

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
)	
Cedar Valley Communications, Inc.)	
)	
Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d))	
)	
)	

ORDER

Adopted: January 8, 2008

Released: January 8, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a petition by Cedar Valley Communications, Inc. (Cedar Valley), a competitive eligible telecommunications carrier (ETC) in Texas, for a waiver of the filing deadlines in section 54.307(c)(3) of the Commission’s rules.¹ We find that Cedar Valley has failed to demonstrate that good cause warrants waiver of this rule.

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.”² Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving high-cost 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.”³ To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.⁴

3. Pursuant to section 54.307 of the Commission’s rules, a competitive local exchange carrier (LEC) designated as an 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

¹ Cedar Valley Communications, Inc. Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d), CC Docket No. 96-45 (filed June 16, 2006) (Petition); *see also* 47 C.F.R. § 54.307(c)(3). In the Petition, in addition to a waiver of section 54.307(c)(3) of the Commission’s rules, Cedar Valley also requests a waiver, to the extent necessary, of sections 36.611(h), 36.612, 54.307(d), 54.314(a), 54.903(a), and 54.904(d). Petition at 1; 47 C.F.R. §§ 36.611(h), 36.612, 54.307(d), 54.314(a), 54.903(a), and 54.904(d). None of these additional rules apply to Cedar Valley because Cedar Valley does not receive universal service support pursuant to any of these rules. We therefore find that no waiver of these rule sections is necessary.

² 47 U.S.C. § 254(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.

the previous December 31, March 31, June 30, and September 30, respectively, in order to receive high-cost support for the quarterly periods.⁵

4. *Cedar Valley's Petition for Waiver*. To receive high-cost loop support, Cedar Valley was required to file its quarterly line count information for the previous June 30 with USAC by December 30, 2005.⁶ USAC did not receive Cedar Valley's December 30, 2005, filing on time and, thus, did not disburse high-cost support to Cedar Valley for the period corresponding to this filing. Although it is unable to verify a timely filing based on its own internal records, Cedar Valley believes that it did timely file its line count report.⁷ Cedar Valley was operating under Chapter 11 bankruptcy protection when it filed its waiver petition in June 2006. On June 6, 2006, Cedar Valley filed by electronic filing with USAC and the Commission its December 30, 2005, quarterly line count report, claiming that it took such action as a "precautionary measure" to ensure that both USAC and the Commission had a copy of the filing.⁸ Cedar Valley filed this petition for waiver because it is unable to verify by its internal records a timely filing.⁹

III. DISCUSSION

5. We deny Cedar Valley's waiver request.¹⁰ We find that Cedar Valley has not demonstrated that good cause exists to waive by more than five months the filing deadline required by section 54.307(c) of the Commission's rules.¹¹ Because USAC processes such a large amount of data each year, it is necessary that carriers meet filing deadlines absent special circumstances.¹² Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.¹³ Cedar Valley did not keep sufficient internal records to ensure it had timely filed its line count information, and did not attempt to fix its deficiency for more than five months.¹⁴ Cedar Valley asserts that it was operating under Chapter 11 bankruptcy protection, but this does not, in and of itself, present a special circumstance warranting a waiver grant. Cedar Valley offers no explanation as to the relationship between its failure to maintain adequate records and its being under bankruptcy protection.¹⁵ In this circumstance, and unlike those situations in which we have waived filing deadlines, Cedar Valley did not promptly cure its failure to timely file, nor did it offer an explanation of an extenuating circumstance

⁵ 47 C.F.R. § 54.307(c).

⁶ Petition at 2; 47 C.F.R. § 54.307(c)(3).

⁷ Petition at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ 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.

¹¹ See 47 C.F.R. § 54.307(c).

¹² *Federal-State Joint Board on Universal Service, 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).

¹³ *Id.*

¹⁴ See Petition at 2.

¹⁵ *Id.* at 1-3.

sufficient to demonstrate the good cause required for us to grant a rule waiver.¹⁶ Accordingly, we deny Cedar Valley's request for waiver of the Commission's rules.

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 of Cedar Valley Communications, Inc. for Waiver of Sections 54.307(d), 54.314(a) and 54.904(d) of the Commission's Rules, 47 C.F.R. § 54.307(c)(3), IS DENIED.

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, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau

¹⁶ Compare *Verizon Communications Inc. Petition for Waiver of Section 54.802(a)*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155, 10157, para. 9 (Wireline Comp. Bur. 2006) (waiving a filing deadline when the filing was submitted two business days after the deadline); *FiberNet, LLC, Petition for Waiver of 54.307(c)(4) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (waiving filing deadline when the filing was submitted five days after the deadline); *Pinebelt Cellular, Inc., Petition for Waiver of 54.313 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9175, 9177-78, para. 8 (Wireline Comp. Bur. 2006) (granting waiver for filing made four months after deadline because Hurricane Ivan affected carrier's operations) with *Federal-State Joint Board on Universal Service, NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 4946, 4948-49, para. 7 (Wireline Comp. Bur. 2007) (denying waiver because carrier missed deadline by six months based on a misunderstanding of USAC's rules); *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 5 (Wireline Comp. Bur. 2004) (denying waiver because carrier missed deadline by one month due to its own error).