

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Petition for Declaratory Ruling by the Rural Independent Competitive Alliance	)	
	)	
Petition for Limited Waiver and Request for Review of Decision of the Universal Service Administrator by ComSouth Telenet	)	

**ORDER**

**Adopted: July 30, 2014**

**Released: July 30, 2014**

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant a request filed by ComSouth Telenet (ComSouth).<sup>1</sup> ComSouth seeks a limited waiver and reversal of a decision by the Universal Service Administrative Company (USAC) that denied ComSouth the relief established in the Wireline Competition Bureau's (Bureau) *RICA Declaratory Ruling and Order*.<sup>2</sup> For the reasons set forth below, we find that good cause exists to grant a limited waiver of the conditions of the *RICA Declaratory Ruling and Order* to allow ComSouth to benefit from the relief granted in that order.

2. In the *RICA Declaratory Ruling and Order*, the Bureau granted a petition filed by the Rural Independent Competitive Alliance (RICA).<sup>3</sup> The Bureau clarified that, for federal universal service fund (USF) contributions purposes, competitive local exchange carriers (CLECs) are not required to allocate a portion of the revenues derived from their fixed local revenues to the interstate jurisdiction.<sup>4</sup> The Bureau directed USAC to accept revised FCC Forms 499-A from RICA members who had filed

<sup>1</sup> Request for Review of a Decision by the Universal Service Administrator and Request for Waiver by ComSouth Telenet, WC Docket 06-122 (filed May 28, 2014) (Request for Review).

<sup>2</sup> See Request for Review at 1-2 (stating that USAC determined that ComSouth does not qualify for the relief specified in the order because ComSouth was not a member of RICA); Petition for Declaratory Ruling by the Rural Independent Competitive Alliance, Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc., WC Docket No. 06-122, Report and Order, 28 FCC Rcd 16037 (Wireline Comp. Bur. 2013) (*RICA Declaratory Ruling and Order*).

<sup>3</sup> See generally, *RICA Declaratory Ruling and Order*, 28 FCC Rcd 16037; Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue, WC Docket No. 06-122 (filed April 26, 2011) (RICA Petition).

<sup>4</sup> See *RICA Declaratory Ruling and Order*, 28 FCC Rcd at 16041-42, paras. 2,10-12 (stating that neither the Commission's formal separations process that governs how incumbent local exchange carriers (ILECs) assign their costs to intrastate and interstate jurisdictions, nor the access charge rules that govern how ILECs recover those costs from their customers, apply to CLECs.)

under protest while disputing USAC's directive to identify an interstate portion of fixed local exchange services.<sup>5</sup> ComSouth was a party to the RICA petition but was not a formal member of RICA, as defined by the RICA bylaws.<sup>6</sup> USAC therefore determined that ComSouth does not qualify for the relief specified in the *RICA Declaratory Ruling and Order*.<sup>7</sup>

3. We find that, based on the unique circumstances presented in this case, good cause exists to grant a limited waiver of the conditions of the *RICA Declaratory Ruling and Order* to allow ComSouth to benefit from the relief granted in that order.<sup>8</sup> Although ComSouth was not a formal member of RICA, it participated substantively with the small group of RICA members that filed the petition by providing the Commission with additional information it requested.<sup>9</sup> ComSouth also shared the costs of filing the petition with the RICA-member petitioners.<sup>10</sup> Moreover, we agree with ComSouth that its "position and actions were consistent with the Bureau's analysis and relief granted the RICA members."<sup>11</sup> ComSouth, like the RICA-member petitioners, is a CLEC and is not required to allocate to the interstate jurisdiction a portion of its fixed local service revenue for federal USF contribution purposes.<sup>12</sup> Like the other petitioners, ComSouth allocated a portion of its revenues to the interstate jurisdiction on the Forms 499 that were filed with USAC under protest, and timely filed revised Forms 499-A after release of the *RICA Declaratory Ruling and Order*.<sup>13</sup> We find that under these limited circumstances ComSouth should be afforded the same relief as the other RICA-member petitioners. Accordingly, we direct USAC to review ComSouth's amended FCC Forms 499-A and supporting documentation and to adjust invoices and issue refunds as appropriate, consistent with the clarifications and findings in the *RICA Declaratory Ruling and*

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<sup>5</sup> On its own motion, the Bureau waived the one-year deadline for revising Forms 499 to enable USAC to process revised filings that were consistent with the Bureau's clarifications in the order. *See id.* at 16043, para 15. The Bureau allowed the RICA members who filed amended FCC Forms 499 under protest, based on USAC's directive to identify an interstate portion of fixed local exchange services, a period of 60 days within which to revise their filings and provide any relevant documentation in support of such filings. *Id.* at para. 14.

<sup>6</sup> Request for Review at 2.

<sup>7</sup> *Id.*

<sup>8</sup> The Commission may waive any provision of its rules for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 875 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> Request for Review at 2-3. Although ComSouth participated with the other petitioners in providing information requested by Commission staff, the information did not make clear that ComSouth's participation was not as a voting member of the organization. *Id.*

<sup>10</sup> *See* Request for Review at 2-3. Because only a small number of RICA members were interested in the issue, the costs were allocated among those CLECs rather than recovered from the general revenues of RICA. ComSouth paid its pro-rata share of the costs "and otherwise participated as an equal with the RICA members." *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *See id.* at 2 (stating that ComSouth became aware that RICA was looking into the matter on behalf of some rural CLEC members and asked to participate); *see RICA Declaratory Ruling and Order*, 28 FCC Rcd at 16041, para. 10 (stating that "there is no existing Commission rule or order mandating that CLECs allocate and report for USF contribution purposes a portion of the revenues derived from their fixed local revenues to the interstate jurisdiction").

<sup>13</sup> *Id.*

*Order*.<sup>14</sup> On our own motion, we find good cause exists to waive the one-year filing deadline for revising the Form 499-A, to enable USAC to process ComSouth's revised filing. We allow ComSouth a period of 30 days in which to file its revised Forms 499-A and supporting documentation.

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, that the request for review and request for waiver filed by ComSouth Telenet IS GRANTED.

5. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154 and 254, and pursuant to sections 0.91, 0.291, 1.3 and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722, the one-year deadline for filing revisions to the FCC Forms 499-A IS WAIVED to the extent described herein, and the Universal Service Administrative Company SHALL ACCEPT ComSouth Telenet's FCC Forms 499 for the time period in which it allocated revenues to the interstate jurisdiction under protest, revised consistent with the terms of this Order, if its revised Forms are filed within 30 days of this Order.

6. IT IS FURTHER ORDERED that, pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BECOME EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>14</sup> See *RICA Declaratory Ruling and Order*, 28 FCC Rcd at 16043, paras. 14-15.