

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

In the Matter of)
San Isabel Telecom, Inc.)
Petition for Waiver of Deadlines of Section) CC Docket No. 96-45
54.314(d) of the Commission's Rules)
Petition for Waiver of Deadlines in Section)
54.307(c) of the Commission's Rules)

ORDER

Adopted: December 28, 2006

Released: December 28, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from San Isabel Telecom, Inc. (San Isabel), an eligible telecommunications carrier (ETC) in Colorado, for a waiver of the October 1, 2002, certification filing deadline as set forth in section 54.314(d) of the Commission's rules. We also grant San Isabel's request for a waiver of the September 30, 2002, December 30, 2002, and March 30, 2003, loop count filing deadlines in section 54.307(c) of the Commission's rules. However, we deny San Isabel's request for a waiver of the September 30, 2003, and December 30, 2003, loop count filing deadlines in section 54.307(c) of the Commission's rules.

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." Once a carrier is designated as an ETC, there are other requirements that must be satisfied before a carrier can begin receiving high-cost universal service

1 San Isabel Telecom, Inc., Petition of Waiver of Deadlines in 47 C.F.R. § 54.314(d), CC Docket No. 96-45, filed January 26, 2004 (Certification Petition); see 47 C.F.R. § 54.314(d).

2 San Isabel Telecom, Inc., Petition of Waiver of Deadlines in 47 C.F.R. § 54.307(c), CC Docket No. 96-45, filed February 12, 2004 (Line Count Petition); see 47 C.F.R. § 54.307(c). We note that San Isabel in its filing uses the term "line count" when referring to reporting such data to the Administrator. See Line Count Petition at 1. Section 54.307 of the Commission's rules uses the term "number of working loops" when referring to reporting such data. 47 C.F.R. § 54.307(b). For purposes of this Order, "line counts" and "number of working loops" have the same meaning.

3 Id.

4 47 U.S.C. § 254(e). Section 214(e) of the Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

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.”⁵ To implement this statutory requirement, the Commission adopted an annual certification requirement. Section 54.314 of the Commission’s rules provides that states desiring rural 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.”⁶ 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).⁷ 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.⁸ 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.⁹ 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.¹⁰

3. In addition to complying with the certification requirement, an ETC must file certain data with USAC before receiving universal service support. A rural competitive ETC receives support to the extent it captures lines from an incumbent LEC or serves new subscriber lines in an incumbent LEC’s service area.¹¹ Accordingly, a competitive ETC must file the number of working loops it serves in the incumbent rural carrier’s service area on a quarterly basis.¹² Specifically, mandatory loop count data are due on July 31 of each year, and quarterly updates are due September 30, December 30, and March 30 of each year.¹³ USAC uses loop count data filed on September 30 to calculate support for first quarter, loop

⁵ 47 U.S.C. § 254(e).

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

⁷ 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 (2001) (*Rural Task Force Order*); 47 C.F.R. § 54.314(b).

⁸ 47 C.F.R. § 54.314(d)(1).

⁹ See 47 C.F.R. § 54.314(d).

¹⁰ 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.

¹¹ 47 C.F.R. § 54.307(a).

¹² 47 C.F.R. § 54.307(c). Prior to the *Rural Task Force Order*, rural incumbents and their competitors were required to file loop count data annually and could provide quarterly updates to USAC on a voluntary basis. To prevent an overpayment of support, the Commission concluded in the *Rural Task Force Order* that, upon competitive entry in rural study areas, quarterly loop count updates would be mandatory. See *Rural Task Force Order*, 16 FCC Rcd at 11298, para. 133. Under the Commission’s forward-looking high-cost support mechanism for non-rural carriers, loop count data must be filed each quarter. See 47 U.S.C. § 54.307(b).

¹³ 47 C.F.R. § 54.307(c).

count data filed on December 30 to calculate support for second quarter, and loop count data submitted on March 30 to calculate support for third and fourth quarters.¹⁴

4. Petition for Waiver of Section 54.314(d). San Isabel, a rural competitive local exchange carrier (CLEC), was designated an ETC in the state of Colorado on December 30, 2002.¹⁵ San Isabel claims that it attempted to “self-certify” with USAC and the Commission on April 1, 2003, because it was told by the Colorado Public Utility Commission (CPUC) “that it would not certify CLECs on a *prospective* basis that USF support *would* be used for its intended purpose.”¹⁶ San Isabel states that “[a]fter additional discussions and clarifications,” the CPUC did certify San Isabel pursuant to section 54.314(a) on September 24, 2003.¹⁷ San Isabel is requesting a waiver of the October 1, 2002, certification filing deadline in order to receive universal service support for all of 2003 because it has been an ETC since December 30, 2002.¹⁸

