

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
New Florence Telephone Company)	
)	
Waiver of Filing Deadline in 47 C.F.R. Section 54.314(d))	

ORDER

Adopted: March 6, 2008

Released: March 6, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we direct the Universal Service Administrative Company (USAC), subject to the conditions discussed herein, to recommence disbursing high-cost universal service support to New Florence Telephone Company (NFTC) as of April 1, 2007, the date as of which the Missouri Public Service Commission (Missouri Commission) has certified that NFTC will use federal high-cost support consistent with its intended purposes. Furthermore, pursuant to section 1.3 of the Commission’s rules,¹ we find good cause to waive, on our own motion, section 54.314(d) of the Commission’s rules setting forth the filing deadlines for annual state certifications of high-cost universal service support for NFTC to allow it to receive high-cost support beginning April 1, 2007.²

II. BACKGROUND

2. NFTC is a rural, incumbent local exchange carrier (LEC) serving the New Florence, Missouri, exchange.³ Section 254(e) of the Communications Act of 1934, as amended (the Act), requires that “[a] carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴ Pursuant to section 54.314(a) of the Commission’s rules, states that desire rural LECs within their jurisdiction to receive federal high-cost universal service support must file an annual certification with USAC and the Commission “stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is

¹ 47 C.F.R. § 1.3 (allowing the Commission to waive Commission rules on its own motion); *see also* 47 C.F.R. § 0.91 (delegating to the Wireline Competition Bureau the functions of the Commission except as reserved to the Commission under 47 C.F.R. § 0.291).

² 47 C.F.R. § 54.314(d).

³ *See* Staff’s Recommendation Concerning Application for Approval of Stock Purchase, Missouri Commission Case No. TO-2007-0139 at p. 2 (Feb. 26, 2007) (Feb. 26, 2007, Missouri Commission Staff’s Stock Purchase Recommendation).

⁴ 47 U.S.C. § 254(e).

intended.”⁵ Section 54.314(d) of the Commission’s rules sets forth the filing deadlines for such state certifications, and the resulting schedules for high-cost support disbursements to the carriers.⁶

3. On September 30, 2004, the Missouri Commission informed the Commission that it was declining to certify that NFTC was using universal service support in accordance with section 254(e) of the Act.⁷ In its letter to the Commission, the Missouri Commission stated that it was conducting an inquiry into NFTC’s eligibility for universal service support and awaiting receipt of a third-party audit.⁸ Subsequently, the Chief of the Commission’s Wireline Competition Bureau (Bureau) sent USAC a letter on October 15, 2004, instructing USAC to immediately suspend all monthly support payments to NFTC until the issue could be resolved.⁹ On November 5, 2004, USAC informed NFTC that it initiated suspension of high-cost payments to NFTC beginning with the September 2004 payments that were disbursed at the end of October 2004, and also informed NFTC of its right to appeal the decision.¹⁰

4. On December 1, 2004, NFTC appealed the decision to suspend its high-cost support payments, arguing that, among other things, NFTC was denied due process, the Commission acted in an arbitrary and capricious manner, and the public interest was disserved by suspension of NFTC’s high-cost support payments.¹¹ Further, NFTC noted that it understood that suspension of its high-cost support payments was related to a Missouri Commission investigation into alleged wrongdoing by Cass County Telephone Company (CassTel), an incumbent LEC with ties to NFTC.¹² In its appeal letter, NFTC

⁵ 47 C.F.R. §54.314(a).

⁶ 47 C.F.R. §54.314(d).

⁷ 47 U.S.C. § 254(e); *see* Letter from Robert M. Clayton, III, Commissioner, Missouri Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 30, 2004) (Sept. 30, 2004, Missouri Commission Letter).

⁸ *See* Sept. 30, 2004, Missouri Commission Letter.

⁹ *See* Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission, to Irene Flannery, Vice President, Universal Service Administrative Company (Oct. 15, 2004). On October 22, 2004, the Bureau Chief sent a follow-up letter informing USAC that it should continue to disburse monthly Lifeline support payments to NFTC, but that it should suspend all high-cost support disbursements to NFTC. *See* Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission, to Irene Flannery, Vice President, Universal Service Administrative Company (Oct. 22, 2004).

¹⁰ *See* Letter from Irene Flannery, Vice President, Universal Service Administrative Company, to Robert Williams, Acting Chairman, New Florence Telephone Company (Nov. 5, 2004).

¹¹ *See* Letter from Michael K. Kurtis, Counsel for New Florence Telephone Company, to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission (Dec. 1, 2004) (Dec. 1, 2004, NFTC Appeal Letter).

¹² *Id.* On October 15, 2004, the Bureau had directed USAC to suspend high-cost support payments to CassTel, based on the Missouri Commission’s September 30, 2004, letter declining to certify that CassTel was using its high-cost support in accordance with section 254(e) and initiating an investigation into CassTel’s use of universal service support. *See* Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission, to Irene Flannery, Vice President, High Cost and Low Income Division, USAC (Oct. 15, 2004) at Attach.; Letter from Robert M. Clayton, III, Commissioner, Missouri Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (Sept. 30, 2004); Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission, to Irene Flannery, Vice President, High Cost and Low Income Division, USAC (Oct. 22, 2004); Letter from Irene Flannery, Vice President, High Cost and Low Income Division, USAC, to Kenneth Matzdorff, Chairman, CassTel (Nov. 5, 2004). In January and February 2005, Kenneth Matzdorff, who had been President of CassTel, Daniel Martino, who had ownership interests in CassTel’s parent corporation, and Richard Martino, who had ownership interests in CassTel’s parent corporation and control of CassTel, entered guilty pleas in U.S. District Court for the Western District of

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acknowledged that 66 percent of NFTC's ownership was common with CassTel, but stressed that "there had been no investigation or even allegation of wrongdoing by New Florence."¹³

5. On January 7, 2004, the Missouri Commission filed comments in the appeal proceeding asserting that it was not required to justify its decision to withhold universal service certification for NFTC, that NFTC shareholders had ties to criminal entities, and that it was continuing its investigation into NFTC.¹⁴ On January 18, 2005, NFTC filed reply comments arguing, among other things, that the Commission and the Missouri Commission deprived NFTC of a property right without due process, and that withholding high-cost support from NFTC while providing it with low-income support was arbitrary, capricious, and an abuse of discretion.¹⁵ The Missouri Commission subsequently declined to certify that NFTC was using universal service support in accordance with the Act for the 2005, 2006, and 2007 funding years.

6. On October 25, 2005, the Missouri Commission staff filed a complaint against NFTC seeking penalties against NFTC based on concerns over financial and managerial controls.¹⁶ On June 2, 2006, a stipulation and agreement were reached in the case whereby the Missouri Commission staff agreed that when NFTC implemented sufficient financial and managerial controls to justify NFTC's receipt of universal service disbursements, the staff would recommend that the Missouri Commission certify to the Commission NFTC's eligibility for high-cost universal service support.¹⁷ On February 26, 2007, the Missouri Commission staff recommended to the Missouri Commission that it certify to the Commission that NFTC would use universal service funds in accordance with section 254(e) of the Act once NFTC transferred control from existing to entirely new shareholders.¹⁸ Specifically, the staff explained that a new entity was acquiring NFTC and that the shareholders seeking to purchase NFTC were independent,

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Missouri (Missouri District Court), related to CassTel's fraudulent receipt of overpayments from USAC and the National Exchange Carrier Association (NECA) in the amount of \$8.9 million. See *United States v. Kenneth Matzdorff*, Case No. 05-00020-CR-W-SOW, Plea Agreement (W.D.Mo. Jan. 18, 2005); *United States v. Richard T. Martino*, Case No. 05-00027-01-CR-W-HFS, Plea Agreement (W.D.Mo. Feb. 23, 2005); *United States v. Daniel D. Martino*, Case No. 05-00027-02-CR-W-HFS, Plea Agreement (W.D.Mo. Feb. 23, 2005). As part of these criminal plea agreements, Kenneth Matzdorff and Daniel and Richard Martino collectively forfeited \$8.9 million to the Missouri District Court. See, e.g., *United States v. Daniel D. Martino*, Case No. 05-00027-02-CR-W-HFS, Judgment in a Criminal Case at 5 (W.D.Mo. imposed Nov. 23, 2005 and entered Dec. 2, 2005) (imposing restitution in the amount of \$8.9 million, jointly and severally upon Daniel Martino, Richard Martino, and Kenneth Matzdorff, and ordering \$3.5 million of such restitution to be paid to USAC, and \$5.4 million of it to be paid to NECA).

¹³ See Dec. 1, 2004, NFTC Appeal Letter.

¹⁴ See *Request for Review by New Florence Telephone Company (SAC 421927) of Decision of Universal Service Administrator Regarding Suspension of High Cost Universal Service Support Payments and Request for Preemption of the Missouri Public Service Commission*, CC Docket No. 96-45, Comments of the Missouri Public Service Commission (filed Jan. 7, 2005).

¹⁵ See *Request for Review by New Florence Telephone Company (SAC 421927) of Decision of Universal Service Administrator Regarding Suspension of High Cost Universal Service Support Payments and Request for Preemption of the Missouri Public Service Commission*, CC Docket No. 96-45, Reply Comments of New Florence Telephone Company (filed Jan. 18, 2005).

¹⁶ See Complaint, Missouri Commission Case No. TC-2006-0184 (Oct. 25, 2005).

¹⁷ See Stipulation and Agreement, Missouri Commission Case No. TC-2006-0184 (filed June 2, 2006) (Stipulation and Agreement). The Missouri Commission approved the Stipulation and Agreement on July 27, 2006.

¹⁸ See Feb. 26, 2007, Missouri Commission Staff's Stock Purchase Recommendation at p. 6.

had no relationship or ties to the then-current owners, and had “sufficient knowledge and skill to provide basic local telecommunications services.”¹⁹

7. On March 2, 2007, the Commission issued a Public Notice establishing a streamlined proceeding for the domestic section 214 transfer of control of Tiger Telephone, Inc. (TTI) (NFTC’s owner/sole shareholder) and NFTC from existing to future shareholders.²⁰ On March 31, 2007, the Missouri Commission authorized NFTC, TTI, and Direct Communications Rockland, Inc., (DCRI) to enter into a stock purchase agreement giving DCRI all of the stock of TTI, which included all NFTC stock.²¹ On April 1, 2007, the transfer of control became effective, and on May 1, 2007, the Missouri Commission certified to the Commission that, “as of April 1, 2007, New Florence Telephone Company has certified to the Missouri Commission that it will use high-cost universal service support in accordance with Section 254(e) of the Telecommunications Act of 1996.”²²

III. DISCUSSION

A. NFTC’s Qualifications to Receive High-Cost Universal Service Support

8. In the CassTel case discussed above, the Bureau imposed certain conditions on CassTel and its successor entity before directing USAC to provide prospective high-cost support to that entity.²³ In this case, NFTC has certified to the Commission that it has implemented safeguards similar to those applied in the CassTel case, both voluntarily and in connection with the Stipulation and Agreement with the Missouri Commission.²⁴ Because the facts underlying NFTC ceasing to receive high-cost support are substantially the same as those that led to CassTel ceasing to receive support, and in reliance on NFTC having implemented safeguards that are substantially the same as required by the Bureau in the *CassTel-FairPoint Order*, we find that NFTC should recommence receiving high-cost universal service support subject to two additional conditions:²⁵

- (a) *Repayment of Monies Owed.* Any amounts owed by NFTC to USAC must be repaid prior to NFTC receiving high-cost support.²⁶

¹⁹ *Id.*

²⁰ See *Domestic Section 214 Application Filed for the Transfer of Control of Tiger Telephone, Inc., and New Florence Telephone Company from Existing to Future Shareholders*, WC Docket No. 07-37, Public Notice, 22 FCC Rcd 4239 (Wireline Comp. Bur. 2007).

²¹ See Order Authorizing Sale of Stock, Missouri Commission Case No. TO-2007-0139 (issued Mar. 22, 2007; effective Mar. 31, 2007) (Missouri Commission Sale Authorization Order).

²² See Letter from Jeff Davis, Chairman, Missouri Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 1, 2007) (May 1, 2007, Missouri Commission Letter).

²³ *Cass County Telephone Company, Limited Partnership, and LEC Long Distance, Inc. d/b/a CassTel Long Distance, Transferors, FairPoint Communications, Inc., FairPoint Communications Missouri, Inc., ST Long Distance, Inc., d/b/a FairPoint Communications Long Distance, Transferees, Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Transfer of Control of Blanket Domestic Section 214 Authority and Certain Telecommunications Assets*, WC Docket No. 06-64, Order, 21 FCC Rcd 8015 (Wireline Comp. Bur. 2006) (*CassTel-FairPoint Order*).

²⁴ See Letter from Leonard May, President, New Florence Telephone Company, to Marlene H. Dortch, Secretary, Federal Communications Commission, Att. (Oct. 1, 2007) (Oct. 1, 2007, NFTC Letter); see also Stipulation and Agreement.

²⁵ *CassTel-FairPoint Order*, 21 FCC Rcd at 8017-21, paras. 6-7.

²⁶ High-cost support is based on projected information submitted by carriers, which are subject to true-up when actual data becomes available. USAC deducts any true-up amounts owed the fund from disbursements to carriers.

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- (b) *Annual Audits*. DCRI has stated that it will undergo an annual independent audit, and DCRI is willing to provide the Commission with a copy of the independent annual audit report that will be conducted for NFTC.²⁷ As a condition to receiving high-cost universal service support, NFTC must provide such audit reports upon the Commission's request.

These safeguards will provide transparency to ensure that NFTC operates consistent with the universal service program rules, and will deter waste, fraud, and abuse of universal service support. Failure to adhere to any of these safeguards, including the safeguards outlined by NFTC in its October 1, 2007, letter to the Commission and in the Stipulation and Agreement,²⁸ will subject NFTC and its successors and assigns to all appropriate remedies and enforcement actions.²⁹

B. Waiver of State Certification Filing Deadline

9. As discussed above, the Missouri Commission filed a letter with the Commission on May 1, 2007, certifying that, as of April 1, 2007, NFTC will use high-cost support in accordance with the Act.³⁰ Pursuant to section 54.314(d) of the Commission's rules, because the Missouri Commission filed its certification letter after April 1, 2007, but before July 1, 2007, NFTC would, in the absence of a waiver, only begin to receive high-cost support for the fourth quarter of 2007.³¹

10. We conclude that special circumstances exist with respect to NFTC, warranting a waiver of state certification filing deadlines set forth in section 54.314(d) of the Commission's rules in this instance.³² The Missouri Commission certified as to NFTC's use of high-cost support as of April 1, 2007.³³ Accordingly, to fully effectuate the Missouri Commission's certification, we waive this rule for

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NFTC has not been receiving disbursements since September 2004, so USAC has not been able to deduct true-up amounts from NFTC's disbursements. We direct USAC to invoice NFTC for any such amounts owed, and begin disbursements after payment is received. The National Exchange Carrier Association (NECA) has stated that NFTC has no outstanding obligations to NECA. See Oct. 1, 2007, NFTC Letter at Att. (Letter from Dean Schneberger, Director-Southwestern Region, NECA, to Ray Hendershot, GVNW Consulting, Inc. (dated Feb. 5, 2007)).

²⁷ *Id.* at 2.

²⁸ See Oct. 1, 2007, NFTC Letter; Stipulation and Agreement.

²⁹ Each failure to adhere to any requirement, directive, or safeguard in this Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies authorized by law attendant to the enforcement of a Commission order, including, but not limited to, the Commission's forfeiture authority pursuant to section 503 of the Communications Act. 47 U.S.C. § 503.

³⁰ May 1, 2007, Missouri Commission Letter.

³¹ 47 C.F.R. § 54.314(d).

³² 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.

³³ See May 1, 2007, Missouri Commission Letter.

NFTC and direct USAC to recommence high-cost support payments to NFTC as of April 1, 2007;³⁴ provided, however, that, prior to USAC recommencing support payments to NFTC, NFTC must first pay in full any outstanding balance of high-cost support that NFTC may owe as a result of Commission true-up rules or otherwise.³⁵

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 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, the Order is ADOPTED.

12. IT IS FURTHER ORDERED that USAC SHALL DISTRIBUTE high-cost support payments to NFTC as discussed above.

13. IT IS FURTHER ORDERED that NFTC SHALL PAY in full the amount it owes to USAC, as discussed above.

14. IT IS FURTHER ORDERED that NFTC SHALL ADHERE TO the safeguards outlined in paragraph 8 of this Order.

15. IT IS FURTHER ORDERED that Section 54.314(d) of the Commission's rules IS WAIVED with respect to NFTC's 2007 high-cost support payments such that, consistent with the requirements in this order, NFTC is eligible for high-cost support as of April 1, 2007.

16. 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

³⁴ We emphasize that the April 1, 2007, date as of which USAC shall recommence high-cost support payments to NFTC is based on the Missouri Commission's certification that, as of April 1, 2007, NFTC had certified that it would use high-cost support in accordance with section 254(e) of the Act. See May 1, 2007, Missouri Commission Letter.

³⁵ See *supra* para. 8.