

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Craw-Kan Telephone Cooperative, Inc. Petition for Waiver of Section 51.917(b) to Correct Clerical Error Resulting in Incorrect Initial Calculation of "2011 Rate-of-Return Carrier Base Period Revenue")	

PETITION FOR WAIVER

Craw-Kan Telephone Cooperative, Inc.

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Dated: June 6, 2014

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Summary

Craw-Kan Telephone Cooperative, Inc. (“Craw-Kan”) requests waiver of: (1) Section 51.917(b)(7) of the Commission’s Rules in order to correct a clerical error that resulted in the inadvertent omission of Craw-Kan’s Fiscal Year 2011 reciprocal compensation revenues from its initial calculations of 2011 Rate-of-Return Carrier Base Period Revenue for both its Kansas and Missouri study areas; and/or (2) Section 51.917(d) of the Rules in order for Craw-Kan to receive the correct amounts of Eligible Recovery from the CAF-ICC Support mechanism for both study areas for the periods beginning July 1, 2012, and continuing throughout subsequent years.

Good cause exists for the requested waivers because: (a) Craw-Kan made material and substantial attempts to comply with its initial CAF ICC Support filing requirements, and in fact made the requisite CAF ICC Support elections and substantially complete (but for the clerical error omitting its Fiscal Year 2011 net reciprocal compensation) data filings with the Commission in timely fashion; (b) Craw-Kan has put in place internal procedures to ensure that its Universal Service filings will be double-checked for accuracy and completeness in addition to being filed with the Commission and/or USAC in timely fashion; (c) Craw-Kan has submitted this petition listing its correct Fiscal Year 2011 reciprocal compensation revenues that should be included in its revised 2011 Rate-of-Return Carrier Base Period Revenues for both study areas, and has done this as soon as practicable after Craw-Kan learned of the clerical error; (d) grant of the requested waiver will not have an adverse impact upon USAC’s administration of the CAF ICC Support program; and (f) the loss of the \$2,438,636 of CAF ICC Support to which Craw-Kan is otherwise entitled will seriously and adversely impair the company’s finances and operations, and constitutes an excessive and onerous penalty for an inadvertent clerical error.

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PETITION FOR WAIVER

Craw-Kan Telephone Cooperative, Inc. ("Craw-Kan"), by its attorney, hereby requests waiver of: (1) Section 51.917(b)(7) of the Commission's Rules in order to correct a clerical error that resulted in the inadvertent omission of Craw-Kan's Fiscal Year 2011 reciprocal compensation revenues from its initial calculation of 2011 Rate-of-Return Carrier Base Period Revenue; and/or (2) Section 51.917(d) of the Rules in order for Craw-Kan to receive the correct amounts of Eligible Recovery from the CAF-ICC Support mechanism for the periods beginning July 1, 2012, and continuing throughout subsequent years.

Factual Background

Craw-Kan is a rural local exchange carrier ("RLEC") that has been providing telecommunications services since 1954. It is a cooperative that is currently comprised of approximately 10,370 member-customers, most of which operate farms, ranches and other small businesses in rural southeastern Kansas and southwestern Missouri. Craw-Kan presently serves

thirty-one exchanges (approximately 9,671 access lines) in its Kansas study area (Study Area Code 411818), and nine exchanges (approximately 1,939 access lines) in its Missouri study area (Study Area Code 421759).

During early Spring 2012, Craw-Kan compiled its net Fiscal Year 2011 reciprocal compensation revenues for both study areas. Craw-Kan had: (a) \$117,983 in net Fiscal Year 2011 reciprocal compensation revenues for its Kansas study area that were received by March 31, 2012; and (b) \$82,090 in net Fiscal Year 2011 reciprocal compensation revenues for its Missouri study area that were received by March 31, 2012. These net Fiscal Year 2011 reciprocal compensation revenues were fully and properly includable pursuant to Section 51.917(b)(7) of the Rules in Craw-Kan's 2011 Rate-of-Return Carrier Base Period Revenues for its Kansas and Missouri study areas.

