

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

In the Matter of
Federal-State Joint Board on Universal Service
Cellular South Licenses, Inc.
Petition for Waiver of Section 54.802(a) of the
Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: August 14, 2006

Released: August 14, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from Cellular South Licenses, Inc. (Cellular South), an eligible telecommunications carrier (ETC), for a waiver of the December 31, 2003, filing deadline for interstate access universal service support set forth in section 54.802(a) of the Commission's rules. We find that Cellular South has demonstrated that special circumstances warrant 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 annual certification requirements.

3. Pursuant to section 54.809 of the Commission's rules, to receive IAS, an ETC must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all IAS received by such carriers will be used "only for the provision, maintenance, and

1 Cellular South Licenses, Inc., Petition for Waiver of Section 54.802 of the Commission's Rules, CC Docket No. 96-45, filed Feb. 10, 2004 (Cellular South Petition). Subsequently, Cellular South filed a supplement to its petition on June 24, 2004. Cellular South Licenses, Inc., Supplement to Petition for Waiver of Section 54.802 of the Commission's Rules, CC Docket No. 96-45, filed June 24, 2004 (Cellular South Supplement).

2 47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions shall designate carriers as ETCs. See 47 U.S.C. § 214(e).

3 47 U.S.C. § 254(e).

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

upgrading of facilities and services for which support is intended.”⁵ A carrier’s certification must be filed on the date the carrier first files its line count data information with USAC pursuant to section 54.809 of the Commission’s rules, and thereafter on June 30 of each year.⁶ In addition to complying with the certification requirement, an ETC that is providing service within an area served by a price cap local exchange carrier must file certain data with USAC before interstate access support can begin to flow.⁷ Specifically, an ETC must submit line count data showing separately the number of residential/single-line business and multi-business lines it serves within each price cap local exchange carrier’s study area on a quarterly basis.⁸ Mandatory line count data are due on the last business day of March, June, September, and December of each year.⁹ 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.¹⁰

4. Cellular South’s Petition for Waiver. On December 18, 2001, the Mississippi Public Service Commission designated Cellular South as an ETC in areas served by non-rural local exchange carriers in Mississippi.¹¹ On December 23, 2003, Cellular South sent, via overnight mail, its line count filings for Alabama and Mississippi to USAC.¹² On January 14, 2004, USAC informed Cellular South that it had not received Cellular South’s December 31, 2003 interstate access line count filing for Mississippi.¹³ Cellular South immediately faxed a copy of the filing to USAC.¹⁴ However, USAC staff informed Cellular South that the filing would be recorded as late, because it was received on January 14, 2004, fourteen days after the applicable filing deadline.¹⁵ On February 10, 2004, Cellular South filed a petition for waiver of section 54.802(a) of the Commission’s rules to permit Cellular South to receive IAS for the three-month period covered by its December 31, 2003 IAS filing for the state of Mississippi.¹⁶

⁵ 47 C.F.R. § 54.809(a).

⁶ 47 C.F.R. §54.809(c).

⁷ See 47 C.F.R. § 54.802.

⁸ 47 C.F.R. § 54.802(a).

⁹ *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). We note that, on June 24, 2005, the annual certification and line count filing deadline requirements changed to a modified quarterly certification schedule. See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6412, para. 94 (2005). This new rule allows carriers that file after the June 30 annual deadline to receive interstate access support in the second calendar quarter after the certification is filed. *Id.*

¹⁰ 47 C.F.R. § 54.802(a).

¹¹ See *Order Designating Cellular South Licenses, Inc. an Eligible Telecommunications Carrier*, Docket No. 01-UA-0451 (Miss. Public Service Comm’n, Dec. 18, 2001).

¹² See Cellular South Petition at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Cellular South Petition.

5. Cellular South contends that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules.¹⁷ Cellular South believed it had submitted its interstate access line count data for Mississippi to USAC on December 23, 2003 along with its other filings until it received notification from USAC on January 14, 2004 that its interstate access line count filing had not been received.¹⁸ Further, Cellular South argues that it has a record of timely and accurate line count filings.¹⁹ Therefore, Cellular South contends that it would be unfair to deny it three months of IAS because its line count filing was received by USAC fourteen days late.²⁰ Cellular South further argues that granting its waiver request will serve the public interest because, absent the requested waiver, its support will be interrupted, which may delay the construction of planned system upgrades and deployment of facilities necessary to provide service to the communities that it serves.²¹

6. On June 24, 2004, Cellular South filed a supplement to its petition.²² In its supplement, Cellular South contends that USAC had previously honored requests by Cellular South to provide date-stamped copies of each of Cellular South's filings upon receipt.²³ However, in this instance, USAC's new processing contractor failed to honor this request for the December 31 deadline.²⁴ Therefore, Cellular South argues that, had USAC complied with its request for date-stamped copies of its filings, Cellular South would have been able to correct the error in time to meet the December 31 filing deadline.²⁵ Cellular South also contends that its prior record of timely and accurate line count filings coupled with USAC's change in contractors may indicate that the error occurred during USAC's intake process, not during Cellular South's submission process.²⁶ Lastly, Cellular South claims that it had not received notice regarding the sanctions for late filings.²⁷ Therefore, Cellular South argues that failure to grant the waiver would also result in a violation of due process.²⁸

7. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.²⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³¹ Waiver of the Commission's rules is therefore appropriate only if special

¹⁷ *Id.* at 1, 3; 47 C.F.R. § 54.802(a).

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 4.

²² See Cellular South Supplement.

²³ *Id.* at 2.

²⁴ *Id.* at 2. According to the attorney responsible for preparing and filing Cellular South's line count data, until December 2003, when USAC changed line count processing vendors, USAC had always returned stamped-receipt copies of all filings within the first seven to ten days following a line count submission. See Cellular South Supplement, Exhibit A, Affidavit of B. Lynn F. Ratnavale, Esq. (Ratnavale Affidavit), para. 5.

²⁵ *Id.* at 2-3.

²⁶ *Id.* at 4-6.

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ 47 C.F.R. § 1.3.

³⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.³² Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.³³

III. DISCUSSION

8. We find that Cellular South has demonstrated that special circumstances warrant a waiver of section 54.802(a) of the Commission's rules in order to allow Cellular South to receive universal service IAS for the period in question.³⁴ Because USAC processes a tremendous amount of line count data each year, it is administratively necessary to require carriers to meet the line count filing deadline absent special circumstances.³⁵ While we recognize that some effort is necessary to meet the line count and certification filing deadlines, the burdens associated with compiling, filing, and submitting line count data or certifications do not by themselves establish special circumstances that warrant a deviation from the Commission's rules.³⁶ We emphasize it is the responsibility of the ETC to ensure that its filings are timely received, regardless of the time or method of their mailing.

9. We find here that Cellular South acted reasonably and in good faith in its attempts to ensure that its filings were received by the deadline. The record shows that Cellular South submitted its IAS data to USAC eight days prior to the December 31 due date.³⁷ When it filed its data with USAC, Cellular South requested that a date-stamped copy be returned.³⁸ Although USAC received the package,³⁹ Cellular South did not receive a date-stamped copy of its filings in return.⁴⁰ Whether Cellular South neglected to include the filing in the package or USAC misplaced the filing once it was received, if a date-stamped copy of the filings had been returned as requested, Cellular South could have discovered its error and filed on time. Furthermore, once Cellular South was alerted to its missed deadline, it immediately remedied the oversight, faxing its data to USAC only two weeks late.⁴¹ Therefore, we find

³² *Northeast Cellular*, 897 F.2d at 1166.

³³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

³⁴ 47 C.F.R. § 54.802(a).

³⁵ *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, CC Docket No. 96-45, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

³⁶ *Id.*; cf. *Federal-State Joint Board on Universal Service, RFB Cellular, 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) (granting waiver of line count filing deadline where ETC designation occurred after the filing deadline).

³⁷ Cellular South Supplement at 1.

³⁸ Cellular South Supplement at 2.

³⁹ Cellular South Supplement, Exhibit B, Affidavit of Steven M. Chernoff, Esq., para. 6.

⁴⁰ Cellular South Supplement at 2. *See also*, Ratnavale Affidavit, paras. 5-6.

⁴¹ Cellular South Petition at 2. Also, we note that last summer, the Commission released a Notice of Proposed Rulemaking seeking comment on ways to improve the management, administration, and oversight of the Universal Service Fund (USF). *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Lifeline and Link-Up*, WC Docket No. 03-109, *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*USF Administration NPRM*). Among other issues, the Commission sought comment on filing deadlines. *See id.* at 11328-30, paras. 47-51.

that the waiver requested by Cellular South should be granted. We emphasize that it is each carrier's responsibility to ensure that Universal Service Fund (USF) line count filings are *received* by the due date in the appropriate places, regardless of the time or method of filing. Given the many options that are now available for filing, we doubt that circumstances such as those described by this petitioner will be considered "special circumstances" in the future.⁴²

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 petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by Cellular South Licenses, Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

⁴² USAC has updated procedures to allow carriers to file by email or facsimile. Carriers now have many options by which to file, including U.S. mail, other sources of commercial delivery, facsimile, and email, and we encourage them to use any and all methods they deem necessary to ensure their filings are timely received. For instance, all carriers receiving funding from the high-cost universal support mechanism are encouraged to make their filings vial email at hcfilings@HCLI.universalservice.org to avoid future filing delays. Same day filings can be made electronically. Additional information regarding USAC's filing requirements and deadlines can be found at <http://www.universalservice.org/hc/tools/filing-tool/default.aspx>.