

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

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of Osirus Communications, Inc. for)	
Waiver of the Commission’s Rules to)	
Participate in NECA Pools and Tariffs and)	
to Obtain Accelerated USF Support)	
)	
Petition of Huron Mountain Communications)	
Co. for Waiver of the Commission’s Rules to)	
Participate in NECA Pools and Tariffs and)	
to Obtain Accelerated USF Support)	

ORDER

Adopted: April 8, 2016

Released: April 8, 2016

By the Chief, Telecommunications Access Policy Division:

1. In this order we dismiss as moot two petitions: (1) the Petition for Waivers of the Commission’s Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support filed by Osirus Communications, Inc. (Osirus), on October 2, 2007;¹ and (2) the Petition for Waivers of the Commission’s Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated Universal Service Fund Support filed by Huron Mountain Communications Co. (Huron Mountain), on April 20, 2009.² In their individual petitions, both Osirus and Huron Mountain seek waiver of various Commission rules³ and a declaratory ruling that a waiver of the definition of a “study area” would not be necessary.⁴ Each company filed its petition in order to participate immediately in the pools and tariffs of the National

¹ Petition for Waivers of the Commission’s Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support, CC Docket No. 96-45, at 1-2 (filed Oct. 2, 2007), <http://apps.fcc.gov/ecfs/comment/view?id=5514891767>.

² Petition for Waivers of the Commission’s Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated Universal Service Fund Support, CC Docket No. 96-45, at 1-2 (filed Apr. 20, 2009), <http://apps.fcc.gov/ecfs/comment/view?id=5515359891>.

³ Each company seeks a waiver of the following Commission rules: sections 69.2(hh), 69.601, and 69.3(e)(6), to allow the company to become a member of NECA and to participate immediately in NECA pools; sections 36.611 and 36.612, to allow accelerated high-cost loop support; the applicable state certification deadlines set forth in section 54.314(d); and data filing deadlines set forth in sections 54.301(b) and 54.903(a). 47 CFR §§ 69.2(hh), 69.601, 69.3(e), 36.611, 36.612, 54.314(d), 54.301(b), and 54.903(a).

⁴ See 47 CFR, Part 36, Appendix-Glossary.

Exchange Carrier Association (NECA), and to expedite receipt of high-cost support from the interstate Universal Service Fund (USF). We solicited comments on both petitions.⁵

2. In 2015, the Michigan Public Service Commission (Michigan PSC) revoked the eligible telecommunications carrier (ETC) designation for both companies.⁶ The Michigan PSC found that Osirus had neither constructed facilities nor provided service in its designated service area; similarly, the PSC found that Huron Mountain had no customers and had never offered service to any customer. Based on the Michigan PSC's revocations, neither company is eligible to receive USF support, so the waivers to accelerate receipt of such support are moot. Moreover, in light of both petitioners' sustained lack of progress in initiating service, we do not find special circumstances which warrant deviation from the rules for participation in NECA pools and tariffs, nor would such waiver serve the public interest.⁷ We therefore dismiss without prejudice all associated petitions and requests contained in the above-captioned pleadings.⁸ The petitioners may re-file their respective waiver requests, if supported by adequate updated information.

3. ACCORDINGLY, IT IS ORDERED, pursuant to the authority delegated under sections 0.91, 0.204(b), and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.204(b), 0.291, that the Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support filed by Osirus Communications, Inc., IS DISMISSED WITHOUT PREJUDICE.

4. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 0.91, 0.204(b), and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.204(b), 0.291, that the Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support filed by Huron Mountain Communications Co., IS DISMISSED WITHOUT PREJUDICE.

5. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102, that this order SHALL BE EFFECTIVE upon release.

6. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted to Osirus Communications, Inc., and to Huron Mountain Communications Co.

⁵ See *Comment Sought on the Petition of Osirus Communications, Inc. to Waive Certain Sections of the Commission's Rules in Order to Become a Member of the National Exchange Carrier Association (NECA), and to Receive Immediate Universal Service Fund Support*, Public Notice, 22 FCC Rcd 20954 (WCB 2007); and *Comment Sought on the Petition of Huron Mountain Communications Co., for Waiver of the Commission's Rules to Participate in NECA Pools and Tariffs, and to Obtain Accelerated Universal Service Support*, Public Notice, 24 FCC Rcd 9246 (WCB 2009).

⁶ See *Application of HURON MOUNTAIN COMMUNICATIONS CO. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Order, Mich. PSC Case No. U-15790 (April 23, 2015); and *Application of OSIRUS COMMUNICATIONS, INC., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as Amended*, Order, Mich. PSC Case No. U-15360 (June 15, 2015). Huron Mountain relinquished its ETC designation voluntarily.

⁷ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁸ Because we are dismissing the waiver requests relating to USF support and NECA participation, the associated requests for declaratory ruling regarding waiver of study area definitions are moot.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau