

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal-State Board on Universal Service
Mid-Tex Cellular, Ltd. Petition for Waiver of the
FCC's Universal Service Rules
CC Docket No. 96-45

ORDER ON RECONSIDERATION

Adopted: April 20, 2016

Released: April 20, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition for reconsideration filed by Mid-Tex Cellular, Ltd. (Mid-Tex). We conclude that Mid-Tex has failed to present any argument warranting reconsideration of the decision of the Wireline Competition Bureau (Bureau) to deny Mid-Tex's petition for waiver of a high-cost filing deadline.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [(ETC)] designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support." Support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." For many years, the Commission has relied upon various certification and data filing requirements to implement this statutory requirement. The specific certifications at issue in this case have been largely superseded by the uniform framework for accountability that the Commission adopted in the USF/ICC Transformation Order.

3. Prior to the USF/ICC Transformation Order, an ETC was required to file a certification with the Universal Service Administrative Company (USAC) and the Commission pursuant to section 54.904(a) of the Commission's rules to receive Interstate Common Line Support (ICLS), among other

1 47 CFR § 1.106; Mid-Tex Cellular, Ltd. Petition for Reconsideration, CC Docket No. 96-45 (filed Jan. 26, 2007) (Mid-Tex Petition for Reconsideration).

2 See Federal-State Joint Board on Universal Service; Mid-Tex Cellular, Ltd. Petition for Waiver of the FCC's Universal Service Rules, Order, 21 FCC Rcd 14931 (WCB. 2006) (Mid-Tex Waiver Order).

3 47 U.S.C. § 254(e).

4 Id.

5 In 2011, the Commission eliminated the ICLS line count reporting and certification requirements for most carriers and adopted a new uniform framework for accountability. Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17849-62, paras. 569-614 (2011) (USF/ICC Transformation Order and/or FNPRM) aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014). Certain competitive ETCs serving remote areas in Alaska remain subject to the ICLS line count reporting requirements. 47 CFR § 54.307(e)(7); USF/ICC Transformation Order, 26 FCC Rcd at 17835-36, para. 529.

requirements. That certification had to state that all ICLS received by the ETC would “be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁶ This certification had to be filed with USAC and the Commission on the date that the ETC first filed its line count data, and thereafter on June 30 of each year.⁷ The Commission adopted a mechanism for accepting untimely filed ICLS certifications, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed.⁸

4. *Mid-Tex’s Petition for Reconsideration.* On December 28, 2006, the Bureau granted in part and denied in part Mid-Tex’s petition seeking waiver of several high-cost filing deadlines, including the ICLS certification deadline.⁹ Mid-Tex did not file its ICLS certification that was due on September 9, 2005 until November 23, 2005. Mid-Tex claimed that it failed to file its ICLS certification on time because it “was overwhelmed and confused by the numerous unfamiliar filings associated with its nascent ETC status” and relied on the advice of its regulatory consultant.¹⁰ The Bureau held that Mid-Tex had not demonstrated that there was good cause to waive the filing deadline because confusion does not constitute special circumstances.¹¹ Mid-Tex filed a petition for reconsideration claiming that the Bureau’s decision was inconsistent with precedent. Mid-Tex also argues that the Bureau’s decision was “arbitrary and capricious” because it did not consider all the relevant facts regarding the potential consumer harm of denying the waiver and that the Bureau did not provide “any rationale or satisfactory explanation” for its decision to deny the waiver.¹²

III. DISCUSSION

5. We conclude Mid-Tex has failed to present any arguments warranting reconsideration of the Bureau’s denial of Mid-Tex’s petition for waiver.¹³ Accordingly, we deny Mid-Tex’s petition for reconsideration.¹⁴ We disagree with Mid-Tex’s claim that the Bureau’s decision “abandon[ed]” Commission precedent in denying Mid-Tex’s petition for waiver of the filing deadline.¹⁵ The Bureau’s

⁶ 47 CFR § 54.904(a).

⁷ 47 CFR § 54.904(d).

⁸ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*; Second Report and Order et al., 16 FCC Rcd 19613, 19688, para. 176 (2001) (subsequent history omitted).

⁹ See generally *Mid-Tex Waiver Order*, 21 FCC Rcd 14931.

¹⁰ *Mid-Tex Cellular, Ltd. Petition for Waiver of the Commission’s Universal Service Rules*, CC Docket No. 96-45, at 8 (filed December 20, 2005) (*Mid-Tex Petition for Waiver*).

¹¹ *Mid-Tex Waiver Order*, 21 FCC Rcd at 14933, para. 10.

¹² *Mid-Tex Petition for Reconsideration* at 4-8.

¹³ Generally, the Commission’s rules may be waived for good cause shown. 47 CFR § 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 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 appropriate 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.

¹⁴ See 47 CFR § 1.106 (permitting the Bureau to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority).

¹⁵ *Mid-Tex Petition for Reconsideration* at 8. We note that the Commission subsequently concluded in 2014 that it would require strict adherence to filing deadlines for the new regime of certifications adopted in the *USF/ICC*

(continued....)

finding that Mid-Tex did not demonstrate that it missed the filing deadline due to special circumstances is consistent with well-established precedent in the high-cost context and in other universal service programs that “confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission’s rules.”¹⁶

6. Despite Mid-Tex’s claims in its petition for reconsideration, we are also not persuaded that special circumstances exist because Mid-Tex would need to delay or stop certain planned upgrades or raise its rates as a result of the reduction in its ICLS support.¹⁷ Mid-Tex cites a number of Bureau decisions where the Bureau granted waivers of high-cost filing deadlines based, in part, on the amount of funding at stake.¹⁸ However, those petitioners presented additional facts, not present here, that helped establish good cause to grant those waiver petitions. For example, some of the orders that Mid-Tex cites involved situations where the ETC filed the late filing soon after the deadline,¹⁹ where the ETC stood to lose an entire year of Local Switching Support as a result of missing the filing deadline,²⁰ where the ETC had taken steps to make the filing, but filed the wrong certification,²¹ or where the ETC was emerging

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Transformation Order. December 2014 Connect America Order, 29 FCC Rcd at 15693, para. 138. Under that standard, we would deny the waiver request. In this order on reconsideration, we apply the precedent that pre-dates this Commission decision.

¹⁶ *South Slope Cooperative Telephone Company, Federal-State Joint Board on Universal Service; South Slope Cooperative Telephone Company Petition for Waiver of Filing Deadline in 47 C.F.R. Section 54.307(c)*, Order, 19 FCC Rcd 17493, 17494, para. 5 (WCB 2004) (*South Slope Order*); *Federal-State Joint Board on Universal Service et al.*, Order, 22 FCC Rcd 4946, 4949, para. 7 (WCB 2007). See also *Federal-State Joint Board on Universal Service FiberNet, LLC Petition for Waiver of 54.307(c) of the Commission’s Rules and Regulations*, Order, 19 FCC Rcd 8202 (WCB 2004) (*FiberNet Order*) (finding that “it is the responsibility of the ETC to plan accordingly so it is in a position to assure that its submissions are filed in a timely manner” and noting that “[o]therwise, recently designated ETCs could seek to circumvent program rules by merely alleging that they do not have prior experience with . . . filing procedures”); *Requests for Waiver by Freehold Regional High School District Englishtown, New Jersey et al.*, Order, 19 FCC Rcd 2983, 2985, para. 4 (WCB 2004) (denying a petition for waiver in the E-rate context after finding that “[c]onfusion by an applicant does not constitute special circumstances for a waiver . . .”).

¹⁷ Mid-Tex Petition for Reconsideration at 4. We note that Mid-Tex certified in its most recent annual report that its rates complied with the Commission’s reasonably comparable benchmark. See Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-58 (filed June 12, 2015) (filing FCC Form 481 on behalf of Mid-Tex Cellular Ltd.).

¹⁸ Mid-Tex Petition for Reconsideration at 4-8.

¹⁹ *Federal-State Joint Board on Universal Service; NPCR, Inc. Petition for Waiver of Section 54.802(A) of the Commission’s Rules*, Order, 22 FCC Rcd 560, 562, para. 6 (WCB 2007) (*NPCR Order*) (filing one business day after the deadline); *Federal-State Joint Board on Universal Service; Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, Order, 20 FCC Rcd 16761, 16763, para. 7 (WCB 2005) (filing two business days after the deadline); *Federal-State Joint Board on Universal Service; FiberNet, LLC Petition for Waiver of FCC Rule Section 54.307(c)(4)*, Order, 20 FCC Rcd 20316, 20317-18, para. 6 (WCB 2005) (filing within five business days of the deadline); *Federal-State Joint Board on Universal Service; Verizon Communications Inc. Petition for Waiver of Section 54.802(A) of the Commission’s Rules*, Order, 21 FCC Rcd 10155, 10157, para. 9 (WCB 2006) (filing two business days after the deadline).

²⁰ *Federal-State Joint Board on Universal Service; Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, 19 FCC Rcd 8891, 8892-93, para. 5 (WCB 2004) (finding the loss of funding for an entire year may affect the rates customers will be charged, which is not in the public interest); *Federal-State Joint Board on Universal Service et al.*, Order, 20 FCC Rcd 18250, 18253, para. 8 (WCB 2005) (finding that loss of funding for an entire year has a much greater impact on a small carrier’s capacity to ensure access to broadband service).

²¹ *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)*, Order, 21 FCC Rcd 14937, 14938, para. 4 (WCB 2006) (filing the high-cost use certification instead of its ICLS certification inadvertently).

from bankruptcy.²² In contrast, here, Mid-Tex simply missed the deadline because it was confused about the deadline and did not file until more than two months later.²³

7. We are not persuaded by Mid-Tex's claim that the Bureau was arbitrary and capricious because it "ignor[ed] Mid-Tex's public interest arguments."²⁴ Because the Bureau must find that both "special circumstances warrant a deviation from the general rule" and that "such deviation will serve the public interest" for there to be good cause to waive a filing deadline, the Bureau's finding that special circumstances did not exist was sufficient grounds for denying Mid-Tex's petition.²⁵ Nevertheless, we are not persuaded that it would serve the public interest to grant Mid-Tex's waiver petition. While we acknowledge that the Commission *may* take into account considerations of hardship or equity in determining whether there is good cause to waive a rule,²⁶ we are not persuaded that the impact of the loss of support alone constitutes good cause to grant the waiver petition. As explained above, where the Bureau has found that the public interest would be served by granting a waiver petition, the Bureau has typically relied on other facts in addition to the hardship caused by a reduction in support in making that finding. If we were to hold that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support, that would effectively negate the public interest requirement, as this criterion would be met any time failure to meet a filing deadline resulted in reduced support.²⁷

8. Moreover, while we acknowledge that USAC has a mechanism in place for true-ups of ICLS support, we disagree with Mid-Tex's claims that USAC would not be burdened if we waived the filing deadline.²⁸ Simply put, this line of argument is irrelevant. The Bureau has consistently enforced line count and certification deadlines absent a finding of special circumstances due to the tremendous amount of data that USAC processes each year.²⁹

9. Finally, we disagree with Mid-Tex's claims that by denying Mid-Tex's waiver petition we are undermining the Commission's universal service rules.³⁰ By enforcing filing deadlines we ensure that all ETCs timely receive the universal service support they are eligible to receive. Because Mid-Tex has not presented any arguments warranting reversal of our prior decision, we deny its petition for reconsideration.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 5 (c), 201, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i),

²² *Federal-State Joint Board on Universal Service; MCI, Inc. Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules*, CC 96-45, Order, 21 FCC Rcd 14926, 14928-29, para. 7 (WCB 2006) (finding a loss of funding to be excessive given that the company had recently emerged from bankruptcy).

²³ Mid-Tex Petition for Waiver at 3.

²⁴ *Id.* at 8.

²⁵ See *Northeast Cellular*, 897 F.2d at 1166; *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citation omitted) ("[B]efore the FCC can invoke its good cause exception, it *both* 'must explain why deviation better serves the public interest, and articulate the nature of the special circumstances . . .'" (citing *Northeast Cellular*, 897 F.2d at 1166).

²⁶ Mid-Tex Petition for Reconsideration at 4 (citing *Wait Radio*, 418 F.2d at 1159).

²⁷ See also *Coral Wireless d/b/a Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542, para. 8 (WCB 2014).

²⁸ Mid-Tex Petition for Reconsideration at 8; Mid-Tex Petition for Waiver at 12.

²⁹ See, e.g., *FiberNet Order*, 19 FCC Rcd at 8204, para. 5; *South Slope Order*, 19 FCC Rcd at 17494, para. 5; *NPCR Order*, 22 FCC Rcd at 561, para. 6.

³⁰ Mid-Tex Petition for Reconsideration at 8; Mid-Tex Petition for Waiver at 5-7.

155(c), 201, 254, and 405, and sections 0.91, 0.291, 1.3, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 1.106, Mid-Tex Cellular, Ltd.'s Petition for Reconsideration is DENIED.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau