

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

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service )  
 )  
Pine Cellular Phones, Inc. Petition for Waiver ) CC Docket No. 96-45  
of Section 54.307 of the Commission’s Rules )

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 Pine Cellular Phones Inc. (Pine Cellular), an eligible telecommunications carrier (ETC) in Oklahoma, for a waiver of 54.307 of the Commission’s rules.<sup>1</sup> For the reasons described below, we find that Pine Cellular 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.”<sup>2</sup> 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> 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>

3. *Pine Cellular’s Petition for Waiver.* On September 29, 2006, Pine Cellular filed a request for waiver of section 54.307 of the Commission’s rules to permit Pine Cellular to receive high-cost universal service support based on its line count data due to USAC on March 30, 2006.<sup>6</sup> Pine Cellular states that, because of an oversight by its third-party vendor, its March 30, 2006, line count

<sup>1</sup> Pine Cellular Phones, Inc. Petition for Waiver of Section 54.307 of the Commission’s Rules, CC Docket No. 96-45, filed September 29, 2006 (Petition). See also 47 C.F.R. § 54.307.

<sup>2</sup> 47 U.S.C. § 254(e).

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

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

<sup>5</sup> See 47 C.F.R. § 54.307.

<sup>6</sup> See Petition at 1.

reports were filed on March 31, 2006.<sup>7</sup> Specifically, Pine Cellular explains that it hired Fred Williamson & Associates, Inc. (FWA) to prepare and file Pine Cellular's line count reports.<sup>8</sup> On March 30, 2006, FWA sent the forms electronically to USAC.<sup>9</sup> However, Pine Cellular's filing did not reach USAC because FWA transmitted the filing to an incorrect electronic mail (e-mail) address.<sup>10</sup> Upon notification that the forms were not delivered to USAC, FWA resent the data using the correct e-mail address on March 31, 2006.<sup>11</sup> USAC, however, could not accept the filing because it received the data one day after the deadline.<sup>12</sup>

4. Pine Cellular asserts that good cause exists for granting its request for waiver of section 54.307 of the Commission's rules.<sup>13</sup> According to Pine Cellular, grant of the waiver will serve the public interest because high-cost support allows Pine Cellular to better serve consumers by maintaining and improving its facilities.<sup>14</sup> Pine Cellular also states that, through its agent, FWA, it has submitted several timely reports to USAC both before and after the March 30, 2006, deadline.<sup>15</sup> In addition, Pine Cellular represents that its agent has taken steps to ensure future filings will be timely.<sup>16</sup> Finally, Pine Cellular argues that the grounds for granting it a waiver are consistent with those underlying the Wireline Competition Bureau's grant of similar petitions filed by Northwest Dakota Cellular of North Dakota's Limited Partnership and United States Cellular Corporation.<sup>17</sup>

### III. DISCUSSION

5. We find that Pine Cellular has demonstrated that there is good cause to waive section 54.307 of the Commission's rules in order to allow Pine Cellular to receive high-cost universal service support.<sup>18</sup> USAC processes a tremendous amount of line count data each year, therefore, it is

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<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

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

<sup>11</sup> *Id.* at 2-3.

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

<sup>13</sup> *Id.* at 3-7.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 5-6; see also *Northwest Dakota Cellular of North Dakota Limited Partnership*; *North Central RSA 2 of North Dakota Limited Partnership*; *North Dakota RSA No. 3 Limited Partnership*; *Badlands Cellular of North Dakota Limited Partnership*; *North Dakota 5-Kidder Limited Partnership*; and *Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9179, (Wireline Comp. Bur. 2006) (*Northwest Dakota*); *United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 12418 (Wireline Comp. Bur. 2004).

<sup>18</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).

administratively necessary to require carriers to meet the line count and certification filing deadlines absent special circumstances.<sup>19</sup> It is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received.<sup>20</sup> Moreover, the Commission has found that it generally does not grant waivers based on the failure of third-parties.<sup>21</sup> Here, however, we find on balance that strict enforcement of the filing deadline would disproportionately penalize Pine Cellular.

6. These findings are consistent with previous waivers granted.<sup>22</sup> Here, Pine Cellular through its agent, FWA, attempted to file its line count data on time and, in fact, filed the data one day after the deadline.<sup>23</sup> Pine Cellular's attempts to promptly cure the error represented a good faith effort to minimize any impact on USAC or other funding recipients.<sup>24</sup> Moreover, Pine Cellular states that FWA has taken steps to ensure that any filings it makes on behalf of Pine Cellular in the future will be timely filed.<sup>25</sup> In granting this waiver, we rely on Pine Cellular's assertion that appropriate steps have been taken to make sure it meets future filing deadlines. Accordingly, we grant the Pine Cellular's petition for waiver of section 54.307.

7. 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 e-mail.<sup>26</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

8. 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

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<sup>19</sup> *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

<sup>20</sup> See 47 C.F.R. § 0.406. See also *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761, 16763, para. 7. (Wireline Comp. Bur. 2005) (*Citizens/Frontier Waiver Order*) (two business days late).

<sup>21</sup> See *Northwest Dakota*, 21 FCC Rcd at 9181, para. 7.

<sup>22</sup> See *Id.* (one day late); *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 16764, para. 9; *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (five days late); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a)*, CC Docket No. 96-45, Order, 21 FCC Rcd 10157, para. 9 (Wireline Comp. Bur. 2006) (two business days late).

<sup>23</sup> Petition at 2-3.

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

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

<sup>26</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.

waiver of section 54.307 of the Commission's rules, 47 C.F.R. § 54.307, filed by Pine Cellular Phones Inc. IS GRANTED.

9. 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