

July 31, 2014

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: SureWest Telephone Application for Review of Denial of Waiver of Section 54.314(d) Filing Deadline for Submission of State Certification of Federal High Cost Support (WC Docket No. 08-71); Ex Parte Presentation

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission's Rules,¹ this letter provides notice that, on behalf of SureWest Telephone ("SureWest"), Kevin Kastor of Consolidated Communications and the undersigned met on July 30, 2014 with Alexander Minard, Vickie Robinson, and Romanda Williams of the Telecommunications Access Policy Division of the Wireline Competition Bureau to discuss SureWest's pending Application for Review² of a Wireline Competition Bureau ("Bureau") order³ denying SureWest a waiver of section 54.314(d) of the Commission's Rules.⁴

During the presentation, SureWest's representatives explained why the Commission should waive in this case the section 54.314(d) deadline for state certification as to the use of federal high-cost support. We indicated that a combination of the following key factors justified a waiver, in whole or in part, of the rule: (1) the October 1, 2012 filing deadline that SureWest

¹ 47 C.F.R. § 1.1206(b).

² SureWest Telephone Application for Review, WC Docket No. 08-71 (filed Nov. 26, 2013) ("Application for Review").

³ *SureWest Telephone Petition for a Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support*, WC Docket No. 08-71, Order, 28 FCC Rcd 14852 (WCB 2013) ("*Bureau Waiver Denial Order*").

⁴ 47 C.F.R. § 54.314(d).

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missed was the first filing required under the revised high-cost certification framework⁵; (2) SureWest had timely filed its final Interstate Common Line Support (“ICLS”) certification (which covered all of the relevant support for the period at issue) on June 12, 2012, attesting that it would use its ICLS funding for the period July 1, 2012 through June 30, 2013 only for the facilities and services for which the support is intended; (3) on July 2, 2012, only 20 days after it filed its final ICLS certification, Consolidated Communications Holdings, Inc. acquired SureWest (“Consolidated”) and SureWest became an affiliate of a price-cap carrier rather than a standalone rate-of-return carrier; and (4) because of confusion stemming from the change in the certification requirements and the change in SureWest’s high-cost support status caused by the Consolidated acquisition, SureWest did not meet the October 1, 2012 deadline for the new certification. We noted that a waiver here was supported by Bureau precedent.⁶

SureWest’s representatives also noted that at least a partial waiver was supported by the recent Further Notice of Proposed Rulemaking in the *Connect America Fund* proceeding, in which the Commission expressed “concerns that [section 54.314(d)] may not be appropriately calibrated to meet our objectives” and expressed an intention to better balance the need to create incentives for timely filing “with ensuring that the support reduction we impose on carriers is a proportionate response to their failure to meet deadlines and not unduly punitive given the nature of the non-compliance.”⁷ In light of these policy concerns, the Commission proposed to modify section 54.314(d) to eliminate the punitive reductions of support in full-quarter blocks, and replace it with a pro-rata reduction in a carrier’s support based on the number of days its certification is late.⁸ Under this new approach, the Commission also proposed to “strictly enforce” the filing deadlines,⁹ and to stop the current policy of what it viewed as granting routine waivers of the rule.¹⁰

⁵ *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

⁶ *Federal-State Joint Board on Universal Service, Smith Begley, Inc. Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, CC Docket No. 96045, Order, 16 FCC Rcd 15275 (CCB 2001). See Application for Review at n.16; Sure West Telephone Petition for Waiver, WC Docket No. 08-71 at 5 n.15 (filed Jan. 24, 2013) (“Petition for Waiver”).

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 at ¶ 318 (rel. June 10, 2014) (“FNPRM”) (citation omitted).

⁸ *Id.* at ¶¶ 319- 320.

⁹ *Id.* at ¶ 319.

¹⁰ *Id.* at ¶ 324. Compare *Bureau Waiver Denial Order*, 28 FCC Rcd at 14854 ¶ 6 (“the Bureau concludes that the Commission intended for these new deadlines to be strictly enforced”) with *FNPRM* at ¶ 324 (referring to current practice of “providing waivers to parties that commit to

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The Commission's policy concerns in the *FNPRM* about the proportionality of the late-filing sanction in the current section 54.314(d) closely track arguments that SureWest made in its Application for Review. SureWest specifically pointed out that the "loss of approximately \$2.5 million in high-cost support is a disproportionate penalty to assess against SureWest" given the scope of the error.¹¹

SureWest continues to believe that its waiver should be granted in full. But, as discussed at the meeting, at a minimum, SureWest urges the Commission to recognize that the policy concerns about proportionality that it has expressed in the *FNPRM* apply squarely to SureWest's situation. Therefore, SureWest requests, as an alternative to a full waiver of the rule, that the Commission grant a partial waiver so as to reduce SureWest's support on a pro-rata basis, based on the number of days its certification was late, consistent with the proposed rule and its underlying policy.¹² This approach would reduce SureWest's loss in support from 50 percent of its support for the year to 38 percent, so that SureWest would lose approximately \$1.9 million in support rather than approximately \$2.5 million. While this reduction is still larger than necessary given the scope of SureWest's error, it would be more proportional – and consistent with the Commission's proposed policy change expressed in the *FNPRM*.

If there are any questions regarding this matter, please contact the undersigned.

Sincerely yours,

/s/ David H. Solomon

David H. Solomon

cc: (email): Alexander Minard
Vickie S. Robinson
Romanda L. Williams

implement improved internal controls to ensure compliance in the future"). SureWest implemented such internal controls. *See* Petition for Waiver at 4.

¹¹ Application for Review at 11. *See also id.* at iii, 11-15.

¹² In its Application for Review, Sure West proposed a reduction of support as an alternative to a full waiver, although not using the same calculations as the *FNPRM*. *See* Application for Review at iii, 1-2, 15, 17.