

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

In the Matter of)
Universal Service High-Cost Filing Deadlines) WC Docket No. 08-17
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Petition for Reconsideration by)
MTA Communications, LLC's d/b/a MTA)
Wireless/Matanuska-Kenai, Inc.)

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 MTA Communications, LLC's d/b/a MTA Wireless/Matanuska-Kenai, Inc. (MTAW) Petition for Reconsideration filed in the above reference proceeding. MTAW seeks reconsideration of the Wireline Competition Bureau's (Bureau) Public Notice denying MTAW's waiver request of the filing deadline set forth in sections 54.307 and 54.903 of the Federal Communications Commission's (FCC or Commission) rules. We conclude that MTAW fails to present any argument warranting reconsideration of the Bureau's decision to deny its petition for waiver of a high-cost filing deadline. Accordingly, we deny the Petition for Reconsideration.

II. BACKGROUND

2. The Waiver Request. MTAW, a competitive eligible telecommunications carrier, is an Alaska company that provides telecommunications services to high-cost customers in Alaska. To receive Interstate Common Line Support (ICLS) from the universal service fund, MTAW must report its line counts every quarter with the Universal Service Administrative Company (USAC) on the FCC Form 525. USAC has an online system for carriers to submit the form. USAC uses the line count data to

1 Petition for Reconsideration and Waiver of MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc., WC Docket No. 08-71 and CC Docket No. 96-45 (filed Dec. 15, 2015), http://apps.fcc.gov/ecfs/document/view?id=60001359738 (Petition for Reconsideration). We also deny MTAW's January 20, 2016 Petition to Leave to File Supplement to Petition for Reconsideration and dismiss MTAW's December 29, 2015 Supplement to Petition for Reconsideration and Waiver. See infra notes 13-14.

2 Universal Service High Cost Filing Deadlines et al., WC Docket No. 02-60 et al., Public Notice, DA 15-1368 (WCB Nov. 27, 2015) (WCB Public Notice).

3 47 C.F.R. §§ 54.307 and 54.903. In addition to ICLS line counts, carriers also use the FCC Form 525 to submit, as required, data for High Cost Loop Support/Local Switching Support, High Cost Model Support, and Interstate Access Support.

determine how much money from the universal service fund to disburse to the carrier. Carriers required to submit the FCC Form 525 cannot receive funds unless they file the line count data by the deadline.

3. MTAW filed its FCC Form 525 (which was due March 30, 2015) electronically with USAC on March 24, 2015. MTAW filed line counts for High Cost Loop Support and Local Switching Support, but did not provide the required ICLS line counts. The submitted ICLS line counts were all zero.⁴ MTAW states that it discovered the error after its disbursement from USAC was \$141,653 less than expected.⁵ The disbursement report was dated August 28, 2015, and on September 14, 2015, MTAW contacted USAC.⁶ USAC informed MTAW that to receive ICLS support it needed to submit a waiver request.⁷

4. On October 6, 2015, MTAW sought a waiver of the ICLS line count filing deadline set forth in sections 54.307 and 54.903.⁸ This was the second time that MTAW requested a waiver of a high-cost filing deadline. MTAW previously received a waiver for a high-cost filing deadline missed on September 30, 2013, and at that time committed to put procedures in place to avoid missing future deadlines.⁹ In the Waiver Request, MTAW stated that it “dutifully verified” the form’s data but due to a clerical error inadvertently failed to check the ICLS box, and that by failing to check the ICLS box, the ICLS data were automatically set to zero.¹⁰

5. We denied MTAW’s October 6, 2015 Waiver Request on November 27, 2015 because MTAW previously missed a high-cost filing deadline, and MTAW committed to “put procedures in place to avoid missing future deadlines.”¹¹ On December 15, 2015, MTAW filed a Petition for Reconsideration of the Bureau’s denial of the Waiver Request.¹² On December 29, 2015, MTAW filed a Supplement to its Petition for Reconsideration.¹³ On January 20, 2016, MTAW filed a petition for leave to file the Supplement, acknowledging for the first time that it had filed the Supplement after 30 days from release of the *WCB Public Notice*.¹⁴

⁴ See Petition of MTA Communications, LLC, d/b/a MTA Wireless/Matanuska-Kenai, Inc., for Waiver of Sections 54.307 and 54.903 of the Commission’s Rules, WC Docket No. 08-71 and CC Docket No. 96-45, at Exhibit A, 2-3 (filed Oct. 6, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001326930> (Waiver Request).

⁵ Waiver Request at 3.

⁶ See *Id.* at 3 & n.7. See also Petition for Reconsideration at 4 & n.13

⁷ See Waiver Request at 3.

⁸ See *id.* at 6.

⁹ See *Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 29 FCC Rcd 3198 (2014).

¹⁰ See Waiver Request at 2-3, 5.

¹¹ *WCB Public Notice* at n.13.

¹² Petition for Reconsideration at 2, 10.

¹³ Supplement to Petition for Reconsideration and Waiver of MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc., WC Docket No. 08-71 and CC Docket No. 96-45 (filed Dec. 15, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001395250> (Supplement).

¹⁴ Petition for Leave to File Supplement to Petition for Reconsideration of MTA Communications, LLC, d/b/a MTA Wireless/Matanuska-Kenai, Inc., P, WC Docket No. 08-71 and CC Docket No. 96-45 (filed Jan. 20, 2016), <http://apps.fcc.gov/ecfs/comment/view?id=60001380372> (Petition for Leave). See also 47 CFR § 1.106(f).

III. DISCUSSION

A. We Deny MTAW's Petition for Leave and Dismiss its Supplement

6. At the outset, we deny MTAW's Petition for Leave to file its Supplement and dismiss its Supplement because MTAW could have presented the arguments in its Supplement within the 30-day deadline.¹⁵ In its Petition for Leave, MTAW describes that it did not become fully aware of the facts until December 28, 2015 when it submitted its FCC Form 525 due December 30, 2015 ("its first Form 525 after discovery and investigation of the problem").¹⁶ MTAW then filed the Supplement, which was due December 28 2015, one day late, on December 29, 2015.¹⁷

7. The Commission's "long-standing policy is not to accept late-filed supplements that raise new arguments that could have been presented within the 30-day deadline prescribed by section 1.106(f)."¹⁸ Because MTAW could have presented the arguments in its Supplement within the 30-day deadline, we deny the Petition for Leave and dismiss the Supplement. MTAW raises two arguments in support of considering the late-filed Supplement. We find neither persuasive.

8. One, as MTAW points out in its January 23, 2016 *ex parte*, a carrier may "submit and certify line counts when they are available to the carrier."¹⁹ If MTAW exercised ordinary diligence, as part of an investigation as to what happened, it could have logged into the FCC Form 525 portal to prepare, submit and certify the December 30, 2015 filing prior to filing its Petition for Reconsideration, let alone the Supplement.²⁰ MTAW provides no reason why it did not do so. Furthermore, MTAW itself acknowledges that it believed the window to file was open two weeks prior to December 30, 2015.²¹ If it diligently investigated the situation at that time, it would have been able to include whatever arguments it deemed relevant in a timely filing submitted on or before the deadline for submission of petitions for reconsideration.

9. Two, MTAW says that the December 30, 2015 FCC Form 525 was its "first Form 525 after discovery and investigation of the problem."²² However, MTAW freely acknowledges that it

¹⁵ While MTAW filed the Petition for Leave after the Supplement, 47 CFR § 1.106(f) does not require that parties file the petition seeking leave and the supplement simultaneously.

¹⁶ See Petition for Leave at 2, and Letter from Shannon M. Heim, Counsel for MTA Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-71 and CC Docket No. 96-45, at 1 (filed Jan. 23, 2016) (MTAW Ex Parte).

¹⁷ In the Supplement, MTAW states that the ICLS data was missing from the March 24, 2015 FCC Form 525 due to an error "in the transmission of the data to USAC, not in entering the data." See Supplement at 2.

¹⁸ *Paging Systems, Inc. Petition for Reconsideration of Public Notice Announcing Procedures for Auction of Automated Maritime Telecommunications System Licenses (Auction 61)*, Order on Reconsideration, 25 FCC Rcd 8476, 8481, para. 15 (WTB 2010) (citing *e.g.*, *In the Matter of Alpine PCS, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 469, 480 n.90 (2010); *Richard R. Zaragoza, et al.*, Letter, 24 FCC Rcd 5743, 5476 (MB 2009); *In the Matter of Brantley County Board of Education*, Order on Reconsideration, 24 FCC Rcd 8102, 8105-06 at ¶ 9 (2009); *In re Southwest Central Dispatch*, Order on Reconsideration, 17 FCC Rcd 15633, 15636 n.28 (Pub. Safety & Private Wireless Div., WTB 2002)); see also *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199-200 (D.C. Cir. 2003) (affirming the Commission's decision not to exercise its discretion to hear late-filed supplements when the petitioner offered no plausible explanation for why supplemental arguments were not made in its initial petition).

¹⁹ MTAW Ex Parte at n.2.

²⁰ While not referenced in the Petition for Leave, MTAW's last correspondence on this matter from USAC was December 8, 2015, which was 20 days before the deadline to file a petition for reconsideration and any supplements. See Petition for Reconsideration, Exh. B at 1.

²¹ MTAW Ex Parte at n.2

²² *Id.* at 1.

discovered that it did not submit ICLS line count data prior to the due date for the September 30, 2015 filing.²³ Also, MTAW filed its Waiver Request on October 6, 2015, after the due date of the September 30, 2015 filing.²⁴ Accordingly, MTAW had the opportunity to discover the facts in the Supplement prior to even filing the Waiver Request. MTAW provides no explicit reason why it did not do so.²⁵

10. Finding no reason to depart from the Commission's long-standing policy, we deny the petition for leave to file the Supplement. Even if we were to consider the Supplement, however, we would still deny MTAW's Petition for Reconsideration. As we discuss in Section III.B.3 *infra*, the FCC Form 525 portal allows filers to check the accuracy of filings after certification. Had MTAW reviewed its March 24, 2015 filing when filed, it would have discovered the error and been able to correct it prior to the March 30, 2015 deadline.

B. MTAW Fails to Present any Argument Warranting Reconsideration of the Bureau's Decision to Deny the Petition for Waiver

11. As we denied the Petition for Leave and dismiss the Supplement, we only consider the timely filed Petition for Reconsideration. MTAW failed to establish good cause to grant its Waiver Request, and in its Petition for Reconsideration, MTAW fails to present any argument warranting reconsideration of the Bureau's decision.²⁶ Consequently, we deny the Petition for Reconsideration. In this section, we address four arguments raised by MTAW: that the form was "timely filed," but incomplete; that MTAW's internal procedures support granting the Petition for Reconsideration; that it was unable to verify its FCC Form 525 before and after certification; and that MTAW suffered "undue hardship."

1. MTAW Did Not Timely File ICLS Data

12. MTAW argues that its filing was in fact timely, but was simply incomplete. While MTAW filed the FCC Form 525 prior to March 30, 2015, the form did not contain ICLS data. To meet a filing deadline, however, carriers must file by the due date and provide all required information.²⁷ By not filing the ICLS line counts, MTAW did not provide all required information. Therefore, MTAW missed the March 30, 2015 ICLS line count deadline. Filing after a due date or filing an incomplete form on time, as MTAW did, are both missed deadlines. We did not make any factually incorrect inference in this regard.²⁸

²³ See Waiver Request at 3 & n.7.

²⁴ See *id.* at 6.

²⁵ Also, MTAW, as a company, has been filing the FCC Form 525 online for years. Yet, MTAW appears to have been unaware of exactly how the online process works until it submitted its FCC Form 525 on December 28, 2015.

²⁶ Generally, the Commission's rules may be waived if good cause is 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 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.

²⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 23 FCC Rcd 11552, 11558, para. 14 (WCB 2008) (reminding ETCs to "familiarize themselves with any and all applicable reporting requirements so that they can ensure that their submissions are filed in a timely and complete manner").

²⁸ Petition for Reconsideration at 5.

2. We Will Not Consider MTAW's Internal Procedures

13. We will not consider MTAW's internal procedures. MTAW provides new information in its Petition for Reconsideration regarding its internal procedures that it did not previously present to the Bureau. This new information consists of facts that existed prior to MTAW's Waiver Request. MTAW could have included this information when it filed its Waiver Request, but it failed to do so. Accordingly, as we discuss below, we will not consider it.

14. In its Waiver Request, MTAW stated its regulatory employee "dutifully verified" the data but inadvertently failed to check the ICLS box on the form.²⁹ In the Waiver Request, MTAW made no reference to the company's Chief Financial Officer (CFO) review of the form. Nor did it describe any of its internal procedures. However, in the Petition for Reconsideration, MTAW describes that its regulatory specialist completed the form and its CFO reviewed and certified the form as complete and correct.³⁰ This process, MTAW states, was part of its internal procedures put in place at the time of its previous waiver request.³¹ MTAW should have known if it followed its internal procedures at the time it filed its Waiver Request and provides no justification why it presented this fact for the first time in its Petition for Reconsideration.

15. MTAW also describes additional internal controls it implemented as a result of not providing USAC with ICLS data.³² However, MTAW appears to have implemented these additional internal controls prior to filing the Waiver Request yet offers no justification why it did not provide us with that information at that time. Because both of these new facts were known to MTAW when it filed its Waiver Request, we cannot use them as a basis to grant its Petition for Reconsideration.³³

16. We also find that the public interest does not require us to consider these new facts.³⁴ The Commission has stated before, "We cannot allow a party to 'sit back and hope that a decision will be in its favor, and when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.'" ³⁵ MTAW did not present facts in its Waiver Request warranting a grant. It is not in the public interest to then consider MTAW's new arguments, based on facts which it knew at the time of its Waiver Request but, for reasons not explained, did not provide.³⁶ Accordingly, we will not consider arguments relating to MTAW's internal procedures.

²⁹ Waiver Request at 3.

³⁰ See Petition for Reconsideration at 5-6, Exh. A, Affidavit of Wanda Tankersley para. 4, Exh. B at 3.

³¹ *Id.* at 5-6.

³² *Id.* at 9.

³³ See 47 CFR §§ 1.106(b)(2)(i), 1.106(b)(2)(ii) and 1.106(c)(1).

³⁴ See 47 CFR § 1.106(c)(2).

³⁵ See *Canyon Area Residents*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)); see also *Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Banks, Redmond, Sunriver and Corvallis Oregon)*, Memorandum Opinion and Order, 19 FCC Rcd 10068, 10075, para. 20 (2004).

³⁶ We point out that it was not until MTAW's late filed Supplement, which we dismiss, see *supra* Section III.A, that it provided us with an explicit description of its filing process for its March 24, 2015 FCC Form 525. MTAW stated "MTAC's regulatory specialist input the actual [ICLS] line count data into the Form 525 portal, and then informed MTAC's Chief Financial Officer ("CFO") that the Form 525 was ready for certification. The CFO verified that the data was inputted and correct, certified the form, and submitted the data." See Supplement at 3. MTAW has not provided any reason why it did not submit this version of the facts in its Waiver Request.

3. The Online Portal Allows Filers to Review the Accuracy of Filings

17. We also are not persuaded by MTAW's argument that it was unable to check the accuracy of its filing. MTAW argues that the USAC online portal for the FCC Form 525 does not contain any way to verify that the information is correctly submitted.³⁷ Contrary to MTAW's argument, the USAC online portal for the FCC Form 525 allow filers to print a preview of the filing prior to certification. The system also allows, as MTAW recognizes, filers to print an as-filed reference copy after certification.³⁸ Consequently, MTAW had opportunities to review and verify the accuracy of its filing and, by submitting on March 24, 2105, could have made corrections prior to the due date. Furthermore, the Commission relies on carriers to monitor all of their filings to ensure they have been timely received.³⁹ Therefore, MTAW's argument provides no basis for reconsideration.

4. MTAW's Arguments Regarding Generalized Harms Are Not Persuasive

18. We find MTAW's argument that the "Commission failed to address the harm to [MTAW's] customers caused by [MTAW's] loss of approximately \$425,000 in high-cost federal universal service support" to be unpersuasive.⁴⁰ In support of its argument, MTAW provided generalized harms and did not demonstrate the existence of any unique or special circumstances. In addition, to support its undue hardship argument, MTAW cites one Bureau Order from 2006.⁴¹ However, that petitioner presented additional facts, not present here, that helped establish good cause to grant its waiver petition.⁴²

19. While the Commission *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 these circumstances alone constitute good cause. Where the Bureau has found that the public interest would be served by granting a waiver petition, the Bureau has usually relied on other compelling facts in addition to the hardship caused by a reduction in support in making that finding. Consistent with this precedent, the Bureau has recently held that "[h]olding 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."⁴³ For these reasons, MTAW's argument of undue hardship fails to support grant of the Waiver Request.

IV. CONCLUSION

20. MTAW failed to present good cause that would justify granting its Waiver Request. MTAW now fails to present any argument warranting reconsideration of the Bureau's decision to deny its Waiver Request. MTAW previously received a waiver of a high-cost filing deadline, and it should have had in place sufficient procedures to avoid missing subsequent deadlines. Therefore, for the reasons

³⁷ Petition for Reconsideration at 8.

³⁸ *See id.* at 6.

³⁹ *See Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order, 29 FCC Rcd 7051, 7152, para. 324 (2014)* ("All ETCs should have policies and procedures in place to ensure compliance with Commission reporting requirements").

⁴⁰ Petition for Reconsideration at 2, 7.

⁴¹ *Federal-State Joint Board on Universal Service, North River Telephone Cooperative, Petition for Waiver Deadline in 47 C.F.R. § 54.904(d), CC Docket No. 96-45, Order, 21 FCC Rcd 14937 (WCB 2006).*

⁴² *Id.* at 14937, para. 4 (granting a waiver when carrier had "excellent history" of compliance").

⁴³ *Coral Wireless d/b/a Mobi 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).* *See also Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order, 29 FCC Rcd 15644, 15690-93, para. 129-38 (2014)* (announcing that going forward, the Commission would require strict adherence to filing deadlines for high-cost program certifications).

discussed herein and consistent with precedent, we affirm our decision in the WCB Public Notice and deny MTAW's Petition for Reconsideration.⁴⁴

V. ORDERING CLAUSES

21. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.1064.722(b), that the Petition for Reconsideration and Petition for Leave filed by MTAW are DENIED and the Supplement filed by MTAW is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

⁴⁴ See *WCB Public Notice* at n.13 (citing *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, 26 FCC Rcd 6178 (WCB 2011) (denying waiver petitions in instances where petitioners missed high-cost filing deadlines previously and "should have put in place sufficient procedures to avoid missing subsequent high-cost 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, 3202, para. 10 (WCB 2014) ("We rely on . . . MTAW to fulfill their commitments to adhere to their revised filing procedures, and do not anticipate [MTAW] . . . will seek similar waivers again.")).