

**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)	
)	
ASTAC Wireless LLC – CL d/b/a ASTAC)	
Petition for Waiver of Section 54.307 and)	
54.903 of the Commission’s Rules)	

ORDER ON RECONSIDERATION

Adopted: August 10, 2016

Released: August 10, 2016

By the Chief, Wireline Competition Bureau:

1. In this Order, we deny ASTAC Wireless LLC – CL’s (ASTAC) Petition for Reconsideration filed in the above captioned proceedings.¹ ASTAC seeks reconsideration of the Wireline Competition Bureau’s (Bureau) order denying ASTAC’s waiver request of filing deadlines set forth in section 54.307(c) of the Federal Communications Commission’s (Commission) rules.² We conclude that ASTAC fails to present any argument warranting reconsideration of the Bureau’s decision to deny its petition for waiver of high-cost filing deadlines. Accordingly, we deny the Petition for Reconsideration.

2. *Background.* 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.³ 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 line count filing on that day.⁴ 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.⁵

¹ Petition for Reconsideration of ASTAC Wireless LLC – CL, WC Docket Nos. 08-71 and CC Docket No. 96-45 (filed May 20, 2016) (Petition for Reconsideration); *see also* 47 CFR 1.106.

² *Petitions for Waiver of Universal Service High-Cost Filing Deadline, et al.*, WC Docket No. 08-71, CC Docket No. 96-45, 31 FCC Rcd 3758 (WCB 2016) (*Waiver Order*).

³ Petition of ASTAC Wireless LLC – CL d/b/a ASTAC for Waiver of Section 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) (Waiver Request); 47 CFR § 54.307(c).

⁴ Waiver Request at 2.

⁵ *Id.*

3. On April 20, 2016, the Bureau denied ASTAC's Waiver Request. The Bureau concluded that ASTAC failed to establish good cause for waiver under governing precedent.⁶ Specifically, the Bureau denied waiver of the second quarter 2015 deadline because ASTAC filed more than fourteen business days after the filing deadline; and the Bureau denied waiver of the third quarter 2015 deadline because it was ASTAC's second consecutive missed deadline.⁷

4. On May 20, 2016, ASTAC filed its Petition for Reconsideration asking the Bureau to reconsider denial of the Waiver Request. ASTAC essentially repeats many of the arguments previously made in the Waiver Request, suggesting that the Bureau did not fully understand the sequence of events or the position of ASTAC.⁸ It asks the Bureau to grant the Waiver Request in its entirety, or as an alternative, at least grant a waiver with respect to the third quarter 2015 filing (the second late filing).⁹

5. *Discussion.* We conclude ASTAC has failed to present any arguments warranting reconsideration of the Bureau's denial of the Waiver Request.¹⁰ Accordingly, we reaffirm our finding that ASTAC has not demonstrated that good cause justifies waiver of the second and third quarter 2015 line count filing deadlines.¹¹

6. In the *Waiver Order*, the Bureau was not persuaded by ASTAC's argument that waiver should be granted because the late filings were due to employee error. ASTAC attempts to present this point again in its Petition for Reconsideration by arguing that the "complexity of [the Universal Service Administrative Company's (USAC)] electronic filing system creates a trap for the unwary into which ASTAC Wireless's trainee fell."¹² In conjunction with this argument, ASTAC also raises the new argument that USAC could have checked its system and flagged the error in time for ASTAC to make a timely correction.¹³ ASTAC further claims that USAC flags errors with respect to other aspects of its programs.

7. We reject these arguments, which either do not provide good cause to grant a waiver or cannot be the basis to grant the Petition for Reconsideration. As AT&T states, it had successfully "navigated" the "complex" system previously, and it should have closely monitored its trainee.¹⁴ Therefore, the alleged complexity of USAC's filing system does not provide good cause for a waiver. Moreover, ASTAC's argument that USAC could have flagged the error cannot be the basis to grant the Petition for Reconsideration. This argument is procedurally barred, as ASTAC has failed to show why it

⁶ *Waiver Order*, 31 FCC Rcd at 3160-61, para. 8.

⁷ *Id.* at 31 FCC Rcd at 3761-62, paras. 9-12.

⁸ Petition for Reconsideration at 4.

⁹ *Id.* at 13.

¹⁰ 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 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.

¹¹ 47 CFR § 1.106 (permitting the Bureau to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority).

¹² Petition for Reconsideration at 9.

¹³ *Id.*

¹⁴ *Id.*

was unable to make this argument in its original Waiver Request.¹⁵ As a separate and independent grounds for decision, however, we are not persuaded by this argument on the merits. As ASTAC itself acknowledges, USAC is not responsible for ensuring carriers timely file, and it had no obligation to flag the situation.¹⁶ It is the eligible telecommunications carrier's responsibility to comply with the Commission's rules. As the Commission has held in other instances, employee error or confusion is not grounds for a waiver.¹⁷

8. We are not persuaded by ASTAC's argument that the Bureau "incorrectly conflated two separate late line count filings" which should be viewed separately,¹⁸ and that under governing precedent, the Bureau should have granted a waiver for the second late filing because it was corrected within a week of the deadline. With regard to the third quarter 2015 missed deadline, we recognize that ASTAC was not aware it missed the second quarter 2015 filing until after it became aware it missed the third quarter 2015 filing.¹⁹ That does not change the fact, however, that failure to file on time for the third quarter of 2015 was a second late filing. Missing two consecutive filings, filings spaced months apart, reveals a continuing lack of internal controls, whether or not ASTAC was aware of that shortcoming at the time of the second failure.²⁰ ASTAC is correct that we have granted waivers where carriers filed within fourteen days of the deadline,²¹ but as we recognized in the *Waiver Order*, that precedent is not applicable here. The Bureau explicitly distinguished ASTAC's circumstances — it missed two consecutive deadlines — deadlines spaced months apart. While ASTAC has not missed the filing deadlines since and has since allegedly strengthened its internal procedures,²² that does not warrant reconsideration under the circumstances.

9. Furthermore, we are not persuaded by ASTAC's argument there is good cause to grant the Waiver Request based on the size of the company and the significance of high-cost support.²³ Essentially, ASTAC's argument attempts to relitigate its undue hardship claim made in the original Waiver Request.²⁴ However, ASTAC provides only generalized harms and does not detail any specific harms to consumers in its Petition for Reconsideration. As we stated in the *Waiver Order*, "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."²⁵ While we acknowledge

¹⁵ 47 C.F.R. § 1.106(c), (b)(2)(ii). Notwithstanding ASTAC's suggestion, we do not find it in the public interest to consider the new argument. *See id.* 1.106(c)(2).

¹⁶ Petition for Reconsideration at 9.

¹⁷ *See, e.g., Universal Service Contribution Methodology Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358, 13361-62, para. 12 (WCB 2013) (emphasizing that "mistakes or negligence by employees or third party contractors are not grounds for waiver of Commission rules").

¹⁸ Petition for Reconsideration at 3.

¹⁹ *Id.* at 8 ("[T]he Bureau's disapproval, it seems, is couched in an assumption that missing two deadline means a failure to remedy a problem the second time it happens.").

²⁰ *Waiver Order*, 31 FCC Rcd at 3762, para. 11. The fact that ASTAC missed two consecutive filings while it was in the process of improving its internal procedures is not good cause to grant the Waiver Request. *See* Petition for Reconsideration at 10.

²¹ *See id.* at 7, n.9.

²² *Id.* at 10.

²³ *Id.* at 10-12.

²⁴ *See* Waiver Request at 3-4.

the additional information provided regarding the amount of support in relationship to the company's subscriber revenues, that information fails to establish that this loss of support has resulted in diminished service to consumers.

10. While it is a small business, ASTAC's size alone does not provide good cause for a waiver. Other carriers subject to this reporting requirement are also small businesses, and ASTAC has not demonstrated that its situation as a small business is unique or distinct. Nor does the Regulatory Flexibility Act require us to grant ASTAC the requested relief.²⁶ Indeed, absent these filings, USAC would be unable to calculate the appropriate support amount which ASTAC claims is so essential.²⁷ Therefore, we do not agree with ASTAC's claim that an obligation to timely file line counts imposes an unnecessary burden on the public, creates entry barriers, or is an unnecessary regulation.²⁸ Furthermore, as we stated in the *Waiver Order*, "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 . . . ASTAC."²⁹

11. ACCORDINGLY, IT IS ORDERED, 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 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, that the Petition for Reconsideration is DENIED.

12. 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

(Continued from previous page) _____

²⁵ *Waiver Order*, 31 FCC Rcd at 3762, para. 12. See also *Petitions for Waiver of Universal High-Cost Filing Deadlines*, WC Docket No. 08-71, Memorandum Opinion and Order, FCC 16-71, para. 10 (rel. Jun. 8, 2016); *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).

²⁶ Petition for Reconsideration at 11.

²⁷ 47 C.F.R. § 54.307(e)(3)(v).

²⁸ Petition for Reconsideration at 11.

²⁹ *Waiver Order*, 31 FCC Rcd at 3762, para. 12.