

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

In the Matter of)
Petition for Waiver of Universal Service High-)
Cost Filing Deadlines) WC Docket No. 08-71
Etex Telephone Cooperative)
Petition for Waiver of Deadline in 47 C.F.R.)
54.301(b))

ORDER

Adopted: May 5, 2010

Released: May 5, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request filed by ETEX Telephone Cooperative (ETEX) for a waiver of the October 1, 2008 data filing deadline set forth in section 54.301(b) of the Commission's rules concerning universal service local switching support (LSS). We find that ETEX has demonstrated that good cause warrants this waiver.

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. Incumbent local exchange carriers (LECs) that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS, subject to compliance with

1 Etex Telephone Cooperative Petition for Waiver of Deadline in 47 C.F.R. 54.301(b), WC Docket No. 08-71 (filed Nov. 6, 2008) (Petition); 47 C.F.R. § 54.301(b).

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 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), and 54.904 (carrier certification requirements regarding the use of ICLS).

5 47 C.F.R. § 54.301.

certain certification and data filing requirements. First, the relevant state commission must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all high-cost support, including LSS, received by the incumbent LEC will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁶ Second, the incumbent LEC ETC must file certain projected data with USAC by October 1 of each year to receive LSS for the following calendar year.⁷ Third, the incumbent LEC ETC must file true-up data with USAC no later than 12 months after the end of the calendar year.⁸

4. *ETEX Petition for Waiver.* On November 6, 2008, ETEX filed a request for waiver of the October 1, 2008 projected data filing deadline in section 54.301(b) of the Commission’s rules so that it can receive LSS for the 2009 calendar year.⁹ ETEX states that it is an incumbent LEC ETC serving 13,600 access lines in its single study area.¹⁰ ETEX asserts that although it does not participate in the National Exchange Carrier Association (NECA) traffic sensitive pool, ETEX had provided NECA with the 2009 projected data and necessary certification to file on its behalf with USAC. As a courtesy to a few non-traffic sensitive pool members, NECA submitted 2009 projected data to USAC on October 1, 2008. On October 9, 2008, NECA found that the data and certification from ETEX were inadvertently excluded from the information NECA had provided to USAC. NECA immediately contacted USAC and provided the 2009 LSS projected data on October 9, 2008.¹¹ ETEX states that the loss of LSS for the 2009 calendar year would be extremely disruptive since LSS represents a substantial portion of ETEX’s recovery of its switching costs.¹² ETEX argues that without LSS support it would be required to increase rates or curtail upgrades.¹³ ETEX states that it has never missed a federal universal service filing deadline before, and states that it will ensure that this will not happen again.¹⁴

III. DISCUSSION

5. We find that ETEX has demonstrated that there is good cause to waive section 54.301(b) of the Commission’s rules so that ETEX may receive LSS for the 2009 calendar year.¹⁵ USAC processes

⁶ The certification requirements for non-rural carriers are found in section 54.313 of the Commission’s rules. 47 C.F.R. § 54.313. The certification requirements for rural carriers are found in section 54.314 of the rules. 47 C.F.R. § 54.314. In instances where carriers are not subject to state jurisdiction, an ETC may self-certify to the Commission and USAC. 47 C.F.R. §§ 54.313(b) and 54.314(b).

⁷ 47 C.F.R. § 54.301(b).

⁸ 47 C.F.R. § 54.301(e)(1).

⁹ Petition at 1; 47 C.F.R. § 54.301(b).

¹⁰ Petition at 2.

¹¹ *Id.* at 1, 3.

¹² *Id.* at 3-4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 3. The Wireline Competition Bureau sought comment on ETEX’s petition and did not receive any comments opposing the petition. See *Comment Sought on Petitions For Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, 23 FCC Rcd 17357 (Wireline Comp. Bur. 2008).

¹⁵ 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
(continued...)

a tremendous amount of data each year. It is, therefore, administratively necessary to require carriers to meet the filing deadlines absent special circumstances.¹⁶ With respect to this petitioner, however, we find that strict compliance with the rule would be inconsistent with the public interest and that considerations of hardship weigh in favor of granting the requested waiver.

6. Specifically, we find that waiver is warranted because NECA took prompt corrective action to file ETEX's projected data for the 2009 calendar year. In instances where carriers have filed the required data or certifications shortly after filing deadlines, the Commission has waived its rules.¹⁷ Here, NECA discovered it had inadvertently omitted ETEX's projected data from its submission to USAC only eight days after the filing deadline, and NECA filed the projected data with USAC that same day.¹⁸ We

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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.

¹⁶ *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*).

¹⁷ 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 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).

¹⁸ Petition at 1, 3.

also note that ETEX has not previously missed any federal universal service filing deadlines and that it has taken steps to ensure that it does not miss future filing deadlines.¹⁹ In light of these special circumstances, we conclude that denial of all LSS to ETEX in calendar year 2009 would be excessive and inconsistent with the public interest.

7. 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 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@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 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 waiver of section 54.301(b) of the Commission's rules, 47 C.F.R. § 54.301(b), filed by Etex Telephone Cooperative IS GRANTED.

9. 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

¹⁹ *Id.* at 2, 3, 4.