

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

In the Matter of
Federal-State Joint Board on Universal Service
Kansas Corporation Commission Petition for Waiver of
Sections 54.313 and 54.314 of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: January 26, 2007

Released: January 26, 2007

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by the Kansas Corporation Commission (Kansas Commission) for a waiver of sections 54.313 and 54.314 of the Commissions rules. This waiver will permit USCOC of Nebraska/Kansas, LLC d/b/a United States Cellular Corporation (U.S. Cellular), an eligible telecommunications carrier (ETC) in Kansas, to receive federal high-cost universal service support as of the date the Kansas Commission designated U.S. Cellular an ETC. For the reasons set forth below, we find that the Kansas Commission has demonstrated that good cause warrants granting 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." 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) states that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

3. Pursuant to sections 54.313 and 54.314 of the Commission's rules, state commissions must file an annual certification with the Universal Service Administrative Company (USAC) and with the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."

1 Kansas Corporation Commission Petition for Waiver of Sections 54.313 and 54.314 of the Commission's Rules, CC Docket No. 96-45, filed July 14, 2006 (Petition). See also 47 C.F.R. §§ 54.313(d), 54.314(d).

2 47 U.S.C. § 254(e).

3 Id.

4 See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802(a), 54.809, 54.903, 54.904.

5 47 C.F.R. §§ 54.313(a), 54.314(a). The certification requirement for non-rural carriers is set forth in 47 C.F.R. § 54.313. The certification requirements for rural carriers is set forth in 47 C.F.R. § 54.314.

In instances in which 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).<sup>6</sup> Sections 54.313(d) and 54.314(d) provide 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. 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.<sup>7</sup> Under sections 54.313(d) and 54.314(d), newly designated ETCs or state commissions have 60 days to file the certification.<sup>8</sup> If a newly designated ETC or a state commission does not file the required certifications within 60 days of an ETC's designation date, the ETC will not receive support retroactively to its ETC designation date.<sup>9</sup> Instead, the ETC will receive support on a going-forward basis pursuant to the date the certification was filed.<sup>10</sup>

4. *Kansas Commission's Petition for Waiver.* On July 14, 2006, the Kansas Commission filed a request for waiver of sections 54.313 and 54.314 of the Commission's rules to permit U.S. Cellular to receive high-cost universal service support as of the date the Kansas Commission designated U.S. Cellular an ETC.<sup>11</sup> The Kansas Commission explains that, on November 4, 2005, U.S. Cellular filed an application with the Kansas Commission seeking designation as an ETC.<sup>12</sup> On February 10, 2006, the Kansas Commission designated U.S. Cellular as an ETC for part of its service area and on March 30, 2006, for additional parts of its service area.<sup>13</sup> U.S. Cellular was subject to the jurisdiction of the Kansas Commission and, therefore, requested that the Kansas Commission file the certification, required by sections 54.313 and 54.314, with the Commission.<sup>14</sup> The Kansas Commission states that, due to an administrative oversight, it did not file the required certification with the Commission within the 60 days required by sections 54.313 and 54.314.<sup>15</sup> Thus, absent a waiver U.S. Cellular would only be able to obtain support starting in the fourth quarter of 2006, and not retroactively to its ETC designation date.<sup>16</sup>

5. The Kansas Commission contends that good cause exists to waive the certification filing requirements of sections 54.313 and 54.314 of the Commission's rules to permit U.S. Cellular to receive high-cost loop support universal service support.<sup>17</sup> The Kansas Commission argues that a waiver is in the public interest because: U.S. Cellular serves sparsely populated areas in Kansas; high-cost support is critically important to U.S. Cellular's service to underserved rural communities; no other party will be prejudiced; and granting this waiver would further the Commission's goal of competitive neutrality.<sup>18</sup>

<sup>6</sup>See 47 C.F.R. §§ 54.313(b), 54.314(b); see also *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, CC Docket No. 00-256, 16 FCC Rcd 11244, 11318, para. 189 (2001).

<sup>7</sup> 47 C.F.R. §§ 54.313(d), 54.314(d).

<sup>8</sup> See 47 C.F.R. §§ 54.313(d)(6), 54.314(d)(6); see also *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6411, para. 92 (2005) ("*ETC Designation Order*").

<sup>9</sup> *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

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

<sup>11</sup> Petition at 1.

<sup>12</sup> *Id.* at 1-2.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* The Kansas Commission filed the certification on June 5, 2006.

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> *Id.* at 3-8.

<sup>18</sup> *Id.* at 5-7.

Additionally, the Kansas Commission asserts that the facts stated in its petition are consistent with those underlying the Commission's grant of petitions by the West Virginia Public Service Commission and the Connecticut Department of Public Utility Control.<sup>19</sup> Finally, the Kansas Commission states that it routinely submits timely universal service filings to USAC and the Commission, and will take steps to ensure that all future certification filings are filed by the applicable deadline.<sup>20</sup>

### III. DISCUSSION

6. We find that the Kansas Commission has demonstrated that there is good cause to waive sections 54.313 and 54.314 of the Commission's rules to permit U.S. Cellular to receive high-cost universal service support as of the date the Kansas Commission designated U.S. Cellular an ETC.<sup>21</sup> Specifically, we find that the potential harm that U.S. Cellular customers would suffer, as a consequence of the Kansas Commission's failure to timely file its sections 54.313 and 54.314 certification within the 60 day window for newly designated ETCs, justifies a waiver in this instance. This finding is consistent with waiver petitions and filing amendments we have granted in the past.<sup>22</sup> Moreover, granting this waiver will further the goals of universal service by helping maintain and promote access to quality services in rural and high-cost areas.<sup>23</sup>

7. In granting this waiver, we rely on the Kansas Commission's commitment to file required certifications with the Commission and USAC by the applicable filing deadlines.<sup>24</sup> We note that the Kansas Commission did file the necessary certification, albeit untimely. We thus have no reason to believe that U.S. Cellular will use federal high-cost support in a manner contrary to the direction of section 254 of the Act. We rely on the Kansas Commission's commitment to "take steps to ensure that

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<sup>19</sup> *Id.* at 6-7; see *West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, CC Docket No. 96-45, Order, 16 FCC Rcd 5784 (2001) (*West Virginia Commission Order*); *Connecticut Department of Public Utility Control Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Rural Carriers*, CC Docket No. 96-45, Order, 17 FCC Rcd 24804 (Telecom. Access Policy Div. 2002) (*Connecticut Commission Order*).

<sup>20</sup> Petition at 7.

<sup>21</sup> 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).

<sup>22</sup> *West Virginia Commission Order*, 16 FCC Rcd at 5786, para. 7 (granting a waiver of a section 54.313(c)(2)(i) deadline to accept a certification filed 22 days after the filing deadline); *Connecticut Commission Order*, 17 FCC Rcd at 24806-24807, para. 7 (granting waivers of section 54.314(d)(1) and 54.314(d)(2) deadlines to accept a certification filed over four months after the filing deadline); *Washington Utilities and Transportation Commission Request to Amend Certification, Inland Cellular Telephone Company Request For Waiver of Filing Deadline in 47 C.F.R. § 54.313*, CC Docket No. 96-45, Order, 20 FCC Rcd 13745 (Telecom. Access Policy Div. 2005) (allowing the Washington Utilities and Transportation Commission to amend its certification letter to include an ETC which it inadvertently omitted from its letter); *Hawaii Public Utilities Commission Request for Waiver of Filing Deadline in 47 C.F.R. Section 54.314*, CC Docket No. 96-45, Order, 20 FCC Rcd 10655 (Telecom. Access Policy Div. 2006) (allowing the Hawaii Public Utility Commission to amend its certification letter to include an ETC which it inadvertently omitted from its letter).

<sup>23</sup> See 47 U.S.C § 254.

<sup>24</sup> See Petition at 7.

all future certification files are made in accordance with the applicable deadlines.”<sup>25</sup> Accordingly, we find that waving sections 54.313 and 54.314 will serve the public interest by advancing universal service.<sup>26</sup>

8. Nevertheless, we remind state regulatory bodies and 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 electronic mail (e-mail).<sup>27</sup> For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at [hcfilings@HCLI.universalservice.org](mailto:hcfilings@HCLI.universalservice.org). Additional information regarding USAC’s filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure their filings are timely received.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to 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, that the petition for waiver of sections 54.313(d) and 54.314(d) of the Commission’s rules, 47 C.F.R. §§ 54.313(d); 54.314(d), filed by the Kansas Corporation Commission IS GRANTED.

10. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291 and 1.102 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kirk S. Burgee  
Associate Chief  
Wireline Competition Bureau

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<sup>25</sup> *Id.* at 7.

<sup>26</sup> 47 C.F.R. § 254(b).

<sup>27</sup> We note that, in June 2005, the Commission released a Notice of Proposed Rulemaking seeking comment on ways to improve the management, administration, and oversight of the federal universal service fund. *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 03-109, 02-60, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005). Among the issues on which the Commission sought comment were filing deadlines. *See id.* at 11328-30, paras. 47-51.