

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

In the Matter of
Federal-State Joint Board on Universal Service
Corr Wireless Communications, LLC Petition for
Limited Waiver of Sections 54.307(c) and 54.313(d)(3)
of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: March 14, 2007

Released: March 14, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part a petition by Corr Wireless Communications, LLC (Corr), an eligible telecommunications carrier (ETC), for waiver of certain filing deadlines set forth in sections 54.313(d)(3) and 54.307(c) of the Commission's rules.

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." 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 Commission has adopted various certification and data filing requirements.

3. Pursuant to sections 54.313 of the Commission's rules, ETCs not subject to the jurisdiction of a state, must file an annual certification with the Universal Service Administrative Company (USAC) and with the Commission stating that all high-cost support received by carriers will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." Section 54.313(d) provides that the certification must be filed by October 1 of the preceding

1 Corr Wireless Communications, LLC, Petition for Limited Waiver of Sections 54.307(c) and 54.313(d) of the Commission's Rules, CC Docket No. 96-45, filed Mar. 18, 2003 (Corr Petition); see also 47 C.F.R. §§ 54.307(c), and 54.313(d)(3).

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 47 C.F.R. §§ 54.313(b).

calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁶ In addition, pursuant to section 54.307 of the Commission's rules, a competitive ETC must file with 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.⁷

4. *Corr's Petition for Waiver.* On October 31, 2002, the Commission designated Corr as an ETC in areas served by non-rural carriers in Alabama.⁸ On March 18, 2003, Corr filed a request for waiver of the July 1, 2002, and October 1, 2002, certification filing deadlines set forth in section 54.313(d)(3) of the Commission's rules.⁹ Corr also sought waiver of the July 31, 2002, September 30, 2002, and December 30, 2002 filing deadlines for line count data set forth in section 54.307(c) of the Commission's rules.¹⁰ Corr argues that good cause exists for granting waivers of sections 54.307 and 54.313 of the Commission's rules because it did not receive its ETC designation until October 31, 2002.¹¹ In addition, Corr argues that the difficulty it had obtaining information about the line count filing requirements and the administrative burden it experienced as a first-time recipient of federal universal service justify a waiver of the December 30, 2002 filing deadline set forth in section 54.307(c) of the Commission's rules.¹² Corr also asserts that granting its request is consistent with the Commission's goal of competitive neutrality and will serve the public interest.¹³

III. DISCUSSION

5. We grant in part and deny in part Corr's waiver request. We find that Corr has demonstrated that there is good cause to waive section 54.313(d)(3) and 54.307(c) of the Commission's rules, in order to allow Corr to receive universal service support as of its ETC designation date.¹⁴ Corr, however, has not demonstrated that there is good cause to waive the December 30, 2002, line count filing deadline required by 54.307(c) of the Commission's rules.

6. Although Corr was required to file its line count data by July 31, 2002, and September 30, 2002, and its annual certification by July 1, 2002, and October 1, 2002, to receive universal service

⁶ 47 C.F.R. §§ 54.313(d). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. *Id.*

⁷ See 47 C.F.R. § 54.307.

⁸ See *Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum and Order, CC Docket 96-45, 17 FCC Rcd 21435 (2002) (*Corr Designation Order*).

⁹ See Corr Petition at 1; see also 47 C.F.R. § 54.313(d).

¹⁰ See Corr Petition at 1; see also 47 C.F.R. § 54.307(c).

¹¹ Corr Petition at 6-10.

¹² *Id.* 6-7.

¹³ *Id.* at 7-8.

¹⁴ 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).

support as of its ETC designation date, we find, as we have previously, that strict enforcement of the filing deadline would unfairly penalize Corr and would not further the Commission's universal service goals.¹⁵ Corr received its ETC designation on October 31, 2002.¹⁶ Therefore, the July, September, and October 1, 2002 deadlines occurred prior to Corr's ETC designation. We, therefore, conclude that waiver of 54.313(d)(3) and 54.307(c) of the Commission's rules is in the public interest and is consistent with previous waiver grants.¹⁷

7. We deny, however, Corr's request for waiver of the December 30, 2002, line count filing deadline established in section 54.307(c) of the Commission's rules. Consistent with precedent, we find that Corr's confusion about the rules and burden as a first time recipient of universal service support does not constitute special circumstances that warrant a deviation from the Commission's rules.¹⁸ Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.¹⁹ Otherwise, recently designated ETCs could seek to circumvent program rules by merely alleging they were confused by or misinterpreted the rules.²⁰ Accordingly, we deny Corr's petition for waiver of the December 30, 2002, line count filing deadline established in section 54.307(c) 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 under 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 54.313(d) and 54.307(c) of the Commission's rules,

¹⁵ The Bureau has granted numerous petitions filed by newly designated ETCs who, like Corr, could not have met filing deadlines that occurred prior to their ETC designation date. See e.g. *Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, Order, CC Docket 96-45, 19 FCC Rcd 15580, 15584-15585, paras. 9-10 (Telecom. Access Policy Div. 2004) (*Grande Communications Inc. Order*); *West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (Wireline Comp. Bur. 2002); *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 7138 (Telecom. Access Policy Div. 2003); *Midwest Wireless Iowa, L.L.C. Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, 19 FCC Rcd 10484 (Telcom. Access Policy Div. 2004); *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related To the Universal Service Program*, Public Notice, CC Docket No. 96-45, 21 FCC Rcd 9143 (Telecom. Access Policy Div. 2006) (granting fourteen petitions for waiver to allow newly designated ETCs to receive funding as of their designation date). *MTA Communications Inc. d/b/a/ MTA Wireless Petition for Waiver of Section 54.314 of the Commission Rules*, 22 FCC Rcd 964 (Wireline Comp. Bur. 2007).

¹⁶ *Corr Designation Order*, 17 FCC Rcd 21435.

¹⁷ See n. 15 *supra*.

¹⁸ See *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 5 (Wireline Comp. Bur. 2004) (denying waiver because carrier missed deadline by one month due to its own error); see also *FiberNet, LLC, Petition for Waiver of 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8203-04, para. 5 (Wireline Comp. Bur. 2004) (*FiberNet*) (denying waiver because carrier missed deadline despite having one month after designation to prepare filing).

¹⁹ *FiberNet*, 19 FCC Rcd at 8203-04, para. 5.

²⁰ *Id.*

filed by Corr Wireless Communications, LCC, IS GRANTED IN PART AND DENIED IN PART as described herein.

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

Renee R. Crittendon
Acting Deputy Chief
Wireline Competition Bureau