

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

In the Matter of )
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45
Westgate Communications LLC d/b/a WeavTel )
Petition of Waiver of the Section 54.903 Interstate )
Common Line Support Reporting Date )

ORDER

Adopted: August 25, 2008

Released: August 25, 2008

Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request from Westgate Communications LLC d/b/a WeavTel (WeavTel), an eligible telecommunications carrier (ETC), for a waiver of section 54.903(a) of the Commission’s rules. WeavTel seeks a waiver of the March 31, 2007, filing deadline required for receipt of Interstate Common Line Support (ICLS). For the reasons set forth below, we find that WeavTel has demonstrated that, in this unique circumstance, good cause warrants a waiver of section 54.903(a) 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.” 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 section 54.903 of the Commission’s rules, rate-of-return carriers must file certain data with the Universal Service Administrative Company (USAC) to be eligible to receive ICLS. Annually, on March 31, rate-of-return carriers must submit to USAC projected data necessary to calculate the carrier’s prospective ICLS. Until June 30, carriers can submit a correction to the projected data filed

1 Westgate Communications LLC d/b/a WeavTel Petition of Waiver of the Section 54.903 Interstate Common Line Support Reporting Date, CC Docket No. 96-45 (filed July 9, 2007) (Petition); 47 C.F.R. § 54.903.

2 Petition at 1.

3 47 U.S.C. § 254(e).

4 Id.

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

6 47 C.F.R. § 54.903.

7 47 C.F.R. § 54.903(a)(3).

on March 31.<sup>8</sup> Carriers are required to submit actual data to USAC annually on December 31.<sup>9</sup> USAC uses the actual data to “true up” or make adjustments to a carrier’s per-line ICLS to account for differences between the ICLS carriers received based on projected data, and the ICLS carriers are ultimately eligible for based on actual data.<sup>10</sup>

4. *WeavTel’s Petition for Waiver.* On July 9, 2007, WeavTel filed a request for waiver of section 54.903(a) of the Commission’s rules to enable WeavTel to receive ICLS despite it having missed the March 31, 2007, deadline for rate-of-return carriers to file projected data.<sup>11</sup> WeavTel did not file its projected data until June 27, 2007.<sup>12</sup> WeavTel asserts that it missed the deadline because of procedural issues stemming from WeavTel’s access to leased facilities.<sup>13</sup> WeavTel argues that is in the public interest and good cause exists to grant its waiver request.<sup>14</sup> Specifically, WeavTel argues that granting its waiver request would not burden USAC or harm any carriers because administration of ICLS involves “true-up” adjustments based on actual data that WeavTel will file in the future.<sup>15</sup> WeavTel also asserts that its request is consistent with the underlying purpose of ICLS and, without ICLS support, WeavTel may have to discontinue service to two communities and curtail or reevaluate its network improvement plans.<sup>16</sup>

### III. DISCUSSION

5. We find that WeavTel has demonstrated that there is good cause to waive section 54.903(a) of the Commission’s rules.<sup>17</sup> WeavTel promptly corrected its error by filing its data before

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

<sup>9</sup> 47 C.F.R. § 54.903(a)(4).

<sup>10</sup> *Id.*; see also *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, 19684-85, paras. 166-176 (2001) (*MAG Order*) (subsequent history omitted).

<sup>11</sup> Petition at 1. WeavTel also submitted supplemental information. See Letter from Richard Weaver, Manager of Operations, WeavTel, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Dec. 17, 2007) (asserting that without a waiver, WeavTel will no longer be able to serve Stehekin and Holden Village, Washington); Letter from Richard Weaver, Manager of Operations, WeavTel, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Dec. 26, 2007) (WeavTel December 26 *Ex Parte* Letter) (explaining why WeavTel missed the March 31, 2007, filing deadline).

<sup>12</sup> Petition at 1.

<sup>13</sup> WeavTel December 26 *Ex Parte* Letter.

<sup>14</sup> Petition at 3-7.

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.*; WeavTel December 26 *Ex Parte* Letter.

<sup>17</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. The Commission sought comment on WeavTel’s petition and did not receive any comments opposing WeavTel’s petition. See *Comment Sought on Petitions Requesting Waiver of Various*

June 30, 2007, the deadline to file corrected projected data. Specifically, section 54.903(a)(3) provides carriers with the opportunity to update their March 31 filing until June 30.<sup>18</sup> WeavTel filed the required data on June 27, 2007, within the window to adjust or correct projected data due on March 31, 2007.<sup>19</sup>

6. Granting WeavTel's waiver request will not harm the administration of ICLS because ICLS is ultimately based on actual data filed by carriers, rather than the projected data for which WeavTel missed the filing deadline.<sup>20</sup> The actual data that will ultimately determine the amount of ICLS available to WeavTel is due on December 31<sup>st</sup>.<sup>21</sup> Granting WeavTel's waiver request will allow USAC to distribute ICLS to WeavTel now, based on projected data which USAC will later "true-up" with actual data.

7. We find that WeavTel's circumstances are unique and emphasize that, going forward, we expect WeavTel to file the required information with USAC and the Commission by the applicable filing deadlines. We recognize that WeavTel did file the necessary data, albeit untimely.<sup>22</sup> 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. Filers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and electronic mail (e-mail). For instance, any carrier receiving funding from the high-cost universal service support mechanism may file timely via e-mail at [hcfilings@HCLL.universalservice.org](mailto:hcfilings@HCLL.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), 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

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*Filing Requirements Related to the Universal Service Program*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 14,005 (Wireline Comp. Bur. 2007).

<sup>18</sup> 47 C.F.R. § 54.903(a).

<sup>19</sup> Petition at 1; 47 C.F.R. § 54.903(a).

<sup>20</sup> See 47 C.F.R. § 54.903(a)(4). To ensure ICLS is distributed in a "predictable manner without significant lag in the distribution of support to rate-of-return carriers," the Commission requires USAC to collect and use projected data instead of waiting until actual cost data is available. See *MAG Order*, 16 FCC Rcd at 19683, para. 164. USAC applies a "true-up" to determine differences between projected data and actual data. *Id.* at 19684-19695, paras. 166-169. True-ups ensure that carriers eventually receive ICLS that reflects their actual costs. *Id.* at 19684, para. 166.

<sup>21</sup> On March 31, 2007, WeavTel was required to submit projected data for the upcoming funding year, July 1, 2007 through June 30, 2008. See 47 C.F.R. § 54.903(a)(3). Unlike projected data, which is filed on a funding year basis, actual data is submitted for each calendar year. Pursuant to section 54.903(a)(4), rate-of-return carriers must submit to USAC, no later than December 31, actual data for the prior calendar year. 47 C.F.R. § 54.903(a)(4). Accordingly, on December 31, 2008, WeavTel will be required to submit actual data for January 1, 2007 through December 31, 2007, including the July 1, 2007 through December 31, 2007 portion of the funding year, and on December 31, 2009, WeavTel will be required to submit actual data for January 1, 2008 through December 31, 2008, including the January 1, 2008 through June 30, 2008 portion of the funding year.

<sup>22</sup> Petition at 1. Generally, rate-of-return carriers meet the projected data deadlines for receipt of ICLS. The majority of rate-of-return carriers are members of the National Exchange Carrier Association's (NECA) common line pool. *MAG Order*, 16 FCC Rcd at 19683, para 165. These carriers are already required to submit similar projected data to NECA and can rely on NECA to develop and file their projected data. *Id.* at 19682, n. 428. Also, rate-of-return carriers do not have an incentive to miss the deadlines for receipt of projected data because it would delay their receipt of ICLS. *Id.* at 19683, para 164 (finding that without the use of projected data, support could be delayed for more than a year).

waiver of section 54.903(a) of the Commission's rules, 47 C.F.R. § 54.903(a) filed by Westgate Communications LLC d/b/a WeavTel IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to 0.291(b)(1) of the Commission's rules, 47 C.F.R. § 0.291(b)(1) this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer  
Chief  
Wireline Competition Bureau