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

In the Matter of	)	
	)	
Request Pursuant to Section 54.722(a) of the	)	CC Docket No. 96-45
Commission's Rules for Review of Universal	)	
Service Administrative Company Decision on High	)	
Cost Support Mechanism Beneficiary Appeal	)	
	)	

ORDER

Adopted: October 2, 2009 **Released: October 2, 2009**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny the request of Centennial Communications Corp. (Centennial) for reversal of a decision by the Universal Service Administrative Company (USAC) to recover universal service interstate common line support (ICLS) from Centennial.[1] As discussed below, we find that USAC acted properly and within its authority to adjust Centennial's ICLS payments pursuant to the requirements in section 54.307(a)(1) of the Commission's rules.[2]

II. BACKGROUND

2. Centennial provides both business and residential telecommunications services in Puerto Rico using both wireline and wireless technology as a competitive eligible telecommunications carrier (ETC) certified by the Telecommunications Regulatory Board of Puerto Rico.[3] Pursuant to section 54.307(a) of the Commission's rules, a competitive ETC, such as Centennial, receives universal service support to the extent that it captures the subscriber lines of the incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.[4] The competitive ETC's per-line support is equal to the per-line support the incumbent LEC would receive for each line, but subject to

[1] *See* Letter from Christopher W. Savage, Davis, Wright, Tremaine, LLP, to Karen M. Majcher, Vice President, High Cost and Low Income Division, Universal Service Administrative Company (July 3, 2007) (Centennial Appeal); Centennial Communications Corp., Request Pursuant to Section 54.722(a) of the Commission's Rules for Review of Universal Service Administrative Company Decision on High Cost Support Mechanism Beneficiary Appeal, CC Docket No. 96-45 (Sept. 8, 2008) (Request). On September 23, 2008, the Wireline Competition Bureau released a public notice seeking comment on Centennial's request. *See Comment Sought on Centennial Communications Corp. Request for Review of a High-Cost Support Decision of the Universal Service Administrative Company*, WC Docket No. 05-337, Public Notice, 23 FCC Rcd 13837 (Wireline Comp. Bur. 2008). No comments were filed in response to the public notice.

[2] 47 C.F.R. § 54.307(a)(1).

[3] *See* Request at 1-2.

[4] 47 C.F.R. § 54.307(a). Section 251(h)(1) of the Communications Act of 1934, as amended (the Act) defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act, or a successor or assign of an incumbent LEC. 47 U.S.C. § 251(h)(1).

adjustments pursuant to the *Interim Cap Order*.[5] In service areas where a competitive ETC has initiated service and reported line count data pursuant to section 54.307(c), rate-of-return incumbent LECs in those areas must submit quarterly line count data to USAC in order to calculate their projected per-line support each quarter.[6] Section 54.903(a)(4) of the Commission's rules requires each rate-of-return incumbent LEC to submit to USAC by December 31 of each year the data necessary to calculate the LEC's actual ICLS for the prior calendar year. That data is then used to make adjustments to the LEC's monthly per-line ICLS in the final two quarters of the following calendar year to the extent there are any differences between the LEC's projected cost and revenue data and its actual cost and revenue data for the relevant period.[7] USAC uses the data filed by incumbent LECs to determine both the initial projected support and the trued-up actual support for competitive ETCs.

3. As a result of a Commission inquiry, the Puerto Rico Telephone Company (PRTC), which is the incumbent LEC in Puerto Rico, disclosed that it erroneously under-billed many multi-line business accounts the lower single-line subscriber line charge (SLC) of $6.50, rather than the higher multi-line SLC of $9.20.[8] Because of the erroneous billing, PRTC reported lower common line revenues to the National Exchange Carrier Association (NECA) and to USAC. Lower reported common line revenues caused PRTC to receive higher ICLS during the affected period.[9] After this disclosure, NECA required PRTC to report revised SLC revenues going back 24 months, as if PRTC had billed the correct SLCs. NECA reported these revised SLC revenues to USAC as an update to previously reported ICLS data.[10] As a result of the revised increased reported SLC revenues, USAC adjusted PRTC's ICLS downward for the same period and also retroactively reduced Centennial's ICLS for 2004 and 2005.[11] Due to these adjustments, USAC recovered $457,020 and $1,173,777 for 2004 and 2005, respectively, from Centennial.[12]

4. On July 3, 2007, Centennial submitted to USAC an appeal of USAC's downward adjustment of Centennial's ICLS for 2004 and 2005.[13] In its appeal, Centennial argued that the adjustments or true-ups are improper out-of-period adjustments not contemplated or sanctioned by section 54.903(a)(4) of the Commission's rules and it is inappropriate to use PRTC's late-filed revised SLC figures for 2004 and 2005 to adjust Centennial's ICLS payments downward in light of the negative

[5] 47 C.F.R. § 54.307(a); *High Cost Universal Service Support; Federal-State Board on Universal Service, Alltel Communications, et al. Petitions for Designation as Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*) (capping by state the annual amount of high-cost support that competitive ETCs can receive during the interim period to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis).

[6] 47 C.F.R. §§ 54.307(a) and 54.903(a)(2).

[7] 47 C.F.R. § 54.903(a)(4).

[8] *See* Letter from Fatina K. Franklin, Assistant Division Chief, Industry Analysis and Technology Division, FCC, to Ann D. Berkowitz, Associate Directory-Federal Regulatory, Verizon Communications (Dec. 14, 2005); Letter from Roberto Garcia, Vice-President, Legal and Regulatory Affairs, PRTC, to Thomas Navin, Chief, Wireline Competition Bureau, FCC (Sept. 22, 2006) (PRTC Letter); 47 C.F.R. § 69.104(n).

[9] ICLS available to rate-of-return LECs equals the common line revenue requirement per study area less the study area revenues obtained from end user common line charges. Because PRTC under-collected its common line revenue, it over-collected ICLS. 47 C.F.R. § 54.901(a)(1).

[10] *See* PRTC Letter.

[11] See Letter from Craig Davis, Director, High Cost Support Mechanism, USAC to Katherine Dourthe, Centennial Communications Corp. (June 5, 2007) (USAC Letter).

[12] *See* Request at 1.

[13] *See* Centennial Appeal.

competitive effects.[14] Centennial states that USAC's reliance on PRTC's late-filed historical data to reduce Centennial's ICLS is in violation of section 54.903(a)(4) of the Commission's rules.[15]

5. On July 10, 2008, USAC denied Centennial's appeal, stating that the clear language of the rule does not place a restriction on USAC's ability to use data necessary for the ICLS true-up submitted after December 31 of each year.[16] USAC also stated that Centennial's argument that Commission rules prohibit USAC from using data submitted by a carrier after the deadline would potentially penalize universal service support and high-cost support stakeholders if an ICLS annual true-up is conducted without all relevant information as a result of one or more carriers filing required information after the deadline.[17]

6. On September 8, 2008, Centennial filed its request, asking the Commission to review and overturn USAC's decision.[18] Centennial claims that USAC's decision was erroneous under the Commission's rules because the decision was based on late-filed data submitted by PRTC, the incumbent LEC.[19] Further, Centennial argues that even if USAC's action is not literally foreclosed by the applicable rules, it should be reversed because applying the rules in this manner is unfair and will have a negative impact on the competitive landscape in Puerto Rico.[20]

7. Centennial argues that the primary issue is USAC's retroactive adjustment of PRTC's 2004 and 2005 ICLS based on late-filed data, and the flow through of those adjustments to Centennial, pursuant to the identical support rule, given the extremely long time incumbent LECs are allowed to submit historical data or correct projected data filings under the Commission's rules.[21] Centennial claims that section 54.903 of the Commission's rules sets up a detailed process for carriers to report projections of cost and revenue data, as well as true-up procedures to calculate ICLS and that the December 31 deadline for incumbent LECs to report their cost and revenue data for the previous calendar year is a generously long reporting period.[22] Further, Centennial states that the Commission wanted the December 31 deadline to be a final, hard cut-off date as evidenced by the fact that the Commission provided no opportunity in the rules for a carrier to correct the historical data filing.[23]

8. Centennial states that USAC's claim that the specific processes laid out in the Commission's rules are not deadlines for USAC, but are deadlines for carriers, is not sustainable because it is USAC, not the carriers, that conducts the true-ups called for by the rules.[24] Centennial argues that to the extent that USAC is making adjustments to any carrier's ICLS outside of specific timeframes, it is a

[14] *See* Centennial Appeal at 3. Specifically, Centennial argues that it was being disadvantaged in the marketplace by PRTC's failure to properly charge the SLC and, by undercharging for the SLC on multi-line business lines, PRTC effectively lowered the retail price for those lines giving it an advantage over Centennial. *Id.*

[15] *Id.*; 47 C.F.R. § 54.903(a)(4).

[16] *See* Letter from the Universal Service Administrative Company to Christopher Savage, Davis Wright Tremaine LLP (July 10, 2008) (USAC Denial) at 3.

[17] *Id*. at 2-3.

[18] Request at 1.

[19] *Id.*

[20] *Id.*

[21] *See id.* at 3.

[22] *See id.*; 47 C.F.R. § 54.903.

[23] *See* Request at 3.

[24] *See id.* at 9.

violation of the Commission's specific deadlines in section 54.903 and also violates the prohibition in section 54.702 against USAC making its own policy.[25]

III. DISCUSSION

9. We deny Centennial's request to reverse USAC's decision. Centennial states that the Commission adopted the December 31 deadline as a final, hard cut-off date as evidenced by the fact that the Commission provided no opportunity in the rules for a carrier to correct the historical data filing. In the *MAG Third Order on Reconsideration*, the Commission, among other things, moved the filing deadline for actual ICLS data from July 31 to December 31.[26] In so doing, the Commission stated that "[m]oving the deadline to December 31st will reduce burdens on carriers and *minimize the potential need for late filings and corrections*."[27] This language demonstrates that the Commission contemplated that carriers might need to file corrected data subsequent to the required data filing deadline. The Commission's rules do not prohibit incumbent LECs from filing revised ICLS data to the extent such revision is necessary.

10. As discussed above, a competitive ETC receives high-cost support for each line it serves in a particular service area based on the support the incumbent LEC receives for such line.[28] There are no constraints in section 54.307(a)(1) of the Commission's rules regarding when or if revised data can be accepted by USAC in order to calculate the proper ICLS for either the incumbent LEC or the competitive ETC.[29] Sections 54.903(a)(3) and (4) of the Commission's rules sets out the deadlines for incumbent LECs to file the projected ICLS revenue and cost data followed by the actual revenue and cost data in order to reconcile the projected ICLS payments to actual results.[30] Section 54.903(a)(4) of the Commission's rules contains no prohibition on an incumbent LEC's ability to file revised data to correct its initial filing nor does it prohibit USAC from adjusting previously paid ICLS payments to either the incumbent LEC or to the competitive ETC to reflect the revised revenue and cost data submitted by the incumbent LEC.[31] Further, the Commission in the *MAG Order* required true-ups for competitive ETCs' support to the extent that incumbent LECs' support is also trued-up.[32]

11. Regarding Centennial's claim that PRTC is not substantially harmed due to its ability to back-bill customers for its previous under-billing of SLCs, we note that, although NECA required PRTC to revise its reported SLC revenues for a 24-month period as if the correct SLC revenues had been

[25] *Id*.; 47 C.F.R. §§ 54.702 and 54.903.

[26] *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*, Third Order on Reconsideration, CC Docket Nos. 00-256 and 96-45, 18 FCC Rcd 10284, 10286, para. 5 (2003) (*MAG Third Order on Reconsideration*).

[27] *See id*. (emphasis added).

[28] *See* note 5 *supra*; 47 C.F.R. § 54.307(a)(1).

[29] *Id*.

[30] 47 C.F.R. § 54.903(a)(3) and (4).

[31] 47 C.F.R. § 54.903(a)(4).

[32] *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, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, 16 FCC Rcd 19613, 19684, para. 167 (2001) (*MAG Order*) (citing 47 C.F.R. § 54.307).

collected, PRTC only back billed its customers for a six-month period, thereby foregoing any SLC revenue recovery for an 18-month period.[33] Contrary to Centennial's claim, PRTC did not, therefore, recoup a substantial portion of the ICLS funds recovered by USAC. Furthermore, because Centennial is not subject to rate regulation, Centennial has the option to adjust its monthly rates to adjust for the correction to its ICLS amount received after PRTC's SLC revenue adjustment.

12. Centennial also claims that USAC should have been aware of the SLC under-billings because PRTC made multiple filings with the SEC stating that it under billed for the years 2000 through 2004.[34] Centennial's earliest cite to such SEC filings is dated November 14, 2006.[35] USAC informed Centennial that its ICLS support would be reduced on June 5, 2007 or only six and one-half months after PRTC's November 14, 2006 SEC filing.[36] There is no requirement for recipients to submit copies of such filings to USAC and USAC does not routinely review such filings. To the extent that these filings are publicly available and Centennial is aware of them, Centennial should have been on notice that its own ICLS could decrease as a result of PRTC's under-billing consistent with the Commission's rules for competitive ETC high-cost support.

13. Centennial argues that USAC's decision should be reversed because its decision is unfair and will have a serious, negative impact on the competitive landscape in Puerto Rico. Centennial argues it was being disadvantaged in the marketplace by PRTC's failure to properly charge the SLC and, by undercharging for the SLC on multi-line business lines, PRTC effectively lowered the retail price for those lines, giving it a competitive advantage over Centennial.[37] As noted above, PRTC back-billed its multi-line business customers for six months.[38] Due to this back billing of its customers, PRTC was competitively disadvantaged in the marketplace and this may have caused customers to switch to a competitor such as Centennial. Further, USAC's recovery of ICLS from Centennial for the years 2004 and 2005 represented reductions of only 12 percent and 7 percent, respectively, of Centennial's original support received.[39] From 2004 to 2008, Centennial's wireless subscribership in Puerto Rico increased from 329,100 to 427,300 subscribers, or an average annual increase of 6.7 percent, and for the same period Centennial's subscribership to broadband access lines increased from 261,000 to 582,200, or 22 percent annually.[40] From 2004 to 2007, however, PRTC's telephone subscribership declined from 1,180,100 to 924,700, or an average annual decrease of 7.8 percent.[41] This demonstrates that USAC's recovery of $1.6 million in ICLS from Centennial does not have any measurable or identifiable impact on Centennial's ability to compete with PRTC in Puerto Rico.

14. Finally, Centennial requests a waiver of the identical support rule contained in section 54.307(a) of the Commission's rules if the Commission concludes that USAC's decision was

---

[33] *See* PRTC Letter at 1; Telecomunicaciones de Puerto Rico, Inc., United States Securities and Exchange Commission, Form 10-Q, at 36 (for the quarterly period ended March 31, 2007) (May 15, 2007).

[34] *See* Request at 11-12.

[35] *Id*.

[36] *See* USAC Letter.

[37] *See* Centennial Appeal at 3.

[38] *See supra* para. 11.

[39] *See* USAC Letter.

[40] *See* Centennial Communications, 2008 Annual Report at page 1. Centennial's revenues in Puerto Rico for 2004 and 2005 totaled $786 million. *See* Centennial Communications, 2008 Annual Report at page 1.

[41] *See* Universal Service Fund, 2008 Submission of 2007 Study Results by the National Exchange Carrier Association, Inc., (Oct. 1, 2008).

appropriate.[42] We decline to grant Centennial a waiver of the identical support rule. Centennial has not demonstrated any special circumstances or public interest benefits that warrant deviation from the general rule. As shown above, Centennial has clearly gained a strong foothold in the telecommunications marketplace in Puerto Rico from 2004 going forward despite the recovery of a portion of its ICLS for 2004 and 2005.[43]

IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Centennial Communications Corp. on September 8, 2008, IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291 that the request for waiver of section 54.307(a) of the Commission rules, 47 C.F.R. § 54.307(a), filed by Centennial Communications Corp. on September 8, 2008, IS DENIED.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

[42] 47 C.F.R. § 54.307(a). Generally, the Commission may waive its rules for good cause shown. *See* 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. *See 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. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *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; *see also NetworkIP, LLC and Network Enhanced Telecom, LLP Co. v. FCC*, 584 F.3d 116, 125-28 (D.C. Cir. 2008).

[43] *See supra* para. 13.