

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

In the Matter of )
Federal-State Joint Board on ) CC Docket No. 96-45
Universal Service )
Saddleback Communications )
Supplemental Data as Required by 47 )
C.F.R. § 54.202; )
Supplemental Data as Required by 47 )
C.F.R. § 54.209 )
Gila River Telecommunications, Inc. )
Petition for Waiver of Section 54.209 of the )
Commission's Rules; )
Supplemental Data as Required by 47 )
C.F.R. § 54.209 )
Pine Belt Cellular, Inc. )
Petition for Waiver of Section 54.209 of the )
Commission's Rules; )
Petition for Protective Waiver of Section 54.209 of )
the Commission's Rules )
IT&E Overseas, Inc. )
Petition for Protective Waiver of Section 54.209 of )
the Commission's Rules; )
Petition for Protective Waiver of Section 54.209 of )
the Commission's Rules )

ORDER

Adopted: July 31, 2008

Released: July 31, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant petitions for waiver filed by Saddleback Communications (Saddleback), Pine Belt Cellular, Inc. (Pine Belt), and IT&E Overseas, Inc. (IT&E) seeking waiver of the annual eligible telecommunications carrier (ETC) filing deadlines set forth in section 54.209(b) of the Commission's rules for 2006 and 2007.1 We also grant a petition for waiver filed by Gila River

1 Saddleback Communications Petition for Waiver to Allow Filing of Supplemental Data Two Days Late, CC Docket No. 96-45 (filed Oct. 16, 2007) (Saddleback 2007 Petition); Saddleback Communications Protective Petition for Waiver of Section 54.209, CC Docket No. 96-45 (filed Feb. 7, 2008) (Saddleback 2006 Petition); Pine Belt Cellular, Inc. Petition for Waiver of Section 54.209 of the Commission's Rules, CC Docket No. 96-45 (filed Oct. 30, 2007) (Pine Belt 2007 Petition); Pine Belt Cellular, Inc. Petition for Waiver, CC Docket No. 96-45 (filed Feb. 29, 2008) (Pine Belt 2006 Petition); IT&E Overseas, Inc. Petition for Protective Waiver of Section 54.209 of the

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Telecommunications, Inc. (Gila River) seeking waiver of the annual ETC filing deadline for 2006. Finally, we grant in part and deny in part Gila River's petition for waiver of: (i) the 2007 annual ETC filing deadline; and (ii) the need for Gila River to file further reports pursuant to section 54.209.<sup>2</sup> We find that good cause warrants a waiver of the 2006 and 2007 filing deadlines for Saddleback, Pine Belt, IT&E, and Gila River as discussed more fully below. We deny Gila River's request for a prospective waiver of section 54.209.

## II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>3</sup> Section 214(e)(6) of the Act provides that, in the case of a telecommunications provider that is not subject to the jurisdiction of a state commission, the Commission shall, upon request, designate the provider to be an ETC.<sup>4</sup> Section 54.202 of the Commission's rules sets out the requirements for a carrier to be designated an ETC under section 214(e)(6) of the Act.<sup>5</sup>

3. Section 54.209 of the Commission's rules provides that an ETC designated by the Commission under section 214(e)(6) shall file annual reports, including a progress report on the ETC's five-year service quality improvement plan, information on any outages in the past year, the number of requests for service that could not be fulfilled, the number of complaints per 1000 lines, and four certifications.<sup>6</sup> Under the Commission's rules, to receive federal universal service support for the following calendar year, an ETC must file its annual report no later than October 1.<sup>7</sup> ETCs that file the required annual reports after October 1 but before July 1 of the subsequent year can receive universal service support for one, two, or three quarters of the funding year, depending on how long after October 1 their filings are made.<sup>8</sup>

4. The Commission established the annual reporting requirements of section 54.209 in the 2005 *ETC Designation Order*.<sup>9</sup> Like the reports and certifications required to receive an initial designation as an ETC, the annual reporting requirements help ensure that high-cost universal service support is being used only for its intended purposes.<sup>10</sup> The annual reporting requirements ensure that

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Commission's Rules, CC Docket No. 96-45 (filed Mar. 28, 2008) (IT&E 2007 Petition); IT&E Overseas, Inc. Petition for Protective Waiver of Section 54.209 of the Commission's Rules, CC Docket No. 96-45 (filed Mar. 25, 2008) (IT&E 2006 Petition); *see also* 47 C.F.R. § 54.209.

<sup>2</sup> Gila River Telecommunications, Inc. Protective Petition for Waiver of Section 54.209, CC Docket No. 96-45 (filed Feb. 8, 2008) (Gila River 2006 Petition); Gila River Telecommunications, Inc. Petition for Waiver of Section 54.209 of the Commission's Rules, CC Docket No. 96-45 (filed Oct. 26, 2007) (Gila River 2007 Petition).

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 U.S.C. § 214(e)(6).

<sup>5</sup> 47 C.F.R. § 54.202(a).

<sup>6</sup> 47 C.F.R. § 54.209(a).

<sup>7</sup> 47 C.F.R. § 54.209(b).

<sup>8</sup> *Id.* ETCs that file their annual reports by January 1 will receive support for the second, third, and fourth quarters; ETCs that file by April 1 will receive support for the third and fourth quarters; and ETCs that file by July 1 will receive support for only the fourth quarter. ETCs that file after July 1 will receive no support for that year.

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

<sup>10</sup> *Id.* at 6373, 6400, paras. 4, 68.

Commission-designated ETCs continue to comply with the conditions of their designations.<sup>11</sup> The Commission concluded that the reporting requirements were “reasonable and consistent with the public interest and the Act” and that they “further the Commission’s goal of ensuring that ETCs satisfy their obligations under section 214(e) of the Act to provide supported services throughout their designated service areas.”<sup>12</sup> The Commission “strengthen[ed] the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended.”<sup>13</sup>

5. *Saddleback’s Petitions for Waiver.* Saddleback is a telecommunications company owned by the Salt River Pima Maricopa Indian Community, a federally-recognized Indian Tribe located in Arizona.<sup>14</sup> On October 16, 2007, Saddleback filed a petition for waiver of section 54.209(b) of the Commission’s rules to allow it to submit its annual ETC report two days after the October 1, 2007 filing deadline.<sup>15</sup> Saddleback contends that the delay resulted from a misunderstanding between its management and its outside counsel concerning the substance and procedure of the requirements.<sup>16</sup> Saddleback notes that it has taken steps to prevent such delays in the future.<sup>17</sup> Saddleback also contends that granting a waiver to allow the filing of universal service data only two days late is consistent with Commission precedent.<sup>18</sup> Saddleback states that its receipt of high-cost universal service support is necessary for its provision of services to tribal lands, and, as a result, Saddleback argues that granting the requested waiver will serve the public interest by supporting the core universal service policies of the Commission.<sup>19</sup>

6. On February 7, 2008, Saddleback filed a petition for waiver of section 54.209(b) of the Commission’s rules with respect to the October 1 filing deadline for Saddleback’s 2006 annual ETC report.<sup>20</sup> Saddleback had been notified by USAC on January 31, 2008, of its failure to file the required section 54.209 report by October 1, 2006, some sixteen months earlier.<sup>21</sup> Saddleback contends that the delay was inadvertent and resulted from a lack of clarity from USAC regarding the annual filing requirement.<sup>22</sup> Saddleback states that it received a notice from USAC in October 2007 concerning the missed October 1, 2007 filing deadline, but that this notice did not contain any indication of the missed October 1, 2006 deadline.<sup>23</sup> As in its 2007 waiver petition, Saddleback states that the missed deadline

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<sup>11</sup> *Id.* at 6400, para. 68.

<sup>12</sup> *Id.* at 6402, para. 70.

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

<sup>14</sup> Saddleback 2007 Petition at 1

<sup>15</sup> *Id.* Saddleback filed its annual report on October 3, 2007. See Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Oct. 3, 2007).

<sup>16</sup> Saddleback 2007 Petition at 2; Attach. 3 at 1 (Affidavit of Bill Bryant) (Bryant Aff.).

<sup>17</sup> Saddleback 2007 Petition at 3; Bryant Aff. at 1-2.

<sup>18</sup> Saddleback 2007 Petition at 3-4 (citing to past Commission waivers allowing filings to be made two and five days late).

<sup>19</sup> *Id.* at 4-6.

<sup>20</sup> Saddleback 2006 Petition as 1-2.

<sup>21</sup> *Id.* at 1-2.

<sup>22</sup> *Id.* at 2-3.

<sup>23</sup> *Id.* at 2.

was the result of a misunderstanding of the rule, and emphasizes that it acted to rectify the problem by filing its 2006 annual ETC report immediately after receiving the USAC notification.<sup>24</sup>

7. Pine Belt's Petitions for Waiver. On October 30, 2007, Pine Belt filed a petition for waiver of the October 1, 2007 deadline in section 54.209 of the Commission's rules to allow it to file its 2007 annual ETC report after the deadline.<sup>25</sup> Pine Belt contends that the delay in filing resulted from a lack of clarity and completeness in public information provided by USAC, because USAC did not include this reporting requirement on its website.<sup>26</sup> Pine Belt states that, because USAC did not list this requirement on its website, Pine Belt's outside contractor inadvertently missed the filing deadline.<sup>27</sup> Pine Belt further certifies that it has taken steps to ensure future regulatory compliance.<sup>28</sup> On February 29, 2008, Pine Belt filed a second petition requesting a waiver of section 54.209 of the Commission's rules to allow it to file its 2006 annual ETC report after the October 1, 2006 deadline.<sup>29</sup> Pine Belt filed its 2006 annual ETC report on February 29, 2008.<sup>30</sup> Pine Belt contends that it is now aware of the annual reporting obligation, but that it was not aware it was responsible for the reporting requirement in October 2006.<sup>31</sup>

8. IT&E's Petitions for Waiver. On March 25, 2008, IT&E filed a petition for waiver of the October 1, 2006 deadline for filing its 2006 ETC annual report, and on March 28, 2008, IT&E filed a petition for waiver of the October 1, 2007 deadline for filing its 2007 ETC annual report.<sup>32</sup> IT&E asserts that, because it has a small staff of employees with only one staff member devoted full-time to regulatory issues, IT&E relies on information from its outside contractors, USAC, and the Commission to ensure compliance with new or revised universal service requirements.<sup>33</sup> IT&E states that it did not receive notice from the Commission or USAC when the new reporting requirement was implemented, and the requirement did not appear in information provided by USAC.<sup>34</sup> The company also alleges that it did not become aware of the missed filing deadlines until it received a notice from USAC on February 1, 2008, informing IT&E that it had missed the October 1, 2006 filing deadline.<sup>35</sup> IT&E filed both its 2006 and 2007 annual ETC reports on March 25, 2008.<sup>36</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Pine Belt 2007 Petition at 1, 4. Pine Belt filed its annual report on October 30, 2007. *See* Letter from Phyllis A. Whitten, Counsel for Pine Belt Cellular, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Oct. 30, 2007).

<sup>26</sup> Pine Belt 2007 Petition at 1.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at Exh. 2.

<sup>29</sup> Pine Belt 2006 Petition at 1.

<sup>30</sup> Letter from Phyllis A. Whitten, Counsel for Pine Belt Cellular, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed Feb. 29, 2008).

<sup>31</sup> Pine Belt 2006 Petition at 2.

<sup>32</sup> IT&E 2006 Petition; IT&E 2007 Petition.

<sup>33</sup> IT&E 2006 Petition at 2; IT&E 2007 Petition at 2.

<sup>34</sup> IT&E 2006 Petition at 2; IT&E 2007 Petition at 2.

<sup>35</sup> IT&E 2006 Petition at 3; IT&E 2007 Petition at 3. IT&E claims that it had not been aware of an earlier notice sent by USAC on October 13, 2007, informing IT&E that it had missed the October 1, 2007 annual ETC report filing deadline, because this notice had been addressed to the incorrect staff person at IT&E. *Id.*

<sup>36</sup> Letter from Benjamin H. Dickens, Attorney for IT&E Overseas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 25, 2008) (IT&E 2006 ETC Compliance Report);

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9. Gila River's Petitions for Waiver. On October 26, 2007, Gila River filed a petition for a waiver of section 54.209 of the Commission's rules to allow its delayed submission of its 2007 annual ETC filing.<sup>37</sup> Gila River contends that the failure to receive universal service support will have "a significant adverse and harmful impact" on its customers, and that granting a waiver of the filing deadline will serve the public interest and support the statutory objectives of universal service by promoting access to telecommunications services in underserved areas.<sup>38</sup> In its petition, Gila River also requests that the Commission "direct USAC to provide [Gila River] with USF support going forward" without requiring Gila River to file any additional compliance reports in the future.<sup>39</sup>

10. Gila River further contends that the requirement to file compliance reports ought not to be imposed on it at all, because: (i) the reports are unnecessary to ensure ETC compliance with universal service eligibility; (ii) not all ETCs are required to file the reports; (iii) the Gila River Indian Community and the Arizona Corporation Commission do not require such reports; (iv) the Commission was required to consult with the Gila River Indian Community prior to imposing reporting requirements; and/or (v) because section 54.209 is not in effect because the Commission did not publish the effective date of the rule in the Federal Register.<sup>40</sup>

11. On February 8, 2008, Gila River filed a petition for waiver of the October 1, 2006 annual ETC filing deadline.<sup>41</sup> Gila River notes that it received notice from USAC in October 2007 concerning the missed October 1, 2007 annual ETC filing deadline, but this notice did not mention the missed October 1, 2006 deadline.<sup>42</sup> As in its 2007 waiver petition, Gila River states that the missed deadline was the result of a misunderstanding of the rule, and Gila River acted to rectify the problem immediately after receiving notification from USAC.<sup>43</sup>

12. All comments that have been filed in response to these petitions support the grant of waivers of the filing deadlines.<sup>44</sup> The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), filing reply comments in response to the 2007 annual ETC

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Letter from Benjamin H. Dickens, Attorney for IT&E Overseas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Mar. 25, 2008) (IT&E 2007 ETC Compliance Report).

<sup>37</sup> Gila River 2007 Petition at 1. Gila River filed its 2007 annual ETC report on October 18, 2007. Letter from James U. Troup, Counsel for Gila River Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 18, 2007).

<sup>38</sup> Gila River 2007 Petition at 1, 8-9.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* at 1-2, 5.

<sup>41</sup> Gila River 2006 Petition at 1-2.

<sup>42</sup> *Id.* at 2.

<sup>43</sup> *Id.* at 2. Gila River filed its 2006 annual ETC report on February 8, 2008. Gila River Telecommunications, Inc., CC Docket No. 96-45 (filed Feb. 8, 2008).

<sup>44</sup> Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 96-45 (filed Nov. 30, 2007) (OPASTCO Reply Comments); National Telecommunications Cooperative Association Initial Comments, CC Docket No. 96-45 (filed Feb. 25, 2008) (NTCA Saddleback Comments); National Telecommunications Cooperative Association Initial Comments, CC Docket No. 96-45 (filed Feb. 25, 2008) (NTCA Gila River Comments); Comments of the Rural Cellular Association, CC Docket No. 96-45 (filed Apr. 18, 2008) (RCA Comments); Comments of GTA Teleguam, CC Docket No. 96-45 (filed May 19, 2008) (GTA Comments). Pine Belt also filed reply comments in support of waiving the 2007 annual ETC report deadline for itself, Saddleback, and Gila River. Reply Comments of Pine Belt Cellular, Inc., CC Docket No. 96-45 (filed Nov. 30, 2007) (Pine Belt Reply Comments).

report filing deadline waiver petitions of Gila River and Saddleback, argues that granting a waiver would be consistent with the universal service principles set forth in the Act.<sup>45</sup> OPASTCO also notes that the Commission has granted similar waivers in the past.<sup>46</sup> The National Telecommunications Cooperative Association (NTCA), filing two separate but substantially identical comments in support of the 2006 annual ETC filing deadline waiver petitions of Gila River and Saddleback, argues that the missed deadlines were based on misunderstandings, which have since been rectified.<sup>47</sup> The Rural Cellular Association (RCA), filing comments in support of Pine Belt's 2006 annual ETC report filing deadline petition for waiver, points to past circumstances in which unclear information provided by USAC concerning filing obligations led to a Commission waiver, and argues that the same rationale applies here.<sup>48</sup>

### III. DISCUSSION

13. We grant the petitions of Saddleback, Pine Belt, and IT&E in full, and we grant Gila River's 2006 annual ETC report filing deadline waiver petition in full.<sup>49</sup> We grant in part and deny in part Gila River's 2007 annual ETC report filing deadline waiver petition. We find that good cause exists to waive section 54.209(b) of the Commission's rules, allowing the petitioners to file their 2006 and 2007 annual ETC filings after the October 1 deadline.<sup>50</sup> The petitioners and commenters contend that the missed deadlines were caused by misunderstandings resulting from USAC's lack of clarity as to the scope of the reporting requirements under section 54.209.<sup>51</sup> This problem was further compounded by USAC's initial notification to petitioners of the missed October 1, 2007 filing deadline, which made no mention of the missed October 1, 2006 filing deadline.<sup>52</sup> Pine Belt notes that many isolated incidents contributed to the delay in filing its annual ETC reports, and that it is unlikely to miss future deadlines.<sup>53</sup> Saddleback, Pine Belt, IT&E, and Gila River have all established procedures to ensure that they will not miss filing

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<sup>45</sup> OPASTCO Reply Comments at 2-3.

<sup>46</sup> *Id.* at 3-4.

<sup>47</sup> NTCA Saddleback Comments at 3; NTCA Gila River Comments at 3.

<sup>48</sup> RCA Comments at 2-4.

<sup>49</sup> Pine Belt notes that its report for Funding Year 2007 does not include detailed information responsive to questions about outage reports, unfulfilled service requests, and complaints, as this information was not retained over the entire time period prior to the date of filing, because of numerous technical problems. Pine Belt 2006 Petition at 3-4. Pine Belt has completed its filing on the basis of personal recollection of management, and has taken steps to prevent such incidents from occurring in the future. *Id.* at 4. Although we accept Pine Belt's report as filed for purposes of this waiver order, we remind Pine Belt and other ETCs that they are subject to audit oversight by USAC and the Commission. We also note that sanctions, including enforcement action, may be appropriate in cases of waste, fraud, and abuse. *See, e.g., Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Report and Order, 22 FCC Rcd 16372, 16385, para. 26 (2007).

<sup>50</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 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 therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>51</sup> *See, e.g.*, RCA Comments at 3-4; NTCA Gila River Comments at 3; Saddleback 2006 Petition at 2-3.

<sup>52</sup> *See, e.g.*, Gila River 2006 Petition at 2.

<sup>53</sup> Pine Belt 2007 Petition at 3.

deadlines in the future.<sup>54</sup> In the limited circumstances of the petitions at hand, and where the delay in filing is inadvertent and where USAC may have, in part, contributed to the misunderstandings, we find that waivers of the missed filing deadlines are warranted.

14. Although we grant the requested waivers of filing deadlines, we remind Saddleback, Pine Belt, IT&E, Gila River, and all ETCs that they each bear the individual responsibility 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. No ETC is permitted to rely solely on information provided through the USAC website to determine its filing obligations.

15. In its 2007 annual ETC filing deadline waiver petition, Gila River also requests a waiver of the annual filing requirements of section 54.209 of the Commission's rules in the future, to allow Gila River to receive federal universal service support without demonstrating ongoing compliance with its ETC obligations.<sup>55</sup> We deny this request. Gila River's first contention, that the reports are unnecessary to ensure compliance with ETC obligations, is incorrect.<sup>56</sup> The Commission found in the *ETC Designation Order* that the annual reporting requirements of section 54.209 are an important tool to ensure the appropriate use of universal service support and to ensure continued compliance of Commission-designated ETCs with their designation obligations.<sup>57</sup> Gila River's second argument, that not all ETCs are required to file the reports, is also unpersuasive.<sup>58</sup> The reporting requirements in section 54.209 are uniformly applied to all ETCs designated by the Commission. Gila River and all other Commission-designated ETCs seeking to receive federal universal service support must comply with this rule. We also find unpersuasive Gila River's argument that the Gila River Indian Community (the Tribe) and the Arizona Corporation Commission do not require such reports, and the Commission is required to consult with the Tribe prior to imposing requirements, including the annual ETC reporting requirement, on Gila River.<sup>59</sup> As Gila River acknowledges in its petition, the Arizona Corporation Commission does not have jurisdiction over Gila River for purposes of ETC designation.<sup>60</sup> Pursuant to section 214(e)(6) of the Act, therefore, the Commission has jurisdiction over Gila River's ETC designation.<sup>61</sup> Thus, the requirements of the Arizona Corporation Commission and the Tribe are inapplicable here. Moreover, the reporting requirements at issue were adopted as part of a Commission notice and comment rulemaking proceeding, in which comment from the public, including the Tribe, was sought prior to the adoption of the rules. Finally, Gila River is incorrect in asserting that section 54.209 is not in effect because the effective date of

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<sup>54</sup> Saddleback 2007 Petition at 3; Bryant Aff. at 1-2; Pine Belt 2007 Petition at Exh. 2; Letter from Benjamin H. Dickens, Attorney for IT&E Overseas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Apr. 3, 2008); Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, Affidavit, at 2 (filed Apr. 2, 2008) (Gila River April 2 *Ex Parte* Letter).

<sup>55</sup> Gila River 2007 Petition at 2.

<sup>56</sup> *Id.*

<sup>57</sup> *ETC Designation Order*, 20 FCC Rcd at 6400, 6402, paras. 68, 70.

<sup>58</sup> Gila River 2007 Petition at 5-6.

<sup>59</sup> *Id.* at 5, 7.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> 47 U.S.C. § 214(e)(6); see *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, AAD/USB File No. 98-28, Memorandum Opinion and Order, 13 FCC Rcd 4547, 4549, para. 4 (Com. Car. Bur. 1998) (Gila River asserted that it was not subject to the jurisdiction of the Arizona Corporation Commission and was granted ETC designation by the Common Carrier Bureau, pursuant to its delegated authority from the Commission, under section 214(e)(6) of the Act).

the rule was not published in the Federal Register.<sup>62</sup> Notice of the effective date of the rule was published in the Federal Register on November 2, 2005.<sup>63</sup>

16. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that federal universal service high-cost support funds are used for appropriate purposes. Although we grant the waivers of the October 1, 2006 and 2007 filing deadlines addressed here, the Commission reserves the right to conduct audits and investigations to determine compliance with the rules and requirements related to high-cost universal service support. Because audits and investigations may provide information showing that a service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of high-cost universal service support monies disbursed and to determine on a case-by-case basis that waste, fraud, or abuse of such funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the universal service program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

17. 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 C.F.R. §§ 0.91, 0.291 and 1.3, that the petitions for waiver filed by Saddleback Communications, Pine Belt Cellular, Inc., and IT&E Overseas, Inc., and the petition for waiver of the 2006 annual ETC report filing deadline filed by Gila River Telecommunications, Inc. ARE GRANTED to the extent described herein, and that the petition for waiver of the 2007 annual ETC report filing deadline filed by Gila River Telecommunications, Inc., IS GRANTED IN PART and IS DENIED IN PART to the extent described herein.

18. IT IS FURTHER ORDERED that, pursuant to section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer  
Chief  
Wireline Competition Bureau

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<sup>62</sup> Gila River 2007 Petition at 9-10.

<sup>63</sup> Public Information Collections Approved by Office of Management and Budget, 70 Fed. Reg. 66,407 (Nov. 2, 2005) (announcing that OMB approval was received, and thus the rule became effective, on October 14, 2005); *see also* Office of Management and Budget Approval of Public Information Collections, 72 Fed. Reg. 67,858 (Dec. 3, 2007).