

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

In the Matter of)
Rural Call Completion) WC Docket No. 13-39
Petition for Waiver of Carolina West Wireless, Inc.)

ORDER

Adopted: June 22, 2015

Released: June 25, 2015

By the Commission: Commissioner O’Rielly issuing a statement.

I. INTRODUCTION

1. In this Order, the Commission grants the petition of Carolina West Wireless, Inc. and its wholly-owned subsidiary, Clear Stream Communications, LLC (collectively, Carolina West), seeking waiver of the recording, retention, and reporting rules adopted in the Rural Call Completion Order.

II. BACKGROUND

2. In the Rural Call Completion Order, the Commission adopted recording, retention, and reporting rules to improve its ability to monitor the delivery of long-distance calls to rural areas. These rules apply to “covered providers,” defined under section 64.2101 of the Commission’s rules as providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, including lines served by the providers’ affiliates. Providers that, together with their affiliates, make the initial long-distance call path choice for 100,000 or fewer subscriber lines are exempt from these recording, retention, and reporting rules.

3. On January 16, 2014, Carolina West filed a petition for reconsideration requesting that the Commission modify the definition of “covered provider” so that the lines served by a provider’s non-controlling minority owners are not counted toward the 100,000 line threshold. In the Rural Call

1 Carolina West Wireless, Inc. and Clear Stream Communications, LLC Petition for Waiver, WC Docket No. 13-39, at 2 (filed Nov. 26, 2014) (Carolina West Petition).

2 See Rural Call Completion, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (Rural Call Completion Order or Order); Order on Reconsideration, 29 FCC Rcd 14026 (2014) (Rural Call Completion Reconsideration Order).

3 See Rural Call Completion Order, 28 FCC Rcd at 16164-91, paras. 19-84, 16211-14, Appx. A; 47 C.F.R. §§ 64.2103-64.2105.

4 See Rural Call Completion Order, 28 FCC Rcd at 16164, para. 19; 47 C.F.R. § 64.2101(c). Under section 3 of the Communications Act of 1934, as amended, an affiliate is “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.” 47 U.S.C. § 153(2). And, for purposes of this definition, the term “own” means to “own an equity interest (or the equivalent thereof) of more than 10 percent.” Id.

5 Carolina West Wireless, Inc. Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (Carolina West Petition for Reconsideration).

Completion Reconsideration Order, the Commission denied Carolina West's reconsideration request.⁶ However, the Commission recognized "that there are burdens associated with compliance with these rules, and there may be particular circumstances that make application of the rules to Carolina West inequitable or contrary to the public interest" and therefore "invite[d] Carolina West and other carriers to file waiver requests if they believe that the public interest would be better served by not counting the lines of some or all of their affiliates towards the 100,000 line threshold."⁷

4. On November 26, 2014, Carolina West filed a petition for waiver of the same rule provision for which it sought reconsideration.⁸ On December 11, 2014, the Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on the Carolina West Petition.⁹ No comments were filed. On March 31, 2015, the Bureau, on its own motion, granted a three-month temporary waiver to Carolina West of the recording, retention, and reporting rules contained in sections 64.2103 and 64.2105 of the Commission's rules.¹⁰

5. In its petition, Carolina West argues that application of the rule requiring the aggregation of the subscriber lines of an entity's affiliates to Carolina West would be inequitable, unduly burdensome, unnecessary for the Commission's collection of useful data, and contrary to the public interest.¹¹ Carolina West notes that it serves "well under 100,000 subscriber lines," and that it is owned by three subscriber-owned wireline telephone cooperatives that collectively serve approximately 60,000 subscriber lines.¹² When the lines of these affiliates are aggregated with Carolina West's lines, however, the total of subscriber lines for which the originating providers make the initial call path selection exceeds the 100,000 line threshold.¹³ Carolina West also states that none of these three owners can control Carolina West's operations or holds a majority equity interest in Carolina West.¹⁴ According to Carolina West,

⁶ *Rural Call Completion Reconsideration Order*, 29 FCC Rcd at 14049-50, paras. 57-59.

⁷ *Id.* at 14050, para. 60.

⁸ Carolina West Petition at 2. Carolina West seeks waiver "of the rule that requires the subscriber lines of its affiliates . . . to be counted toward the determination of whether [Carolina West] serves fewer than 100,000 subscriber lines," i.e., a waiver of a portion of the definition of "covered provider" in 47 C.F.R. § 64.2101. Carolina West Petition at 1. Because the recording, retention, and reporting requirements of 47 C.F.R. §§ 64.2103-64.2105 apply to each "covered provider" and because the waiver Carolina West seeks would exclude it from being a "covered provider," the substantive effect of granting its petition is to waive 47 C.F.R. §§ 64.2103-64.2105 as to Carolina West.

⁹ *Wireline Competition Bureau Seeks Comment on Petition for Waiver Filed in the Rural Call Completion Proceeding*, WC Docket No. 13-39, Public Notice, 29 FCC Rcd 14855 (Wireline Comp. Bur. 2014).

¹⁰ See *Rural Call Completion, Petition for Waiver of Carolina West Wireless, Inc.*, WC Docket No. 13-39, Order, 30 FCC Rcd 2841 (Wireline Comp. Bur. 2015). The Bureau "ma[de] no conclusions on the merits" of the Carolina West Petition. *Id.* at 2842, para. 4.

¹¹ Carolina West Petition at 4.

¹² *Id.* at 3.

¹³ Carolina West Petition for Reconsideration at 2.

¹⁴ Carolina West Petition at 3. These three subscriber-owned wireline telephone cooperatives are Skyline Telephone Membership Corporation (itself a subsidiary of SkyBest Communications, Inc.), Surry Telephone Membership Corporation (a subsidiary of Piedmont Communications Services, Inc.), and Wilkes Telephone Membership Corporation (a subsidiary of Wilkes Communications, Inc.), which hold 45.9 percent, 33.3 percent, and 20.8 percent ownership interests in Carolina West, respectively. See Carolina West Petition at Exh. A. Carolina West has stated that "Verizon Wireless is not affiliated with [Carolina West]," "Verizon Wireless has no ownership interest in [Carolina West]," and "Verizon Wireless has no influence over [Carolina West's] initial long-distance call path selection." Letter from Robert S. Koppel, Counsel to Carolina West Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 (filed Apr. 3, 2015).

each of the three owners holds only one seat apiece on Carolina West's three member board of directors, and none of the entities have influence over Carolina West's call routing, which is determined "solely by [Carolina West's] independent management team."¹⁵

6. Carolina West argues that requiring it to comply with the recording, retention, and reporting rules adopted in the *Rural Call Completion Order*, despite its size and the size of its non-controlling minority owners, is inconsistent with the objective of exempting small carriers from the burden of complying with the rules.¹⁶ Carolina West asserts that its compliance would "impose a highly burdensome requirement on a small provider with no countervailing public interest benefit."¹⁷ Specifically, it asserts that because the Commission itself found that a review of subscription counts via FCC Form 477 revealed that the 100,000-subscriber-line threshold should capture as much as 95 percent of all callers, granting its request for waiver would not impact the Commission's ability to capture data for as much as 95 percent of all subscriber lines.¹⁸ Finally, Carolina West contends that application of the rules in this case would be inequitable because entities making the initial call path choice for up to 99,999 subscriber lines would be exempt so long as they have no affiliates or their affiliates do not make the initial call path choice, whereas Carolina West is not exempt despite serving tens of thousands fewer subscribers.¹⁹

III. DISCUSSION

7. Consistent with section 1.3 of the Commission's rules, we find that there is good cause to grant Carolina West's petition.²⁰ The Commission may waive its rules, in whole or in part, for good cause shown, and may exercise its discretion to waive a regulation where the particular facts make strict compliance inconsistent with the public interest.²¹

8. As Carolina West notes in its petition, it serves well under 100,000 subscriber lines. Although the company is owned by three subscriber-owned wireline telephone cooperatives, these entities, in the aggregate, serve only 60,000 subscriber lines.²² Obligating Carolina West to comply with the recording, retention, and reporting rules adopted in the *Order* would thus impose a significant regulatory burden relative to Carolina West's size. And we also agree with Carolina West that granting this waiver will not significantly impede the Commission's ability to collect data on rural call completion rates as intended by the *Order*. As Carolina West noted in its petition, a review of subscription counts via FCC Form 477 reveals that the 100,000-subscriber-line threshold should capture as much as 95 percent of all subscriber lines.²³ Because this dataset did not include Carolina West or its affiliated carriers, none of the information that the Commission expects to be reported will be lost by granting this waiver.²⁴

¹⁵ Carolina West Petition at 3.

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ *Id.* (quoting *Rural Call Completion Order*, 28 FCC Rcd at 16169, para. 27).

¹⁹ *Id.*

²⁰ 47 C.F.R. § 1.3.

²¹ *See id.*; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)) (noting further that a waiver may be granted if special circumstances warrant a deviation from the general rule and such deviation will better serve the public interest than would application of the rule).

²² Carolina West Petition at 3.

²³ *Id.* at 5 (quoting *Rural Call Completion Order*, 28 FCC Rcd at 16169, para. 27).

Accordingly, considering the burden imposed and the lack of corresponding benefit to the data the Commission will collect, we find that strict compliance with the rule would, in this case, be inconsistent with the public interest.

9. Moreover, none of the three companies with ownership interests in Carolina West holds a majority equity interest in Carolina West, and each holds only one seat apiece on Carolina West's three member board of directors.²⁵ Carolina West further asserts that "[n]one of the three owners can control [its] operations," "[n]one of the three owners holds a majority equity interest in [Carolina West]," and "[e]ach of the three owners holds only one seat on [Carolina West's] three member board of directors."²⁶ It also states that "the three owners have no influence whatsoever on CWW's call routing, which is determined solely by [Carolina West's] independent management team."²⁷ Therefore, absent any evidence to the contrary, this particular case does not appear to present the same concern that animated our rejection of Carolina West's petition for reconsideration, namely that "a categorical decision to consider the lines of only affiliates under common control could create a loophole exempting carriers under common influence in their routing decisions, making it more difficult for the Commission to identify the sources of problems in rural call completion."²⁸

10. In sum, we find that there is good cause to grant Carolina West's request for waiver and that doing so is in the public interest, because of the burden of compliance relative to the company's size and the lack of harm that granting the waiver will pose to the Commission's data collection efforts. Importantly, we have received no complaints concerning Carolina West's delivery of calls to rural areas, and Carolina West will continue to be bound by the substantive requirements imposed on providers – such as the restrictions on call blocking²⁹ and false ring signaling³⁰ – that help ensure that long-distance calls to all Americans, including rural Americans, are completed.

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²⁴ We note that Carolina West submitted its FCC Form 477 filing as a separate entity apart from its affiliates. See Wireline Competition Bureau, FCC Form 477 Filers, State Level, as of December 31, 2013, at row 7039 (July 25, 2014), http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/statefilers1213.xls. Thus, when the Commission initially tallied subscriber line counts reported on FCC Form 477 to determine what percentage of subscriber lines would be captured by the 100,000-subscriber-line threshold, it did not include Carolina West and its affiliated carriers in this tally. Granting Carolina West a waiver in this instance will therefore not reduce the amount of information that the Commission calculated would be captured. Moreover, while there is no data in the record as to whether other providers also might qualify for a waiver on the basis asserted by Carolina West, no such waivers have thus far been sought — even though the recordkeeping requirements are already effective — and we do not believe that the universe of carriers that might seek a waiver under similar circumstances would significantly affect the Commission's ability to capture the expected data and otherwise meet the goals of the *Rural Call Completion Order*.

²⁵ Carolina West Petition at 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Rural Call Completion Reconsideration Order*, 29 FCC Rcd at 14050, para. 59.

²⁹ See *Developing a Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17903, para. 734 (2011); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629 (Wireline Comp. Bur. 2007).

³⁰ See 47 C.F.R. § 64.2201.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Petition for Waiver filed by Carolina West IS GRANTED.

12. IT IS FURTHER ORDERED that pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Rural Call Completion, Petition for Waiver of Carolina West Wireless, Inc.*, WC Docket No 13-39.

I support the relief provided to Carolina West in this order. However, I would have preferred to provide that relief when the Commission adopted the *Rural Call Completion Reconsideration Order* last November.¹ As I stated at the time: "I tend to find the argument presented by Carolina West persuasive and carriers now captured by our rules should not be forced to pray that a waiver is granted, as is suggested. I suspect that we could exclude such carriers without undermining our rural call completion efforts."² I guess I should be pleased that the Commission is finally coming around to my viewpoint.

When the current item circulated, I asked what additional information staff had learned in the intervening seven months that would make the Commission more comfortable granting the relief now. The answer was little more than a clarification regarding the company's ownership. In other words, it was something that could have been handled through a quick conversation, avoiding unnecessary burdens on both the company and the Commission. Instead, the company had to file a waiver and the Bureau had to: (1) issue a Public Notice seeking comment on it; (2) grant Carolina West a three-month temporary waiver of the requirements pending final resolution of the petition; and (3) draft and brief the current waiver order for the Commission's consideration.

To be fair, Carolina West's earlier petition for reconsideration, if granted, could have had a broader impact than granting the current company-specific waiver petition. But nothing prevented the Commission from addressing this with respect to Carolina West, when it issued the Order on Reconsideration. I hope that the Commission will do better in the future to consider the costs of its actions and avoid creating unnecessary procedures and delays.

¹ *Rural Call Completion*, WC Docket No. 13-39, Order on Reconsideration, 29 FCC Rcd 14026 (2014).

² *Id.* at 14062 (Concurring Statement of Commissioner Michael O'Rielly).