

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Federal-State Joint Board on
Universal Service
Request for Review of the
Decision of the
Universal Service Administrator by
Thumb Cellular Limited Partnership
CC Docket No. 96-45

ORDER

Adopted: November 21, 2006

Released: November 22, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On June 2, 2004, Thumb Cellular Limited Partnership (Thumb Cellular) filed an appeal of the Universal Service Administrative Company's (USAC or Administrator) decision to deny it Interstate Common Line Support (ICLS) for the third quarter of 2003 because USAC determined that it had received Thumb Cellular's FCC Form 507, which includes line count data, after USAC's calculated filing date.

II. BACKGROUND

2. Thumb Cellular receives high-cost support from USAC pursuant to sections 54.901 through 54.904 of the Commission's rules, which establish the ICLS mechanism. In order to receive ICLS support, carriers must file FCC Form 507 with USAC. Thumb Cellular began receiving ICLS in July 2003, and continued to receive support payments through October of that year. In October 2003, USAC determined that Thumb Cellular's FCC Form 507, which USAC received on March 31, 2003, was filed late pursuant to section 54.307(c)(4) of the Commission's rules, which states that line count information

1Request for Appeal of the Decision of the Universal Service Administrator by Thumb Cellular Limited Partnership, CC Docket 96-45, Request for Appeal, filed June 2, 2004 (Thumb Cellular Appeal).

247 C.F.R. §§ 54.901-54.904.

3Instructions for Completing the Interstate Common Line Support Mechanism Line Count Report, FCC Form 507, OMB 3060-0972 (November 2004).

4Thumb Cellular Appeal, Attach. 1 (Letter from Universal Service Administrative Company to Timothy Welch, Counsel for Thumb Cellular Limited Partnership, at 2 (dated May 7, 2004) (Administrator's Decision)).

for the third quarter must be submitted “[n]o later than March 30 of each year.”⁵ Because March 30, 2003, fell on a Sunday, USAC directed carriers like Thumb Cellular to file their 507 forms by March 28 in order to meet the Commission’s deadline.⁶

3. Over the course of several conversations from October through December 2003, USAC advised Thumb Cellular that its FCC Form 507 had not been received in a timely fashion, should not have been processed, and Thumb Cellular should not have received ICLS for the third quarter of 2003.⁷ To recover ICLS amounts it believed were mistakenly disbursed to Thumb Cellular in the third quarter of 2003, USAC withheld ICLS in November and December of 2003, and January 2004.⁸ Pursuant to section 54.719(a), Thumb Cellular filed with USAC a Request for Review of the denial of ICLS funding on December 24, 2003.⁹ USAC denied the appeal on May 7, 2004, and Thumb Cellular subsequently filed the above-captioned appeal with the Commission.

4. In support of its appeal, Thumb Cellular argues that its FCC Form 507 was timely filed for the third quarter of 2003 despite being received by USAC on March 31, 2003, a day after the deadline established by USAC under the Commission’s rules.¹⁰ It contends that because March 30 fell on a holiday in 2003,¹¹ section 1.4(j) of the Commission’s rules applies.¹² Under this rule, filings that fall on a holiday may be timely filed on the next business day—in this case, Monday, March 31, 2003.

5. In denying Thumb Cellular’s appeal for ICLS funding, USAC determined that section 1.4(j) applies only in situations where computations of time are involved.¹³ Because section 54.307(c)(4) establishes a specific filing date, it argues that no computation of time is necessary and, therefore, the plain language of the rule requires carriers to file their forms no later than March 30 of each year. Since March 30, 2003 was a Sunday, USAC determined that carriers must have submitted their 507 forms by Friday, March 28, 2003.¹⁴ USAC also concluded that Thumb Cellular was supplied with actual notice when it sent each carrier a letter mentioning that March 28, 2003 was the FCC Form 507 filing deadline

⁵Administrator’s Decision at 2; *see* 47 C.F.R. § 54.307(c).

⁶Administrator’s Decision at 2.

