BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of:	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
Allband Communications Cooperative Petition for Waiver of implementation of Section 54.302 of the Commission's Rules and framework to limit reimbursable capital and operating costs.	)	

THE MICHIGAN PUBLIC SERVICE COMMISSION'S COMMENTS IN SUPPORT OF ALLBAND COMMUNICATIONS COOPERATIVE'S REQUEST FOR WAIVER

Pursuant to the Federal Communications Commission's (FCC) procedural schedule established in the above-referenced docket, the Michigan Public Service Commission (MPSC) hereby submits the following comments in support of Allband Communications Cooperative's (Allband) requested waiver.

Facts and History

The MPSC is the state agency charged with the authority to administer the Michigan Telecommunications Act and the federal telecommunications laws as applied to the state. On December 2, 2004, the MPSC licensed Allband, a non-profit telecommunications cooperative, to provide telecommunications service to a geographic area in Michigan that was not currently being served by any other carrier. See *In the matter of the application of Allband Communications*

Cooperative for a temporary and permanent license to provide basic local exchange service in the proposed Robbs Creek Exchange, MPSC Case No. U-14200, Opinion and Order, December 2, 2004. Allband serves the Robbs Creek Exchange, located in northeast Michigan, which consists of portions of Alcona, Alpena, Montmorency, and Oscoda counties. The Robbs Creek Exchange is located in a rural heavily-forested area with an average population density of approximately one premise per square mile. This service area had never been included in the local exchange service territory or the study area of Frontier (previously Verizon), the adjacent incumbent local exchange carrier (ILEC).

Due to its unique operating situation, Allband petitioned the FCC for waiver of Sections 69.2(hh) and 69.601 of its rules, along with requesting a limited waiver of the FCC's definition of an ILEC in Part 36 and Section 54.5. In its petition, Allband asked to be treated as an ILEC for the purposes of receiving universal service support and participating in National Exchange Carriers Association's tariffs and pools. Allband additionally requested additional waivers to help ensure that it would be able to collect access charges and universal service funding in a timely manner. See Allband Communications Cooperative's Petition for Waiver of Sections 69.2 and 69.601 of the Commission's Rules, WC Docket No. 05-174 (filed April 7, 2005); Public Notice, 20 FCC Rcd 8450 (WCB 2005). The FCC granted the requested waivers indicting that this was "consistent with Commission precedent and the public interest". *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, WC Docket No. 05-174, Order, para. 6 (rel. August 11, 2005). In granting the waiver, the FCC also noted that its rules regarding universal service support for ILECs did not provide for a telecommunications carrier like Allband, which came into existence after the enactment of the Telecommunications Act of 1996 (Act). 47 U.S.C. §§ 151 *et seq*.

Upon the FCC granting its waiver, Allband filed an application, pursuant to Section 214(e)(2) of the Act, for designation as an eligible telecommunications carrier (ETC) for purposes of receiving universal service fund (USF) support. The MPSC designated Allband an ETC on November 10, 2005. *In the matter of the application of Allband Communications Cooperative for designation as an eligible telecommunications carrier pursuant to Section 214(e) of the Telecommunications Act of 1996*, MPSC Case No. U-14659, Opinion and Order, November 10, 2005. Later, the MPSC granted Allband's request to expand its basic local exchange service license and permit the cooperative to provide service to seven other unserved areas in the counties of Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda. *In the matter of the application of Allband Communications Cooperative for a license to provide basic local exchange service in seven currently unserved areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda counties*, MPSC Case No. U-15385, Opinion and Order, November 8, 2007. Allband's ETC designation was also approved to include its expanded license area. *In the matter of the application of Allband Communications Cooperative for expansion of its designated eligible telecommunications carrier service areas in Michigan*, MPSC Case No. U-15492, Order, March 11, 2008.

Recently, the FCC issued its *USF/ICC Transformation Order*, which comprehensively reformed the nation's universal service system for both fixed and mobile telecommunications, and affects designated ETCs. See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at para. 1404 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases). Citing its authority under Section 254(b) of the Act, the FCC adopted support for broadband-capable networks as an express universal service principle and elected to set specific performance goals for the high-cost component of the USF. Additionally, a cap was set for limiting federal revenue for high-cost programs. Recognizing that the USF reform may put some customers at risk of losing their telecommunication services, the FCC provided a waiver mechanism to allow carriers to seek relief from some or all of the FCC's reforms.

Due to its unique situation, Allband filed for a waiver of the implementation of Section 54.302 of the FCC's rules and the pending framework to limit reimbursable capital and operating costs. The FCC noticed the proceeding and sought comment on the waiver of the two high-cost universal service rules.

Discussion

The MPSC supports Allband's requested waiver and recommends that the FCC grant the request expeditiously. Allband's Petition has satisfied the FCC's standards and can demonstrate that the FCC's rules implementing a per-line cap on

USF support would place Allband in financial hardship and be detrimental to the Company's operations and customers.

Recognizing that its universal service reforms would affect some providers' financial viability, the FCC advised individual carriers that they may seek to waive the enacted rules. *USF/ICC Transformation Order*, paras. 539-544. In general, the FCC may waive its rules for good cause and may exercise its discretion when determining whether the particular circumstances of an individual carrier makes strict compliance with the FCC's rules inconsistent with the public interest. See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In the *USF/ICC Transformation Order*, the FCC established parameters for waiver of the USF reform rules when an ETC demonstrates that: 1) without the additional universal service funding, the support would be insufficient to achieve the purposes of Section 254 of the Act; and 2) the ETC can demonstrate that a reduction in high-cost support would put customers at risk of losing voice services with no alternative provider available to provide the service. *USF/ICC Transformation Order*, para. 540. Allband meets the FCC's requirements for a waiver.

Absent a waiver of Section 54.302 and the pending framework to limit reimbursable capital and operating costs, Allband would be faced with irreparable harm. With the reduction in high-cost USF support, Allband will be unable to continue providing voice service to its customer, pay the principle and interest on its Rural Utilities Service (RUS) loan, and continue operations as a telecommunications carrier. Allband Petition, p. 1. In reliance on the revenues provided by the USF, the RUS loaned Allband approximately eight million dollars to purchase and construct facilities in Allband's service territory – a previously unserved area. At this time, 84% of Allband's revenue, both regulated and unregulated, consists of USF funds. Allband Petition, p. 3. The USF funds received are used to meet Allband's existing loan obligations. Under the newly imposed high-cost USF cap, Allband will be unable to pay back its loans.

Allband is in a unique situation that was not anticipated by the FCC in its *USF/ICC Transformation Order*. Although reduction in high-cost USF support will not significantly affect the majority of ILECs, this is because most ILECs paid for their plant long ago. Allband is a new ILEC that built out its facilities and deployed its network in 2005. Absent the FCC maintaining Allband's continued level of USF support, Allband and its customers will be negatively impacted. If Allband defaults on its RUS loan and has to discontinue providing service, it is highly unlikely that another carrier would step in and provide service in Allband's territory. This is detrimental because, at this time, there is no affordable alternative telecommunication provider in this service area.

Moreover, Allband meets the stated goals of both the USF itself and the *USF/ICC Transformation Order*. Allband is not only providing service in an area previously unserved, but also is extending broadband service to customers in an area where it was previously unavailable. The extension of broadband at an affordable price is in furtherance of the FCC's goals in the *USF/ICC Transformation Order*. As such, the MPSC believes that Allband's requested waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.

Conclusion

The MPSC requests that the FCC grant Allband Communications Cooperative's petition for waiver of the implementation of Section 54.302 of the FCC's rules and the pending framework to limit reimbursable capital and operating costs.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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