

**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
	)	
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	)	

**ORDER**

**Adopted: February 23, 2006****Released: February 23, 2006**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant requests by Dixon Telephone Company (Dixon), Lexcom Telephone Company (Lexcom), and Citizens Telephone Company of Higginsville, Missouri (Citizens) (collectively, the Petitioners) – incumbent local exchange carriers (LECs) that have been designated as eligible telecommunications carriers (ETCs) – for a waiver of the data submission reporting deadline set forth in section 54.301(b) of the Commission's rules for local switching support (LSS).<sup>1</sup> 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."<sup>2</sup> Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS.<sup>3</sup> Before an incumbent LEC can begin receiving LSS, however, certain data must be filed with the Universal Service Administrative Company (USAC). First, the relevant state commission must file a certification stating

<sup>1</sup> Dixon Telephone Company, Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date, CC Docket No. 96-45, filed Oct. 26, 2005 (Dixon Petition); Lexcom Telephone Company, Petition for Waiver of the Section 54.301 Local Switching Support Data, CC Docket No. 96-45, filed Oct. 28, 2005 (Lexcom Petition); Citizens Telephone Company of Higginsville, Missouri, Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date, CC Docket No. 96-45, filed Oct. 28, 2005 (Citizens Petition); 47 C.F.R. § 54.301(b).

<sup>2</sup> 47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions shall designate carriers as ETCs. See 47 U.S.C. § 214(e).

<sup>3</sup> 47 C.F.R. § 54.301.

that all high-cost support, including LSS, received by the incumbent LEC will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”<sup>4</sup> Second, the incumbent LEC must file certain data with USAC by October 1 of each year to receive LSS for the following calendar year.<sup>5</sup>

3. *Dixon’s Petition for Waiver.* On October 26, 2005, Dixon filed a request for waiver of the October 1, 2005, annual LSS filing deadline in section 54.301(b) of the Commission’s rules so that it can receive support for the 2006 calendar year.<sup>6</sup> Dixon states that it missed the LSS filing deadline as a result of an inadvertent oversight.<sup>7</sup> After realizing its mistake, Dixon submitted the projected data on October 26, 2005.<sup>8</sup> Dixon argues that the loss of approximately \$199,428 in LSS for the 2006 calendar year would require it to increase its rates and curtail or reevaluate some of its plans for capital expenditures and network improvements.<sup>9</sup> Moreover, Dixon emphasizes that allowing it to receive LLS during 2006 will not harm or burden another party, because it has already submitted the projected data to USAC.<sup>10</sup>

4. *Lexcom’s Petition for Waiver.* On October 28, 2005, Lexcom filed a request for waiver of the October 1, 2005, LSS filing deadline so that it can receive support for the 2006 calendar year.<sup>11</sup> Lexcom explains that the manager of its Regulatory and Revenue Department was out of the office on emergency medical leave for most of September 2005, and an email from Lexcom’s consultant regarding the projected 2006 LSS data submission was overlooked or inadvertently deleted as a result.<sup>12</sup> Upon receiving a voicemail from USAC inquiring about Lexcom’s missing submission, Lexcom faxed the data to USAC the next day, October 10, 2005.<sup>13</sup> Lexcom has implemented new procedures designed to ensure future deadlines are not missed.<sup>14</sup> Lexcom further asserts that the loss of approximately \$439,736 in expected LSS for 2006 would be extremely onerous and disruptive to the 30,208 access lines it serves in its single North Carolina study area.<sup>15</sup>

5. *Citizens’ Petition for Waiver.* On October 28, 2005, Citizens filed a request for waiver of the October 1, 2005, LSS filing deadline so that it can receive support for the 2006 calendar year.<sup>16</sup> Citizens, a company with 19 employees, suffered a breakdown in its filing procedures, and neglected to

<sup>4</sup> 47 C.F.R. § 54.313; 47 C.F.R. § 54.314. The certification requirements for non-rural carriers are found in section 54.313 of the Commission’s rules and the certification requirements for rural carriers are found in section 54.314 of the Commission’s rules. *See id.* In instances where carriers are not subject to state jurisdiction, an ETC may self-certify to the Commission and USAC. *See* 47 C.F.R. § 54.313(b); 47 C.F.R. § 54.314(b).

<sup>5</sup> 47 C.F.R. § 54.301(b); *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 (Wireline Comp. Bur. 2004) (*Smithville Waiver Order*).

<sup>6</sup> *See* Dixon Petition at 7.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *See* Lexcom Petition at 10.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 2 and 8.

<sup>16</sup> *See* Citizens Petition at 6.

file its data submissions until October 11, 2005.<sup>17</sup> Citizens contends that denial of LSS for an entire year would be a disproportionately excessive penalty.<sup>18</sup> It expected to receive approximately \$423,991 in LSS support for 2006, representing approximately 7.6% of its total revenue.<sup>19</sup>

6. Waiver Standard. Generally, the Commission's rules may be waived for good cause shown.<sup>20</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>21</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>22</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>23</sup> Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>24</sup>

### III. DISCUSSION

7. We find that good cause exists to waive section 54.301(b) of the Commission's rules so that Dixon, Lexcom, and Citizens can receive LSS for the 2006 calendar year. It is the responsibility of ETCs to familiarize themselves with any applicable regulations,<sup>25</sup> and to ensure that filings are timely received.<sup>26</sup> With respect to these 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.

8. We conclude that denial of the LSS could result in substantial hardship in the areas served by the Petitioners. To receive LSS, carriers must serve fewer than 50,000 lines.<sup>27</sup> Unlike the requirements for other types of universal service support,<sup>28</sup> carriers must file data annually in order to receive LSS.<sup>29</sup> Therefore, if a carrier misses the annual deadline, it will not receive funding for an entire year. As such, the loss of LSS 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 LSS for an entire calendar year in these

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> 47 C.F.R. § 1.3.

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>22</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166.

<sup>23</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>24</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>25</sup> See 47 C.F.R. § 0.406. See also *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. § 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494-95 (2004); *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).

<sup>26</sup> See 47 C.F.R. § 54.301.

<sup>27</sup> 47 C.F.R. § 54.301(a).

<sup>28</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>29</sup> See 47 C.F.R. § 54.301.

instances may have a significant effect on the rates that Petitioners charge consumers.<sup>30</sup> Likewise, the loss of LSS may adversely affect Petitioners' ability to continue to provide quality service to consumers.<sup>31</sup> For these reasons, we have previously waived Section 54.301(b) of the Commission's rules to serve the public interest.<sup>32</sup>

9. Quality service available at just, reasonable and affordable rates is a fundamental principal of the Commission's universal service policies.<sup>33</sup> We find that denying LSS for an entire calendar year to these small LECs would undermine this goal.<sup>34</sup> Thus, we conclude that waiver of Section 54.301 of the Commission's rules is in the public interest.

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<sup>30</sup> See Dixon Petition at 4; Lexcom Petition at 8; Citizens Petition at 4. To the extent that the Petitioners adjusted the rates specified in their tariff filings to reflect a loss of LSS, the Petitioners must readjust their rates accordingly. Cf. *1993 Annual Access Tariff Filings*, CC Docket No. 93-193, *1994 Annual Access Tariff Filings*, CC Docket No. 94-65, Order, 19 FCC Rcd 14949 (2004) (requiring LECs to compute any changes to their access rates resulting from the tariff investigation and, if necessary, provide refunds plus interest to their access customers).

<sup>31</sup> See Dixon Petition at 4; Lexcom Petition at 8.

<sup>32</sup> See *Alliance Communications Cooperative, Inc., et al., Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date*, Order, DA 05-3024, para. 7 (rel. Nov. 22, 2005), *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 6. We note that early this past 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 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 11,308 (2005) (*USF Administration NPRM*). Among the issues on which the Commission sought comment are filing deadlines. See *id.* at 11,328-30, paras. 47-51.

<sup>33</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>34</sup> *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 6.

**IV. ORDERING CLAUSE-**

10. 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 petitions for waiver of section 54.301 of the Commission's rules, filed by Dixon Telephone Company, Lexcom Telephone Company, and Citizens Telephone Company of Higginsville, Missouri, ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau