

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Pine Belt Cellular, Inc.)	CC Docket No. 96-45
Petition for Waiver of Section 54.313 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 Pine Belt Cellular, Inc. (Pine Belt), an eligible telecommunications carrier (ETC) in Alabama, for a waiver of the October 1, 2004 annual certification filing deadline set forth in section 54.313 of the Commission's rules.¹ We find that Pine Belt has demonstrated that special circumstances warrant this waiver.

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, there are other requirements that must be satisfied before it 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 has adopted certification requirements.⁴

3. Section 54.313 of the Commission's rules provides that states desiring non-rural ETCs to receive high-cost universal service support shall file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all federal 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

¹ Pine Belt Cellular, Inc., Petition for Waiver of Section 54.313 of the Commission's Rules, CC Docket No. 96-45, filed Mar. 3, 2005 (Petition). See 47 C.F.R. § 54.313.

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ See 47 C.F.R. §§ 54.313, 54.314.

⁵ *Id.* § 54.313(a). The certification requirement for rural ETCs is found in section 54.314 of the Commission's rules.

that such support will be used in a manner consistent with section 254(e).⁶ Section 54.313(d) requires that the certification be filed by October 1 of a given year to receive support beginning in the first quarter of the following 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

4. *Petition for Waiver of Section 54.313.* Pine Belt, a wireless telecommunications carrier, was designated an ETC for the non-rural portions of its service area in Alabama on May 24, 2002.¹⁰ Pine Belt is not subject to the jurisdiction of the Alabama Public Service Commission.¹¹ Therefore, Pine Belt must file an annual certification in accordance with section 54.313 of the Commission's rules. Pine Belt, however, missed the October 1, 2004 deadline and did not file the annual certification until February 2, 2005.¹² Subsequently, Pine Belt filed this request for waiver of section 54.313 to permit Pine Belt to receive high-cost support for the first and second quarters of 2005.¹³

5. Pine Belt contends that good cause exists for granting its request for waiver of section 54.313 of the Commission's rules.¹⁴ Pine Belt explains that Hurricane Ivan, which struck Alabama on September 16, 2004, caused damage and power outages at all 48 of the Pine Belt critical network and business facilities.¹⁵ Specifically, the lack of power caused total disruption to its accounting and regulatory functions, including all financial and government reporting from September 16 to September 23, 2004, as well as severe disruptions to these functions for another two months.¹⁶ Pine Belt states that,

⁶ See *id.* § 54.313(b).

⁷ *Id.* § 54.313(d).

⁸ *Id.*

⁹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20483, para. 100 (1999). 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 *Federal-State Joint Board on Universal Service, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002) (*Pine Belt ETC Designation Order*).

¹¹ See *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for ETC Status and/or Clarification Regarding the Jurisdiction of the Commission to Grant ETC Status to Wireless Carriers*, Docket U-4400, Order (Ala. Pub. Serv. Comm'n rel. March 12, 2002) (concluding that the Alabama Public Service Commission "has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama" including the services provided by Pine Belt); see also *Pine Belt ETC Designation Order*, 17 FCC Rcd at 9592, para. 6.

¹² Petition at 5.

¹³ *Id.* Pine Belt updated its Petition on January 13, 2006 to specify the actual amount of high-cost support it would recover through a grant of the requested waiver and to inform the Commission of the steps it has taken to ensure future compliance. See Letter from Phyllis A. Whitten, Counsel to Pine Belt Cellular, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Jan. 13, 2006) (Supplement).

¹⁴ Petition at 4-7.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

because of the disruptions, it inadvertently missed the filing deadline.¹⁷ Pine Belt further notes that, without a waiver, it will lose \$33,438 in funding that is used to provide the wireless services in Alabama relied on by its customers for both routine and emergency purposes.¹⁸ Moreover, Pine Belt argues that grant of the waiver will not cause undue administrative burden because USAC has received all of the data necessary to make its funding calculations.¹⁹ For these reasons, Pine Belt contends that grant of the waiver “would serve the public interest.”²⁰

6. *Waiver Standard.* Generally, the Commission’s rules may be waived for good cause shown.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁴ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²⁵

III. DISCUSSION

7. We find that Pine Belt has demonstrated that there is good cause to waive section 54.313 of the Commission’s rules in order to allow Pine Belt to receive high-cost funding for the first and second quarters of 2005.²⁶ It is the responsibility of ETCs to familiarize themselves with any applicable regulations,²⁷ and to ensure that filings are timely received.²⁸ In this case, however, considerations of hardship and equity weigh in favor of granting the requested waiver.

8. We conclude that the extensive and unforeseeable disruption to Pine Belt’s facilities and operations caused by Hurricane Ivan coinciding with the time of the filing deadline constitutes special circumstances warranting a deviation from the general rule. In particular, we note that Pine Belt experienced total disruption of its operations in the two weeks prior to the filing deadline and severe disruptions for two months afterwards.²⁹ Moreover, Pine Belt has taken steps to ensure future regulatory

¹⁷ *See id.*

¹⁸ *Id.* at 6. Supplement at 1.

¹⁹ Petition at 6.

²⁰ *Id.*

²¹ 47 C.F.R. § 1.3.

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁶ 47 C.F.R. § 54.313.

²⁷ *See id.* § 0.406. *See also Richard Joslin, Application for Renewal of Amateur Operator’s License and Vanity Call Sign W7CXW*, Memorandum Opinion and Order, 15 FCC Rcd 23835, 23837, n.19 (PSPWD 2000); *South Slope Cooperative Telephone Co., Petition for Waiver of Filing Deadline in 47 C.F.R. Sect. 54.307(c)*, Order, 19 FCC Rcd 17493, 17494-95, para. 5 (Wireline Comp. Bur. 2004).

²⁸ *See* 47 C.F.R. § 54.313.

²⁹ Our decision to grant Pine Belt’s request for waiver, which was filed approximately 120 days after the filing deadline and the onset of the hurricane that prompted the late filing, is consistent with our previous order waiving certain rules relating to the Universal Service Fund (USF) to permit telecommunications carriers to file USF forms,

(continued....)

compliance. Specifically, Pine Belt has hired a certified public accountant to assist the company with future regulatory filings and to supervise regulatory compliance efforts.³⁰

9. We also conclude that deviation from the general rule under these special circumstances will serve the public interest. The loss of funding would only compound the hardships created by the natural disaster. By contrast, waiving section 54.313 of the Commission's rules will serve the public interest by facilitating consumers' continued access to routine and emergency wireless services in Alabama. Moreover, USAC already possesses the data it needs to make funding calculations. Accordingly, any administrative burdens resulting from the delay are outweighed by the public interest benefits of granting the requested waiver.

IV. ORDERING CLAUSE

10. 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 section 54.313 of the Commission's rules, 47 C.F.R. § 54.313, filed by Pine Belt Cellular, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

(...continued from previous page)

payments, and data for a period of up to 150 days after the date on which Hurricane Katrina struck the Gulf Coast of the United States. See *Federal-State Joint Board on Universal Service*, Order, DA 05-2484 (Wireline Comp. Bur. rel. Sept. 21, 2005).

³⁰ Supplement at 2-3 (Declaration of Rod Ballard).