

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:
Federal-State Joint Board on
Universal Service
Buggs Island Telephone Cooperative
Petition for Waiver of Deadline in 47 C.F.R. §§
54.313, 54.314
Pembroke Telephone Cooperative
Petition for Waiver of Section 54.314(d)(1) 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 the requests of Buggs Island Telephone Cooperative (Buggs Island), a rural incumbent local exchange carrier (LEC), and Pembroke Telephone Cooperative (Pembroke), an eligible telecommunications carrier (ETC), for waivers of the annual certification deadline set forth in section 54.314 of the Commission's rules. We find that Buggs Island and Pembroke have demonstrated that good cause warrant these waivers.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934 (the Act), as amended, limits the receipt of universal service support to ETCs designated under section 214(e) of the Act. Section 54.314 of the Commission's rules requires those rural incumbent LECs not subject to the jurisdiction of a state, or ETCs not subject to the jurisdiction of a state serving lines in the service area of a rural incumbent LEC, to file an annual certification with both the Commission and the Universal Service Administrative

1 Buggs Island Telephone Cooperative, Petition for Waiver of Deadline in 47 C.F.R. §§ 54.313, 54.314, CC Docket No. 96-45, filed Oct. 18, 2005 (Buggs Island Petition); Pembroke Telephone Cooperative Petition for Waiver, CC Docket No. 96-45, filed October 31, 2005 (Pembroke Petition). See also 47 C.F.R. § 54.314. Section 54.313 applies only to non-rural carriers. 47 C.F.R. § 54.313. Therefore, we treat Buggs Island's petition as a request for waiver of only the deadline in section 54.314.

2 47 U.S.C. § 254(e). See also 47 U.S.C. § 214(e).

Company (USAC) in order to receive high-cost support.<sup>3</sup> USAC must receive the carrier's certification by October 1 of each year in order for the carrier to receive funds for the following calendar year.<sup>4</sup>

3. Buggs Island Petition for Waiver. On October 18, 2005, Buggs Island filed a petition for waiver of the October 1, 2005, filing deadline in section 54.314 of the Commission's rules.<sup>5</sup> As a rural incumbent LEC not subject to the jurisdiction of a state, Buggs Island must submit the certification required by section 54.314 itself.<sup>6</sup> On September 29, 2005, Buggs Island mailed the filing via certified mail with the U.S. Postal Service, and USAC received the certification on Monday, October 3, 2005.<sup>7</sup> Buggs Island interpreted the Commission's rules to mean that the submission only needed to be postmarked by October 1, rather than received by USAC by October 1.<sup>8</sup> Moreover, Buggs Island argues that an interruption in its high-cost support for an entire quarter would not serve the public interest.<sup>9</sup>

4. Pembroke's Petition for Waiver. On August 23, 2005, Pembroke received a reminder from the National Exchange Carrier Association (NECA) that its rural use certification was required to be filed with USAC no later than October 1, 2005.<sup>10</sup> The certification was completed and signed by Pembroke's president on September 28, 2005, and mailed via certified mail, return receipt on September 29, 2005.<sup>11</sup> The certified mailing was signed and delivered to USAC on October 3, 2005 and to the FCC on October 4, 2005.<sup>12</sup> It was not until October 10, 2005 that Pembroke was alerted, by its NECA representative, that its annual certification was not posted on USAC's website.<sup>13</sup> Pembroke seeks a waiver because it did not understand that the submission was required to be received by USAC by the due date, instead of mailed by the due date.<sup>14</sup>

5. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.<sup>15</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>16</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an

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<sup>3</sup> 47 C.F.R. § 54.314(c).

<sup>4</sup> 47 C.F.R. § 54.314(d)(1).

<sup>5</sup> Buggs Island Petition at 1.

<sup>6</sup> See 47 C.F.R. § 54.314. See also Buggs Island Petition at 1; Va. Code Ann. § 56.502 (2006).

<sup>7</sup> Buggs Island Petition at 1.

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

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Pembroke Petition at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

<sup>15</sup> 47 C.F.R. § 1.3.

<sup>16</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

individual basis.<sup>17</sup> 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.<sup>18</sup> Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>19</sup>

### III. DISCUSSION

6. We grant the petitions of Buggs Island and Pembroke. Section 1.4 of the Commission's rules details the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission.<sup>20</sup> While section 54.314 establishes October 1 each year as the deadline for line count information filings, computation of time using section 1.4 is still necessary because the deadline is subject to change on a yearly basis as a recurring annual deadline.<sup>21</sup> Section 1.4(j) of the Commission's rules provides that if the filing date falls on a "holiday," the document shall be filed on the next business day.<sup>22</sup> In 2005, the October 1 deadline fell on a Saturday, which is considered a "holiday" under the Commission's rules.<sup>23</sup> In this case, the next business day was Monday, October 3, 2005. As such, in accordance with Commission rules, USAC should have deemed the certifications of Buggs Island and Pembroke filed on Monday, October 3, 2005, as timely filed.<sup>24</sup> We direct USAC to implement the conclusions in this Order by disbursing first quarter 2005 funds to Buggs Island and Pembroke.<sup>25</sup>

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<sup>17</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>20</sup> 47 C.F.R. § 1.4.

<sup>21</sup> See, e.g., *Wireline Competition Bureau Reminds Licensees of Annual Employment Report Due Date*, Public Notice, 19 FCC Rcd. 8136, n.1 (2004); *FCC Announces Release of FCC Form 477 (Local Competition and Broadband Reporting Form) for the September 1, 2003 Filing*, Public Notice, 18 FCC Rcd. 12865, n.1 (2003); *FCC Announces Release of FCC Form 477 (Local Competition and Broadband Reporting Form) for the March 1, 2003 Filing*, Public Notice, 18 FCC Rcd 431, para. 2, n.1 (2003).

<sup>22</sup> 47 C.F.R. § 1.4(j). We therefore distinguish rule 54.314 from rules that provide the exact filing date. See, e.g., *Johnson Broadcasting, Inc. v. DirectTV, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 21329, 21332, para. 9 (2001); *Johnson Broadcasting of Dallas v. DirectTV, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 886, 889, para. 9 (2002) (finding by Cable Services Bureau that section 1.4 of the Commission's rules did not apply since the regulation specified the exact filing date and this filing was a one-time occurrence).

<sup>23</sup> 47 C.F.R. § 1.4(e)(1).

<sup>24</sup> USAC typically posts these deadlines on its website at [www.universalservice.org](http://www.universalservice.org). It makes no difference if Buggs Island had notice of a deadline that was different than the one established by the Commission's rules, which provide specific guidance on calculating the deadline.

<sup>25</sup> 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

**IV. ORDERING CLAUSE**

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Petition for Waiver of Deadline in 47 C.F.R. §§ 54.313, 54.314 filed by Buggs Island Telephone Cooperative on October 18, 2005, and the Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules filed by Pembroke Telephone Cooperative on October 31, 2005, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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Rulemaking, 20 FCC Rcd 11308 (2005). Among other issues, the Commission sought comment on filing deadlines. *See id.* at 11328-30, paras. 47-51.