

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

In the Matter of )  
 )  
Waiver of 47 C.F.R. § 43.21(b) )  
 )

**ORDER**

**Adopted: March 31, 2009**

**Released: March 31, 2009**

By the Deputy Chief, Wireline Competition Bureau:

1. In this order, on our own motion, we waive on an interim basis section 43.21(b) of the Commission's rules.<sup>1</sup> Section 43.21(b) requires certain holding companies of communications common carriers to file annually two copies of their SEC Form 10-K with the Commission by April 1.<sup>2</sup> We find good cause to waive this rule given that the Commission may now readily access Forms 10-K via the Internet without imposing a burden on holding companies to file these forms.

2. The Commission may waive any provision of its rules on its own motion, or on the motion of a petition, for good cause shown.<sup>3</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>5</sup> In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>6</sup>

3. In the past, Commission staff relied on the paper copies of Forms 10-K filed with the Commission to obtain information necessary for the Commission's work. However, the Securities and Exchange Commission (SEC) now posts on its web-site in a searchable database, called EDGAR, copies of all filed Forms 10-K.<sup>7</sup> Thus, Commission staff may obtain electronic copies of Forms 10-K directly

---

<sup>1</sup> 47 C.F.R. § 43.21(b). The Commission requested discontinuance of OMB approval of the information collection under OMB Control Number 3060-0514 on February 6, 2009. *See* OMB Control No. 3060-0514.

<sup>2</sup> Section 43.21(b) provides, "Each company, not itself a communication common carrier, that directly or indirectly controls any communication common carrier that has annual operating revenues equal to or above the indexed revenue threshold, as defined in § 32.9000, shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10-K (or any superseding form) filed with that Commission." 47 C.F.R. § 43.21(b).

<sup>3</sup> 47 C.F.R. § 1.3; *see also* 47 C.F.R. §§ 0.91 and 0.291.

<sup>4</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> SEC rules require Forms 10-K to be filed electronically with the SEC. *See* 17 C.F.R. § 232.101 ("Mandated electronic submissions and exceptions."). The public may access Forms 10-K via the SEC's EDGAR database. *See* <http://www.sec.gov/edgar.shtml> (visited March 25, 2009). Some carriers may also maintain Forms 10-K on their own web-sites, often on their investor relations pages.

from the SEC's web-site. We find that waiving the filing requirement in section 43.21(b) of the Commission's rules on an interim basis, while we review whether this information collection is still necessary, will reduce the paperwork burden on filers without harming the public interest.<sup>8</sup>

4. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and pursuant to authority delegated in 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 section 43.21(b) of the Commission's rules, 47 C.F.R. § 43.21(b), IS WAIVED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau

---

<sup>8</sup> See, e.g., *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, WC Docket No. 04-259, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Interim Partial Waiver, 19 FCC Rcd 13591, 13605 para. 39 (2004) ("The waiver we grant herein is interim and will remain in place only until we resolve the issues raised . . . in the notice of proposed rulemaking, at which time the waiver will expire.").