

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Washington RSA No. 8 Limited Partnership; Eastern Sub-RSA Limited Partnership d/b/a Inland Cellular)	WC Docket No. 08-71
Petition for Waiver of Section 54.307 (c) and Section 54.802(a) of the FCC's rules)	

ORDER

Adopted: December 7, 2011

Released: December 7, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request by Washington RSA No. 8 Limited Partnership; Eastern Sub-RSA Limited Partnership d/b/a Inland Cellular (Inland Cellular) for a waiver of the universal service high-cost support filing deadlines set forth in sections 54.307(c) and 54.802(a) of the Commission rules.¹ For the reasons discussed below, we find that Inland Cellular has not shown 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,”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

¹ Washington RSA No. 8 Limited Partnership; Eastern Sub-RSA Limited Partnership d/b/a Inland Cellular Petition for waiver of Section 54.307(c) and Section 54.802(a) of the Commission rules, WC Docket No. 08-71 (filed March 14, 2011) (Petition); 47 C.F.R. §§ 54.307(c) and 54.802(a).

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).

received in the appropriate places by the applicable deadline to be considered timely filed.⁵ The petitioner requests waiver of a filing deadline associated with the requirements described below.

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 be eligible to receive High Cost Loop Support (HCLS), 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 be eligible 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. *Inland Cellular Petition for Waiver.* On March 14, 2011, Inland Cellular filed a petition for waiver of the March 30, 2010 filing deadlines in sections 54.307(c) and 54.802(a) of the Commission's rules to permit it to receive high-cost universal service support for the third quarter of 2010.¹¹ On June 22, 2010, Inland Cellular filed with USAC its required data that was due on March 30, 2010, nearly three months after the filing was due. Inland Cellular states that it has always made its line count filings on a timely basis in the past and that the loss of funding will delay important upgrades.¹² Inland Cellular claims that personnel responsible for making the filing attempted to submit the line count data electronically prior to the filing deadline, but experienced computer problems that made it impossible to submit the data.¹³ Inland Cellular also states that it has limited staff and they were busy working on a wide array of projects including broadband grant applications during this period.¹⁴

III. DISCUSSION

6. We find that Inland Cellular has failed to demonstrate good cause to grant a waiver of the applicable sections of the Commission's rules. Generally, the Commission's rules may be waived if good

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.*

¹¹ Inland Cellular Petition at 1. Although Inland Cellular states that it missed the "March 30, 2010" deadline required by sections 54.307(c) and 54.802(a) of the Commission's rules, we note that the filing deadline required by section 54.802(a) of the Commission's rules was March 31, 2010.

¹² *Id.* at 2.

¹³ *Id.* at 2.

¹⁴ *Id.* at 2. The Wireline Competition Bureau sought comment on the petition on March 21, 2011. See The Wireline Competition Bureau seeks comment on a petition filed by Washington RSA No. 8 Limited Partnership; Eastern Sub-RSA Limited Partnership d/b/a Inland Cellular for waiver of filing deadlines required by sections 54.802(a) and 54.307(c) of the Commission's rules, CC Docket No. 08-71, Public Notice, 26 FCC Rcd 4004 (Wireline Comp. Bur. 2011). No comments were filed in response to the petition

cause is shown.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷ 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.¹⁸ As we have said previously, because USAC processes such a large amount of data each year, it is necessary that carriers meet the requisite filing deadlines, absent special circumstances.¹⁹ Carriers are responsible for reviewing and understanding the rules to ensure that submissions are received in a timely manner.²⁰

7. Inland Cellular filed three months late and has not provided evidence of special circumstances sufficient to satisfy the good cause waiver standard.²¹ Inland Cellular states that staff attempted to submit the line count data electronically prior to the filing deadline, but experienced computer problems that made it impossible to submit the data.²² If its staff experienced computer problems during the submission process, they could have contacted USAC for assistance or used an alternative filing method. And Inland Cellular should have known immediately (not three months later) that the filing had not been made. Inland Cellular does not explain why its staff did not attempt to contact USAC or to re-file (although it claims that its staff were overburdened during that time) nor does it explain how it was unaware that the filing had not been made until three months later.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *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).

²⁰ *Id.*

²¹ *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).

²² Inland Cellular Petition at 2.

8. Filing difficulties²³ and overburdened staff²⁴ do not constitute special circumstances warranting waiver. Moreover, as we have said before, “the assertion that loss of funding would result in delayed upgrades [and] improvements is not unique” to this petition.²⁵ Inland Cellular cites three orders where the Bureau granted waivers of high-cost filing deadlines based, in part, on the amount of funding at stake.²⁶ However, those petitioners presented additional compelling facts, not present here, that helped establish good cause to grant those waiver petitions.²⁷ Inland Cellular also cites an order where the Bureau granted a waiver petition, in part, because the petitioner promptly filed after it learned it had missed the deadline.²⁸ In that instance, however, the petitioner filed within 14 business days of the deadline – not three months after the deadline.²⁹ Finally, while Inland Cellular notes that it has a history of compliance with filing requirements and it has put in place procedures to ensure it meets future deadlines, these are things we expect from all recipients of federal universal service support, not special circumstances. In sum, we conclude that Inland Cellular has not met the good cause waiver standard and we deny its petition.

9. We remind carriers that it is their responsibility to ensure that their complete and accurate 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 electronic mail (e-mail). For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via email 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.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 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.

²³ See, e.g., *Grande Communications Networks, Inc. et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 6187 (Wireline Comp. Bur. 2011) (denying three waiver petitions where the petitioners alleged that they attempted to file, but the filings were not received).

²⁴ See, e.g., *The Community Cable Television Agency of O'Brien County d/b/a The Community Agency and TCA et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 25 FCC Rcd 4626 (Wireline Comp. Bur. 2010) (denying TCA’s waiver petition even though TCA alleged that the employee responsible for submitting the line count data was involved in extraordinary activities before the Iowa Utilities Board concerning telephone company matters).

²⁵ *Grande Communications Networks, Inc. et al.*, 26 FCC Rcd at 6191, para. 13.

²⁶ Inland Cellular Petition at 3-4.

²⁷ *North River Telephone Cooperative*, CC Docket No. 96-45, Order, 21 FCC Rcd 14937 (Wireline Comp. Bur. 2006) (granting a waiver petition based on the amount of funding at stake *and* the fact that North River filed a certification on time but used the wrong certification form); *MCI, Inc.*, CC Docket No. 96-45, Order, 21 FCC Rcd 14926 (Wireline Comp. Bur. 2006) (granting a waiver petition based on the amount of funding at stake *and* the fact that MCI had just emerged from bankruptcy); *Verizon Communications Inc.*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155 (Wireline Comp. Bur. 2006) (granting a waiver petition based on the amount of funding at stake *and* the fact that Verizon filed only two business days after the deadline).

²⁸ Inland Cellular Petition at 3, 4.

²⁹ *Cellular South Licenses, Inc.*, CC Docket No. 96-45, Order, 21 FCC Rcd 9165 (Wireline Comp. Bur. 2006).

11. 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) and §54.802(a), filed by Washington RSA No. 8 Limited Partnership; Eastern Sub-RSA Limited Partnership d/b/a Inland Cellular, IS DENIED.

12. 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

Amy Bender
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau