

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

In the Matter of )
Federal-State Joint Board on Universal Service )
NPI-Omnipoint Wireless, LLC Petition for Waiver of ) CC Docket No. 96-45
Sections 54.307(c), 54.802(a), and 54.903 of the )
Commission's Rules )
SouthEast Telephone, Inc. Petition of Waiver of )
Deadlines In 47 C.F.R. § 54.809(c) )
SEI Data, Inc. Petition for Waiver of Filing Deadline In )
47 C.F.R. Section 54.802(a) )

ORDER

Adopted: March 13, 2007

Released: March 13, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny three separate requests for waiver, filed by three eligible telecommunications carriers (ETCs) – NPI-Omnipoint Wireless, LCC (NPI), SouthEast Telephone, Inc. (SouthEast), and SEI Data, Inc. (SEI) (collectively, Petitioners) – of certain filing deadlines required for receipt of high-cost universal support service as set forth in sections 54.307(c), 54.802(a), 54.809(c), and 54.903 of the Commission's rules. We find that the Petitioners have failed to demonstrate that good cause warrants waiver of the Commission's rules.

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) 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

1 NPI-Omnipoint Wireless, LLC, Petition for Waiver of Deadlines in 47 C.F.R. §§ 54.307(c), 54.802(a) and 54.903, CC Docket No. 96-45, filed Apr. 6, 2004 (NPI Petition); SEI Data, Inc. Petition for Waiver of Deadline in 47 C.F.R. § 54.802(a), CC Docket No. 96-45, filed March 23, 2004 (SEI Petition); SouthEast Telephone, Inc., Petition of Waiver of Deadlines In 47 C.F.R. § 54.809(c), CC Docket No. 96-45, filed December 17, 2003 (SouthEast Petition); see also 47 C.F.R. §§ 54.307(c), 54.802(a), 54.809(c), and 54.903.

2 47 U.S.C. § 254(e).

3 Id.

Commission has adopted various certification and data filing requirements.<sup>4</sup>

3. Pursuant to section 54.307 of the Commission's rules, a competitive ETC must file with the Universal Service Administrative Company (USAC), no later than July 31, September 30, December 30, and March 30 of each year, working line count data for the previous December 31, March 31, June 30, and September 30, respectively, in order to receive high-cost support for those quarterly periods.<sup>5</sup> In addition, an ETC that is providing service within an area served by a price cap local exchange carrier must file line count data on a quarterly basis, pursuant to section 54.802 of the Commission's rules.<sup>6</sup> Line count data are due on the last business day of March, June, September, and December of each year.<sup>7</sup> Before an ETC can begin receiving interstate access support (IAS) it must also file a certification with USAC and the Commission stating that all IAS support will only be used for the provision, maintenance, and upgrading of facilities and services for which such support is intended.<sup>8</sup> An ETC must file this certification on the date that it first files its line counts information pursuant to section 54.802, and thereafter on June 30 of each year.<sup>9</sup>

4. NPI's Petition for Waiver. On August 26, 2003, the Michigan Public Service Commission designated NPI as an ETC in areas served by non-rural carriers in Michigan.<sup>10</sup> Although NPI timely submitted its initial line count filings for high-cost support prior to its designation as an ETC, it failed to submit its line count data due on September 30, 2003.<sup>11</sup> NPI filed its line count data on April 6, 2004, approximately six months after the line count filing deadline.<sup>12</sup> At the same time, NPI filed a request for waiver of sections 54.307(c), 54.802(a), and 54.903 of the Commission's rules to permit NPI to receive high-cost support for the first quarter of 2004.<sup>13</sup> NPI contends that good cause exists for granting its request for waiver because it misunderstood information it received from USAC.<sup>14</sup> NPI also asserts that granting its waiver request will serve the public interest because, absent the requested waivers, its receipt of universal service support will be interrupted, which may adversely affect NPI's ability to

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<sup>4</sup> See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802(a), 54.809, 54.903, 54.904.

<sup>5</sup> See 47 C.F.R. § 54.307.

<sup>6</sup> See 47 C.F.R. § 54.802(a). Interstate access universal service support was established to replace implicit support that was collected through interstate access charges. See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board On Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, 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, 13043, para. 195 (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 (5<sup>th</sup> Cir. 2001).

<sup>7</sup> 47 C.F.R. § 54.802(a). 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. *CALLS Order*, 15 FCC Rcd at 13061, para. 230.

<sup>8</sup> 47 C.F.R. § 54.809(a).

<sup>9</sup> 47 C.F.R. § 54.809(c).

<sup>10</sup> NPI Petition at 2

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, Attachment A.

