

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
Valor Telecommunications of Texas, L.P.)
Request for Review of Decision of Universal)
Service Administrator; Petition for Waiver and/or)
Clarification of Filing Deadline in 47 C.F.R.)
Section 54.802(a))

ORDER

Adopted: January 13, 2006

Released: January 13, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by Valor Telecommunications of Texas, L.P. (Valor), an eligible telecommunications carrier (ETC) with study areas in Texas, Oklahoma, and New Mexico, for a waiver of the September 30, 2004, filing deadline for interstate access universal service support set forth in section 54.802(a) of the Commissions rules. For the reasons set forth below, we find that Valor has demonstrated that special circumstances warrant 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." 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 support is intended." To implement this statutory requirement, the Commission

1 Valor Telecommunications of Texas, L.P., Request for Review by Valor Telecommunications of Texas, L.P. of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Section 54.802(a), CC Docket Nos. 97-21 and 96-45, filed December 23, 2004 (Petition). Valor's request for review of a decision of the Universal Service Administrative Company (USAC) is therefore moot.

2 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).

3 47 U.S.C. § 254(e).

has adopted certification and reporting requirements.⁴

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 USAC to receive IAS funding.⁵ 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.⁶ Mandatory line count data filings 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. *Valor's Petition for Waiver* Valor is a price cap incumbent LEC that has been designated as an ETC for its study areas in Texas, Oklahoma, and New Mexico.⁹ Therefore, Valor must file line count data in accordance with section 54.802(a) of the Commission's rules. Valor, however, missed the September 30, 2004, deadline for submitting the line count report reflecting lines served as of June 30, 2004, because it sent the data to the National Exchange Carrier Association (NECA) rather than to USAC.¹⁰ Valor discovered the error on December 2, 2004, and forwarded the data to USAC.¹¹ On December 23, 2004, Valor filed this request for waiver of section 54.802(a) of the Commission's rules to permit Valor to receive IAS for the fourth quarter of 2004. Valor also challenges the methodology USAC used to true-up IAS for the second quarter of 2004.

5. Valor contends that special circumstances warrant a waiver of section 54.802(a) of the Commission's rules.¹² Valor claims that it submitted its March 31, 2004 filing to NECA, and NECA forwarded the data to USAC's new vendor.¹³ Valor concedes that when it submitted its June 30, 2004 filing to NECA, NECA returned it with instructions on how to forward the filing to the new location.¹⁴

⁴ See, e.g., 47 C.F.R. §§ 54.313, 54.314, 54.802(a), 54.809.

⁵ See 47 C.F.R. § 54.802.

⁶ 47 C.F.R. § 54.802(a).

⁷ *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).

⁸ 47 C.F.R. § 54.802(a).

⁹ Valor serves approximately 550,000 access lines in Texas, Oklahoma, New Mexico, and Arkansas. See Petition at 2. The lines in Arkansas are served by the Texas study area. 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 Valor's petition.

¹⁰ See Petition at 4.

¹¹ See Petition at 4.

¹² See generally Petition.

¹³ See Petition at 3.

¹⁴ See Petition at 3.

Valor claims that the employee who made the filings did not understand that the new filing location was to be anything other than temporary.¹⁵ Valor claims that its internal procedures were not updated to reflect this new filing location, because at the same time that USAC changed vendors Valor was reorganizing its regulatory compliance department and inadvertently did not update its procedures with the new filing location.¹⁶ Valor claims that it submitted its line count data in a timely manner on September 29, 2004, but mistakenly submitted it to NECA, USAC's former vendor.¹⁷ Furthermore, Valor submits a copy of an e-mail from a NECA employee dated September 29, 2004, acknowledging Valor's "timely submission of the loop data," and stating that the data would be forwarded to the person responsible for collecting such data.¹⁸ Valor states that it has subsequently reviewed all of its regulatory procedures to ensure that all filing requirements are up-to-date and comprehensive.¹⁹ Valor claims that USAC sought recovery of \$1.5 million in IAS funding provided to Valor in the second quarter of 2004, and projected that it would receive zero IAS in the first quarter of 2005.²⁰ Valor argues that its request for waiver would serve the public interest and avoid an onerous and inequitable penalty on Valor and its rural customers.²¹

6. *Waiver Standard* Generally, the Commission's rules may be waived for good cause shown.²² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁴ 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.²⁵ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.²⁶

III. DISCUSSION

7. We find that Valor has demonstrated that special circumstances warrant a waiver of the filing deadline for June 30, 2004, as set forth in section 54.802(a), of the Commission's rules. Because USAC processes a tremendous amount of line count data each year, it is administratively necessary to

¹⁵ See Petition at 3.

¹⁶ See Petition at 2-3.

¹⁷ See Petition at 3. Prior to January 1, 2004, carriers routinely and appropriately made such filings with NECA.

¹⁸ See Petition at 3, Exhibit 1, Attachment.

¹⁹ See Petition at 4.

²⁰ See Petition at 4. At the time Valor filed its Petition, it apparently thought it had been penalized for more than one quarter for missing a quarterly filing deadline. See Petition at 9-10. Pursuant to USAC's true-up methodology, however, when a carrier misses one IAS quarterly filing deadline, rather than receiving zero support for one quarter, the carrier receives support based on approximately half the number of lines served for two quarters. Because Valor eventually received IAS support for the fourth quarter of 2004 and the first quarter of 2005, we find that its arguments about USAC's true-up methodology are moot.

²¹ See Petition at 11.

²² 47 C.F.R. § 1.3.

²³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Northeast Cellular*, 897 F.2d at 1166.

²⁶ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

require carriers to meet the line count and certification filing deadlines absent special circumstances.²⁷ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations,²⁸ and to ensure that filings are timely received.²⁹ In this case, however, considerations of hardship and equity, as well as Valor'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 Valor timely filed, but with the wrong vendor.

8. We find that the loss of approximately \$1.5 million in IAS funding could cause significant hardship in the rural and high-cost areas served by Valor.³⁰ We are concerned that the loss of such a substantial amount of IAS funding could undermine Valor's investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. 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."³¹ Likewise, the requested waiver would enable Valor to continue uninterrupted its efforts to maintain and promote access to quality services in its rural and high-cost areas.

9. Significantly, Valor's delay in filing the line count report was caused by unique circumstances, and the error was promptly cured as soon as Valor discovered it.³² We find that Valor reasonably relied on NECA's representation that Valor's September 30, 2004 line count data was timely filed and would be forwarded to the appropriate party. Moreover, had NECA indicated in its September 29, 2004 e-mail that Valor should send the line count data to the new address, Valor would have been able to timely file the data with USAC's new vendor. Valor filed its line count data the same day it discovered the error, on December 2, 2004.³³ Although the line count data was filed too late for USAC to incorporate projected line count data for Valor into its quarterly calculations, we find that, in this instance,

²⁷ *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).

²⁸ 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).

²⁹ See 47 C.F.R. § 54.802(a), (c).

³⁰ 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*).

³¹ See *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, DA 05-2829, at para. 11 (released Oct. 27, 2005) (*Frontier*).

³² Valor claims that the Commission's IAS rules do not clearly indicate the consequences of failing to file line count data. See *Petition* at 9. We disagree. Section 54.802(a) provides that "Each [ETC] . . . shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date," and Section 54.802(c) provides that an ETC "shall be eligible for [IAS] only after it has filed all of the information required by paragraphs (a) through (c) of this section." 47 C.F.R. § 54.802(a), (c). Valor also claims that it cannot be penalized for filing late because the line count form on USAC's website does not have an Office of Management and Budget (OMB) control number. See *Petition* at 8-9, Exhibit 4. Valor is incorrect. The "form" Valor refers to is a "sample letter," not a required form, and the data collection has a valid OMB control number, OMB 3060-0942.

³³ See *Petition* at 4, 6. Valor also claims that USAC indicated the new filing location only in the "What's New" archive and not in the IAS section, Frequently Asked Questions, or on the sample IAS line count form. *Id.* at 7-8.

these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed data.³⁴

10. In light of these unique special circumstances, we conclude that it would be onerous to deny Valor receipt of a significant amount of IAS. In granting this waiver, we rely on Valor's improvements to its regulatory procedures to ensure that all filing requirements are up-to-date and comprehensive to ensure that future filings will be submitted on a timely basis.³⁵ 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, as well as system construction and upgrades in Valor's service areas. 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.³⁶

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 Valor Telecommunications of Texas, L.P., on December 23, 2004 IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

³⁴ 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. *Frontier*, DA 05-2829, at 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).

³⁵ See Petition at 3.

³⁶ See 47 U.S.C. § 254(b); 47 C.F.R. § 54.802. We note that in June, 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 Rulemaking, 20 FCC Rcd 11308 (2005) (*USF Administration NPRM*). One of the issues the Commission is seeking comment on is filing deadlines for high-cost carriers. See *id.* at 11328-30, paras. 47-51. The Commission may further clarify its deadlines in the course of that proceeding.