

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 )
)
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45
)
Pine Cellular Phones, Inc. )
Petition for Waiver of Sections 54.307 and 54.809 )
of the Commission’s Rules )
)
OTZ Telecommunications, Inc. )
Petition for Waiver of Section 54.307 Deadline for )
Quarterly Filings )
)
ASTAC Wireless LLC – CL d/b/a ASTAC )
Petition for Waiver of Sections 54.307 and )
54.903 of the Commission’s Rules )

ORDER

Adopted: April 20, 2016

Released: April 20, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny requests by OTZ Telecommunications, Inc. (OTZ Telecom), ASTAC Wireless LLC – CL d/b/a ASTAC Wireless (ASTAC), and Pine Cellular Phone, Inc. (Pine Cellular) for waivers of various high-cost universal service support filing deadlines set forth in sections 54.307(c) and 54.904(d) of the Commission’s rules. We find that OTZ Telecom, ASTAC, and Pine Cellular have not demonstrated good cause warranting grant of the requested waivers.

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

1 47 CFR §§ 54.307, 54.903, 54.904; OTZ Telecommunications, Inc. Petition for Waiver of Section 54.307 Deadline for Quarterly Filings, WC Docket No. 08-71 (filed Apr. 22, 2009) (OTZ Telecom Petition); Petition of ASTAC Wireless LLC – CL d/b/a ASTAC for Waiver of Sections 54.307 and 54.903 of the Commission’s Rules, CC Docket No. 96-45 and WC Docket No. 08-71 (filed Oct. 13 2015) (ASTAC Petition); Pine Cellular Phones, Inc. Petition for Waiver of Sections 54.307 and 54.809 of the Commission’s Rules, WC Docket No. 96-45 (filed Jan. 29, 2007) (Pine Cellular Petition). Although Pine Cellular requests a “waiver of the June 30, 2005 Carrier Certification deadline set forth in 54.809(c) to . . . receive [Interstate Common Line Support (ICLS)],” that deadline is actually established by section 54.904(d) of the Commission’s rules. Pine Cellular Petition at 1; 47 CFR § 54.904(d). Also, although ASTAC seeks a waiver of section 54.903 of the Commission’s rules, we find that waiver of this rule is not necessary because the deadlines ASTAC missed are established by section 54.307(c) of the Commission’s rules, not section 54.903 of the Commission’s rules. See ASTAC Petition at 1.

to receive specific Federal universal service support.”<sup>2</sup> Support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>3</sup> For many years, the Commission has relied upon various certification and data filing requirements to implement this statutory requirement. Two of those requirements are at issue in this order.<sup>4</sup>

3. The first requirement is, under section 54.904(a) of the Commission’s rules, to receive Interstate Common Line Support (ICLS), an ETC had to certify with the Universal Service Administrative Company (USAC) and the Commission that all ICLS received by the ETC would “be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>5</sup> ETCs filed this certification with USAC and the Commission on the date that the ETC first filed its line count data, and thereafter on June 30 of each year.<sup>6</sup> When the Commission consolidated various annual reporting requirements in the *USF/ICC Transformation Order*, it eliminated section 54.904 of the Commission’s rules effective as of July 2013.<sup>7</sup>

4. The second reporting requirement is, under section 54.307(c) of the Commission’s rules, competitive ETCs file working line count data with USAC on a quarterly basis to receive certain high-cost support.<sup>8</sup> While the Commission eliminated this reporting requirement for the vast majority of competitive ETCs, it still applies to carriers serving remote areas in Alaska, including OTZ Telecom and ASTAC.<sup>9</sup>

5. *OTZ Telecom’s Petition for Waiver*. On April 22, 2009, OTZ Telecom requested a waiver of the fourth quarter 2008 and the first quarter 2009 line count filing deadlines established by section 54.307(c) of the Commission’s rules.<sup>10</sup> OTZ Telecom states that miscommunication among its staff caused it to miss the deadlines.<sup>11</sup> According to OTZ Telecom, its operations department and its parent company’s billing department each believed that the other would handle the fourth quarter 2008 and first quarter 2009 filings.<sup>12</sup> After learning of the mistakes, OTZ Telecom filed both line counts with USAC on April 10, 2009.<sup>13</sup> OTZ Telecom indicates that it filed both line counts immediately after

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<sup>2</sup> 47 U.S.C. § 254(e).

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

<sup>4</sup> The specific requirements at issue in this case have been largely eliminated, consolidated or superseded by the uniform framework for accountability that the Commission adopted in the *USF/ICC Transformation Order*. *Connect America Fund et al.*; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17849-62, paras. 569-614 (2011) (*USF/ICC Transformation Order and/or FNPRM*) *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>5</sup> 47 CFR § 54.904(a).

<sup>6</sup> 47 CFR § 54.904(d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*; CC Docket No. 00-256 et al., Second Report and Order et al., 16 FCC Rcd 19613, 19688, para. 176 (2001) (subsequent history omitted).

<sup>7</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17862, para. 614.

<sup>8</sup> See 47 CFR § 54.307(c).

<sup>9</sup> See 47 CFR § 54.307(e)(7); *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529. Pine Cellular is no longer subject to the reporting requirements in section 54.307(c).

<sup>10</sup> OTZ Telecom Petition at 1; 47 CFR § 54.307(c).

<sup>11</sup> OTZ Telecom Petition at 3.

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

<sup>13</sup> *Id.*

discovering the problem, and that these are the first filing deadlines it missed since becoming an ETC in March 2008.<sup>14</sup> To ensure it meets future filing deadlines, OTZ Telecom stated that it put in place “a clear internal procedure” for submitting high-cost program filings.<sup>15</sup>

6. *ASTAC’s Petition for Waiver.* On October 13, 2015, ASTAC requested a waiver of the second quarter 2015 and third quarter 2015 line count filing deadlines established by section 54.307(c) of the Commission’s rules.<sup>16</sup> ASTAC states that it completed its filing for the second quarter prior to the deadline, but it did not certify the filing due to a new clerical employee being involved at the time. ASTAC learned of the error on October 10, 2015 after discovering it did not receive certain support. It then submitted the filing on that day.<sup>17</sup> For third quarter 2015, ASTAC filed its line counts on October 7, 2015, five business days late. ASTAC asserts that the missed deadline was due to miscommunication between an employee that previously was responsible for filing and the employee that is now responsible.<sup>18</sup> ASTAC states that these are the first filing deadlines it has missed. ASTAC states that it has taken steps to prevent missed deadlines from occurring in the future.<sup>19</sup>

7. *Pine Cellular’s Petition for Waiver.* On January 29, 2007, Pine Cellular requested waivers of two deadlines — the third quarter line count filing deadline established by section 54.307(c)(2) of the Commission’s rules and the June 30, 2005 certification deadline established by section 54.904(d) of the Commission’s rules.<sup>20</sup> Pine Cellular states that an oversight by the third-party vendor hired to prepare and file Pine Cellular’s quarterly line count reports caused it to miss the third quarter 2005 ICLS deadline, and that its certification was mailed only four days prior to the June 2005 deadline.<sup>21</sup> Based on a review of Pine Cellular’s filings, it appears that as of now Pine Cellular still has not submitted the required line count data, but its certification was received by USAC on July 6, 2005, six days after the deadline.<sup>22</sup> Pine Cellular indicates that it received assurances from the third-party vendor that “appropriate measures have been implemented to assure future filing deadlines are met.”<sup>23</sup> Pine Cellular had previously sought and received a waiver of the section 54.307(c) March 30, 2006 line count filing deadline after its filing was transmitted to an incorrect email address by the same third party.<sup>24</sup>

### III. DISCUSSION

8. We find that OTZ Telecom, ASTAC, and Pine Cellular have not demonstrated good cause warranting waivers of the line count filing deadlines in section 54.307(c) of the Commission’s rules.<sup>25</sup> We also find that Pine Cellular has not demonstrated good cause warranting a waiver of the June

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<sup>14</sup> *Id.* at 2-3, 5.

<sup>15</sup> *Id.* at 5-6. OTZ has not missed any deadlines since.

<sup>16</sup> 47 CFR § 54.307(c).

<sup>17</sup> ASTAC Petition at 2; 47 CFR § 54.307(c).

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

<sup>19</sup> *Id.* at 3.

<sup>20</sup> Pine Cellular Petition at 1; 47 CFR §§ 54.307(c)(2), 54.904(d).

<sup>21</sup> Pine Cellular Petition at 1-3.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Federal-State Joint Board on Universal Service; Pine Cellular Phones, Inc. Petition for Waiver of Section 54.307 of the Commission’s Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 968 (2007) (*Pine Cellular Waiver Order*); Pine Cellular Phones, Inc. Petition for Waiver of Section 54.307 of the Commission’s Rules, CC Docket No. 96-45 (filed Sept. 29, 2006) (*Pine Cellular 2006 Waiver Petition*).

<sup>25</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

(continued....)

2005 carrier certification deadline required by section 54.904(d) of the Commission's rules. USAC processes a large amount of data each year. It is, therefore, administratively necessary to require carriers to meet the requisite filing deadlines absent good cause warranting relief.<sup>26</sup> We conclude that each carrier failed to establish good cause for waiver under governing precedent.<sup>27</sup> As discussed in this section, special circumstances do not exist here. Accordingly, we deny the waiver requests.

9. *OTZ Telecom and ASTAC.* OTZ Telecom and ASTAC each missed two consecutive deadlines. With respect to the first missed deadline, both OTZ Telecom and ASTAC filed more than fourteen business days late.<sup>28</sup> Historically, prior to the new regime adopted in the *USF/ICC Transformation Order*, the Bureau had found good cause to grant waivers of high-cost filing deadlines that were missed due to an inadvertent oversight (and not any other extenuating circumstances) only in cases where the petitioner filed the required data within fourteen business days of the filing deadline.<sup>29</sup> Here, both OTZ Telecom and ASTAC filed more than fourteen business days after the filing deadline. Moreover, neither carrier has demonstrated any special circumstances.<sup>30</sup> Accordingly, we deny OTZ Telecom's waiver request of the fourth quarter 2008 deadline and ASTAC's waiver request of the second quarter 2015 deadline.

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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 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.

<sup>26</sup> See, e.g., *Federal-State Joint Board on Universal Service; 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 (WCB 2004).

<sup>27</sup> 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. Under that standard, we would deny the waiver request. We apply here precedent that pre-dates this Commission decision.

<sup>28</sup> ASTAC states that while it did not certify the FCC Form 525 by the deadline, it completed the form by the deadline. See ASTAC Petition at 2. This argument is immaterial. Failing to certify by the deadline means AT&T did not timely submit the filing.

<sup>29</sup> See *Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 23 FCC Rcd 15325, 15300, para. 11 (WCB 2008) (waiving filing deadlines where the petitioners "promptly remedied their errors" "by filing the required data within fourteen business days after the applicable filing deadlines . . ."). See also *Universal Service High-Cost Filing Deadlines Federal-State Joint Board on Universal Service*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 29 FCC Rcd 3198, 3200-01 paras. 5, 9 (WCB 2014).

<sup>30</sup> See *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71 et al., Order, 25 FCC Rcd 4626, 4628-30, paras. 6-7, 10, 12 (WCB 2010) (declining to waive filing deadlines for parties that submitted the required data four weeks or more after the deadline); *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, 115-16, para. 5 (WCB 2008) (denying waiver because the filing deadline was missed by more than five months); *Federal-State Joint Board on Universal Service et al.*, CC Docket 96-45, Order, 22 FCC Rcd 4946, 4648-9, para. 7 (WCB 2007) (denying NPI-Omnipoint's waiver because the data was filed six months late; denying SouthEast Telephone Inc.'s waiver because the data was filed three months late; denying SEI Data, Inc.'s waiver because the data was filed two months late); *Federal-State Joint Board on Universal Service; South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket 96-45, Order, 19 FCC Rcd 17493, 17495, para. 5 (WCB 2004) (denying waiver because the data was filed more than a month late).

10. We disagree with OTZ Telecom's claim that it would be consistent with past precedent to find good cause to grant OTZ Telecom's petition for waiver because the ETC filed its fourth quarter 2008 filing immediately after it *discovered* that it missed the deadline.<sup>31</sup> As OTZ Telecom acknowledges,<sup>32</sup> the precedent OTZ Telecom cites to support its argument involved "highly unique circumstances" where the president of the ETC had died a month before the filing and the company would have not have received an entire year of Local Switching Support if the petition for waiver had not been granted.<sup>33</sup> Here, we find that the internal confusion that led to OTZ Telecom's late filing and the resulting loss of support are not special circumstances that would justify the more than three month delay in USAC receiving the filing.

11. We also deny OTZ Telecom's and ASTAC's waiver request of the first quarter 2008 and the third quarter 2015 deadlines, respectively. Each carrier neglected to meet two consecutive high-cost filing deadlines — deadlines that are spaced months apart. Such failures reveal a severe lack of internal controls. Furthermore, miscommunication between employees is not a special circumstance that warrants a waiver. Accordingly, we deny OTZ Telecom's waiver request for the first quarter 2008 deadline and ASTAC's waiver request of the third quarter 2015 deadline.

12. While our finding that neither OTZ Telecom nor ASTAC have established special circumstances is dispositive, we also are not persuaded that waiving these deadlines would serve the public interest. We conclude that the public interest benefits of ensuring that USAC and the Commission have timely access to required data and certifications and can monitor the use of high-cost support outweigh the impact of these support reductions on OTZ Telecom and ASTAC.<sup>34</sup> OTZ Telecom and ASTAC cite decisions where the Bureau granted waivers of high-cost filing deadlines based, in part, on the amount of funding at stake and the potential impact on the continued provision of service and network upgrades.<sup>35</sup> However, those petitioners presented additional facts, not present here, that helped establish good cause to grant those waiver petitions.<sup>36</sup> And in any event, 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 because this criterion would be met in each instance where a carrier failed to meet a filing deadline.<sup>37</sup>

13. *Pine Cellular.* We also deny Pine Cellular's petition for waiver of the June 2005 certification deadline and the third quarter 2005 ICLS line count filing deadline. It appears that Pine

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<sup>31</sup> OTZ Telecom Petition at 3, 5.

<sup>32</sup> *Id.* at 5, n.5.

<sup>33</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*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891, 8893, para. 5 (WCB 2004).

<sup>34</sup> While OTZ Telecom asserted in its petition that absent a waiver it would forego \$116,220 (\$38,740 for three consecutive quarters), *see* OTZ Telecom Petition at 6, UASC subsequently confirmed that it withheld \$90,536 in support. While ASTAC asserts that absent a waiver it would forego approximately \$465,000 (\$77,500 for six months) *see* ASTAC Petition at 2, USAC subsequently confirmed that it withheld \$320,655 in support.

<sup>35</sup> *See* OTZ Telecom Petition at 6-8, *and* ASTAC Petition 4, n.8

<sup>36</sup> *See 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*, CC Docket No. 96-45, Order, 21 FCC Rcd 14926, 14929, para. 9 (WCB 2006) (granting a waiver of filing deadlines for an ETC emerging from bankruptcy); *Federal-State Joint Board on Universal Service; Valor Telecommunications of Texas, L.P. Request for Review of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(A)*, CC Docket No. 96-45, Order, 21 FCC Rcd 249, 251-52, para. 7 (WCB 2006) (granting a waiver of a filing deadline where the data was filed on time and an acknowledgement of timely filed data was received that said the data would be forwarded to the appropriate party, but the ETC had mistakenly sent the filing to USAC's former vendor).

<sup>37</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)

Cellular failed to file its third quarter 2005 ICLS line entirely.<sup>38</sup> We find that Pine Cellular has not demonstrated good cause to waive the June 2005 carrier certification deadline. Although Pine Cellular mailed the certification four days before the required deadline and it arrived six days after the deadline,<sup>39</sup> we find that, looking at the totality of circumstances, Pine Cellular has not established good cause to waive a third deadline, given its apparent overall lack of internal controls and oversight of its high-cost filings.

14. In the past we have denied waiver petitions from parties that have previously been granted waivers of high-cost filing deadlines.<sup>40</sup> As noted above, the Bureau had already granted Pine Cellular a waiver of a March 2006 high-cost line count filing deadline prior to Pine Cellular filing the instant waiver request.<sup>41</sup> We recognize that the March 2006 deadline was after the June 2005 and third quarter 2005 deadlines that Pine Cellular seeks waiver of in the instant petition. But just as the Bureau historically relied on ETCs' assurances that they would implement measures to ensure that they do not miss subsequent deadlines, the Bureau also relied on carriers to monitor all of their filings to ensure they have been timely received, especially before they submit a petition to the Commission seeking waiver of a filing deadline.<sup>42</sup>

15. Pine Cellular's failure to discover that it had missed the two 2005 deadlines until more than a year after those deadlines had passed and after it had sought waiver for a separate, third missed deadline demonstrates that Pine Cellular has not in fact implemented adequate measures to ensure compliance. In fact, Pine Cellular represented to the Bureau in its 2006 petition that the same third party that had helped Pine Cellular make both the 2005 and 2006 line count filings had "submitted several timely reports to USAC both before and after the March 30, 2006, deadline."<sup>43</sup> Pine Cellular had clearly not done its due diligence at the time it made this statement to determine that the third party had not filed the third quarter 2005 ICLS line count filing on time.

16. We are not persuaded by Pine Cellular's claim that granting its waiver petition would be consistent with past precedent where the Bureau had granted a petition for waiver of multiple deadlines.<sup>44</sup> In the order cited by Pine Cellular, the Bureau granted the ETC a waiver of two filing deadlines after finding that "special circumstances exist[ed] to justify a waiver" because the ETC "reasonably believed that quarterly line counts were not mandatory" due to a series of rule changes and confusion about the effective date of the rules.<sup>45</sup> Here, the rules were clear about the relevant filing deadlines, Pine Cellular

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<sup>38</sup> See Pine Cellular Petition at 3 (stating that the third party vendor inadvertently excluded the September 2005 ICLS lines when filing Pine Cellular's quarterly line count).

<sup>39</sup> *Id.*

<sup>40</sup> See, e.g., *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, 26 FCC Rcd 6178, 6184, para. 16 (WCB 2011) (denying the waiver petitions of three ETCs that had previously filed for and received waivers of high-cost deadlines); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, Order, 24 FCC Rcd 4806, 4810-11, para. 10 (WCB 2009) (denying the waiver petition of an ETC that had previously sought a waiver of a line count filing deadline).

<sup>41</sup> *Pine Cellular Waiver Order*, 22 FCC Rcd at 968, para. 1; Pine Cellular 2006 Waiver Petition.

<sup>42</sup> See *Pine Cellular Waiver Order*, 22 FCC Rcd at 970, para. 7 (reminding carriers "that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings"). We note that under the strict adherence to deadlines approach adopted by the Commission in 2014, the Commission no longer considers assurances from an ETC that it will revise its procedures to ensure future compliance. December 2014 Connect America Order, 29 FCC Rcd at 15693, para. 138.

<sup>43</sup> Pine Cellular 2006 Waiver Petition at 2; see also *Pine Cellular Waiver Order*, 22 FCC Rcd at 969, para. 4.

<sup>44</sup> Pine Cellular Petition at 6-7; *Federal-State Joint Board on Universal Service, United States Cellular Corporation Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 12418 (2004).

<sup>45</sup> *Id.* at 12421, para. 6.

simply did not fulfill its responsibility to ensure that the filings were received on time. Nor are we convinced that we should waive the filing deadline simply because a third party was the cause of the late filings.<sup>46</sup> The Commission has consistently made clear that it is the ETC's "responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings."<sup>47</sup> Absent other compelling facts, the Bureau generally did not grant waivers based on the failure of third-parties.<sup>48</sup> Here, we find that special circumstances do not exist in this case that would justify a waiver of the June 2005 certification deadline and third quarter 2005 ICLS line count filing deadline.

17. We also conclude that it would not serve the public interest to waive these filing deadlines. We are not persuaded that the precedent that Pine Cellular cites to suggest that the loss of three months of universal service funding would be "egregious" should be viewed as controlling. That case involved the failure of a state public service commission to meet its 2001 state certification requirement.<sup>49</sup> Here, in contrast, it is the ETC that failed to make the requisite filing. We find that the benefits to the public that result from providing incentives for ETCs like Pine Cellular to closely monitor their high-cost obligations outweigh the impact of Pine Cellular's loss of six months of ICLS support.<sup>50</sup>

18. Finally, we conclude that Pine Cellular's claim that denying it ICLS for the relevant periods would "undermine the Commission's goal of competitive neutrality" is unfounded.<sup>51</sup> All ETCs are subject to the Commission's rules requiring that they lose a portion of their support if they do not make timely filings. We note that the precedent that Pine Cellular cites to support its claim involved a Bureau finding that "it would be inconsistent with the Commission's goal of competitive neutrality" to deny the petition for waiver of an ETC that was unable to meet filing deadlines because it had not been designated as an ETC before the high-cost filings at issue were due.<sup>52</sup> Such special circumstances do not exist here.

#### IV. ORDERING CLAUSES

19. 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 CFR §§ 0.91, 0.291, and 1.3, that this order is ADOPTED.

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<sup>46</sup> Pine Cellular Petition at 7.

<sup>47</sup> See, e.g., *Pine Cellular Waiver Order*, 22 FCC Rcd at 970, para. 7.

<sup>48</sup> See, e.g., *id.* at 970, para. 5. Although Pine Cellular cites precedent where the Bureau waived a high-cost filing deadline in circumstances where the ETC could not have foreseen that a third party would file its filing past the deadline, we note in that situation the filing was made the next business day after the deadline and the ETC at issue had not missed multiple deadlines. Pine Cellular Petition at 5-6 (citing *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Order, 21 FCC Rcd 9179, 9181, para. 7 (WCB 2006) (finding that "no other party was prejudiced due to the late filing, which was received the next business day following the deadline")).

<sup>49</sup> Pine Cellular Petition at 6 (citing *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, CC Docket No. 96-45, Order, 16 FCC Rcd 5784 (WCB 2001)).

<sup>50</sup> See also *Coral Wireless D/B/A Moby PCS Request for Review of the Decision of the Universal Service Administrator et al.*, CC Docket No. 96-45 et al., Order, 29 FCC Rcd 9540, 9542, para. 8 (WCB 2014) ("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.").

<sup>51</sup> Pine Cellular Petition at 5.

<sup>52</sup> *Id.*; *Federal-State Joint Board on Universal Service; Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15585, paras. 11-12 (WCB 2004).

20. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 CFR § 54.307(c), filed by OTZ Telecommunications, Inc., is DENIED as discussed herein.

21. IT IS FURTHER ORDERED that the petition for waiver of section 54.307(c) of the Commission's rules, 47 CFR §§ 54.307(c) filed by ASTAC Wireless LLC – CL d/b/a ASTAC Wireless, is DENIED as discussed herein.

22. IT IS FURTHER ORDERED that the petition for waiver of sections 54.307(c) and 54.904(d) of the Commission's rules, 47 CFR §§ 54.307(c), 54.904(d) filed by Pine Cellular Phones, Inc., is DENIED as discussed herein.

23. 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