

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

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Centennial Cellular Tri-State Operating)	
Partnership, Centennial Claiborne Cellular Corp.)	
)	
Petition for Waiver of Section 54.313(d) of the)	
Commission's Rules and Regulations)	

ORDER

Adopted: August 16, 2004

Released: August 16, 2004

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

I. INTRODUCTION

1. In this Order, we grant a request from Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. (Centennial) for waiver of the April 1, 2003 certification filing deadline set forth in section 54.313(d) of the Commission's rules for high-cost universal service support in areas served by BellSouth Telecommunications, Inc., a non-rural local exchange carrier (LEC).¹ Granting the request filed by Centennial, a competitive eligible telecommunications carrier (ETC), will allow Centennial to receive high-cost universal service support as of September 24, 2003, the date that the Mississippi Public Service Commission (Mississippi Commission) designated Centennial as an ETC.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."² Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. Section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."³ To implement this statutory requirement, the Commission adopted an annual certification requirement. Section 54.313 of the Commission's rules provides that states desiring ETCs to receive universal service high-cost support in areas served by non-rural LECs must file an annual certification with the Universal Service Administrative Company (USAC) and the

¹Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d)(3) of the Commission's Rules, filed Nov. 4, 2003 (Centennial Waiver Request).

²47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions, or this Commission when states lack jurisdiction, shall designate carriers as ETCs. 47 U.S.C. § 214(e).

³47 U.S.C. § 254(e).

Commission stating that all high-cost support received by such carriers within such state will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁴ In instances in which carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e).⁵ Section 54.313 provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁶ If a state or an ETC misses the October 1 deadline, it must file the certification by January 1 for support to begin in the second quarter of the year, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁷ The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and calculate estimated high-cost demand amounts for submission to the Commission.⁸

3. Generally, the Commission’s rules may be waived for good cause shown.⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹² Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹³

4. Centennial’s Petition for Waiver. On September 24, 2003, the Mississippi Commission designated Centennial as an ETC.¹⁴ On September 29, 2003, consistent with 54.313(d) of the Commission’s rules, the Mississippi Commission filed a certification with the Commission and USAC stating that Centennial would use high-cost support in the year 2004 “only for the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with [s]ection

⁴47 C.F.R. § 54.313. The certification requirement for ETCs designated in areas served by rural LECs is found in section 54.314 of the Commission’s rules. 47 C.F.R. § 54.314.

⁵See *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, CC Docket No. 00-256, 16 FCC Rcd 11244, 11318, para. 189 (2001) (*Rural Task Force Order*); 47 C.F.R. §§ 54.313(b), 54.314(b).

⁶See 47 C.F.R. § 54.313(d)(1).

⁷See 47 C.F.R. § 54.313(d).

⁸See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission’s rules, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support, two months prior to the beginning of each quarter. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC generally needs to know which carriers have been certified under the Commission’s rules no later than October 1. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

⁹47 C.F.R. § 1.3.

¹⁰*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹*WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹²*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

¹³*Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴*Application of Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp.*, Order, Docket No. 2003-UA-0234 (Mississippi Public Service Commission Sept. 24, 2003).

254(e)” of the Act.¹⁵ On November 4, 2003, Centennial filed a request for waiver of the April 1, 2003 certification filing deadline so that it can receive support beginning September 24, 2003, the date Centennial was designated as an ETC by the Mississippi Commission.¹⁶ In its petition, Centennial contends that good cause exists for granting its waiver of section 54.313 of the Commission’s rules because the Mississippi Commission could not have met the April 1, 2003 certification deadline under any circumstances because Centennial did not receive its ETC designation until after the deadline.¹⁷ Centennial also argues that granting its waiver request is consistent with the Commission’s goal of competitive neutrality and will serve the public interest.¹⁸ The Wireline Competition Bureau sought comment on Centennial’s petition in a public notice released on November 26, 2003.¹⁹ CenturyTel, Inc. filed comments opposing Centennial’s petition.²⁰

III. DISCUSSION

5. Consistent with Commission precedent, we find that good cause exists to waive the April 1 deadline contained in section 54.313(d) of the Commission’s rules so that Centennial can receive universal service support beginning on September 24, 2003, the date of Centennial’s designation as an ETC.²¹

6. As a threshold matter, we reject CenturyTel’s argument that consideration of Centennial’s petition is inappropriate because the Mississippi Commission should have filed the instant waiver request.²² In prior orders, the Bureau has considered waiver requests filed by competitive ETCs although the state commission was responsible for filing the certification.²³ The Bureau also has determined that absent opposition filed by a state commission, consideration of such waiver requests is appropriate.²⁴ The Mississippi Commission had the opportunity to oppose Centennial’s petition, but did

¹⁵Centennial Waiver Request at 2; Letter from Michael Callahan, Bo Robinson, Nielsen Cochran, Mississippi Public Service Commission, to Marlene H. Dortch, FCC, dated Sept. 29, 2003 (Mississippi Commission Sept. 29 Letter) at 1 & Attachment A.

¹⁶Centennial Waiver Request at 1.

¹⁷Centennial Waiver Request at 4-5.

¹⁸*Id.*

¹⁹See *Wireline Competition Bureau Seeks Comment on Petition of Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. for Waiver of Section 54.313(d) of the Commission’s Rules*, Public Notice, CC Docket No. 96-45, DA 03-3821 (rel. Nov. 26, 2003).

²⁰See *Opposition of CenturyTel, Inc.*, filed Dec. 10, 2003 (CenturyTel Opposition).

²¹See, e.g., *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (2002) (granting a waiver of the October 1 certification filing deadline) (*RFB Cellular Waiver Order*); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 7138 (2002) (granting a waiver of the October 1 certification filing deadline) (*Guamcell Waiver Order*). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation, Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 14689 (2003) (*Western Wireless Order*).

²²See Centennial Opposition at 3.

²³See, e.g., *Western Wireless Order*, 18 FCC Rcd at 14691, para. 6.

not. Because the Mississippi Commission has not opposed Centennial's waiver request, our consideration of Centennial's waiver request is appropriate.²⁵

7. CenturyTel also contends that Commission precedent requires that in order to grant Centennial's waiver request, Centennial should have at least obtained support for its waiver from the Mississippi Commission.²⁶ Otherwise, CenturyTel contends there is no indication from the Mississippi Commission that it believes Centennial will use universal service support for the third and fourth quarter of 2003 for its intended purposes.²⁷ We do not find it necessary for the Mississippi Commission to file a letter supporting Centennial's waiver request in this docket. As noted above, we do not require a state commission to affirmatively demonstrate its support for Centennial's waiver request. The Mississippi Commission designated Centennial as an ETC so it is reasonable to believe that the Mississippi Commission is not opposed to Centennial receiving universal service funds. Furthermore, we find that the Mississippi Commission does not need to file a supplemental certification for September 24, 2003 to December 31, 2003, as suggested by CenturyTel.²⁸ The Mississippi Commission's certification dated September 29, 2003 stated that Centennial would use high-cost support in the year 2004 "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."²⁹ Any universal service funding that Centennial may receive for the third and fourth quarters of 2003 as a result of this waiver order will actually be distributed to Centennial during 2004.³⁰ Therefore, we conclude that the Mississippi Commission's September 29, 2003 certification applies to those funds as well as other funds received by Centennial during 2004.

8. We also disagree with CenturyTel that Centennial has not demonstrated special circumstances that warrant a deviation from the filing deadline provided in section 54.313(d) of the Commission's rules.³¹ The certification filing schedule set out in the Commission's rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission.³² Because Centennial did not receive its ETC designation until September 24, 2003, however, the Mississippi Commission could not have met, under any circumstances, the April 1, 2003 certification filing deadline so that Centennial could receive support beginning in the third quarter of 2003. As the Wireline Competition Bureau has determined in prior orders, it would be onerous to deny an ETC receipt of universal service support for more than a quarter because the ETC designation occurred after the certification filing deadline.³³ In this instance, moreover, these special

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²⁴*Federal-State Joint Board on Universal Service, Grande Communications, Inc., Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-2534 (Wireline Compet. Bur., Telecommunications Access Policy Div. rel. Aug. 16, 2004).

²⁵*See id.*

²⁶*See* Centennial Opposition at 3.

²⁷*See* Centennial Opposition at 4; Mississippi Commission Sept. 29 Letter.

²⁸*See* Centennial Opposition at 3-4.

²⁹Mississippi Commission Sept. 29 Letter.

³⁰*See infra* n.34.

³¹*See* CenturyTel Opposition at 5. Moreover, any impact on the universal service fund resulting from grant of this waiver is beyond the scope of this proceeding. *See* CenturyTel Opposition at 6-7. Specifically, such issues are part of the Commission's proceeding in which it has requested the Joint Board examine the Commission's rules relating to high-cost universal service support. *See Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004). In addition, granting Centennial's Petition will not affect the amount of support distributed to other ETCs. 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.101, 54.201.

³²*See Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

³³*See, e.g., Western Wireless Order*, 18 FCC Rcd at 14691-92, para. 7.

circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certifications.³⁴ We therefore find that Centennial has demonstrated special circumstances that justify a waiver of section 54.313.

9. We further conclude, contrary to the claim of CenturyTel, that waiver of section 54.313 is consistent with the public interest.³⁵ The Commission has found that “competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications.”³⁶ Denying third and fourth quarter 2002 support to Centennial, a competitive ETC, merely because the timing of its ETC designation precluded the Mississippi Commission from timely filing the certification would undermine the Commission’s goals of competitive neutrality. Further, as discussed above, the Mississippi Commission, the state entity with the obligation to make the appropriate section 54.313 certification, did not oppose Centennial’s waiver request. We therefore conclude waiver of this rule is in the public interest.

10. In sum, because Centennial did not become eligible to receive high-cost support until after the April 1, 2003 certification filing deadline, we find good cause exists to warrant a waiver of section 54.313(d) of the Commission’s rules. This waiver will allow Centennial to begin receiving high-cost support as of September 24, 2003, the date Centennial received its ETC designation.³⁷

³⁴To facilitate timely payments and to minimize the administrative burden associated with processing those payments, we direct USAC to distribute Centennial’s retroactive support payments on a phased-in basis. Specifically, we instruct USAC to pair monthly retroactive support payments with regular monthly support payments until all retroactive support has been paid. In other words, USAC shall pair Centennial’s next support payment following release of this Order with its September 2003 retroactive support payment, continuing in this fashion until all retroactive support has been paid.

³⁵See CenturyTel Opposition at 6.

³⁶See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket 96-45, 14 FCC Rcd 20432, 20479-78, paras. 89-90 (1999) (*Ninth Report and Order*), reversed in part and remanded in part, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). See also *Federal-State Joint Board on Universal Service; Promoting Deployment of Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking CC Docket No. 96-45, 15 FCC Rcd 12208, 12264-65, para. 114 (2000) (“competitively neutral access to . . . support is critical to ensuring all Americans, including those that live in high-cost areas, have access to affordable telecommunications.”). See also *Western Wireless Order*, 18 FCC Rcd at 14699, para. 8.

³⁷ Granting Centennial’s Petition will not affect the amount of support distributed to other ETCs. 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.101, 54.201.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, 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 section 54.313(d)(3) of the Commission's rules, filed by Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp., on November 4, 2003, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones
Acting Chief, Telecommunications Access Policy Division
Wireline Competition Bureau