

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

In the Matter of)	
)	
Petition for Waiver of Universal Service High-Cost)	WC Docket No. 08-71
Filing Deadlines)	
)	
Centennial Communications Corp. Petition for Waiver)	
of Section 54.809 of the Commission's Rules)	

ORDER

Adopted: June 10, 2009

Released: June 10, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request from Centennial Communications Corp. (Centennial) for a waiver of section 54.809 of the Commission's rules.¹ For the reasons discussed below we find that Centennial has failed to demonstrate that good cause warrants grant of its request for waiver.

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."² 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. Interstate Access Support (IAS) is available to incumbent local exchange carrier (LEC) ETCs that are subject to price cap regulation, and to other ETCs providing service within a price cap LEC's service area.⁵ To receive IAS, an ETC must file a certification with the Universal Service Administrative Company (USAC) and the Commission pursuant to section 54.809(a) of the Commission's rules, stating that all IAS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁶ This certification must be filed on the date that

¹ Centennial Communications Corp. Petition for Waiver of Section 54.809 of the Commission's Rules, WC Docket No. 08-71 (filed Sept. 18, 2008) (Centennial Petition); Letter from William L. Roughton, Jr., Attorney for Centennial, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-71 (filed Oct. 28, 2008) (Oct. 28 *Ex Parte* Letter); 47 C.F.R. § 54.809.

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ *See, e.g.*, 47 C.F.R. §§ 54.307 (competitive ETC line count filing requirements), 54.313 (certification requirements regarding use of high-cost support by non-rural carriers), 54.314 (certification requirements regarding the use of high-cost support by rural carriers), 54.802(a) (ETC line count filing requirements for Interstate Access Support (IAS)), 54.809 (certification requirements regarding the use of IAS), 54.903 (data filing requirements for Interstate Common Line Support (ICLS)), 54.904 (certification requirements regarding the use of ICLS).

⁵ 47 C.F.R. § 54.802.

⁶ 47 C.F.R. § 54.809(a).

the ETC first files its line count data, and thereafter on June 30 of each year.⁷ In the *ETC Designation Order*, the Commission adopted a quarterly IAS certification schedule to accommodate late filings, whereby a late-filing carrier's IAS support is curtailed by a quarter's worth of support for each quarter that the certification is untimely.⁸

4. *Centennial's Petition for Waiver*. On September 18, 2008, Centennial requested a waiver of the September 30, 2005, June 30, 2006, and June 30, 2007 IAS certification filing deadlines set forth in section 54.809(c) of the Commission's rules.⁹ Centennial did not submit certifications to USAC until February 4, 2008, more than 28 months, 19 months and 7 months (respectively) after each of the three deadlines.¹⁰ Centennial was designated an ETC by the Louisiana Public Service Commission (LPSC) by order dated March 21, 2004.¹¹ In its ETC designation petition, Centennial asked the LPSC to find it eligible for all high-cost programs available within Centennial's service territory.¹² Centennial argues that although the LPSC in the designation order acknowledged Centennial's request to serve some non-rural areas, the ordering clause characterized the areas being approved as rural high-cost areas.¹³ Centennial claims that for this reason it failed to file line count data and the supporting section 54.809 certifications for IAS because only non-rural areas in Louisiana are eligible for IAS.¹⁴ In mid-2007, Centennial conducted an internal audit of high-cost funding it receives in all states, and as a result of this internal audit determined that it was not receiving IAS in Louisiana.¹⁵ On December 4, 2007, Centennial sought clarification from the LPSC regarding the scope of the designation order.¹⁶ By letter dated December 19, 2007, the LPSC confirmed that pursuant to the March 21, 2004 designation order, Centennial was granted ETC status in the service territory set forth in Centennial's ETC petition, including the rural and non-rural wire centers encompassed by such service territories.¹⁷ On February 4, 2008, Centennial filed IAS line count data with USAC for periods going back to the third quarter of 2005.¹⁸ Also on February 4, 2008, Centennial filed IAS certifications pursuant to section 54.809(c).¹⁹ Centennial requests that the filing deadlines for its IAS certifications under section 54.809(c) be waived to allow Centennial to receive IAS funding beginning as of the fourth quarter of 2005.²⁰ Alternatively, Centennial requests that the filing deadlines be waived to allow Centennial to receive IAS funding as of

⁷ 47 C.F.R. §54.809(c).

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6413-14, para. 94 (2005) (*ETC Designation Order*); 47 C.F.R. § 54.809(c).

⁹ Centennial Petition at 1; 47 C.F.R. § 54.809(c).

¹⁰ Centennial Petition at 3 and Attach. 3.

¹¹ *Id.* at 2, Attach. 1 (*Centennial Lafayette Communications, LLC et al. Application for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934 for the Purposes of Receiving Federal Universal Service Support in Louisiana*, Order No. U-27174 (LPSC 2004) (*Centennial Louisiana ETC Designation Order*)).

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* The only price cap LEC ETC receiving IAS in Louisiana is BellSouth, which is a non-rural carrier.

¹⁵ Oct. 28 *Ex Parte* Letter at 1.

¹⁶ *Id.*; Centennial Petition at 3 and Attach. 2.

¹⁷ Centennial Petition at Attach. 2.

¹⁸ *Id.* at 3. Although Centennial asserts that it is permitted to file line count data retroactively, its filings did not meet the filing deadlines for IAS line counts set forth in section 54.802(a) of the Commission's rules. 47 C.F.R. § 54.802(a). Centennial does not seek a waiver of these filing deadlines.

¹⁹ Centennial Petition at 3 and Attach. 3.

²⁰ *Id.* at 1, 6.

January 1, 2008.²¹ Centennial states that, due to the misunderstanding that surrounded the scope of its IAS eligibility, neither the section 54.809(c) certifications nor the required line count data were filed in the customary manner.²² Centennial argues that under section 54.809(c), a carrier must file its IAS certifications “on the date that it first files its line counts pursuant to § 54.802,” and because Centennial did not file line count data until February 4, 2008, its IAS certifications were not due until February 4, 2008.²³ Alternatively, Centennial argues that public policy and fairness support the waiver of the rules in this instance.²⁴ Centennial seeks a waiver to permit it to receive IAS funds for the first quarter of 2008, and a further waiver to permit it to receive retroactive payments beginning October 1, 2005 through the end of 2007.²⁵

III. DISCUSSION

5. We find that Centennial has failed to demonstrate that there is good cause to waive the applicable sections of the Commission’s rules.²⁶ As discussed above, the *Centennial Louisiana ETC Designation Order* was released on March 21, 2004.²⁷ Centennial did not seek to clarify the status of its ETC designation in non-rural areas for more than three years. ETCs have an obligation to ensure that they understand and fully comply with the terms of their ETC designations.²⁸ We find that Centennial has not demonstrated that good cause exists to allow it to receive IAS for the intervening years when it took no action to clarify the ambiguity in its 2004 designation order. USAC processes a large amount of data each year; therefore, it is necessary that carriers meet the requisite filing deadlines absent special

²¹ *Id.* at 6.

²² *Id.* at 3.

²³ *Id.* at 4; 47 C.F.R. §§ 54.809(c), 54.802. As discussed above, Centennial has not requested a waiver of the line count filing deadlines. *See supra* note 18.

²⁴ Centennial Petition at 4-5, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁵ Centennial Petition at 7. Although Centennial also seeks a waiver of section 54.809(c) of the Commission’s rules to permit it to receive IAS funds for the second quarter of 2008, we find that waiver of this rule is not necessary because Centennial filed a certification prior to March 31, 2008. *See* 54.809(c)(3). To the extent Centennial received IAS funds for periods prior to the second quarter of 2008, USAC should recover such amounts.

²⁶ 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*, 897 F.2d at 1166. 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.

²⁷ Centennial Petition at Attach. 1.

²⁸ Shortly after the release of the *Centennial Louisiana ETC Designation Order* in May 2004, Centennial requested a waiver from the Commission of the line count filing deadline set forth in section 54.314(d) of the Commission’s rules for newly designated ETCs. *See* Centennial Lafayette Communications, LLC, et. al, Petition for Wavier of Section 54.3134(d)(1) of the Commission’s Rules, CC Docket No. 96-45 (filed May 28, 2004) (Centennial 2004 Petition); 47 C.F.R. § 54.314(d). Centennial sought waiver of the line count filing deadlines to allow it to receive universal service support as of January 14, 2004, the effective date of the *Centennial Louisiana ETC Designation Order*. *See* Centennial 2004 Petition; *see also* *Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16121 (Wireline Comp. Bur. 2004). This demonstrates that Centennial was familiar with the terms of the *Centennial Louisiana ETC Designation Order* and should have acted to correct any ambiguities at that time.

circumstances.²⁹ Carriers are responsible for reviewing and understanding the Commission's rules to ensure that submissions are filed in a timely manner.³⁰ Centennial did not cure its failure to meet the filing deadlines by promptly filing the required information within a few days of the applicable deadlines, nor did Centennial provide evidence of any extenuating circumstances sufficient to demonstrate the good cause required for us to grant a rule waiver.³¹

6. We find unpersuasive Centennial's argument that a waiver should be granted because the LPSC ETC designation order was confusing. Any lack of clarity that existed in the underlying designation order does not relieve Centennial of the responsibility to file all required information with USAC in a timely manner. Centennial did not seek clarification from the LPSC until December 4, 2007, more than three years after the LPSC's 2004 order, and did not file an IAS certification with USAC until February 2008, more than two years and four months, one year and seven months, and seven months after the certification deadlines that would have allowed Centennial to receive IAS going back to the fourth quarter of 2005.³² Such lengthy delays between the filing of the required certifications and the dates for which Centennial seeks support curtail USAC's ability to accurately calculate high-cost support payments. Centennial's argument that its IAS certification was not due until February 4, 2008, the date on which Centennial first filed line count data, is incorrect. Centennial's line count filings were due on the dates specified in section 54.802(a) of the Commission's rules, not on February 4, 2008.³³

²⁹ *Federal-State Joint Board on Universal Service, FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

³⁰ *Id.*

³¹ Compare *Federal-State Board on Universal Service, NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 560 (Wireline Comp. Bur. 2007) (waiver granted when line count data was received one business day after the filing deadline); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 10149 (Wireline Comp. Bur. 2006) (waiver granted when deadline was missed by two business days); *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005) (waiver granted when deadline was missed by two business days), with *Federal-State Joint Board on Universal Service, Cedar Valley Communications, Inc. Petition for Waiver of 47 C.F.R. §§ 54.307(d), 54.314(a), and 54.904(d)*, CC Docket 96-45, Order, 23 FCC Rcd 114 (Wireline Comp. Bur. 2008) (waiver denied because the filing deadline was missed by more than five months); *South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket 96-45, Order, 19 FCC Rcd 17493 (Wireline Comp. Bur. 2004) (waiver denied because the data was filed more than a month late); *NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules*; *SouthEast Telephone, Inc. Petition of Waiver of Deadlines in 47 C.F.R. § 54.809(c)*; *SEI Data, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a)* CC Docket 96-45, Order, 22 FCC Rcd 4946 (Wireline Comp. Bur. 2007) (NPI's waiver denied because the data was filed six months late, SouthEast's waiver denied because the data was filed two months late; SEI's waiver denied because the data was filed three months late).

³² In May 2004 Centennial requested a waiver from the Commission of the line count filing deadline set forth in section 54.314(d) of the Commission's rules for newly designated ETCs. See Centennial Lafayette Communications, LLC, et. al, Petition for Wavier of Section 54.3134(d)(1) of the Commission's Rules, C.C. Docket No. 96-45, filed May 28, 2004 (Centennial 2004 Petition); 47 C.F.R. § 54.314(d). Centennial sought waiver of the line count filing deadlines to allow it to receive universal service support as of January 14, 2004, the effective date of the LPSC's decision designating Centennial as an ETC in Louisiana. See Centennial 2004 Petition; see also *Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16121 (Wireline Comp. Bur. 2004). The LPSC order that was the subject of the Centennial 2004 Petition is the same LPSC order that is the subject of the present petition.

³³ *Id.*

Accordingly, we find that Centennial has not demonstrated good cause to waive the applicable deadlines and we deny Centennial's request for waiver of the Commission's rules.

7. Although we deny Centennial's request for waiver, the amount of IAS that Centennial would have been able to receive in March 2008 if it had not missed the filing deadlines will be included in the capped level of support available to competitive ETCs in Louisiana pursuant to the Commission's *Interim Cap Order*.³⁴ In that order the Commission capped total annual competitive ETC support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis.³⁵ Although USAC did not disburse IAS to Centennial due to Centennial's violation of Commission rules, Centennial was eligible to receive high-cost support in March 2008. The high-cost support amounts (including IAS) for Centennial in Louisiana will therefore be included in the amount available to competitive ETCs pursuant to the cap in Louisiana.

8. We remind carriers that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings. Carriers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and e-mail. For instance, any carrier receiving funding from the high-cost universal 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 that their filings are timely received.

IV. ORDERING CLAUSES

9. 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 this order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for waiver of section 54.809 of the Commission's rules, 47 C.F.R. § 54.809, filed by CENTENNIAL COMMUNICATIONS CORP., IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §§ 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
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³⁴ See *High Cost Universal Service Support; Federal-State Board on Universal Service, Alltel Communications, et al. Petitions for Designation as Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, para. 1 (2008) (*Interim Cap Order*) (capping the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis).

³⁵ *Id.* at 8834, 8837, 8838, 8839, paras. 1, 5, 7, 9.