

**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
)	
Midwest Wireless Iowa, L.L.C.)	
Petition for Waiver of Sections 54.313(d) and)	
54.314(d) of the Commission's Rules and)	
Regulations)	

ORDER

Adopted: June 10, 2004

Released: June 14, 2004

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from Midwest Wireless Iowa, L.L.C. (Midwest), a competitive eligible telecommunications carrier (ETC), for a waiver of the April 1, 2002 certification filing deadline set forth in section 54.314(d)(3) of the Commission's rules for high-cost universal service support in areas served by rural carriers.¹ Granting Midwest's waiver request will allow it to receive high-cost universal service support as of July 12, 2002, the date that the Iowa Utilities Board (Iowa Board) designated Midwest as an ETC.

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."² Once a carrier is designated as an ETC, other requirements also 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."³ 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 must 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,

¹Midwest Wireless Iowa, L.L.C., Petition for Waiver of FCC Rule Sections 54.313 and 54.314, filed March 20, 2003 (Midwest Waiver Request).

²47 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).

³47 U.S.C. § 254(e).

and upgrading of facilities and services for which support is intended.”⁴ In instances in which 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).⁵ 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.⁶ 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 of the year, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁷ 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.⁸

3. Generally, the Commission’s rules may be waived for good cause shown.⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹² Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹³

4. *Midwest’s Petition for Waiver.* On July 12, 2002, the Iowa Board issued an order designating Midwest as an ETC throughout the study areas of certain non-rural and rural local exchange carriers.¹⁴ On September 27, 2002, consistent with 54.314(d)(3) of the Commission’s rules, the Iowa Board filed a certification with the Commission and USAC stating that Midwest would use high-cost support “only for the provision, maintenance and upgrading of facilities and services for which the

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

⁵See *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, CC Docket No. 00-256, 16 FCC Rcd 11244, 11318, para. 189 (2001) (*Rural Task Force Order*); 47 C.F.R. § 54.314(b).

⁶See 47 C.F.R. § 54.314(d)(1).

⁷See 47 C.F.R. § 54.314(d).

⁸See *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.

⁹47 C.F.R. § 1.3.

¹⁰*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹*WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹²*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166.

¹³*Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴*Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4), Order Designating Eligible Carrier (Iowa Utilities Board issued July 12, 2002).

support is intended, pursuant to section 254(e)” of the Act.¹⁵ On March 20, 2003, Midwest filed a request for waiver of the April 1, 2002 and July 1, 2002 certification filing deadlines so that it can receive support beginning July 12, 2002, the date Midwest was designated as an ETC by the Iowa Board.¹⁶

5. Midwest 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 July 12, 2002.¹⁷ Midwest also argues that granting its waiver request is consistent with the Commission’s goal of competitive neutrality and will serve the public interest.¹⁸

III. DISCUSSION

6. Consistent with Commission precedent, we find that good cause exists to waive the April 1 deadline contained in section 54.314(d)(3) of the Commission’s rules so that Midwest can receive universal service support beginning on July 12, 2002, the date of Midwest’s designation as an ETC.¹⁹ Although section 54.314 requires states to certify that a competitive ETC will use support for its intended purposes, we find in this case that Midwest has demonstrated that special circumstances warrant a deviation from the filing deadline in the Commission’s rules and that the waiver is consistent with the public interest.

7. The certification filing schedule set out in the Commission’s rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission.²⁰ Because Midwest did not receive its ETC designation until July 12, 2002, however, the Iowa Board could not have met, under any circumstances, the April 1, 2002 certification filing deadline so that Midwest could receive support in the third quarter of 2002, or the July

¹⁵Midwest Waiver Request at 2; Letter from Judi K. Cooper, Iowa Utilities Board, to Marlene H. Dortch, FCC, dated Sept. 27, 2002 (Iowa Board Sept. 27 Letter) at 1, 5. In addition, on November 14, 2002, the Iowa Board filed a supplemental certification reiterating that Midwest had certified to it that it would use all universal service support consistent with section 254, and that it understood that Midwest intended to file a waiver request with the Commission. The Iowa Board also requested that Midwest’s certification be deemed effective July 12, 2002. Letter of Judi K. Cooper, Iowa Utilities Board, to Marlene H. Dortch, FCC, and Irene Flannery, USAC, dated Nov. 14, 2002 (Iowa Board Nov. 14 Letter).