5. Petition for Waiver of Section 54.307(c). San Isabel also requests a waiver of the loop count filing deadlines pursuant to section 54.307(c) so that it may receive universal service support beginning in the first quarter of 2003 through the second quarter of 2004. San Isabel states that it did not file the required loop counts on September 30, 2002, December 30, 2002, and March 30, 2003, because the CPUC did not issue its section 54.314 certification until September 24, 2003.¹⁹ San Isabel filed loop count data on June 30, 2003, in accordance with section 54.307.²⁰ San Isabel claims, however, that given the uncertainty of whether the CPUC would issue the section 54.314 certification and the short time frame between when the certification was made on September 24, 2003, and the September 30, 2003, loop count filing, it did not file loop counts by September 30, 2003.²¹ Finally, San Isabel states that, given the confusion that resulted from this “entire process,” it did not file loop counts by December 30, 2003.²² In summary, San Isabel is requesting a waiver of the quarterly loop count filing deadlines from September 30, 2002, through December 30, 2003, with the exception of the July 31, 2003, deadline so that it can retroactively receive support from the date of its ETC designation.²³

III. DISCUSSION

6. Waiver of Section 54.314(d). We find that San Isabel has demonstrated that special circumstances warrant a waiver of the October 1, 2002, filing deadline for annual certification in section

¹⁴ For non-rural carriers, loop count data filed on September 30 are used for first quarter support, loop count data filed on December 30 are used for second quarter support, loop count data filed on March 30 are used for third quarter support, and loop count data filed on July 31 are used for fourth quarter support. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Reconsideration Order, 15 FCC Rcd 12070, 12077, para. 17, n. 25 (2000).

¹⁵ Certification Petition at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 2-3.

¹⁹ Line Count Petition at 3.

²⁰ San Isabel states it filed loop count data on June 30, 2003 subsequent to its attempt to self-certify with USAC and the Commission on April 1, 2003; however, the self-certification was not accepted by either USAC or the Commission. Line Count Petition at 2. We note that San Isabel’s June 30, 2003 loop count data submission was not due until July 31, 2003.

²¹ *Id.* at 3.

²² *Id.* at 1-3.

²³ *Id.* at 8.

54.314(d) of the Commission's rules.²⁴ San Isabel received its ETC designation from the CPUC on December 30, 2002.²⁵ The CPUC told San Isabel that it would not certify competitive LECs on a prospective basis that universal service would be used for its intended purpose.²⁶ Section 54.314(a) indicates, however, that the annual certification filed by state commissions must state "that all federal high-cost support provided to such carriers within that State *will* be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."²⁷ The plain language of the rule allows for prospective certification that funds will be used for their intended purpose. Therefore, we find that the late filing of the state certification was not the fault of San Isabel, but due to a misunderstanding of the Commission's rules regarding state certification. Accordingly, we grant San Isabel a waiver of the October 1, 2002, certification requirement in section 54.314(d) so that San Isabel is eligible for universal service support beginning January 2003.²⁸

7. Waiver of Section 54.307(c). We grant San Isabel's request for waiver of the loop count filing deadlines of September 30, 2002, December 30, 2002, and March 30, 2003. All of these quarterly loop count filing deadlines were prior to the date CPUC certified San Isabel (September 24, 2003). We deny San Isabel's request for waiver of the September 30, 2003, and December 30, 2003, loop counts deadlines. These two quarterly deadlines were subsequent to San Isabel's certification date.

8. With respect to San Isabel's request for waiver of the September 30, 2002, and December 30, 2002, and March 30, 2003, loop count filing deadlines, we grant San Isabel's request so that it may receive universal service beginning January 1, 2003, or just after San Isabel received its ETC designation (December 30, 2002). As noted above and consistent with Commission precedent, it would be inconsistent with the Commission's goal of competitive neutrality and section 254(e) to delay San Isabel's receipt of support merely because the CPUC did not submit San Isabel's certification until September 24, 2003, after the September 30, 2002, December 30, 2002, and March 30, 2003, loop count filing deadlines.²⁹ San Isabel could not have been expected to file timely because the CPUC had not yet submitted the required state certification. Accordingly, we find that a waiver of 54.307(c) is warranted. Our grant of these loop count filing deadlines allows San Isabel to be eligible for universal service support for all of 2003.³⁰

²⁴ 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 a 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).

²⁵ See Certification Petition at 2.

²⁶ See Certification Petition at 3.

²⁷ See 47 C.F.R. § 54.314(a) (emphasis added).

²⁸ Because we are not granting San Isabel's request for waiver of the September 30, 2003, and December 30, 2003, working loop count filing deadlines, pursuant to section 54.307(c), San Isabel will not be eligible for universal service support for the first and second quarters of 2004. See *infra* paras. 11-12; see also 47 C.F.R. § 54.307(c).

²⁹ See 47 U.S.C. § 254(e); see e.g., *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387, 24391, para. 10 (Wireline Comp. Bur. 2002) (*RFB Cellular*).

³⁰ San Isabel had filed the required loop count data pursuant to the July 31, 2003 filing deadline. See Line Count Petition at 2. 47 C.F.R. § 54.307(c)(1).

9. San Isabel also is requesting a waiver of two quarterly loop count deadlines that occurred after September 24, 2003, the date CPUC certified San Isabel. San Isabel claims that, given the uncertainty of whether CPUC would issue the section 54.314 certification and the short time between when the certification was made on September 24 and the September 30, 2003, loop count filing deadline, San Isabel did not file loop counts by September 30, 2003.³¹ San Isabel further claims that, given the confusion that resulted from this entire process, San Isabel did not file loop counts by December 30, 2003.³²

10. San Isabel submitted the quarterly loop count filing that was due July 31, 2003, in accordance with the Commission's rules prior to being certified by the CPUC.³³ We find no compelling reason why San Isabel also could not have submitted the two subsequent required filings particularly when those filings were due after San Isabel received its state certification. Because USAC processes such a large amount of data each year, it is necessary to require carriers to meet filing deadlines absent special circumstances. A week elapsed between CPUC's certification on September 24, 2003, and the loop count filing due date of September 30, 2003. We find that the time period was sufficient for San Isabel to file the loop count data because discussions had been ongoing for several months between San Isabel and the CPUC regarding the required CPUC certification. San Isabel could and should have had its loop count filings prepared and ready to be filed as necessary to ensure that it receives universal service support immediately after receiving the certification from CPUC. Furthermore, a carrier's confusion does not establish special circumstances that warrant a deviation from the Commission's rules.³⁴ It is the responsibility of the ETC to review and understand the rules so it is in a position to assure that its submissions are filed in a timely manner. Otherwise, ETCs could seek to circumvent the Commission's rules merely by alleging that they misinterpreted or were confused by the rules. We find that San Isabel has not presented special circumstances to warrant a waiver of the September 30, 2003, and December 30, 2003, loop count filings. We therefore deny San Isabel's request for waiver of section 54.307(c) of the September 30, 2003 and December 30, 2003, filing deadlines.

IV. ORDERING CLAUSES

11. 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 October 1, 2002, certification deadline in section 54.314(d) of the Commission's rules, 47

³¹ See Line Count Petition at 3.

³² *Id.*

³³ See Line Count Petition at 2; see also *supra* n.20.

³⁴ See e.g., *Application for Review of a Decision by the Wireline Competition Bureau, Information Technology Department State of North Dakota, Bismarck, North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521, 21528, para. 19 (2003); *Request for Review by Gardner Unified School District 231, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-189138, CC Docket Nos. 96-45 and 97-21, 18 FCC Rcd 9709, 9709-10, para. 2 (Wireline Comp. Bur. 2003) (reaffirming that applicants have the burden of meeting filing deadlines to qualify for funding under the Commission's schools and libraries program and reaffirming that applicants are responsible for complying with program rules and procedures). In contrast, in instances where an ETC designation occurred after a loop count filing deadline, the Wireline Competition Bureau (Bureau) has granted waiver of that deadline. See *RFB Cellular*, 17 FCC Rcd 24387, 24391, para. 10 (Bureau determining that "it would be inconsistent with the Commission's goal of competitive neutrality and section 254(e) to delay" the receipt of high-cost support because a carrier received its ETC designation after certain line count filing deadlines).

C.F.R. § 54.314(d), filed by San Isabel Telecom, Inc. on January 26, 2004, 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 September 30, 2002, December 30, 2002, and March 30, 2003, loop count filing deadlines in section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by San Isabel Telecom, Inc. on February 12, 2004, IS GRANTED, as described herein.

13. 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 September 30, 2003, and December 30, 2003, loop count filing deadlines in section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by San Isabel Telecom, Inc. on February 12, 2004, IS DENIED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau