

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

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Guam Cellular and Paging, Inc.)	
Petition for Waiver of Section 54.314 of the)	
Commission's Rules and Regulations)	
)	

ORDER

Adopted: April 16, 2003

Released: April 17, 2003

By the Chief, Telecommunications Access Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Guam Cellular and Paging, Inc. (Guamcell), a competitive eligible telecommunications carrier (ETC), for waiver of the October 1, 2001 certification filing deadline set forth in section 54.314(d)(1) of the Commission's rules for high-cost universal service support in areas served by rural carriers. Granting Guamcell's waiver request will allow it to receive universal service support beginning on February 1, 2002, the date Guamcell filed its high-cost certification under section 54.314(d) with the Commission.

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."¹ Once a carrier is designated as an ETC, there are other requirements that must be satisfied before a carrier can begin receiving high-cost universal service support. Section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."² To implement this statutory requirement, the Commission adopted an annual certification requirement. Section 54.314 of the Commission's rules provides that states desiring rural ETCs to receive universal service high-cost support shall file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all high-cost support received by such carriers within such state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is

¹ 47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions, or this Commission when states lack jurisdiction, shall designate carriers as ETCs. 47 U.S.C. § 214(e).

² 47 U.S.C. § 254(e).

intended.”³ In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e).⁴ Section 54.314 provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁵ If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁶ The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and calculate estimated high-cost demand amounts for submission to the Commission.⁷

3. *Guamcell’s Petition for Waiver.* On July 26, 2001, Guamcell submitted an application with the Commission requesting designation as an ETC to receive high-cost support for operation in the Territory of Guam.⁸ On January 25, 2002, the Wireline Competition Bureau⁹ (Bureau) of the Commission designated Guamcell as an ETC.¹⁰ On February 1, 2002, consistent with section 54.314(b) of the Commission’s rules, Guamcell certified to the Commission that federal high-cost support would be “used only for the provision, maintenance and upgrading of facilities and services for which the support is intended pursuant to Section 254(e)” of the Act.¹¹ On February 6, 2002, Guamcell filed a request for waiver of section 54.314 requesting the Commission accept Guamcell’s annual certification for high-cost support so that it can receive support beginning on February 1, 2002, the date Guamcell filed its high-cost certification under section 54.314(d).

4. Guamcell contends that good cause exists for granting its waiver of section 54.314 of the Commission’s rules because it did not receive its ETC designation until January 25, 2002. Specifically, Guamcell argues that granting its request is consistent with the Commission’s goal of competitive neutrality and will serve the public interest.¹²

³ 47 C.F.R. § 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission’s rules.

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, para. 189 (rel. May 23, 2001) (*Rural Task Force Order*); 47 C.F.R. § 54.314(b).

⁵ 47 C.F.R. § 54.314(d)(1).

⁶ See 47 C.F.R. § 54.314(d).

⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission’s rules, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support, two months prior to the beginning of each quarter. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC generally needs to know which carriers have been certified under the Commission’s rules no later than October 1. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

⁸ See *Guam Cellular and Paging, Inc., Petition for Waiver*, filed Feb. 6, 2002, at 1 (Guamcell Petition).

⁹ Formerly the Common Carrier Bureau.

¹⁰ See *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as and Eligible Telecommunications Carrier in the Territory of Guam, Memorandum Opinion and Order*, DA 02-174, CC Docket 96-45 (Com. Car. Bur. rel. Jan. 25, 2002) (*Guamcell ETC Designation Order*).

¹¹ See *Letter* from Phillip N. Lyons, Chairman and CEO, Guamcell, to Magalie R. Salas, Secretary, FCC (Jan. 31, 2002).

¹² See *Guamcell Petition* at 6-7.

7. We also conclude that waiver of section 54.314 would be consistent with the public interest. Competitive neutrality is a fundamental principal of the Commission's universal service policies.²¹ Denying first quarter and second quarter 2002 support to Guamcell, a competitive ETC, merely because the timing of its ETC designation precluded it from timely filing its October 1 certifications would undermine the Commission's goals of competitive neutrality. Because the Commission has found that "competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications," Guamcell should not be penalized as a result of the timing of its ETC designation.²² We therefore conclude waiver of this rule is in the public interest.

8. In conclusion, because Guamcell became eligible to receive high-cost support after the October 1, 2001 certification filing deadlines, we find that good cause exists to warrant a waiver of section 54.314(d) of the Commission's rules. As Guamcell requested, this waiver shall allow Guamcell to begin receiving high-cost support as of February 1, 2002, the date it filed its high-cost certification under section 54.314 of the Commission's rules.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, 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 petition for waiver of section 54.314(d) of the Commission's rules, filed by Guam Cellular and Paging, Inc. on February 6, 2002, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Eric N. Einhorn
Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

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2003) shall include its May 2002 support payment; and Guamcell's August 2003 support payment (disbursed in September 2003) shall include its June 2002 support payment.

²¹ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20479-78, paras. 89-90 (1999) (*Ninth Report and Order*), reversed in part and remanded in part, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). See also *Federal-State Joint Board on Universal Service; Promoting Deployment of Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264-65, para. 114 (2000) ("competitively neutral access to ... support is critical to ensuring all Americans, including those that live in high-cost areas, have access to affordable telecommunications.").

²² See *id.*