

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petitions for Waiver of Universal Service High-Cost Filing Deadlines	)	WC Docket No. 08-71
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Petition for Reconsideration by	)	
	)	
ASTAC Wireless LLC – CL d/b/a ASTAC Petition for Waiver of Sections 54.307 and 54.903 of the Commission’s Rules	)	

To the Federal Communications Commission:

**ASTAC WIRELESS LLC – CL APPLICATION FOR REVIEW**

Pursuant to Section 405 of the Communications Act of 1934 (“Act”) and Section 1.115(a) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>1</sup> ASTAC Wireless LLC – CL d/b/a ASTAC Wireless (“ASTAC Wireless”) files this application for review of the Wireline Competition Bureau’s (“Bureau”) *Order on Reconsideration*.<sup>2</sup> In that order, the Bureau denied ASTAC Wireless’s request to reconsider the denial of ASTAC

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<sup>1</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.115(a).

<sup>2</sup> *Universal Service High-Cost Filing Deadlines, et al.*, Order on Reconsideration, DA 16-903, WC Docket No. 08-71, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Aug. 10, 2016) (“*Order on Reconsideration*”).

Wireless's Petition for Waiver<sup>3</sup> of high-cost support line count filing deadlines for the second and third quarters of 2015.<sup>4</sup> This application for review addresses only the request for waiver of the third quarter 2015 filing deadline, which was the first deadline ASTAC Wireless was aware of missing and which it corrected within seven days – well within the period for which the Bureau has previously granted waivers to permit late line count filings. The Bureau's *Order on Reconsideration* is both arbitrary and unduly harsh because it denies ASTAC relief from the third quarter 2015 filing deadline that would otherwise be granted – and thus \$229,200 in high-cost support – solely on the basis of missing the second quarter 2015 line count filing deadline, even though ASTAC Wireless was not aware at the time it missed the third quarter 2015 filing that it had missed the second quarter deadline, and thus its miss of the second quarter deadline provided ASTAC Wireless with no notice of any need to review or correct its internal procedures. While ASTAC Wireless understands that the Commission does not want to grant sequential relief to a petitioner who should have known of deficient processes, that was simply not the case here. Accordingly, ASTAC Wireless asks the Commission to reverse the Bureau's *Order on Reconsideration* solely with respect to the third quarter 2015 filing deadline, but not with respect to the later-discovered failure to meet the second quarter 2015 filing deadline. This would restore \$229,200 in high-cost support related to the third quarter 2015 line count filing, but continue to deny ASTAC Wireless \$91,000 in high-cost support related to the second quarter 2015 line count filing.

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<sup>3</sup> Petition of ASTAC Wireless LLC – CL d/b/a ASTAC Wireless for Waiver of Sections 54.307 and 54.903 of the Commission's Rules, WC Docket No. 08-71, CC Docket No. 96-45 (filed Oct. 13, 2015) ("ASTAC Petition").

<sup>4</sup> *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, et al.*, Order, DA 16-432, 31 FCC Rcd. 3758 (Wireline Comp. Bur. 2016) ("ASTAC Order" or "Order").

It should be noted that there is no meaningful forward-looking systemic benefit from the harsh approach taken in the *Order on Reconsideration*. Under the *Alaska Plan Order* released on August 31, 2016,<sup>5</sup> Alaska Competitive Eligible Telecommunications Carriers will no longer be filing quarterly line counts. Here, substantial justice can be achieved by accepting ASTAC Wireless' seven-day late wireless line count, just as the Bureau would have for any other provider that missed a line count filing for the first time and corrected it within seven days, while still denying ASTAC Wireless \$91,000 in high-cost support as a result of faulty processes.

## **I. FACTUAL BACKGROUND**

### **A. ASTAC Wireless Serves Remote Alaska as a Small Company**

ASTAC Wireless serves the North Slope region of Alaska, covering 92,000 square miles north of the Arctic Circle with nine different exchanges. ASTAC Wireless is part of a cooperative owned by its subscribers, with just under 1,000 wireless subscribers, many of whom are Native Alaskans. The areas ASTAC Wireless serves are isolated; eight of the villages in the region are not even connected by roads.

In terms of compliance with the high-cost requirements, ASTAC Wireless has consistently filed its line count data by the deadlines since it began receiving high-cost support. Since it was first certified as a CETC in 2008, the only times that ASTAC Wireless missed line count filing deadlines were the second and third quarter of 2015. However, at the time it missed the third quarter 2015 deadline and corrected that filing, ASTAC was not aware that it had also not filed its second quarter 2015 line count report.

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<sup>5</sup> *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115, WC Docket Nos. 10-90, 16-271, WT Docket No. 10-208 (rel. Aug. 31, 2016).

## **B. The Third Quarter 2015 Line Count Report**

Under the high-cost support mechanism applicable to Remote Alaska CETCs in 2015, ASTAC Wireless was required to file line counts each quarter in order to justify the support it would receive a little over three months later. ASTAC Wireless had filed these reports on time since being certified as a CETC by the Regulatory Commission of Alaska in 2008.

At the time of the third quarter 2015 filing deadline, which occurred on September 30, 2015, as far as ASTAC Wireless knew, it had never missed a filing deadline and had no reason to question its procedures. At that time, however, it was cross-training a second employee to learn additional systems, including the high-cost filing requirements.<sup>6</sup> This led to internal confusion between the employee who had previously been handling the filing and the person trained as back-up, with each thinking the other was submitting the filing. On October 7, 2015, the ASTAC Wireless employees discovered they had missed the deadline and quickly remedied it that same day – a mere seven days late.

## **C. Discovery of Second Quarter 2015 Line Count Filing**

On October 10, 2015, three days *after* the ASTAC Wireless employees discovered the filing deadline error for the third quarter, they discovered a second error related to the second quarter filing. In June 2015, the employee in training had filled out and saved the line count data and given the form and support to the officer for review in advance of the second quarter deadline. At the time, the employee-in-training did not understand that the USAC electronic filing system not only required the employee to enter and save the data and then “submit” the data, but it also required the officer separately to enter the system to certify the data. ASTAC

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<sup>6</sup> See ASTAC Petition at 5.

Wireless discovered this error when it did not receive its expected amount of support. The error was remedied on the same day.

Because ASTAC Wireless only learned of its second quarter 2015 line count filing error *after* its third quarter 2015 error, ASTAC Wireless could not have learned from its second quarter 2015 line count filing error to prevent its third quarter error. Since that time, the internal procedures have been resolved and improved.

**D. The Bureau’s April 20, 2016 Order**

ASTAC Wireless filed its petition for waiver of the second and third quarter 2015 line count filing deadlines on October 13, 2015, a mere three days after its second discovery of a missed deadline.<sup>7</sup> On April 20, 2016, the Bureau denied ASTAC Wireless’s petition, asserting that (1) the second quarter 2015 filing was more than fourteen days late; (2) the third quarter 2015 filing was a second consecutive mistake, and (3) the revenue loss of \$320,655 did not constitute good cause.<sup>8</sup>

**E. The Bureau’s *Order on Reconsideration***

ASTAC Wireless timely filed a Petition for Reconsideration with the Bureau on May 20, 2016, asking the Bureau to reconsider its denial because, among other things, ASTAC made its third quarter filing within the timeframe for which the FCC consistently grants waivers, and the third quarter filing was in fact the first late filing that ASTAC discovered.<sup>9</sup> In particular, the Petition for Reconsideration asked the Bureau especially to take note of the fact that ASTAC

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<sup>7</sup> *See id.*

<sup>8</sup> *ASTAC Order* ¶ 9, 11-12.

<sup>9</sup> *See* ASTAC Wireless LLC – CL Petition for Reconsideration, WC Docket No. 08-71, CC Docket No. 96-45 (filed May 20, 2016).

could not have remedied its line count filing processes for the third quarter 2015 filing in light of its error on the second quarter 2015 filing, since it learned of the second quarter 2015 filing only after the third quarter filing.<sup>10</sup> The Bureau brushed aside any notion of an opportunity to correct, and simply denied relief that it would have granted for the third quarter 2015 had it stood alone on the basis that there were two missed deadlines.

**II. IT IS ARBITRARY AND CAPRICIOUS TO DENY ASTAC WIRELESS RELIEF FROM ITS FIRST DISCOVERED ERROR – THE THIRD QUARTER FILING – WHEN THE FILING WAS REMEDIED WITHIN THE TIMEFRAME FOR WHICH THE FCC CONSISTENTLY GRANTS WAIVERS AND ASTAC HAD NO KNOWLEDGE OF ANY PRIOR MISSED DEADLINES.**

Because the Commission’s precedent consistently grants waivers for filings made within fourteen days of the deadline,<sup>11</sup> the Bureau’s failure to grant a waiver for ASTAC Wireless missing the third quarter 2015 filing by a mere seven days (five business days) was inconsistent with Commission precedent and policy, and thus both arbitrarily and unnecessarily punitive. ASTAC Wireless remedied its third quarter filing – the first missed filing deadline of which it was aware – on October 7, 2010, within a week of the deadline.

The *Order on Reconsideration* does not question that, in the absence of the missed second quarter filing deadline, ASTAC Wireless’ request for waiver would have fallen within the

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<sup>10</sup> *Id.* at 7.

<sup>11</sup> See *Universal Service High-Cost Filing Deadlines et al.*, Order, DA 08-2336, 23 FCC Rcd. 15,325, 15,330 ¶ 11 (Wireline Comp. Bur. 2008) (waiving filing deadlines where “by filing the required data within fourteen business days after the applicable filing deadlines, the petitioners promptly remedied their errors”); *Universal Service High-Cost Filing Deadlines et al.*, Order, DA 14-419, 29 FCC Rcd. 3198, 3200-01 ¶¶ 5, 9 (Wireline Comp. Bur. 2014); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, Order, DA 10-107, 25 FCC Rcd. 843, 854-55 ¶ 22 (Wireline Comp. Bur. 2010) (granting waivers where the filings were submitted between one and fourteen business days after the deadline); *Federal-State Joint Board on Universal Service*, Order, DA 05-3290, 20 FCC Rcd. 20,316, 20,137-38 ¶¶ 5-6 (Wireline Comp. Bur. 2005) (granting waiver where the filing was submitted five days after the deadline).

scope of prior precedent. As the Bureau acknowledged, “ASTAC is correct that we have granted waiver orders where carriers filed within fourteen days of the deadline.” Here, ASTAC Wireless filed within seven days, well within that fourteen-day period.

The *Order on Reconsideration*, however, refused to apply the fourteen-day precedent and argued that there were two consecutive missed deadlines “spaced months apart.”<sup>12</sup> In the first instance, this appears to be an entirely novel decision, as neither the *ASTAC Order* nor the *Order on Reconsideration* cite any prior Commission decisions.<sup>13</sup> And while it is true that there were two consecutive deadline and that these quarterly deadline of course are three months apart, it does not follow – as the Bureau asserted – that there was a “severe lack of internal controls.”<sup>14</sup> ASTAC Wireless did not even know about the first missed deadline when the second occurred, and thus had no reason to suspect it had any problems of any kind. Furthermore, the Bureau and USAC’s interest in the timely availability of data – cited by the *ASTAC Order* as a reason for denying the waiver<sup>15</sup> – does not distinguish the third quarter 2015 filing, which was remedied in less than fourteen days, from any other instance in which a late filing was cured within fourteen days.

The distinction the Bureau drew between a single missed deadline and two missed deadlines is not reasonable or rational without knowledge of the earlier missed deadline. It would be reasonable to deny subsequent relief for an inadvertent late line count filing if the ETC

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<sup>12</sup> *Order on Reconsideration* ¶ 8.

<sup>13</sup> *See ASTAC Order* ¶ 11; *Order on Reconsideration* ¶ 8.

<sup>14</sup> *ASTAC Order* ¶ 11.

<sup>15</sup> *Id.* ¶ 12. In addition, although the *ASTAC Order* states USAC needs a large volume of information in a timely manner, there is no indication in the record that the seven-day delay in filing the third quarter 2015 line count would have prevented USAC from correctly computing the distribution of Remote Alaska high-cost support. *See id.*

had previously missed a deadline and been on notice that its procedures may be deficient. Here, however, without any knowledge component, the result is simply to deny support without any systemic benefit. ASTAC Wireless could not have learned from its second quarter 2015 miss to avoid the third quarter 2015 miss, nor could the third quarter 2015 miss – which it learned of first – have prevented the second quarter 2015 miss.

A much more reasonable approach, and one which is in harmony rather than tension with its fourteen-day precedent, is to allow fourteen days to correct the first inadvertent late filing of which the CETC was aware – but not to provide the same allowance for later errors. That better balances the need for CETCs to ensure that they maintain strong controls with the recognition that errors will occur and that the consequences should not be unduly harsh, especially when the result is to deny support for extending service to extremely high-cost areas.

ASTAC Wireless therefore urges the Commission to reconsider the Bureau’s decision with respect to the third quarter 2015 line count filing and grant ASTAC Wireless a waiver with respect to filing its line counts within five business days – well less than the fourteen-business-day period for which the Commission and Bureau have previously granted similar waivers.<sup>16</sup>

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<sup>16</sup> See *id.* ¶ 9.

**III. RELIEF SOUGHT**

ASTAC Wireless respectfully asks the Commission to vacate the *Order on Reconsideration* and grant ASTAC Wireless's petition for waiver as to the third quarter filing, resulting in payment of the full amount of high-cost support for that quarter (\$229,200).

Respectfully submitted,



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