

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

In the Matter of
Universal Service High-Cost Filing
Deadlines
WC Docket No. 08-71

ORDER

Adopted: November 10, 2014

Released: November 10, 2014

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies a petition filed by Madison Telephone Company (Madison) for a waiver of sections 36.612(a)(2), 54.305(d)(2), and 54.305(f) of the Commission's rules, which require an eligible telecommunications carrier (ETC) that opts to establish a calendar quarter index year expense adjustment for Safety Valve Support (SVS) to make filings on a quarterly basis. Madison has not shown good cause for a waiver or that waiver of the Commission's rules is necessary to advance the public interest. Accordingly, we deny Madison's petition.

II. BACKGROUND

2. The Commission adopted SVS in 2001 to allow rural carriers to receive additional high-cost loop support to improve the service and enhance the infrastructure of acquired exchanges. To receive SVS, the Commission required carriers to establish in accordance with section 36.611 or section 36.612 of the Commission's rules an "index year expense adjustment" (index year) for purposes of determining the SVS for acquired exchanges. The Commission defined the SVS index year as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year operating the exchanges. Pursuant to section 36.611, carriers submitted loop cost data to the National Exchange Carrier Association (NECA) on an annual basis and established an index year for the acquired exchange(s) at the beginning of the next calendar year after the transfer of said exchanges.

1 Madison Telephone Company Petition for Waiver of 47 C.F.R. §§ 36.612(a)(2), 54.305(d)(2), 54.305(f) of the Commission's Rules, WC Docket No. 08-71 (filed Nov. 7, 2013) (Madison Petition).

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

3 See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45 et al., Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11284-89, paras. 97-106 (2001) (Rural Task Force Order).

4 Id. at 11285-86, para. 99.

5 See id.

6 See id.; 47 C.F.R. § 36.611.

However, carriers that sought to receive SVS closer in time to the acquisition of an exchange(s) had the option to submit loop cost data to NECA on a quarterly basis pursuant to section 36.612.⁷ For carriers that elected to establish an index year pursuant to section 36.612, the index year for the acquired exchange(s) commenced at the beginning of the next calendar quarter after the transfer of said exchanges.⁸ An acquiring carrier that voluntarily elected to establish an index year pursuant to section 36.612 was required to submit an expense adjustment for the acquired exchanges in subsequent years that ended on the same calendar quarter.⁹ The Commission made clear that establishing an index year pursuant to section 36.612 required “submitting loop cost data for acquired exchanges on a quarterly, as opposed to annual, basis.”¹⁰

3. Madison, a rural Illinois carrier, acquired two exchanges from an unaffiliated carrier in May 2001 and has made investments in facilities in those exchanges.¹¹ Pursuant to section 54.305(f) of the Commission’s rules, on July 2, 2001, Madison provided notification to NECA, the Universal Service Administrative Company (USAC), and the Commission that Madison had acquired two exchanges that were eligible for SVS.¹² Madison opted to establish a quarterly index year expense adjustment in the first quarter after the close of the acquisition of the two exchanges, which was July 1, 2001 and ended on June 30, 2002, to expedite the process of receiving SVS.¹³

4. On July 2, 2001 Madison, requested that NECA provide “the appropriate data forms . . . to use in supplying the required data for this data period.”¹⁴ Madison claims that it understood its election to establish a quarterly index year beginning on July 1, 2001 mandated submission of cost data from July 1, 1999 – June 30, 2000.¹⁵ On April 11, 2002 Madison sent an additional letter to USAC stating that Madison had never received any data forms, and therefore was submitting what it believed to be the correct data in the correct format.¹⁶ Madison claims that it subsequently began submitting cost data in accordance with what it understood the rules to require, after failing to receive any information from NECA or USAC that indicated Madison’s filings were incomplete or inconsistent with its selected SVS index period.¹⁷

5. Madison states that when it had not received any SVS by 2004, it engaged a consultant to investigate.¹⁸ NECA informed Madison, in a September 9, 2004 email, that Madison appeared to qualify for SVS payments based on its 2003 and 2004 calendar year filings.¹⁹ On September 21, 2004, Madison

⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99; 47 C.F.R. § 36.612.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ Madison Petition at 4.

¹² See *id.* at 5, Attach. A.

¹³ See *id.* Pursuant to section 54.305(d)(2), for carriers that opt to establish the first year of operation of the acquired exchanges at the beginning of the next calendar quarter following the transfer of the exchanges, the index year shall be determined using cost data in accordance with section 36.612. See 47 C.F.R. §§ 36.612, 54.305(d)(2).

¹⁴ See Madison Petition at 5, Attach. A.

¹⁵ See *id.*

¹⁶ See Madison Petition at 5-6, Attach. C.

