

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	
	)	
Connecticut Department of Public Utility	)	CC Docket No. 96-45
Control	)	
	)	
Request for Waiver of State	)	
Certification Requirements for	)	
High-Cost Universal Service Support	)	
For Rural Carriers	)	

**ORDER**

**Adopted: December 11, 2002**

**Released: December 11, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant the petition of the Connecticut Department of Public Utility Control (Connecticut Department) for a waiver of the calendar year 2002 state certification requirements for high-cost universal service support in areas served by rural carriers.<sup>1</sup> This waiver will permit rural carriers in Connecticut to receive federal high-cost universal service support for calendar year 2002, including the first and second quarters of calendar year 2002. We believe that this waiver is in the public interest and will ensure that consumers in high-cost areas served by rural carriers in Connecticut benefit from high-cost support for the first and second quarters of calendar year 2002.

**I. BACKGROUND**

2. In its *Ninth Report and Order* on universal service, the Commission, building upon the framework established in its *Universal Service Order* and *Seventh Report and Order*, set forth a federal high-cost support mechanism to enable non-rural carriers' rates for services supported by universal service to remain affordable and reasonably comparable in all regions of

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<sup>1</sup> Petition of the Connecticut Department of Public Utility Control for Expedited Waiver , CC Dockets No. 96-45, 00-256, filed May 3, 2002 (Petition). The Division is taking this action pursuant to authority delegated to the Common Carrier Bureau at 47 C.F.R. § 0.29. See *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, CC Docket No. 96-45, 16 FCC Rcd. 5784 (2001).

the nation.<sup>2</sup> Among other things, the federal high-cost universal service support mechanism established in the *Ninth Report and Order* set forth specific certification requirements with which states wishing to receive federal universal service high-cost support for all non-rural carriers within their territory must comply.<sup>3</sup> These certifications must state that all federal high-cost support received by non-rural carriers in the state will be used in a manner consistent with section 254(e) of the Communications Act.<sup>4</sup> The Commission concluded that, absent the timely filing of such certification by their state commission, non-rural carriers in a state would not receive federal high-cost universal service support for the applicable certification period.<sup>5</sup>

3. On May 23, 2001, the Commission issued an order which, among other things created universal service support mechanisms for rural carriers, and extended similar section 254(e) state certification requirements to the support mechanisms for rural carriers.<sup>6</sup> Accordingly, pursuant to section 54.314(d)(1) of the Commission's rules, states were required to file their certifications by October 1, 2001 in order for rural carriers serving high-cost areas in the state to receive support for the first, second, third, and fourth quarters of calendar year 2002.<sup>7</sup> If a state did not file before October 1, 2001, but filed its certification before January 1, 2002, rural carriers in that state will receive support for only the second, third, and fourth quarters of calendar year 2002.<sup>8</sup>

4. On February 19, 2002, the Connecticut Department submitted its section 54.314 certification on behalf of Woodbury Telephone Company (Woodbury), the only rural carrier in the state of Connecticut.<sup>9</sup> Woodbury was designated an eligible telecommunications carrier

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<sup>2</sup> *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded in part, *Qwest Corporation v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001); Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8766 (1997) (*Universal Service Order*); *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Record 8077 (1999) (subsequent history omitted) (*Seventh Report and Order*).

<sup>3</sup> See *Ninth Report and Order*, 14 FCC Rcd at 20481-88, paras. 93-110. See also 47 C.F.R. § 54.313 *et seq.*

<sup>4</sup> *Ninth Report and Order*, 14 FCC Rcd at 20483-84, para. 97. 47 U.S.C. § 254(e) requires that carriers use high-cost support only for the "provision, maintenance, and upgrading of facilities and services for which the support is intended."

<sup>5</sup> *Ninth Report and Order*, 14 FCC Rcd at 20484, para. 98.

<sup>6</sup> *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*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45, 00-256, 16 FCC Rcd 11244 (2001).

<sup>7</sup> 47 C.F.R. § 54.314(d)(1).

<sup>8</sup> See 47 C.F.R. § 54.314(d)(2).

<sup>9</sup> Petition at 3.

(ETC) eligible for high-cost support by the state of Connecticut on December 16, 1997.<sup>10</sup> The Connecticut Department subsequently filed the present Petition, requesting that the Commission waive its rules and accept its February 19, 2002 certification letter out-of-time and allow rural carriers in Connecticut to receive federal high-cost universal service funding for the entire calendar year 2002.<sup>11</sup> The Connecticut Department stated that its failure to meet the October 1, 2001 deadline resulted from the fact that neither Woodbury nor the Connecticut Department were aware of the new section 54.314 certification requirements.<sup>12</sup> The Connecticut Department further stated that the loss of two quarters of universal service high-cost support would have a substantial impact on Woodbury, which serves approximately 25,000 access lines and receives approximately \$65,000 per month in federal high-cost universal service support.<sup>13</sup>

## II. DISCUSSION

5. As an initial matter, we note that the Connecticut Department's February 19, 2002 certification does, under the Commission's rules, ensure that rural carriers in Connecticut will be able to receive high-cost support for the third and fourth quarters of calendar year 2002.<sup>14</sup> At issue here is whether or not the Connecticut Department is entitled to a waiver of the October 1, 2001 filing deadline to ensure that rural carriers in Connecticut will also receive high-cost support for the first and second quarters of calendar year 2002.

6. Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown."<sup>15</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>16</sup> The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>17</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.<sup>18</sup>

7. We conclude that special circumstances exist to justify waivers of section 54.314(d)(1) and 54.314(d)(2) of our rules as requested by the Connecticut Department. Specifically, we find that the potential harm that would be suffered by customers of rural carriers

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<sup>10</sup> Letter from Robert J. Murphy, Connecticut Department, to Universal Service Administrative Company, dated December 16, 1997. In its Petition, the Connecticut Department erroneously states that Woodbury was not certified as an ETC before October 1, 2002. Petition at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> States that file their certifications prior to April 1, 2001 are entitled to receive federal high-cost support for rural carriers for the third and fourth quarters of calendar year 2002. See 47 C.F.R. § 54.314 (d)(3).

<sup>15</sup> 47 C.F.R. § 1.3.

<sup>16</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>17</sup> *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>18</sup> *WAIT Radio*, 418 F.2d at 1159.

in Connecticut, as a consequence of the Connecticut Department's failure to timely file its section 54.314 certification before the October 1, 2001 deadline, justifies a waiver in this instance. We note that the potential harm caused by loss of two quarters of annual federal high-cost support is particularly egregious when it affects the only rural carrier in the state of Connecticut, which is likely dependent on high-cost support to serve its customer base. We believe, therefore, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant the Petition and thus provide federal high-cost support to rural eligible telecommunications carriers in Connecticut for the first and second quarters of 2001.

8. While we are, as a general matter, reluctant to grant waivers of Commission rules, especially waivers of the section 54.314 certification requirements, we note that the Connecticut Department has made the necessary certification, albeit untimely. We thus have no reason to believe that rural carriers in the state of Connecticut will use federal high-cost support for the first and second quarters of 2002 in a manner contrary to the direction of section 254 of the Act. Although we are granting the waiver of section 54.314 of our rules and conclude in this order that rural carriers in Connecticut shall be allowed to receive federal high-cost universal service support for the entire calendar year of 2002, we caution the Connecticut Department that, in subsequent program years, it should take steps to ensure that all applicable certifications necessary to secure federal high-cost support are filed with the Commission before the expiration of the applicable filing deadline.

### **III. ORDERING CLAUSE**

9. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 U.S.C. § 1.3, that the Petition for waiver of section 54.314(d)(1) and (2) of the Commission's rules, 47 C.F.R. §§ 54.314(d)(1), (d)(2), filed by the Connecticut Department of Public Utility Control on May 3, 2002, IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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