

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
Illinois Commerce Commission's Petition for Waiver)
and Leave to File Certification of Eligible)
Telecommunications Carrier Out-of-Time)
Farmers Mutual Telephone Company Petition for)
Waiver of Section 54.314(d) Filing Deadlines for)
Submission of State Certification of Federal High-Cost)
Support for a Rural Carrier)
Petition of the Wyoming Public Service Commission for)
Waiver of Filing Deadline for Rate Comparability)
Certification Pursuant to 47 C.F.R. § 54.313(d)(3))

ORDER

Adopted: April 21, 2008

Released: April 21, 2008

Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant three separate requests for waiver filed by the Illinois Commerce Commission (Illinois Commission), Farmers Mutual Telephone Company (Farmers), and the Wyoming Public Service Commission (Wyoming Commission), of the high-cost universal service support filing deadlines set forth in sections 54.313(d) and 54.314(d) of the Commission's rules. For the reasons set forth below, we find that the Illinois Commission, Farmers, and the Wyoming Commission have demonstrated that good cause warrants waiver of the Commission's rules.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [ETC] designated under section 214(e) shall be eligible to receive specific Federal universal service support." Support shall be used "only for the provision,

1 Illinois Commerce Commission's Petition for Waiver and Leave to File Certification of Eligible Telecommunications Carrier Out-Of-Time, CC Docket No. 96-45 (filed May 11, 2007) (Illinois Commission Petition); Farmers Mutual Telephone Company Petition for Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support for a Rural Carrier, CC Docket No. 96-45 (filed May 7, 2007) (Farmers Petition); Petition of the Wyoming Public Service Commission for Waiver of Filing Deadline for Rate Comparability Certification Pursuant to 47 C.F.R. § 54.313(d)(3), CC Docket No. 96-45 (filed Feb. 15, 2008) (Wyoming Commission Petition); see also 47 C.F.R. §§ 54.313(d)(3), 54.314(d). We note that on January 10, 2007, the Illinois Commission attempted but failed to electronically file its petition with the Commission. The Illinois Commission ultimately filed its petition with the Commission on May 11, 2007.

2 47 U.S.C. § 254(e).

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 sections 54.313 and 54.314 of the Commission’s rules, state commissions must file an annual certification with the Universal Service Administrative Company (USAC) and with the Commission stating that all high-cost support received by carriers within the 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 used in a manner consistent with section 254(e) of the Act.⁶ For non-rural carriers, each state is required to annually review the comparability of residential rates in rural areas of the state serviced by non-rural incumbent local exchange carriers to urban rates nationwide.⁷ States are required to certify to the Commission and USAC whether the rates are reasonably comparable.⁸ The certification is due on the dates set forth in section 54.313(d)(3) of the Commission’s rules.⁹ Sections 54.313(d) and 54.314(d) of the Commission’s rules provides that the certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.¹⁰ 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, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.¹¹ Under sections 54.313(d) and 54.314(d), newly designated ETCs or state commissions have 60 days to file the certification.¹² If a newly designated ETC or a state commission does not file the required certifications within 60 days of an ETC’s designation date, the ETC will not receive support retroactively to its ETC designation date.¹³ Instead, the ETC will receive support on a going-forward basis from the date the certification was filed.¹⁴

4. *Illinois Commission’s Petition for Waiver.* On April 19, 2006, the Illinois Commission designated Illinois Valley Cellular RSA 2-1 Partnership, Illinois Valley Cellular RSA 2-11 Partnership, and Illinois Valley Cellular RSA 2-III Partnership (collectively, IVC) as ETCs.¹⁵ At the time the Illinois

³ *Id.*

⁴ See, e.g., 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802(a), 54.809, 54.903, 54.904.

⁵ 47 C.F.R. §§ 54.313(a), 54.314(a). The certification requirement for non-rural carriers is set forth in 47 C.F.R. § 54.313. The certification requirements for rural carriers is set forth in 47 C.F.R. § 54.314.

⁶ See 47 C.F.R. §§ 54.313(d), 54.314(b); see also *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, 11318, para. 189 (2001).

⁷ 47 C.F.R. § 54.316(a).

⁸ *Id.*

⁹ 47 C.F.R. §§ 54.313(d)(3), 54.316(d)

¹⁰ 47 C.F.R. §§ 54.313(d), 54.314(d).

¹¹ 47 C.F.R. §§ 54.313(d), 54.314(d).

¹² See 47 C.F.R. §§ 54.313(d)(vi), 54.314(d)(6); see also *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6411, para. 92 (2005) (*ETC Designation Order*).

¹³ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

¹⁴ *Id.*

¹⁵ Illinois Commission Petition at 1.

Commission designated IVC as ETCs, IVC advised the Illinois Commission that IVC intended to file a certification with the Commission pursuant to section 54.314(d) of the Commission's rules.¹⁶ After the filing deadline, IVC informed the Illinois Commission that the Illinois Commission was required to file the certification.¹⁷ On May 11, 2007, the Illinois Commission filed: (1) the 54.314(d) certification with the Commission and USAC; and (2) a request for waiver of section 54.314(d)(6) of the Commission's rules to permit IVC to receive high-cost universal service support as of the date the Illinois Commission designated IVC an ETC.¹⁸

5. The Illinois Commission contends that good cause exists to waive the section 54.314(d) filing deadline.¹⁹ The Illinois Commission argues that its failure to file IVC's certification resulted from "an apparent administrative oversight inasmuch as IVC are the first eligible telecommunications carriers designed by the [Illinois Commission] that has ever required certification to receive federal high cost [support], and it was not clear that IVC could not self-certify."²⁰ The Illinois Commission also argues it is in the public interest to grant the requested waiver because IVC's receipt of high cost support will help IVC serve customers in areas where few competitive telecommunications providers exist.²¹ The Illinois Commission also put in place procedures to ensure that it meets future filing deadlines.²²

6. *Farmers Mutual Telephone Company's Petition for Waiver.* On May 17, 2007, Farmers filed a request for waiver of section 54.314(d) of the Commission's rules to permit it to receive Local Switching Support (LSS) for the first and second quarters of 2007.²³ Farmers did not receive LSS support for those two quarters because the Idaho Public Utility Commission (Idaho Commission) did not include Farmers in its annual certification filings due by October 1, 2006, due to confusion stemming from the adoption of new ETC eligibility and reporting requirements by the Idaho Commission in September 2006.²⁴ Pursuant to these rules, carriers requesting the Idaho Commission to file the annual certification required by section 54.314(d) of the Commission's rules had to file an annual report (Idaho annual report) with the Idaho Commission.²⁵ In August 2006, an Idaho Commission staff member advised Farmers that Farmers was not required to file the Idaho annual report with the Idaho Commission.²⁶ On September 27, 2007, the Idaho Commission filed the certification required pursuant to section 54.314 of the Commission's rules but did not include Farmers on the certification list because Farmers had not filed the Idaho annual report.²⁷ In February 2007, Farmers investigated why it did not receive LSS support for January and learned that the Idaho Commission had not included it on the certification filing. Farmers

¹⁶ *Id.* at 2-3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3-4.

²⁰ *Id.*

²¹ *Id.* at 4.

²² *Id.*

²³ Farmers Petition at 1.

²⁴ *Id.* at 3-5. Prior to the adoption of these rules Farmers filed its own annual certifications. *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.* at 5-6. The Idaho Commission confirms that, due to a misunderstanding with the Idaho Commission, Farmers did not understand its obligation to file the Idaho annual report. See letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Grace Seaman, Idaho Public Utilities Commission, CC Docket No. 96-45 (filed May 1, 2007) (Idaho Commission Letter).

²⁷ Farmers Petition at 5-6.

promptly contacted the Idaho Commission and filed the Idaho annual report.²⁸ On February 23, 2007, the Idaho Commission filed the annual certification for Farmers required by section 54.314(d) with the Commission and USAC.²⁹

7. Farmers contends that good cause exists to waive the section 54.314(d) filing deadline and the Idaho Commission urges the Commission to grant Farmers' petition.³⁰ Farmers argues that it met all of its filings deadlines to receive LSS support and, but for the Idaho Commission's omission of its name on the certification filing, it would have received support for the first and second quarters of 2007.³¹ Farmers claims that the new rules adopted by the Idaho Commission caused both Farmers and the Idaho Commission to be uncertain about the filing requirements.³² Farmers points to its efforts to promptly remedy the error as further justification for granting its waiver request.³³ Farmers claims that granting its waiver would not harm the administration of universal service.³⁴ Denying its waiver, Farmers argues, would hamper its ability to invest in its infrastructure and would be an excessive penalty.³⁵

8. Wyoming Commission's Petition for Waiver. On February 15, 2008, the Wyoming Commission filed a request for waiver of the October 1, 2007, filing deadline required by section 54.313(d) of the Commission's rules.³⁶ For non-rural ETCs in Wyoming to receive high-cost model (HCM) support for the first quarter of 2008, Wyoming was required to review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide, and to certify, by October 1, 2007, to the Commission and USAC whether the rates are reasonably comparable.³⁷ The Wyoming Commission asserts that a member of its staff misrepresented to the Wyoming Commission that the certification was filed prior to the deadline.³⁸ The certification actually was filed on December 26, 2007.³⁹

9. The Wyoming Commission contends there is good cause to waive the filing deadline.⁴⁰ It claims missing the deadline was an inadvertent mistake because the Wyoming Commission relied on the staff member's misrepresentation that the certification was filed by the deadline.⁴¹ The Wyoming Commission argues that denying carriers HCM support for the first quarter of 2008 because of the Wyoming Commission's failure to meet the deadline is contrary to the purposes of the universal service fund and the public interest.⁴² To ensure it meets the deadlines under the Commission's rules, the

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ *Id.* at 6-11; Idaho Commission Letter.

³¹ Farmers Petition at 7.

³² *Id.* at 6-8.

³³ *Id.* at 8.

³⁴ *Id.* at 9-11.

³⁵ *Id.*

³⁶ Wyoming Commission Petition at 2.

³⁷ *Id.*; 47 C.F.R. §§ 54.313(d), 54.316.

³⁸ Wyoming Commission Petition at 3.

³⁹ *Id.*

⁴⁰ *Id.* at 2-5.

⁴¹ *Id.* at 3.

⁴² *Id.* at 4-5.

Wyoming Commission has reassigned filing responsibilities to another staff member and has implemented an internal chain of supervision.⁴³

III. DISCUSSION

10. We find that the Illinois Commission, Farmers, and the Wyoming Commission have demonstrated that there is good cause to waive sections 54.313 and 54.314 of the Commission's rules.⁴⁴ Granting the waivers will further the goals of universal service by helping maintain and promote access to quality services in rural and high-cost areas.⁴⁵ This conclusion is consistent with Commission precedent.⁴⁶

11. In granting the waivers, we expect the Illinois, Idaho, and Wyoming Commissions to file the required certifications with the Commission and USAC by the applicable filing deadlines, and rely on the Illinois and Wyoming Commission's commitments to put procedures in place to ensure future filings are timely submitted.⁴⁷ We conclude it is unlikely the Idaho Commission will miss future deadlines because Farmers and the Idaho Commission are now familiar with the rules the Idaho Commission adopted in 2006 and how those rules affect the Idaho Commission and carrier's filing requirements.⁴⁸ We recognize the Illinois, Idaho, and Wyoming Commissions did file the necessary certifications, albeit untimely.⁴⁹ We thus have no reason to believe that carriers covered by the certifications will use federal

⁴³ *Id.* at 5.

⁴⁴ 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. The Commission sought comment on the petitions and did not receive any comments in opposition to the petitions. *Comment Sought on Petitions Requesting Waiver of Various Filing Requirements*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 11157 (2007); *Comment Sought on Petitions for Waiver of Filing Deadlines Related to the Universal Service Program*, Public Notice, DA 08-479 (Wireline Comp. Bur., Feb. 28, 2008).

⁴⁵ See 47 U.S.C § 254.

⁴⁶ *West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, CC Docket No. 96-45, Order, 16 FCC Rcd 5784, 5786, para. 7 (2001) (granting a waiver of a section 54.313(c)(2)(i) deadline to accept a certification filed 22 days after the filing deadline); *Connecticut Department of Public Utility Control Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Rural Carriers*, CC Docket No. 96-45, Order, 17 FCC Rcd 24804, 24806-24807, para. 7 (Telecom. Access Policy Div. 2002) (granting waivers of section 54.314(d)(1) and 54.314(d)(2) deadlines to accept a certification filed over four months after the filing deadline); *Washington Utilities and Transportation Commission Request to Amend Certification, Inland Cellular Telephone Company Request For Waiver of Filing Deadline in 47 C.F.R. § 54.313*, CC Docket No. 96-45, Order, 20 FCC Rcd 13745 (Telecom. Access Policy Div. 2005) (allowing the Washington Utilities and Transportation Commission to amend its certification letter to include an ETC which it inadvertently omitted from its letter); *Hawaii Public Utilities Commission Request for Waiver of Filing Deadline in 47 C.F.R. Section 54.314*, CC Docket No. 96-45, Order, 20 FCC Rcd 10655 (Telecom. Access Policy Div. 2006) (allowing the Hawaii Public Utility Commission to amend its certification letter to include an ETC which it inadvertently omitted from its letter).

⁴⁷ Illinois Commission Petition at 4; Wyoming Petition at 5.

⁴⁸ Farmers Petition at 4-8.

⁴⁹ Illinois Petition at 4; Farmers Petition at 8; Wyoming Petition at 3.

high-cost support in a manner contrary to the direction of section 254 of the Act.⁵⁰ Accordingly, we find that waiving section 54.313 and 54.314 of the Commission's rules will serve the public interest by advancing universal service.⁵¹

12. We remind state regulatory bodies and carriers that it is their responsibility to ensure that their complete and accurate filings are timely received in the appropriate places, regardless of the time and method of their filings. Filers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and electronic mail (e-mail). For instance, any carrier receiving funding from the high-cost universal service support mechanism may file timely via e-mail at hcfilings@HCLI.universalservice.org. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure their filings are timely received.

IV. ORDERING CLAUSES

13. 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 54.314(d)(6) of the Commission's rules, 47 C.F.R. § 54.314(d)(6), filed by the Illinois Commerce Commission, the petition for waiver of section 54.314(d) of the Commission's rules, 47 C.F.R. § 54.314(d), filed by Farmers Mutual Telephone Company, and the petition for waiver of section 54.313(d)(3) of the Commission's rules, 47 C.F.R. § 54.313(d)(3), filed by the Wyoming Public Service Commission ARE GRANTED.

14. 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

Dana R. Shaffer
Chief
Wireline Competition Bureau

⁵⁰ 47 U.S.C. § 254

⁵¹ *Id.*