

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

In the matter of)	
)	
Universal Service High-Cost Filing)	WC Docket No. 08-71
Deadlines)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
)	

ORDER

Adopted: March 27, 2014

Released: March 27, 2014

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we grant petitions filed by Cordova Wireless Communications, LLC (Cordova) and MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc. (MTAW) for a waiver of sections 54.307 and 54.802(a) of the Commission’s rules, which require a competitive eligible telecommunications carrier (ETC) to report the number of lines it serves, on a quarterly basis, in order to receive universal service support.¹ Because both Cordova and MTAW promptly filed the required data after the initial deadline and have instituted revisions to their internal processes to prevent late filings in the future, we find good cause to waive the Commission’s rules. Accordingly, we grant both petitions and direct the Universal Service Administrative Company (USAC) to reinstitute any reduced high-cost support for both carriers.

I. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission adopted a plan to transition all existing universal service fund support for competitive ETCs to the new Connect America Fund program.² To avoid flash cuts and ensure that service was maintained during the transition, the Commission phased down support over a five year period beginning July 1, 2012.³ Competitive ETC support, per study area, was frozen at the 2011 baseline, with that baseline amount provided on a monthly

¹ Petition for Waiver of 47 C.F.R. § 54.307(c), WC Docket No. 08-71 et al. (filed Nov. 12, 2013) (Cordova Petition); Petition of MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc., for Waiver of Sections 54.307 and 54.802(a) of the Commission’s Rules, WC Docket No. 08-71 et al. (filed Nov. 6, 2013) (MTAW Petition).

² See *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, 17830-31, para. 513 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. argued Nov. 19, 2013). See also 47 C.F.R. § 54.307(e)(2).

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17830-31, para. 513.

basis from January 1, 2012 to June 30, 2012.⁴ Under the phase down, each competitive ETC would then receive 80 percent of its monthly baseline amount beginning on July 1, 2012 through June 30, 2013, and 60 percent of its monthly baseline amount beginning on July 1, 2013 through June 30, 2014.⁵ This 20 percent per year reduction would continue until July 1, 2016, when such support for competitive ETCs would be phased out completely.⁶

3. In establishing the phase down for competitive ETCs, the Commission recognized that carriers serving remote parts of Alaska should be provided with an opportunity to “preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.”⁷ As a result, the Commission adopted a more gradual approach for these carriers, delaying the beginning of the five-year transition period for two years and establishing an interim high-cost cap for competitive ETCs serving remote areas of Alaska.⁸ This cap was set at the total of all competitive ETCs’ baseline support amounts in remote areas of Alaska.⁹

4. The Commission has adopted various certification and data filing requirements for carriers seeking universal service support.¹⁰ Under section 54.307(c) of the Commission’s rules, a competitive ETC must file working line count data with USAC on a quarterly basis to receive certain high-cost support.¹¹ Mandatory line count data are due on March 30, July 31, September 30, and December 30 of each year.¹² Because Cordova and MTAW serve remote areas of Alaska and are subject to the delayed phase down described above, they remain required to submit the line count data required by section 54.307 in order to receive support under the interim high-cost cap.

⁴ *Id.* at 17832, para. 519. Each competitive ETC’s baseline support amount was calculated to be equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times the number of reported lines as of year-end 2011, whichever was lower. *See id.* at 17831, para. 515.

⁵ *Id.* at 17832, para. 519.

⁶ *Id.*

⁷ *Id.* at 17835-36, para. 529. The Commission noted that “remote areas of Alaska” included “all areas other than the study areas, or portions thereof, that include the three major cities in Alaska with over 30,000 in population, Anchorage, Juneau, and Fairbanks.” *Id.* at para. 529 n.876.

⁸ *Id.* at para. 529. *See also* 47 C.F.R. § 54.307(e)(3).

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529 n.880. The Commission calculated the baseline support amounts for competitive ETCs in remote areas of Alaska using the same formula as for all other competitive ETCs. On a quarterly basis, USAC calculates the support each competitive ETC would have received under the frozen per-line support amount as of December 31, 2011 capped at \$3000 per year, and then, if necessary, calculates a state reduction factor to reduce the total amount down to the cap amount for remote areas of Alaska.

¹⁰ *See, e.g.*, 47 C.F.R. §§ 54.301(b), (e)(1) (data filing requirements for local switching support), 54.307 (competitive ETC line count filing requirements for interstate common line support 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).

¹¹ *See* 47 C.F.R. § 54.307(c).

¹² *Id.* *See also* 47 C.F.R. § 54.802(a). 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.

5. *MTAW's Petition for Waiver.* On November 6, 2013, MTAW requested waiver of the September 30, 2013 line count filing deadline.¹³ MTAW states that the loss of critical regulatory personnel and the implementation of major financial software prevented it from immediately identifying an error in the company's internal tracking system that identified the September 30, 2013 filing as complete.¹⁴ As a result, its line count data was not filed with USAC until fourteen business days after the filing deadline.¹⁵ MTAW indicates that it has timely filed all of its previous line count filings, and has reviewed and modified its internal procedures to ensure future compliance with filing deadlines.¹⁶

6. *Cordova's Petition for Waiver.* On November 12, 2013, Cordova requested waiver of the September 30, 2013 line count filing deadline.¹⁷ Cordova states that a clerical error caused its line count data to be filed on October 1, 2013, one business day after the deadline.¹⁸ Cordova also indicates that this was the first high-cost filing deadline it has missed.¹⁹ Cordova has implemented internal procedures, including having additional employees involved in the filing process, to ensure it meets future filing deadlines.²⁰

II. DISCUSSION

7. We find that the petitioners have demonstrated that there is good cause to waive the applicable sections of the Commission's rules.²¹ USAC processes a tremendous amount of data each year, making it administratively necessary to require carriers to meet the filing deadlines absent special circumstances. Although our rules require that data and certifications must be received by the applicable deadline, we find that petitioners have demonstrated that, in these special circumstances, there is good cause to waive the filing deadlines. 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 future compliance with the Commission's rules.

8. We recognize that the Commission harmonized and updated annual ETC reporting requirements in the *USF/ICC Transformation Order* by establishing a "uniform national framework for accountability" that replaces certain data and certification filing deadlines that carriers previously were required to meet.²² Such an accountability framework is "critical to ensure appropriate use of high-cost

¹³ See MTAW Petition at 1.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 3-4.

¹⁷ See Cordova Petition at 1.

¹⁸ *Id.* at 3, 5.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6-7.

²¹ 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, 125-28 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17850, para. 573.

support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.”²³ In this instance, however, parties are seeking waiver of the applicable deadline for quarterly filing of line count data, a requirement that existed before the *USF/ICC Transformation Order* reforms. Thus, we look to Bureau precedent that pre-dates the *USF/ICC Transformation Order* as our guide for deciding Cordova and MTAW’s waiver petitions.

9. In the past, when carriers filed the required line count data shortly after filing deadlines, the Bureau has waived the filing deadline.²⁴ Both Cordova and MTAW promptly took action to file their line count data after learning they had missed the initial deadline. Accordingly, we find that, by making the required filings shortly after the applicable filing deadlines, the petitioners promptly remedied their errors. We note that, absent highly extraordinary circumstances, the Bureau has not found good cause to waive deadlines when petitioners filed significantly after the deadline.²⁵

²³ *Id.* Failure to meet the new 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, rather than the immediate loss of an entire year’s support regardless of when the data or certification is filed. See 47 C.F.R. §§ 54.313(j), 54.314(d).

²⁴ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, CC Docket No. 08-71 et al., Order, 25 FCC Rcd 843, 853, para. 21 (Wireline Comp. Bur. 2010) (granting waivers where the filings were submitted between one and fourteen 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, 955, para. 6 (Wireline Comp. Bur. 2007) (*AT&T Order*) (granting waiver where 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, 562, para. 6 (Wireline Comp. Bur. 2007) (*NPCR Order*) (granting waiver where the filing was submitted one business day 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. 6 (Wireline Comp. Bur. 2006) (granting waiver where 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. 7 (Wireline Comp. Bur. 2006) (*Verizon Order*) (granting waiver where the filing was submitted two business days after the deadline); *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, 16764, para. 9 (Wireline Comp. Bur. 2005) (*Citizens/Frontier Order*) (granting waiver where 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. 5 (Wireline Comp. Bur. 2005) (granting waiver where the filing was submitted five days after the deadline).

²⁵ See, e.g., *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, 115-16, para. 7 (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 for 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, 4948-49, paras. 4-7 (Wireline Comp. Bur. 2007) (denying NPI’s waiver because the filing deadline was missed by more than six months; denying SEI’s waiver because the filing deadline was missed by more than three months); *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, 17494-95, para. 5 (Wireline Comp. Bur. 2004) (denying waiver because the filing deadline was missed by more than a month); *but see Smithville Telephone Company, Inc.*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891, 8892-93, para. 5 (Wireline Comp. Bur. 2004) (granting waiver where Smithville missed filing deadline by more than four months due in large part to the death of the company’s president less than one month before the filing deadline).

10. In the past, the Bureau also has granted waiver requests based on commitments by carriers to revise their internal procedures in order to ensure that their filings will be accurately and timely submitted.²⁶ Both Cordova and MTAW have taken steps similar to those of other carriers that missed filing deadlines but were granted waivers of the missed deadlines by making changes to their filing processes.²⁷ We rely on both Cordova and MTAW to fulfill their commitments to adhere to their revised filing procedures, and do not anticipate either carrier will seek similar waivers again.

11. 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. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/about/tools/e-file.aspx/>. We encourage carriers to use any and all methods they deem necessary to ensure that their filings are timely received.

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

13. 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 Cordova Wireless Communications, LLC, IS GRANTED as described herein.

14. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307 and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307, 54.802(a), filed by MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc., IS GRANTED as described herein.

15. 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

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²⁶ See, e.g., *AT&T Order*, 22 FCC Rcd at 955-56, para. 9; *NPCR Order*, 22 FCC Rcd at 563, para. 9; *Verizon Order*, 21 FCC Rcd at 10158, para. 10; *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 10.

²⁷ See MTAW Petition at 4; Cordova Petition at 6-7.