

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
The Chillicothe Telephone Company (SAC)
#300597) Petition for Waiver of Section 54.301(e))
Filing Deadline for Submission of True-Up)
Adjustment for Local Switching Support for)
Calendar Year 2010)
Jordan Soldier Valley Telephone Company)
Petition for Waiver of Section 54.301(e)(1))
Submission Date for True-Up 2011 Local)
Switching Support Data)
Consolidated Communications of Fort Bend)
Company Petition for a Waiver of Section)
54.301(e)(1) of the Commission's Rules)
CenturyLink Petition for Limited Waiver)
FairPoint Communications, Inc. Petition for)
Waiver of Section 54.301(e)(1) of the)
Commission's Rules, 47 C.F.R. § 54.301(e)(1))
Micronesia Telecommunications Corporation)
(SAC 653700) Petition for Waiver of Section)
54.301(e) Submission Date for 2011 Local)
Switching Support True-Up Data)

ORDER

Adopted: October 29, 2013

Released: October 29, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant six separate requests, filed by: (1) The Chillicothe Telephone Company (Chillicothe); (2) Jordan Soldier Valley Telephone Company (Jordan Soldier Valley); (3) Consolidated Communications of Fort Bend Company (Consolidated Fort Bend); (4) CenturyLink; (5) FairPoint Communications, Inc. (FairPoint); and (6) Micronesia Telecommunications Corporation (MTC) (collectively, the LSS Petitioners), for waiver of the filing deadline for the submission of true-up data used to adjust Local Switching Support (LSS), set forth in section 54.301(e)(1) of the Commission's

rules.¹ We find that the LSS Petitioners have demonstrated that good cause exists to grant these waivers of the deadlines associated with the LSS data and certification filing requirements, that pre-date the *USF/ICC Transformation Order*.²

A. 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,”³ and such support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴ To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

3. For example, pursuant to section 54.301 of the Commission's rules, incumbent local exchange carriers (LECs) that had been designated as ETCs, and served 50,000 or fewer access lines within a study area, historically were required to file certain data with the Universal Service Administrative Company (USAC) to be eligible to receive LSS.⁵ Annually, on or before October 1, incumbent LECs were required submit to USAC projected data necessary to calculate the carrier's projected LSS for the following calendar year.⁶ No later than twelve months after the end of that calendar year, incumbent LECs were required to submit historical (i.e., actual) data for that calendar year to USAC.⁷ USAC adjusted each carrier's LSS to account for differences between (i) the LSS received by

¹ The Chillicothe Telephone Company (SAC #300597) Petition for Waiver of Section 54.301(e) Filing Deadline for Submission of True-Up Adjustment for Local Switching Support for Calendar Year 2010, WC Docket No. 08-71, CC Docket No. 96-45 (filed Mar. 2, 2012) (Chillicothe Petition); Jordan Soldier Valley Telephone Company Petition for Waiver of Section 54.301(e)(1) Submission Date for True-Up 2011 Local Switching Support Data, CC Docket No. 96-45 (filed Jan. 7, 2013) (Jordan Soldier Valley Petition); Consolidated Communications of Fort Bend Company Petition for a Waiver of Section 54.301(e)(1) of the Commission's Rules, WC Docket No. 08-71 (filed Jan. 11, 2013) (Consolidated Fort Bend Petition); CenturyLink Petition for Limited Waiver, WC Docket Nos. 10-90, 05-337, CC Docket No. 96-45 (filed Jan. 16, 2013) (CenturyLink Petition) (filing the petition on behalf of CenturyLink The El Paso County Telephone Company and CenturyLink Qwest Corporation Idaho North); FairPoint Communications, Inc. Petition for Waiver of Section 54.301(e)(1) of the Commission's Rules, 47 C.F.R. § 54.301(e)(1), WC Docket Nos. 10-90, 05-337 (filed Jan. 16, 2013) (FairPoint Petition) (filing the petition on behalf of China Telephone Company, FairPoint Vermont, Inc., Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, and Maine Telephone Company); Micronesia Telecommunications Corporation (SAC 653700) Petition for Waiver of Section 54.301(e) Submission Date for 2011 Local Switching Support True-Up Data, CC Docket No. 96-45, WC Docket No. 08-71 (filed Jan. 17, 2013) (MTC Petition); 47 C.F.R. § 54.301(e).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

³ 47 U.S.C. § 254(e).

