

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

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

ORDER

Adopted: September 12, 2006

Released: September 12, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by Verizon Communications Inc. (Verizon), a price cap local exchange carrier (LEC), for a waiver of the June 30, 2006 filing deadline for receipt of interstate access universal service support (IAS) set forth in section 54.802(a) of the Commission's rules.¹ For the reasons set forth below, we find that Verizon has demonstrated that good cause warrants granting 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."² 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 various certification and data filing requirements.⁴

3. Pursuant to section 54.802 of the Commission's rules, a price cap LEC must file certain data with the Universal Service Administrative Company (USAC) to receive IAS funding.⁵ Specifically, a price cap LEC must submit line count data showing separately the number of residential/single-line business lines and multi-line business lines within its study area on a quarterly basis.⁶ Mandatory line

¹ Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the FCC's Rules, CC Docket No. 96-45, filed July 6, 2006 (Petition). *See also* 47 C.F.R. § 54.802(a). The Verizon companies on behalf of whom Verizon filed the petition are the regulated, wholly owned subsidiaries of Verizon Communications Inc. *See* Petition at 1 n.1. *See* 47 C.F.R. § 54.802(a).

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ *See* 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802(a), 54.809, 54.903, 54.904.

⁵ *See* 47 C.F.R. § 54.802.

⁶ 47 C.F.R. §§ 54.802(a), (b).

count data are due on the last business day of March, June, September, and December of each year.⁷ 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.⁸

4. Verizon's Petition for Waiver. On July 6, 2006, Verizon filed a request for waiver of section 54.802(a) of the Commission's rules to permit Verizon to receive IAS for the third quarter of 2006.⁹ Verizon missed the June 30, 2006 deadline for submitting the line count report reflecting lines served as of March 31, 2006, as a result of a significant departmental reorganization directly affecting the employees responsible for universal service filings.¹⁰ On July 5, 2006, Verizon attempted to file the report, two business days after the deadline.¹¹ USAC informed Verizon, however, that USAC could not accept the report unless the Wireline Competition Bureau waives section 54.802(a).¹²

5. Verizon contends that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules.¹³ According to Verizon, grant of the waiver will serve the public interest because IAS funding based on the line count data serves a vitally important role in assuring affordable telephone service.¹⁴ Verizon asserts that this was the first time that it has missed the relevant line count data filing date since the quarterly filing requirements were instituted.¹⁵ Verizon includes a declaration by one of its vice presidents asserting that it is revising its internal procedures in order to assure that it will comply with future filing deadlines by making several employees, including a senior manager, responsible for assuring the filings are timely submitted.¹⁶ Finally, Verizon argues that the facts asserted in its Petition are virtually identical to those underlying the Wireline Competition Bureau's grant of a petition by Citizens Communications and Frontier Communications.¹⁷

6. 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

⁷ 47 C.F.R. § 54.802(a). See also *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) (*CALLS Order*).

⁸ *CALLS Order*, 15 FCC Rcd at 13061, para. 230.

⁹ See Petition at 6.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3-4.

¹⁴ See *id.* at 1-2, 4-5 (citing *CALLS Order*).

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 3. See also *id.*, Declaration of Patrick Garzillo (*Garzillo Declaration*), para. 6. Mr. Garzillo notes that he will be the senior manager responsible for assuring accurate and timely filing of line count data. *Id.*

¹⁷ Petition at 2, 5-6; see *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005) (*Citizens/Frontier Waiver Order*). Citizens/Frontier filed its June 30, 2005, IAS line count on July 5, 2005, two business days late. See *id.*, 20 FCC Rcd at 16762, para. 4.

¹⁸ 47 C.F.R. § 1.3.

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 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

7. We find that Verizon has demonstrated that there is good cause to waive section 54.802(a) of the Commission's rules in order to allow Verizon to receive IAS funding for the third quarter of 2006. 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.²³ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received.²⁴ In this case, however, we find on balance that strict enforcement of the filing deadline would disproportionately penalize Verizon when considered in light of its actions to remedy its error.

8. The loss of IAS funding could impact the high-cost areas served by Verizon. We are concerned that the loss of the funding may undermine Verizon's investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. In the *CALLS Order*, the Commission found that IAS provides "explicit support that is specific, predictable, and sufficient to ensure that consumers in all regions of the nation have access to telecommunications services at affordable and reasonably comparable rates."²⁵ Here, the requested waiver would enable Verizon to continue uninterrupted its efforts to maintain and promote access to advanced services in its high-cost areas.

9. These findings are consistent with previous waivers granted.²⁶ Here, Verizon attempted to file its IAS data only two business days after the deadline.²⁷ Verizon's attempt to cure the error promptly also represented a good faith attempt to minimize any impact on USAC or other IAS funding recipients.²⁸

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 *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

²⁴ See 47 C.F.R. § 0.406. See also *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 16763, para. 7.

²⁵ See *CALLS Order*, 15 FCC Rcd at 13039, para. 186.

²⁶ See, e.g., *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, Order, DA 06-1632, para. 7 (Wireline Comp. Bur. rel. Aug. 14, 2006) (one day late); *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 16764, para. 9 (two business days late); *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (four business days late).

²⁷ Petition at 2.

²⁸ *Id.*

10. In granting this waiver, we rely on Verizon's commitment to revise its internal procedures to ensure that its filings will be accurately and timely submitted in the future. These revisions include making several employees specifically responsible for assuring that the line count filings are timely submitted, in order to institute a system of checks and balances that will minimize the risk of non-compliance, and tasking a senior manager with responsibility for assuring the accurate and timely filing of the line count data.²⁹ We require Verizon to comply with these commitments. Accordingly, we find that waiving section 54.802(a) of the Commission's rules will serve the public interest by preserving and advancing universal service.³⁰

11. 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 and method of their filings. 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.³¹ 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 CLAUSE

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 254, 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 Verizon Communications Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

²⁹ *Id.* at 3 and *Garzillo Declaration*, para. 6.

³⁰ 47 U.S.C. § 254(b).

³¹ 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 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 the issues on which the Commission sought comment are filing deadlines. *See id.* at 11328-30, paras. 47-51.