

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

In the Matter of)
)
Petition for Waiver of Universal Service High-Cost) WC Docket No. 08-71
Filing Deadlines)
)
Xfone USA, Inc.)
Petition for Waiver of Sections 54.307(c) and 54.802(a))
of the Commission's Rules)

ORDER

Adopted: April 21, 2009

Released: April 21, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant in part and deny in part a request filed by Xfone USA, Inc. (Xfone) for waivers of high-cost universal service support filing deadlines set forth in sections 54.307(c) and 54.802(a) of the Commission's rules. For the reasons discussed below, we find good cause to grant Xfone's request for waiver of the December 30, 2007, and December 31, 2007, line count filing deadlines, but that Xfone has not demonstrated that good cause warrants waiver of the March 30, 2008, and March 31, 2008 line count filing deadlines.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [(ETC)] 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 54.307 of the Commission's rules, a competitive local exchange carrier (LEC) designated as an ETC must file with the Universal Service Administrative Company (USAC), working line count data according to the following schedule:

1 Xfone USA, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission's Rules, WC Docket No. 08-71 (filed June 27, 2008) (Xfone Petition); 47 C.F.R. §§ 54.307(c), 54.802(a).

2 47 U.S.C. § 254(e).

3 Id.

4 See, e.g., 47 C.F.R. §§ 54.307 (competitive ETC line count filing requirements), 54.313 (certification requirements regarding use of high-cost support by non-rural carriers), 54.314 (certification requirements regarding the use of high-cost support by rural carriers), 54.802(a) (ETC line count filing requirements for Interstate Access Support (IAS)), 54.809 (certification requirements regarding the use of IAS), 54.903 (data filing requirements for Interstate Common Line Support (ICLS)), 54.904 (certification requirements regarding the use of ICLS).

- (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;
- (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;
- (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; and
- (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year;

in order to receive high-cost support for those quarterly periods.⁵

4. To receive Interstate Access Support (IAS) pursuant to section 54.802 of the Commission's rules, an ETC that is providing service within an area served by a price cap LEC must file certain data with USAC to receive funding.⁶ Specifically, an ETC must submit line count data showing separately the number of residential/single-line business lines, and multi-line business lines within its study area on a quarterly basis.⁷ Mandatory line count data are due on the last business day of March, June, September, and December of each year.⁸

5. *Xfone's Petition for Waiver*. On June 27, 2008, Xfone requested waivers of section 54.307(c) and 54.802(a) of the Commission's rules.⁹ Xfone missed the December 30, 2007 and December 31, 2007 line count filing deadlines established pursuant to these rule sections, and instead filed its data on January 8, 2008, six and five business days, respectively, after the deadlines.¹⁰ Xfone also missed the March 30, 2008 and March 31, 2008 line count filing deadlines established pursuant to these rule sections, and filed line count data pursuant to section 54.307 on July 29, 2008, three months after the filing deadline.¹¹ Xfone asserts that, between November 16, 2007, and February 26, 2008, Xfone was in the process of acquiring another company, and this acquisition caused a significant corporate reorganization.¹² Xfone alleges that the uncertainty and anxiety associated with the pending acquisition and anticipated restructure and downsizing were the cause of the late-filed December 2007 line count data.¹³ The March 2008 line count filings were not made, according to Xfone, because the personnel previously responsible for

⁵ 47 C.F.R. § 54.307(c).

⁶ 47 C.F.R. § 54.802(a).

⁷ *Id.*

⁸ *Id.*; see also *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel*, 265 F.3d 313 (5th Cir. 2001).

⁹ Xfone Petition at 1; 47 C.F.R. §§ 54.307(c); 54.802(a).

¹⁰ Xfone Petition at 3; 47 C.F.R. §§ 54.307(c)(3), 54.802(a).

¹¹ Xfone Petition at 5-6. Although Xfone submitted an FCC Form 525 to receive IAS on July 29, 2008, the form did not contain line count information. Instead, the number of lines reported on the form were zeroes. Therefore, Xfone has not submitted the line count data that it was required to file on the last business day of March 2008 pursuant to section 54.802(a) of the Commission's rules. 47 C.F.R. § 54.802(a).

¹² *Id.* at 1-4.

¹³ *Id.* at 5.

Xfone's regulatory filings left the company in March 2008.¹⁴ Xfone states that, prior to these missed deadlines, it had timely submitted its universal service filings, and it has revised its internal procedures to ensure compliance with all future filing deadlines.¹⁵ To achieve this, Xfone states that it has consolidated all of its regulatory compliance responsibilities in one department, and has designated two employees with primary and secondary responsibility for submitting the company's universal service reports.¹⁶

III. DISCUSSION

6. We find that good cause exists to grant Xfone a waiver of the December 2007 filing deadlines.¹⁷ USAC processes a tremendous amount of data each year. It is, therefore, administratively necessary to require carriers to meet the filing deadlines absent special circumstances.¹⁸ Although our rules require that data must be received by the applicable deadline, we find that, with respect to Xfone's late-filed December 2007 line count data, there is good cause to waive the filing deadlines. Specifically, we find that waivers are warranted because Xfone promptly filed the required data and has revised its internal procedures to ensure compliance with the Commission's rules.

7. Xfone promptly made the required December 2007 filings after discovering that it had missed the filing deadlines. In instances where carriers have filed the required data shortly after filing deadlines, the Commission has waived its rules.¹⁹ Xfone made the required December 2007 filings five and six

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ 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.

¹⁸ *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). It is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received. 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 Order*).

¹⁹ See, e.g., *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 9 (waiving filing deadline when the filing was submitted two business days after the deadline); *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) (waiving filing deadline when the filing was submitted five days after the deadline); *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, 9181, para. 7 (Wireline Comp. Bur. 2006) (waiving filing deadline when the filing was submitted one day after the deadline); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155, 10157, para. 9 (Wireline Comp. Bur. 2006) (*Verizon Order*) (waiving a filing deadline when the filing was submitted two business days after the deadline); *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 953, 954, para. 4 (Wireline Comp. Bur. 2007) (*AT&T Order*) (waiving filing deadline when the filing was submitted two business days after the deadline); *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 560 (Wireline Comp. Bur. 2007) (*NPCR Order*) (waiving filing deadline when the filing was submitted one business day after the deadline).

business days after the deadlines.²⁰ Accordingly, we find that, by filing the required data shortly after the applicable filing deadlines, Xfone promptly remedied its errors with respect to the December 2007 filings. As Xfone notes in its petition, these were the first universal service filing deadlines the company had missed.²¹ To ensure the deadlines are met in the future, Xfone has revised its filing procedures.²² We note that these steps are similar to those taken by other carriers who missed filing deadlines but were granted waivers of the missed deadlines.²³ In granting other waiver requests, the Commission has found that carriers must comply with their commitments to revise their internal procedures to ensure that their filings will be accurately and timely submitted.²⁴ Similarly, we rely on Xfone to fulfill its commitment to adhere to its revised filing procedures, and do not expect Xfone to seek similar waivers in the future.

8. With respect to the March 2008 filings, however, we find that good cause does not warrant grant of Xfone's waiver requests. Unlike its December 2007 filings, Xfone did not make its March 2008 filings shortly after the deadlines. Instead, Xfone filed line count data pursuant to section 54.307 on July 29, 2008, three months after the filing deadline. Furthermore, it was not the case that, prior to the missed March 2008 filing deadlines Xfone had timely filed all of its previous universal service filings. It had, in fact, missed the deadlines for the line count filings due in the immediately preceding quarter, in December 2007. Therefore, waiver of these filing deadlines is not warranted and we deny Xfone's petition for waiver with respect to the March 2008 line count filing deadlines.

9. In granting in part Xfone's petition, we find that Xfone's circumstances are unique and emphasize that, going forward, we expect Xfone to file the required information with USAC and the Commission by the applicable filing deadlines. 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. For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at 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 that their filings are timely received. In addition, due to the procedures Xfone has enacted in response to these late filings, we do not expect Xfone to seek similar waivers in the future.

IV. ORDERING CLAUSES

10. 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 this order IS ADOPTED.

11. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(c) and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307(c) and 54.802(a), filed by Xfone USA, Inc., IS GRANTED IN PART AND DENIED IN PART as discussed herein.

²⁰ Xfone Petition at 5.

²¹ *Id.* at 3.

²² *Id.* at 7.

²³ See, e.g., *AT&T Order*, 22 FCC Rcd at 954, para. 5 (instituting e-mail reminders and quarterly reviews by management); *NPCR Order*, 22 FCC Rcd at 563, para. 9 (assigning filing responsibility to a manager).

²⁴ See, e.g., *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 10; *Verizon Order*, 21 FCC Rcd at 10158, para. 10; *AT&T Order*, 22 FCC Rcd at 954, para. 5; *NPCR Order*, 22 FCC Rcd at 563, para. 9.

12. 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

Julie A. Veach
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