

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

In the Matter of)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Sagebrush Cellular, Inc.)
Petition for Waiver of Filing Deadline in)
47 C.F.R. Sections 54.307(d), 54.314(a) and)
54.904(d))

ORDER

Adopted: August 13, 2007

Released: August 13, 2007

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request from Sagebrush Cellular, Inc (Sagebrush), an eligible telecommunications carrier (ETC) in Montana, for a waiver of the annual filing deadlines set forth in section 54.904(d) of the Commission’s rules. We find that Sagebrush has demonstrated that good cause warrants a waiver of section 54.904(d), as discussed more fully below.

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.” 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.” To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.

3. To receive high-cost support under the interstate common line support (ICLS) mechanism pursuant to section 54.904 of the Commission’s rules, an ETC must file a certification stating

1 Sagebrush Cellular, Inc. Petition for Waiver of 47 C.F.R. Sections 54.307(d), 54.314(a), and 54.904(d), CC Docket No. 96-45 (filed June 5, 2006) (Petition); see also 47 C.F.R. §§ 54.307, 54.314 and 54.904. Sagebrush also sought waiver, to the extent necessary, of sections 54.307(d) and 54.314(a) of the Commission’s rules, regarding line count and state certification filing deadlines. Petition at 1; 47 C.F.R. §§ 54.307(d), 54.314(a). USAC has confirmed, however, that Sagebrush has met the requirements of these sections, and USAC has distributed Sagebrush the high-cost support associated with these requirements retroactive to the date of its ETC designation, November 29, 2005. Therefore, we find that no waiver of those sections is necessary.

2 47 U.S.C. § 254(e). Section 214(e) of the Act provides that state commissions shall designate carriers as ETCs. See 47 U.S.C. § 214(e).

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.

that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended.⁵ This certification must be filed with the Universal Service Administrative Company (USAC) and the Commission on the date that the ETC first files its line count information, and, thereafter, on June 30 of each year.⁶

4. *Sagebrush's Petition for Waiver.* On June 5, 2006, Sagebrush filed a request for waiver, to the extent necessary, of section 54.904(d) of the Commission's rules in order to ensure that Sagebrush receives ICLS universal service funding retroactively to November 29, 2005, the date it was designated an ETC by the Public Service Commission of the State of Montana (Montana PSC).⁷ Sagebrush contends that it contacted USAC for guidance on the requirements to be met to allow it to receive support as of its ETC designation date.⁸ USAC staff provided Sagebrush with a checklist, with which Sagebrush complied.⁹ Sagebrush received verbal confirmation from USAC staff that the checklist was complete and that USAC had received all filings necessary for Sagebrush to receive support retroactive to November 29, 2005.¹⁰ After the expiration of the 60-day period within which newly-designated ETCs must file their information with USAC,¹¹ Sagebrush was informed by USAC that USAC had not received Sagebrush's self-certification pursuant to section 54.904(d) of the Commission's rules.¹² Sagebrush contends that it anticipated the receipt of universal service funding retroactive to the date of the ETC designation and the company had already made significant additions to its plant, resulting in significant improvements in wireless service in its licensed areas.¹³ Sagebrush also notes that the infrastructure and service deployment that it has undertaken is consistent with the build-out and service commitments that Sagebrush made to the Montana PSC in its application for ETC status.¹⁴ Sagebrush argues that granting the requested waiver will serve the public interest by ensuring that the fundamental universal service policies of the Commission and the Montana PSC are fulfilled.¹⁵

III. DISCUSSION

5. We grant Sagebrush's petition. We find that Sagebrush has demonstrated that there is good cause to waive section 54.904(d) of the Commission's rules in order to allow Sagebrush to receive

⁵ 47 C.F.R. § 54.904(a).

⁶ 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; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*; 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) (*MAG Order*) (*subsequent history omitted*).

⁷ Petition at 1.

⁸ *Id.* at 3-4, Attach. A at 1 (Aff. of Roger P. Del Fiacco) (Del Fiacco Aff.).

⁹ *Id.* at 4, Del Fiacco Aff. at 1.

¹⁰ *Id.* at 4, Del Fiacco Aff. at 1-2.

¹¹ 47 C.F.R. §§ 54.904(d) and 54.307(d).

¹² *Id.* at 2-3, Del Fiacco Aff. at 2-3.

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

ICLS retroactive to the date of its designation as an ETC.¹⁶ Given that Sagebrush had only recently been designated as an ETC, we find that it reasonably relied on USAC's assurances that Sagebrush had submitted all of the required filings.¹⁷ USAC has confirmed that its service center erroneously informed Sagebrush that all relevant filings were received in the 60-day timeframe, and has corrected the issue with its customer service center on a going-forward basis. Further, Sagebrush states that it "is fully respectful of the certification requirements and processes, and that [it] intends to utilize . . . ICLS only for permissible uses."¹⁸ Although we grant the requested waiver here, we remind Sagebrush and all ETCs to familiarize themselves with any applicable regulations so that they can ensure that their submissions are filed in a timely and complete manner.

IV. ORDERING CLAUSES

6. 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 section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Sagebrush Cellular, Inc., IS GRANTED to the extent described herein.

7. 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 and 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jeremy D. Marcus
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁶ 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).

¹⁷ See Petition at 3-4; see also Del Fiacco Aff. at 1-2.

¹⁸ *Id.* at 9.