

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

In the Matter of )
Federal-State Joint Board on Universal Service )
SouthEast Telephone, Inc. ) CC Docket No. 96-45
Expedited Petition for Waiver of Deadlines in )
Sections 54.307(c)(2) and 54.802(a) of the )
Commission's Rules )
Cellular Network Partnership d/b/a Pioneer )
Cellular Petition for Waiver of Deadline in 47 )
C.F.R. § 54.307(c) )
Pine Belt Cellular, Inc. Petition for Waiver )
of Section 54.307(c) of the Commission's Rules )

ORDER

Adopted: September 12, 2006

Released: September 12, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant three separate requests for waiver, filed by three eligible telecommunications carriers (ETCs) – SouthEast Telephone, Inc. (SouthEast), Cellular Network Partnership d/b/a Pioneer Cellular (Pioneer), and Pine Belt Cellular, Inc. (Pine Belt) (collectively, Petitioners) – of certain quarterly filing deadlines required for receipt of high-cost universal service support as set forth in sections 54.307(c) and 54.802(a) of the Commission's rules. We find that SouthEast, Pioneer, and Pine Belt have demonstrated that good cause warrants these waivers.

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

1 SouthEast Telephone, Inc. Expedited Petition for Waiver of Deadlines in Sections 54.307(c)(2) and 54.802(a) of the Commission's Rules, CC Docket No. 96-45, filed Dec. 20, 2005 (SouthEast Petition); Cellular Network Partnership d/b/a Pioneer Cellular Petition for Waiver of Deadline in 47 C.F.R. § 54.307(c), CC Docket No. 96-45, filed Mar. 15, 2006 (Pioneer Petition); Pine Belt Cellular, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules, CC Docket No. 96-45, filed June 2, 2006 (Pine Belt Petition). See also 47 C.F.R. §§ 54.307(c), 54.802(a). Pine Belt's petition only requests a waiver of section 54.307(c). We find, however, that Pine Belt also requires a waiver of section 54.802(a), which we grant on our own motion. See 47 C.F.R. § 1.3.

specific Federal universal service support.”<sup>2</sup> 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) states that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>3</sup> To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.<sup>4</sup>

3. Pursuant to section 54.307 of the Commission’s rules, a competitive ETC must file with the Universal Service Administrative Company (USAC) no later than July 31, September 30, December 30, and March 30 of each year, working line count data for the previous December 31, March 31, June 30, and September 30, respectively, in order to receive high-cost support for those quarterly periods.<sup>5</sup> In addition, an ETC that is providing service within an area served by a price cap local exchange carrier must file line count data on a quarterly basis, pursuant to section 54.802 of the Commission’s rules.<sup>6</sup> Line count data are due on the last business day of March, June, September, and December of each year.<sup>7</sup> USAC uses line count data filed in December to calculate first quarter support for the following calendar year, line count data filed in March to calculate second quarter support for the current year, line count data filed in June to calculate third quarter support for the current year, and line count data filed in September to calculate fourth quarter support for the current year.<sup>8</sup>

4. SouthEast’s Petition for Waiver. On December 20, 2005, SouthEast, a competitive ETC in Kentucky, filed a request for waiver of the September 30, 2005 deadlines in sections 54.307(c)(2) and 54.802(a) of the Commission’s rules.<sup>9</sup> In its petition, SouthEast states that it mailed its required reporting data via certified mail to USAC on September 23, 2005, seven days in advance of the September 30 filing deadline.<sup>10</sup> SouthEast notes that September 30, 2005 was a Friday, and USAC received the filing the following Monday, October 3, 2005.<sup>11</sup> SouthEast further submits that the resultant short delay did not impair the administration of the federal universal service fund, and therefore requests waiver of sections 54.307(c)(2) and 54.802(a).<sup>12</sup>

5. Pioneer’s Petition for Waiver. On March 15, 2006, Pioneer, a competitive ETC in Oklahoma, requested a waiver of section 54.307(c) of the Commission’s rules.<sup>13</sup> Pioneer states that it

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<sup>2</sup> 47 U.S.C. § 254(e). Section 214(e)(2) of the Act provides that state commissions shall designate carriers as ETCs, but section 214(e)(6) allows the Commission to designate as ETCs carriers not subject to the jurisdiction of a state commission. 47 U.S.C. § 214(e)(2), (6).

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802, 54.809, 54.903, 54.904.

<sup>5</sup> See 47 C.F.R. § 54.307.

<sup>6</sup> See 47 C.F.R. § 54.802(a).

<sup>7</sup> *Id.* See also *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000), *aff’d in part, rev’d in part, and remanded in part, Texas Office of Public Utility Counsel*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001) (*CALLS Order*).

<sup>8</sup> *CALLS Order*, 15 FCC Rcd at 13061, para. 230.

<sup>9</sup> SouthEast Petition at 5.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.*

<sup>13</sup> Pioneer Petition at 7.

mailed its required reporting data via first class U.S. Mail to USAC on September 23, 2005, seven days in advance of the deadline of September 30, 2005.<sup>14</sup> USAC did not receive the filing until Monday, October 3, 2005.<sup>15</sup> Pioneer argues that it acted in reasonable reliance on the U.S. Mail and that its failure to meet the reporting deadline was not a matter of negligence, carelessness, or forgetfulness on its part.<sup>16</sup>

6. *Pine Belt's Petition for Waiver.* On June 2, 2006, Pine Belt, a competitive ETC in Alabama, filed a request for waiver of section 54.307(c) of the Commission's rules.<sup>17</sup> Pine Belt seeks waiver of the deadlines for high-cost filings submitted between March 2005 and March 2006.<sup>18</sup> Pine Belt notes that Hurricane Ivan struck Alabama on September 16, 2004, causing severe disruption to its business operations and personal hardship to its staff.<sup>19</sup> Pine Belt states that because the employee responsible for USAC filings was severely affected by the hurricane, Pine Belt's president reassigned the process of USAC filings to another employee, who, in the mistaken belief that the Interstate Access Support (IAS) filings needed only to be postmarked prior to the filing deadline, mailed the filings by certified first class U.S. Postal Service mail several days in advance of the required deadline.<sup>20</sup> USAC did not receive these filings until one or two business days after the filing deadline.<sup>21</sup> Pine Belt's mistake was discovered only when Pine Belt's outside accounting firm began an investigation of why USAC withheld universal service funds.<sup>22</sup>

7. Subsequently, Pine Belt's president decided to supplement his staff's efforts and request additional assistance from an accounting firm in Alabama that began assisting the company with its regulatory filings in late 2005.<sup>23</sup> In the preparation of two similar USAC forms, the accountant, in his first filing on Pine Belt's behalf, incorrectly assumed that both filings were due on the same day, March 31, although one form was due on March 30.<sup>24</sup> He mailed both forms on March 30 and the filings arrived on March 31.<sup>25</sup> After being alerted of this mistake, the accountant also emailed and faxed the forms to USAC on March 31.<sup>26</sup> Pine Belt argues that, because USAC is in possession of all the required data, no administrative burden would result from granting its waiver request.<sup>27</sup>

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<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4.

<sup>17</sup> Pine Belt Petition at 1.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.* at 5-6. *See also* Pine Belt Cellular, Inc. Petition for Waiver of Section 54.313 of the Commission's Rules, CC Docket No. 96-45, filed March 2, 2005. *See also* 47 C.F.R. § 54.313. We note that the Bureau recently released an order granting Pine Belt's 2005 petition. *See Pine Belt Cellular, Inc. Petition for Waiver of Section 54.313 of the Commission's Rules*, CC Docket No. 96-45, Order, DA 06-1631 (Wireline Comp. Bur. rel. Aug. 14, 2006).

<sup>20</sup> Pine Belt Petition at 6. The IAS line count filing due March 30, 2005, was received by USAC two days after the deadline. The June 30, 2005 filing was received one day late and the September 30, 2005 filing was received the next business day. *See id.* at Exhibit 3.

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 8.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 10.

8. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.<sup>28</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>29</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>30</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>31</sup> Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>32</sup>

### III. DISCUSSION

9. We find that SouthEast, Pioneer and Pine Belt have demonstrated that there is good cause to waive the deadlines in sections 54.307(c) and 54.802(a) of the Commission's rules.

10. Although our rules require that line count filings must be *received* by the applicable deadline, we find here that SouthEast and Pioneer acted reasonably and in good faith in their attempts to ensure that their filings were timely received by mailing the required data seven days in advance of the September 30 deadline provided in sections 54.307(c) and 54.802(a).<sup>33</sup> The Commission has found that it generally does not grant waivers based on the failure of third-party couriers, stating that "although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays."<sup>34</sup> Even given unexpected delays, however, mailing the data when SouthEast and Pioneer did should have ensured that the filings arrived on time. In addition, here no other party was prejudiced due to the late filings, which were received the next business day following the deadline.<sup>35</sup> Furthermore, SouthEast and Pioneer have implemented new procedures to ensure that future filings are timely received by USAC. SouthEast asserts that it will file all of its reports via verified overnight mail.<sup>36</sup> Pioneer has indicated that it will transmit future filings to USAC via e-mail with return receipt requested or an overnight delivery service.<sup>37</sup>

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<sup>28</sup> 47 C.F.R. § 1.3.

<sup>29</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>30</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>31</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>32</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>33</sup> See *Benton/Linn Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *Highland Cellular, Inc., Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules*; *Louisa Communications, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *Unity Telephone Company d/b/a UniTel, Inc., Petition for Waiver of Section 54.904(d) of the Commission's Rules*; *Wapsi Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220, para. 18 (Wireline Comp. Bur. 2005).

<sup>34</sup> See *Mary Ann Salvatoriello*, FCC 91-243, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 23 (1991) (quoting *FCC Overrules Caldwell Television Associates, Ltd.*, FCC 85-534, Public Notice, 58 RR2d 1706, 1707 (1985)).

<sup>35</sup> SouthEast Petition at 3; Pioneer Petition at 3.

<sup>36</sup> SouthEast Petition at 2.

<sup>37</sup> Pioneer Petition at 4.

We therefore grant SouthEast and Pioneer requests for waiver of the September 30 deadline provided in section 54.307(c) and 54.802 of the Commission's rules.

11. We also find that Pine Belt has demonstrated good cause to waive sections 54.307(c) and 54.802(a) of the Commission's rules.<sup>38</sup> As noted above, our rules require that line count filings must be *received* by the deadline. We find, however, that given the disruption of Pine Belt's business operations that resulted from Hurricane Ivan, as well as personal hardships suffered by Pine Belt's staff, Pine Belt acted reasonably and in good faith to ensure its filings were filed on time. Moreover, because Pine Belt's line counts were received within two business days of the applicable deadlines, no other party was prejudiced as a result of the late filings.<sup>39</sup> In addition, Pine Belt has revised its procedures and notes that it has the option to file by facsimile or email.<sup>40</sup> We therefore grant Pine Belt a waiver of sections 54.307(c) and 54.802(c) of the Commission's rules.

12. Nevertheless, we remind carriers that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings. Carriers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and email, and we encourage them to use any and all methods they deem necessary to ensure their filings are timely received.<sup>41</sup> For instance, all carriers receiving funding from the high-cost universal support mechanism are encouraged to make their filings via email at [hcfilings@HCLI.universalservice.org](mailto:hcfilings@HCLI.universalservice.org) to avoid future filing delays. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>.

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<sup>38</sup> We again note that we waive section 54.802(a) for Pine Belt on our own motion. *See* 47 C.F.R. § 1.3.

<sup>39</sup> *See* Pine Belt Petition, Exhibit 3.

<sup>40</sup> *Id.* at 11 and 14.

<sup>41</sup> We note that last summer, the Commission released a Notice of Proposed Rulemaking seeking comment on ways to improve the management, administration, and oversight of the USF. *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*, WC Docket No. 03-109, *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*USF Administration NPRM*). Among the issues on which the Commission sought comment are filing deadlines. *See id.* at 11328-30, paras. 47-51.

**IV. ORDERING CLAUSE**

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 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, the SouthEast Telephone, Inc. Petition for Waiver of Deadlines in Sections 54.307(c)(2) and 54.802(a) of the Commission's Rules, the Cellular Network Partnership d/b/a Pioneer Cellular Petition for Waiver of Deadline in 47 C.F.R. § 54.307(c)(2) and the Pine Belt Cellular, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau