

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Mid-Tex Cellular, Ltd. Petition for Waiver of the)	CC Docket No. 96-45
FCC's Universal Service Rules)	
)	

ORDER

Adopted: December 28, 2006

Released: December 28, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part a petition from Mid-Tex Cellular, Ltd. (Mid-Tex), an eligible telecommunications carrier (ETC) in Texas, for a waiver of sections 54.314(d)(5) and 54.904 of the Commission's rules.¹ We find that Mid-Tex has demonstrated that good cause warrants a waiver of section 54.314(d)(5), but not section 54.904.

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 the support is intended."³ To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.⁴

3. Section 54.314 of the Commission's rules requires state commissions to file an annual certification with both the Commission and the Universal Service Administrative Company (USAC) stating that all federal high-cost support provided to ETCs subject to the jurisdiction of that state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is

¹ Mid-Tex Cellular, Ltd. Petition for Waiver of the FCC's Universal Service Rules, CC Docket No. 96-45, filed December 20, 2005 (Petition); *see also* 47 C.F.R. §§ 54.314(d)(5), 54.904.

² 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).

³ 47 U.S.C. § 254(e).

⁴ *See* 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802, 54.809, 54.903.

intended.⁵ A carrier for which certifications are received by USAC after July 1 shall not receive support in that year.⁶ Under sections 54.307(d) and 54.314(a), newly designated ETCs have 60 days to file the line count data and certifications.⁷

4. Similarly, to receive interstate common line support (ICLS) pursuant to section 54.904 of the Commission's rules, an ETC must file a certification stating that all ICLS it receives will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended. This certification must be filed with USAC and the Commission on the date that the ETC first files its line count information and thereafter on June 30 of each year.⁸

5. *Mid-Tex's Petition for Waiver.* On December 20, 2005, Mid-Tex, a small commercial mobile radio service (CMRS) carrier serving parts of Texas, filed a petition for waiver of sections 54.314(d)(5) and 54.904 of the Commission's rules.⁹ Mid-Tex was designated as an ETC by the Public Utility Commission of Texas (Texas Commission) on August 9, 2005.¹⁰ The Texas Commission filed the annual certification for Mid-Tex to receive support for 2006 on September 21, 2005.¹¹

6. Mid-Tex was required to file its ICLS annual certification at the same time it filed its initial line count data.¹² Mid-Tex filed its initial line count data on September 9, 2005, but, relying on the advice of its consultant, did not file its initial ICLS annual certification at that time.¹³ Only after it did not receive its expected high-cost support did Mid-Tex file its ICLS annual certification, on November 23, 2005.¹⁴ Mid-Tex states that it was a new ETC overwhelmed and confused by the numerous unfamiliar filings.¹⁵ Mid-Tex states that it failed to file its ICLS annual certification with its initial ICLS line count data in a timely manner due to confusion over the deadline.¹⁶ Mid-Tex argues that it has implemented new procedures to ensure all of its federal universal service fund filings are received on a timely basis.¹⁷

⁵ 47 C.F.R. § 54.314(a).

⁶ 47 C.F.R. § 54.314(d)(5).

⁷ 47 C.F.R. §§ 54.307(d) and 54.314(a).

⁸ See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *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, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*subsequent history omitted*) (*MAG Order*).

⁹ Petition at 13.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 9.

¹² 47 C.F.R. § 54.904(d).

¹³ Petition at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 4.

Mid-Tex also argues that it is the only wireless carrier providing ubiquitous, high-quality service in certain remote parts of its service area in Texas, and therefore the waiver is in the public interest.¹⁸

7. Mid-Tex requests that the Commission accept its late-filed annual ICLS certification, direct USAC to disburse ICLS support to Mid-Tex based on the September 9, 2005 filing, and direct USAC to disburse support for the period of August 9, 2005, to December 31, 2005.¹⁹

III. DISCUSSION

8. We grant in part and deny in part Mid-Tex's petition. We find that Mid-Tex has demonstrated that there is good cause to waive the certification deadline in section 54.314 of the Commission's rules, but has not demonstrated that there is good cause to waive the deadline in section 54.904.²⁰

9. We grant Mid-Tex's petition for waiver of the annual certification requirement set forth in section 54.314. We have routinely allowed newly designated carriers to receive high-cost support back to their date of designation when, as here, the date of the state commission's certification made it impossible for the state commission to file the certification prior to the July 1 deadline.²¹ Except for ICLS, as detailed below, we therefore direct USAC to disburse high-cost support to Mid-Tex for the period between August 9, 2005, and December 31, 2005.

10. We deny Mid-Tex's petition for waiver of the filing deadline set forth in section 54.904. Section 54.904 requires that, in order for an ETC to receive ICLS support, the carrier must file an annual certification on the date that it first files its line count information and thereafter on June 30 of each year.²² Mid-Tex filed its line count information pursuant to section 54.904 on September 9, 2005,²³ but did not file the required annual certification until November 23, 2005 – more than two months later.²⁴ Because USAC processes a large amount of data each year, it is administratively necessary to require ETCs to meet filing deadlines absent special circumstances. Mid-Tex's only excuse for its late filing was its confusion over the deadline. Such an excuse does not constitute special circumstances.²⁵ Therefore, we deny Mid-Tex's petition for waiver. We note, however, that because Mid-Tex filed its certification on

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 13.

²⁰ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. 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. *Northeast Cellular*, 897 F.2d at 1166. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²¹ See *Grande Communications, Inc., Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15584, para. 9 (2004).

²² 47 C.F.R. § 54.904.

²³ See Petition at 3.

²⁴ See *id.*

²⁵ See *South Slope Cooperative Telephone Co., Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493 (2004).

November 23, 2005, it is eligible to receive support for the nine-month period beginning April 1, 2006, and ending December 31, 2006.²⁶

IV. ORDERING CLAUSES

11. 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 Mid-Tex Cellular, Ltd. Petition for Waiver of the Commission's Universal Service Rules IS GRANTED IN PART and DENIED IN PART, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

²⁶ See *MAG Order*, 16 FCC Rcd at 19688, para. 176.