



1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000  
FAX 202.719.7049

7925 JONES BRANCH DRIVE  
McLEAN, VA 22102  
PHONE 703.905.2800  
FAX 703.905.2820

www.wileyrein.com

September 11, 2014

Bennett L. Ross  
202.719.7524  
bross@wileyrein.com

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Universal Service High-Cost Filing Deadlines;*  
*Petition of Virgin Islands Telephone Corp. d/b/a Innovative Telephone for*  
*Waiver of the National Exchange Carrier Association Adjustment Period,*  
WC Docket 08-71, CC Docket No. 96-45

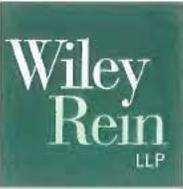
Dear Ms. Dortch:

On September 10, 2014, in connection with the above-referenced proceedings, Don Parrish with Parrish, Blessing & Associates, and the undersigned with Wiley Rein LLP, counsel for the Virgin Islands Telephone Corp. d/b/a Innovative Telephone (“Innovative”) met with Suzanne Yelen, Alex Minard, Ted Burmeister, and Chris Cook with the Wireline Competition Bureau (“Bureau”). Mark Fortin and Nathania Bates, Innovative’s Chief Financial Officer and Vice President – Legal Affairs, respectively, participated in the meeting by telephone.

During this meeting, Innovative explained the basis for its request for a waiver of the National Exchange Carrier Association’s (“NECA”) rolling 24-month adjustment period, which would ensure that the company’s high cost loop support for 2011 and Connect America Fund (“CAF”) frozen support would be calculated based on accurate loop count data. Innovative underscored the significance of the waiver, which, if granted, would result in the company receiving \$565,860 in additional support in 2011 and annual frozen CAF support in subsequent years.<sup>1</sup>

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<sup>1</sup> In its waiver petition, which was filed in December 2011, Innovative indicated that the amount of high cost loop support it stood to lose absent a waiver was approximately \$540,000 annually. This difference is attributable to the fact that the National Average Cost per Loop for the 2009 data period (which gives rise to 2011 support) had yet to be finalized. True-up 2009 cost data submitted to NECA by carriers subsequent to the filing of the petition resulted in adjustments to the National Average Cost per Loop and the high cost funds available to Innovative.



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Innovative indicated that the erroneous loop count data was the result of including loops for non-switched wideband services – loops that should have been excluded under NECA’s rules – which resulted in Innovative’s 2009 loop counts (the data year upon which 2011 support was calculated) being overstated by approximately 1,800 loops. As soon as Innovative discovered this error in November 2011, Innovative alerted NECA, which agreed that non-switched wideband loops should have been excluded from the company’s loop counts. However, NECA indicated that, absent a waiver, it would not recalculate Innovative’s high cost loop support for January through October 2011 under its 24-month adjustment policy, although NECA agreed to make the adjustment for November and December 2011 loop count data by the end of January 2012.

Absent a waiver, there is no dispute that Innovative’s 2011 high cost loop support and its frozen CAF support would be based on inaccurate loop count data. Consistent with relevant statutory obligations and with Commission precedent, the Bureau should grant the waiver to ensure that accurate loop count data are used in calculating Innovative’s universal service support.

As the Commission has recognized in other contexts, the agency has “a well-established duty under the Administrative Procedure Act (‘APA’) to ‘analyze . . . new data’ when faced with existing data that ‘are either outdated or inaccurate.’”<sup>2</sup> Consistent with its APA obligations, the FCC consistently has relied on updated, accurate data whenever possible. For example, in the universal service context, the Bureau has found that “[t]he public interest is served by ensuring accurate data is used in necessary computations, regardless of the extent of support reduction or increase.”<sup>3</sup>

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<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 138 (2014) (citing *Dow Agrosciences LLC v. Nat’l Marine Fisheries Service*, 707 F.3d 462, 473 (4th Cir. 2013)).

<sup>3</sup> *Connect America Fund; High-Cost Universal Service Support*, 27 FCC Rcd 12106, ¶ 4, n.9 (2012) (granting request for expedited waiver to correct a carrier’s study area boundaries that were used in the regression analysis that established “benchmarks” for high cost loop support); *Connect America Fund; High-Cost Universal Service Support*, 27 FCC Rcd 11075, ¶ 4, n.9 (2012) (same).

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Just this past month, the Commission granted two waiver petitions allowing carriers to include in their recovery calculations funds they were unable to collect from Halo Wireless; in so doing, the Commission found that the waiver would serve the public interest because it would result in the carriers' Base Period Revenue reflecting "actual service provided during FY 2011 to terminate actual calls bound for Petitioners' customers."<sup>4</sup> The same rationale applies here – granting the requested waiver will ensure that Innovative's baseline support amount reflects actual loops in service used to provide actual switched services to Innovative's customers.

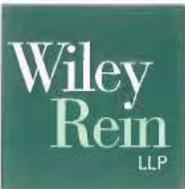
During the meeting, Innovative responded to the Bureau's questions about the precedential impact as well as the practical effects of granting the requested waiver. As Innovative explained, its waiver request presents relatively unique circumstances such that any waiver granted to Innovative would not establish precedent for future waiver requests. Innovative's waiver seeks to ensure that its 2011 high cost support is calculated based on accurate loop data, and Innovative filed its waiver petition in 2011. The accuracy of 2011 high cost loop support is critical because, under 47 C.F.R. § 54.312(a), a price cap carrier's baseline support amount for frozen CAF support purposes is based on the carrier's total 2011 support as determined by USAC on January 31, 2012. As far as Innovative is aware, no other price cap carrier has petitioned for a waiver of any deadlines related to the 2011 funding year, and any carrier that may file such a petition in the future would have to explain why it could not have timely filed in 2011 and demonstrate good cause for its failure to do so.

While granting Innovative the requested relief would require very modest adjustments to the support available to other carriers as a result of the cap applicable to the CAF program, the Commission has made such adjustments in the past. And, consistent with Commission precedent, the fact that adjustments to universal service support may be required cannot override the public interest that would be served by ensuring the use of accurate data in calculating Innovative's high cost support.

Furthermore, irrespective of the requested waiver, adjustments to the support available to other carriers under the CAF program will be required by virtue of USAC's failure to calculate correctly Innovative's baseline support amount under the Commission's rules. Specifically, as Innovative explained to the Bureau, NECA agreed to include corrected November and December 2011 loop counts in

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<sup>4</sup> *Connect America Fund; High-Cost Universal Service Support*, Order, FCC 14-121, ¶ 22 (rel. Aug. 7, 2014).



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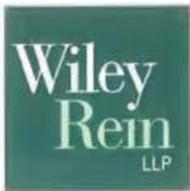
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calculating Innovative's 2011 high cost loop support. As reflected in an email from Robert Knoble of NECA dated December 13, 2011, a copy of which was provided to the Bureau and which is attached to this ex parte filing, NECA indicated that "[t]hese revisions will be processed at the end of January [2012], then sent to USAC."

However, for whatever reason, that apparently did not happen, as Innovative's baseline support amount is based upon the inaccurate loop counts for November and December 2011 that NECA agreed to correct – corrections that were within the 24-month rolling period and that did not require a waiver in order to be effectuated by NECA and USAC. This error – whether caused by NECA or USAC – occurred through no fault of Innovative but has resulted in Innovative's frozen CAF support being understated by \$113,172 annually.

Accordingly, the Bureau should grant the requested waiver, which would increase the company's high cost support in 2011 and annual frozen CAF support by \$565,860. The Bureau also should direct USAC to recalculate Innovative's baseline support amount based on accurate loop counts for November and December 2011, which would increase the company's frozen CAF support by \$113,172 annually. Both actions by the Bureau would result in increased annual support to Innovative in the amount of \$679,032.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced dockets.



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Sincerely,

A handwritten signature in blue ink, appearing to read "Bennett L. Ross".

Bennett L. Ross

BLR:rw

Enclosure

cc: Suzanne Yelen  
Alex Minard  
Ted Burmeister  
Chris Cook

## Don Parrish

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**From:** Knoble, Robert <RKNOBLE@neca.org>  
**Sent:** Tuesday, December 13, 2011 1:12 PM  
**To:** Tisha Lake  
**Cc:** Donald E Parrish; Mike Cumbermack  
**Subject:** RE: Revised USF Data Collection Materials 2010-1 and 2011-1 for VITELCO

Good afternoon Tisha,

NECA processes revisions on a quarterly basis. These revisions will be processed at the end of January, then sent to USAC.

Bob

**From:** Tisha Lake [mailto:Tisha.Lake@innovativevi.net]  
**Sent:** Tuesday, December 13, 2011 11:51 AM  
**To:** Knoble, Robert  
**Cc:** Donald E Parrish; Mike Cumbermack  
**Subject:** RE: Revised USF Data Collection Materials 2010-1 and 2011-1 for VITELCO

Hi Bob,

Can you confirm if the information related to the revised data for 2010-1 and 2011-1 has been submitted to USAC already? And if so, would you also provide a date.

Thanks,

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Tisha Lake  
*Accounting Department*

**Innovative Companies**  
4611 Tutu Park, Suite 200  
St Thomas, VI 00802

O: 340.715.8011  
F: 340.776.9856  
E: [Tisha.Lake@innovativevi.net](mailto:Tisha.Lake@innovativevi.net)



Is it necessary to print this document?  
Let us save the planet together!

**From:** Donald Parrish [mailto:dparrish@pbanda.com]  
**Sent:** Friday, November 18, 2011 10:10 AM  
**To:** Bob Knoble  
**Cc:** Bob Gary; Mike Cumbermack; Tisha Lake; Kris Carson  
**Subject:** Revised USF Data Collection Materials 2010-1 and 2011-1 for VITELCO

Good morning Bob,

As mentioned in previous correspondence, VITELCO submits the revised USF Data Collection Materials attached hereto for the 2010-1 and 2011-1 data collections. The changes affect the loop counts for Categories 1.1 and 1.2 private line loops