

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Universal Service High-Cost Filing	)	WC Docket No. 08-71
Deadlines	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 2, 2015**

**Released: November 4, 2015**

By the Commission: Commissioner Clyburn approving in part, concurring in part and issuing a statement.

**I. INTRODUCTION**

1. The Commission has before it an Application for Review (Application) filed on December 10, 2014, by Madison Telephone Company (Madison).<sup>1</sup> Madison seeks review of a Wireline Competition Bureau (Bureau)<sup>2</sup> order denying Madison's Petition seeking waiver of sections 36.612(a)(2), 54.305(d)(2), and 54.305(f) of the Commission's rules pertaining to receipt of Safety Valve Support (SVS).<sup>3</sup> In the *Madison Denial Order*, the Bureau determined that Madison's mistake in filing calendar-year, rather than quarterly, SVS cost data and failure to recognize that it was not receiving SVS payments for almost nine years did not warrant waiver of the Commission's rules regarding the deadlines for submitting information necessary to calculate SVS.<sup>4</sup> We affirm the Bureau's conclusion that Madison did not demonstrate good cause for waiver; accordingly, we deny Madison's Application.

**II. BACKGROUND**

2. The Commission adopted SVS in 2001 to allow rural carriers to receive additional high-cost loop support to improve the service and enhance the infrastructure of acquired exchanges.<sup>5</sup> To receive SVS, a carrier acquiring exchanges must establish in accordance with section 36.611 or section 36.612 of the Commission's rules an "index year expense adjustment" (index year) for purposes of calculating support.<sup>6</sup> The Commission's rules define the SVS index year as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year operating

<sup>1</sup> See Madison Telephone Company, Application for Review, WC Docket No. 08-71 (filed Dec. 10, 2014) (Madison Application)

<sup>2</sup> See *Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, Order, 29 FCC Rcd 13754 (Wireline Comp. Bur. 2014) (*Madison Denial Order*).

<sup>3</sup> Madison Telephone Company Petition for Waiver of 47 C.F.R. §§ 36.612(a)(2), 54.305(d)(2), 54.305(f) of the Commission's Rules, WC Docket No. 08-71 (filed Nov. 7, 2013) (Madison Petition).

<sup>4</sup> See *Madison Denial Order*, 29 FCC Rcd at 13757-59, paras. 8-12.

<sup>5</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45 et al., Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11284-89, paras. 97-106 (2001) (*Rural Task Force Order*).

<sup>6</sup> See *Madison Denial Order*, 29 FCC Rcd at 13754-56, paras. 2-7; see *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99; 47 C.F.R. §§ 36.611, 36.612.

the exchanges.<sup>7</sup> Carriers that sought to receive SVS closer in time to the acquisition of an exchange(s) had the option to submit loop cost data to National Exchange Carrier Association (NECA) on a quarterly basis pursuant to section 36.612.<sup>8</sup> An acquiring carrier that voluntarily elected to establish an index year pursuant to section 36.612 was required to submit (1) an expense adjustment for the acquired exchanges in subsequent years that ended on the same calendar quarter and (2) “loop cost data for acquired exchanges on a quarterly, as opposed to annual, basis.”<sup>9</sup>

3. Madison, a rural Illinois carrier, acquired two exchanges from an unaffiliated carrier, Staunton and Livingston, in May 2001 and made investments in and upgrades to facilities in those exchanges.<sup>10</sup> Pursuant to section 54.305(f) of the Commission’s rules, on July 2, 2001, Madison provided notification to NECA, the Universal Service Administrative Company (USAC), and the Commission that Madison had acquired two exchanges that were eligible for SVS.<sup>11</sup> Madison opted to establish a quarterly index year expense adjustment in compliance with section 36.612 of the Commission’s rules in the first quarter after the close of the acquisition of the two exchanges, which was July 1, 2001 and ended on June 30, 2002, to expedite the process of receiving SVS.<sup>12</sup>

4. Madison states that it assumed that it was receiving SVS from January 2006 until December 2010, but after completing its five-year plan, it determined that it was actually receiving Safety Net Additive support and never received any SVS support.<sup>13</sup> In total, Madison received \$161,220 of Safety Net Additive from January 2006 until December 2010, which it thought was SVS.<sup>14</sup>

5. On November 7, 2013, Madison submitted a petition asking for a waiver of certain rules to allow it to collect the \$2,126,314 of SVS that it claimed it should have received from 2004 through 2011.<sup>15</sup> In the *Madison Denial Order*, the Bureau found that Madison had not demonstrated good cause for a waiver.<sup>16</sup> The Bureau determined that Madison’s mistake in filing calendar-year rather than quarterly SVS cost data and, more importantly, failing to recognize that it was not receiving SVS payments for almost nine years did not warrant deviation from the Commission’s rules regarding the deadlines for submitting information required to calculate universal service support.<sup>17</sup> In addition, the Bureau was not persuaded that waiver of the deadline was necessary for Madison to provide quality service to its consumers.<sup>18</sup> Therefore, the Bureau denied Madison’s request for waiver.

---

<sup>7</sup> See *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99.

<sup>8</sup> See *id.*; 47 C.F.R. § 36.612.

<sup>9</sup> See *id.*

<sup>10</sup> Madison Petition at 4. For the period ending December 31, 2014, Madison reported on FCC Form 477 the deployment of broadband with speeds of at least 10 Mbps downstream and 1 Mbps downstream in all census blocks covering the two exchanges.

<sup>11</sup> See *id.* at 5, Attach. A.

<sup>12</sup> See *id.* Pursuant to section 54.305(d)(2), for carriers that opt to establish the first year of operation of the acquired exchanges at the beginning of the next calendar quarter following the transfer of the exchanges, the index year shall be determined using cost data in accordance with section 36.612. See 47 C.F.R. §§ 36.612, 54.305(d)(2).

<sup>13</sup> See Madison Petition at 8-9.

<sup>14</sup> See *id.* at 8.

<sup>15</sup> Madison seeks waiver of sections 36.612(a)(2), 54.305(d)(2), and 54.305(f) of the Commission’s rules. See Madison Petition at 1, 15-16, Attach. B.

<sup>16</sup> See *Madison Denial Order*, 29 FCC Rcd at 13757-59, paras. 8-12.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*; Madison Petition at 12.

6. On December 10, 2014, Madison filed its Application for Review.<sup>19</sup> Madison seeks review of the Bureau's order and asks that the Commission direct USAC and NECA to accept Madison's cost data filings from 2003 to 2011 and disburse the associated SVS to Madison.<sup>20</sup> In support of its Application, Madison argues that the Bureau made an erroneous finding of fact when the Bureau stated that Madison made a mistake in filing calendar-year rather than quarterly SVS cost data.<sup>21</sup> In addition, Madison claims that the Bureau neglected to address the fact that Madison NECA and USAC documents stated that Madison should receive SVS, and that Madison received one payment of "Safety Valve Additive."<sup>22</sup> Finally, Madison cites to two previous SVS waiver decisions made by the Bureau and argues that the Bureau failed to adhere to the precedent set in those cases.<sup>23</sup>

### III. DISCUSSION

7. Based on the record before us, we deny Madison's Application. We are not persuaded that the Bureau made incorrect findings of fact or that the Bureau's decision was inconsistent with established precedent. Below, we address each argument in turn and conclude that waiver of our rules is not warranted here.

8. We disagree with Madison's argument that the Bureau erred in finding that Madison made a "mistake in filing calendar-year rather than quarterly SVS cost data."<sup>24</sup> As the Bureau noted in the *Madison Denial Order*, Madison acquired the two unaffiliated exchanges in May 2001 for which it could receive SVS support.<sup>25</sup> Madison, on its own election, established its index year expense adjustment in the first quarter after the close of the acquisition of the two exchanges, from July 1, 2001 to June 30, 2002.<sup>26</sup> When establishing an index year on a calendar quarter pursuant to sections 36.612 and 54.305(c)(2) of the Commission's rules, both the Commission's rules and orders make clear that Madison was required to submit loop cost data to NECA on a quarterly basis in accordance with the July 1 to June 30 index year.<sup>27</sup> Madison admits that it failed to file quarterly data.<sup>28</sup> The Commission agrees with the Bureau's finding that Madison willingly chose to establish its index year at the end of the first quarter after the close of its acquisition, was required to file quarterly cost data, and failed to do so.<sup>29</sup>

9. We are not persuaded by Madison's argument that regardless of the Bureau's determination as to whether Madison filed the correct cost data, "USAC's records clearly show Madison

---

<sup>19</sup> See Madison Application.

<sup>20</sup> See *id.* at 7-8.

<sup>21</sup> See *id.* at 2-4.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* at 4-7.

<sup>24</sup> *Id.* at 2-3; see *Madison Denial Order*, 29 FCC Rcd at 13757, para. 8.

<sup>25</sup> See Madison Petition at 3-4.

<sup>26</sup> See *id.* at 5.

<sup>27</sup> 47 C.F.R. §§ 36.612, 54.305(c)(2); see *Rural Task Force Order*, 16 FCC Rcd at 11285-86, para. 99 (stating, "For carriers establishing an index year for acquired exchanges pursuant to section 36.612, the index year for the acquired exchange(s) shall commence at the beginning of the next calendar quarter after the transfer of said exchanges. An acquiring carrier's expense adjustment for the acquired exchanges in subsequent years shall end on the same calendar quarter. By submitting loop cost data for acquired exchanges *on a quarterly, as opposed to annual, basis*, a carrier could establish its index year expense adjustment earlier and therefore potentially could begin receiving safety valve support earlier." (emphasis added)).

<sup>28</sup> See Madison Petition at 6; 47 C.F.R. §§ 36.612, 54.305(c)(2).

<sup>29</sup> See *id.*

as an eligible recipient of SVS,<sup>30</sup> and that Madison received one disbursement of “Safety Valve Additive.”<sup>31</sup> First, as explained above, Madison was not entitled to receive SVS unless it complied with our rules regarding the timely filing of quarterly loop cost data.<sup>32</sup> There is no dispute that it failed to meet these deadlines over a period extending nearly nine years. Second, while Madison did receive \$2,480 in support labeled “Safety Valve Additive,”<sup>33</sup> Madison subsequently received a revised NECA statement on May 31, 2005 showing that the \$2,480 was rescinded.<sup>34</sup> Moreover, the fact that Madison claims that it believed that the monthly Safety Net Additive payments it received from January 2006 until December 2010 were SVS payments does not constitute grounds for now awarding Madison SVS payments for this time period.<sup>35</sup> We agree with the Bureau that any confusion on the part of Madison under the circumstances here does not constitute special circumstances warranting waiver of the filing deadlines, particularly given that the Safety Net Additive support was awarded for different exchanges and the amount was substantially less than Madison’s SVS would have been.<sup>36</sup>

10. We reject Madison’s argument that both NECA and USAC erred in indicating that Madison should receive SVS, and the Bureau failed to take this into consideration.<sup>37</sup> It is possible that USAC and NECA classified Madison as eligible for SVS because they expected that Madison would file the required quarterly loop cost data consistent with the index year Madison had selected. However, regardless of whether USAC and NECA included Madison on the list of eligible recipients, Madison could not rightfully receive support if it did not comply with the Commission’s rules. Further, even if Madison had properly filed its cost data on a quarterly basis, and NECA and USAC erred in not providing SVS support to Madison, Madison was responsible for recognizing that it had not received whatever support to which it may have been entitled and seeking relief from the Commission. A single payment of support categorized as “Safety Net Additive,” which was subsequently rescinded, does not create the expectation of SVS eligibility or a right to payment.

---

<sup>30</sup> See Madison Application at 3-4. Madison provides USAC documents from 2005 that show that Madison qualified for SVS to support this argument. See Madison Application at App. A.

<sup>31</sup> See Madison Application at 3-4.

<sup>32</sup> 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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>33</sup> See Madison Application at 3-4; Madison Petition at 7, Attach. G.

<sup>34</sup> See Madison Petition at 7-8, Attach. G.

<sup>35</sup> See *id.*

<sup>36</sup> See *Madison Denial Order*, 29 FCC Rcd at 13757, para. 10; see also *SureWest Telephone, Petition for Waiver of 54.314(d) Filing Deadline*, WC Docket No. 08-71, Order, 28 FCC Rcd 14852, 14854-55, para. 6 (Wireline Comp. Bur. 2013); *South Slope Cooperative Telephone Company, Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 5 (Wireline Comp. Bur. 2004) (*South Slope*) (“A carrier’s confusion regarding the rules does not establish special circumstances that warrant a deviation from the Commission’s rules.”); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Grande Communications Networks, Inc. Petition for Waiver of Section 54.307(c) of the Commission’s Rules et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, 26 FCC Rcd 6187, 6191, para. 12 (Wireline Comp. Bur. 2011) (“Carriers are responsible for reviewing and understanding the rules to ensure that submissions are filed in a timely manner.”).

<sup>37</sup> See Madison Application at 3-4, App. A.

11. We also disagree with Madison's assertion that the Bureau failed to act in accordance with existing precedent. Madison argues that the Bureau granted two petitions for waiver based on facts almost identical to those in Madison's Petition, and the Bureau therefore should have granted Madison a waiver.<sup>38</sup> In one of the cases cited, the Bureau granted a waiver after Twin Valley demonstrated that it missed an SVS filing deadline "because of confusion concerning the obligation to make a quarterly rather than annual calendar year filing," which Madison argues is "of the same nature" as Madison's mistake.<sup>39</sup> In addition, Madison cites to a 2006 order in which the Bureau granted two Wisconsin LECs a waiver for missing the filing deadline because "denial of SVS could impact the areas served by Petitioners."<sup>40</sup> Madison argues that the Bureau's decision in this case ignored how it "could impact Madison's ability to continue to provide quality service at just, reasonable and affordable rates in the future."<sup>41</sup>

12. We are not persuaded by the precedent cited by Madison. First, we find that the Bureau's decision is consistent with more recent Commission precedent in other contexts to enforce filing deadlines strictly.<sup>42</sup> We emphasize that full adherence to the filing deadlines in the high-cost program is required, and waiver is appropriate only under extraordinary circumstances, which are not presented here.<sup>43</sup>

13. Second, the precedents cited by Madison are not comparable, because of the amount of time between when the carrier missed the filing deadline and the date of petition requesting relief from the Commission. In the Twin Valley case, the petitioner missed its March 30, 2010 quarterly cost data filing deadline and was notified on August 3, 2010 that it would not receive July SVS. The petitioner provided USAC the missing cost information and filed its petition with the Commission a mere six days later, on August 9, 2010.<sup>44</sup> Similarly, the Wisconsin LECs missed their March 2005 quarterly cost data

---

<sup>38</sup> See Madison Application at 4-7; see Madison Petition at 10-12.

<sup>39</sup> See Madison Application at 4-5; Petition of Twin Valley Telephone, Inc. for Waiver of Sections 36.612 and 54.305 of the Commission's Rules, CC Docket No. 96-45 (filed Aug. 9, 2010) (Twin Valley Petition).

<sup>40</sup> See Madison Application at 5-7; Petition of CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC for Waiver of Section 36.612(a)(3), CC Docket No. 96-45 (filed Dec. 22, 2005) (Wisconsin LECs Petition); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Order, 21 FCC Rcd 14633, 14635, para. 7 (Wireline Comp. Bur. 2006) (*Wisconsin LECs Order*).

<sup>41</sup> See Madison Application at 6.

<sup>42</sup> See, e.g., *Vanessa Cintron, Noble Ventures, Inc., On Request for Inspection of Records*, FOIA Control No. 2014-282, Memorandum Opinion and Order, 29 FCC Rcd 11583, 11583, para. 1 (2014) (dismissing an application for review that was filed three days late and noting "[w]hile losing the right of appeal when a deadline is missed by a brief time 'may seem unduly harsh . . . short of exceptional circumstances (which are not present here), courts have generally respected statutory and regulatory deadlines'"); *Totally Jesus Network, Inc. Application for a New NCE FM Station at Gold Beach, Oregon, et al.*, File No. BNPED-20071018AON, Memorandum Opinion and Order, 29 FCC Rcd 6414 (2014) (affirming a decision to dismiss an application for a new noncommercial FM station after the applicant experienced technical difficulties and filed nine days past the filing deadline).

<sup>43</sup> See, e.g., *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, 3201, para. 9 (Telecom. Access Policy Div. 2014) (noting that "absent highly extraordinary circumstances, the Bureau has not found good cause to waive deadlines when petitioners filed significantly after the deadline"); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines; Federal-State Joint Board on Universal Service; Nebraska Technology & Telecommunications, Inc. Petitions for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a) et al.*; WC Docket No. 08-71 et al., Order, 25 FCC Rcd 4626, 4630, para. 12 (Wireline Comp. Bur. 2010) ("Because USAC processes such a large amount of data each year, it is necessary that carriers meet the requisite filing deadlines, absent special circumstances."); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, LBH, L.L.C. Petition for Waiver of Section 54.802(A) of the Commission's Rules et al.*, WC Docket No. 08-71, Order, 24 FCC Rcd 4806, 4810, para. 10 (Wireline Comp. Bur. 2009) (same).

<sup>44</sup> See Twin Valley Petition at 2-4, 9.

filing and were notified on August 31, 2005 that they would not receive July SVS. Petitioners contacted USAC regarding the missing SVS on September 9, 2005 and filed their petition with the Commission on December 22, 2005.<sup>45</sup> In each case, petitioners sought to correct their mistakes within days.

14. In contrast, Madison has still not filed the required quarterly data and did not file a petition for waiver until almost nine years later.<sup>46</sup> The length of Madison's delay in realizing that it was not receiving SVS and filing its petition before the Commission undermines its argument that waiver is warranted.<sup>47</sup> Nor are we persuaded by Madison's conclusory assertion that it needs SVS in order to ensure its consumers have and maintain access to service at just, reasonable, and affordable rates.<sup>48</sup> We find the Bureau's decision to be consistent with Commission precedent, and conclude for the reasons in the Bureau's order and those discussed above that the public interest would not be served here by granting the necessary waivers to allow Madison to receive SVS.

15. Upon review of the arguments presented by Madison in its Application, we affirm the Bureau's decision and deny Madison's Application on the grounds that Madison has failed to establish good cause to waive the Commission's rules.<sup>49</sup>

#### IV. ORDERING CLAUSE

16. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Madison Telephone Company Application for Review, filed December 10, 2014 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>45</sup> See Wisconsin LECs Petition at 1-4, 9.

<sup>46</sup> See Madison Petition at 3-9. Madison states that it had expected to receive SVS by 2004. See *id.* at 6. Although Madison claims that it contacted both NECA and USAC regarding the proper filing requirements, Madison should have recognized that further action was required when it did not receive its SVS in 2004. See Madison Application at 4; Madison Petition at 5-9.

<sup>47</sup> See *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 (Wireline Comp. Bur. 2008) (denying waiver because the filing deadline was missed by more than five months); *NPI-Omnipoint Wireless, LLC Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules; SouthEast Telephone, Inc. Petition of Waiver of Deadlines in 47 C.F.R. § 54.809(c)*; *SEI Data, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.802(a)*, CC Docket 96-45, Order, 22 FCC Rcd 4946 (Wireline Comp. Bur. 2007) (denying NPI's waiver because the data was filed six months late; denying SouthEast's waiver because the data was filed two months late; denying SEI's waiver because the data was filed three months late); *South Slope*, 19 FCC Rcd at 17493 (denying waiver because the data was filed more than a month late).

<sup>48</sup> See Madison Application at 6-7. The fact that Madison waited until September 26, 2013 to file a petition with the Commission undercuts its argument that it needed the money over this extended time period in order to provide service at just, reasonable and affordable rates. Moreover, we note that Madison's residential local service rates are well below the reasonable comparability benchmark in the exchanges for which Madison is seeking SVS. See Madison Telephone Company FCC Form 481, Line 703(b)(2) (filed July 1, 2014).

<sup>49</sup> The Commission affirms the Bureau's decision to deny the necessary waivers to permit Madison to receive SVS both in arrears *and* on a prospective basis.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN  
APPROVING IN PART, CONCURRING IN PART**

Re: *Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71

While I agree that Madison Telephone Company has failed to establish that retroactive relief is warranted, particularly with the lack of discovery of the error for nine years, I am concerned about our denial of prospective relief. There is no dispute that Madison Telephone qualified to receive a federal universal service mechanism known as safety valve support but, due to a filing error, they will be unable to receive such support on a prospective basis even after curing the error. I find this result unnecessarily harsh and am struggling to see how it furthers our universal service goals. In this particular case, however, the denial does not seem material because Madison Telephone has yet to establish specific harms. As a result, I approve in part and concur in part.