

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
MTA Communications Inc. d/b/a MTA Wireless)	CC Docket No. 96-45
Petition for Waiver of Section 54.314(d) of the)	
Commission’s Rules)	

ORDER

Adopted: January 26, 2007

Released: January 26, 2007

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by MTA Communications Inc. d/b/a MTA Wireless (MTAW), an eligible telecommunications carrier, for a waiver of section 54.314(d) of the Commission’s rules.¹ Granting MTAW’s waiver request will allow it to receive universal service support as of December 9, 2004, the date the Regulatory Commission of Alaska (Alaska Commission) designated MTAW an ETC. For the reasons set forth below, we find that MTAW 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.”² 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.”³ To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.⁴

3. Pursuant to section 54.314 of the Commission’s rules, state commissions must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all high-cost support provided to ETCs subject to the jurisdiction of that state will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁵ In instances in which carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be

¹ MTA Communications, Inc. d/b/a MTA Wireless Petition for Waiver of Section 54.314(d) of the Commission’s Rules, CC Docket No. 96-45, filed November 11, 2006 (Petition). *See also* 47 C.F.R. § 54.314(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 47 C.F.R. § 54.314(a).

used in a manner consistent with section 254(e).⁶ Section 54.314 provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁷ 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 of the year, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁸ The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and calculate estimated high-cost demand amounts for submission to the Commission.⁹

4. In 2005, the Commission amended section 54.314 to provide a provision for newly designated ETCs.¹⁰ The Commission found that, under the then-existing rule, a newly designated ETC may not begin to receive support until well after its ETC designation date based on the timing of its designation.¹¹ To ensure that newly designated ETCs receive support on a timely basis, the Commission amended section 54.314 by adding section 54.314(d)(6), which allows newly designated ETCs to receive support as of the date of their designation so long as the required certifications and data are filed within 60 days of the ETC designation date.¹²

5. *MTAW's Petition for Waiver.* On December 8, 2004, the Alaska Commission issued an order designating MTAW as an ETC in the study area of Matanuska Telephone Association, a rural local exchange carrier.¹³ Also, on December 8, 2004, MTAW, consistent with 54.314(b) of the Commission's rules, filed a certification with the Commission and USAC stating that MTAW would use high-cost loop support "only for the provision, maintenance and upgrading of facilities and services for which [the] support is intended, pursuant to Section 254(e)" of the Act.¹⁴ On November 11, 2006, MTAW filed a request for a waiver of the July 1, 2004, and October 1, 2004, quarterly filing deadlines so that it can receive support beginning on December 8, 2004, the date MTAW was designated an ETC by the Alaska Board.¹⁵

6. MTAW contends that good cause exists to waive the certification filing requirements of section 54.314(d) of the Commission's rules to permit MTAW to receive high-cost loop support for the

⁶ See 47 C.F.R. § 54.314(b); *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, CC Docket No. 00-256, 16 FCC Rcd 11244, 11318, para. 189 (2001) (*Rural Task Force Order*).

⁷ See 47 C.F.R. § 54.314(d)

⁸ *Id.*

⁹ See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission's rules, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support, two months prior to the beginning of each quarter. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC generally needs to know which carriers have been certified under the Commission's rules no later than October 1. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

¹⁰ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) ("*ETC Designation Order*").

¹¹ *Id.* at 6410, para. 89.

¹² *Id.* at 6411, para. 92; 47 C.F.R. § 54.314(d)(6).

¹³ Petition, Ex. A.

¹⁴ Petition, Ex. B.

¹⁵ Petition at 1.

fourth quarter of 2004 and the first quarter of 2005.¹⁶ MTAW argues that granting its waiver is in the public interest because it will further the Commission's goal of competitive neutrality and will allow MTAW to further improve its facilities, which will allow it to better serve the consumers in its service area.¹⁷ Finally, MTAW argues that granting its waiver is consistent with Commission precedent and the Commission's 2005 amendment to 54.314(d), allowing newly designated ETCs to receive funding from the date of ETC designation.¹⁸

III. DISCUSSION

7. We find that MTAW has demonstrated that there is good cause to waive section 54.314(d) of the Commission's rules in order to allow MTAW to receive universal service support beginning on December 8, 2004, the date of MTAW's designation as an ETC.¹⁹ Although MTAW was required to file its certification by July 1, 2004 to receive 2004 fourth quarter support and by October 1, 2004 to receive 2005 first quarter support, we find that strict enforcement of the filing deadline would unfairly penalize MTAW and would not further the Commission's universal service goals.²⁰

8. MTAW did not receive its ETC designation until December 8, 2004. Therefore, it could not have met the July 1, 2004, certification deadline for support in the fourth quarter of 2004 or the October 1, 2004, certification deadline for support in the first quarter of 2005. Shortly after MTAW 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.²¹ Moreover, the Wireline Competition Bureau (Bureau) has found that it would "be onerous . . . to deny an ETC receipt of universal service support for almost two quarters as a result of a particular ETC designation having occurred after the certification filing deadline."²² The Bureau has granted numerous petitions filed by newly designated ETCs who, like MTAW, could not have met filing deadlines that occurred prior to their ETC designation.²³ We, therefore, conclude that waiver of this rule is in the public interest and is consistent with the Commission's amendment to section 54.317(d)(6) and previous waiver grants.

¹⁶ *Id.* at 4-8.

¹⁷ *Id.* at 6-8

¹⁸ *Id.* at 5-6.

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 *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*")

²¹ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92; 47 C.F.R. § 54.314(d)(6).

²² *Western Wireless Petition for Waiver of Section 54.314(d) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 14689, 14691, para. 7 (Telecom. Access Policy Div. 2003).

²³ 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*

IV. ORDERING CLAUSES

9. 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 54.314(d) of the Commission's rules, 47 C.F.R. § 54.314(d), filed by MTA Wireless Communications, Inc. d/b/a MTA IS GRANTED.

10. 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

Kirk S. Burgee
Associate Chief
Wireline Competition Bureau

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).