

**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
	)	
Grande Communications Networks, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules	)	CC Docket No. 96-45
	)	
Advantage Cellular Systems, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules	)	
	)	
Decatur Telephone Company Petition for Waiver of Section 54.904(d) of the Commission's Rules	)	
	)	
Range Telephone Cooperative, Inc. Petition for Waiver of the Commission's Universal Service Rules	)	
	)	

**ORDER**

**Adopted: April 28, 2011**

**Released: April 28, 2011**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we address four separate petitions filed by Grande Communications Networks, Inc. (Grande), Advantage Cellular Systems, Inc. (Advantage), Decatur Telephone Co. (Decatur), and Range Telephone Cooperative, Inc. (Range) for waiver of high-cost universal service filings deadlines set forth in sections 54.307(c) or 54.904(d) of the Commission's rules.<sup>1</sup> In each instance, the petitioner alleges that the required data or certification was timely filed, but USAC has no record of the filing. We find that Grande has provided sufficient evidence that the submission was timely filed, so we direct USAC to accept the filing. We find that Advantage, Decatur, and Range have not provided sufficient evidence that their submissions were timely filed, and we also find that Advantage, Decatur, and Range

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<sup>1</sup> Grande Communications Networks, Inc., Petition for Waiver of FCC Rule Section 54.307, CC Docket No. 96-45, filed Feb. 1, 2007 (Grande Petition); Advantage Cellular, Inc., Petition for Waiver of the FCC's Universal Service Rules, CC Docket No. 96-45, filed Nov. 2, 2005 (Advantage Petition); Advantage Cellular, Inc., Supplement to Petition for Waiver, CC Docket No. 96-45, Filed Nov. 24 2009 (Advantage Supplement); Decatur Telephone Company, Petition for Waiver of the Section 54.904(d) Interstate Common Line Support Self-Certification Filing Deadline, CC Docket No. 96-45, filed Aug. 23, 2007 (Decatur Petition); Range Telephone Cooperative, Inc.'s Petition for Waiver of the Commission's Universal Service Rules, CC Docket No. 96-45 (filed Mar. 28, 2007) (Range Petition). See also 47 C.F.R. §§ 54.307(c), 54.904(d).

have not demonstrated that there is good cause to waive the filing deadlines. We therefore deny their petitions.

## II. BACKGROUND

### A. Commission Precedent

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”<sup>2</sup> and that support shall be used “only for the provision, 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 rules that include certification and data filing requirements and established deadlines for those filings.<sup>4</sup> Consistent with our precedent, complete and accurate submissions must be *received* in the appropriate places by the applicable deadline to be considered timely filed.<sup>5</sup> Each petitioner requests waiver of a filing deadline associated with one of 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 receive certain high-cost universal service support.<sup>6</sup> Mandatory line count data must be submitted no later than March 30, July 31, September 30, and December 30 of each year.<sup>7</sup>

4. To receive Interstate Common Line Support (ICLS), an ETC, among other things, 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.<sup>8</sup> 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.<sup>9</sup>

### B. Petitions for Waiver

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<sup>2</sup> 47 U.S.C. § 254(e).

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

<sup>4</sup> *See, e.g.*, 47 C.F.R. §§ 54.301(b) and (e)(1) (data filing requirements for the local switching support (LSS) mechanism), 54.307 (competitive ETC line count filing requirements for the interstate common line support (ICLS) mechanism and other high-cost universal service support mechanisms), 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 the interstate access support (IAS) mechanism), 54.809 (carrier certification requirements regarding the use of IAS), 54.903 (data filing requirements for the ICLS mechanism), 54.904 (carrier certification requirements regarding the use of ICLS).

<sup>5</sup> *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).

<sup>6</sup> *See* 47 C.F.R. § 54.307.

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 54.904(a). In addition, ETCs must file certain line count data with USAC. 47 C.F.R. §§ 54.903, 54.307.

<sup>9</sup> 47 C.F.R. § 54.904(d).

5. *Grande*. On February 1, 2007, Grande requested a waiver of the September 30, 2005 filing deadline set forth in section 54.307(c) in order to receive HCLS support for the first quarter of 2006.<sup>10</sup> Grande states that, on September 19, 2005, it sent to USAC via overnight DHL delivery a package containing the necessary paperwork.<sup>11</sup> Grande verified receipt of this package on September 20, 2005, ten days before the filing deadline.<sup>12</sup> When Grande did not receive HCLS during the first quarter of 2006, it contacted USAC and was informed that, although the package was timely received, the spreadsheet with the HCLS line-count data was not included.<sup>13</sup> To support its assertions, Grande includes with its petition: (1) a sworn statement from its Senior Regulatory Analyst;<sup>14</sup> (2) copy of the package's contents, including a spreadsheet with HCLS line-count data;<sup>15</sup> and (3) a copy of the package's tracking history, which shows it was delivered to USAC on September 20, 2005.<sup>16</sup>

6. *Advantage*. On November 2, 2005, Advantage requested a waiver of the September 30, 2004 and December 30, 2004 filing deadlines set forth in section 54.307(c) of the Commission's rules in order to receive High-Cost Loop Support (HCLS) and Local Switching Support (LSS) for the first half of 2005.<sup>17</sup> Advantage states that it mailed line-count data to USAC on September 24, 2004 and December 21, 2004.<sup>18</sup> Advantage provides copies of the line-count data and sworn statements from three of its employees to prove that the filings were mailed.<sup>19</sup> Advantage, however, did not receive HCLS or LSS between January and June, 2005.<sup>20</sup> Advantage contacted USAC on March 9, 2005 and, on September 23, 2005, learned that neither submission was received.<sup>21</sup>

7. *Decatur*. On August 23, 2008, Decatur requested a waiver of the June 30, 2007 filing deadline set forth in section 54.904(d) of the Commission's rules in order to receive ICLS for the first half of 2008.<sup>22</sup> Decatur states that it mailed its ICLS certification to USAC and to the Commission on June 15, 2007.<sup>23</sup> On that same day, Decatur faxed a copy of the certification to the National Exchange Carrier Association (NECA), and includes the faxed copy with its petition.<sup>24</sup> On June 29, 2007, USAC notified

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<sup>10</sup> Grande Petition at 1; 47 C.F.R. § 54.307(c).

<sup>11</sup> Grande Petition at 2-3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1, 3.

<sup>14</sup> *Id.* at Exh. A.

<sup>15</sup> *Id.* at Exh. B.

<sup>16</sup> Grande Petition at Exh. C.

<sup>17</sup> Advantage Petition at 1; 47 C.F.R. § 54.307(c).

<sup>18</sup> Advantage Petition at 2.

<sup>19</sup> *Id.* at Exh. 1; Advantage Petition at Attachs. B, C. Advantage asserts that one employee personally prepared the filings and then placed them in the internal mail receptacle, while another employee personally delivered all of the mail in the basket to a commercial carrier. See Advantage Petition at Attachs. A, B, C.

<sup>20</sup> *Id.* at 3.

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

<sup>22</sup> Decatur Petition at 1-3; 47 C.F.R. § 54.904(d).

<sup>23</sup> Decatur Petition at 1.

<sup>24</sup> *Id.* at 5 and Attach. D..

Decatur via e-mail that it had not yet received the ICLS certification, but the employee that received the message was on vacation until July 8, 2007.<sup>25</sup> After it could not verify receipt by USAC or the Commission, Decatur resent the certification on July 27, 2007.<sup>26</sup>

8. *Range*. On March 28, 2007, Range filed a petition for waiver of the July 31, 2006 deadline set forth in section 54.307(c) of the Commission's rules to receive High-Cost Model Support (HCMS) for the fourth quarter of 2006.<sup>27</sup> Range states that it was designated as a competitive ETC on March 21, 2006 and by May 16, 2006 had submitted all the necessary line count data relating back to its ETC designation date.<sup>28</sup> Range also claims that it submitted all of the data necessary to comply with June 30, 2006 and July 31, 2006 deadlines to receive Interstate Access Support and HCMS.<sup>29</sup> Range asserts that it had conversations with USAC during the period of March through August of 2006, in which USAC informed Range that USAC had all the data it needed for Range to receive support as of its ETC designation date.<sup>30</sup> Range states that when it began to receive decreasing payments in October 2006, it called USAC, and was informed that it missed the July 31, 2006 line count filing deadline for HCMS.<sup>31</sup> It filed the required form on November 9, 2006,<sup>32</sup> but the form was blank.<sup>33</sup> The correct form was subsequently filed on December 4, 2006.<sup>34</sup>

### III. DISCUSSION

9. We begin by considering whether the record evidence is sufficient to establish that the submissions were timely filed. We conclude that Grande has provided sufficient evidence that its submission was timely filed but Advantage, Decatur, and Range have not.

10. Although USAC has no record of Grande's filing, Grande provides evidence that it was both mailed and received by USAC in a timely manner. Grande includes with its petition: (1) a sworn statement from one of its Senior Regulatory Analysts,<sup>35</sup> (2) copy of the package's contents, including a spreadsheet with the relevant line-count data,<sup>36</sup> and (3) a copy of the package's tracking history, which

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<sup>25</sup> *Id.* at 4-5; 10-11.

<sup>26</sup> *Id.* at 5-6.

<sup>27</sup> Range Petition at 1-2; 47 C.F.R. § 54.307(c)(1).

<sup>28</sup> *Id.* at 2-3.

<sup>29</sup> Letter from Jason B. Williams, Counsel, Range Telephone Cooperative, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed May 29, 2007).

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 3-4.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> Email from Corina Graham, USAC High Cost Division to Robin Stephens, CFO, Range Telephone Cooperative (Nov. 9, 2006) *attached to* Affidavit of Robin Stephens, Exh. A, *attached to* Letter from Jason B. Williams, Counsel, Range Telephone Cooperative, to Marlene H. Dortch, FCC (filed Apr. 30, 2007).

<sup>34</sup> Email from Robin Stephens to HCFilings@heli.universalservice.org (Dec. 4 2006) *attached to* Affidavit of Robin Stephens, Exh. A, *attached to* Letter from Jason B. Williams, Counsel, Range Telephone Cooperative, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed Apr. 30, 2007).

<sup>35</sup> *Id.* at Exh. A.

<sup>36</sup> *Id.* at Exh. B.

shows it was delivered to USAC on September 20, 2005.<sup>37</sup> We conclude that this evidence is sufficient to demonstrate that Grande complied with the filing requirements. We therefore find that the filing was timely and direct USAC to accept it.

11. Advantage, Decatur, and Range contend that they mailed their filings to USAC well in advance of the filing deadlines but, unlike Grande, they do not provide evidence that the filings were timely received. Advantage and Decatur provide copies of the filings and sworn statements from employees to show that the filings were mailed, but no evidence that they were received.<sup>38</sup> Range provides a sworn statement from an employee that USAC told the employee that USAC had all of the information necessary for Range to receive support as of the effective date of its ETC designation.<sup>39</sup> However, that statement is ambiguous. It could have referred to the fact that Range had complied with a prior deadline and not a guarantee that Range had complied with subsequent deadlines. It does not establish that the missing filing was mailed or received.

12. Therefore, we must next consider whether Advantage, Decatur, and Range have shown good cause to waive the filing deadlines. Generally, the Commission's rules may be waived if good cause is shown.<sup>40</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>41</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>42</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>43</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>44</sup> Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.<sup>45</sup>

13. Advantage, Decatur, and Range have not shown that special circumstances support their waiver request. The assertion that loss of funding would result in delayed upgrades improvements is not unique to these petitions. We therefore conclude that there is not good cause to grant the waivers requested by Advantage, Decatur, and Range.

14. 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 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

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<sup>37</sup> Grande Petition at Exh. C.

<sup>38</sup> Advantage Petition at Attachs. B, C; Advantage Supplement at Exh. 1; Decatur Petition at Attachs. A, B.

<sup>39</sup> Affidavit of Robin Stephens, Exh. A, *attached to* Letter from Jason B. Williams, Counsel, Range Telephone Cooperative, to Marlene H. Dortch, FCC, CC Docket No. 96-45 (filed Apr. 30, 2007).

<sup>40</sup> 47 C.F.R. § 1.3.

<sup>41</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>42</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>43</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>44</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>45</sup> *Id.*

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

#### 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 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by Grande Communications Networks, Inc., IS DISMISSED.

17. IT IS FURTHER ORDERED that the high-cost loop support filing for the first quarter of 2006, filed by Grande Communications Networks, Inc., SHALL BE ACCEPTED as timely by USAC.

18. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(c) of the Commission's rules, 47 C.F.R. § 54.307(c), filed by Advantage Cellular Systems, Inc., IS DENIED.

19. 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 Decatur Telephone Company, IS DENIED.

20. 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 Range Telephone Cooperative, Inc., IS DENIED.

21. 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