

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:
Federal-State Joint Board on
Universal Service
North River Telephone Cooperative
Petition for Waiver of the Deadline in 47 C.F.R. §
54.904(d)
CC Docket No. 96-45

ORDER

Adopted: December 28, 2006

Released: December 28, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the request of North River Telephone Cooperative (North River), an eligible telecommunications carrier (ETC) in Virginia, for a waiver of the annual filing deadline set forth in section 54.904(d) of the Commission’s rules. We find that North River has demonstrated good cause that warrants this waiver.

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.” Once a carrier is designated as an ETC, other requirements also must be satisfied before a carrier can begin receiving interstate access support (IAS), interstate common line support (ICLS), and other 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 the support is intended.” To implement this statutory requirement, the Commission has adopted annual certification and data filing requirements.

1 North River Telephone Cooperative Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d), CC Docket No. 96-45, filed Nov. 17, 2005 (Petition); see also 47 C.F.R. § 54.904(d).

2 47 U.S.C. § 254(e). Section 214(e) of the Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

3 47 U.S.C. § 254(e).

4 See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802, 54.809, 54.903.

3. To receive ICLS pursuant to section 54.904 of the Commission's rules, an ETC must file a certification, stating that all ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended, with the Universal Service Administrative Company (USAC) and the Commission on the date that it first files its line count information and thereafter on June 30 of each year.⁵

4. *North River's Petition.* On November 17, 2005, North River filed a petition for waiver of the June 30, 2003, filing deadline in section 54.904(d) of the Commission's rules.⁶ In August 2005, North River received a telephone call from its National Exchange Carrier Association (NECA) representative informing it that its ICLS certification due June 30, 2003, had not been filed correctly.⁷ North River investigated and discovered that it had inadvertently filed the High Cost use certification required by section 54.314(b), believing it to be the correct use certification to file in June, instead of its ICLS certification.⁸ After receiving the call from NECA, North River filed its ICLS certification.⁹ North River states that the employee responsible for the filing is no longer with the company, and the new personnel are now fully aware of the due dates.¹⁰ NECA has instituted guidelines to assist North River with meeting future filing requirements and deadlines.¹¹ Moreover, North River argues that it otherwise has an excellent history of compliance with regulatory requirements, and intended to comply in this instance.¹² North River will not receive about \$46,000 absent a waiver.¹³

III. DISCUSSION

5. We grant the petition of North River and waive section 54.904(d) of the Commission's rules.¹⁴ We find that North River has demonstrated that there is good cause for this waiver in order to

⁵ See 47 C.F.R. §§ 54.904(a) and (d). In the *MAG Order*, the Commission adopted a mechanism for accepting an untimely filed ICLS certification, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *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, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19688, para. 176 (2001) (*subsequent history omitted*) (*MAG Order*).

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* See 47 C.F.R. §§ 54.314(b), 54.314(d)(1). North River correctly filed its High Cost use certification again in October 2003. Petition at 1.

⁹ Petition at 1.

¹⁰ *Id.*

¹¹ *Id.* at 1-2.

¹² *Id.* at 2.

¹³ *Id.* at 1.

¹⁴ 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

allow North River to receive ICLS funding.¹⁵ Because USAC processes a tremendous amount of line-count data each year, it is administratively necessary to require carriers to meet the line-count and certification filing deadlines absent special circumstances.¹⁶ Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations,¹⁷ and to ensure that filings are timely received.¹⁸ In this case, however, considerations of hardship and equity – as well as North River’s longstanding history of submitting timely data – weigh in favor of granting the requested waiver.

6. Specifically, we conclude that the loss of about \$46,000 in ICLS funding due to filing the wrong certification could cause significant hardship in the rural and high-cost areas served by North River. We are concerned that the loss of the funding could undermine North River’s investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. We have granted waivers of our universal service rules in order to “ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.”¹⁹

7. Significantly, North River’s mistaken filing of its certification was caused by unique circumstances and the error did not create any hardship for USAC or other ICLS funding recipients. In granting this waiver, we rely on North River’s commitment to implement new procedures and safeguards to ensure that future filings will be submitted correctly and on a timely basis.²⁰ Finally, we conclude that deviation from the general rule under these special circumstances will serve the public interest. Granting the requested waiver will facilitate the continued provision of service, as well as system construction and upgrades in North River’s service areas.²¹ Accordingly, we find that waiving section 54.904(d) of the Commission’s rules will serve the public interest by preserving and advancing universal service.²²

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. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁵ 47 C.F.R. § 54.904(d). The rule adopted in the *MAG Order*, penalizing carriers one quarter of support for late certifications, does not apply here, because North River did not file the required certification until over a year after it was due.

¹⁶ *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission’s Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

¹⁷ See 47 C.F.R. § 0.406; see also *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005).

¹⁸ See 47 C.F.R. § 54.802(a), (c).

¹⁹ 47 U.S.C. § 254(b); see also *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20318, para. 7 (Wireline Comp. Bur. 2005).

²⁰ Petition at 1-2.

²¹ *Id.* at 1.

²² 47 U.S.C. § 254(b).

IV. ORDERING CLAUSE

8. 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, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d) filed by North River Telephone Cooperative on November 17, 2005, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau