

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

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

ORDER

Adopted: January 18, 2007

Released: January 18, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by NPCR, Inc. (NPCR), an eligible telecommunications carrier (ETC), for a waiver of section 54.802(a) of the Commission's rules. For the reasons set forth below, we find that NPCR has demonstrated that good cause warrants granting this waiver.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." 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." To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

3. Pursuant to section 54.802 of the Commission's rules, an ETC that is providing service within an area served by a price cap local exchange carrier must file certain data with the Universal Service Administrative Company (USAC) to receive Interstate Access Support (IAS) funding. Specifically, an ETC 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. Mandatory line count data are due on the last business day of March, June, September, and December of each year.

1 NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No. 96-45, filed September 29, 2006 (Petition). See also 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(a).

6 Id.

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,

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. *NPCR's Petition for Waiver.* On September 29, 2006, NPCR filed a request for waiver of section 54.802(a) of the Commission's rules to permit NPCR to receive IAS funding for the third quarter of 2006.⁹ Although NPCR mailed its line count report by certified mail on June 29, 2006, one business day before the June 30, 2006, deadline for submitting the line count data, it missed the deadline because USAC received NPCR's filing on July 3, 2006, one business day after the filing deadline.¹⁰ NPCR explains that it established an internal procedure for preparing and filing line count data that includes mailing the filing two to four weeks prior to the deadline.¹¹ However, NPCR states that a staff redirection to address matters related to its merger with Sprint Nextel Corporation caused NPCR's staff to delay completing and mailing the line count data.¹²

5. NPCR asserts that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules.¹³ According to NPCR, grant of the waiver will serve the public interest because IAS funding allows NPCR to better serve consumers by maintaining and improving its network.¹⁴ NPCR states that this is the first time it has missed a line count data filing deadline in the three years that NPCR has been filing the data as an ETC.¹⁵ NPCR also submitted a declaration by one of its senior tax accountants explaining why the redirection of staff delayed NPCR from mailing the line count data and how NPCR has revised its internal procedures to ensure its future filings will be timely filed with USAC.¹⁶ Specifically, NPCR has made it mandatory that all line count data will be submitted via overnight carrier and has charged its Senior Tax Manager with direct responsibility for timely submission of the line count data to USAC.¹⁷ NPCR also argues that the grounds for granting NPCR a waiver are consistent with those underlying the Wireline Competition Bureau's grant of similar petitions filed by Frontier Communications and Verizon Communications Inc.¹⁸

15 FCC Rcd 12962, 13060, para. 227 (2000) (*CALLS Order*), *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).

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

⁹ See Petition at 1.

¹⁰ *Id.* at 2-4.

¹¹ *Id.*

¹² *Id.* at 3-4.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 3.

¹⁶ *Id.*, Decl. of Josh Milliern (*Milliern Decl.*), para. 9-10.

¹⁷ Petition at 5; see also *Milliern Decl.*, para. 10.

¹⁸ Petition at 7-10; 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*); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a)*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155 (Wireline Comp. Bur. 2006) (*Verizon Order*).

III. DISCUSSION

6. We find that NPCR has demonstrated that there is good cause to waive section 54.802(a) of the Commission's rules in order to allow NPCR to receive IAS funding for the third quarter of 2006.¹⁹ 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.²⁰ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received.²¹ Although our rules require that line count filings must be *received* by the applicable deadline, we find on balance that strict enforcement of the filing deadline would disproportionately penalize NPCR when considered in light of the impact on consumers NPCR serves, its filing having been received by USAC one business day after the deadline, and the revisions NPCR has made to its internal procedures to ensure its data will be submitted to USAC by the applicable deadline.

7. The loss of IAS funding could impact the high-cost areas served by NPCR. We are concerned that the loss of the funding may undermine NPCR'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."²² Here, the requested waiver would enable NPCR to continue uninterrupted its efforts to maintain and promote access to advanced services in its high-cost areas.

8. These findings are consistent with previous waivers granted.²³ Here, NPCR mailed its IAS data one business day before the deadline and USAC received the filing in one business day after the deadline.²⁴ NPCR's attempt to meet the deadline by mailing the data before the deadline coupled with its subsequent revisions to its internal procedures to ensure future filings will be timely represents a good faith attempt to comply with the Commission's deadlines and minimizes any negative impact on USAC or other IAS funding recipients.

¹⁹ 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).

²⁰ *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

²¹ See 47 C.F.R. § 0.406. See also *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 16763, para. 7.

²² See *CALLS Order*, 15 FCC Rcd at 13039, para. 186.

²³ 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, 21 FCC Rcd 9179, 9181, para. 7 (Wireline Comp. Bur. 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) (five days late); *Verizon Order*, 21 FCC Rcd at 10157, para. 9 (two business days late).

²⁴ Petition at 2.

9. In granting this waiver, we rely on NPCR's commitment to revise its internal procedures to ensure that its filings will be accurately and timely submitted in the future. Although, NPCR previously had established a system of checks and balances to minimize the risk of non-compliance, NPCR's failure to meet the June 30, 2006, deadline demonstrated its procedures needed to be revised. The subsequent revisions that NPCR has committed to make include making its Senior Tax Manager directly responsible for submitting the data to USAC and requiring that filings be sent via overnight carrier.²⁵ These revisions should further decrease the risk of NPCR missing another deadline. We require NPCR 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.²⁶

10. 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 electronic mail (e-mail).²⁷ For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at hcfilings@HCLI.universalservice.org. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure their filings are timely received.

IV. ORDERING CLAUSES

11. 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 NPCR Inc. IS GRANTED.

12. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

²⁵ *Id.* at 5; *see also Milliern Decl.*, para. 10.

²⁶ 47 U.S.C. § 254(b).

²⁷ 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 federal universal service fund. *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. 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005). Among the issues on which the Commission sought comment were filing deadlines. *See id.* at 11328-30, paras. 47-51.