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

<sup>14</sup> *Id.* at 3-4.

maintain the quality of service to its customers in rural areas of Michigan and exacerbate the carrier's financial difficulties.<sup>15</sup>

5. *SEI's Petition for Waiver.* On March 23, 2004, SEI filed a request for waiver of section 54.802(c) to enable it to receive IAS support.<sup>16</sup> Pursuant to 54.802(c) of the Commission's rules, to receive IAS support, SEI was required to file line count data by December 31, 2003.<sup>17</sup> SEI did not file the data until March 4, 2004.<sup>18</sup> SEI explains that it missed the deadline due to personnel changes, and confusion regarding the fund administrator.<sup>19</sup> SEI argues that good cause exists for granting its waiver request because USAC would not be burdened by accepting its late filed line count data and denying its waiver request would frustrate the underlying purpose of the Commission's rules.<sup>20</sup>

6. *SouthEast's Petition for Waiver.* On December 17, 2003, SouthEast filed a request for waiver of the June 30, 2003, filing deadline for annual certification set forth in section 54.809(c) of the Commission's rules.<sup>21</sup> SouthEast filed its annual certification on September 30, 2003, approximately three months after the deadline.<sup>22</sup> SouthEast contends it missed the June 30, 2003, filing deadline because it was not familiar with the Commission's filing deadlines and misinterpreted information from USAC about the reporting and annual certification deadlines.<sup>23</sup> Southeast argues that granting its waiver request would serve the public interest because IAS helps SouthEast provides low cost telephone service to consumers in rural Kentucky.<sup>24</sup>

### III. DISCUSSION

7. We deny the Petitioner's waiver requests.<sup>25</sup> We find that the Petitioners have not demonstrated that good cause exists to waive the filing deadlines required by 54.307(c), 54.802(a), 54.809(c), and 54.903 of the Commission's rules.<sup>26</sup> Because USAC processes such a large amount of

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<sup>15</sup> *Id.* at 4-6.

<sup>16</sup> SEI Petition. SEI filed a supplement to its petition. *See* Letter from Michael Leach, General Manager SEI Data, Inc., to Marlene H. Dortch, FCC, dated July 23, 2004.

<sup>17</sup> 47 C.F.R. § 54.802(c).

<sup>18</sup> SEI Petition at 2.

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> *Id.* at 2-3.

<sup>21</sup> SouthEast Petition at 1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> *Id.*

<sup>25</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>26</sup> NPI is a competitive ETC, not a rate-of-return carrier. Therefore, its line counts are filed pursuant to section 54.307(c) and not 54.903 of the Commission's rules. *See* 47 C.F.R. §§ 54.307(c) and 54.903. Thus, NPI's request for a waiver of section 54.903 of the Commission's rules is not necessary, and we dismiss it as moot.

data each year, it is necessary to require carriers to meet filing deadlines absent special circumstances.<sup>27</sup> Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.<sup>28</sup> NPI, SEI, and SouthEast argue that they missed their respective filing deadlines due to their unfamiliarity with and misunderstanding of the Commission's rules, insufficient information about the filing deadlines, or misinterpretation of information from USAC.<sup>29</sup> However, a carrier's confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission's rules.<sup>30</sup> Otherwise, carriers could seek to circumvent the Commission's rules merely by alleging that they misinterpreted or were confused by the rules.<sup>31</sup> Moreover, in each of these circumstances and unlike those orders in which these rules have been waived, none of the petitioners here cured its failure to timely file quickly nor demonstrated sufficient good cause to justify grant of a rule waiver.<sup>32</sup> We therefore, deny the Petitioner's requests for waiver of the Commission's rules.

#### IV. ORDERING CLAUSES

8. 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 pursuant to authority delegated in 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 sections 54.307(c), 54.802(a), and 54.903 of the Commission's rules, 47 C.F.R. §§ 54.307(c), 54.802(a), 54.903, filed by NPI-Omnipoint Wireless, LLC, the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by SEI Data, Inc., and the petition for waiver of section 54.809(c) of the Commission's rules, 47 C.F.R. § 54.809(c), filed by SouthEast Telephone, Inc. ARE DENIED.

9. IT IS FURTHER ORDERED that, pursuant to authority delegated under 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

Renée R. Crittendon  
Acting Deputy Chief  
Wireline Competition Bureau

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<sup>27</sup> *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, CC Docket No. 96-45, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

<sup>28</sup> *Id.*

<sup>29</sup> NPI Petition at 3-6; SEI Petition at 2-3; and SouthEast Petition at 2-3.

<sup>30</sup> *Federal-State Joint Board on Universal Service, South Slope Cooperative Telephone Company, Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket No. 96-45, 19 FCC Rcd 17493, 17494 para. 5 (Wireline Comp. Bur. 2004).

<sup>31</sup> *Id.*

<sup>32</sup> See e.g. *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) (waiving a filing deadline when the filing was submitted two business days after the deadline).