

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

In the Matters of
Petitions for Waiver of Universal Service High-
Cost Filing Deadlines
Allied Wireless Communications Corporation
Petition for Waiver of Sections 54.307(d), 54.313,
and 54.314 of the Commission’s Rules
Georgia RSA #8 Partnership Petition for Waiver of
Sections 54.307(d), 54.313, and 54.314 of the
Commission’s Rules
WC Docket No. 08-71

ORDER

Adopted: April 8, 2011

Released: April 8, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address petitions by Allied Wireless Communications Corporation (Allied Wireless)1 and Georgia RSA #8 Partnership (Georgia RSA #8)2 for waivers of various universal service high-cost support filing deadlines.3 For the reasons discussed below, although we deny the requested waivers, we find that petitioners have met all the requirements to be eligible to receive high-cost universal service support as of October 14, 2010, which is the release date of the orders designating them as eligible telecommunications carriers (ETCs) in Georgia.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support,”4 and such support shall be used “only for the provision, maintenance,

1 Allied Wireless Communications Corporation Petition for Waiver, WC Docket Nos. 09-197, 08-71, CC Docket No. 96-45 (filed Nov. 2, 2010) (Allied Wireless Petition).

2 Georgia RSA #8 Partnership Petition for Waiver, WC Docket Nos. 09-197, 08-71, CC Docket No. 96-45 (filed Oct. 27, 2010) (Georgia RSA #8 Petition). Allied Wireless is one of the partners in Georgia RSA #8. See Georgia RSA #8 Petition at 1.

3 Allied Wireless seeks waivers of sections 54.307(d), 54.313(d)(vi), 54.314(d)(6), 54.809, and 54.904 of the Commission’s rules. Allied Wireless Petition at 3-4; see also 47 C.F.R. §§ 54.307(d), 54.313-314, 54.809(a), 54.904(a), (d). Georgia RSA #8 seeks waivers of sections 54.307(d), 54.313, and 54.314 of the Commission’s rules. Georgia RSA #8 Petition at 4; see also 47 C.F.R. §§ 54.307(d), 54.313-314. As explained below, petitioners seek waiver of these rules to permit them to receive universal service support effective as of April 26, 2010, the date the Georgia Public Service Commission declared that their designations should be considered effective.

4 47 U.S.C. § 254(e).

and upgrading of facilities and services for which the support is intended.”<sup>5</sup> To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.<sup>6</sup>

3. In the 2005 *ETC Designation Order*, the Commission amended its rules to permit newly designated ETCs to be eligible for high-cost universal service support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of such designation date.<sup>7</sup> If the required line count data and certifications are not filed within these time frames, a newly designated ETC will not receive support as of its ETC designation date; instead, it will receive support on a going-forward basis according to the schedule for other ETCs (*i.e.*, those not newly designated).<sup>8</sup>

4. *The Waiver Petitions.* The Commission, in approving Verizon Wireless’s acquisition of ALLTEL Corporation in 2008, required Verizon Wireless to divest business units in a number of markets across the country.<sup>9</sup> Allied Wireless acquired certain of those assets, including, as relevant here, assets in Georgia, in a transaction that closed on April 26, 2010.<sup>10</sup> Prior to the close of that transaction, on April 15, 2010, Allied Wireless filed a petition for designation as an ETC with the Georgia Public Service Commission (Georgia PSC); in a filing made on August 9, 2010, Allied requested that its designation be made effective retroactive to the date the Verizon Wireless-Allied transaction closed on April 26, 2010.<sup>11</sup> Georgia RSA #8’s petition was filed three months later, on July 14, 2010.<sup>12</sup> On September 21, 2010, the Georgia PSC adopted orders designating petitioners as ETCs; the orders were released on October 14, 2010.<sup>13</sup> The Georgia PSC granted petitioners’ request to make the effective date of petitioners’ ETC designations retroactive to April 26, 2010.<sup>14</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *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).

<sup>7</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6411, para. 92 (2005) (*ETC Designation Order*). Under section 54.307(d) of the Commission’s rules, newly designated ETCs have 60 days from the date of their designation to file line count data. *See* 47 C.F.R. § 54.307(d). Under sections 54.313(d)(3)(vi) and 54.314(d), certifications must be filed on behalf of the newly designated ETCs by the relevant state commission or by the ETC within 60 days of the effective date of its designation. *See* 47 C.F.R. §§ 54.313(d)(3)(vi), 54.314(d). Under sections 54.809(c) and 54.904(d), the newly designated carrier must file its own required self-certifications when it first files line counts. *See* 47 C.F.R. §§ 54.809(c), 54.904(d). Prior to the *ETC Designation Order*, newly designated ETCs were subject to the same filing schedules as other ETCs.

<sup>8</sup> *See ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

<sup>9</sup> *See Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3764, paras. 1-2 (2010).

<sup>10</sup> *See Allied Wireless Petition* at 1 n.1, 2-3.

<sup>11</sup> *See Allied Wireless Petition* at 3, Ex. 1 at 5.

<sup>12</sup> *See Georgia RSA #8 Petition*, Ex. 1 at 2. Georgia RSA #8 sought retroactive designation in its initial petition to the Georgia PSC.

<sup>13</sup> *See Allied Wireless Petition* at 3, Ex. 1; *Georgia RSA #8 Petition* at 4, Ex. 1.

<sup>14</sup> *See Allied Wireless Petition* at 3, *Georgia RSA #8 Petition* at 3.

### III. DISCUSSION

5. We find that petitioners have failed to demonstrate that there is good cause to grant their requests for waiver of the Commission's rules.<sup>15</sup> Generally, the Commission's rules may be waived if good cause is shown.<sup>16</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>17</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>18</sup> 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.<sup>19</sup> As we have noted 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.<sup>20</sup> Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.<sup>21</sup>

6. Petitioners contend that they should be excused from the requirement that they file line counts within 60 days of the effective date of their designations because they had "no way of knowing" that the Georgia PSC would set April 26, 2010 as the effective date until the PSC voted to grant the designation on September 21, 2010.<sup>22</sup> We disagree. Petitioners expressly requested that the Georgia PSC set April 26, 2010 as the effective date for their designations.<sup>23</sup> Thus, petitioners were clearly on notice that the Georgia PSC might select that date as the effective date. Petitioners' assertion that in prior waiver orders we have stated that carriers are not necessarily required to file line counts in anticipation of their designation is unavailing on this point.<sup>24</sup> Petitioners rely on a case that predates the adoption of the 60-day grace period for newly designated carriers to make their filings following designation. The 60-day grace period embodies the principle petitioners cite: Under our rules, petitioners were not required to file prior to the effective date of their designation. Petitioners were, however, required to file within 60 days of the effective date. As we explained in the context of another carrier similarly seeking a waiver to obtain retroactive support, "the Commission found that the adoption of the 60-day period would 'eliminate the need for carriers to seek waiver of filing deadline rules in order to receive support on a timely basis.'"<sup>25</sup> In this regard, we note that petitioners have failed to show that they were unable to make

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<sup>15</sup> Even assuming *arguendo* that a state commission may designate a carrier retroactively, petitioners here still require a waiver to obtain support as of the date the Georgia PSC set as the effective date of their designations. Therefore, we need not and do not decide the effect of a state commission order designating a carrier as an ETC on a retroactive basis.

<sup>16</sup> 47 C.F.R. § 1.3.

<sup>17</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>18</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *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>21</sup> *Id.*

<sup>22</sup> See Allied Wireless Petition at 4; Georgia RSA #8 Petition at 4.

<sup>23</sup> See Allied Wireless Petition, Ex. 1 at 5; Georgia RSA #8 Petition, Ex. 1 at 5.

<sup>24</sup> See Letter from Jeffrey C. Humiston, Vice President and General Counsel, Allied Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-71, at 7 (filed Feb. 4, 2011) (Petitioners' Feb. 4 *ex parte*) (citing *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15585, para. 11 (Wireline Comp. Bur. 2004)).

<sup>25</sup> See *Petition for Waiver of Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service, Centennial USVI Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules*,

line count filings within 60 days of April 26, 2010. In this context, we find that petitioners' claim does not meet the high standard required for a waiver.

7. Although we find that petitioners have not demonstrated good cause to allow them to receive high-cost support retroactively to April 26, 2010, we conclude that, for the purposes of distributing federal high-cost support, the effective date of petitioners' ETC designations in Georgia is October 14, 2010, the release date of the Georgia PSC's orders. Petitioners contend that if their designations are considered effective April 26, 2010 (as the Georgia PSC declared), "strict application of the filing deadline rules . . . would lead to the absurd result of [petitioners] receiving *less* support than they would have received if the Georgia PSC had not granted *nunc pro tunc* designation."<sup>26</sup> We note that all required line counts and certifications were filed within 60 days of October 14, 2010.<sup>27</sup> We conclude that considering petitioners' designations as effective as of October 14, 2010 is consistent with the purpose of the 60-day rule and with our precedent.<sup>28</sup> Accordingly, we direct USAC to provide all high-cost support to which petitioners are otherwise entitled in Georgia retroactively to October 14, 2010, and to offset against this amount any high-cost support received by petitioners in Georgia for periods prior to that date.

8. 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](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 carriers to use any and all methods they deem necessary to ensure that their filings are timely received.

#### IV. ORDERING CLAUSES

9. 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.

10. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the petition for waiver of sections 54.307(d), 54.313, and 54.314 of the Commission's rules filed by Allied Wireless Communications Corporation IS DENIED.

11. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the petition for waiver of sections 54.307(d), 54.313, and 54.314 of the Commission's rules filed by Georgia RSA #8 Partnership IS DENIED.

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WC Docket No. 08-71, CC Docket No. 96-45, 24 FCC Rcd 4821, 4825, para. 9 (Wireline Comp. Bur. 2009) (*Centennial Order*) (citing *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92).

<sup>26</sup> Petitioners' Feb. 4 *ex parte* at 5.

<sup>27</sup> *See id.*

<sup>28</sup> *See Centennial Order*, 24 FCC Rcd at 4825, para. 10 (concluding that for the purposes of distributing high-cost support, the effective date of the carrier's designation is the release date of the state commission's order, notwithstanding the state commission's "attempt[] to retroactively designate" the carrier as an ETC).

12. IT IS FURTHER ORDERED that USAC SHALL CONSIDER, for the purposes of providing high-cost universal service support, the effective date of the designations of Allied Wireless Communications Corporation and Georgia RSA #8 Partnership as eligible telecommunications carriers to be October 14, 2010.

13. 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