

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5–Kidder Limited Partnership; and Bismarck MSA Limited Partnership)	CC Docket No. 96-45
)	
Petition for Waiver of Section 54.307 of the Commission’s Rules)	
)	

ORDER

Adopted: August 14, 2006

Released: August 14, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the requests of Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5–Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, the Partnerships or Petitioners) – designated as competitive eligible telecommunications carriers (ETCs) for certain service areas within North Dakota – for a waiver of the September 30, 2004 data submission reporting deadline set forth in section 54.307(c) of the Commission’s rules.¹ We find that the Partnerships have 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

¹ Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership, Petition for Waiver of Section 54.307 of the Commission’s Rules, CC Docket No. 96-45, filed July 29, 2005 (Petition); Reply Comments of Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership, CC Docket No. 96-45, filed Dec. 9, 2005. *See also* 47 C.F.R. § 54.307.

specific Federal universal service support.”² Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. Section 254(e) states that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³ To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.⁴ Pursuant to section 54.307 of the Commission’s rules, a competitive ETC must file with the Universal Service Administrative Company (USAC) no later than July 31, September 30, December 30, and March 30 of each year, working line count data for the previous December 31, March 31, June 30 and September 30, respectively, in order to receive high-cost support for those time periods.⁵

3. On February 25, 2004, the Partnerships were each designated as competitive ETCs for certain service areas within the state of North Dakota.⁶ The Partnerships hired GVNW Consulting, Inc. (GVNW) to prepare and file their quarterly line reports.⁷ Prior to the September 30 filing deadline, the Partnerships submitted their line count data to GVNW for the first and second quarters of 2004. GVNW completed and signed the line count report on or before September 29, 2004.⁸ Due to an oversight, however, GVNW did not tender the completed report for delivery on September 30, 2004.⁹ USAC received the package at 9:34 a.m. on October 1, 2004, the morning after the deadline.¹⁰ On July 29, 2005, the Partnerships filed a petition for waiver of the September 30, 2004 filing deadline in section 54.307(c) of the Commission’s rules.¹¹ The Partnerships argue that the loss of high-cost universal service support will inhibit and delay their ability to increase access to telecommunications services in North Dakota, and hence, that the waiver is in the public interest.¹²

4. According to the Partnerships, they had “no reason to suspect that their line count filings had not been timely filed.”¹³ Accordingly, the Partnerships did not discover the late filing until February 2005, and it was not until June 2005 that GVNW, after conducting an internal investigation, informed the Partnerships that the reports were completed but not delivered in time.¹⁴ The Partnerships argue that the consulting manager, who is no longer with GVNW, was preoccupied with work-related and personal responsibilities during the months leading up to September 30, causing him to be away from the office for substantial periods of time and preventing GVNW from being able to file the report sooner.¹⁵ As a result of the oversight, GVNW has modified its internal practices and procedures.¹⁶ The Partnerships

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.

⁶ See Petition at 6.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ *Id.* at 17.

¹² *Id.* at 14.

¹³ See *id.* at 8.

¹⁴ *Id.*

¹⁵ *Id.* at 15-16.

¹⁶ *Id.* at 9.

emphasize that USAC received the data “only a few working hours after the filing deadline.”¹⁷

5. Waiver Standard. Generally, the Commission’s rules may be waived for good cause shown.¹⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ 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.²¹ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²²

III. DISCUSSION

6. 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 the Petitioners to receive high-cost universal service support for the months of January through March 2005. We find that the primary cause of the Partnerships’ filing delay was an unusual and unforeseeable occurrence attributable to a third party, and we therefore grant their requested waiver of the Commission’s rule.

7. While we emphasize to all carriers the importance of strict compliance with filing deadlines to the efficient and orderly administration of the Universal Service Fund (USF), we find here that the Partnerships acted reasonably and in good faith in their attempts to ensure that their filing was received by the deadline. The Commission has found that it generally does not grant waivers based on the failure of third-parties,²³ Here, however, the Partnerships could not have foreseen that GVNW would submit their filing after the deadline. Most importantly, the Partnerships’ filing arrived only one day late.²⁴ In addition, no other party was prejudiced due to the late filing, which was received the next business day following the deadline.²⁵ Therefore, we find that in this case the late filing did not impair

¹⁷ See *id.* at 6, 15, 16.

¹⁸ 47 C.F.R. § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²¹ *Northeast Cellular*, 897 F.2d at 1166.

²² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²³ See *Mary Ann Salvatoriello*, FCC 91-243, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 23 (1991) (“[A]lthough these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated delays”) (quoting *FCC Overrules Caldwell Television Associates, Ltd.*, FCC 85-534, Public Notice, 58 RR2d 1706, 1707 (1985)).

²⁴ See Petition at 8. See also *Benton/Linn Wireless, LLC*, Petition for Waiver of Section 54.307(c) of the Commission’s Rules; *Highland Cellular, Inc.*, Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission’s Rules; *Louisa Communications, LLC*, Petition for Waiver of Section 54.802(a) of the Commission’s Rules; *Nebraska Technology & Telecommunications* Petition for Waiver of Section 54.802(a) of the Commission’s Rules; *Northeast Iowa Telephone Company* Petition for Waiver of Section 54.307(c) of the Commission’s Rules; *United States Cellular Corporation* Petition for Waiver of Section 54.307(c) of the Commission’s Rules; *Unity Telephone Company d/b/a UniTel, Inc.*, Petition for Waiver of Section 54.904(d) of the Commission’s Rules; *Wapsi Wireless, LLC*, Petition for Waiver of Section 54.307(c) of the Commission’s Rules, CC Docket No. 96-45, Order, 20 FCC Rcd 19212 (Wireline Comp. Bur. 2005) (*Benton/Linn Wireless Order*) (one to eight days late).

²⁵ See *Mary Ann Salvatoriello*, FCC 91-243, Memorandum Opinion and Order, 6 FCC Rcd 4705, paras. 2-4. In that case, the subject applications were dismissed under the Commission’s particular “hard look” approach for processing of applications for commercial FM facilities. See *id.* at paras. 2-3.

the administration of the USF. Furthermore, GVNW has taken steps to ensure that it will not file late in the future.²⁶ As such, we grant the Partnerships' petition for waiver of section 54.307(c).

8. Nevertheless, we remind carriers that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time or method of their filing. 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 via email at hcfilings@HCLI.universalservice.org to avoid future filing delays. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>.

IV. ORDERING CLAUSES

9. 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 Section 54.307 of the Commission's Rules filed by Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership on July 29, 2005, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

²⁶ Petition at 9-10. *See Benton/Linn Wireless Order* at 19218, para. 12 (carriers took steps to ensure that they would not file late in the future).