

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
	)	
SureWest Telephone Petition for a Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support	)	
	)	

**ORDER**

**Adopted: October 29, 2013**

**Released: October 29, 2013**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we deny a request by SureWest Telephone (SureWest) for waiver of the filing deadline for the annual state certification that high-cost support is being used only for its intended purposes, as set forth in section 54.314(d)(1) and (d)(2) of the Commission’s rules.<sup>1</sup> For the reasons discussed below, we find that SureWest has failed to demonstrate that good cause warrants a waiver of the Commission’s new certification rule adopted in the *USF/ICC Transformation Order*.<sup>2</sup> The required certification is a critical part of the Commission’s uniform national framework for accountability, and the Commission has adopted a framework that provides support for the quarters that follow a late filing.<sup>3</sup> SureWest will receive high-cost support in the third and fourth quarters of 2013 because the required certification was filed before April 1, pursuant to section 54.314(d)(3) of the Commission’s rules.<sup>4</sup>

**A. Background**

2. Section 254(e) of the Communications Act of 1934, as amended, provides that “only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support,”<sup>5</sup> and such support shall be used “only for the provision,

<sup>1</sup> SureWest Telephone, Petition for a Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support, WC Docket No. 08-71 (filed Jan. 24, 2013) (SureWest Petition); 47 C.F.R. § 54.314(d)(1), (2).

<sup>2</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17850, para. 573 (2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>3</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17862-63, para. 617.

<sup>4</sup> Letter from Paul Clanon, Executive Director, California Public Utilities Commission (California PUC), to Marlene H. Dortch, Secretary, FCC and Karen Majcher, Vice President, High Cost and Low Income Division, Universal Service Administrative Company (USAC), WC Docket No. 10-90, CC Docket No. 96-45 (dated Feb. 13, 2013) (California PUC SureWest Certification Letter); 47 C.F.R. § 54.314(d)(3).

<sup>5</sup> 47 U.S.C. § 254(e).

maintenance, and upgrading of facilities and services for which the support is intended.”<sup>6</sup> To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

3. In the *USF/ICC Transformation Order*, the Commission adopted several reforms to harmonize and update annual ETC requirements by establishing a “uniform national framework for accountability” that replaces the various data and certification filing deadlines that carriers were required to meet previously.<sup>7</sup> Such an accountability framework is “critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.”<sup>8</sup> The framework incorporates annual unified reporting and certification procedures,<sup>9</sup> and adopts rules that better calibrate the consequences resulting from missed annual filing deadlines. Failure to meet the annual data and certification deadlines imposed by the *USF/ICC Transformation Order* results in reduced support to the ETC based on the length of the delay in certification or data submission,<sup>10</sup> rather than the immediate loss of an entire year’s support regardless of when the data or certification is filed.

4. Relevant to this Order, the *USF/ICC Transformation Order*’s accountability framework includes a modified requirement for states to certify annually that federal universal service high-cost support is used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>11</sup> In order for ETCs to receive high-cost support, states must file a certification annually that all federal high-cost support provided to ETCs within that state “was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>12</sup> The first of these certifications was due on October 1, 2012. Under the Commission’s rules, filing the state certification after October 1 results in the subject ETC losing one quarter of support in the subsequent year, filing after January 1 results in the subject ETC losing two quarters of support, filing after April 1 results in the subject ETC losing three quarters of support, and filing after July 1 will result in the subject ETC losing all support in the subsequent year.<sup>13</sup>

#### **B. SureWest’s Petition for Waiver**

5. On September 28, 2012, the California PUC timely filed a list of ETCs for which it made the required annual certification, in advance of the deadline of October 1, 2012.<sup>14</sup> The California PUC’s

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<sup>6</sup> *Id.*

<sup>7</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17850, para. 573.

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g.*, 47 C.F.R. §§ 54.313, 54.314.

<sup>10</sup> *See* 47 C.F.R. §§ 54.313(j), 54.314(d).

<sup>11</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17859, para. 607.

<sup>12</sup> 47 C.F.R. § 54.314(a). ETCs not subject to state jurisdiction must file a similar certification on their own behalf. 47 C.F.R. § 54.314(b).

<sup>13</sup> 47 C.F.R. § 54.314(d).

<sup>14</sup> Letter from Paul Clanon, Executive Director, California PUC, to Marlene H. Dortch, Secretary, FCC and Karen Majcher, Vice President, High Cost and Low Income Division, USAC, WC Docket No. 10-90, CC Docket No. 96-45 (dated Sept. 28, 2012). The California PUC filed a second timely certification for one additional ETC on October 1. Letter from Paul Clanon, Executive Director, California PUC, to Marlene H. Dortch, Secretary, FCC and Karen Majcher, Vice President, High Cost and Low Income Division, USAC, WC Docket No. 10-90, CC Docket No. 96-45 (dated Oct. 1, 2012).

list of ETCs did not include SureWest.<sup>15</sup> On January 24, 2013, seven days after it was contacted by USAC about its missing certification, SureWest filed for certification with the California PUC and filed the instant petition for waiver.<sup>16</sup> On February 19, 2013, the California PUC filed a certification with respect to SureWest pursuant to section 54.314 of the Commission's rules.<sup>17</sup>

## II. DISCUSSION

6. We find that SureWest has failed to demonstrate that there is good cause to waive section 54.314(d)(1) and (d)(2) of the Commission's rules.<sup>18</sup> The required certification is a critical part of the Commission's new national framework for accountability. In adopting this framework, the Commission specifically provided for the loss of support to be proportional to the time period in which there is non-compliance.<sup>19</sup> In general, deadlines set in Commission rules are strictly enforced,<sup>20</sup> and the new framework ensures that the consequences of non-compliance are appropriate rather than unduly harsh. For these reasons, the Bureau concludes that the Commission intended for these new deadlines to be strictly enforced. SureWest's mere confusion regarding the Commission's rules is not sufficient to establish good cause for a waiver of the Commission's new accountability framework.<sup>21</sup> SureWest also failed to quickly cure its error. Due to its failure to undertake due diligence regarding timely compliance with filing deadlines, SureWest did not file for ETC certification with the California PUC until January 24, 2013—over three months past the October 1, 2012 state certification deadline. The magnitude of SureWest's delay in filing the requisite certification further supports our conclusion that good cause to waive the Commission's new accountability framework has not been established.<sup>22</sup> We therefore deny

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<sup>15</sup> SureWest Petition at 2.

<sup>16</sup> *Id.* at 3-4, Exh. A.

<sup>17</sup> California PUC SureWest Certification Letter.

<sup>18</sup> 47 C.F.R. § 54.314(d)(1), (2). Generally, the Commission's rules may be waived if good cause is 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. *Northeast Cellular*, 897 F.2d at 1166. “[D]eadlines can only be waived under ‘unusual or compelling circumstances.’” *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

<sup>19</sup> *See supra* para. 3.

<sup>20</sup> *See NetworkIP v. FCC*, 548 F.3d at 127.

<sup>21</sup> *See Federal-State Joint Board on Universal Service; South Slope Cooperative Telephone Company, Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 5 (Wireline Comp. Bur. 2004) (*South Slope*) (“A carrier's confusion regarding the rules does not establish special circumstances that warrant a deviation from the Commission's rules”); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Grande Communications Networks, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 6187, 6191, para. 12 (Wireline Comp. Bur. 2011) (“Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner”).

<sup>22</sup> *See supra* para. 5; compare *Federal-State Board on Universal Service; 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) (granting waiver when line count data was received one business day after the filing deadline); *Federal-State Board on Universal Service; Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005)

(continued...)

the request for waiver of the Commission's rules. We note that because the California PUC filed prior to April 1, 2013, pursuant to section 54.314(d)(3) of the Commission's rules, SureWest is still eligible to receive high-cost support in the third and fourth quarters of 2013.<sup>23</sup>

### III. ORDERING CLAUSES

7. 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.

8. IT IS FURTHER ORDERED that the petition for waiver of section 54.314(d)(1) and (d)(2) of the Commission's rules, 47 C.F.R. § 54.314(d)(1) and (d)(2), filed by SureWest Telephone IS DENIED.

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

Julie A. Veach  
Chief  
Wireline Competition Bureau

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(granting waiver when deadline was missed by two business days), with *Federal-State Joint Board on Universal Service, Cedar Valley Communications, Inc. Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d)*, CC Docket 96-45, Order, 23 FCC Rcd 114 (Wireline Comp. Bur. 2008) (denying waiver because the filing deadline was missed by more than five months); *NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules; SouthEast Telephone, Inc. Petition of Waiver of Deadlines in 47 C.F.R. § 54.809(c); SEI Data, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a)*, CC Docket 96-45, Order, 22 FCC Rcd 4946 (Wireline Comp. Bur. 2007) (denying NPI's waiver because the data was filed six months late; denying SouthEast's waiver because the data was filed two months late; denying SEI's waiver because the data was filed three months late); *South Slope* (denying waiver because the data was filed more than a month late).

<sup>23</sup> 47 C.F.R. § 54.314(d)(3); *see supra* para. 4.