

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

In the Matter of	)	
	)	
M&L Enterprises, Inc., d/b/a Skyline Telephone Company	)	
	)	
Waiver of Sections 54.301(b), 54.314(d), and 54.903(a) of the Commission's Rules	)	CC Docket No. 96-45
	)	

**ORDER**

**Adopted: January 14, 2005**

**Released: January 14, 2005**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we waive the October 1, 2003 state certification filing deadline set forth in section 54.314(d) of the Commission's rules for high-cost universal service support in areas served by M&L Enterprises, Inc., d/b/a Skyline Telephone Company (Skyline Telephone). We also waive the October 1, 2003 data filing deadline set forth in section 54.301(b) of the Commission's rules for local switching support (LSS) and the March 31, 2004 and July 31, 2004 data filing deadlines set forth in section 54.903(a) of the Commission's rules for interstate common line support (ICLS) in areas served by Skyline Telephone. We grant these waivers on our own motion to permit Skyline Telephone to be eligible to receive high-cost universal service support, beginning in 2004, consistent with the Commission's intention as articulated in the *Skyline Order*.<sup>1</sup>

**II. BACKGROUND**

2. In the *Skyline Order*, the Commission dismissed in part, and granted in part, a request from Skyline Telephone for waiver of sections 36.611, 36.612, and 69.2(hh) of the Commission's rules and on its own motion waived the study area definition in Part 36 of the Commission's rules.<sup>2</sup> The Commission concluded that to grant Skyline the relief it sought, the Commission had to grant waivers beyond those Skyline Telephone specifically sought. The Commission found that a study area waiver was required in order for Skyline Telephone to receive support for the newly formed study area created as a result of modifications to the study areas of both Qwest Corporation and Verizon Northwest Inc. in the State of Washington.<sup>3</sup> This study area waiver enabled Skyline Telephone to receive high-cost universal

<sup>1</sup> M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules, Order, 19 FCC Rcd 6761, 6770 (2004) (*Skyline Order*).

<sup>2</sup> See *id.*; Petition of M&L Enterprises, Inc., d/b/a Skyline Telephone Company for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules (filed May 25, 2001) (Petition); 47 C.F.R. § 36 App.

<sup>3</sup> See *Skyline Order*, 19 FCC Rcd at 6761, n.2 (citing Letter from Kirk R. Nelson, Qwest Corporation, to Carole Washburn, Washington Utilities and Transportation Commission, dated Oct. 13, 2000; Letter from Lida C. Tong,

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service support based on its own costs in the newly established study area.<sup>4</sup> The Commission dismissed as moot Skyline Telephone's request for waiver of sections 36.611 and 36.612 of the Commission's rules, which would have enabled Skyline Telephone to receive accelerated high-cost loop support payments based on estimated costs, because Skyline Telephone had historical cost data.<sup>5</sup> The Commission specified that "Skyline Telephone shall be eligible to receive high-cost universal service support as of January 1, 2004, notwithstanding the filing deadlines in sections 36.611 and 36.612."<sup>6</sup>

3. While the Commission expressed a clear intent to permit Skyline Telephone to begin receiving high-cost universal service support as of January 1, 2004, the *Skyline Order* did not address all the rules and conditions necessary for that intention to be realized. In order to begin receiving high-cost universal service support as of January 1, 2004, Skyline Telephone also requires waiver of the state certification requirement in section 54.314 and certain additional filing deadlines set forth in the Commission's rules.<sup>7</sup> Absent waiver of these rules, Skyline Telephone would not be eligible to receive high-cost loop support until the fourth quarter of 2004, and would not be eligible to receive LSS and ICLS until 2005. This result would not be consistent with the Commission's intent as set forth in the *Skyline Order*.<sup>8</sup>

4. State Certification. Section 54.314 of the Commission's rules provides that states desiring rural incumbent local exchange carriers (LECs) and/or eligible telecommunications carriers (ETCs) serving lines in areas served by rural incumbent LECs to receive universal service support must file an annual certification with the Universal Service Administrative Company (USAC) and the 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."<sup>9</sup> In addition, section 54.314 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> The State of Washington filed a section 54.314 certification for

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Verizon Northwest Inc., to Carole Washburn, Washington Utilities and Transportation Commission, dated Oct. 13, 2000).

<sup>4</sup> See *Skyline Order*, 19 FCC Rcd at 6771-72, paras. 25-28.

<sup>5</sup> *Skyline Order*, 19 FCC Rcd at 6770, paras. 22-23.

<sup>6</sup> *Skyline Order*, 19 FCC Rcd at 6770, n.56; see also 47 C.F.R. §§ 36.611, 36.612,

<sup>7</sup> Section 254(e) of the Communications Act of 1934, as amended, provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support," and that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." 47 U.S.C. §§ 214(e), 254(e).

<sup>8</sup> *Skyline Order*, 19 FCC Rcd at 6770, n.56.

<sup>9</sup> 47 C.F.R. § 54.314(a).

<sup>10</sup> See 47 C.F.R. § 54.314(d)(1).

<sup>11</sup> See 47 C.F.R. § 54.314(d)(1)-(4).

<sup>12</sup> See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission's rules, the Universal Service Administrative Company (USAC) submits estimated demand for the universal service support mechanisms to the Commission 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 Commission on or around November 1. In order

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Skyline Telephone on June 21, 2004.

5. Data Filing Deadlines. In addition to meeting the certification requirements, an ETC must file certain data with USAC before support can begin to flow. Although the Commission in the *Skyline Order* waived the data filing deadlines in sections 36.611 and 36.612 of the Commission's rules, it did not address the data filing deadlines with respect to other types of high-cost support. Section 54.301(b) of the Commission's rules provides that incumbent LECs must file certain data with USAC by October 1 of each year to receive LSS for the following calendar year.<sup>13</sup> Section 54.903(a)(3) of the Commission's rules provides that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.<sup>14</sup> In addition, section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.<sup>15</sup> Skyline Telephone filed the data required to receive LSS and ICLS with USAC on September 4, 2004.<sup>16</sup>

6. Generally, the Commission's rules may be waived for good cause shown.<sup>17</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> 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.<sup>20</sup>

### III. DISCUSSION

7. On our own motion, we find that good cause exists for waiver of the state certification filing deadline set forth in section 54.314(d) of the Commission's rules, and the data filing deadlines set forth in sections 54.301(b) and 54.903(a) of the Commission's rules to permit Skyline Telephone to receive high-cost universal service support, beginning in 2004, consistent with the Commission's intention in the *Skyline Order*.

8. Waiver of Section 54.314(d). We believe in this case that special circumstances warrant a deviation from the filing deadline in the Commission's rules and that the waiver is consistent with the public interest. The Commission already found that the public interest would be served by waiver of the study area freeze to recognize Skyline Telephone's service territory in Washington as a study area for

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to submit an accurate estimate by that date, USAC 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.

<sup>13</sup> 47 C.F.R. § 54.301(b). Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS. See 47 C.F.R. § 54.301.

<sup>14</sup> 47 C.F.R. § 54.903(a)(3).

<sup>15</sup> 47 C.F.R. § 54.903(a)(1). Section 54.903(a)(2) provides that rate-of-return LECs must file such line count data quarterly in areas where a competitive ETC has initiated service and reported line count data to USAC in order to receive support. 47 C.F.R. § 54.903(a)(2).

<sup>16</sup> Skyline Telephone also filed the carrier certification required pursuant to section 54.904 in order to receive ICLS. See 47 C.F.R. § 54.904.

<sup>17</sup> 47 C.F.R. § 1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *Northeast Cellular*, 897 F.2d at 1166.

regulatory purposes,<sup>21</sup> and specified that Skyline Telephone shall be eligible to receive high-cost universal service support based on its own costs for 2004.<sup>22</sup> In order to give effect to the Commission's intention that Skyline Telephone be eligible to receive high-cost loop support as of January 1, 2004, we waive the October 1, 2003 state certification filing deadline set forth in section 54.314(d) of the Commission's rules for high-cost universal service support in areas served by Skyline Telephone.

9. *Waiver of Sections 54.301(b) and 54.903(a).* The Commission in the *Skyline Order* waived only the data filing deadlines in sections 36.611 and 36.612. We believe that, to give effect to the Commission's decision in the *Skyline Order*, a waiver of the filing deadlines in sections 54.301(b) and 54.903(a) is also necessary and that the waiver is consistent with the public interest. Nothing in the *Skyline Order* implies that the Commission intended to limit Skyline Telephone to a certain type of high-cost support. Indeed, the Commission expressly stated that Skyline Telephone shall be eligible to receive high-cost universal service support as of January 1, 2004....<sup>23</sup> The Commission's conclusion that Skyline Telephone, as a rural carrier, would be eligible to receive high-cost support based on its own embedded costs implies that it should also be eligible to receive LSS and ICLS.<sup>24</sup> It is reasonable to believe that the Commission only specifically addressed the filing deadlines in 36.611 and 36.612, because Skyline Telephone's petition requested only accelerated high-cost loop support.<sup>25</sup> Accordingly, we waive the October 1, 2003 data filing deadline set forth in section 54.301(b) of the Commission's rules for LSS, and the March 31, 2004 and July 31, 2004 data filing deadlines set forth in section 54.903(a) of the Commission's rules for ICLS in areas served by Skyline Telephone.<sup>26</sup>

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<sup>21</sup> *Skyline Order*, 19 FCC Rcd at 6767-68.

<sup>22</sup> Although the Commission denied Skyline Telephone's request for accelerated high-cost loop support, it specifically waived the filing deadlines in sections 36.611 and 36.612, stating that "Skyline Telephone shall be eligible to receive high-cost universal service support as of January 1, 2004." *Skyline Order*, 19 FCC Rcd at 6770, n. 56; *see also* 47 C.F.R. §§ 36.611, 36.612.

<sup>23</sup> *Skyline Order*, 19 FCC Rcd at 6770, n.56.

<sup>24</sup> *Skyline Order*, 19 FCC Rcd at 6767.

<sup>25</sup> Unlike high-cost loop support, LSS and ICLS are based on projected costs, which are then trued-up with historical data. Therefore, there is no need for new incumbent LECs to request accelerated LSS or ICLS.

<sup>26</sup> To facilitate timely payments and to minimize the administrative burdens associated with processing high-cost loop support payments, we direct USAC to distribute Skyline Telephone's retroactive support payments on a phased-in basis. Specifically, Skyline Telephone began receiving high-cost loop support for the Fourth Quarter of 2004 and should receive retroactive high-cost loop support for the First through Third Quarters of 2004 in the First through Third Quarters of 2005. Skyline Telephone should begin receiving LSS in 2005 and should receive retroactive LSS for 2004 in the First through Fourth Quarters of 2005. Because the program year for ICLS runs from July 1 through June 30, Skyline Telephone should receive retroactive ICLS for the Third and Fourth Quarters of 2004, in the First and Second Quarters of 2005. USAC should use the line count data filed by Skyline Telephone in 2004 to determine the per-line support amount for both the Third and Fourth Quarters of 2004. To the extent possible, USAC should pair monthly retroactive support payments with regular monthly support payments until all retroactive support has been paid. We recognize, however, that USAC may need additional time in the First Quarter of 2005 as it begins to phase in the retroactive payments.

**IV. ORDERING CLAUSES**

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that waiver of sections 54.301(b), 54.903(a), and 54.914(d) of the Commission's rules, 47 C.F.R. §§ 54.301(b), 54.903(a), and 54.914(d) IS GRANTED, as described herein, to M&L Enterprises, Inc., d/b/a Skyline Telephone Company.

FEDERAL COMMUNICATIONS COMMISSION

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Chief  
Wireline Competition Bureau