

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

In the Matter of
Special Access for Price Cap Local Exchange Carriers
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services
WC Docket No. 05-25
RM-10593

ORDER

Adopted: November 26, 2014

Released: November 26, 2014

By the Chief, Wireline Competition Bureau:

Deadline for Filing Streamlined Certifications: December 15, 2014 (no change)

Filing Deadline for Large Businesses: January 29, 2015

Filing Deadline for Other Respondents: February 27, 2015

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) extends the deadline for responding to the Commission's data collection in the special access proceeding. We extend the deadline for large businesses with more than 1,500 employees that are required to provide data in response to the collection to January 29, 2015. For small businesses with 1,500 or fewer employees that are required to provide data in response to the collection, the deadline is extended to February 27, 2015. For those required only to certify that they are not required to provide data and information because they are not a covered Provider, Purchaser, or entities providing Best Efforts Business Broadband Internet Access Service, the deadline remains December 15, 2014.

II. BACKGROUND

2. On December 18, 2012, the Commission released the Data Collection Order, adopting a mandatory, one-time data collection to support a comprehensive analysis of the special access market.

1 See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (Data Collection Order); Order on Reconsideration, 29 FCC Rcd 10899 (Wireline Comp. Bur. 2014) (Reconsideration Order) (announcing the filing deadline for the data collection).

2 Unless referring to items previously released by the Commission or Bureau, capitalized and italicized terms used in this Order refer to the defined terms in the data collection. See Reconsideration Order, 29 FCC Rcd at 10908-11, Appx. A.

3 See generally Data Collection Order, 27 FCC Rcd 16318.

The Commission attached an initial version of the data collection questions and definitions to the *Data Collection Order*, and delegated authority to the Bureau to implement the data collection.⁴ The Commission's delegation gave the Bureau authority to: "(a) draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the [Paperwork Reduction Act (PRA)] process; (c) make corrections to the data collection to ensure it reflects the Commission's needs as expressed in [the *Data Collection Order*]; . . . (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats), and setting deadlines for response to ensure that data collections are complied with in a timely manner; and (e) take other such actions as are necessary to implement [the *Data Collection Order*]. . . consistent with [its] terms."⁵ In addition, the Commission cautioned that "although the Bureau may employ the existing waiver process under Commission rule 1.3 to waive some or all of the requirements of this [*Data Collection Order*] for individual respondents where good cause is shown, *see* 47 C.F.R. § 1.3, such waivers must be narrowly tailored to the applicable circumstances."⁶

3. On August 15, 2014, the Office of Management and Budget (OMB) approved the collection pursuant to the PRA subject to changes, and the Bureau amended the collection to reflect this approval and announced a December 15, 2014 deadline for collection responses.⁷ The Bureau launched the secure web portal for receiving responses on October 1, 2014, and has conducted a series of outreach events to provide the public with information to address questions regarding the collection.⁸ We did not, however, make the database container available when activating the secure web portal.⁹ The container is necessary for respondents to provide much of the numerical-type data sought, e.g., facilities and billing information. The Bureau continues to test the container internally and with certain companies. Both COMPTEL—The Competitive Communications Association (COMPTEL) and the United States Telecom Association (USTelecom) have filed letters with the Commission stressing the importance of making the database container available to its members so they can timely respond to the data collection.¹⁰ FairPoint Communications, Inc. (FairPoint) also filed a petition for limited waiver on

⁴ *Id.* at 16340, para. 52, 16364-82, Appx. A.

⁵ *Id.* at 16340, para. 52.

⁶ *Id.* at n.111.

⁷ *See* Notice of Office of Management and Budget Action, OMB Control No. 3060-1197 (Aug. 15, 2014), available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-3060-001#; *Reconsideration Order*, 29 FCC Rcd at 10899-10900, para. 1, 10905, para. 13; *Special Access Proceeding; Data Collection Amended to Reflect OMB Approval; Filing Deadline Announced; Petitions for Reconsideration Addressed*, 79 Fed. Reg. 57811 (Sept. 26, 2014); *Special Access Proceeding; Effective Date for Data Collection*, 79 Fed. Reg. 57810 (Sept. 26, 2014).

⁸ *See Wireline Competition Bureau Launches Secure Web Portal for Special Access Data Collection*, WC Docket No. 05-24, RM-10593, Public Notice, 29 FCC Rcd 11691 (Wireline Comp. Bur. 2014) (*Web Portal Public Notice*); *Wireline Competition Bureau to Host Public Webinar October 30, 2014 To Discuss Special Access Data Collection*, WC Docket No. 05-24, RM-10593, Public Notice, DA 14-1531 (Wireline Comp. Bur. rel. Oct. 23, 2014).

⁹ When the Bureau launched the secure web portal on October 1, 2014, the database container was undergoing testing and not yet available; therefore, the Bureau deactivated certain web portal functionality related to the database container pending the completion of testing. *See Web Portal Public Notice*, 29 FCC Rcd at 11692.

¹⁰ *See* Letter from Angie Kronenberg, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, at 1 (filed Nov. 25, 2014) (COMPTEL *Ex Parte*); Letter from Robert H. Mayer, Vice President – Industry and State Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1 (filed Nov. 25, 2014) (USTelecom *Ex Parte*).