Craw-Kan fully intended that these 2011 reciprocal compensation revenues be included in its calculated 2011 Rate-of-Return Carrier Base Period Revenues for both study areas. However, due to a clerical error by one of its employees or consultants, the net Fiscal Year 2011 reciprocal compensation revenues were not included for either study area in Craw-Kan's response to the initial CAF ICC Data Request of the National Exchange Carrier Association ("NECA") in April 2012. Unfortunately, no manager or employee of Craw-Kan or its consultant noticed the clerical error at the time, and Craw-Kan assumed that its net Fiscal Year 2011 reciprocal compensation revenues had been included in the adjusted 2011 Rate-of-Return Carrier Base Period Revenues used to calculate its CAF ICC Support during the 2012-2013 and 2013-2014 periods. It was not until Spring 2014 that one of Craw-Kan's consultants noticed that net Fiscal Year 2011 reciprocal compensation revenues had not been included in the 2011 Rate-of-Return Carrier Base Period Revenue for either Craw-Kan study area.

The inadvertently omitted net Fiscal Year 2011 reciprocal compensation revenues reduced Craw-Kan's eligible recovery (and, therefore, its CAF ICC Support): (a) for its Kansas study area by \$112,084 for the July 1, 2012 to June 30, 2013 period, and by \$106,479 for the July 1, 2013 to June 30, 2014 period; and (b) for its Missouri study area by \$77,985 for the July 1, 2012 to June 30, 2013 period, and by \$74,086 for the July 1, 2013 to June 30, 2014 period. As indicated by the attached chart (Exhibit 1), over the twenty-year phase down of 2011 Rate-of-Return Carrier Base Period Revenues (*i.e.*, from July 1, 2012 to June 30, 2032), the inadvertent clerical error omitting its net Fiscal Year 2011 reciprocal compensation revenues could deprive Craw-Kan of a total of \$2,438,636 of the CAF ICC Support to which it is otherwise entitled under the Commission's rules and policies -- \$1,438,064 of CAF ICC Support for its Kansas study area and \$1,000,572 of CAF ICC Support for its Missouri study area.

Waiver of Section 51.917(b)(7) May Not Be Required

Craw-Kan has filed this pleading as a waiver petition, and does not want to run afoul of Commission procedures that limit the types of relief that can be requested in the same pleading. However, it does wish to note that the Commission may be able, on its own motion, to allow Craw-Kan to correct its clerical error without a waiver.

Section 51.917(b)(7) of the Rules does not establish any deadline by which 2011 Rate-of-Return Carrier Base Period Revenue must be calculated, or after which it cannot be corrected or revised. In fact, Section 51.917(c) expressly permits certain adjustments to 2011 Rate-of-Return Carrier Base Period Revenue regarding access stimulation activity after the July 1, 2012 tariff filing (in cases of Commission and court rulings, and apparently also by carriers themselves, which the rule indicates "should" -- but not "must" -- make the adjustment in the July 1, 2012 tariff filing). Likewise, Section 51.917(d) provides for numerous true-ups and adjustments to

eligible recovery and revenues (including net reciprocal compensation revenues) throughout the years that the CAF ICC Support mechanism is operational. Finally, the only express Section 51.917 deadline is the Section 51.917(f) deadline that requires rate-of-return carriers to elect in their July 1, 2012 access tariff filing whether they will receive CAF ICC Support. Craw-Kan made this Section 51.917(f) election in timely fashion.

Craw-Kan is aware that some carriers have been required to seek waivers of Section 51.917(b)(7) when they received reciprocal compensation or other relevant revenues for Fiscal Year 2011 after March 31, 2012. This is not the case here, as Craw-Kan received the entire subject \$200,072 in net reciprocal compensation revenues for both study areas prior to March 31, 2012. Its net reciprocal compensation revenues for Fiscal Year 2011 are therefore fully and properly includable in its 2011 Rate-of-Return Carrier Base Period Revenue.

The inadvertent omission of Craw-Kan's net reciprocal compensation revenues from its initial calculation of its Base Period Revenue is the type of clerical error that trial courts are routinely allowed to correct in judgments without further proceedings, see, e.g., *Machniak v. Com.*, 351 S.W. 3d 648 (Kentucky, 2011), and that administrative agencies are required to correct in procurement proceedings, *BC Peabody Construction Services, Inc.*, No. 13-378C (U.S. Ct. Claims 2013).

Hence, the Commission could, if it wishes, permit Craw-Kan to correct the subject clerical error and to employ the proper and accurate 2011 Rate-of-Return Carrier Base Period Revenues in the calculation of its ICC CAF Support for both of its study areas for the 2012-2013 and 2013-2014 periods and for future periods. If it takes this approach, the Commission should issue a statement to this effect (together with any required waiver of Section 51.917(d) of the Rules) so that the Universal Service Administrative Company ("USAC") will revise Craw-Kan's

currently listed 2011 Rate-of-Return Carrier Base Period Revenues, and adjust its CAF ICC Support for 2012-2013, 2013-2014 and future years, and so that NECA also will accept and use the corrected 2011 Rate-of-Return Carrier Base Period Revenues for present and future reporting purposes.

Good Cause Exists for a Waiver

If the Commission finds that waivers of Sections 51.917(b)(7) and/or 51.917(d) are necessary, Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Good cause exists for the requested waiver because: (a) Craw-Kan made material and substantial attempts to comply with its initial CAF ICC Support filing requirements, and in fact made the requisite CAF ICC Support election and a substantially complete (but for the clerical error omitting its Fiscal Year 2011 net reciprocal compensation) data filing with the Commission in timely fashion; (b) Craw-Kan has put in place internal procedures to ensure that its Universal Service filings will be double-checked for accuracy and completeness in addition to being filed with the Commission and/or USAC in timely fashion; (c) Craw-Kan has submitted this petition listing its correct Fiscal Year 2011 reciprocal compensation revenues that should be included in its revised 2011 Rate-of-Return Carrier Base Period Revenues for both study areas, and has done this as soon as practicable after Craw-Kan learned of the clerical error; (d) grant of the requested

waiver will not have an adverse impact upon USAC's administration of the CAF ICC Support program; and (f) the loss of the \$2,438,636 of CAF ICC Support to which Craw-Kan is otherwise entitled will seriously and adversely impair the company's finances and operations, and constitutes an excessive and onerous penalty for an inadvertent clerical error.

Craw-Kan Substantially Complied With the Commission's Requirements

As the Wireline Competition Bureau has recognized¹, Spring 2102 was a very difficult and confusing time for RLECs as they struggled to understand and comply with the initial implementation of the Commission's November 2011 *USF/ICC Order*², including new and complex initial CAF ICC Support data filings, as well as new and changing Section 54.313 reporting requirements. The Bureau has found that the widespread confusion surrounding implementation of the new requirements, as well as the inexperience of carriers in making certain first-time filings, constituted unique circumstances justifying waivers of certain of the new rules.³

Craw-Kan was one of the many small RLECs that worked very hard during Spring 2012 to understand and comply with all of the new intercarrier compensation and universal service rules and filing requirements. Its four full-time-employee accounting department worked with its cost consultants to gather and compile the new information required by the new Commission requirements, and to complete the data requests and forms necessary to comply with them in timely fashion. Craw-Kan made the required Section 51.917(f) election for CAF ICC Recovery by the required deadline, and completed the new CAF ICC Support data submissions so that they

¹ See *ACS Wireless, Inc. Petition for Waiver*, Order, DA 12-1503, WC Docket No. 10-90 (Wireline Competition Bureau, rel. September 17, 2012); *Chillicothe Telephone Company Petition for Waiver*, Order, DA 12-1684, WC Docket No. 10-90 and CC Docket Nos. 01-92 and 96-45 (Wireline Competition Bureau, rel. October 19, 2012)

² *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17633 (2011).

³ *ACS Wireless, Inc. Petition for Waiver*, at para. 8; *Chillicothe Telephone Company Petition for Waiver*, at para. 7.

could be filed on time. Craw-Kan also filed the required portions of its Section 54.313 report (FCC Form 481) in timely and complete fashion.

Unfortunately, as indicated above, Craw-Kan made a single, inadvertent clerical error when it failed to include the Fiscal Year 2011 net reciprocal compensation revenues that it had compiled for its Kansas and Missouri study areas in its April 2012 response to the initial CAF ICC Data Request. Given that Craw-Kan provided all of the other information sought by the data request and made all of the other required *USF/ICC Order* implementation filings in timely fashion, it was clearly in substantial compliance with the numerous, difficult and confusing first time requirements.

Craw-Kan Has Put Internal Procedures In Place

The April 2012 CAF ICC Data Request was a first-time filing that was difficult in itself, and that was further complicated by all of the new intercarrier compensation and universal service requirements and filings that were being implemented at the same time. Although such unique circumstances that were conducive to clerical errors and other mistakes may not arise again within the foreseeable future, Craw-Kan has nonetheless implemented a new internal procedure to prevent the type of clerical error that resulted in the omission of its Fiscal Year 2011 net reciprocal compensation revenues from its April 2012 CAF ICC Data Request. Henceforth, all data compiled by or on behalf of Craw-Kan for submission to NECA, USAC or the Commission in connection with the determination of Craw-Kan's CAF ICC Support and/or High-Cost Universal Service Support will be reviewed line-by-line for accuracy and completeness via telephone by a member of Craw-Kan's staff and a representative of its cost consultant prior to submission.

Craw-Kan Has Filed This Petition As Soon As Practicable

Craw-Kan did not discover the April 2012 clerical error until April 2014. Given that the CAF ICC Support mechanism was a brand new program, there was no sudden and significant drop in monthly support payments that was readily noticeable. Craw-Kan was aware that it had lower revenues in both study areas, but presumed that such revenue decrease was a consequence of overall economic conditions and of the Commission's intercarrier compensation and universal service rule changes.

Once its cost consultant discovered the clerical error while reviewing prior filings in connection with the preparation of its response to NECA's April 2014 CAF ICC Data Request, Craw-Kan investigated the matter. Whereas it is still not clear exactly when or how the error occurred, it is clear that it was a wholly inadvertent oversight arising from a combination of the heavy workload necessary to comply with the Commission's new procedures and requirements and of the unfamiliarity of Craw-Kan's employees, managers and consultants with the new requirements. After completing its investigation, Craw-Kan contacted its counsel, and ordered the preparation and filing of this petition.

**Waiver Will Not Have an Adverse Impact Upon
USAC's Administration of the CAF ICC Support Mechanism**

The omitted net Fiscal Year 2011 reciprocal compensation revenues will, at the maximum, increase Craw-Kan's CAF ICC Support by \$190,069 (\$112,084 for its Kansas study area and \$77,985 for its Missouri study area) for the July 1, 2012 to June 30, 2013 period, and by \$180,565 (\$106,479 for its Kansas study area and \$74,086 for its Missouri study area) for the July 1, 2013 to June 30, 2014 period. Given that CAF ICC Support was estimated to be \$421,924,000 for 2013⁴, the incremental Craw-Kan CAF ICC Support represents about 0.045%

⁴ USAC 2013 Annual Report, p. 36.

to 0.043%, or less than five hundredths of one percent, of the entire CAF ICC Support distributions for the approximate periods involved. Such minimal true-ups will not have any adverse impact upon the CAF ICC Support mechanism, or USAC's administration of it. Going forward, the correct adjusted 2011 Rate-of-Return Carrier Base Period Revenues for both study areas will enable USAC to calculate the proper and equitable CAF ICC Support for Craw-Kan during future years.

**The Commission Should Not Impose
An Excessive Penalty Upon Craw-Kan for a Clerical Error**

As indicated above, the inadvertent omission of Craw-Kan's net reciprocal compensation revenues from its initial calculation of its Base Period Revenue is the type of clerical error that trial courts are routinely allowed to correct in judgments without further proceedings, see, e.g., *Machniak v. Com.*, 351 S.W. 3d 648 (Kentucky, 2011), and that administrative agencies are required to correct in procurement proceedings, *BC Peabody Construction Services, Inc.*, No. 13-378C (U.S. Ct. Claims 2013). The Commission itself has long allowed applicants for various radio station licenses to correct clerical errors without dismissal, waiver, penalty, or other further formal proceedings or actions. See, e.g., *Singleton v. FCC*, 952 F2d 1444 (D.C. Cir. 1992) (Commission decision to allow cellular applicant to correct erroneous coordinates and elevations was affirmed by court); *Ram Communications of Michigan, Inc.*, 3 FCC Rcd 3101 (1988) (applicant allowed to correct typographical error in cellular application); *Timothy Roper*, 4 FCC Rcd 4070 (1989) (application amended to correct technical exhibits and errors in cost figures); and *James K. Larrington Corporation*, 2 FCC Rcd 1529 (Comm. Carr. Bur. 1987) (applicant allowed to correct wattage relating to maximum radiating power).

Craw-Kan would suffer an excessive penalty of \$2,438,636 (\$1,438,064 for its Kansas study area and \$1,000,572 for its Missouri study area) during the period from July 1, 2012, to

June 30, 2032, if it were to be denied the ability to correct its clerical error and add its Fiscal Year 2011 reciprocal compensation revenues to its initial calculation of 2011 Rate-of-Return Carrier Base Period Revenues. Even if were denied CAF ICC Support for a single year for its adjusted net 2011 reciprocal compensation due to its clerical error (for example, \$112,084 for its Kansas study area and \$77,985 for its Missouri study area for the period from July 1, 2012 to June 30, 2013), such penalty would be wholly excessive for an inadvertent clerical error.

It is well established that penalties and forfeitures are not favored by the law, and should be enforced only when they are within both the spirit and letter of the law. *United States v. One Ford Coach*, 307 U.S. 219, 226 (1939). In determining whether penalties and fines are excessive, courts have examined whether they are “so disproportionate to the offense as to shock public sentiment” or “contrary to the judgment of reasonable people concerning what is proper under the circumstances.” *Hindt v. State*, 421 A.2d 1325, 1333 (Del. 1980).

A penalty of over \$190,000 (much less, one in excess of \$2.4 million) for an inadvertent failure to list net 2011 reciprocal compensation revenues on a new and unfamiliar submission during a period of substantial and confusing regulatory upheaval is plainly disproportionate to the alleged “offense” and would be deemed “excessive” in the judgment of virtually all reasonable people. In this respect, it should be noted that Section 503(b)(2)(B) of the Act imposes a maximum penalty of \$100,000 upon a common carrier for a willful violation of a law or regulation.

Craw-Kan has already suffered due to the delayed distribution of \$370,634 in CAF ICC Support for which it would otherwise have been entitled during the two-year period from July 1, 2012 to June 30, 2014. Given the time value of money and the importance of cash flow, delayed distributions are reasonable and sufficient incentives and sanctions to encourage carriers to file

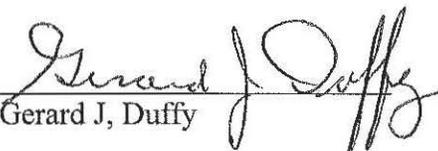
their data in complete, accurate and timely fashion. However, complete denial of from \$190,069 to \$2,438,636 of CAF ICC Support would go far beyond any reasonable and effective carrot or stick, and impose an excessive and unnecessary sanction upon Craw-Kan, its member-customers and its employees.

Conclusion

To the extent one or more waivers are necessary, the Commission is respectfully requested to allow Craw-Kan to correct the clerical error that resulted in the inadvertent omission of its Fiscal Year 2011 reciprocal compensation revenues from its initial calculation of 2011 Rate-of-Return Carrier Base Period Revenue, and to receive the correct amounts of Eligible Recovery from the CAF-ICC Support mechanism for the periods beginning July 1, 2012, and continuing throughout subsequent years. Good cause exists for such waivers because: (a) Craw-Kan made material and substantial attempts to comply with the new and complex initial CAF ICC Support filing requirements; (b) Craw-Kan has put in place internal procedures to ensure that its future Universal Service filings will be carefully checked for accuracy and completeness in addition to being timely filed; (c) Craw-Kan has acted to investigate and correct its clerical error as soon as practicable after it was discovered; (d) grant of the requested waiver will not have an adverse impact upon USAC's administration of the CAF ICC Support program; and (f)

the loss of the \$2,438,636 of CAF ICC Support to which Craw-Kan is otherwise entitled will seriously and adversely impair the company's finances and operations, and constitutes an excessive and onerous penalty for an inadvertent clerical error.

Respectfully submitted,
CRAW-KAN TELEPHONE COOPERATIVE, INC.

By: 
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Dated: June 6, 2014

Exhibit 1

Craw-KanTelephone Cooperative, Inc.
 CAF/ICC Reciprocal Compensation Analysis
 May 2014

Line		Craw-Kan KS SAC: 411818	Craw-Kan MO SAC: 421759	Total Company
1	FY 2011 Reciprocal Compensation			
2	for Frozen Baseline	117,983	82,090	200,072
3				
4	5% Annual Phase Down over 20 Years			
5	7/1/2012 to 6/30/2013	112,084	77,985	190,069
6	7/1/2013 to 6/30/2014	106,479	74,086	180,565
7	7/1/2014 to 6/30/2015	101,155	70,382	171,537
8	7/1/2015 to 6/30/2016	96,098	66,863	162,960
9	7/1/2016 to 6/30/2017	91,293	63,519	154,812
10	7/1/2017 to 6/30/2018	86,728	60,343	147,072
11	7/1/2018 to 6/30/2019	82,392	57,326	139,718
12	7/1/2019 to 6/30/2020	78,272	54,460	132,732
13	7/1/2020 to 6/30/2021	74,359	51,737	126,096
14	7/1/2021 to 6/30/2022	70,641	49,150	119,791
15	7/1/2022 to 6/30/2023	67,109	46,693	113,801
16	7/1/2023 to 6/30/2024	63,753	44,358	108,111
17	7/1/2024 to 6/30/2025	60,566	42,140	102,706
18	7/1/2025 to 6/30/2026	57,537	40,033	97,570
19	7/1/2026 to 6/30/2027	54,660	38,031	92,692
20	7/1/2027 to 6/30/2028	51,927	36,130	88,057
21	7/1/2028 to 6/30/2029	49,331	34,323	83,654
22	7/1/2029 to 6/30/2030	46,864	32,607	79,472
23	7/1/2030 to 6/30/2031	44,521	30,977	75,498
24	7/1/2031 to 6/30/2032	42,295	29,428	71,723
25				
26	Total Revenues Lost			
27	Over 20 Year Phase Down	1,438,064	1,000,572	2,438,636

DECLARATION

I, Mary L. Smith, hereby declare upon penalty of perjury, that:

1. I am the President of Craw-Kan Telephone Cooperative, Inc. ("Craw-Kan").

2. I have reviewed the "Petition For Waiver," dated June 6, 2014, to which this Declaration is attached, and declare that the factual statements therein are true and correct to the best of my knowledge, information and belief.

Mary L. Smith
Mary L. Smith

6/9/14
Date