⁴ *Id.*

⁵ 47 C.F.R. § 54.301. LSS had allowed such LECs to allocate a larger percentage of their switching costs (including related overhead costs) to the interstate jurisdiction and recover those costs through the federal universal service fund. See 47 C.F.R. § 54.301(a). In the *USF/ICC Transformation Order*, the Commission eliminated LSS as a separate universal service support mechanism, effective July 1, 2012. *USF/ICC Transformation Order*, 26 FCC Rcd at 17760, para. 257. The *USF/ICC Transformation Order* adopted several reforms to harmonize and update annual ETC requirements by establishing a “uniform national framework for accountability” that replaces the various data and certification filing deadlines that carriers were required to meet previously. *Id.* at 17850, para. 573.

⁶ 47 C.F.R. § 54.301(b).

⁷ 47 C.F.R. § 54.301(e)(1).

the carrier for a calendar year based on the carrier's projected data, and (ii) the LSS the carrier should receive based on its historical data (true-up adjustments).⁸ True-up adjustments were made by USAC no later than fifteen months after the end of each calendar year.⁹ The deadline for the submission of true-up LSS data for the 2010 funding year was January 3, 2012,¹⁰ and the deadline for the submission of true-up LSS data for the 2011 funding year was December 31, 2012.

4. Because these LSS data submission deadlines were annual deadlines, failure to meet them resulted in the loss of the entire year of funding to which the LSS data related. Prior to the implementation of the *USF/ICC Transformation Order*, the Wireline Competition Bureau waived the LSS data submission deadlines for certain carriers that missed them, recognizing that loss of an entire year of LSS could impact service and rates, and result in a "substantial hardship" for consumers.¹¹

5. The *USF/ICC Transformation Order* eliminated LSS as a standalone support mechanism after the 2011 funding year.¹² But because the LSS true-up data for 2011 was required to be filed 12 months after the last day of the 2011 funding year, December 31, 2012 was the last true-up deadline for LSS.¹³ Thus, carriers that missed that deadline could still lose the entire year of 2011 LSS, absent a waiver.

⁸ 47 C.F.R. § 54.301(e)(2).

⁹ *Id.*

¹⁰ The deadline was not December 31, 2011, because this date fell on a Saturday and the following Monday, January 2, 2012, was a holiday. See 47 C.F.R. § 1.4.

¹¹ See, e.g., *Petition for Waiver of Universal Service High-Cost Filing Deadlines; Federal-State Joint Board on Universal Service; Northeast Iowa Telephone Company Petition of Waiver of the Section 54.301(b) Submission Date for Projected 2008 Local Switching Support Data*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 24 FCC Rcd 4818, 4819-20, paras. 4-5 (Wireline Comp. Bur. 2009); *Federal-State Joint Board on Universal Service; Dixon Telephone Company et al.*, CC Docket No. 96-45, Order, 21 FCC Rcd 1717, 1719-20, paras. 8-9 (Wireline Comp. Bur. 2006) (*Dixon Telephone Company et al. Waiver Order*); *Federal-State Joint Board on Universal Service; Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc. et al.*, CC Docket No. 96-45, Order, 20 FCC Rcd 18250, 18253, paras. 8-9 (Wireline Comp. Bur. 2005).

¹² The Commission made limited recovery of the costs previously covered by LSS available pursuant to its intercarrier compensation reform. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17969, para. 872. Rate-of-return carriers were eligible to receive LSS from January 1, 2012 to June 30, 2012, but such support was frozen at 2011 support levels, and was subject to true-up based on 2011 operating results. *Id.* at 17760, para. 257; see 47 C.F.R. § 54.301(a)(1). For price cap carriers and their rate-of-return affiliates, the Commission froze all support under its existing high-cost support mechanisms on a study area basis. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17715, para. 133. This support includes high-cost loop support, high-cost model support, safety net additive, safety valve support, LSS, interstate access support, and interstate common line support. *Id.* at 17712, para. 128. Frozen support was calculated by USAC on January 31, 2012 based on the amount of support disbursed to carriers in 2011. *Id.* at 17715, para. 133, n.212. Thus, any adjustments or true-ups made to 2011 support after January 31, 2012 do not affect price cap carriers and their rate-of-return affiliates' frozen high-cost support. See *id.* CenturyLink expressed confusion about whether a denial of its instant petition for waiver would impact its frozen support. CenturyLink Petition at 5. We clarify here that because the Commission directed USAC to make its frozen support calculations on January 31, 2012, any subsequent action to true up universal service support would not impact price cap carriers' frozen support levels.

¹³ Because 2011 was the last funding year in which carriers received LSS based on actual data, section 54.301(e)(1) of the Commission's rules specifies that the last true-up data submission deadline for LSS was December 31, 2012.

B. LSS Petitioners' Petitions for Waiver

6. Chillicothe seeks waiver of the January 3, 2012 LSS true-up data filing deadline set forth in section 54.301(e)(1) of the Commission's rules in order to receive LSS support for 2010,¹⁴ and the five other petitioners seek waiver of the December 31, 2012 LSS true-up data filing deadline in order to receive LSS support for 2011.¹⁵ Each petitioner ultimately filed LSS true-up data after being notified by USAC that its data had not been received.¹⁶

II. DISCUSSION

7. We conclude that the LSS Petitioners have demonstrated that there is good cause to waive section 54.301(e)(1) of the Commission's rules.¹⁷ Specifically, each of the LSS Petitioners has demonstrated that the missed deadline was the result of minor ministerial, clerical, or procedural errors which do not warrant an entire year's loss of LSS.¹⁸ In the past, prior to the adoption of the new accountability framework in the *USF/ICC Transformation Order*, the Bureau granted waiver of LSS data submission deadlines in section 54.301 of the Commission's rules when such an error caused the deadlines to be missed,¹⁹ and the Bureau found that it would not be in the public interest to deny carriers an entire year's LSS.²⁰

¹⁴ Chillicothe Petition at 1, 3 (filing its petition on March 2, 2012 after it was notified by USAC that its mailed submission had not been received, and claiming that it expected to receive \$379,189 in LSS for 2010).

¹⁵ Jordan Soldier Valley Petition at 1, 4 (filing its petition on January 7, 2013 and claiming that it expected approximately \$76,000 in LSS for 2011); Consolidated Fort Bend Petition at 1, 3 (filing its petition on January 11, 2013 and claiming that it expected approximately \$530,000 in LSS for 2011); CenturyLink Petition at 1-2 (filing its petition on Jan. 16, 2013 after it had neglected to file LSS true-up data for two study areas on behalf of two of its subsidiaries); FairPoint Petition at 1, 3 (filing its petition on January 16, 2013 on behalf of six of its subsidiaries and claiming that the six subsidiaries anticipated that they would have to return \$1,034,000 in LSS if their petition was denied); MTC Petition at 1, 3 (filing its petition on January 17, 2013 and claiming that it expected \$625,000 in LSS for 2011); 47 C.F.R. § 54.301(e)(1).

¹⁶ Chillicothe Petition at 3 (stating that it re-filed its LSS true-up data via email on February 13, 2012 and re-filed the accompanying certification on February 14, 2012); Jordan Soldier Valley Petition at 2 (stating that it filed its LSS true-up data via email on January 4, 2013); Consolidated Fort Bend Petition at 2 (stating that it filed its LSS true-up data on January 11, 2013); CenturyLink Petition at 2 (stating that it filed LSS true-up data for its two subsidiaries on January 8, 2013); FairPoint Petition at 2 (stating that it filed LSS true-up data for its six subsidiaries on January 10, 2013); MTC Petition at 5 (stating that it filed its LSS true-up data on January 3, 2013).

¹⁷ 47 C.F.R. § 54.301(e)(1). Generally, the Commission's rules may be waived if good cause is 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. 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. *Northeast Cellular*, 897 F.2d at 1166. "[D]eadlines can only be waived under 'unusual or compelling circumstances.'" *NetworkIP, LLC v. FCC*, 548 F.3d 116, 126 (D.C. Cir. 2008) (citation omitted).

¹⁸ See Chillicothe Petition at 2-3; Jordan Soldier Valley Petition at 2; Consolidated Fort Bend Petition at 1; CenturyLink Petition at 1; FairPoint Petition at 2; MTC Petition at 2.

¹⁹ See, e.g., *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various High-Cost Universal Service Filing Deadlines*, WC Docket No. 08-71, Public Notice, 27 FCC Rcd 13507 (Telecomm. Access Policy Div. 2012); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Flat Rock Telephone Co-Op, Inc. (SAC #341012) Petition for Waiver of Section 54.301(e)(1) Filing Deadline for Submission of True-Up Data for Local Switching Support for a Rural Incumbent Local*

(continued...)

8. Moreover, we find that the waivers are warranted because the LSS Petitioners promptly remedied their errors by filing the required data shortly after the filing deadlines.²¹ Under precedent that pre-dated the adoption of the new framework in the *USF/ICC Transformation Order* regarding loss of support for failure to file ETC certifications on a timely basis,²² in instances where carriers filed the required LSS data shortly after filing deadlines, the Bureau waived the LSS data submission rules.²³

9. To ensure that future filings deadlines are met, most of the LSS Petitioners note that they have revised their internal procedures.²⁴ These steps are similar to those taken by other carriers who missed filing deadlines in the past, prior to the *USF/ICC Transformation Order*, and were granted waivers of missed deadlines.²⁵ We reiterate that all ETCs should have adequate internal controls and procedures to ensure that their filings required by the Commission's revised rules will be accurately and timely received.²⁶

III. ORDERING CLAUSES

10. 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.

11. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by The Chillicothe Telephone Company IS GRANTED.

12. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by Jordan Soldier Valley Telephone Company IS GRANTED.

13. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by Consolidated Communications of Fort Bend Company IS GRANTED.

14. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by CenturyLink IS GRANTED.

(Continued from previous page) _____
Exchange Carrier, et al., WC Docket No. 08-71, Order, 25 FCC Rcd 4637 (Wireline Comp. Bur. 2010) (*Flat Rock et al. Waiver Order*); *Dixon Telephone Company et al. Waiver Order*.

²⁰ See *supra* para. 4.

²¹ See *supra* note 166.

²² See 47 C.F.R. § 54.314(d).

²³ See, e.g., *Petition for Waiver of Universal Service High-Cost Filing Deadlines, ETEX Telephone Cooperative Petition for Waiver of Deadline in 47 C.F.R. 54.301(b)*, WC Docket No. 08-71, Order, 25 FCC Rcd 4698, 4700 para. 6 (Wireline Comp. Bur. 2010); *Dixon Telephone Company et al. Waiver Order*, 21 FCC Rcd at 1718-19, paras. 3-5.

²⁴ See Chillicothe Petition at 3; Jordan Soldier Valley Petition at 3; Consolidated Fort Bend Petition at 2-3; CenturyLink Petition at 6; MTC Petition at 2. FairPoint claims that the departure of key personnel before the filing deadline which caused them to miss their deadline is "not likely to be a problem in the future," and notes that "this type of filing no longer will be required." FairPoint Petition at 4.

²⁵ See, e.g., *Flat Rock et al. Waiver Order*, 25 FCC Rcd at 4639-41, paras. 4-8 nn.17, 25, 49 (describing such steps as maintaining a calendar and assigning new staff to be made aware of and takeover the new filings).

²⁶ See, e.g., *id.* at 4643-44, para. 14.

15. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by FairPoint Communications, Inc. IS GRANTED.

16. IT IS FURTHER ORDERED that the petition for waiver of section 54.301(e)(1) of the Commission's rules, 47 C.F.R. § 54.301(e)(1), filed by Micronesia Telecommunications Corporation IS GRANTED.

17. 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

Julie A. Veach
Chief
Wireline Competition Bureau