

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
)
F&B Communications, Inc.)
f/k/a Farmers' and Business Men's Telephone)
Company)
)
Petition for Waiver of Section 54.802(a) of the FCC's)
Rules)

ORDER

Adopted: March 29, 2011

Released: March 29, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by F&B Communications, Inc. f/k/a Farmers' and Business Men's Telephone Company (F&B Communications) for a waiver of section 54.802(a) of the Commission's rules, which sets forth deadlines for eligible telecommunications carriers (ETCs) providing service within an area served by a price cap local exchange carrier (LEC) to file line count data on a quarterly basis with the Universal Service Administrative Company (USAC) to receive certain high-cost universal service support. We conclude that F&B Communications has demonstrated that there is good cause to grant the requested waiver. Specifically, F&B Communications promptly filed the required data and has taken steps to ensure future compliance with filing requirements.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support," and such support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." To implement

1 F&B Communications, Inc. f/k/a Farmers' and Business Men's Telephone Company Petition for Waiver of Section 54.802(a) of the FCC's Rules, WC Docket No. 08-71 (filed Oct. 13, 2010) (Petition); 47 C.F.R. § 54.802(a).

2 47 U.S.C. § 254(e).

3 Id.

this statutory requirement, the Commission has adopted various certification and data filing requirements.⁴

3. 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.⁵ 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.⁶ Mandatory line count data are due on the last business day of March, June, September, and December of each year.⁷

4. *F&B Communications's Petition for Waiver*. On October 13, 2010, F&B Communications requested a waiver of the June 30, 2010, line count filing deadline required by section 54.802(a) of the Commission's rules.⁸ F&B Communications explains that its office manager, who is the sole employee responsible for IAS filings, and the general manager were out of town at a USDA/RUS Broadband Initiative Program post award workshop the week before the filing was due.⁹ The company contends that the absence of two key staff members of a small company of only 826 access lines just before the filing deadline caused it to miss the June 30, 2010 deadline. The data was filed successfully by email on July 13, eight business days later. The company claims that it has never previously missed a deadline and, except for this one late filing, its filings have been sent – and received by USAC – in a timely manner.¹⁰ In addition, F&B Communications states that it has committed to revise its internal procedures to ensure compliance with all future filing deadlines such as having automated calendar reminders, having two people instead of one responsible for filing the quarterly reports, and assigning internal deadline to ensure completeness and on time submission of filings.¹¹ The Wireline Competition Bureau sought comment on the petition on October 15, 2010, and on November 15, 2010, the National Telecommunications Cooperative Association (NTCA) filed comments in support of granting this waiver. No comments were filed in opposition to the petition.¹²

⁴ See, e.g., 47 C.F.R. §§ 54.301(b) and (e)(1) (data filing requirements for Local Switching Support), 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 47 C.F.R. § 54.802(a).

⁶ *Id.*

⁷ *Id.* 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.

⁸ Petition at 1; 47 C.F.R. § 54.802(a).

⁹ Petition at 2.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² See *Comment Sought on the F&B Communications, Inc. f/k/a Farmers' and Business Men's Telephone Company. Petition For Waiver of a Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, DA 10-1989 (Wireline Comp. Bur. 2010).

III. DISCUSSION

5. We conclude that F&B Communications has demonstrated that there is good cause to grant the requested waiver. Generally, the Commission's rules may be waived if good cause is shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ 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.¹⁶

6. 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.¹⁷ Although our rules require that filings be received by the applicable deadline, we conclude that F&B Communications has demonstrated that, in these special circumstances, there is good cause to waive the filing deadline.

7. Specifically, we conclude that a waiver is warranted because F&B Communications promptly filed the required data. In instances where carriers have filed the required data or certifications shortly after filing deadlines, the Commission has waived its rules.¹⁸ By making the required filing eight business days after the deadline, F&B Communications promptly remedied the problem.

¹³ 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *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*).

¹⁸ 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* (continued. . .)

8. F&B Communications states that it has revised its internal measures to ensure that it meets future deadlines.¹⁹ In granting previous waiver requests, we have found that carriers must comply with their commitments to revise their internal procedures to ensure that their filings will be accurately and timely submitted.²⁰ Similarly, we rely on F&B Communications to fulfill its commitments to adhere to its revised filing procedures.

9. We remind all filers that it is their responsibility to ensure that their complete and accurate 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.

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 section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by F&B Communications, Inc. f/k/a Farmers' and Business Men's Telephone Company IS GRANTED.

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

Sharon E. Gillett
Chief
Wireline Competition Bureau

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54.307(c) of the Commission's Rules, et al., CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220, para. 10 (Wireline Comp. Bur. 2005).

¹⁹ Petition at 4.

²⁰ 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.