

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

In the Matter of)
Federal-State Joint Board on)
Universal Service) CC Docket No. 96-45
South Slope Cooperative Telephone Company)
Petition for Waiver of Filing Deadline in)
47 C.F.R. Section 54.307(c))

ORDER

Adopted: September 2, 2004

Released: September 3, 2004

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

I. INTRODUCTION

1. In this Order, we deny a request from South Slope Cooperative Telephone Company (South Slope), an eligible telecommunications carrier (ETC) in Iowa, for a waiver of the July 31, 2003 filing deadline set forth in section 54.307(c) of the Commission’s rules so that it may receive interstate common line support (ICLS) for its competitive local exchange carrier (LEC) operation for the fourth quarter of 2003.1 South Slope provides service both as an incumbent LEC and as a competitive LEC.

II. BACKGROUND

2. Competitive LECs designated as ETCs are eligible to receive ICLS pursuant to section 54.307 of the Commission’s rules.2 In order for an ETC to receive such support, certain information must be filed with the Universal Service Administrative Company (USAC). First, ETCs must file a certification with USAC and the Commission on the date that it first files its line count information and thereafter on June 30 of each year, stating that universal service support will only be used for the provision, maintenance, and upgrading of facilities and services for which such support is intended.3

1South Slope Cooperative Telephone Company, Petition for Waiver of Deadline in 47 C.F.R. § 54.307(c), CC Docket No. 96-45, filed September 22, 2003 (Petition). 47 C.F.R § 54.307(c).

247 C.F.R. § 54.307. ICLS supports interstate common line costs with explicit support that is available to all ETCs. See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, para. 128 (2001) (subsequent history omitted). See also 47 C.F.R. §§ 54.901-904.

347 C.F.R. § 54.904.

Second, ETCs must file with USAC, no later than July 31, September 30, December 30, and March 30 of each year, working loop count data for the previous December 31, March 31, June 30, and September 30, respectively, in order to receive ICLS for those quarterly periods.⁴

3. *South Slope's Petition for Waiver.* On September 22, 2003, South Slope filed a request for waiver of the July 31, 2003 deadline for filing working loop data set forth in section 54.307(c) of the Commission's rules and requests that the Commission accept its September 2, 2003, data submission as timely in order for it to receive ICLS for the fourth quarter 2003.⁵ South Slope contends it missed the July 31, 2003 filing deadline because of its confusion over the applicable deadlines for each universal service support offering.⁶

4. Generally, the Commission's rules may be waived for good cause shown.⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁰ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹

III. DISCUSSION

5. We find that South Slope has not demonstrated that special circumstances warrant a deviation from the filing deadline for working loop data as set forth in section 54.307(c) of the Commission's rules. Because USAC processes such a large amount of data each year, it is necessary to require carriers to meet filing deadlines absent special circumstances. Section 54.307(c) requires that a competitive LEC must submit the data pursuant to section 54.307(b) no later than July 31 of each year in order to receive ICLS for the quarterly period ending the prior December 31.¹² A carrier's confusion regarding the rules does not establish special circumstances that warrant a deviation from the Commission's rules.¹³ It is the responsibility of the ETC to review and understand the rules so it is in a

⁴47 C.F.R. § 54.307(c).

⁵See Petition at 1-2.

⁶See Petition at 2.

⁷47 C.F.R. § 1.3.

⁸*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁹*WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰*Northeast Cellular*, 897 F.2d at 1166.

¹¹*Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹²47 C.F.R. § 54.307(b) and (c).

¹³See e.g., *Application for Review of a Decision by the Wireline Competition Bureau, Information Technology Department State of North Dakota, Bismarck, North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521, 21528, para. 19 (2003); *Request for Review by Gardner Unified School District 231, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-189138, CC Docket Nos. 96-45 and 97-21, 18 FCC Rcd 9709, 9709-10, para. 2 (Wireline Comp. Bur. 2003) (reaffirming that applicants have the burden of meeting filing deadlines to qualify for funding under the Commission's schools and libraries program and reaffirming that applicants are responsible for complying with program rules and procedures). In contrast, in instances where an ETC designation occurred after a line count filing deadline, the Wireline Competition Bureau (Bureau) has granted waiver of that deadline. See *Federal-State Joint Board on Universal Service, RFB Cellular*,

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position to assure that its submissions are filed in a timely manner. Otherwise, ETCs could seek to circumvent the Commission's rules merely by alleging that they misinterpreted or were confused by the rules. In the instant case, South Slope filed its working loop count data more than a month late due to its confusion over the applicable deadlines. We do not find it onerous to deny South Slope three months of ICLS when it missed the deadline due to its own error. We therefore deny South Slope's request for waiver of section 54.307(c).

IV. ORDERING CLAUSE

6. 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 the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by South Slope Cooperative Telephone Company on September 22, 2003 IS DENIED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones
Acting Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

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Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, 17 FCC Rcd 24387, 24391, para. 10 (Wireline Comp. Bur. 2002) (Bureau determining that "it would be inconsistent with the Commission's goal of competitive neutrality and section 254(e) to delay" the receipt of high-cost support because a carrier received its ETC designation after certain line count filing deadlines).