

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

In the Matter of )
)
Petitions for Waiver of Universal Service High- ) WC Docket No. 08-71
Cost Filing Deadlines )
)
Advantage Cellular Systems, Inc. Petition for ) CC Docket No. 96-45
Waiver of the FCC’s Universal Service Rules )
)

ORDER ON RECONSIDERATION

Adopted: April 20, 2016

Released: April 20, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition for reconsideration filed by Advantage Cellular Systems, Inc. (Advantage).<sup>1</sup> We conclude that Advantage has failed to present any argument warranting reconsideration of the decision of the Wireline Competition Bureau (Bureau) to deny Advantage’s petition for waiver of the relevant section 54.307(c) high-cost line count filing deadlines.<sup>2</sup>

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier [(ETC)] designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support.”<sup>3</sup> Support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>4</sup> For many years, the Commission has relied upon various certification and data filing requirements to implement this statutory requirement. The specific line count filing requirements at issue in this case have been largely superseded by the uniform framework for accountability that the Commission adopted in the USF/ICC Transformation Order.<sup>5</sup>

3. Prior to the USF/ICC Transformation Order, section 54.307(c) of the Commission’s rules required all competitive ETCs to file working line count data with the Universal Service Administrative

<sup>1</sup> 47 CFR § 1.106; Advantage Cellular Systems, Inc. Petition for Reconsideration, WC Docket No. 08-71, CC Docket No. 96-45 (filed May 27, 2011) (Advantage Petition for Reconsideration).

<sup>2</sup> Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al., Order, 26 FCC Rcd 6187 (WCB 2011) (Advantage Waiver Order).

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> Id.

<sup>5</sup> In the USF/ICC Transformation Order, the Commission eliminated for most carriers the line count reporting and certification requirements that existed at that time and adopted a new uniform framework for accountability. 47 CFR § 54.307(e)(7); Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17862, para. 614 (2011) (USF/ICC Transformation Order and/or FNPRM) aff’d sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

Company (USAC) on a quarterly basis to receive certain high-cost support.<sup>6</sup> Mandatory line count data were due on March 30, July 31, September 30, and December 30 of each year.<sup>7</sup> USAC used line count data filed in March to calculate third quarter support for the current calendar year, line count data filed in July to calculate fourth quarter support for the current calendar year, line count data filed in September to calculate first quarter support for the following calendar year, and line count data filed in December to calculate second quarter support for the following calendar year.

4. *Advantage's Petition for Reconsideration.* On April 28, 2011, the Bureau denied Advantage's petition seeking waiver of the September 30, 2004 and December 30, 2004 line count filing deadlines set forth in section 54.307(c) to receive High-Cost Loop Support (HCLS) and Local Switching Support (LSS) for the first and second quarters of 2005.<sup>8</sup> Advantage claims that it mailed the line count data six and nine days before each of the filing deadlines respectively.<sup>9</sup> The Bureau found that Advantage did not provide sufficient evidence that the filings had been received by USAC and did not demonstrate that special circumstances supported its request for a waiver.<sup>10</sup> Advantage filed a petition for reconsideration claiming that the Bureau had misapplied the applicable waiver standard and that the Bureau's decision is arbitrary and capricious and inconsistent with precedent.<sup>11</sup>

### III. DISCUSSION

5. We conclude Advantage has failed to present any arguments warranting reconsideration of the Bureau's denial of Advantage's petition for waiver.<sup>12</sup> Accordingly, we reaffirm our finding that Advantage has not demonstrated that good cause justifies waiver of the September 30, 2004 and December 30, 2004 line count filing deadlines.<sup>13</sup>

6. First, we disagree with Advantage's claims that the Bureau misapplied the waiver standard or acted inconsistent with precedent in finding that Advantage did not demonstrate special circumstances.<sup>14</sup> At the outset, we note that although Advantage claims that section 1.925 of the

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<sup>6</sup> See 47 CFR § 54.307(c).

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

<sup>8</sup> See generally *Advantage Waiver Order*, 26 FCC Rcd 6187. If the petition was granted, Advantage claims it would have recovered approximately \$321,948 in high-cost support. Advantage Petition for Reconsideration at 1.

<sup>9</sup> Advantage Cellular Systems, Inc. Petition for Waiver of the FCC's Universal Service Rules, CC Docket No. 96-45, at 3 (filed Nov. 2, 2005) (Advantage Petition for Waiver); see also Supplement to Advantage Cellular Systems, Inc. d/b/a DTC Wireless Petition for Waiver, WC Docket No. 08-71, CC Docket No. 96-45, at 2-3 (filed Nov. 24, 2008) (Advantage Petition for Waiver Supplement).

<sup>10</sup> *Advantage Waiver Order*, 26 FCC Rcd at 6191, paras. 11-12.

<sup>11</sup> Advantage Petition for Reconsideration at 3-10.

<sup>12</sup> 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) (*WAIT Radio*); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> 47 CFR § 1.106 (permitting the Bureau to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority).

<sup>14</sup> Advantage Petition for Reconsideration at 3-6. We note that the Commission subsequently concluded in 2014 that it would require strict adherence to filing deadlines for the new regime of certifications adopted in the *USF/ICC Transformation Order*. *December 2014 Connect America Order*, 29 FCC Rcd at 15693, para. 138. In this order on reconsideration we apply the precedent that pre-dates this Commission decision.

Commission's rules is applicable, section 1.3 is the appropriate rule to apply because Advantage seeks waiver of section 54.307(c) of the Commission's rules, and not of rules associated with "the requirements and conditions under which entities may be licensed in the Wireless Radio Services."<sup>15</sup>

7. Nothing in the Advantage petition for reconsideration persuades us to reconsider our prior conclusion. As Advantage notes in its petition, the Bureau has granted waivers of filing deadlines where ETCs have acted reasonably and in good faith in their attempts to ensure that their filings were received by the deadline.<sup>16</sup> However, in the cases cited by Advantage, the parties that missed the relevant deadlines after mailing their filings were able to provide additional affirmative evidence, including evidence that the mailings were actually received, that provided support for claims that the mailing had actually occurred.<sup>17</sup> For example, in those cases the mailings arrived soon after the deadline,<sup>18</sup> the petitioners were able to submit a receipt or some other documentation from the carrier that showed the filings were mailed in advance of the deadline,<sup>19</sup> or they were able to show a faxed version of the filing was received by the National Exchange Carrier Association on the same day as the mailing to corroborate their mailing date.<sup>20</sup> Here, Advantage only provides sworn statements from employees that the filings were handed to the commercial courier that brings Advantage's mail to the post office;<sup>21</sup> there is no additional evidence to support these claims. We are not persuaded that our initial decision to find that such evidence is insufficient absent any additional corroboration is inconsistent with these prior orders.<sup>22</sup>

8. Furthermore, Advantage missed two filing deadlines that are spaced months apart. In the cases where we found special circumstances existed as discussed above, those parties that reasonably relied on mail carriers missed only one deadline.

9. We are also not convinced by Advantage's speculation in its supplemental petition that the reports were misplaced possibly due to the transition in ownership of the contractor that processes high-cost reports for USAC.<sup>23</sup> Just as Advantage suggests that "it seems unusual that two reports in a row

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<sup>15</sup> 47 CFR § 1.901. See also 47 CFR § 1.925; Advantage Petition for Reconsideration at 3-4.

<sup>16</sup> Advantage Petition for Reconsideration at 4.

<sup>17</sup> See Advantage Petition for Reconsideration at 5-6 (citing *Federal-State Joint Board on Universal Service; Benton/Linn Wireless, LLC Petition for Waiver of Section 54.307(c) of the Commission's Rules et al.*, Order, 20 FCC Rcd 19212 (WCB 2005) (*Benton/Linn Waiver Order*); *Federal-State Joint Board on Universal Service; Southeast Telephone, Inc. Expedited Petition for Waiver of Deadlines in Section 54.307(c)(2) and 54.802(a) of the Commission's Rules et al.*, Order, 21 FCC Rcd 10149 (WCB 2006) (*Southeast Telephone Waiver Order*)).

<sup>18</sup> *Benton/Linn Waiver Order*, 20 FCC Rcd at 19218-19, paras. 13-14 (noting that mailed filings were received one or six days after the deadline); *Southeast Telephone Waiver Order*, 21 FCC Rcd at 10150, para. 4 (noting the mailed filings were received one or two business days after the deadline).

<sup>19</sup> *Benton/Linn Waiver Order*, 20 FCC Rcd at 19219, para. 16 (noting that the package was returned undelivered to the ETC). See also WAPSI Wireless, LLC Petition for Waiver of December 30, 2004 Deadline in Sections 54.308(b) and (c) for Submission of Quarterly FCC Form 507 Line Count Report by Competitive Eligible Telecommunications Carrier, CC Docket No. 96-45, at Exh. B & C (filed Apr. 13, 2005) (submitting a UPS tracking record and a copy of the envelope to corroborate the mailing date).

<sup>20</sup> *Benton/Linn Waiver Order*, 20 FCC Rcd at 19218-19, para. 15 (noting that the ETC had faxed a copy of the filing to NECA). See also Unity Telephone Company d/b/a Unitel, Inc. Petition for Waiver of the Section 54.904(d) Interstate Common Line Support Self-Certification Filing Deadline, CC Docket No. 96-45, at Attach. E, F (filed Feb. 17, 2005) (providing evidence that the mailing was faxed to and received by NECA on the date the ETC claimed to have mailed the filing).

<sup>21</sup> Advantage Petition for Waiver at Attach.; Advantage Petition for Waiver Supplement at Exh. 1.

<sup>22</sup> Advantage Petition for Reconsideration at 5 n.8.

<sup>23</sup> Advantage Petition for Waiver Supplement at 4.

would meet the same fate at the hands of the U.S. Postal Service,<sup>24</sup> it also seems unusual that the contractor would misplace two successive reports for one carrier. An equally plausible speculation is that Advantage failed to take appropriate steps to ensure that filings were received on time. Without further evidence, we are unable to conclude special circumstances exist that would support a waiver of the deadlines.

10. We are not persuaded by Advantage's claims that the Bureau was arbitrary and capricious because it "ignored the relevant facts concerning consumer harm due to the loss of high cost support and abandoned its own precedent."<sup>25</sup> Under longstanding Commission precedent,<sup>26</sup> the Bureau must find that both "special circumstances warrant a deviation from the general rule" and that "such deviation will serve the public interest" for there to be good cause to waive a filing deadline. Therefore, the Bureau's finding that special circumstances did not exist was sufficient grounds for denying Advantage's petition.

11. Nevertheless, we are not persuaded that it would serve the public interest to grant Advantage's waiver petition even though Advantage claims it "has no reasonable alternative but seek a waiver of the FCC's rules."<sup>27</sup> While we acknowledge that the Bureau *may* take into account considerations of hardship or equity in determining whether there is good cause to waive a rule, we are not persuaded that the impact of the loss of support alone constitutes good cause to grant the waiver petition.<sup>28</sup> We are not persuaded by Advantage's argument that in other cases the Bureau granted waivers of high-cost filing deadlines based, in part, on the amount of funding at stake.<sup>29</sup> Those petitioners presented additional facts not present here in addition to the hardship caused by a reduction in support that helped establish good cause to grant those waiver petitions. For example, in other cases, the ETC stood to lose an entire year of Local Switching Support as a result of missing the filing deadline,<sup>30</sup> the ETC had taken steps to make the filing, but filed the wrong certification,<sup>31</sup> or the deadline occurred before the carrier received its ETC designation.<sup>32</sup> And in any event, only one of the cases cited by Advantage

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<sup>24</sup> *Id.* at 3.

<sup>25</sup> Advantage Petition for Reconsideration at 10.

<sup>26</sup> See *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citation omitted) ("[B]efore the FCC can invoke its good cause exception, it *both* 'must explain why deviation better serves the public interest, and articulate the nature of the special circumstances . . .'" (citing *Northeast Cellular*, 897 F.2d at 1166).

<sup>27</sup> Advantage Petition for Waiver at 9-10. See also Advantage Petition for Reconsideration at 9.

<sup>28</sup> Advantage Petition for Reconsideration at 6-10; Advantage Petition for Waiver at 8-9; Advantage Petition for Waiver Supplement at 5-6.

<sup>29</sup> Advantage Petition for Reconsideration at 6-9.

<sup>30</sup> *Federal-State Joint Board on Universal Service; Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, 19 FCC Rcd 8891, 8892-93, para. 5 (WCB 2004) (finding the loss of funding for an entire year may affect the rates customers will be charged, which is not in the public interest); *Federal-State Joint Board on Universal Service; Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc. et al.*, Order, 20 FCC Rcd 18250, 18253, para. 8 (WCB 2005) (finding that loss of funding for an entire year has a much greater impact on a small carrier's capacity to ensure access to broadband service than the loss of other types of universal service support).

<sup>31</sup> *Federal-State Joint Board on Universal Service; North River Telephone Cooperative Petition for Waiver of the deadline in 47 C.F.R. § 54.904(d)*, Order, 21 FCC Rcd 14937, 14938, para. 4 (WCB 2006) (granting a petition for waiver where the ETC filed its high-cost use certification inadvertently instead of its ICLS certification).

<sup>32</sup> *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, 18 FCC Rcd 14689, para. 7 (WCB 2003) (finding that

(continued....)

involved a situation involving multiple failures to meet a deadline, and in that case the ETC was emerging from bankruptcy which the Bureau considered to be special circumstances at that time.<sup>33</sup> If we were to hold that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support, that would effectively negate the public interest requirement, as this criterion would be met any time failure to meet a filing deadline resulted in reduced support.<sup>34</sup>

12. Moreover, while we acknowledge that USAC could calculate the amount owed to Advantage and adjust its support now that the line count reports have been submitted, we disagree with Advantage's claims that USAC or other ETCs would not be burdened if we waived the filing deadline.<sup>35</sup> The Bureau has consistently enforced line count filing deadlines absent a finding of special circumstances due to the tremendous amount of data that USAC processes each year.<sup>36</sup> When USAC has to make adjustments or spend time tracking down missing filings, its resources are diverted from otherwise administering the fund for all ETCs. Finally, we disagree with Advantage's claims that by denying Advantage's waiver petition, we are undermining the Commission's universal service rules.<sup>37</sup> By enforcing filing deadlines we ensure that all ETCs timely receive the universal service support they are eligible to receive. Because Advantage has not presented any arguments warranting reversal of our prior decision, we deny its petition for reconsideration.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 5 (c), 201, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 254, and 405, and sections 0.91, 0.291, 1.3, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 1.106, Advantage Cellular Systems, Inc.'s Petition for Reconsideration is DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief  
Wireline Competition Bureau

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"the South Dakota Commission could not have met, under any circumstances" the relevant deadline on behalf of the ETC).

<sup>33</sup> *Federal-State Joint Board on Universal Service; MCI, Inc. Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules*, Order, 21 FCC Rcd 14926, 14928-29, para. 7 (WCB 2006) (finding a loss of funding to be excessive given that the company had recently emerged from bankruptcy).

<sup>34</sup> *See also Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542, para. 8 (WCB 2014)

<sup>35</sup> Advantage Petition for Reconsideration at 9-10; Advantage Waiver Petition at 10.

<sup>36</sup> *See, e.g., Federal-State Joint Board on Universal Service; South Slope Cooperative Telephone Company*, Order, 19 FCC Rcd 17493, para. 5 (WCB 2004); *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)*, Order, 23 FCC Rcd 114, 115 para. 5 (WCB 2008).

<sup>37</sup> Advantage Petition for Reconsideration at 9; Advantage Petition for Waiver at 6-7.