

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 Deadline)
)
Federal-State Joint Board on Universal Service)
)
CTC Telecom, Inc. d/b/a Snake River PCS)
Petition for Waiver of Deadline in 47 C.F.R.)
54.314(d)(6))

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request filed by CTC Telecom, Inc. d/b/a Snake River PCS (CTC) for waiver of the universal service high-cost support filing deadline set forth in section 54.314(d)(6) of the Commission’s rules. For the reasons discussed below, we find that CTC has demonstrated that there is good cause to grant the requested 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,” and such support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

1 CTC Telecom, Inc. Petition for Waiver of Deadline in 47 C.F.R. 54.301(d)(6), WC Docket No. 08-71 (filed Dec. 17, 2009) (CTC Petition); 47 C.F.R. § 54.314(d)(6).

2 47 U.S.C. § 254(e).

3 Id.

4 See, e.g., 47 C.F.R. §§ 54.301(b) and (e)(1) (data filings requirements for Local Switching Support), 54.307 (competitive ETC line count filing requirements for Interstate Common Line Support (ICLS) and other high-cost support), 54.313 (state certification requirements regarding the use of high-cost support by non-rural carriers), 54.314 (state 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 (carrier certification requirements regarding the use of IAS), 54.903 (data filing requirements for ICLS), 54.904 (carrier certification requirements regarding the use of ICLS).

3. Pursuant to section 54.314(a) 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 universal service high-cost support received by rural carriers and competitive ETCs serving lines in a rural carrier's service area within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵ This certification must be filed by October 1 of the preceding calendar year for support to begin in the first quarter of a subsequent calendar year.⁶ A newly designated ETC is eligible to receive high-cost support as of the effective date of its ETC designation if the state commission files the certification within 60 days of the effective date of the carrier's ETC designation.⁷ If the state commission does not file the certification within 60 days, the ETC will receive support on a going-forward basis from the date the certification was filed.⁸

4. *CTC's Petition for Waiver.* On December 17, 2009, CTC requested a waiver of the 60-day certification filing deadline to allow CTC to receive universal service high-cost support as of the effective date of its designation as an ETC.⁹ The Idaho Public Utilities Commission (IPUC) designated CTC as an ETC on July 24, 2009.¹⁰ Therefore, the IPUC should have filed a certification for CTC no later than September 23, 2009, to enable CTC to receive high-cost support retroactive to the effective date of CTC's ETC designation.¹¹ The IPUC, however, did not file the 2009 certification until February 1, 2010.¹² CTC argues that a waiver is warranted because the IPUC's mistake caused it to lose support.¹³

III. DISCUSSION

5. We find that CTC has demonstrated that there is good cause to waive section 54.314(d)(6) of the Commission's rules.¹⁴ Consistent with precedent, we find that good cause exists to

⁵ 47 C.F.R. § 54.314(a). The certification requirement for non-rural carriers is set forth in section 54.313 of the Commission's rules. 47 C.F.R. § 54.313.

⁶ 47 C.F.R. § 54.314(d)(1). 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.

⁷ See 47 C.F.R. § 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*).

⁸ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

⁹ CTC Petition at 1; 47 C.F.R. § 54.314(d)(6). The Wireline Competition Bureau sought comment on the petition on January 12, 2010. See *Comment Sought on the CTC Telecom, Inc. Petition For Waiver of a Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 25 FCC Rcd 163 (Wireline Comp. Bur. 2010). No comments were filed in opposition to the petition. U.S. Senators Mike Crapo and James Risch filed a letter in support of the petition. See Letter from Sens. Mike Crapo and James Risch, to Ms. Marlene H. Dortch, FCC, and Ms. Karen Majcher, USAC, WC Docket No. 08-71 (filed Feb. 19, 2010).

¹⁰ CTC Petition at 1.

¹¹ While CTC states that it missed the filing deadline, in this instance, the IPUC was responsible for filing the certification. See 47 C.F.R. § 54.314(a).

¹² Letter from Grace Seaman, Utilities Analyst, IPUC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 00-256 (filed Feb. 1, 2010).

¹³ *Id.*

¹⁴ 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. (continued. . .))

grant a waiver when the missed filing deadline and the subsequent loss of support was due to state commission action, as opposed to actions of the carrier.¹⁵ The IPUC has made the necessary certification, albeit untimely. Although we are granting a waiver of section 54.314(d)(6) of our rules in this case and conclude that CTC should be allowed to receive federal high-cost universal service support as of the date of its ETC designation, we remind the IPUC that, in subsequent program years, it should take steps to ensure that all applicable certifications necessary to secure federal high-cost support are filed with the Commission and USAC before the expiration of the applicable filing deadline. In addition, we remind CTC of its independent responsibility to review and understand the Commission's rules so it is in a position to ensure that submissions are filed in a timely manner.¹⁶

6. We remind all filers that it is their responsibility to review and understand the Commission's rules to ensure that their complete and accurate filings are timely received in the appropriate places, regardless of the time and method of their filings.¹⁷ 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 filer 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.

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1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ See, e.g., *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 by the West Virginia Commission after the filing deadline); *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)*, CC Docket No. 96-45, Order, 23 FCC Rcd 6664 (Wireline Comp. Bur. 2008) (granting waivers of sections 53.313(d) and 54.314(d) deadlines where the state commissions filed certifications after the deadlines and inadvertently omitted a carrier from a certification).

¹⁶ See, e.g., *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Etext Telephone Cooperative Petition for Waiver of Deadline in 47 C.F.R. 54.301(b) Petition for Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Order, DA 10-767, para. 7 (Wireline Comp. Bur., rel. May 5, 2010); *Federal-State Joint Board on Universal Service, The Georgia Public Service Commission Request for Leave to File an Addendum to its State Certification of Federal Universal Service Support Eligibility Out-Of-Time*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 10-749, para. 6 (Wireline Comp. Bur., rel. Apr. 29, 2010); *San Isabel Telecom, Inc. Petition for Waiver of Deadlines of Section 54.314(d) of the Commission's Rules, Petition for Waiver of Deadlines in Section 54.307(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 14941, 14945, para. 10 (Wireline Comp. Bur. 2006); *South Slope Cooperative Telephone Company request for Waiver of Filing Deadline for High-Cost Universal Service Support*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 4 (Wireline Comp. Bur. 2004).

¹⁷ See *supra* note 16.

III. ORDERING CLAUSES

7. 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.

8. IT IS FURTHER ORDERED 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 CTC Telecom, Inc. IS GRANTED.

9. 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

Sharon E. Gillett
Chief
Wireline Competition Bureau