

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

In the Matter of)
)
Petitions for Waiver of Universal Service High-Cost) WC Docket No. 08-71
Filing Deadlines)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Western New Mexico Telephone Company, Inc.)
Petition for Waiver of Section 54.904(d) Filing Deadline)
For Submission of Annual Interstate Common Line)
Support Certification for a Rural Rate-of-Return Carrier)
)
Yukon Telephone Company, Inc.)
Petition for Waiver of Section 54.904(d) Filing Deadline)
For Submission of Annual Interstate Common Line)
Support Certification for a Rural Rate-of-Return Carrier)
)
Northern New England Telephone Operations LLC and)
Telephone Operating Company of Vermont LLC)
Petition for Waiver of Sections 54.802(a) and 54.809(c))
of the Commission's Rules)
)
Ballard Rural Telephone Cooperative Corporation, Inc.)
Petition for Waiver of Section 54.904(d) Filing Deadline)
For Submission of Annual Interstate Common Line)
Support Certification for a Rural Rate-of-Return Carrier)
)
PRWireless Inc.)
Petition for Waiver of Section 54.307(c) of the FCC's)
Rules)
)
CommuniGroup of Jackson, Inc.)
Petition for Waiver of Sections 54.307(c) and 54.802(a))
of the Commission's Rules)
)
Hopi Telecommunications, Inc. (SAC #452173))
Petition for Waiver of Section 54.314(d)(1) Filing)
Deadline For Submission of Annual Section 254(e))
Certification by Tribal and Other Carriers Not Subject to)
State Jurisdiction)
)
Midstate Telecom, Inc.)
Petition for Waiver of FCC Rules Section 54.307(c) and)
Section 54.802(a))
)
T-Mobile USA, Inc.)
Petition for Waiver of Section 54.307(c) of the)
Commission's Rules (SAC Nos. 639003 and 239005))
)

Minerva Valley Telephone Company, Inc.)
 Petition for Waiver of Section 54.904(d) Deadline for)
 Annual Interstate Common Line Support Certification)
)
 WorldNet Telecommunications, Inc.)
 Petition for Waiver of Filing Deadline for Quarterly)
 Interstate Common Line Support Line Count Report –)
 Form 525)
)
 Midcontinent Communications)
 Petition for Waiver of Section 54.307(c) of the)
 Commission’s Rules)
)
 General Communications, Inc.)
 Petition for Waiver of Section 54.802(a) of the)
 Commission’s Rules)

ORDER

Adopted: January 22, 2010

Released: January 22, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant thirteen separate requests, filed by: (1) Western New Mexico Telephone Company, Inc. (Western); (2) Yukon Telephone Company, Inc. (Yukon); (3) Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC (jointly, FairPoint); (4) Ballard Rural Telephone Cooperative Corporation, Inc. (Ballard); (5) PRWireless, Inc. (PRWireless); (6) CommuniGroup of Jackson, Inc. (CommuniGroup); (7) Hopi Telecommunications, Inc. (Hopi); (8) Midstate Telecom, Inc. (Midstate); (9) T-Mobile USA, Inc. (T-Mobile); (10) Minerva Valley Telecommunications Company, Inc. (Minerva Valley); (11) WorldNet Telecommunications, Inc. (WorldNet); (12) QSI Consulting, Inc., on behalf of Midcontinent Communications (Midcontinent); and (13) General Communications, Inc. (GCI) (collectively, the petitioners), for waivers of various high-cost universal service support filing deadlines set forth in sections 54.307(c), 54.314(d)(1), 54.802(a), 54.809(c) and 54.904(d) of the Commission’s rules.¹ For the reasons discussed below, we find that the

¹ Western New Mexico Telephone Company, Inc. Petition for Waiver of Section 54.904(d) Filing Deadline For Submission of Annual Interstate Common Line Support Certification for a Rural Rate-of-Return Carrier, CC Docket No. 96-45 (filed July 17, 2008) (Western Petition); Yukon Telephone Company, Inc. Petition for Waiver of Section 54.904(d) Filing Deadline For Submission of Annual Interstate Common Line Support Certification for a Rural Rate-of-Return Carrier, CC Docket No. 96-45 (filed July 23, 2008) (Yukon Petition); Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC Petition for Waiver of Sections 54.802(a) and 54.809(c) of the Commission’s Rules, CC Docket No. 96-45 (filed Aug. 5, 2008) (FairPoint Petition); Ballard Rural Telephone Cooperative Corporation, Inc. Petition for Waiver of Section 54.904(d) Filing Deadline For Submission of Annual Interstate Common Line Support Certification for a Rural Rate-of-Return Carrier, CC Docket No. 96-45 (filed Aug. 15, 2008) (Ballard Petition); PRWireless Inc. Petition for Waiver of Section 54.307(c) of the FCC’s Rules, WC Docket No. 08-71 (filed Oct. 2, 2008) (PRWireless Petition); CommuniGroup of Jackson, Inc. Petition for Waiver of Sections 54.307(c) and 54.802(a) of the Commission’s Rules, WC Docket No. 08-71 (filed Oct. 21, 2008) (CommuniGroup Petition); Hopi Telecommunications, Inc. (SAC #452173) Petition for Waiver of (continued. . .)

petitioners have demonstrated that good cause warrants waiver 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 [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support.”² 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 various certification and data filing requirements.⁴ Each of the petitioners requests waiver of one or more of the requirements described below.

3. Section 54.307(c) of the Commission's rules provides that a competitive ETC must file working line count data with the Universal Service Administrative Company (USAC) on a quarterly basis to receive certain high-cost support.⁵ Mandatory line count data are due on March 30, July 31, September 30, and December 30 of each year.⁶ USAC uses line count data filed in March to calculate third quarter support for the current calendar year, line count data filed in July to calculate fourth quarter support for the current calendar year, line count data filed in September to calculate first quarter support for the following calendar year, and line count data filed in December to calculate second quarter support for the following calendar year.

4. Section 54.314 of the Commission's rules provides that states shall file an annual certification with USAC and the Commission stating that all high-cost support received by rural ETCs within such

(Continued from previous page) _____

Section 54.314(d)(1) Filing Deadline For Submission of Annual Section 254(e) Certification by Tribal and Other Carriers Not Subject to State Jurisdiction, WC Docket No. 08-71 (filed Oct. 29, 2008) (Hopi Petition); Midstate Telecom, Inc. Petition for Waiver of FCC Rules Section 54.307(c) and Section 54.802(a), WC Docket No. 08-71 (filed Jan. 7, 2009) (Midstate Petition); T-Mobile USA, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules (SAC Nos. 639003 and 239005), WC Docket No. 08-71 (filed Jan. 15, 2009) (T-Mobile Petition); Minerva Valley Telephone Company, Inc. Petition for Waiver of Section 54.904(d) Deadline for Annual Interstate Common Line Support Certification, WC Docket No. 08-71 (filed Mar. 4, 2009) (Minerva Valley Petition); WorldNet Telecommunications, Inc. Petition for Waiver of Filing Deadline for Quarterly Interstate Common Line Support Line Count Report – Form 525, WC Docket No. 08-71 (filed May 21, 2009) (WorldNet Petition); Midcontinent Communications Petition for Waiver of Section 54.307(c) of the Commission's Rules, WC Docket No. 08-71 (filed June 25, 2009) (Midcontinent Petition); General Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules, WC Docket No. 08-71 (filed July 16, 2009) (GCI Petition); 47 C.F.R. §§ 54.307(c), 54.314(d)(1), 54.802(a), 54.809(c), 54.904(d).

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ *See, e.g.*, 47 C.F.R. §§ 54.301(b) and (e)(1) (data filings requirements for local switching support (LSS)), 54.307 (competitive ETC line count filing requirements for interstate common line support (ICLS) and other high-cost support), 54.313 (state certification requirements regarding the use of high-cost support by non-rural carriers), 54.314 (state 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 (carrier certification requirements regarding the use of IAS), 54.903 (data filing requirements for ICLS), 54.904 (carrier certification requirements regarding the use of ICLS).

⁵ *See* 47 C.F.R. § 54.307.

⁶ *Id.*

state will be used only for the provision, maintenance, and upgrading of facilities and services for which support is intended.⁷ In instances where carriers are not subject to the jurisdiction of a state, the Commission allows ETCs to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e) of the Act.⁸ Section 54.314 provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁹ If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.¹⁰ The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and calculate estimated high-cost demand amounts for submission to the Commission.¹¹

5. To receive Interstate Access Support (IAS), an ETC that is providing service within an area served by a price cap local exchange carrier must file certain line count data with USAC on a quarterly basis pursuant to section 54.802(a) of the Commission's rules.¹² Specifically, the 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.¹³ Mandatory line count data are due on the last business day of March, June, September, and December of each year.¹⁴ USAC uses line count data filed in March to calculate second quarter support for the current calendar year, line count data filed in June to calculate third quarter support for the current calendar year, line count data filed in September to calculate fourth quarter support for the current calendar year, and line count data filed in December to calculate first quarter support for the following calendar year.

6. In addition, the ETC must file a certification pursuant to section 54.809(a) of the Commission's rules, stating that all IAS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁵ This

⁷ 47 C.F.R. § 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission's rules. 47 C.F.R. § 54.313.

⁸ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Report and Order, 16 FCC Rcd 11244, 11318, para. 189 (2001) (*Rural Task Force Order*); 47 C.F.R. § 54.314(b).

⁹ 47 C.F.R. § 54.314(d)(1); 47 U.S.C. § 254(e).

¹⁰ See 47 C.F.R. § 54.314(d).

¹¹ See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission's rules, USAC submits to the Commission the estimated demand for the universal service support mechanisms, including high-cost support, two months prior to the beginning of each quarter. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the Commission on or before November 1. To submit an accurate estimate by that date, USAC generally needs to know which carriers have been certified under the Commission's rules no later than October 1. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

¹² 47 C.F.R. § 54.802(a).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 54.809(a).

certification must be filed with USAC and the Commission on the date that the ETC first files its line count data, and thereafter on June 30 of each year.¹⁶

7. To receive Interstate Common Line Support (ICLS), an ETC, among other things, must file a certification with USAC and the Commission pursuant to section 54.904(a) of the Commission's rules, stating that all ICLS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁷ This certification must be filed with USAC and the Commission on the date that the ETC first files its line count data, and thereafter on June 30 of each year.¹⁸

8. *Western's Petition for Waiver*. On July 17, 2008, Western requested a waiver of the June 30, 2008 certification deadline established by section 54.904(d) of the Commission's rules.¹⁹ Western claims that it mailed the certification on June 23, 2008, but USAC received the certification on July 3, 2008, and the Commission received the certification on July 7, 2008.²⁰ Western argues that the Commission should grant its waiver request because Western complied with the ICLS data filing requirements and mailed the required ICLS certification prior to the June 30, 2008 deadline, although it was received by USAC and the FCC after the deadline.²¹ Western argues that the relatively brief delay in USAC's receipt of Western's certification, from June 30, 2008, to July 3, 2008, does not adversely impact the ICLS program since Western had filed projected data and line counts in a timely fashion to enable USAC to incorporate Western's estimated ICLS funding needs into the universal service contribution and disbursement plans for 2008 and 2009.²² Western asserts that loss or substantial delay of ICLS funding to Western would affect its ability to invest in infrastructure and upgrades, thereby impairing service to its future

¹⁶ 47 C.F.R. §54.809(c). The Commission adopted a quarterly IAS certification schedule to accommodate late filings, whereby a late-filing carrier's IAS support is curtailed by a quarter's worth of support for each quarter that the certification is untimely. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6413-14, 6421, para. 94 (2005) (revising 47 C.F.R. §54.809(c) to reflect this treatment of late-filed IAS certifications).

¹⁷ 47 C.F.R. § 54.904(a). In addition, ETCs must file certain line count data with USAC. 47 C.F.R. §§ 54.903, 54.307.

¹⁸ 47 C.F.R. § 54.904(d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certifications, 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) (subsequent history omitted) (*MAG Order*).

¹⁹ Western Petition at 1; 47 C.F.R. § 54.904(d).

²⁰ Western Petition at 1; Western Supplement to Petition for Waiver of Section 54.904(d) Deadline for Annual Interstate Common Line Support Certification, CC Docket No. 96-45 (filed July 23, 2008).

²¹ Western Petition at 2, 4.

²² *Id.* at 6.

customers.²³ Western has implemented new procedures and safeguards to ensure it meets future filing deadlines.²⁴

9. *Yukon's Petition for Waiver.* On July 23, 2008, Yukon requested a waiver of the June 30, 2008 certification deadline required by section 54.904(d) of the Commission's rules.²⁵ Yukon claims that it mailed the certification on June 25, 2008, but USAC received the certification on July 2, 2008, two business days after the deadline, and the Commission received the certification on July 7, 2008, four business days after the deadline.²⁶ Yukon argues that the Commission should grant its waiver request because Yukon complied with the ICLS data filing requirements and mailed the required ICLS certification prior to the June 30, 2008 deadline.²⁷ Yukon argues that the relatively brief delay in USAC's receipt of Yukon's certification, from June 30, 2008, to July 2, 2008, does not adversely impact the ICLS program since Yukon had filed projected data and line counts in a timely fashion to enable USAC to incorporate Yukon's estimated ICLS funding needs into the universal service contribution and disbursement plans for 2008 and 2009.²⁸ Yukon asserts that loss or substantial delay of ICLS funding to Yukon would affect its ability to invest in infrastructure and upgrades, thereby impairing service to its future customers.²⁹ Yukon has implemented new procedures and safeguards to ensure it meets future filing deadlines.³⁰

10. *FairPoint's Petition for Waiver.* On August 5, 2008, FairPoint requested a waiver of the June 30, 2008 line count filing deadline established under section 54.802(a) of the Commission's rules, and a waiver of the June 30, 2008 certification deadline established under section 54.809(c) of the Commission's rules.³¹ FairPoint states that the line count and certification filings had been prepared prior to the June 30, 2008 deadline, but due to employee error they were not submitted by e-mail until July 1, 2008, one business day after the deadline.³² FairPoint argues that strict enforcement of the filing deadline in this case would cause a significant financial hardship to FairPoint and consequently harm the customers that federal high-cost universal service program is intended to benefit.³³ FairPoint indicates that the late filing was not the result of a systematic problem, but an oversight during FairPoint's efforts

²³ *Id.* at 6-8.

²⁴ For example, Western will require that certain future filings be made by overnight delivery service, that a calendar be maintained of all universal service filings, and that staff and management be assigned to track all filings. *See* Letter from Gerard Duffy, Counsel for Western, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 29, 2008) (Western Oct. 29, 2008 *Ex Parte* Letter).

²⁵ Yukon Petition at 1; 47 C.F.R. § 54.904(d).

²⁶ Yukon Petition at 1-2.

²⁷ *Id.* at 2, 4.

²⁸ *Id.* at 6.

²⁹ *Id.* at 6-8.

³⁰ For example, Yukon will require that certain future filings be made by overnight delivery service, that a calendar be maintained of all universal service filings, and that staff and management be assigned to track all filings. *See* Letter from Gerard Duffy, Counsel for Yukon, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 23, 2008) (Yukon Oct. 23, 2008 *Ex Parte* Letter).

³¹ FairPoint Petition at 1; 47 C.F.R. § 54.802(a); 47 C.F.R. § 54.809(c).

³² FairPoint Petition at 3.

³³ *Id.* at 6.

to build its regulatory compliance organization after it acquired Verizon's operations in Maine, New Hampshire, and Vermont.³⁴ In addition, USAC informed FairPoint that it would incorporate FairPoint's quarterly line count information into its third-quarter forecasts notwithstanding that it received this data one day late, indicating that the delay did not cause an administrative hardship to USAC.³⁵ To ensure it meets future filing deadlines, FairPoint has instituted internal measures involving management oversight of filings.³⁶

11. *Ballard's Petition for Waiver.* On August 15, 2008, Ballard requested a waiver of the June 30, 2008 certification deadline required by section 54.904(d) of the Commission's rules.³⁷ Ballard states that it sent the certifications by overnight delivery on the June 30, 2008 deadline because delivery service was not available during the two days before the deadline, and thus USAC received the certifications on July 1, 2008, one business day after the deadline, and the Commission received the certifications on July 2, 2008, two business days after the deadline.³⁸ Ballard argues that the Commission should grant its waiver request because Ballard complied with the ICLS projection and line count data filing requirements, and because Ballard sent the ICLS certifications by overnight delivery on June 30, 2008.³⁹ Ballard argues that the relatively brief delay in USAC's receipt of Ballard's certification, from June 30, 2008, to July 1, 2008, does not adversely impact the ICLS program since Ballard had filed projected data and line counts in a timely fashion to enable USAC to incorporate Ballard's estimated ICLS funding needs into the universal service contribution and disbursement plans for 2008 and 2009.⁴⁰ Ballard asserts that loss or substantial delay of ICLS funding to Ballard would affect its ability to invest in infrastructure and upgrades, thereby impairing service to its future customers.⁴¹ Ballard has implemented new procedures and safeguards to ensure it meets future filing deadlines.⁴²

12. *PRWireless's Petition for Waiver.* On October 2, 2008, PRWireless requested a waiver of the March 30, 2008 line count filing deadline established under section 54.307(c) of the Commission's rules.⁴³ Since the March 30 deadline set by the Commission's rules fell on a Sunday, this submission was due on the following Monday, March 31, 2008.⁴⁴ PRWireless states that due to the filing date falling on a

³⁴ *Id.* at 7.

³⁵ *Id.* at 7-8. On July 3, 2008, FairPoint notified USAC by phone of its intent to request a waiver of the June 30 filing date "in order to avoid creating any undue hardship for USAC and to allow USAC to incorporate FairPoint's line-count data into its quarterly calculations for IAS funding." *Id.* at 3.

³⁶ For example, the filing team is now required to copy management on electronic submissions to USAC, and management is now required to confirm that filings have been made via the electronic filing system. *Id.* at 4.

³⁷ Ballard Petition at 1; 47 C.F.R. § 54.904(d).

³⁸ Ballard Petition at 1-2.

³⁹ *Id.* at 2, 5.

⁴⁰ *Id.* at 8.

⁴¹ *Id.* at 8-10.

⁴² For example, Ballard has established a scheduling calendar to cross-check filing requirements, and has assigned final authority for compliance issues to a manager with backup by an assistant manager. See Letter from Mark Medlin, Counsel for Ballard, to Matthew Berry, General Counsel, Federal Communications Commission, WC Docket No. 08-71 (filed Nov. 21, 2008) (Ballard Nov. 21, 2008 *Ex Parte* Letter).

⁴³ PRWireless Petition at 1; 47 C.F.R. § 54.307(c).

⁴⁴ 47 C.F.R. § 1.4(j).

Sunday, it transmitted its line count data on March 31, 2008, but it was not received by USAC until April 1, 2008, one business day after the deadline.⁴⁵ PRWireless argues that not receiving high-cost support for the third quarter of 2008 would adversely affect its ability to deploy planned infrastructure improvements.⁴⁶ PRWireless indicates that the late filing in question is the only instance in which it has failed to meet line count submission deadlines since being designated an ETC.⁴⁷ To ensure it meets future filing deadlines, PRWireless has established an internal procedure to complete ICLS reports three weeks before the relevant filing deadline.⁴⁸

13. *CommuniGroup's Petition for Waiver.* On October 21, 2008, CommuniGroup requested a waiver of the September 30, 2008 line count filing deadline under sections 54.307(c) and 54.802(a) of the Commission's rules.⁴⁹ CommuniGroup states that, due to a combination of employee error and change in staff, it inadvertently missed the filing deadlines.⁵⁰ Once the mistake was brought to CommuniGroup's attention it immediately filed the line counts electronically on October 16, 2008, eleven business days after the deadline.⁵¹ CommuniGroup argues that the loss of funding would significantly impact the high-cost areas that CommuniGroup serves and undermine investment in its network, adversely affecting its customers.⁵² CommuniGroup indicates that prior to this late filing it had timely filed all of its required universal service reports, including its quarterly high-cost line counts.⁵³ To ensure it meets future filing deadlines, CommuniGroup has revised its internal procedures, including establishing a reporting compliance group.⁵⁴

14. *Hopi's Petition for Waiver.* On October 29, 2008, Hopi requested a waiver of the October 1, 2008 annual certification deadline under section 54.314(d)(1) of the Commission's rules.⁵⁵ Hopi is a tribal corporation in Arizona that is not subject to the jurisdiction of the Arizona Corporation Commission.⁵⁶ Hopi was designated an ETC by the Commission pursuant to section 214(e)(6) of the Act.⁵⁷ Pursuant to section 54.209 of the Commission's rules, every carrier designated as an ETC by the

⁴⁵ See Letter from Federico Grosso, Finance Vice President, PRWireless, Inc. d/b/a Open Mobile, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-71 (filed Feb. 6, 2009) (PRWireless Feb. 6, 2009 *Ex Parte* Letter).

⁴⁶ PRWireless Petition at 4.

⁴⁷ *Id.* at 6.

⁴⁸ PRWireless Feb. 6, 2009 *Ex Parte* Letter.

⁴⁹ CommuniGroup Petition at 1; 47 C.F.R. §§ 54.307(c), 54.802(a).

⁵⁰ CommuniGroup Petition at 1, 3.

⁵¹ *Id.* at 5.

⁵² *Id.*

⁵³ *Id.* at 2.

⁵⁴ *Id.* at 3-4. The reporting compliance group will provide electronic notification among all responsible parties of key dates and will afford management time to complete internal review of reported data prior to the required filing dates.

⁵⁵ Hopi Petition at 1; 47 C.F. R § 54.314(d)(1).

⁵⁶ Hopi Petition at 3.

⁵⁷ *Id.* at 1, 3; 47 U.S.C. § 214(e)(6); *Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona*, CC Docket No. 96-45, Order, 22 FCC Rcd 1866 (Wireline Comp. Bur. 2007).

Commission under section 214(e)(6) of the Act must submit an annual progress report with respect to its five-year service quality improvement plan no later than October 1 of each year.⁵⁸ Hopi erroneously believed that the annual progress report it filed under section 54.209 of the Commission's rules also satisfied the annual certification required under section 54.314(d)(1) of the Commission's rules. Hopi realized its mistake on October 6, 2008, and immediately filed its section 54.314(d)(1) certification five business days after the deadline.⁵⁹ Hopi argues that the loss of high-cost support it would otherwise be entitled to receive during the first quarter of 2009 would require it either to reduce service and/or postpone or cancel planned investments, resulting in reduced services and quality for its customers.⁶⁰ Hopi indicates that USAC has received all relevant data needed to project, calculate and/or true up Hopi's high-cost support for 2008 and 2009.⁶¹ To ensure it meets future filing deadlines, Hopi has revised its internal procedures to require both staff and management to monitor the preparation and timely submission of all high-cost program filings and reports.⁶²

15. *Midstate's Petition for Waiver*. On January 1, 2009, Midstate requested a waiver of the December 30, 2008 line count filing deadline under section 54.307(c) of the Commission's rules, and a waiver of the December 31, 2008 line count filing deadline under section 54.802(a) of the Commission's rules.⁶³ Midstate states that it prepared the line count reports prior to the applicable deadlines and placed them in the designated place for FedEx pick up on December 22, 2008. On January 5, 2009 a Midstate employee saw that the FedEx package had not been picked up. Midstate immediately filed the line count reports electronically less than five business days after the deadline.⁶⁴ Midstate argues that universal service support is important for the maintenance of its network as well as for future expansion plans.⁶⁵ Midstate indicates that prior to this late filing it had always been timely in its submissions to USAC.⁶⁶ To ensure it meets future filing deadlines, Midstate intends to submit future reports electronically instead of using a delivery service.⁶⁷

16. *T-Mobile's Petition for Waiver*. On January 15, 2009, T-Mobile requested a waiver of the December 30, 2008 line count filing deadline established under section 54.307(c) of the Commission's rules.⁶⁸ T-Mobile filed the petition on behalf of its newly acquired subsidiary, SunCom Wireless, Inc. (SunCom). SunCom is a competitive ETC in certain rural and non-rural areas of North Carolina. Prior to its acquisition of SunCom, T-Mobile was not a competitive ETC.⁶⁹ T-Mobile states that it engaged an

⁵⁸ 47 C.F.R. § 54.209.

⁵⁹ Hopi Petition at 5.

⁶⁰ *Id.* at 5-6.

⁶¹ *Id.* at 5.

⁶² *Id.* at 7. For example, both Hopi management and the cost consultant's staff will send each other email reminders and monitor the preparation and submission of reports.

⁶³ Midstate Petition at 1; 47 C.F.R. §§ 54.307(c), 54.802(a).

⁶⁴ Midstate Petition at 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ T-Mobile Petition at 1; 47 C.F.R. § 54.307(c).

⁶⁹ T-Mobile Petition at 2.

outside consultant to assist with the regulatory requirements for competitive ETCs. The outside consultant mistakenly thought the line count filing was due December 31 rather than December 30, and therefore filed the line count data one business day after the deadline.⁷⁰ T-Mobile argues that failure to receive the high-cost support for which it is eligible could have a detrimental effect on its business plans in North Carolina and the existing and new customers that would benefit from these plans.⁷¹ T-Mobile indicates that it timely filed all other reports relating to universal service support in North Carolina.⁷² To ensure it meets future filing deadlines, T-Mobile and its outside consultant have implemented internal procedures for line count data gathering and intend to prepare line count filings several weeks prior to the filing deadlines.⁷³

17. *Minerva Valley's Petition for Waiver*. On March 4, 2009, Minerva Valley requested a waiver of the June 30, 2008 filing deadline established under section 54.904(d) of the Commission's rules.⁷⁴ Minerva Valley states that it had just hired a new general manager prior to the filing deadline, and that this new general manager underestimated how much time it would take for a mailing from Zearing, Iowa to reach Washington, DC.⁷⁵ Minerva Valley mailed its ICLS certifications on June 26, 2008, but USAC did not receive them until July 2, 2008, two business days after the deadline.⁷⁶ Minerva Valley asserts that this is the first filing deadline it has ever missed, and that it made material and substantial attempts to comply with all ICLS filing requirements.⁷⁷ To ensure it meets future filing deadlines, Minerva Valley organized a development session for its general manager with the company's board of directors, and plans to hold meetings with auditors to go over filing requirements and how they correlate with revenue streams.⁷⁸

18. *WorldNet's Petition for Waiver*. On May 21, 2009, WorldNet requested a waiver of the December 30, 2008 filing deadline established under section 54.307(c) of the Commission's rules.⁷⁹ WorldNet states that a clerical error caused its line count data to be filed on December 31, 2008, one business day after the deadline.⁸⁰ WorldNet also indicates that this was the first high-cost filing deadline it has missed.⁸¹ To ensure it meets future filing deadlines, WorldNet has created a special team to supervise its regulatory filings.⁸²

⁷⁰ *Id.*

⁷¹ *Id.* at 4.

⁷² *Id.* at 2, footnote 4.

⁷³ *Id.* at 3, 4-5.

⁷⁴ Minerva Valley Petition at 1; 47 C.F.R. § 54.904(d).

⁷⁵ Minerva Valley Petition at 1.

⁷⁶ *Id.*

⁷⁷ *Id.* at 1-3.

⁷⁸ *Id.* at 3.

⁷⁹ WorldNet Petition at 1; 47 C.F.R. § 54.307(c).

⁸⁰ WorldNet Petition at 3.

⁸¹ *Id.* at 1.

⁸² *Id.* at 2.

19. *Midcontinent's Petition for Waiver*. On June 25, 2009, Midcontinent requested a waiver of the September 30, 2008 line count filing deadline established under sections 54.307(c) and 54.802(a) of the Commission's rules.⁸³ Midcontinent states that the employee responsible for the filing fell ill and was unable to attend work on the day it was due.⁸⁴ As a result, Midcontinent's line count data was not filed until October 1, 2008, one business day after the deadline.⁸⁵ Midcontinent indicates that this was the first time it missed a high-cost filing deadline since becoming an ETC in 2004.⁸⁶ To ensure it meets future filing deadlines, Midcontinent has implemented a backup system so that its filings are no longer dependent on the efforts of a single employee.⁸⁷

20. *GCI's Petition for Waiver*. On July 16, 2009, GCI requested a waiver of the December 30, 2008 and March 30, 2009 line count filing deadlines established under section 54.307(c) of the Commission's rules.⁸⁸ GCI states that the personnel responsible for filing the line count data mistakenly believed that the filing deadline was the last day of each calendar month.⁸⁹ As a result, GCI submitted its data via overnight mail on December 30, 2008, and March 30, 2009. USAC received the filings on December 31, 2008, one business day after the deadline, and April 1, 2009, two business days after the deadline.⁹⁰ GCI indicates that it had not previously filed late high-cost data with USAC.⁹¹ To ensure it meets future filing deadlines, GCI has instituted a system of internal deadlines and electronic reminders and will submit future filings electronically.⁹²

III. DISCUSSION

21. We find that the petitioners have demonstrated that there is good cause to waive the applicable sections of the Commission's rules.⁹³ 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.⁹⁴ Although our rules require that data and certifications must be received by the

⁸³ Midcontinent Petition at 1-2; 47 C.F.R. §§ 54.307(c), 54.802(a).

⁸⁴ Midcontinent Petition at 3.

⁸⁵ *Id.* at 4.

⁸⁶ *Id.* at 2.

⁸⁷ *Id.* at 5-6.

⁸⁸ GCI Petition at 1; 47 C.F.R. § 54.307(c).

⁸⁹ GCI Petition at 1.

⁹⁰ *Id.* at 2.

⁹¹ *Id.* at 2.

⁹² *Id.* at 3-4.

⁹³ 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 appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

applicable deadline, we find that petitioners have demonstrated that, in these special circumstances, there is good cause to waive the filing deadlines.⁹⁵

22. Specifically, we find that waivers are warranted because the petitioners promptly filed the required data or certifications and have revised their internal procedures to ensure compliance with the Commission's rules. In instances where carriers have filed the required data or certifications shortly after filing deadlines, the Commission has waived its rules.⁹⁶ The petitioners made the required filings

(Continued from previous page) _____

⁹⁴ *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*).

⁹⁵ The Commission did not receive any comments opposing these petitions. See *Comment Sought on Petitions For Wavier of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, 23 FCC Rcd 12690 (Wireline Comp. Bur. 2008); *Comment Sought on Petitions For Wavier of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, 23 FCC Rcd 13485 (Wireline Comp. Bur. 2008); *Comment Sought on Petition Filed by PRWireless, Inc. For Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 23 FCC Rcd 17360 (Wireline Comp. Bur. 2008); *Comment Sought on Petitions For Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, 23 FCC Rcd 17363 (Wireline Comp. Bur. 2008); *Comment Sought on Petition Filed by Midstate Telecom, Inc. For Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 24 FCC Rcd 3277 (Wireline Comp. Bur. 2009); *Comment Sought on Petition Filed by T-Mobile USA, Inc. For Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 24 FCC Rcd 3262 (Wireline Comp. Bur. 2009); *Comment Sought on WorldNet Telecommunications, Inc. Petition for Waiver of Universal Service High-Cost Deadline*, WC Docket No. 08-71, Public Notice, 24 FCC Rcd 7598 (Wireline Comp. Bur. 2009); *Comment Sought on Petitions for Waiver of High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, 24 FCC Rcd 9231 (Wireline Comp. Bur. 2009); *Comment Sought on General Communications, Inc. Petition for Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 24 FCC Rcd 10597 (Wireline Comp. Bur. 2009).

⁹⁶ 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*, Order, 21 FCC Rcd 10155, at 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, at 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); *Benton/Linn Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *Highland Cellular, Inc., Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules*; *Louisa Communications, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the* (continued. . .)

between one and fourteen business days after the deadlines. Accordingly, we find that, by making the required filings shortly after the applicable filing deadlines, the petitioners promptly remedied their errors.

23. To ensure that Commission deadlines are met, these petitioners have revised their filing procedures.⁹⁷ 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.⁹⁸ 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.⁹⁹ Similarly, we rely on these petitioners to fulfill their commitments to adhere to their revised filing procedures, and do not anticipate these petitioners will seek similar waivers again.

24. We find that petitioners' circumstances are unique and emphasize that, going forward, we expect petitioners to make required filings 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 such 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 carriers to use any and all methods they deem necessary to ensure that their filings are timely received. Due to the procedures the petitioners have enacted in response to these late filings, we do not expect these petitioners to seek similar waivers in the future.

IV. ORDERING CLAUSES

25. 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.

26. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Western New Mexico Telephone Company, Inc., IS GRANTED.

(Continued from previous page) _____

Commission's Rules; United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules; Unity Telephone Company d/b/a UniTel, Inc., Petition for Waiver of Section 54.904(d) of the Commission's Rules; Wapsi Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220, para. 10 (Wireline Comp. Bur. 2005).

⁹⁷ Western Oct. 29, 2008 *Ex Parte* Letter; Yukon Oct. 23, 2008 *Ex Parte* Letter; FairPoint Petition at 4; Ballard Nov. 21, 2008 *Ex Parte* Letter; PRWireless Feb. 6, 2009 *Ex Parte* Letter; CommuniGroup Petition at 3-4; Hopi Petition at 7; Midstate Petition at 2; T-Mobile Petition at 3, 4-5; Minerva Petition at 3; WorldNet Petition at 2; MidContinent Petition at 5-6; GCI Petition at 3-4.

⁹⁸ 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).

⁹⁹ 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.

27. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Yukon Telephone Company, Inc., IS GRANTED.

28. IT IS FURTHER ORDERED that the petition for waiver of sections 54.802(a) and 54.809(c) of the Commission's rules, 47 C.F.R. §§ 54.802(a) and 54.809(c), filed by Northern New England Telephone Operations LLC and Telephone Operating Company of Vermont LLC, IS GRANTED.

29. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Ballard Rural Telephone Cooperative Corporation, Inc., IS GRANTED.

30. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by PRWireless, Inc., IS GRANTED.

31. 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), 54.802(a), filed by CommuniGroup of Jackson, Inc., IS GRANTED.

32. IT IS FURTHER ORDERED that the petition for waiver of section 54.314(d)(1) of the Commission's rules, 47 C.F.R. § 54.314(d)(1), filed by Hopi Telecommunications, Inc., IS GRANTED.

33. 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), 54.802(a), filed by Midstate Telecom, Inc., IS GRANTED.

34. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by T-Mobile USA, Inc., IS GRANTED.

35. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Minerva Valley Telephone Company, Inc., IS GRANTED.

36. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by WorldNet Telecommunications, Inc., IS GRANTED.

37. 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), 54.802(a), filed by QSI Consulting, Inc. on behalf of Midcontinent Communications, IS GRANTED.

38. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by General Communications Inc., IS GRANTED.

39. 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