

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

In the Matter of
Federal-State Joint Board on Universal Service
Cellular South Licenses, Inc. Petition for Waiver of
Section 54.904(d) of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: March 29, 2007

Released: March 29, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by Cellular South Licenses, Inc. (Cellular South), an eligible telecommunications carrier (ETC), for a waiver of section 54.904(d) the Commission's rules. Granting Cellular South's waiver request will allow it to receive universal service support as of September 23, 2004, the date the Mississippi Public Service Commission (Mississippi Commission) designated Cellular South as an ETC. For the reasons set forth below, we find that Cellular South has demonstrated that good cause warrants 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." 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 54.904 of the Commission's rules, to receive Interstate Common Line Support (ICLS) an ETC must file a certification stating that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended. The certification must be filed with the Universal Service Administrative Company (USAC) and the Commission on the date that an ETC first files its line count information and thereafter on June 30 of each

1 Cellular South Licenses Inc. Petition for Waiver of Section 54.904(d) of the Commission's Rules, CC Docket No. 96-45, filed August 9, 2006 (Petition); see also 47 C.F.R. § 54.904(d).

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. § 54.904.

year.⁶ In 2005, the Commission concluded that “in order to provide universal service support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier’s ETC designation date.”⁷

4. Cellular South’s Petition for Waiver. On September 23, 2004, the Mississippi Public Service Commission issued an order designating Cellular South as an ETC in non-rural areas of Mississippi.⁸ On November 12, 2004, Cellular South filed the certification required by 54.904(d) with the Commission and USAC.⁹ On August 9, 2006, Cellular South filed a petition for waiver of the 53.904(d) filing deadlines to enable it to receive ICLS support beginning on September 23, 2004, the date Cellular South was designated an ETC by the Mississippi Commission.¹⁰

5. Cellular South contends that good cause exists to waive the certification filing requirements of section 54.904(d) of the Commission’s rules to permit Cellular South to receive ICLS support as of its ETC designation date.¹¹ Cellular South argues that granting its waiver is in the public interest because it will further the Commission’s goal of competitive neutrality and will allow Cellular South to improve its facilities.¹² Finally, Cellular South argues that granting its waiver is consistent with Commission precedent and the Commission’s 2005 decision to allow newly designated ETCs to receive support as of their ETC designation date, provided the ETC files the necessary filings within 60 days of the carrier’s ETC designation date.¹³

III. DISCUSSION

6. We find that Cellular South has demonstrated that there is good cause to waive section 54.904(d) of the Commission’s rules in order to allow Cellular South to receive universal service support beginning on September 23, 2004, the date of Cellular South’s designation as an ETC.¹⁴ Although

⁶ See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*MAG Order*) (*subsequent history omitted*).

⁷ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6411 (2005) (“*ETC Designation Order*”).

⁸ Petition at 1.

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 3-7.

¹² *Id.* at 3-5.

¹³ *Id.* at 4-7.

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.

Cellular South was required to file its certification by June 30, 2004, to receive ICLS support as of its ETC designation date, we find that strict enforcement of the filing deadline would unfairly penalize Cellular South and would not further the Commission's universal service goals.¹⁵

7. Cellular South did not receive its ETC designation until September 23, 2004.¹⁶ Therefore, it could not have met the June 30, 2004, certification deadline. Shortly after Cellular South was designated an ETC, the Commission amended its rules to allow newly designated ETCs to receive universal service support as of the effective date of their ETC designation, provided that the necessary certifications and data are filed within 60 days of the ETC designation date.¹⁷ The Bureau has granted numerous petitions filed by newly designated ETCs who, like Cellular South, could not have met filing deadlines that occurred prior to their ETC designation date.¹⁸ We, therefore, conclude that waiver of section 54.904(d) of the Commission's rules is in the public interest and is consistent with previous waiver grants and the Commission's decision to allow newly designated ETCs to receive support of the carrier's designation date.

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 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Cellular South Licenses, Inc. IS GRANTED.

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).

¹⁵ See *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*")

¹⁶ Petition at 1.

¹⁷ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92; 47 C.F.R. § 54.314(d)(6).

¹⁸ See, e.g., *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) (granting a waiver of the October 1 certification filing deadline); *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) (granting a waiver of the October 1 certification filing deadline); *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) (granting a waiver of the October 1 certification filing deadline); *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 (Telecom. Access Policy Div. 2004) (granting a waiver of the April 1 certification filing deadline); *Grande Communications Inc. Order*, 19 FCC Rcd 15580 (granting a waiver of the January 1 certification filing deadline); *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).

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