November 5, 2014, seeking a 90-day extension of the deadline to March 16, 2015, and NTCA—The Rural Broadband Association (NTCA) supports extending the deadline by 90 days.¹¹

III. DISCUSSION

4. We extend the deadline by which certain filers are required to respond to the collection, and grant FairPoint's petition to the extent it is consistent with this Order. For larger businesses with more than 1,500 employees, as measured at the parent company level, that are required provide data and information in response to the data collection questions, we extend the deadline by 45 days to **January 29, 2015**. The deadline for other respondents that are required to provide data and information in response to the collection is extended to **February 27, 2015**. Lastly, for those required only to certify that they are not required to provide data and information because they are not a covered *Provider*, *Purchaser*, or entities providing *Best Efforts Business Broadband Internet Access Service*, the deadline remains **December 15, 2014**.

5. When announcing the deadline for responding to the collection, the Bureau anticipated the database container would have completed testing and been released to the public by mid- to late-October.¹² We expected respondents would need sufficient time in advance of the deadline to work with the database container. Testing, however, revealed the need for improvements and further testing, delaying the database container's release to the public.

6. Respondents are limited in their ability to respond to the collection without the database container. Respondents can still organize their data into files for loading based on the table format specifications contained in the instructions, but will still need time to understand and fully navigate the necessary procedures to successfully load the container. USTelecom acknowledges that without having a fully-tested database container file available, the ability of its members to comply with the quickly approaching deadline is jeopardized.¹³ Similarly, COMPTTEL states a limited extension is prudent given the circumstances, so its members will have sufficient time to work with the database container.¹⁴ We agree and find an extension of the deadline is warranted.

7. We will give smaller businesses more time to respond than larger business. During our outreach efforts, many smaller businesses explained they lack sufficient employees to dedicate to the task at hand while still devoting resources necessary for the proper functioning of their business.¹⁵ We will therefore give small entities additional time based on this feedback and the Commission's statutory obligation to "minimize the significant economic impact on small entities" when promulgating record keeping requirements.¹⁶ This approach also gives the Commission the opportunity to address any unforeseen technical issues with a smaller group of respondents during the initial wave of submissions.

¹¹ FairPoint Communications, Inc. Petition for Limited Waiver of Deadline for Data Submission, WC Docket No. 05-25, RM-10593, at 1 (filed Nov. 5, 2014) (FairPoint Petition); *see also* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 1, 3 (filed Nov. 14, 2014) (NTCA *Ex Parte*) (proposing a 90-day extension of the December 15, 2014 filing deadline, in a letter supporting in part, and objecting in part, to an application for review filed by USTelecom).

¹² *See Reconsideration Order*, 29 FCC Rcd 10899-10900, para. 1, 10905-07, paras. 13-14, 22; *see also Web Portal Public Notice*.

¹³ *See USTelecom Ex Parte*.

¹⁴ *See COMPTTEL Ex Parte*.

¹⁵ *See NTCA Ex Parte* at 2-3.

¹⁶ *See* 5 U.S.C. §§ 604(a)(6), 605(b); *see Data Collection Order*, 27 FCC Rcd at 16384-16410, Appx. B (Final Regulatory Flexibility Analysis).

8. The standard we adopt to divide large from small businesses for purposes of the applicable filing deadlines is based on size standards established by the Small Business Administration.¹⁷ Specifically, companies with more than 1,500 employees are considered large and must respond to the data collection by January 29, 2015. Other respondents with 1,500 or fewer employees are considered small for purposes of the collection and must file their responses by February 27, 2015. For a holding company consisting of subsidiaries, the dividing threshold is calculated on a company-wide basis, e.g., employees of the parent company and its subsidiaries are counted, even if the parent decides to file separate responses for each subsidiary or operating unit.

9. For those entities not providing data and information in response to the collection but that are otherwise required to certify that they are not a covered *Provider*, *Purchaser* or an entity that provides *Best Efforts Business Broadband Internet Access Services*, the filing deadline remains December 15, 2014 regardless of the entity's size.¹⁸ These entities have had access to the necessary electronic tools since the launch of the secure web portal on October 1, 2014.¹⁹ In addition, the burden associated with filing this certification is minimal and more than 250 streamlined certifications have already been filed. Therefore, there is no reason to change this deadline.

10. Finally, we grant FairPoint's request for limited waiver to the extent stated herein. FairPoint has more than 1,500 employees and sought a 90-day extension due to an employee strike and storm damage to its network, which occurred in October 2014.²⁰ Consistent with the actions taken above, FairPoint will have 45 additional days to respond to the collection, as will other large businesses as defined herein. While citing company-specific concerns that might justify some additional time to respond to the collection, FairPoint's waiver request does not demonstrate why the company as a whole needs an extension longer than the 45 additional days granted in this Order. As the January 29, 2015 deadline approaches, if FairPoint finds it needs additional time than what is provided herein, we will entertain requests related to specific subsidiaries impacted by the strike and weather-related disruptions.²¹

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED pursuant to sections 1, 4(i), 4(j), 5, 201-205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, 1302, sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, and the authority delegated to the Bureau in the *Data Collection Order*, 27 FCC Rcd at 16340, para. 52, that the deadline for businesses with more than 1,500 employees that are required to respond to the data collection IS EXTENDED to January 29, 2015, and the deadline for businesses with 1,500 or fewer employees that are required to respond to the data collection IS EXTENDED to February 27, 2015.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 155(c), and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of the December 15, 2014 collection deadline filed by FairPoint Communications, Inc. on November 5, 2014, IS GRANTED IN PART to the extent consistent with this Order, and IS OTHERWISE DENIED.

¹⁷ See 13 C.F.R. § 121.201 (NAICS code 517110).

¹⁸ See *Reconsideration Order*, 29 FCC Rcd at 10905, para. 13, 10935, Appx. A, 10941, 11010, Appx. B.

¹⁹ See *Web Portal Public Notice*.

²⁰ FairPoint Petition at 1, 5-6.

²¹ See *id.* at 7.

13. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau