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

2001 JAN 11 A 11: 50

In the Matter of)
)
Federal-State Joint Board On)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association)
)
Petition for Waiver of Section 54.709(a)(3))
of the Commission's Rules and Regulations)

CC Docket No. 96-45 RECEIVED

CC Docket No. 97-21 ✓

MEMORANDUM OPINION AND ORDER

Adopted: January 9, 2001

Released: January 10, 2001

By the Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant the petition of the Universal Service Administrative Company (USAC) for a limited waiver of the quarterly filing requirements of section 54.709(a)(3) of the Commission's rules,¹ to permit USAC to file its financial projections for second quarter 2001 one week late.² We find that good cause exists to permit USAC to file its second quarter 2001 financial projections on or before February 6, 2001.

II. BACKGROUND

2. Contributions to the federal universal service support mechanisms are determined using a contribution factor calculated by the Commission.³ Each quarter, the Commission

¹ 47 C.F.R. § 54.709(a)(3).

² *Universal Service Administrative Company (USAC), Petition for Waiver of Section 54.709(a)(3) of the Commission's Rules and Regulations*, filed Dec. 14, 2000 (Petition).

³ See 47 C.F.R. § 54.709(a). The Commission shall calculate the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to total end-user interstate and international telecommunications revenues. 47 C.F.R. § 54.709(a)(2).

revises the contribution factor based on USAC's quarterly filing, which contains projections of demand for universal service programs and administrative expenses for the following quarter. USAC is required to submit these projections at least 60 days prior to the start of that quarter.⁴ During the 60-day period, the Commission reviews the information and calculates a revised contribution factor, which is then announced in a public notice.⁵

3. USAC seeks a limited waiver of the quarterly filing deadline to enable it to file its projections for the second quarter of 2001 one week late. It explains that, prior to submitting its quarterly filings, USAC's Committees and Board of Directors must meet in Washington, D.C. to review and approve the projected program requirements, funding base, and administrative expenses to be included in the filing.⁶ Typically, these meetings are scheduled the week of, or the week immediately prior to, the filing date. USAC states that the filing for the second quarter 2001 is due on January 30, 2001 and that scheduling a meeting in Washington, D.C. during the week prior to this date will be difficult due to the Presidential inauguration events taking place around the same time.⁷ USAC also states that it does not believe that any party will be prejudiced by a one-week delay in this filing because there will still be ample time available for the Commission and interested parties to review the projected funding requirements prior to the contribution factor becoming effective on April 1, 2001.⁸

III. DISCUSSION

4. We find that USAC has demonstrated good cause to waive the filing deadline. Accordingly, we grant a limited waiver to permit USAC to file its financial projections for second quarter 2001 one week late, on or before February 6, 2001.

5. Generally, the Commission's rules may be waived for good cause shown.⁹ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on

⁴ 47 C.F.R. § 54.709(a).

⁵ 47 C.F.R. § 54.709(a)(3). If the Commission takes no action within 14 days of the date of release of the public notice, the contribution factor shall be deemed approved by the Commission.

⁶ See Petition at 1.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert.denied*, 409 U.S. 1027 (1972).

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

an individual basis.¹² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹³

6. We find that USAC has shown good cause to grant a one-week extension under the circumstances indicated. We also find that no harm will result from permitting USAC to file its projections one week late for this quarter. The 60-day period ensures that the Commission has sufficient opportunity to review the information filed by USAC and to calculate the contribution factor. We find that truncating the review period to 53 days in this instance will not result in any harm to the administration of the fund. We also note that, in the three years since USAC has administered the universal service support mechanism, this is the first time USAC has asked the Commission for an extension of the filing deadline. Finally, we conclude that it is in the public interest to grant USAC's waiver. USAC expects that shifting their meeting dates will decrease administrative costs.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by the Universal Service Administrative Company on December 14, 2000 is GRANTED.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Katherine L. Schroder
Chief, Accounting Policy Division
Common Carrier Bureau

¹² *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹³ *WAIT Radio*, 418 F.2d at 1159.