

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

In the Matter of	)	
	)	
Petition 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
	)	
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 Wireline Competition Bureau:

**ASTAC WIRELESS LLC – CL PETITION FOR RECONSIDERATION**

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**Table of Contents**

INTRODUCTION AND SUMMARY ..... 3

I. FACTUAL BACKGROUND ..... 4

    A. ASTAC Wireless Serves Remote Alaska as a Small Company ..... 4

    B. Second Quarter 2015 Line Count Filing ..... 5

    C. The Third Quarter 2015 Line Count Report ..... 6

    D. The Bureau’s April 20, 2016 Order ..... 7

II. ASTAC WIRELESS MADE ITS THIRD QUARTER FILING WITHIN THE TIMEFRAME FOR WHICH THE FCC CONSISTENTLY GRANTS WAIVERS. .... 7

III. THE BUREAU SHOULD WAIVE THE SECOND QUARTER 2015 DEADLINE DUE TO THE COMPLEXITY OF USAC’S ELECTRONIC FILING SYSTEM ..... 9

IV. ASTAC WIRELESS HAS CONSISTENTLY FILED ON TIME AND HAS SINCE STRENGTHENED ITS FILING PROCEDURES ..... 10

V. GOOD CAUSE EXISTS TO GRANT THE WAIVER BASED ON ASTAC WIRELESS’S SIZE AND SIGNIFICANCE OF HIGH COST SUPPORT ..... 10

VI. RELIEF SOUGHT ..... 13

## ASTAC WIRELESS LLC – CL PETITION FOR RECONSIDERATION

### INTRODUCTION AND SUMMARY

Pursuant to Section 405 of the Communications Act of 1934 (“Act”) and Section 1.106 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 petition for reconsideration with the Wireline Competition Bureau (“Bureau”) of the Order<sup>2</sup> in which it denied ASTAC Wireless’s Petition for Waiver<sup>3</sup> of high cost support line count filing deadlines for the second and third quarters of 2015 under Section 54.307 of the Commission’s rules. ASTAC Wireless files this petition for reconsideration to ensure that its arguments have been fully presented to the Bureau.

The Bureau’s Order incorrectly conflated two separate late line count filings, which arose separately. This resulted in the Bureau denying ASTAC Wireless’s requested waiver for the third quarter 2015 filing, even though that request fell squarely within the Commission’s precedent. The Bureau’s Order with respect to the second quarter 2015 line count filing applies an overly strict penalty to a situation in which a newly-trained employee failed to correctly navigate USAC’s complex, multi-step electronic filing process for line counts. This situation could have been avoided had USAC flagged—as it does in other areas—to ASTAC Wireless that

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<sup>1</sup> 47 U.S.C. § 405; 47 C.F.R. § 1.106.

<sup>2</sup> *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, et al.*, Order, DA 16-432, WC Docket No. 08-71, CC Docket No. 96-45 (rel. Apr. 20, 2016) (“ASTAC Order” or “Order”).

<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”).

it had saved, but not certified the line counts. Both the second and third quarter 2015 line count filing mistakes were discovered in a three day period in October 2015 and promptly remedied. ASTAC Wireless then took steps to improve its internal procedures for future filings. For a small rural carrier bringing lifesaving wireless service to an extremely hard to serve area larger than 39 states, withholding \$320,655 in support based on ministerial errors is both unjust and contrary to the spirit of the Regulatory Flexibility Act.

## **I. FACTUAL BACKGROUND**

The Bureau's denial of ASTAC Wireless's Petition for Waiver suggests it did not clearly grasp the sequence of events in the second and third quarters of 2015, or the whole story of the service ASTAC Wireless provides as a small company. Because granting the petition is in the public interest, the Bureau should take any additional facts provided under consideration to understand the full picture.<sup>4</sup>

### **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—an area larger than Minnesota. 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. Among the areas ASTAC Wireless serves are the oil fields of Prudhoe Bay.

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<sup>4</sup> See 47 C.F.R. § 1.106(c)(2) (“[A] petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances: . . . The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.”).

Despite the vast geographic area and important need it serves for Alaskans, ASTAC Wireless is a small company. Arctic Slope Telephone Association Cooperative, Inc. (“ASTAC”) has a total of approximately 50 full time employee equivalents, with only eight administrative employees who are shared with ASTAC’s local, long distance, wireless and Internet access operations.<sup>5</sup> For the second quarter of 2015, the withheld high cost support would have been equivalent to 54 percent of ASTAC Wireless’s end user revenues, and for the third quarter of 2015, the withheld high cost support would have been equivalent to 118 percent of its end user revenues. All of this demonstrates the importance of the high cost support to small companies like ASTAC Wireless.

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. The second and third quarter 2015 filings—which were late for different, unrelated reasons—are aberrations.

#### **B. Second Quarter 2015 Line Count Filing**

Because ASTAC Wireless is so leanly staffed, prior to the second and third quarter of 2015, only one employee at ASTAC Wireless handled the FCC filings, with one approving officer certifying the forms at the appropriate time. To provide backup for that single employee, ASTAC Wireless started “cross-training” a second employee to learn additional systems, including the high cost filing requirements.

In June 2015, the employee in training filled out and saved the line count data and gave the form and support to the officer for review in advance of the second quarter deadline. But the employee in training did not understand that not only did the USAC electronic filing system

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<sup>5</sup> ASTAC, Inc. has just under 4,000 local voice lines (business and residential) in service.

require 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. The full form was completed on the USAC system, but the last steps did not happen to finish the process, and unfortunately the form simply sat in the USAC system.<sup>6</sup>

Four months elapsed before this error was discovered on October 10, 2015, when ASTAC Wireless did not receive its expected amount of support. The error was remedied on the same day. But as discussed below, even though the error was associated with the earlier line count filing, it was discovered three days *after* ASTAC Wireless discovered that it had failed timely to file the later, September 30, 2015 line count report.

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

With respect to the third quarter 2015 line count report, ASTAC Wireless failed timely to file that report because both the employee who had previously been handling the filing and the person trained as backup each thought the other was submitting the filing. Within seven days of the third quarter deadline, on October 7, 2015, the ASTAC Wireless employees discovered they had missed the deadline and quickly remedied it that same day. This was the first time ASTAC Wireless was aware of any issue with respect to any of its CETC line count filings.

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<sup>6</sup> The Bureau’s Order says that it was immaterial that the form was completed on the website prior to the deadline. But ASTAC Wireless’s attempt to file prior to the deadline—evidenced by the completed form in the system—was not finalized because the employee had a mistaken understanding of the online system. The Bureau has previously granted waivers when technical but preventable errors have delayed filings. *See Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(A)*, Order, DA 06-73, 21 FCC Rcd. 249, 252-53 ¶ 7 (Wireline Comp. Bur. 2006) (granting a waiver of a filing deadline where the data was filed on time and an acknowledgment of timely filed data was received that said the data would be forwarded to the appropriate party, but the ETC had mistakenly sent the filing to the former vendor).

Notably, both filing errors were discovered within three days of each other and remedied quickly. Unlike other instances previously considered by the Bureau, ASTAC Wireless could not have learned from its second quarter 2015 line count filing error to prevent its third quarter error, because it was not aware of the second quarter filing error at the time of the third quarter filing deadline. 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> ASTAC Wireless now timely files this Petition for Reconsideration.

## **II. ASTAC WIRELESS MADE ITS THIRD QUARTER FILING WITHIN THE TIMEFRAME FOR WHICH THE FCC CONSISTENTLY GRANTS WAIVERS.**

Because the Commission's precedent consistently grants waivers for filings made within fourteen days of the deadline,<sup>9</sup> at a minimum, the Bureau should grant the waiver for ASTAC

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<sup>7</sup> ASTAC Petition.

<sup>8</sup> ASTAC Order ¶ 9, 11-12.

<sup>9</sup> See *Universal Service High-Cost Filing Deadlines et al.*, Order, DA 08-2336, 23 FCC Rcd. 15,325, 15330 ¶ 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) ("MTAW Order"); *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).

Wireless missing the third quarter 2015 filing by a mere five business days. There is no question that 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 fails to address Bureau precedent of granting waivers for filings made within fourteen days of the deadline with respect to the third quarter filing. While it mentions that precedent in consideration of the *second* quarter filing, it glosses over the issue completely for the filing that was only five business days late.

The Order instead takes issue with the fact that ASTAC Wireless missed two consecutive deadlines. But the Bureau's disapproval, it seems, is couched in an assumption that missing two deadlines means a failure to remedy a problem the second time it happens. That was not the case here. At the time it missed the third quarter 2015 line count filing deadline, as far as it was aware, ASTAC Wireless had never missed a line count filing deadline and had never suffered a lapse in its line count filing procedures. It was not until three days *after* it had discovered and remedied the missed third quarter 2015 line count filing that ASTAC Wireless discovered that it had also had a problem with its second quarter 2015 line count filing. The April 2016 Order appears to have assumed that the second quarter 2015 filing error should have put ASTAC Wireless on notice of the need to strengthen its internal controls, but it could not have done so.

ASTAC Wireless therefore urges the Bureau—at a minimum—to reconsider its decision for the third quarter 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>10</sup>

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<sup>10</sup> See ASTAC Order ¶ 9.

**III. THE BUREAU SHOULD WAIVE THE SECOND QUARTER 2015 DEADLINE DUE TO THE COMPLEXITY OF USAC'S ELECTRONIC FILING SYSTEM.**

The Bureau should also find good cause to waive the filing deadline for ASTAC Wireless's second quarter 2015 line count filing because the complexity of USAC's electronic filing system creates a trap for the unwary into which ASTAC Wireless's trainee fell. This system is not at all simple for the first time user. A user can enter and save line count data into the electronic filing system, but that, by itself, does not count as filing. The user must also click a separate button to submit the data, and then an officer must separately enter the system to certify the data. While ASTAC Wireless had successfully navigated this system previously, and should have more closely monitored its trainee, the difficulty the trainee encountered is understandable.

