

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

In the Matter of
Federal-State Joint Board on Universal Service
Citizens Communications and Frontier Communications
Petition for Waiver of Section 54.802(a) of the
Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: October 27, 2005

Released: October 27, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by Citizens Communications and Frontier Communications (jointly, Frontier), on behalf of 31 eligible telecommunications carriers (ETCs), for a waiver of the June 30, 2005, filing deadline for interstate access universal service support set forth in section 54.802(a) of the Commission's rules. For the reasons set forth below, we find that Frontier has demonstrated that special circumstances warrant granting this waiver.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving interstate access support (IAS) and high-cost universal service support. Section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." To implement this statutory requirement, the Commission has adopted certification and reporting requirements.

3. Pursuant to section 54.802 of the Commission's rules, an ETC that provides service within an area served by a price cap local exchange carrier (LEC) must file certain data with the Universal

1 Citizens Communications and Frontier Communications, Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver of FCC Rule Section 54.802(a), CC Docket No. 96-45, filed July 8, 2005 (Petition). Subsequently, Citizens filed an ex parte presentation supplementing the Petition. See Letter from Jerry Elliott, Executive Vice President and Chief Financial Officer, Citizens Communications to Thomas Navin, Chief, Wireline Competition Bureau, FCC, CC Docket No. 96-45, filed Aug. 1, 2005 (Supplement). See also 47 C.F.R. § 54.802(a).

2 47 U.S.C. § 254(e).

3 Id.

4 See 47 C.F.R. §§ 54.313, 54.314, 54.809, 54.802(a).

Service Administrative Company (USAC) to receive IAS funding.⁵ Specifically, an ETC must submit line-count data showing separately the number of residential/single-line business lines and multi-business lines it serves within each price cap LEC's study area on a quarterly basis.⁶ Mandatory line-count data are due on the last business day of March, June, September, and December of each year.⁷ USAC uses line-count data filed in December to calculate first quarter support for the following calendar year, line-count data filed in March to calculate second quarter support for the current calendar year, line-count data submitted in June to calculate third quarter support for the current year, and line-count data filed in September to calculate fourth quarter support for the current year.⁸

4. *Frontier's Petition for Waiver.* The 31 Frontier companies that filed the instant petition⁹ are price cap incumbent LECs (ILECs) that have been designated as ETCs in their respective study areas.¹⁰ Therefore, the Frontier companies must file line-count data in accordance with section 54.802(a) of the Commission's rules. Frontier, however, missed the June 30, 2005, deadline for submitting the line-count report reflecting lines served as of March 31, 2005. Frontier did not file the report until July 5, 2005, two business days after the deadline.¹¹ Three days later, on July 8, 2005, Frontier filed this request for waiver of section 54.802(a) of the Commission's rules to permit Frontier to receive IAS for the third quarter of 2005.¹²

5. Frontier contends that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules.¹³ Frontier notes that, without a waiver, it will lose approximately \$9.6 million in IAS funding that is used to provide service to more than 1.4 million customer lines in rural, insular, and high-cost areas of 19 states, including Native American Indian reservations.¹⁴ Frontier argues that the loss of \$9.6 million in IAS funding would be an "excessive penalty" given that the filing was only two business days late and was received in time for USAC to incorporate Frontier's line-count data into its internal funding and reporting calculations.¹⁵ Moreover, Frontier claims that the loss "will have an immediate and significant impact" on Frontier's customers.¹⁶ Specifically, Frontier states that the loss will impair its ability to raise capital that is used to invest in telecommunications and broadband services.¹⁷ Frontier states that, in this case, a corporate reorganization implemented during the two weeks prior to the filing deadline directly affected the employees responsible for the line-count filing, causing

⁵ See 47 C.F.R. § 54.802.

⁶ 47 C.F.R. § 54.802(a).

⁷ *Id.*; see *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel*, 265 F.3d 313 (5th Cir. 2001).

⁸ 47 C.F.R. § 54.802(a).

⁹ The list of Frontier companies making this request can be found at Exh. 1 of the Petition. See Petition at Exh. 1.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² See generally Petition.

¹³ *Id.* at 3-7; 47 C.F.R. § 54.802(a).

¹⁴ Petition at 5; Supplement at 1, 7.

¹⁵ Petition at 5.

¹⁶ Supplement at 2.

¹⁷ *Id.* at 3.

these employees to submit the filing two business days late.¹⁸ Frontier asserts that it otherwise has a “spotless record” of making timely and accurate line-count filings.¹⁹ For these reasons, Frontier contends that “the waiver is supported by considerations of hardship and equity” and that the “public interest will be served by the requested waiver.”²⁰

6. *Waiver Standard.* Generally, the Commission’s rules may be waived for good cause shown.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁴ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²⁵

III. DISCUSSION

7. We find that Frontier has demonstrated that there is good cause to waive section 54.802(a) of the Commission’s rules in order to allow Frontier to receive IAS funding for the third quarter of 2005.²⁶ Because USAC processes a tremendous amount of line-count data each year, it is administratively necessary to require carriers to meet the line-count and certification filing deadlines absent special circumstances.²⁷ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations,²⁸ and to ensure that filings are timely received.²⁹ In this case, however, considerations of hardship and equity – as well as Frontier’s longstanding history of submitting timely data – weigh in favor of granting the requested waiver. Specifically, we conclude that a loss of \$9.6 million in IAS funding due to filing a line-count report two business days late constitutes special circumstances warranting a deviation from the general rule.

8. We find that the loss of \$9.6 million in IAS funding could cause significant hardship in the rural, insular, and high-cost areas served by Frontier. We are concerned that the loss of such a substantial amount of IAS funding could undermine Frontier’s investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. We have granted waivers

¹⁸ Petition at 4.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 7; *see also* Supplement at 8.

²¹ 47 C.F.R. § 1.3.

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁶ 47 C.F.R. § 54.802(a).

²⁷ *Federal-State Joint Board on Universal Service, FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission’s Rules and Regulations*, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

²⁸ *See* 47 C.F.R. § 0.406. *See also* *Richard Joslin, Application for Renewal of Amateur Operator’s License and Vanity Call Sign W7CXW*, Memorandum Opinion and Order, 15 FCC Rcd 23835, 23837, n.19 (PSPWD 2000).

²⁹ *See* 47 C.F.R. § 54.802(a), (c).

of our universal service rules³⁰ in order to “ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.”³¹ Likewise, the requested waiver would enable Frontier to continue uninterrupted its efforts to maintain and promote access to advanced services in its rural, insular, and high-cost areas.

9. Significantly, Frontier’s delay in filing the line-count report was caused by unique circumstances, was brief, and the error was promptly cured and did not create any hardship for USAC or other IAS funding recipients. Frontier acted expeditiously in both filing its data and seeking a waiver of the deadline. These findings are consistent with previous waivers granted. For example, we have granted waivers of the Commission’s data submission rules in cases involving delays of two or more weeks.³² Here, Frontier filed its report only two business days after the deadline. Importantly, Frontier’s swift efforts to submit the report, notify Commission staff of the delay, and file the waiver request ensured that the late filing would not impair the administration of the universal service fund. In fact, USAC was able to incorporate projected line-count data for Frontier into its quarterly calculations.³³

10. In granting this waiver, we rely on Frontier’s commitment to implement new procedures and safeguards to ensure that future filings will be submitted on a timely basis. These measures include, but are not limited to: (1) creating a centralized Regulatory Compliance group to coordinate all regulatory compliance nationwide; (2) establishing multiple systems for tracking compliance matters and alerting staff of compliance deadlines; and (3) co-locating and integrating the regulatory accounting organization, which is responsible for filing the line-count report, with the corporate accounting organization at the corporate headquarters.³⁴ We require Frontier to comply with these commitments.

11. Finally, we conclude that deviation from the general rule under these special circumstances will serve the public interest. Granting the requested waiver will facilitate the continued provision of service, as well as system construction and upgrades in Frontier’s service areas. Accordingly, we find that waiving section 54.802(a) of the Commission’s rules will serve the public interest by preserving and advancing universal service.³⁵

³⁰ See, e.g., *Connecticut Department of Public Utility Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Rural Carriers*, Order, 17 FCC Rcd 24804, 24806, para. 4 (Wireline Comp. Bur. 2002).

³¹ *Smith Bagley, Inc., Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, Order, 16 FCC Rcd 15275, 15277, para. 7 (Common Carrier Bur. 2001).

³² See, e.g., *United States Cellular Corporation, Petition for Waiver of Section 54.307(c) of the Commission’s Rules and Regulations*, Order, 19 FCC Rcd 12418 (Wireline Comp. Bur. 2004); *Smithville Telephone Company, Inc., Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, 19 FCC Rcd 8891 (Wireline Comp. Bur. 2004).

³³ See *Universal Service Administrative Company, Fund Size Projection for the First Quarter 2005* (Nov. 2, 2004) (containing projected data for the relevant timeframe); Petition at 5.

³⁴ Supplement at 8-9.

³⁵ 47 U.S.C. § 254(b).

IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, 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 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by Citizens Communications and Frontier Communications IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau