

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

In the Matter of)	
)	
Petitions for Waiver of Universal Service High-Cost Filing Deadlines)	WC Docket No. 08-71
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Cedar-Wapsie Communications, Inc. Petition for Waiver of Section 54.904(d) Filing Deadline For Submission of Annual Interstate Common Line Support Certification)	
)	
DialToneServices, L.P. Petition for Waiver of Section 54.307(c) of the Commission's Rules)	
)	
Virgin Islands Telephone Corp. d/b/a Innovative Telephone for Waiver of Section 54.903(a) of the Commission's Rules)	
)	
Wildflower Telecommunications, LLC Petition for Waiver of Sections 54.802(a) and 54.307(c) of the Commission's Rules)	
)	

ORDER

Adopted: August 2, 2011

Released: August 2, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant four separate requests for waivers of various high-cost universal service support filing deadlines, filed by: (1) Cedar-Wapsie Communications, Inc. (Cedar-Wapsie); (2) DialToneServices, L.P. (DialToneServices); (3) Virgin Islands Telephone Corp. d/b/a Innovative Telephone (Innovative) and (4) Wildflower Telecommunications, LLC (Wildflower) (collectively, the petitioners).¹ For the reasons discussed below, which include promptly filing the required data or

¹ Cedar-Wapsie Communications, Inc. Petition for Waiver of Section 54.904(d) of the Commission rules, CC Docket No. 08-71 (filed Dec. 22, 2010) (Cedar-Wapsie Petition); DialToneServices, L.P. Petition for Waiver of Section 54.307(c) of the Commission's Rules, CC Docket No. 08-71 (filed Jan. 13, 2011) (DialToneServices Petition); Virgin Islands Telephone Corp. d/b/a Innovative Telephone Petition for Waiver of Section 54.903(a) of the Commission's Rules, CC Docket No. 08-71 (filed Apr. 14, 2011) (Innovative Petition); Wildflower Telecommunications, LLC Petition for Waiver of Sections 54.802(a) and 54.307(c) of the Commission's Rules, CC Docket No. 08-71 (filed Jan. 10, 2011) (Wildflower Petition).

certification and taking corrective measures to ensure compliance with future filing requirements, we find that the petitioners 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, provides that "only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support"² and such 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 rules that include various certification and data filing requirements.⁴ Consistent with our precedent, complete and accurate submissions must be *received* in the appropriate places by the applicable deadline to be considered timely filed.⁵ Each petitioner requests waiver of one or more of the following requirements.

3. Section 54.307(c) of the Commission's rules provides that a competitive ETC must file working line count data with the Universal Service Administrative Company (USAC) on a quarterly basis to receive High Cost Loop Support (HCL), Local Switching Support (LSS), Interstate Common Line Support (ICLS) and High Cost Model Support (HCMS).⁶ Mandatory line count data are due on March 30, July 31, September 30, and December 30 of each year.⁷

4. To receive Interstate Access Support (IAS), an ETC that is providing service within an area served by a price cap local exchange carrier must, among other things, file certain line count data with USAC on a quarterly basis, pursuant to section 54.802(a) of the Commission's rules.⁸ Specifically, the 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.⁹ Mandatory line count data are due on the last business day of March, June, September, and December of each year.¹⁰

5. To receive ICLS, an ETC must, among other things, file line count data with USAC. Specifically, section 54.903(a) of the Commission's rules requires that a rate-of-return incumbent carrier

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 (LSS)), 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).

⁵ *See, e.g.*, *Benton/Linn Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules, et al.*, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19218, 19220, paras. 12, 18 (Wireline Comp. Bur. 2005).

⁶ *See* 47 C.F.R. § 54.307.

⁷ *Id.*

⁸ 47 C.F.R. § 54.802(a).

⁹ *Id.*

¹⁰ *Id.*

located in a study area in which a competitive ETC has initiated service and reported line count data file the number of lines served as of September 30 of the preceding year on March 30, the number of lines served as of March 31 of the present year on September 30, and the number of lines served as of June 30 of the present year on December 30.¹¹ In addition an ETC must file a certification with USAC and the Commission pursuant to section 54.904(a) of the Commission's rules, stating that all ICLS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹² Section 54.904(d) of the Commission's rules provides that this certification must be filed with USAC and the Commission on the date that the ETC first files its line count data, and thereafter on June 30 of each year.¹³

6. *Cedar-Wapsie Petition for Waiver*. On December 22, 2010, Cedar-Wapsie requested a waiver of the June 30, 2010 certification deadline set forth in section 54.904(d) of the Commission's rules to be eligible to receive ICLS.¹⁴ Cedar-Wapsie claims that the certification was sent to and received by USAC on July 1, 2010, one day after the deadline.¹⁵ Cedar-Wapsie argues that the Commission should grant its waiver request because it filed the required ICLS certification only one day late, which it contends did not adversely impact administration of the program, and because it has not missed prior deadlines.¹⁶ Cedar-Wapsie also states that it has implemented new procedures and safeguards to ensure that it meets future universal service filing deadlines.¹⁷

7. *DialToneServices Petition for Waiver*. On January 13, 2011, DialToneServices requested a waiver of the December 30, 2010 line count filing deadline set forth in section 54.307(c) of the Commission's rules to receive several types of high-cost support.¹⁸ DialToneServices states that it submitted its filing one day late and that this was the first time it missed a filing deadline.¹⁹ DialToneServices claims the delay occurred solely because of a technical incompatibility between its new computers and the USAC website.²⁰ DialToneServices also represents that it has revised its internal procedures to ensure compliance with all future universal service filing deadlines.²¹ DialToneServices contends that granting its request will not impose any burdens on program administration because the filing was only one day late.²²

¹¹ 47 C.F.R. § 54.903(a)(2); 47 C.F.R. § 36.612.

¹² 47 C.F.R. § 54.904(a).

¹³ 47 C.F.R. § 54.904(d).

¹⁴ Cedar-Wapsie Petition at 1; 47 C.F.R. § 54.904(d).

¹⁵ Cedar-Wapsie Petition at 2.

¹⁶ *Id.* at 6. These procedures include requiring multiple employees, along with the CEO, to set up calendar reminders for USAC filings.

¹⁷ *Id.* at 5.

¹⁸ DialToneServices Petition at 1; 47 C.F.R. § 54.307(c).

¹⁹ DialToneServices Petition at 2.

²⁰ *Id.*

²¹ DialToneServices Petition at 3.

²² *Id.* at 5.

8. *Innovative Petition for Waiver.* On April 14, 2011, Innovative requested a waiver of the March 30, 2011 line count filing deadline set forth in section 54.903(a) of the Commission's rules to be eligible to receive ICLS.²³ Innovative claims that NECA used to file Form 507 on its behalf for many years until Innovative converted to price cap regulations starting July 1, 2010.²⁴ NECA stopped filing Form 507 on behalf of Innovative after December 31, 2010, making Innovative responsible for its own filings to USAC.²⁵ Innovative also argues that its own contact person with NECA regarding filing issues with USAC had been out on medical leave since late February, just days prior to the deadline of submitting Form 507 to USAC.²⁶ Innovative states that it was unaware of the missed deadline until USAC contacted its consultant by email, stating that Form 507 had not been received by USAC. On April 8, 2011, seven business days after the filing was due, Innovative filed the required Form with USAC. Innovative states that since this late filing, it has revised internal procedures to ensure future compliance by making personnel in charge of filing aware of filing deadlines under price cap regulations, providing training on filing requirements to primary and back-up personnel, and improving management oversight for filing purposes.²⁷

9. *Wildflower Petition for Waiver.* On January 11, 2011, Wildflower requested a waiver of the December 31, 2010 quarterly line count filing deadline set forth in section 54.802(a) of the Commission's rules to be eligible to receive IAS.²⁸ Wildflower also requests a waiver of the December 30, 2010 deadline set forth in section 54.307(c) of the Commission's rules to submit quarterly line count data used to calculate its high-cost loop support (HCLS) and local switching support (LSS).²⁹ Wildflower states that during 2010, the company's president, who was previously responsible for the filing of the line counts, transitioned this responsibility to the company's chief financial officer (CFO).³⁰ As part of this transition, an electronic calendar with many regulatory deadlines was to be transferred to the CFO's electronic calendaring system, but the transfer failed.³¹ In addition, during the last few working days in December 2010, both the president and CFO were working with the Commission and USAC to resolve an apparent computer software problem concerning the Commission's accounts receivable system.³² On January 5, 2011, Wildflower realized it had missed the deadlines and electronically filed the required line counts the same day. Thus, it missed the IAS deadline by 4 business days and the HCLS/LSS deadline by three business days. Wildflower notes that it has never previously missed a filing deadline, and that it has taken steps to ensure compliance with all future filing deadlines.³³ Such new procedures include assigning two persons, including the company's president, to verify that the quarterly reports are

²³ Innovative Petition at 1; 47 C.F.R. § 54.903(a). In its petition, Innovative mistakenly states that it missed the "March 31, 2011" quarterly line count filing deadline. . Innovative Petition at 1-2. The quarterly line count filing deadline was March 30, 2011. 47 C.F.R. § 54.903(a)(2).

²⁴ Innovative Petition at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 2-3.

²⁸ Wildflower Petition at 1; 47 C.F.R. § 54.802(a).

²⁹ Wildflower Petition at 1.

³⁰ *Id.* at 2.

³¹ *Id.*

³² *Id.* at 2-3.

³³ *Id.* at 3.

completed and submitted to USAC in a timely manner and correcting the electronic calendaring problem.³⁴ Wildflower believes that the requested waiver will not hamper program administration because USAC received the filings shortly after the deadlines.³⁵

III. DISCUSSION

10. We find that the petitioners have demonstrated that there is good cause to waive the applicable sections of the Commission's rules. Generally, the Commission's rules may be waived if good cause is shown.³⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁸ 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.³⁹

11. USAC processes a tremendous amount of data each year so it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.⁴⁰ Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.⁴¹ Although our rules require that data and certifications must be received by the applicable deadline, we find that petitioners have demonstrated that, in these special circumstances, there is good cause to waive the filing deadlines. The Commission did not receive any comments opposing any of these petitions.⁴²

12. We find that waivers are warranted because the petitioners promptly filed the required data and have revised their internal procedures to ensure compliance with the Commission's rules and future universal service filing deadlines. In instances where carriers have filed the required data or certifications shortly after filing deadlines, the Commission has waived its rules.⁴³ The petitioners made

³⁴ *Id.* at 4.

³⁵ *Id.* at 6.

³⁶ 47 C.F.R. § 1.3.

³⁷ *Northeast Cellular telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³⁹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁴⁰ *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).

⁴¹ It is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received. See 47 C.F.R. § 0.406. See also *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761, 16763, para. 7 (Wireline Comp. Bur. 2005) (*Citizens/Frontier Order*).

⁴² See *Comment Sought on Petition filed by Cedar-Wapsie Communications, Inc. For Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, DA 11-43 (Wireline Comp. Bur. 2011); *Comment Sought on Petition Filed by DialToneServices, L.P. For Waiver of Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, DA 11-113 (Wireline Comp. Bur. 2011); *Comment Sought on Petition Filed by Wildflower Telecommunications, LLC For Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Public Notice, DA 11-115 (Wireline Comp. Bur. 2011).

⁴³ See, e.g., *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 9 (waiving filing deadline when the filing was submitted two business days after the deadline); *FiberNet, LLC Petition for Waiver of FCC Rule Section* (continued. . .)

the required filings between one and seven business days after the deadlines and missed the deadlines for the first time. Accordingly, we find that, by making the required filings shortly after the applicable filing deadlines, the petitioners promptly remedied their errors.

13. To ensure that future filings deadlines are met, these petitioners have revised their filing procedures.⁴⁴ We note that these steps are similar to those taken by other carriers who missed filing deadlines but were granted waivers of the missed deadlines.⁴⁵ In granting other waiver requests, the Commission has found that carriers must comply with their commitments to revise their internal procedures to ensure that their filings will be accurately and timely received.⁴⁶ Similarly, we rely on these petitioners to fulfill their commitments to adhere to their revised filing procedures, and do not anticipate these petitioners will seek waivers of any filing deadlines associated with the high-cost mechanism.

14. We remind carriers of their responsibility to ensure that their complete and accurate filings are timely received in the appropriate places, regardless of the time and method of such 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 carriers to use any and all methods they deem necessary to ensure that their filings are timely received.

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54.307(c)(4), CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (waiving filing deadline when the filing was submitted five days after the deadline); *Northwest Dakota Cellular of North Dakota Limited Partnership*; *North Central RSA 2 of North Dakota Limited Partnership*; *North Dakota RSA No. 3 Limited Partnership*; *Badlands Cellular of North Dakota Limited Partnership*; *North Dakota 5-Kidder Limited Partnership*; and *Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9179, 9181, para. 7 (Wireline Comp. Bur. 2006) (waiving filing deadline when the filing was submitted one day after the deadline); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, 21 FCC Rcd 10155, at 10157, para. 9 (Wireline Comp. Bur. 2006) (*Verizon Order*) (waiving a filing deadline when the filing was submitted two business days after the deadline); *AT&T Communications of NY & AT&T Communications of California Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 953, at 954, para. 4 (Wireline Comp. Bur. 2007) (*AT&T Order*) (waiving filing deadline when the filing was submitted two business days after the deadline); *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) (*NPCR Order*) (waiving filing deadline when the filing was submitted one business day after the deadline); *Benton/Linn Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *Highland Cellular, Inc., Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules*; *Louisa Communications, LLC, Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(a) of the Commission's Rules*; *Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules*; *Unity Telephone Company d/b/a UniTel, Inc., Petition for Waiver of Section 54.904(d) of the Commission's Rules*; *Wapsi Wireless, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 19212, 19220, para. 10 (Wireline Comp. Bur. 2005).

⁴⁴ Cedar-Wapsie Petition at 5; DialToneServices Petition at 3; Wildflower Petition at 4.

⁴⁵ See, e.g., *AT&T Order*, 22 FCC Rcd at 954, para. 5 (instituting e-mail reminders and quarterly reviews by management); *NPCR Order*, 22 FCC Rcd at 563, para. 9 (assigning filing responsibility to a manager).

⁴⁶ See, e.g., *Citizens/Frontier Order*, 20 FCC Rcd at 16764, para. 10; *Verizon Order*, 21 FCC Rcd at 10158, para. 10; *AT&T Order*, 22 FCC Rcd at 954, para. 5; *NPCR Order*, 22 FCC Rcd at 563, para. 9.

IV. ORDERING CLAUSES

15. 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.

16. IT IS FURTHER ORDERED that the petition for waiver of section 54.904(d) of the Commission's rules, 47 C.F.R. § 54.904(d), filed by Cedar-Wapsie Communications, Inc., IS GRANTED.

17. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by DialToneServices, L.P., IS GRANTED.

18. IT IS FURTHER ORDERED that the petition for waiver of section 54.903(a) of the Commission's rules, 47 C.F.R. § 54.903(a), filed by Virgin Islands Telephone Corp. d/b/a Innovative Telephone, IS GRANTED.

19. 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 Wildflower Telecommunications, LLC, IS GRANTED.

20. 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