Moreover, the data was timely sitting in USAC's servers. It would have been readily apparent to USAC that it had not received line counts for a study area for which it had always previously received line counts. Had USAC checked its system, it could have flagged the error to ASTAC Wireless for timely correction. While USAC does not have an affirmative duty to do this, an organization that sought to minimize inadvertent error, particularly by small carriers, could have done so—and in fact USAC does so with respect to other aspects of its programs.

The April 20, 2016 Order is unduly punitive, in that it uses ASTAC Wireless's unfortunate error with respect to completing all electronic filing steps to deny ASTAC Wireless both approximately \$91,000 in high cost support for lines reported in the second quarter 2015 report, and another \$229,000 in support for lines reported in the third quarter 2015 report. This is an excessive toll to extract from such a small error.

**IV. ASTAC WIRELESS HAS CONSISTENTLY FILED ON TIME AND HAS SINCE STRENGTHENED ITS FILING PROCEDURES.**

Because the missed deadlines represent an anomaly in ASTAC Wireless’s filing record, and ASTAC Wireless has since taken steps to remedy the filing, the Commission should find that good cause exists to grant the waiver for both deadlines. ASTAC Wireless’s missed deadlines here were the result of a training issue, but they both came to light within three days of each other. Even more significant, the issues here occurred while ASTAC Wireless was attempting to *improve* its internal procedures to ensure it had backup support for regulatory compliance. While this effort unfortunately led to the mistakes here, it was well-intentioned, and has led to even greater controls within the company.

The Bureau “has granted waiver requests based on commitments by carriers to revise their internal procedures in order to ensure that their filings will be accurately and timely submitted.”<sup>11</sup> ASTAC Wireless has since revised its procedures and has not missed a deadline since it revised them. Because ASTAC Wireless has “taken steps similar to those of other carriers that missed filing deadlines but were granted waivers of the missed deadlines by making changes to their filing processes,”<sup>12</sup> ASTAC Wireless asks the Bureau to reconsider its decision and give credit to ASTAC Wireless’s efforts to remedy its filing procedures.

**V. GOOD CAUSE EXISTS TO GRANT THE WAIVER BASED ON ASTAC WIRELESS’S SIZE AND SIGNIFICANCE OF HIGH COST SUPPORT.**

The Bureau’s Order also failed to give significant weight to important public interest arguments in ASTAC Wireless’s favor: (1) ASTAC Wireless’s size as a small business warrants

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<sup>11</sup> MTAW Order ¶ 10.

<sup>12</sup> *Id.*

regulatory flexibility consistent with U.S. policy supporting small businesses; and (2) the loss of \$320,655 is a substantial loss for a company of ASTAC Wireless’s size and subscriber revenue.

ASTAC Wireless is a small company serving the important need of providing service to rural, remote areas in Alaska. ASTAC Wireless faces continuous challenges to provide service and expand communications. Providing regulatory flexibility for small companies serves the public interest, a policy that is expressly established in the Regulatory Flexibility Act.<sup>13</sup> Indeed, Congress’s purpose in passing the Regulatory Flexibility Act provides important wisdom in dealing with small companies: “unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.”<sup>14</sup> Further, “the practice of treating all regulated businesses . . . as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation.”<sup>15</sup> Based on these findings, the Regulatory Flexibility Act encourages flexibility for small businesses to achieve “statutory goals . . . without imposing unnecessary burdens on the public.”<sup>16</sup> In the spirit of this important policy, the Bureau should take into consideration that ASTAC Wireless is not a large national corporate entity, but instead is a small cooperative serving the needs of remote Alaskans as efficiently and effectively as possible. The Bureau should not ignore this important circumstance in considering ASTAC Wireless’s waiver request.

Along similar lines, loss of high cost support for all or part of two quarters—nearly a third of the year’s support—has a substantially greater impact on a company the size of ASTAC

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<sup>13</sup> 5 U.S.C. §§ 601-12.

<sup>14</sup> 5 U.S.C. § 601 note (Congressional Findings and Declaration of Purpose).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Wireless. ASTAC Wireless's second quarter 2015 loss of support amounted to 54 percent of its subscriber revenues for the quarter. ASTAC Wireless's third quarter 2015 loss of support was a much higher amount, and 118 percent of its subscriber revenues. At the end of the year in particular, that is a significant loss for a small cooperative serving a challenging geographic area. While the Bureau's Order notes that any loss of revenue cannot be the basis for good cause because missing a deadline always results in lost revenue, ASTAC Wireless urges the Bureau to take a second look at the effect this loss has on a small business like ASTAC Wireless and the remote regions it serves, in light of the nature of the errors that occurred and were promptly remedied. In the spirit of U.S. policy supporting regulatory flexibility for small businesses, granting this waiver would serve the public interest.

**VI. RELIEF SOUGHT**

ASTAC Wireless respectfully asks the Bureau to reconsider the Order and grant ASTAC Wireless's petition for waiver in all respects, resulting in payment of the full amount of high cost support for the second quarter and third quarter (\$320,655).

Alternatively, ASTAC Wireless requests that the Bureau reconsider the Order 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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