

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

In the Matter of )
Federal-State Joint Board on ) CC Docket No. 96-45
Universal Service )
Bristol Bay Cellular Partnership )
Petition for Waiver of the Federal )
Communications Commission's Rules Concerning )
the Administration of the Universal Service Fund )

ORDER

Adopted: December 12, 2007

Released: December 12, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from Bristol Bay Cellular Partnership (Bristol Bay), a competitive eligible telecommunications carrier (ETC) in Alaska, for a waiver of section 54.307(b) of the Commission's rules. Specifically, Bristol Bay seeks a waiver of the requirement that subscriber line count data submitted for purposes of obtaining universal service support be based on the subscriber's billing address. We find that Bristol Bay has demonstrated that good cause warrants a waiver of section 54.307(b) in this unique circumstance, as discussed more fully below.

II. BACKGROUND

2. In 2001, the Commission adopted the requirement that a competitive ETC providing mobile wireless service in an incumbent local exchange carrier's service area use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area. The Commission declined to use the residential or primary business location as a surrogate for wireless mobile carrier customers' locations because not all wireless carriers have databases capable of making such a determination. The Commission noted that it might revisit this approach in the future. Based on this decision, a competitive ETC receives universal service support only on the number of mobile wireless

1 Bristol Bay Cellular Partnership Petition for Waiver, CC Docket No. 96-45 (filed Nov. 13, 2006) (Petition); 47 C.F.R. § 54.307(b).

2 Petition at 1.

3 Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11314-16, paras. 178-184 (2001) (Rural Task Force Order); 47 C.F.R. § 54.307(b).

4 Rural Task Force Order, 16 FCC Rcd at 11315, para. 182.

5 Id. at 11316, para. 183.

customer lines with billing addresses within the competitive ETC's service area.

3. The Commission revisited this approach in 2005, but declined to change the basis for determining a wireless mobile customer's location from the billing address to a "place of primary use" definition.<sup>6</sup> The Commission found that there was not a significant difference between the two definitions, because, in the majority of cases, the customer's billing address and the place of primary use would be the same.<sup>7</sup> In reaching this conclusion, the Commission relied on evidence submitted in the record of the proceeding demonstrating that only a small number of customers have billing addresses in locations other than where service is located.<sup>8</sup>

4. *Bristol Bay's Petition for Waiver.* On November 13, 2006, Bristol Bay filed a request for waiver of section 54.307(b) of the Commission's rules, specifically seeking waiver of the requirement that subscriber line count data submitted for purposes of receiving universal service support be based on the subscriber's billing address.<sup>9</sup> Due to the unique nature of the two rural service areas that Bristol Bay serves in Alaska, Bristol Bay requests a waiver of section 54.307(b) to allow it to file line count data based on the service area within which a subscriber exclusively or primarily uses his or her wireless telephone.<sup>10</sup> Bristol Bay argues that it has a subscriber base of approximately 1,244 customers in its two service areas, and it has determined that all of its subscribers use their telephones exclusively or almost exclusively within the service areas where Bristol Bay is designated as an ETC.<sup>11</sup> Of these 1,244 customers, however, Bristol Bay states that only 487 have billing addresses within Bristol Bay's service areas, meaning that 757 customers, or approximately two-thirds of Bristol Bay's customers, have billing addresses outside of Bristol Bay's service areas.<sup>12</sup> Bristol Bay does not offer roaming service outside of its service areas, so grant of its waiver request would not allow it to receive high-cost universal service support for customers it serves outside its ETC-designated service areas.

### III. DISCUSSION

5. Due to the unique circumstances surrounding its petition, we grant Bristol Bay's request for waiver and allow it to file line count data based on the service area in which its wireless customers exclusively or primarily use their wireless service. We find that there is good cause to waive section 54.307(b) of the Commission's rules in this limited circumstance.<sup>13</sup> The unique factual circumstance here demonstrates that the provision of wireless service by Bristol Bay is inconsistent with the rationale underlying the general rule on which the Commission relied in adopting the billing address requirement.

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<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6406-08, paras. 80-83 (2005) (*ETC Designation Order*).

<sup>7</sup> *Id.* at 6407, para. 82.

<sup>8</sup> *Id.* at 6407-08, para. 83 (citing an analysis provided by the Iowa Utilities Board).

<sup>9</sup> Petition at 1.

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 2-3.

<sup>13</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.

Unlike in the majority of situations, here Bristol Bay's wireless customers' billing addresses are significantly different from the place of primary use of the service. Moreover, the fact that Bristol Bay does not provide roaming service outside of its service areas protects against the possibility of Bristol Bay "gaming the system" to attempt to receive universal service support for customers it serves outside of the service areas in which it is designated as an ETC. Also, the fact that Bristol Bay does not provide roaming service outside of its service areas allows Bristol Bay to be certain that its customers' primary place of use of its wireless service consists of the service areas Bristol Bay serves. Therefore, given the fact that the majority of Bristol Bay's customers' billing addresses and primary places of use of the wireless service are significantly different, and that Bristol Bay does not provide roaming service outside of its service areas, we grant Bristol Bay's waiver request in this unique and limited circumstance. Consequently, in this case, we find it serves the public interest to waive the general rule and allow Bristol Bay to rely on the service area where its customers exclusively or primarily use their wireless service for purpose of reporting lines to receive universal service support.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, 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 54.307(b) of the Commission's rules, 47 C.F.R. § 54.307(b), filed by Bristol Bay Cellular Partnership, IS GRANTED to the extent described herein.

7. 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 and 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer  
Chief  
Wireline Competition Bureau