¹⁷ See Madison Petition at 6.

¹⁸ See *id.*

¹⁹ See Madison Petition at 6-7, Attach. E, F.

informed USAC that Madison had had discussions with NECA over its SVS, and there appeared to be disagreement over what data should have been used to calculate the index period. Madison represents that it asked USAC to assist in resolving the issue,²⁰ but it never received any response. Madison claims that it believed the matter had been resolved when Madison received its NECA disbursement statement data May 4, 2005 that showed the company would receive \$2,480 in “Safety Valve Additive.”²¹ However, Madison subsequently received a revised NECA statement on May 31, 2005 showing that the \$2,480 was rescinded.²² In the course of investigating the cause of the rescinded payment, Madison discovered that the company was qualified to begin receiving Safety Net Additive in 2006 in the amount of \$2,445 per month.²³ Madison, therefore, requested and received Safety Net Additive support on a monthly basis from January 2006 until December 2010.²⁴ Madison now claims that it believed that the monthly Safety Net Additive payments it received from January 2006 until December 2010 were SVS payments²⁵ and that its calendar year SVS cost data annual filings were therefore consistent with the Commission’s rules.²⁶

6. More recently, Madison completed a five-year service quality improvement plan.²⁷ Madison claims that while preparing its plan, it discovered that the monthly support it had received from January 2006 until December 2010 was actually Safety Net Additive support, and not SVS, as it had assumed.²⁸ In total, Madison received \$161,220 of Safety Net Additive from January 2006 until December 2010 that it thought was SVS.²⁹

7. On November 7, 2013, Madison submitted its Petition asking for a waiver of certain rules to allow Madison to collect the \$2,126,314 of SVS it claims it should have received from 2004 - 2012 and to direct USAC to begin distributing SVS support to Madison on a regular basis.³⁰ Specifically Madison asks to submit quarterly cost data for the previous years that the Company should have been receiving SVS, or alternatively, to resubmit its SVS eligibility and election notification pursuant to section 54.305(f) and establish a calendar index year of January 1 – December 31, 2002.³¹ Additionally, if permitted to re-establish its index year as a calendar year, Madison requests that the annual cost study data that Madison has submitted each year pursuant to section 36.611 be accepted for the purpose of calculating SVS.³²

²⁰ *See id.*

²¹ *See* Madison Petition at 7, Attach. G.

²² *See id.*

²³ *See* Madison Petition at 8.

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See* 47 C.F.R. §§ 54.202(a), 54.313(a)(1); Madison Petition at 8-9.

²⁸ *See* Madison Petition at 8-9.

²⁹ *See id.* at 8.

³⁰ Madison seeks waiver of sections 36.612(a)(2), 54.305(d)(2), and 54.305(f) of the Commission’s rules. *See* Madison Petition at 1, 15-16, Attach. B.

³¹ *See* Madison Petition at 15-16.

³² *See id.*

III. DISCUSSION

8. The Bureau finds that Madison has not demonstrated good cause for a waiver.³³ Madison's mistake in filing calendar-year rather than quarterly SVS cost data and, more importantly, failing to recognize that it was not receiving SVS payments does not warrant deviation from the Commission's rules.³⁴ In addition, we are not persuaded that waiver of the deadline is necessary for Madison to provide quality service to its consumers.³⁵ Consequently, we deny Madison's request for waiver.

9. As discussed above, upon acquiring the two unaffiliated exchanges in May 2001, Madison correctly recognized that it qualified to receive SVS support.³⁶ To begin receiving SVS as soon as possible, Madison established its index year expense adjustment in the first quarter after the close of the acquisition of the two exchanges, from July 1, 2001 to June 30, 2002.³⁷ By electing to establish its index year beginning on July 1, rather than January 1 of the year following the acquisition of the exchanges, Madison demonstrated that it was familiar with Commission's rules pertaining to SVS. In establishing its index year on a calendar quarter pursuant to sections 36.612 and 54.305(c)(2) of the Commission's rules, Madison was required to submit loop cost data to NECA on a quarterly basis.³⁸ It is undisputed that Madison willingly chose to establish its index year pursuant to sections 36.612 and 54.305(c)(2) of the Commission's rules and subsequently did not comply with the associated quarterly cost data filing requirement.³⁹

10. Confusion on the part of Madison regarding the filing requirements associated with the support it was seeking does not constitute special circumstances warranting waiver of the filing deadlines.⁴⁰ The argument that Madison did not realize that it was not receiving the SVS it now claims it needs and that it confused SVS support with Safety Net Additive support is not persuasive.⁴¹ Safety Net

³³ Generally, the Commission's rules may be waived for good cause 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), cert. denied, 409 U.S. 1027 (1972). 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

³⁴ See *SureWest Telephone, Petition for Waiver of 54.314(d) Filing Deadline*, WC Docket No. 08-71, Order, 28 FCC Rcd 14852, 14854-55, para. 6 (Wireline Comp. Bur. 2013); *South Slope Cooperative Telephone Company, Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 5 (Wireline Comp. Bur. 2004) (*South Slope*) ("A carrier's confusion regarding the rules does not establish special circumstances that warrant a deviation from the Commission's rules."); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Grande Communications Networks, Inc. Petition for Waiver of Section 54.307(c) of the Commission's Rules et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 6187, 6191, para. 12 (Wireline Comp. Bur. 2011) ("Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.").

³⁵ See Madison Petition at 12.

³⁶ See *id.* at 3-4.

³⁷ See *id.* at 5.

³⁸ 47 C.F.R. §§ 36.612, 54.305(c)(2); see *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99.

³⁹ See Madison Petition at 6; 47 C.F.R. §§ 36.612, 54.305(c)(2).

⁴⁰ See *supra* note 34.

⁴¹ See Madison Petition at 8.

Additive support “applies to new investments in existing exchanges while Safety Valve Support applies to new investments in acquired exchanges.”⁴² To receive Safety Net Additive support, a carrier must provide written notice to USAC affirmatively stating that its study area meets the requirements to receive Safety Net Additive.⁴³ Having requested Safety Net Additive support, Madison clearly understood the difference between SVS and Safety Net Additive support and was responsible for using these funds in the appropriate exchanges. Madison’s claim that it failed to realize it was not receiving both SVS and Safety Net Additive is surprising given the vastly different amounts of each that it would have received had it properly filed its cost data. Madison received \$161,220 of Safety Net Additive support from January 2006 until December 2010,⁴⁴ but now claims that it should have received \$2,126,314 in SVS.⁴⁵ Reasonable diligence by Madison would have revealed that the company was not receiving even close to the total amount of SVS and Safety Net Additive support to which it was entitled. The magnitude of Madison’s delay in recognizing that it was not receiving SVS further supports our conclusion that good cause to waive the Commission’s rules has not been established.⁴⁶

11. Finally, the Bureau is not persuaded that the public interest would be served by waiving these deadlines for a time period extending longer than a decade. The argument the company faces substantial hardship in its ability “to provide quality service to consumers” in the absence of the requested SVS is not persuasive.⁴⁷ Consistent with precedent, we decline to grant a waiver of these filing deadlines merely because petitioner claims it needs the support.⁴⁸ We note in this instance, even without receipt of SVS, Madison states that it “has made – and continues to make – significant investments to enhance the network infrastructure in its acquired exchanges. . . [that] have resulted in the deployment of an enhanced

⁴² *Rural Task Force Order*, 16 FCC Rcd at 11288, para. 106.

⁴³ USAC, Filing Requirements – Safety Net Additive, <http://usac.org/hc/legacy/telecom-carriers/step04/sna.aspx> (last visited Nov. 10, 2014).

⁴⁴ See Madison Petition at 8.

⁴⁵ See *id.* at 1, 15-16, Attach. B.

⁴⁶ 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) (granting waiver when line count data was received one business day after the filing deadline); *Federal-State Board on Universal Service; 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) (granting waiver 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) (denying waiver because the filing deadline was missed by more than five months); *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) (denying NPI’s waiver because the data was filed six months late; denying SouthEast’s waiver because the data was filed two months late; denying SEI’s waiver because the data was filed three months late); *South Slope*, 19 FCC Rcd at 17493 (denying waiver because the data was filed more than a month late).

⁴⁷ See Madison Petition at 12.

⁴⁸ Holding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support. Such an exception would swallow the rule. See *Federal-State Board on Universal Service; Coral Wireless d/b/a Mobi PCS and Cordova Wireless Petition for Review of USAC Decision*, CC Docket 96-45, WC Docket No. 05-337, Order, 29 FCC Rcd 9540, 9542, para. 8 (Wireline Comp. Bur. 2014)

network capable of products and services that can accommodate the growing needs of business, residential, and anchor institution customers.”⁴⁹

12. Therefore, the Bureau finds that Madison has not shown good cause for a waiver.⁵⁰

IV. ORDERING CLAUSES

13. 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, 254, sections 0.91, 0.291, 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

14. IT IS FURTHER ORDERED that the petition for waiver of sections 36.612(a)(2), 54.305(d)(2), and 54.305(f) of the Commission’s rules, 47 C.F.R. §§ 36.612(a)(2), 54.305(d)(2), and 54.305(f), filed by Madison Telephone Company, IS DENIED as described herein.

15. 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

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau

⁴⁹ See Madison Petition at 15.

⁵⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).