

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

In the Matter of)
Micronesia Telecommunications Corporation and)
PTI Pacifica, Inc.)
Request for Waiver of Section 54.418 of the) CC Docket No. 96-45
Commission's Rules)
DTV Consumer Education Initiative) MB Docket No. 07-148

ORDER

Adopted: April 30, 2008

Released: April 30, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The Micronesia Telecommunications Corporation (MTC) and its wholly-owned subsidiary PTI Pacifica, Inc. (PTI Pacifica) (collectively the Petitioners), have filed the above-captioned request for a waiver of the notification requirements in section 54.418 of the Commission's rules. Pursuant to that rule section, eligible telecommunications carriers (ETCs) must notify their customers about the digital television (DTV) transition through use of bill notices or monthly stand-alone mailers and publicity campaigns. For the reasons stated below, we grant the Petitioners a waiver pursuant to section 1.3 of the Commission's rules.

II. BACKGROUND

A. The DTV Consumer Education Initiative

2. Newly-adopted section 54.418 of the Commission's rules requires all ETCs that receive federal universal service support to provide specified DTV transition information on a monthly basis to their Lifeline or Link-Up customers and in their Lifeline or Link-Up publicity campaigns. ETCs are required to convey the following information:

1 Micronesia Telecommunications Corporation Request for Expedited Waiver, MB Docket No. 07-148 (filed Apr. 10, 2008) (Waiver Petition); 47 C.F.R. § 54.418.

2 These provisions were recently adopted in the DTV Consumer Education Report and Order. DTV Consumer Education Initiative, MB Docket No. 07-148, Report and Order, FCC 08-56, App. B (Mar. 3, 2008) (DTV Consumer Education Report and Order); DTV Consumer Education Initiative, MB Docket No. 07-148, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 08-119 (Apr. 23, 2008) (modifying the notification requirements to allow ETCs to provide stand-alone mailers (e.g., postcards or brochures) in lieu of bill notices or inserts to Lifeline and Link-Up customers).

3 47 C.F.R. § 1.3.

4 47 C.F.R. § 54.418.

After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.⁵

3. The Commission adopted this rule to adequately prepare the American public for the full-power digital transition.⁶ In recognition of the fact that the DTV transition is likely to greatly affect many lower income households because those are the households that are most likely to be over-the-air households, the Commission decided to utilize the existing communication paths between low-income customers and ETCs under the Lifeline and Link-Up programs to inform such customers of the DTV transition.⁷ The Commission concluded that application of the DTV consumer education requirements to ETCs that receive federal universal service support and are required to advertise to low-income consumers is reasonably ancillary to the Commission's duty to ensure the success of the DTV transition.⁸

B. Petitioners' Waiver Request

4. MTC and PTI Pacifica are ETCs located in the Commonwealth of the Northern Mariana Islands (CNMI), an archipelago of fourteen islands located in the Micronesian area of the eastern Pacific Ocean, over 5,000 miles from the United States.⁹ MTC is the incumbent local exchange carrier in CNMI and has Lifeline and Link-Up customers that it serves pursuant to its status as an ETC.¹⁰ PTI Pacifica is a wireless carrier that recently received ETC status but has no Lifeline or Link-Up customers.¹¹ Under the newly-adopted DTV information rules, MTC would be required to provide information on a monthly basis about the transition of over-the-air full power broadcasting from analog to digital service, and both Petitioners would be required to provide this information as part of their Lifeline and Link-Up publicity campaigns.¹²

5. On April 10, 2008, the Petitioners filed a request for waiver, arguing that they should be exempt from the ETC notice requirements in section 54.418(b)(2).¹³ The Petitioners assert that CNMI is a unique territory with no licensed full power television broadcast stations and, thus, no stations subject to the February 17, 2009, DTV transition deadline.¹⁴ According to the Petitioners, the only terrestrial television station licensed to broadcast in CNMI is KPPI-LP, a low power station on CNMI's largest inhabited island, Saipan.¹⁵ Because the Commission has not required low power stations to cease analog broadcasting on February 17, 2009, the Petitioners assert that KPPI-LP has no plans to broadcast digitally in the foreseeable future and will continue broadcasting in analog for an indeterminate time after February

⁵ 47 C.F.R. § 54.418(b)(2)(i).

⁶ *DTV Consumer Education Report and Order* at paras. 1-2.

⁷ *Id.* at para. 57.

⁸ *Id.*

⁹ Waiver Petition at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. §§ 54.418(b), (d).

¹³ Waiver Petition at 1-2.

¹⁴ *Id.*

¹⁵ *Id.* at 2-3, n.3.

17, 2009.¹⁶ Therefore, the Petitioners argue that, because no television station licensed in CNMI will be broadcasting digitally after February 17, 2009, “the information about over-the-air reception that is required to be distributed by ETCs to low-income CNMI residents who may not subscribe to cable and satellite TV services is erroneous.”¹⁷ According to the Petitioners, expedited relief is necessary because

even one distribution of incorrect information as a telephone company bill insert is bound to cause consumer confusion and may encourage low-income CNMI residents to acquire digital converter boxes that are unneeded and will serve only to disrupt reception of the over-the-air signals of CNMI’s lone television station after February 17, 2009.¹⁸

The Petitioners argue that their “[a]dherence to Section 54.418 under these circumstances would frustrate the purposes of the rule, which is to educate consumers, not misinform them.”¹⁹

III. DISCUSSION

6. Pursuant to section 1.3 of the Commission's rules, the Commission may waive any provision of its rules if it determines that good cause has been shown.²⁰ We conclude that the Petitioners have amply demonstrated good cause for a waiver.²¹

7. The ETCs in the instant case serve a location where no full power over-the-air television station is licensed, and, therefore, no stations are required to turn off their analog signals at midnight on February 17, 2009. Absent a waiver of section 54.418, the Petitioners would have to prepare bill notices or stand-alone mailers and include information in publicity campaigns stating that “[a]fter February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting.”²² In the unusual circumstances of this case, the notices would create consumer confusion and erroneous expectations because these consumers’ over-the-air television service will not be affected

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4. The Petitioners also argue that “[r]equiring MTC to provide the misleading information will be unduly burdensome to the Petitioners and their customers,” because “it is inevitable that MTC customers who are confused about the applicability of the Section 54.418(b)(2) notification to them will call MTC.” *Id.* at 4 n.6.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 4. The Petitioners further argue that “[t]he confusion created would be exacerbated should CNMI’s low power television station broadcast information about its plans to continue analog broadcasting after February 17, 2009, because that information would directly contradict the notice required to be sent by ETCs in accordance with Section 54.418(b)(2).” *Id.* The Petitioners argue that “[i]f MTC customer service representatives accurately inform the Lifeline and Link-Up customers that information in the Section 54.418(b)(2) notification does not apply to over-the-air viewers in the CNMI, those customers properly may question why MTC sent them the notification in the first place.” *Id.* at 4 n.6.

²⁰ 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.

²¹ The Petitioners also cite the waiver standard in section 1.925(b)(3) of the Commission’s rules. *Id.* at 3 (citing 47 C.F.R. § 1.925(b)(3)). Because we find Petitioners have demonstrated good cause for a waiver under section 1.3, we need not address their argument for waiver under section 1.925(b).

²² 47 C.F.R. § 54.418(b)(2)(i).

by the DTV transition. In addition, application of the rule to the Petitioners would impose upon them the burden of preparing notices or stand-alone mailers and including information in publicity campaigns, as well as resolving the likely consumer confusion resulting from these, without a commensurate benefit to the public. Requiring the Petitioners to implement these notice provisions would thus frustrate the underlying purpose of the rules to ensure that consumers have accurate information concerning the DTV transition so that they can prepare for it. In addition, it would place an undue burden on the Petitioners. The Petitioners have therefore shown that application of the rule in these circumstances would be contrary to the public interest and that good cause exists for grant of their waiver request.

IV. CONCLUSION

8. For the reasons stated above and based upon the current record, we conclude that grant of a waiver of the notice requirements set forth in section 54.418 of the Commission's rules to MTC and PTI Pacifica is justified under section 1.3 of the Commission's rules.²³ If any broadcaster licensed to CNMI now or in the future switches to digital-only service on or before March 31, 2009, this waiver will no longer be effective.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 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 request for waiver filed by Petitioners Micronesian Telecommunications Corporation and its wholly-owned subsidiary PTI Pacifica, Inc., of section 54.418 of the Commission's rules, 47 C.F.R. § 54.418, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau

²³ 47 C.F.R. §§ 54.418, 1.3.