

**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
)	
Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc.)	
)	
East Ascension Telephone Company, LLC)	
)	
Columbus Telephone Company)	
)	
Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date)	

ORDER

Adopted: November 22, 2005

Released: November 22, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant requests by Alliance Communications Cooperative, Inc. and its subsidiary, Hills Telephone Company, Inc. (jointly, Alliance), East Ascension Telephone Company, LLC (EATEL), and Columbus Telephone Company (Columbus) (collectively, the Petitioners)—incumbent local exchange carriers (LECs) that have been designated as eligible telecommunications carriers (ETCs)—for a waiver of the data submission reporting deadline set forth in section 54.301(b) of the Commission’s rules for local switching support (LSS).¹ We find that the Petitioners have demonstrated that good cause warrants these waivers.

II. BACKGROUND

2. Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS.² Before an incumbent LEC can begin receiving LSS, however, certain data must be filed with the Universal Service Administrative Company (USAC). First, the relevant state commission must file a certification stating that all high-cost support, which includes LSS, received by the incumbent LEC will be used “only for the provision, maintenance, and upgrading of

¹ Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc., Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date To Extent Applicable to Average Schedule Companies, CC Docket No. 96-45, filed May 20, 2004 (Alliance Petition); East Ascension Telephone Company, LLC, Petition for Waiver of the Section 54.301 Local Switching Support Data Submission Reporting Date, CC Docket No. 96-45, filed Apr. 9, 2004 (EATEL Petition); Columbus Telephone Company, Petition for Waiver of Deadline in 47 C.F.R. 54.301(b), CC Docket No. 96-45, filed Nov. 26, 2003 (Columbus Petition); 47 C.F.R. § 54.301(b).

² 47 C.F.R. § 54.301.

facilities and services for which support is intended.”³ Second, the incumbent LEC must file certain data with USAC by October 1 of each year to receive LSS for the following calendar year.⁴

3. *Alliance’s Petition for Waiver.* On May 20, 2004, Alliance filed a request for waiver of the October 1, 2003 annual LSS filing deadline in section 54.301(b) of the Commission’s rules so that it can receive support for the 2004 calendar year.⁵ Alliance contends that it missed the LSS filing deadline because corporate reorganizations and reassignments disrupted its accounting staff in 2003,⁶ and because USAC’s website did not provide adequate or timely notice of the October 1 deadline.⁷ Alliance states that the loss of approximately \$951,804 in LSS for the 2004 calendar year will adversely affect the rates it charges its rural customers and impair its ability to invest in new and upgraded telecommunications infrastructure.⁸ Moreover, Alliance argues that the loss of such support would be an excessive penalty given its inadvertent clerical oversight and the fact that the late filing did not have a significant adverse impact on USAC’s administration of the LSS program.⁹ Alliance therefore claims that its waiver request is supported by good cause.¹⁰

4. *EATEL’s Petition for Waiver.* On April 9, 2004, EATEL filed a request for waiver of the October 1, 2003 LSS filing deadline so that it can receive support for the 2004 calendar year.¹¹ In support of its petition, EATEL notes that it filed the required data only one day late.¹² EATEL further states that the loss of support could force it to adjust its rate structure, curtail network improvements, and delay the availability of advanced services.¹³ Therefore, EATEL argues that strict application of the filing deadline, in this case, would not serve the public interest.¹⁴

5. *Columbus’ Petition for Waiver.* On November 26, 2003, Columbus filed a request for waiver of the October 1, 2002 LSS filing deadline so that it can receive support for the 2003 calendar year.¹⁵ Columbus claims that the late filing occurred due to its confusion about whether the National

³ 47 C.F.R. § 54.313; 47 C.F.R. § 54.314. The certification requirements for non-rural carriers are found in section 54.313 of the Commission’s rules and the certification requirements for rural carriers are found in section 54.314 of the Commission’s rules. *See id.* In instances where carriers are not subject to state jurisdiction, an ETC may self-certify to the Commission and USAC. 47 C.F.R. § 54.313(b); 47 C.F.R. § 54.314(b).

⁴ 47 C.F.R. § 54.301(b); *Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 8891 (Wireline Comp. Bur. 2004) (*Smithville Waiver Order*). *See also* Local Switching Support, Data Collection Form, Cost Company, available at <http://www.universalservice.org/hc/components/lss.asp>; Local Switching Support, Data Collection Form, Average Schedule Company, available at <http://www.universalservice.org/hc/components/lss.asp>.

⁵ *See* Alliance Petition at 2, 16. In the alternative, Alliance requests that the Wireline Competition Bureau (Bureau) issue an order clarifying that Section 54.301 does not clearly impose LSS filing requirements, filing deadlines and late-filing penalties upon ETCs that are average schedule companies, and that USAC has not been delegated authority to adopt and implement such filing requirements. *Id.* at 1-2. Because we grant Alliance’s waiver request, as described herein, we find that it is unnecessary to address Alliance’s alternative request.

⁶ *Id.* at 2, 5-6.

⁷ *Id.*

⁸ *Id.* at 2, 12-13.

⁹ *Id.* 2, 11, 13-14

¹⁰ *Id.* at 16.

¹¹ *See* EATEL Petition at 9.

¹² *Id.* at 5.

¹³ *Id.* at 6, 9.

¹⁴ *Id.*

¹⁵ *See* Columbus Petition at 4.

Exchange Carrier Association (NECA) had filed Columbus' LSS data with USAC.¹⁶ However, Columbus notes that it submitted its 2002 filing immediately after USAC notified Columbus that it had not received Columbus' LSS filing.¹⁷ Finally, Columbus asserts that there is good cause to grant the requested waiver because, without these funds, it likely will not be able to maintain quality service to the public.¹⁸

6. *Waiver Standard.* Generally, the Commission's rules may be waived for good cause shown.¹⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²¹ 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.²² Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²³

III. DISCUSSION

7. We find that good cause exists to waive section 54.301(b) of the Commission's rules so that Alliance and EATEL can receive LSS for the 2004 calendar year and so that Columbus can receive LSS for the 2003 calendar year. It is the responsibility of ETCs to familiarize themselves with any applicable regulations,²⁴ and to ensure that filings are timely received.²⁵ With respect to these Petitioners, however, we find that strict compliance with the rules is inconsistent with the public interest and, therefore, considerations of hardship weigh in favor of granting the requested waiver.

¹⁶ At the end of the third quarter of 2002, Columbus changed its classification from average schedule-based settlements to cost-based settlements for interstate access charges. *See* Columbus Petition at 1. Average schedule companies are incumbent LECs that receive compensation for use of their interstate telecommunications services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost company that is representative of average schedule companies. 47 C.F.R. § 69.606(a). Cost-based companies receive compensation based on their actual costs. *See generally* 47 C.F.R. Part 69. Because average schedule companies do not receive LSS based on actual costs, NECA calculates the LSS amounts from the LSS average schedule formula and submits the data to USAC on behalf of average schedule companies that are in the Traffic Sensitive Pool. *See* 47 C.F.R. § 69.606(f). When Columbus changed its classification from an average schedule company to a cost-based company, it should have begun to file its own LSS data with USAC. *See* 47 C.F.R. § 54.301.

¹⁷ *See* Columbus Petition at 3.

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²² *Northeast Cellular*, 897 F.2d at 1166.

²³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁴ *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); *South Slope Cooperative Telephone Co., Petition for Waiver of Filing Deadline in 47 C.F.R. Sect. 54.307(c)*, Order, 19 FCC Rcd 17493, 17494-95, para. 5 (2004).

²⁵ *See* 47 C.F.R. § 54.301.

8. We conclude that denial of the LSS could result in substantial hardship in the areas served by the Petitioners. Unlike the requirements for other types of universal service support,²⁶ carriers must file data annually in order to receive LSS.²⁷ Therefore, if a carrier misses the annual deadline, it will not receive funding for an entire year. As such, the loss of LSS has a much greater impact on a small carrier's capacity to ensure that consumers have and maintain access to service at just, reasonable, and affordable rates than the loss of other types of universal service support. Indeed, the loss of LSS for an entire calendar year in these instances may have a significant effect on the rates that Petitioners charge consumers.²⁸ Likewise, the loss of LSS may adversely affect Petitioners' ability to continue to provide quality service to consumers.²⁹ For these reasons, we have previously waived Section 54.301(b) of the Commission's rules to serve the public interest.³⁰

9. Quality service available at just, reasonable and affordable rates is a fundamental principal of the Commission's universal service policies.³¹ We find that denying LSS for an entire calendar year to these small LECs would undermine this goal.³² Thus, we conclude that waiver of Section 54.301 of the Commission's rules is in the public interest.

IV. ORDERING CLAUSE

10. 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 petitions for waiver of section 54.301 of the Commission's rules, filed by Alliance Communications Cooperative, Inc. and its subsidiary, Hills Telephone Company, Inc., East Ascension Telephone Company, LLC, and Columbus Telephone Company, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

²⁶ In most instances, carriers can or must file line counts and certifications on a quarterly basis. *See, e.g.*, 47 C.F.R. Part 54, Subpart J (Interstate Access Universal Service Support Mechanism) and Subpart K (Interstate Common Line Support Mechanism for Rate-of-Return Carriers).

²⁷ *See* 47 C.F.R. § 54.301.

²⁸ *See* Alliance Petition, 12-13; EATEL Petition at 6, 9. The Petitioners are subject to section 61.39 and file tariffs in odd numbered years to be effective for two years. They filed in 2005 based on costs for 2003-04. To the extent that any Petitioner included in its 2003-04 costs supporting its 2005 tariff filing any amounts calculated pursuant to section 54.301, the Petitioner must submit revised cost support materials excluding such amounts and adjust its interstate access rates accordingly as a condition of this waiver. Before filing, Petitioners are encouraged to contact the Bureau's Pricing Policy Division to discuss the procedures to be followed.

²⁹ *See* Alliance Petition, 12-13; EATEL Petition at 6, 9; Columbus Petition at 3.

³⁰ *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 6.

³¹ *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8839, para. 112 (1997) (*First Report and Order*) ("We recognize affordable rates are essential to inducing consumers to subscribe to telephone service, and also that increasing the number of people connected to the network increases the value of the telecommunications network."); 47 U.S.C. § 254(b).

³² *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 6.