

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

In the Matter of
Petitions for Waiver of Universal Service High-Cost
Filing Deadlines
LBH, L.L.C. Petition for Waiver of Section 54.802(a) of
the Commission's Rules
Knology of the Black Hills, LLC f/k/a PrairieWave
Black Hills, LLC Petition for Waiver of Section
54.802(a) of the Commission's Rules
USCOC of Cumberland, Inc. Hardy Cellular Telephone
Company Petition for Waiver of Sections 54.809(c),
54.904(d), 54.313(d) and 54.314(d) of the Commission's
Rules
WC Docket No. 08-71

ORDER

Adopted: April 21, 2009

Released: April 21, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny three requests, filed by LBH, L.L.C (LBH); Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC (Knology); and USCOC of Cumberland Inc. Hardy Cellular Telephone Company (U.S. Cellular) (collectively, the petitioners), for waivers of various high-cost universal service support filing deadlines set forth in sections 54.307(c), 54.802, 54.809, and 54.904 of the Commission's rules. For the reasons discussed below, we find that the petitioners have failed to demonstrate that good cause warrants waiver of the Commission's rules.

II. BACKGROUND

A. Applicable Rules

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 LBH, L.L.C. Petition for Waiver of Section 54.802 of the Commission's Rule, CC Docket No. 96-45 (filed Mar. 20, 2008) (LBH Petition); Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules, WC Docket No. 08-71 (filed July 3, 2008) (Knology Petition); USCOC of Cumberland, Inc. Hardy Cellular Telephone Company Petition for Waiver of Sections 54.809(c), 54.904(d), 54.313(d) and 54.314(d) of the Commission's Rules, WC Docket No. 08-71 (filed July 18, 2008) (U.S. Cellular Petition); 47 C.F.R. §§ 54.307(c), 54.313, 54.314, 54.802, 54.809, 54.904.

2 47 U.S.C. § 254(e).

maintenance, and upgrading of facilities and services for which the support is intended.”<sup>3</sup> To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.<sup>4</sup>

3. Pursuant to section 54.307 of the Commission’s rules, a competitive ETC must file with the Universal Service Administrative Company (USAC), working line count data according to the following schedule:

(1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;

(3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; and

(4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year;

in order to receive high-cost support for those quarterly periods.<sup>5</sup>

4. Pursuant to sections 54.313 and 54.314 of the Commission’s rules, state commissions must file an annual certification with USAC and 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 the support is intended.”<sup>6</sup> 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.<sup>7</sup> Sections 54.313(d) and 54.314(d) of the Commission’s rules provide that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. 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.<sup>8</sup> Under sections 54.313(d) and 54.314(d), newly designated ETCs or state commissions have 60 days to file the certification.<sup>9</sup> If a newly

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> 47 C.F.R. § 54.307(c).

<sup>6</sup> 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 requirement for rural carriers is set forth in 47 C.F.R. § 54.314.

<sup>7</sup> *See* 47 C.F.R. §§ 54.313(b), 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).

<sup>8</sup> 47 C.F.R. §§ 54.313(d), 54.314(d).

<sup>9</sup> *See* 47 C.F.R. §§ 54.313(d)(6), 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*).

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.<sup>10</sup> Instead, the ETC will receive support on a going-forward basis pursuant to the date the certification was filed.<sup>11</sup>

5. To receive Interstate Access Support (IAS) pursuant to section 54.802 of the Commission's rules, an ETC that is providing service within an area served by a price cap LEC must file certain data with USAC to receive funding.<sup>12</sup> Specifically, an ETC must submit line count data showing separately the number of residential/single-line business lines, and multi-line business lines within its study area on a quarterly basis.<sup>13</sup> Mandatory line count data are due on the last business day of March, June, September, and December of each year.<sup>14</sup> In addition, pursuant to section 54.809 of the Commission's rules, an ETC must file an annual certification with USAC and the Commission 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."<sup>15</sup> A carrier's certification must be filed on the date the carrier first files its line count data information with USAC, and, thereafter, on June 30 of each year.<sup>16</sup>

6. To receive Interstate Common Line support (ICLS) pursuant to section 54.904 of the Commission's rules, an ETC must file a certification stating that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended.<sup>17</sup> This certification must be filed with USAC and the Commission on the date that the ETC first files its line count information, and, thereafter, on June 30 of each year.<sup>18</sup>

## B. Petitions

7. *LBH's Petition for Waiver*. On March 20, 2008, LBH requested a waiver of the December 31, 2007 deadline established by section 54.802(a) of the Commission's rules.<sup>19</sup> LBH did not submit the required data to USAC until February 14, 2008, more than six weeks after the deadline.<sup>20</sup> LBH claims it

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<sup>10</sup> *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. § 54.802(a).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; see also *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001).

<sup>15</sup> 47 C.F.R. § 54.809(a).

<sup>16</sup> 47 C.F.R. § 54.809(c).

<sup>17</sup> 47 C.F.R. § 54.904(a).

<sup>18</sup> See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*; Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*MAG Order*) (*subsequent history omitted*).

<sup>19</sup> LBH Petition at 1; 47 C.F.R. § 54.802(a).

<sup>20</sup> LBH Petition at 1.

missed the deadline because of an administrative oversight and personnel changes.<sup>21</sup> LBH argues that the Commission should grant its waiver request because LBH filed the required data as soon as it discovered it missed the filing deadline and has a history of complying with filing deadlines required by Commission rules.<sup>22</sup> LBH also argues that granting its petition is consistent with Commission precedent and is in the public interest.<sup>23</sup> To ensure future filings are timely, LBH asserts that it has revised its internal filing procedures.<sup>24</sup>

8. *Knology's Petition for Waiver.* On July 3, 2008, Knology requested a waiver of the September 28, 2007, line count filing deadline established by section 54.802(a) of the Commission's rules and a waiver of the September 30, 2007, line count filing deadline established by section 54.307(c) of the Commission's rules.<sup>25</sup> Knology claims that it prepared the required data but failed to submit it to USAC.<sup>26</sup> Knology also asserts that it did not learn of its error until the first quarter of 2008.<sup>27</sup> Knology included the line count data as an attachment to its petition for waiver filed on July 3, 2008, more than nine months after the filing deadline.<sup>28</sup> Knology argues that it is in the public interest to grant its waiver request because denying its request would reduce its universal service support and could reduce the support to all competitive ETCs in South Dakota due to the interim cap on high-cost support provided to competitive ETCs.<sup>29</sup>

9. *U.S. Cellular's Petition for Waiver.* On February 25, 2008, U.S. Cellular was designated an ETC by the West Virginia Public Service Commission.<sup>30</sup> On July 18, 2008, U.S. Cellular requested a waiver of the certification filing deadlines required by sections 54.809(c) and 54.904(d) of the Commission's rules.<sup>31</sup> U.S. Cellular's certifications were due on March 17, 2008, the date on which it filed its initial line count data.<sup>32</sup> U.S. Cellular did not file the required certifications until June 26, 2008, more than three months after they were due.<sup>33</sup> U.S. Cellular alleges that it missed the filing deadlines because its regulatory compliance staff was overburdened during March 2008 responding to unforeseen data requests from regulatory agencies, including a USAC audit.<sup>34</sup> U.S. Cellular also requests that,

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<sup>21</sup> *Id.* at 2-3.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 5-6.

<sup>24</sup> *Id.* at 6-7.

<sup>25</sup> Knology Petition at 1; 47 C.F.R. §§ 54.307(c), 54.802(a).

<sup>26</sup> Knology Petition at 2-3.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* at Attachment.

<sup>29</sup> *Id.* at 3-4. 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).

<sup>30</sup> U.S. Cellular Petition at 2.

<sup>31</sup> U.S. Cellular Petition at 3; 47 C.F.R. §§ 54.809(c) and 54.904(d). Although U.S. Cellular requests a waiver of sections 54.313(d) and 54.314(d) of the Commission's rules, it appears that waiver of these rule sections is not necessary because the West Virginia Public Service Commission filed the required data within 60 days of the date it designated U.C. Cellular an ETC. U.S. Cellular Petition at 3. 47 C.F.R. §§ 54.313(d), 54.314(d). Therefore, we find that no waiver of those sections is necessary.

<sup>32</sup> 47 C.F.R. §§ 54.809(c) and 54.904(d).

<sup>33</sup> U.S. Cellular Petition at 19.

<sup>34</sup> *Id.* at 3-4.

regardless of whether the Commission grants or denies the U.S. Cellular Petition, the Commission should include the amount of high-cost support associated with the required filings in calculating the interim cap on competitive ETC support in West Virginia.<sup>35</sup>

### III. DISCUSSION

10. We find that the petitioners have failed to demonstrate that there is good cause to waive the applicable sections of the Commission's rules.<sup>36</sup> Because USAC processes such a large amount of data each year, it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.<sup>37</sup> Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.<sup>38</sup> The petitioners did not promptly cure their failure to timely file by promptly filing the required information within a few days of the applicable deadlines, nor did the petitioners provide evidence of any extenuating circumstances sufficient to demonstrate the good cause required for us to grant a rule waiver.<sup>39</sup> In response to U.S. Cellular's claim that it is unclear when the certifications required by sections 54.809(c) and 54.904(d) were due, we point out that these rule sections clearly state that a carrier must file its annual certifications "on the date that it first files its line count information."<sup>40</sup> Furthermore, Knology has previously sought a similar waiver of a line count filing deadline, and, in its prior petition, asserted that it has in place measures to ensure that future filing

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<sup>35</sup> *Id.* at 19.

<sup>36</sup> 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.

<sup>37</sup> *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).

<sup>38</sup> *Id.*

<sup>39</sup> *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).

<sup>40</sup> U.S. Cellular Petition at 16-18; 47 C.F.R. §§ 54.809(c) and 54.904(d).

deadlines would be met.<sup>41</sup> Where an ETC has made such representations to the Commission, we expect the ETC to abide by its commitments to ensure that its filing deadlines are met. We will not grant a waiver of filing deadlines in such a case absent extremely compelling circumstances, which are not demonstrated in Knology's instant petition. Accordingly, we deny the petitioners' requests for waiver of the Commission's rules.

11. Although we deny the petitioners' requests for waiver, the amount of high-cost universal service support that these ETCs would have been able to receive in March 2008 if they had not missed the filing deadlines will be included in the capped level of support available to competitive ETCs in their respective states pursuant to the Commission's *Interim Cap Order*.<sup>42</sup> 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.<sup>43</sup> Although USAC did not disburse high-cost support to the petitioners in March 2008 due to the petitioners' violations of Commission rules, the petitioners were eligible to receive high-cost support in March 2008. The high-cost support amounts for LBH in Louisiana, Knology in South Dakota, and U.S. Cellular in West Virginia will therefore be available to competitive ETCs pursuant to the cap in those states.

12. 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](mailto: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

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 this order IS ADOPTED.

14. IT IS FURTHER ORDERED that the petition for waiver of section 54.802(a) of the Commission's rules, 47 C.F.R. § 54.802(a), filed by LBH, L.L.C, IS DENIED.

15. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(c) and 54.802(a) of the Commission's rules, 47 C.F.R. §§ 54.307(c), 54.802(a), filed by Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC, IS DENIED.

16. IT IS FURTHER ORDERED that the petition for waiver of sections 54.809(c) and 54.904(d) of the Commission's rules, 47 C.F.R. §§ 54.809(c), 54.904(d), filed by USCOC of Cumberland, Inc. Hardy Cellular Telephone Company, IS DENIED.

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<sup>41</sup> PrairieWave Black Hills, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No 96-45, at 3, (filed Apr. 9, 2007). Prior to a merger transaction in April 2007, Knology was known as PrairieWave Black Hills, LLC. *Id.* at 1, n.2.

<sup>42</sup> *Interim Cap Order*, 23 FCC Rcd at 8834, para. 1.

<sup>43</sup> *Id.* at 8834, 8837, 8838, 8839, paras. 1, 5, 7, 9.

17. 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  
Wireline Competition Bureau