

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
MCI, Inc.)	
Petitions for Waiver of Sections 54.802(a) and)	
54.809(c) of the Commission's Rules)	

ORDER

Adopted: December 28, 2006

Released: December 28, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by MCI, Inc. (MCI), on behalf of MCImetro Access Transmission Services, Inc. (MCImetro), an eligible telecommunications carrier (ETC) in New York, for waiver of the March 31, 2004, June 30, 2004, and September 30, 2004, filing deadlines for universal service interstate access support (IAS) set forth in section 54.802(a) of the Commission's rules.¹ In addition, we grant MCI's request for waiver of the June 30, 2004, filing deadline for IAS annual certification set forth in section 54.809(c) of the Commission's rules.² We find that MCI has demonstrated that special circumstances warrant granting 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."³ 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

¹ MCI, Inc., Petition for Waiver of FCC Rule Section 54.802(a), CC Docket No. 96-45, filed Jan. 7, 2005 (54.802 Petition).

² MCI, Inc., Petition for Waiver of FCC Rule Section 54.809(c), CC Docket No. 96-45, filed July 21, 2004 (54.809 Petition).

³ 47 U.S.C. § 254(e); *see also* 47 U.S.C. § 214(e). Section 254 of the Act was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

and services for which the support is intended.”⁴ To implement this statutory requirement, the Commission has adopted certification and reporting requirements.⁵

3. Pursuant to section 54.802 of the Commission’s rules, an ETC that provides service within an area served by a price cap local exchange carrier (LEC) must file certain data with the Universal Service Administrative Company (USAC) to receive IAS funding.⁶ Specifically, an ETC must submit line count data showing separately the number of residential/single-line business lines and multi-business lines it serves within each price cap LEC’s study area on a quarterly basis.⁷ Mandatory line count data filings are due on the last business day of March, June, September, and December of each year.⁸ 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.⁹

4. Pursuant to section 54.809(c) of the Commission’s rules, in order to receive IAS support, an ETC also must file an annual certification that “all interstate access universal service support will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”¹⁰ Each ETC must file this certification on the date that it first files line count information and thereafter on June 30 of each year.¹¹ An ETC that misses the June 30 annual IAS certification deadline receives support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2) carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.¹²

5. MCI’s Petitions for Waiver. MCI’s subsidiary, MCImetro, provides service within an area served by a price cap carrier and has been designated as an ETC in New York. Therefore, MCI must file line count data in accordance with section 54.802(a) of the Commission’s rules, and an annual IAS certification in accordance with section 54.809(c) of the Commission’s rules. MCI, however, missed the March 31, 2004, June 30, 2004, and September 30, 2004, deadlines for submitting the line count reports reflecting lines served as of December 30, 2003, March 30, 2004, and June 30, 2004, respectively. In

⁴ 47 U.S.C. § 254(e).

⁵ See, e.g., 47 C.F.R. §§ 54.313, 54.314, 54.802(a), 54.809.

⁶ See 47 C.F.R. § 54.802.

⁷ 47 C.F.R. § 54.802(a).

⁸ *Id.*; 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); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Order on Remand, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, 18 FCC Rcd 14976 (2003).

⁹ 47 C.F.R. § 54.802(a).

¹⁰ 47 C.F.R. § 54.809(a).

¹¹ 47 C.F.R. § 54.809(c).

¹² *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6412, para. 94 (2005) (*ETC Designation Order*). Prior to adoption of the *ETC Designation Order*, an ETC that missed the annual filing deadline could lose as much as a year of IAS. See *id.*, at 6412, para. 93.

addition, MCI missed the June 30, 2004 IAS annual certification deadline. MCI filed a request for waiver of section 54.802(a) of the Commission's rules to permit MCI to receive IAS for the second, third and fourth quarters of 2004,¹³ and a request for waiver of the June 30, 2004 annual IAS certification deadline.¹⁴

6. MCI contends that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules,¹⁵ and that granting its request for waiver of section 54.809(c) of the Commission's rules will serve the public interest.¹⁶ During the time that MCI missed the deadlines for submitting its annual certification and quarterly line count data for IAS, MCI asserts that "it was in the midst of its transition from bankruptcy and experiencing considerable work force reductions with an inability to re-staff personnel."¹⁷ MCI claims that, with the exception of the line count filings for three quarters at issue here, it has consistently filed its line counts on a timely basis since 2000.¹⁸ MCI contends that the impact of not receiving the waivers is significant, because MCI would lose approximately \$1.5 million in IAS.¹⁹ MCI also argues that it would be inequitable to hold MCI liable for "true-up" invoice amounts based on USAC's erroneous assumption that MCI was serving far fewer, or even zero lines, than it was actually serving.²⁰ MCI claims that it continued to serve the relevant customers, some at a loss, with no interruption or increase in price.²¹ MCI contends that not permitting it to recoup this support "may affect its future ability to market prospective customers in these areas,"²² and "could detrimentally affect its provision of services to rural areas of New York."²³ MCI argues that the Wireline Competition Bureau has recognized in granting a similar waiver request that "considerations of hardship and equity—as well as [a] longstanding history of submitting timely data—weigh in favor of granting the requested waiver."²⁴

III. DISCUSSION

7. We find that MCI has demonstrated that special circumstances warrant a waiver of the filing deadlines for March 31, 2004, June 30, 2004, and September 20, 2004, as set forth in section 54.802(a), of the Commission's rules, and the June 30, 2004, annual certification requirement, as set forth

¹³ See generally 54.802 Petition. The Wireline Competition Bureau released a public notice on Feb. 1, 2005, seeking comment on the petition. See *Wireline Competition Bureau Seeks Comment on Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 2090 (2005). No comments were filed on MCI's petition.

¹⁴ See generally 54.809 Petition.

¹⁵ See 54.802 Petition at 5-6.

¹⁶ See 54.809 Petition at 2.

¹⁷ See Letter from Karen T. Reidy, MCI, to Marlene H. Dortch, FCC, dated Dec. 15, 2005, at 1 (MCI Letter).

¹⁸ See 54.802 Petition at 2.

¹⁹ See MCI Letter at 1-2.

²⁰ See 54.802 Petition at 5.

²¹ See MCI Letter at 2.

²² *Id.*

²³ 54.802 Petition at 6.

²⁴ MCI Letter at 1 (quoting *Federal-State Joint Board on Universal Service, 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, 16763, para. 7 (Wireline Comp. Bur. 2005) (*Citizens/Frontier*)).

in section 54.809(c) of the Commission's rules.²⁵ 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.²⁶ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations,²⁷ and to ensure that filings are timely received.²⁸ In this case, however, considerations of hardship and equity, as well as MCI's history of submitting timely data, weigh in favor of granting the requested waiver. Specifically, we conclude that a loss of approximately \$1.5 million in IAS funding is excessive under the circumstances given that MCI had just emerged from bankruptcy.

8. We find that the loss of approximately \$1.5 million in IAS funding could impact the rural and high-cost areas served by MCImetro.²⁹ We are concerned that the loss of such a substantial amount of IAS funding could undermine MCImetro's future ability to serve customers in the high-cost areas of New York. We have granted waivers of the universal service line count filing deadline to "facilitate the continued provision of service, as well as system construction and upgrades."³⁰ Likewise, the requested waiver would enable MCImetro to continue uninterrupted its efforts to maintain and promote access to quality services in its rural and high-cost areas.

9. Significantly, MCI's delay in filing the line count report was caused by unique circumstances that are unlikely to reoccur. MCI, which emerged from Chapter 11 bankruptcy protection on April 20, 2004, was experiencing considerable work force reductions and was unable to re-staff positions during its reorganization. MCI has subsequently implemented new procedures to ensure that its future filings will be timely.³¹ Although the line count data was filed too late for USAC to incorporate projected line count data for MCI into its quarterly calculations, we find that, in this instance, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed data.³²

²⁵ 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).

²⁶ *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, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

²⁷ See 47 C.F.R. § 0.406; see also *Citizens/Frontier*, 20 FCC Rcd at 16763, para. 7.

²⁸ See 47 C.F.R. § 54.802(a), (c).

²⁹ See, e.g., *Federal-State Joint Board on Universal Service, United States Cellular Corporation, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, Order, 19 FCC Rcd 12418 (Wireline Comp. Bur. 2004) (finding that United States Cellular Corporation reasonably believed that quarterly line counts were not mandatory prior to the effective date of the *MAG Order*).

³⁰ See *Frontier*, 20 FCC Rcd at 16764, para. 11.

³¹ See MCI Letter at 2.

³² See *Federal-State Joint Board on Universal Service, Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Data for Average Schedule Company*, Order, 19 FCC Rcd 8891, 8893 para. 5 (Wireline Comp. Bur. 2004) (*Smithville*); but cf. *Citizens/Frontier*, 20 FCC Rcd at 16764, para. 9 (noting that Frontier's swift efforts to submit data, notify Commission staff, and file a waiver request enabled USAC to incorporate projected line count data for Frontier into its quarterly calculations").

10. In light of these unique special circumstances, we conclude that it would be onerous to deny MCI receipt of a significant amount of IAS. In granting this waiver, we rely on MCI's improvements to its certification and data filing process and procedures, including executive oversight, to ensure that future filings will be submitted on a timely basis.³³ We also conclude that deviation from the general rule under these special circumstances will serve the public interest. Granting the requested waiver will facilitate the continued provision of service in MCImetro's service areas. Accordingly, we find that waiving section 54.802(a) and 54.809(c) of the Commission's rules will serve the public interest by preserving and advancing universal service.³⁴

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, 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 MCI, Inc., on January 7, 2005, IS GRANTED, as described herein.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, 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 54.809(c) of the Commission's rules, 47 C.F.R. § 54.809(c), filed by MCI, Inc., on July 21, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

³³ See MCI Letter at 2.

³⁴ See 47 U.S.C. § 254(b); 47 C.F.R. §§ 54.802, 54.809. We note that, in June 2005, 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 Nos. 05-195, 03-109, 02-60, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005). Among other issues, the Commission sought comment on the various filing deadlines for high-cost carriers. See *id.* at 11328-30, paras. 47-51.