

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	CC Docket No. 96-45
Puerto Rico Telephone Company)	
)	
Request for Waiver of State)	
Certification Requirements for)	
High-Cost Universal Service Support)	
For Non-Rural Carriers)	

ORDER

Adopted: December 19, 2003

Released: December 19, 2003

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

1. In this Order, we grant the request of the Puerto Rico Telephone Company (PRTC) for a waiver of the state certification requirements for high-cost universal service support in areas served by non-rural carriers.¹ This waiver will allow PRTC to receive federal high-cost universal service support for calendar year 2004, including the first quarter of calendar year 2004. We believe that this waiver is in the public interest and is necessary to ensure that consumers in high-cost areas served by PRTC are not harmed by the Puerto Rico Telecommunications Regulatory Board's (Puerto Rico Board's) inadvertent failure to file the required certification with the Commission prior to October 1, 2003.

I. BACKGROUND

2. Pursuant to section 54.313(d)(3)(i) of the Commission's rules, states are required to file their certifications by October 1, 2003 in order for non-rural local exchange carriers serving high-cost areas in the state to receive support for the first, second, third, and fourth quarters of calendar year 2004.² If a state does not file before October 1, 2003, but files its certification before January 1, 2004, non-rural carriers in that state will receive support for the second, third, and fourth quarters of calendar year 2004.³ The Puerto Rico Board submitted its

¹ *Federal-State Joint Board on Universal Service, Telecommunications Regulatory Board of Puerto Rico, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support, filed December 8, 2003 (PRTC Request).*

² 47 C.F.R. § 54.313(d)(3)(i).

³ *See* 47 C.F.R. § 54.313(d)(3)(ii).

section 54.313 certification on behalf of PRTC on December 8, 2003, and based on this certification PRTC is eligible to receive support beginning with the second quarter of 2004.⁴

3. Concurrent with the Puerto Rico Board's certification filing, PRTC filed a request for waiver of the state certification requirements so that it could receive support for the first quarter of 2004. PRTC asserts that the failure of the Puerto Rico Board to meet the certification deadline was inadvertent and resulted from PRTC's misunderstanding of PRTC's certification status.⁵ Specifically, PRTC states that prior to October 1, 2003, it believed that no further information was required before the Puerto Rico Board would issue its certification letter, and that a "Certification Checklist" on the Universal Service Administrative Company's (USAC's) website incorrectly indicated that the Puerto Rico Board issued a certification for both of PRTC's study areas on September 29, 2003.⁶ PRTC states that once it realized that the USAC website results were in error, it promptly filed with the Puerto Rico Board the information necessary to allow the Board to issue its certification letter.⁷ PRTC argues that granting its waiver request is in the public interest because it ensures that PRTC will receive high-cost support for all of calendar year 2004, noting its belief that it is entitled to approximately \$88 million in Long Term Support (LTS) for 2004.⁸ The Puerto Rico Board filed a letter supporting PRTC's waiver request on December 10, 2003.⁹

II. DISCUSSION

4. The Commission may waive any provision of its rules for good cause shown.¹⁰ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³

⁴ Letter of Phoebe Forsyth Isales, Chair, Puerto Rico Board, to Marlene H. Dortch, Secretary, FCC and Irene Flannery, Universal Service Administrative Company, filed December 8, 2003.

⁵ PRTC Request at 2.

⁶ *Id.* at 2, Exhibit 1 (hard copy of online certification status for PRTC's study areas from <http://www.universalservice.org/hc/checklist/result.asp>).

⁷ *Id.* at 2.

⁸ *Id.* at 2-3. The LTS mechanism, created in 1987, requires local exchange carriers that have left the National Exchange Carrier Association common line pool to make payments into the pool sufficient to allow pool members to charge the nationwide average common line rate of non-pooling carriers.

⁹ Letter from Phoebe Forsyth Isales, Chair, Puerto Rico Board, to Marlene H. Dortch, Secretary, FCC, dated December 10, 2003.

¹⁰ 47 C.F.R. §1.3.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

¹² *WAIT Radio*, 418 F.2d at 1157.

¹³ *Northeast Cellular*, 897 F.2d at 1166. Although section 54.313 requires *states* to certify that an incumbent local exchange carrier will use universal service support for its intended purposes, we believe it is appropriate to consider

5. We conclude that PRTC has shown good cause to grant its petition for a waiver of section 54.313(d)(3)(i) of the Commission's rules. PRTC's misunderstanding of its certification status resulted from an informational error on USAC's web site, which led PRTC to incorrectly believe that its certification status was secured for all of calendar year 2004. PRTC and the Puerto Rico Board made a good-faith effort to file the necessary certification and a corresponding waiver request immediately after discovering the error. These special circumstances warrant deviation from the October 1 deadline set out in the Commission's rules. We note that the potential harm caused by the loss of one quarter of annual federal high-cost support could be harmful to consumers. Moreover, because the Puerto Rico Board has made the necessary certification, albeit untimely, we have no reason to believe that PRTC will use any federal high-cost support that it receives for 2004 in a manner contrary to the direction of section 254 of the Act. We conclude, therefore, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant the waiver request and thus provide federal high-cost support to which PRTC may be entitled to for the entire calendar year of 2004.¹⁴

III. ORDERING CLAUSE

6. 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 54.313(d)(3)(i) of the Commission's rules, 47 C.F.R. § 54.313(d)(3)(i), filed by the Puerto Rico Telephone Company on December 8, 2003, IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Eric Einhorn
Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

this waiver request filed by PRTC, particularly in light of the letter from the Puerto Rico Board, which specifically supports the waiver request filed by PRTC. See *Federal-State Joint Board on Universal Service, Western Wireless Corporation, Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-2364 (Wireline Comp. Bur. 2003).

¹⁴ We note that PRTC has a separate petition pending before the Commission regarding its interpretation of section 54.311(b) of the Commission's rules. Puerto Rico Telephone Company, Petition for Clarification, or in the Alternative, Waiver of Section 54.311(b), Federal-State Joint Board on Universal Service, CC Docket No. 96-45, filed December 8, 2003. Our decision here on PRTC's certification status for calendar year 2004 in no way affects any action the Commission may take regarding that petition.