

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

In the Matter of)
Centennial Cellular Tri-State Operating)
Partnership and Centennial Claiborne Cellular)
Corp.)
Petition for Waiver of Section 54.314(d) of the)
Commission's Rules) CC Docket No. 96-45
Mississippi Public Service Commission)
Petition for Waiver of Sections 54.313(d) and)
54.314(d) of the Commission's Rules)

ORDER

Adopted: August 14, 2006

Released: August 14, 2006

By the Chief, 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. (collectively, Centennial) for waiver of the April 1, 2004 and October 1, 2004 certification deadlines in section 54.314(d) of the Commission's rules. We also grant a request of the Mississippi Public Service Commission (MPSC) for a waiver of the January 1, 2005 certification deadline in sections 54.313(d) of the Commission's rules, so that Southern Telecommunications Company, LLC (Southern) is eligible to receive universal service support beginning in the second quarter of 2005.

1 Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.314(d) of the Commission's Rules, CC Docket No. 96-45, filed Jan. 21, 2005 (Centennial Petition). See 47 C.F.R. § 54.314(d). We dismiss, as unnecessary and without prejudice, Centennial's request for waiver of the July 1, 2004 and January 1, 2005 certification deadlines in section 54.314(d) of the Commission's rules. See infra n.22.

2 Mississippi Public Service Commission, Petition for Waiver of Section 54.314(d)(1) of the Commission's Rule, CC Docket No. 96-45, filed Jan. 21, 2005 (MPSC Petition). The MPSC erroneously requests a waiver of section 54.314(d) on behalf of Southern. Because Southern operates within the service territory of a non-rural incumbent local exchange carrier, a waiver of section 54.313(d) is necessary. See Letter from Bo Robinson, Chairman, Mississippi Public Service Commission to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (Jan. 12, 2005) (certifying, pursuant to 47 C.F.R. § 54.313, that Southern's proposed use of universal service support for the year 2005 will be only used for the provision, maintenance, and upgrading of facilities and services for which the support is intended). See 47 C.F.R. §§ 54.313(d) and 54.314(d)(1). We dismiss as moot MPSC's request for waiver of the January 1, 2005 certification deadline on behalf of Centennial. See infra n.22.

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.”³ Once a carrier is designated as an ETC, other requirements 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.”⁴ To implement this statutory requirement, the Commission adopted an annual certification requirement. Sections 54.313 and 54.314 of the Commission’s rules provide that states desiring ETCs to receive universal service high-cost support shall 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.”⁵ In instances where 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).⁶ Sections 54.313 and 54.314 provide that the certification must be filed by October 1 of the preceding calendar year for ETCs to receive support beginning in the first quarter of the subsequent calendar year.⁷ If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁸ 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.⁹

3. *Centennial’s Petition for Waiver of Section 54.314(d)*. Centennial requests a waiver of the April 1, 2004, July 1, 2004, October 1, 2004 and January 1, 2005 certification filing deadlines to allow Centennial to receive universal service support beginning as of August 10, 2004, the effective date of the decision of the MPSC designating Centennial as an ETC.¹⁰ Centennial states that the April 1, 2004 and the July 1, 2004 filing deadlines fell prior to Centennial’s rural ETC designation in Mississippi and therefore, the MPSC could not have met those deadlines as required for Centennial to receive support

³ 47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

⁴ 47 U.S.C. § 254(e).

⁵ 47 C.F.R. §§ 54.313 and 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission’s rules. The certification requirement for rural ETCs is found in section 54.314 of the Commission’s rules.

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, para. 189 (rel. May 23, 2001) (*Rural Task Force Order*); 47 C.F.R. § 54.314(b).

⁷ 47 C.F.R. §§ 54.313(d)(3)(i), 54.314(d)(1).

⁸ See 47 C.F.R. §§ 54.313(d)(3), 54.314(d).

⁹ See *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 needs to know which carriers have been certified under the Commission’s rules no later than October 1.

¹⁰ See Centennial Petition at 1.

beginning on August 10, 2004.¹¹ Centennial further states that, although the October 1, 2004 certification deadline came after Centennial's August 10, 2004 ETC designation, the timing did not allow sufficient time for the MPSC to consider Centennial's 2005 universal service utilization plan prior to the October 1 deadline. Finally, Centennial states that, due to a widespread electrical power outage that affected state offices in Jackson, Mississippi, the MPSC was prevented from submitting its 2005 section 54.314 certification by January 1, 2005.¹²

4. MPSC's Petition for Waiver of Certification Filing Deadlines. MPSC requests a waiver of the January 1, 2005 certification filing deadline to allow Southern to receive support in Mississippi beginning April 1, 2005.¹³ MPSC also requests a waiver of the January 1, 2005 certification filing deadline in section 54.314(d) to allow Centennial to receive support in Mississippi beginning April 1, 2005.¹⁴ MPSC states that a severe electrical problem closed MPSC's office building from December 27, 2004 through January 3, 2005. Because of the building closure, the MPSC was unable to complete and submit its universal service certifications for Southern and Centennial by the January 1, 2005 certification filing deadline.¹⁵ MPSC filed the certifications on January 6, 2005.¹⁶ Approval of these waiver requests will allow Southern and Centennial to receive universal service support beginning April 1, 2005.

5. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ 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.²⁰ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²¹

III. DISCUSSION

6. Centennial's Petition for Waiver of Section 54.314(d). We find good cause exists to waive the April 1, 2004 and October 1, 2004 certification filing deadlines contained in section 54.314 of the Commission's rules so that Centennial can receive support beginning August 10, 2004, the date of Centennial's designation as an ETC, and through 2005.²² Although section 54.314(d) requires states to

¹¹ *Id.* at 4.

¹² See Centennial Petition at 5-6.

¹³ Specifically, a waiver of section 54.313(d)(3)(ii) is required in order for Southern to receive universal service support beginning April 1, 2005. See 47 C.F.R. § 54.313(d)(3)(ii). See *infra* n. 1.

¹⁴ The January 1 certification deadline is specifically referenced in section 54.314(d)(2) of the Commission's rules. See 47 C.F.R. § 54.314(d)(2).

¹⁵ See MPSC Petition at 1-2.

¹⁶ See Centennial Petition at Exhibit B.

¹⁷ 47 C.F.R. § 1.3.

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

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

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

²¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²² Centennial does not need a waiver of the July 1, 2004 certification filing deadline because a waiver of the April 1, 2004 deadline will allow Centennial to receive universal service support from August 10, 2004, the date of its ETC designation, to the end of 2004. Similarly, Centennial does not need a waiver of the January 1, 2005 certification

(continued....)

meet deadlines for their certifications that competitive ETCs will use universal service support for its intended purposes, we believe in this case that Centennial has demonstrated that special circumstances warrant a deviation from the filing deadline in the Commission's rules and that a waiver is consistent with the public interest.

7. 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.²³ Because Centennial did not receive its ETC designation until August 10, 2004, however, the MPSC could not have met, under any circumstances, the April 1, 2004 certification filing deadline so that Centennial could receive support beginning August 10, 2004 and for the remainder of 2004. Further, we find that Centennial should not be denied support for all of 2005 due to MPSC's delay in submitting its certification by the October 1, 2004 deadline.²⁴ As the Wireline Competition Bureau has determined in prior orders, it would be onerous to deny an ETC receipt of universal service support because of a delay beyond the control of Centennial.²⁵ In this instance, moreover, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late filed certifications. We therefore find that Centennial has demonstrated special circumstances that justify a waiver of section 54.314. Our grant of Centennial's waiver request will provide universal service support to Centennial beginning August 10, 2004, the date of its ETC designation.

8. *MPSC's Petition for Waiver of Sections 54.313(d) and 54.314(d)*. We find that the MPSC has demonstrated that special circumstances warrant a waiver of the January 1, 2005 certification filing deadline set forth in section 54.313(d) of the Commission's rules in order for Southern to be eligible to receive support effective April 1, 2005.²⁶ The severe electrical problem that caused MPSC's office building to be closed from December 27, 2004 through January 3, 2005 prevented MPSC from certifying Southern by the January 1, 2005 deadline.²⁷ We find that closure of MPSC's offices due to the electrical problem was unforeseeable and it therefore would be unduly onerous to delay Southern's universal service support eligibility to July 1, 2005. Approval of MPSC's requested waiver of the January 1, 2005 certification deadline will allow Southern to be eligible for universal service at the

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filing deadline because a waiver of the October 1, 2004 deadline will allow Centennial to receive universal service support for all of 2005. Therefore, we dismiss, as moot, Centennial's request for waiver of the July 1, 2004 and January 1, 2005 certification deadlines. See 47 C.F.R. § 54.314(d).

²³See *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, 14691-92, para. 7 (2003) (*Western Wireless Order*).

²⁴We note that MPSC filed a letter stating that it does not oppose Centennial's petition for waiver. See Letter from Brian U. Kay, Executive Secretary, Mississippi Public Service Commission to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 13, 2006). MPSC missed the January 1, 2005 filing deadline due to an electrical problem at its offices. See *infra* para. 8.

²⁵See, e.g., *Western Wireless Order*, 18 FCC Rcd 14689, 14691-92, para. 7; *Federal-State Joint Board on Universal Service, Midwest Wireless Iowa, L.L.C., Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 19 FCC Rcd 10484, 10486, para. 7 (2004). Furthermore, the Commission's rules allow newly designated ETCs 60 days to file their required data and certification. See 47 C.F.R. 54.314(d)(6). The October 1 deadline fell less than 60 days after Centennial's designation so it was reasonable for the MPSC to file the certification by the next deadline of January 1.

²⁶Because we have dismissed, as moot, Centennial's separate request for a waiver of the January 1, 2005 certification deadline, we find MPSC's similar request for a waiver of the January 1, 2005, on behalf of Centennial, is moot. See *supra* n.22.

²⁷See MPSC Petition at 1-2.

beginning of the second quarter of 2005.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, 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 April 1, 2004 and October 1, 2004 certification deadlines in section 54.314(d) of the Commission's rules, 47 C.F.R. § 54.314(d), filed by Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. on January 21, 2005, IS GRANTED, as described herein.

10. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, 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 July 1, 2004 and January 1, 2005 certification deadlines in section 54.314(d) of the Commission's rules, 47 C.F.R. § 54.314(d), filed by Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. on January 21, 2005, IS DISMISSED, as moot, as described herein.

11. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, 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 January 1, 2005 certification deadline in sections 54.313(d) and 54.314(d) of the Commission's rules with respect to Southern Telecommunications Company, LLC, 47 C.F.R. §§ 54.313(d)(3)(ii) and 54.314(d)(2), filed by the Mississippi Public Service Commission on January 21, 2005, IS GRANTED, as described herein.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, 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 January 1, 2005 certification deadline in section 54.314(d) of the Commission's rules with respect to Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp., 47 C.F.R. § 54.314(d), filed by Mississippi Public Service Commission on January 21, 2005, IS DISMISSED, as moot, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau