

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

In the Matter of
Federal-State Joint Board on Universal Service
FiberNet, LLC
Petition for Waiver of FCC Rule Section 54.307(c)(4)
CC Docket No. 96-45

ORDER

Adopted: December 22, 2005

Released: December 23, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request of FiberNet, LLC (FiberNet) – a competitive local exchange carrier (CLEC) serving areas of West Virginia – for a waiver of the data submission reporting deadline set forth in section 54.307 of the Commission’s rules. We find that FiberNet has demonstrated that good cause warrants 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 eligible telecommunications carrier (ETC), other requirements also must be satisfied before a carrier can begin receiving 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 annual certification and data filing requirements. Pursuant to section 54.307 of the Commission’s rules, to receive high-cost support, CLECs designated as ETCs must file line count data with the Universal Service Administrative Company (USAC).

3. On April 11, 2005, FiberNet filed a petition for waiver of the March 30, 2005, filing

1 FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4), CC Docket No. 96-45, filed Apr. 11, 2005 (FiberNet Petition); 47 C.F.R. § 54.307.

2 47 U.S.C. § 254(e). Section 214(e) of the Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

3 47 U.S.C. § 254(e).

4 See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802, 54.809, 54.903.

5 See 47 C.F.R. § 54.307.

deadline in section 54.307(c)(4) of the Commission's rules.<sup>6</sup> On April 6, 2005, FiberNet submitted the line count data to USAC.<sup>7</sup> FiberNet states that the employee responsible for compiling and submitting the data resigned about the time the data was due, causing FiberNet to miss the March 30 deadline.<sup>8</sup> FiberNet argues that no other person or entity will be prejudiced by the waiver, and customers in West Virginia will be harmed if the waiver is not granted.<sup>9</sup>

4. *Waiver Standard.* Generally, the Commission's rules may be waived for good cause shown.<sup>10</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>11</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>12</sup> 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.<sup>13</sup> Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>14</sup>

### III. DISCUSSION

5. We find that the petitioners have demonstrated that there is good cause to waive section 54.307(c) of the Commission's rules in order to allow receipt of universal service high-cost support. 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.<sup>15</sup> Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations,<sup>16</sup> and to ensure that filings are timely received.<sup>17</sup> In this case, however, considerations of hardship and equity – as well as FiberNet's history of submitting timely data – weigh in favor of granting the requested waiver.

6. Specifically, FiberNet'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 funding recipients. FiberNet's March 30 data was late due to its employee resigning, a one-time occurrence. FiberNet acted expeditiously in both filing its data and seeking a waiver of the deadline.

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<sup>6</sup> See FiberNet Petition at 1.

<sup>7</sup> FiberNet Petition at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3.

<sup>10</sup> 47 C.F.R. § 1.3.

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>15</sup> *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-2829, para. 7 (Wireline Comp. Bur. 2005) (*Citizens Order*).

<sup>16</sup> See 47 C.F.R. § 0.406. See also *South Slope Cooperative Telephone Co.*, Petition for Waiver of Filing Deadline in 47 C.F.R. Sect. 54.307(c), CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494-95 (Wireline Comp. Bur. 2004); *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).

<sup>17</sup> See 47 C.F.R. § 54.307(c).

FiberNet filed its line count data within five business days and filed its waiver request within seven business days.<sup>18</sup> Importantly, FiberNet's 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.

7. In addition, we find that the loss of universal service support could cause significant hardship in the rural, insular, and high-cost areas served by FiberNet. The loss of funding could undermine FiberNet's investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. We have granted waivers of our universal service rules 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."<sup>19</sup> Likewise, the requested waiver would enable FiberNet to continue uninterrupted its efforts to maintain and promote access to advanced services in its rural, insular, and high-cost areas. Therefore, we conclude that deviation from the general rule under these special circumstances will serve the public interest. Accordingly, we find that waiving section 54.307(c) of the Commission's rules will serve the public interest by preserving and advancing universal service.<sup>20</sup>

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Petition for Waiver of FCC Rule Section 54.307 filed by FiberNet, LLC, on April 11, 2005, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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<sup>18</sup> *Cf.*, *Citizens Order*, para. 9 (2005) (two days late).

<sup>19</sup> *See, e.g., Connecticut Department of Public Utility Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Rural Carriers*, CC Docket No. 96-45, Order, 17 FCC Rcd 24808, 24806, para. 4 (Wireline Comp. Bur. 2002); *Smith Bagley, Inc., Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 16 FCC Rcd 15275, 15277, para. 7 (Common Carrier Bur. 2001).

<sup>20</sup> 47 U.S.C. § 254(b).