¹⁶Midwest Waiver Request at 1. Although Midwest’s waiver request addresses the state’s certification of an ETC, and not a certification that Midwest was required to file, we believe it is appropriate to consider this waiver request filed by Midwest instead of requiring the state to file the waiver request. The Iowa Board specifically filed a letter supporting the waiver request filed by Midwest. *See* Iowa Board Nov. 14 Letter. *See also Federal-State Joint Board on Universal Service, Western Wireless Corporation, Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 14689, 14691, para. 6 (2003) (*Western Wireless Order*).

¹⁷Midwest Waiver Request at 2-3.

¹⁸Midwest Waiver Request at 6.

¹⁹*See, e.g., Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (2002) (granting a waiver of the October 1 certification filing deadline) (*RFB Cellular Waiver Order*); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, 18 FCC Rcd 7138 (2002) (granting a waiver of the October 1 certification filing deadline) (*Guamcell Waiver Order*). *See also Western Wireless Order*, 18 FCC Rcd at 14691, para. 6.

²⁰*See Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

1, 2002 deadline for support in the fourth quarter of 2002. As the Wireline Competition Bureau has determined in prior orders, it would be onerous to deny an ETC receipt of universal service support for almost two quarters because the ETC designation occurred after the certification filing deadline.²¹ In this instance, moreover, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certifications.²² We therefore find that Midwest has demonstrated special circumstances that justify a waiver of section 54.314.

8. We also conclude that waiver of section 54.314 is consistent with the public interest. The Commission has found that “competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications.”²³ Denying third and fourth quarter 2002 support to Midwest, a competitive ETC, merely because the timing of its ETC designation precluded the Iowa Board from timely filing the certification would undermine the Commission’s goals of competitive neutrality. Further, the Iowa Board, the state entity with the obligation to make the appropriate section 54.314 certification, supports Midwest’s waiver request.²⁴ We therefore conclude waiver of this rule is in the public interest.

9. Midwest also requests a waiver of the April 1, 2002 certification deadline set forth in section 54.313 of the Commission’s rules for high-cost universal service support in areas served by non-rural carriers.²⁵ We find, however, that it unnecessary to address this waiver request because non-rural high-cost support is not available in the non-rural wire centers for which Midwest is designated as an ETC.²⁶ Therefore, Midwest’s request to waive the deadline set forth in section 54.313 of the Commission’s rules is dismissed as moot.

10. In sum, because Midwest did not become eligible to receive high-cost support until after the April 1, 2002 certification filing deadline, we find good cause exists to warrant a waiver of section 54.314(d) of the Commission’s rules. This waiver will allow Midwest to begin receiving high-cost

²¹See, e.g., *Western Wireless Order*, 18 FCC Rcd at 14691-92, para. 7.

²²To facilitate timely payments and to minimize the administrative burden associated with processing those payments, we direct USAC to distribute Midwest’s retroactive support payments on a phased-in basis. Specifically, we instruct USAC to pair monthly retroactive support payments with regular monthly support payments until all retroactive support has been paid. In other words, USAC shall pair Midwest’s next support payment following release of this Order with its July 2002 retroactive support payment, continuing in this fashion until all retroactive support has been paid.

²³See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket 96-45, 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*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking CC Docket No. 96-45, 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.”). See also *Western Wireless Order*, 18 FCC Rcd at 14699, para. 8.

²⁴See Iowa Board Nov. 14 Letter.

²⁵Midwest Waiver Request at 1.

²⁶See Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2001 (Universal Service Administrative Company, May 2, 2002); Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2001 (Universal Service Administrative Company, Aug. 2, 2001).

support as of July 12, 2002, the date Midwest received its ETC designation.²⁷

²⁷ Granting Midwest's Petition will not affect the amount of support distributed to other ETCs. 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.101, 54.201.

IV. ORDERING CLAUSES

11. 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)(3) of the Commission's rules, filed by Midwest Iowa Wireless, L.L.C., on March 20, 2003, IS GRANTED, as described herein, and that the petition for waiver of section 54.313(d)(3)(iii) of the Commission's rules, filed by Midwest Iowa Wireless, L.L.C., on March 20, 2003, IS DISMISSED AS MOOT, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

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