

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

In the Matter of )
Federal-State Joint Board on Universal Service )
CenturyTel of Central Wisconsin, LLC and ) CC Docket No. 96-45
Telephone USA of Wisconsin, LLC )
Petition for Waiver of Section 36.612(a)(3) of the )
Commission's Rules )

ORDER

Adopted: December 19, 2006

Released: December 19, 2006

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition by CenturyTel of Wisconsin, LLC and Telephone USA of Wisconsin, LLC (collectively, the Petitioners) – local exchange carriers (LECs) that have been designated as eligible telecommunications carriers (ETCs) – for a waiver of the filing deadline in section 36.612(a)(3) of the Federal Communication Commission's (Commission) rules for safety valve support. We find that the Petitioners have demonstrated that good cause warrants these waivers.

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 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 the support is intended." To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.

3. Safety valve support (SVS) provides additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure. SVS is

1 Petition of CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC for Waiver of Section 36.601(a)(3) of the Commission's Rules (Petition); 47 C.F.R. § 36.612(a)(3).

2 47 U.S.C. § 254(e). Section 214(e)(2) of the Act provides that state commissions shall designate carriers as ETCs, but section 214(e)(6) allows the Commission to designate as ETCs carriers not subject to the jurisdiction of a state commission. 47 U.S.C. § 214(e)(2), (6).

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 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and

available only to rural carriers that otherwise qualify for high-cost loop support for the acquired exchanges under section 36.631 of the Commission's rules.<sup>6</sup>

4. Acquiring carriers establish an index year, consisting of the first four full calendar quarters following the closing date of the acquisition.<sup>7</sup> Carriers then file expense adjustments for the acquired exchange through cost data submitted in accordance with section 36.611 or section 36.612 of the Commission's rules.<sup>8</sup> Under section 36.611 of the Commission's rules, all incumbent local exchange carriers, including rural carriers, submit loop cost data to the National Exchange Carrier Association (NECA) on an annual basis.<sup>9</sup> Under section 36.612 of the Commission's rules, rural carriers have the option of submitting loop cost data to NECA on a quarterly basis.<sup>10</sup> For carriers establishing an index year for acquired exchanges pursuant to section 36.612, the index year for an acquired exchange begins at the beginning of the next calendar quarter after the transfer of the exchange.<sup>11</sup> Companies seeking to receive SVS whose index year does not correspond to one calendar year are required to file an additional quarterly report showing data for the fiscal year corresponding to the original safety valve index year, in this case October 1 through September 30.<sup>12</sup>

5. Petition for Waiver. In 2000, the Petitioners purchased a total of approximately 133,000 lines in 77 exchanges in Wisconsin.<sup>13</sup> As a result of the Petitioners' efforts to increase service quality and provide new services to these areas in Wisconsin, the Petitioners are eligible for SVS.<sup>14</sup> On March 28, 2002, Petitioners reported their index year data, for the period October 1, 2000, through September 30, 2001.<sup>15</sup> In March 2003 and March 2004, the Petitioners reported cost data for the prior October 1-September 30 fiscal years established for safety valve purposes, in addition to the calendar year data required to be filed each July under section 36.611 of the Commission's rules.<sup>16</sup> The Petitioners did not receive any SVS in July 2005, however, because they did not submit fiscal year cost information to NECA for the October 1, 2003, to September 30, 2004, fiscal year, prior to the March 2005 due date.<sup>17</sup> Petitioners are accustomed to NECA reminding carriers of impending due dates for required filings. NECA, however, does not send reminders for the additional reports because not all carriers are required to file them. Therefore, Petitioners did not realize they had a deadline because they did not receive a

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Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 02-56, 16 FCC Rcd 11244, 11284-88, paras. 97-106 (2001) (*Rural Task Force Order*).

<sup>6</sup> *Id.* See also 47 C.F.R. § 36.631.

<sup>7</sup> *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99. See also 47 C.F.R. §§ 36.611, 36.612. Index year expense adjustment is defined as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year operating the exchanges. *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99.

<sup>8</sup> *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99.

<sup>9</sup> *Id.* See 47 C.F.R. § 36.611.

<sup>10</sup> *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99. See also 47 C.F.R. § 36.612.

<sup>11</sup> *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99.

<sup>12</sup> Petition at 3. Therefore, a carrier whose index year runs from October 1 through September 30 must file its data the following March. 47 C.F.R. § 36.612(a)(3).

<sup>13</sup> Petition at 1.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* See also 47 C.F.R. § 36.611.

<sup>17</sup> Petition at 2-3.

reminder.<sup>18</sup> As a result, Petitioners have implemented new procedures to minimize the risk of future problems, including reviewing the Commission's rules, clarifying with NECA and USAC which periodic reports are required and what data should be included, and establishing a reminder system to ensure that filing deadlines are met.<sup>19</sup> We understand that CenturyTel filed the 2003-04 cost information in November 2005.

### III. DISCUSSION

6. We find that good cause exists to waive section 36.612(a)(3) of the Commission's rules so that Petitioners can receive SVS for the October 1, 2003, to September 30, 2004, fiscal year.<sup>20</sup> It is the responsibility of ETCs to familiarize themselves with any applicable regulations,<sup>21</sup> and to ensure that filings are timely received.<sup>22</sup> With respect to Petitioners, however, we find that strict compliance with the rules is inconsistent with the public interest and, therefore, considerations of hardship weigh in favor of granting the requested waiver.

7. We conclude that denial of SVS could impact the areas served by Petitioners. Unlike the requirements for other types of universal service support,<sup>23</sup> carriers must file data annually in order to receive SVS.<sup>24</sup> Therefore, if a carrier misses the annual deadline, it will not receive funding for an entire year. As such, the loss of SVS has a much greater impact on a small carrier's capacity to ensure that consumers have and maintain access to service at just, reasonable, and affordable rates than the loss of other types of universal service support. Indeed, the loss of SVS for an entire calendar year in these instances may impact the rates that Petitioners charge consumers.<sup>25</sup> Likewise, the loss of SVS may adversely affect Petitioners' ability to continue to provide quality service to consumers.<sup>26</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> See Letter from Richard Cameron, Latham & Watkins, for CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC, to Federal Communications Commission, dated Nov. 29, 2006 (Cameron Letter).

<sup>20</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. 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. *Northeast Cellular*, 897 F.2d at 1166. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>21</sup> See 47 C.F.R. § 0.406. See also *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); *South Slope Cooperative Telephone Co., Petition for Waiver of Filing Deadline in 47 C.F.R. Sect. 54.307(c)*, Order, 19 FCC Rcd 17493, 17494-95, para. 5 (2004).

<sup>22</sup> See 47 C.F.R. § 54.301.

<sup>23</sup> In most instances, carriers can or must file line counts and certifications on a quarterly basis. See, e.g., 47 C.F.R. Part 54, Subpart J (Interstate Access Universal Service Support Mechanism) and Subpart K (Interstate Common Line Support Mechanism for Rate-of-Return Carriers).

<sup>24</sup> See 47 C.F.R. § 54.301.

<sup>25</sup> See Petition at 8.

<sup>26</sup> See *Dixon Telephone Company, Lexcom Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date*, CC Docket No. 96-45, Order, 21 FCC Rcd 1717 (Wireline Comp. Bur. 2006) (*Dixon Waiver Order*); *Smithville Telephone Company, Inc., Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891 (2004)

8. Quality service available at just, reasonable and affordable rates is a fundamental principal of the Commission's universal service policies.<sup>27</sup> We find that denying SVS for an entire fiscal year would undermine this goal.<sup>28</sup> In granting this waiver, we rely on Petitioners' commitment to its new internal procedures to ensure that its filings will be accurately and timely submitted in the future, including a reminder system for key personnel.<sup>29</sup> We require Petitioners to comply with these commitments. Thus, we conclude that waiver of Section 36.612 of the Commission's rules is in the public interest.

#### IV. ORDERING CLAUSE

9. 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 of CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC for Waiver of Section 36.601(a)(3) of the Commission's Rules, IS GRANTED.

#### FEDERAL COMMUNICATIONS COMMISSION

Kirk S. Burgee  
Associate Chief  
Wireline Competition Bureau

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(*Smithville Waiver Order*) (finding that loss of local switching support for an entire year could result in substantial hardship in the areas served by petitioners).

<sup>27</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8839, para. 112 (1997) (*First Report and Order*) ("We recognize affordable rates are essential to inducing consumers to subscribe to telephone service, and also that increasing the number of people connected to the network increases the value of the telecommunications network."); 47 U.S.C. § 254(b).

<sup>28</sup> See *Dixon Waiver Order*, 21 FCC Rcd at 1719-20, paras. 8-9; *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 6.

<sup>29</sup> See Cameron Letter at 2.