⁷*Id.*

⁸*Id.*

⁹*See* Thumb Cellular Appeal, Attach. 2 (Request for Review by Thumb Cellular Limited Partnership of Decision of the Universal Service Administrator, Universal Service Administrative Company, High Cost Low Income Division, Denying a Request for Interstate Common Line Support and Long Term Support, to High Cost Low Income Committee (filed December 24, 2003)).

¹⁰Thumb Cellular Appeal at 6. *See also* 47 C.F.R. § 54.307(c).

¹¹The Commission considers Sundays to be a holiday. *See* 47 C.F.R. § 1.4(e)(1) (noting that “[t]he term ‘holiday’ means Saturday, Sunday, officially recognized federal legal holidays and any other day on which the Commission’s offices are closed and not reopened prior to 5:30 p.m.”).

¹²47 C.F.R. § 1.4(j) (“Unless otherwise provided . . . if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day.”).

¹³Administrator’s Decision at 3.

¹⁴*Id.* *See also* 47 C.F.R. § 54.307(c)(4).

under USAC's application of section 54.307(c)(4).¹⁵ USAC also posted a reminder of the deadline on its web site on March 7, 2003.¹⁶

III. DISCUSSION

6. We grant Thumb Cellular's appeal. Under section 54.307(c)(4) of the Commission's rules, third quarter line count information is due every year no later than March 30. In 2003, the March 30 deadline fell on a Sunday. This date is considered a holiday under the Commission's rules. Section 1.4(j) of the Commission's rules provides that if the filing date falls on a holiday, the document shall be filed on the next business day. In this case, the next business day was Monday, March 31, 2003. USAC should have deemed 507 forms filed on this day to be timely filed.

7. We disagree with USAC's conclusion that section 1.4 does not apply in this situation because no computation of time is necessary. The stated purpose of section 1.4 is broad in that it details the method for computing "deadlines established by the Commission."¹⁷ Moreover, while the Commission has established a specific date each year by which line count information filings are due, computation is still necessary since the date specified in section 54.307 is subject to change on a yearly basis as a recurring annual deadline.¹⁸ Because we find that section 1.4 is applicable to section 54.307, it makes no difference that Thumb Cellular had notice of a deadline that was different than the one established by the Commission's rules, which provide specific guidance on calculating deadlines. We direct USAC to implement the conclusions in this Order by disbursing third quarter 2003 ICLS funds to Thumb Cellular.

¹⁵Administrator's Decision at 3.

¹⁶*Id.* ("Since March 30, 2003 falls on a Sunday, your line count filing is due no later than Friday, March 28, 2004.") (citing USAC's web site, What's New Archive, March 2003, available at <http://www.universalservice.org/hc/whatsnew/032003.asp>).

¹⁷47 C.F.R. § 1.4.

¹⁸*See, e.g., Wireline Competition Bureau Reminds Licensees of Annual Employment Report Due Date*, Public Notice, 19 FCC Rcd. 8136, n.1 (2004); *FCC Announces Release of FCC Form 477 (Local Competition and Broadband Reporting Form) for the September 1, 2003 Filing*, Public Notice, 18 FCC Rcd 12865, n.1 (2003); *FCC Announces Release of FCC Form 477 (Local Competition and Broadband Reporting Form) for the March 1, 2003 Filing*, Public Notice, 18 FCC Rcd 431, para. 2, n.1 (2003). We rely on these prior Wireline Competition Bureau precedents rather than on narrower decisions of the prior Cable Services Bureau. *See, e.g., Johnson Broadcasting of Dallas v. DirecTV, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 886, 889, para. 9 (Cable Serv. Bur. 2002) (finding by Cable Services Bureau that section 1.4 of the Commission's rules did not apply since the regulation specified the exact filing date and this filing was a one-time occurrence).

IV. ORDERING CLAUSE

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Appeal of USAC's Denial of Funding filed by Thumb Cellular Limited Partnership on June 2, 2004 IS GRANTED.

9. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau