

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
)	
RCC MINNESOTA, INC.)	
)	CC Docket No. 96-45
Petition for Waiver of)	
Sections 54.313 and 54.314)	
of the Commission's Rules)	

SUPPLEMENT AND ERRATUM TO PETITION FOR WAIVER

RCC Minnesota, Inc. ("RCC"), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. § 1.925(b), hereby submits this Supplement and Erratum ("Supplement") to its Petition for waiver of Sections 54.313 and 54.314 of the Commission's rules ("Petition"), which RCC submitted on July 11, 2003. Specifically, in addition to the waivers requested in its Petition, RCC requests a waiver of the High-Cost Loop Support ("HCLS"), Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS") line-count filing deadlines set forth, respectively, in Sections 54.307(c), 54.802(a), and 54.903(a)(2) of the Commission's rules, 47 C.F.R. §§ 54.307(c), 54.802(a), and 54.903(a)(2). Additionally, RCC corrects an erroneous date reference on page 7 of its Petition. In support of this Supplement, the following is respectfully shown:

I. BACKGROUND

RCC was designated as an eligible telecommunications carrier ("ETC") by the Washington Utilities and Transportation Commission ("WUTC") on August 14, 2002. Because of the timing of RCC's designation, the WUTC's timely high-cost certification on or before October 1, 2002, only entitled RCC to begin receiving support in January 2003 under the FCC's

rules. Accordingly, RCC submitted its recent Petition requesting a waiver of the FCC's high-cost certification deadlines, consistent with the FCC's recent *RFB Waiver Order*,¹ to permit it to receive support as of the date it became an ETC.

Subsequent to filing the Petition, RCC was advised by FCC staff that, in addition to a waiver of the applicable certification deadlines, a waiver of line-count filings would be necessary for the company to be eligible for support as of its designation. This additional waiver is needed because of the schedule set forth in the FCC's rules, which, like the certification rules, require filings to be made several months before the time period for which support is to be received. For example, to receive high-cost loop support for the first quarter of 2003, an ETC must submit line counts by September 30, 2002. To receive support for the third and fourth quarters of 2002, an ETC must submit line counts by March 30, 2002. Thus, even if a carrier begins filing line counts immediately upon its designation as an ETC, the carrier must endure a gap of three months or more during which it provides the supported services but receives none of the support to which it is entitled.

RCC began submitting line counts while its ETC designation was still pending, when it first discovered that its future support payments would depend upon line counts filed well in advance. However, in order to receive support as of the date of its designation, it would have to have started filing line counts on March 30, 2002 — a virtual impossibility, considering RCC did not even apply for ETC status until June. Because of the rules conditioning the payment of support on line-count submissions it could not reasonably be expected to make, RCC began receiving support only as of January 1, 2003. Accordingly, unless the FCC grants a waiver of the

¹ See *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 02-3316 (WCB rel. Dec. 4, 2002) ("*RFB Waiver Order*").

applicable line-count deadlines that passed prior to RCC's designation, RCC will forgo high-cost support for its provision of universal service between August 14, 2002, and December 31, 2002.

Upon a grant of the waivers sought in this Supplement, RCC will submit line counts covering the applicable time periods for the deadlines it could not meet because of the timing of its designation. RCC requests that the FCC direct the Universal Service Administrative Company ("USAC") to accept those line counts *nunc pro tunc* and incorporate the retroactive support into its regular payment schedule.

II. ARGUMENT

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may grant a waiver of the application of any of its rules for "good cause shown." In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

While rules are generally presumed valid,² federal courts have emphasized that the Commission may waive a rule where the specific facts make strict compliance with the rule inconsistent with the public interest.³

Strict application of Sections 54.307(c), 54.802(a), and 54.903(a)(2) to the instant case would be contrary to the public interest. The rules tying high-cost support payments to the filing

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

³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

of line counts several months before designation would have been virtually impossible to comply with, and, absent a waiver, will effectively nullify the WUTC's designation of RCC through the last third of 2002. Moreover, RCC is offering universal service to subscribers in Washington, and is actively working with the WUTC to advance Lifeline and Link-up support in the state. Given that RCC is taking on the responsibilities of an ETC, it would be grossly unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request, and consumers in rural Washington who are expecting rapid deployment of facilities would be harmed by its denial.

The denial of support that would result from strict application of Sections 54.307(c), 54.802(a), and 54.903(a)(2) would be inconsistent with the Commission's goal of competitive neutrality, which the Commission has stressed as a "fundamental principle of the Commission's universal service policies."⁴ Additionally, the Commission has repeatedly recognized that designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas.⁵ For newly designated ETCs, prompt commencement of high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. Since the majority of

⁴ *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003) ("Guamcell Waiver Order").

⁵ *See, e.g., Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18137 (2001) ("Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies."); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000) ("[C]ompetition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers . . . by creating incentives to ensure that quality services are available at 'just, reasonable, and affordable rates.'") (footnote omitted).

newly designated ETCs are competitive carriers, strict enforcement of Sections 54.307(c), 54.802(a), and 54.903(a)(2) would unfairly handicap new entrants, including carriers offering services using new technologies.

Furthermore, the Commission has granted similar requests in the past.⁶ Specifically, similar to the instant situation, the Commission granted to RFB Cellular, Inc. (“RFB”) a limited waiver of, *inter alia*, the line-count filing deadlines in Section 54.307(c) of the Commission’s rules in order to allow RFB to begin receipt of high-cost universal service support from the date on which it received its ETC designation.⁷ In deciding to grant RFB’s waiver request, the Commission agreed that denying high-cost support to the newly-designated ETC merely because of the timing of its ETC designation would undermine the FCC’s well-established goal of competitive neutrality for universal service.⁸ Additionally, in discussing RFB’s request for a waiver of the high-cost certification requirements, the FCC emphasized that, while the rule tying receipt of support to previous filings is intended to provide USAC with sufficient time to process the certifications before payment, the “special circumstances” of an ETC being designated after a filing deadline “outweigh any processing difficulties that USAC may face as a result of the late-filed certification.”⁹

The same special circumstances are present in the instant case. As with RFB, RCC seeks a limited waiver of the line-count filing deadlines that occurred prior to the company’s designation as an ETC. As with that case, RCC could not reasonably have been expected to meet

⁶ *In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, CC Docket 96-45, DA 01-1911 (Released August 15, 2001).

⁷ *See RFB Waiver Order, supra*, at ¶ 10.

⁸ *See id.*

⁹ *See id.* at ¶ 8.

the March 29, 2002, June 28, 2002, or July 31, 2002, line-count filing deadlines because the company had not yet been granted, and in some cases had not even applied for, ETC status.¹⁰ In the *RFB Waiver Order*, the Commission concluded that “[i]t would be onerous . . . to deny an ETC receipt of universal service support for an entire quarter” simply because its designation occurred after the filing deadlines upon which its receipt of support was conditioned.¹¹ In the instant case, denial would be even more onerous for RCC because it would forgo not just one quarter, but more than four months of high-cost support.¹² As the Commission found with respect to RFB, RCC “should not be penalized as a result of the timing of its ETC designation.”¹³

III. REQUEST FOR EXPEDITED ACTION

Because RCC is a cellular carrier serving only sparsely populated areas in Washington, both forms of support are critically important to RCC’s operations. Such support assists RCC in providing a quality universal service offering to underserved rural communities. It would be extreme and inequitable to penalize RCC — and to hinder a state’s efforts to promote the development and improvement of telecommunications infrastructure for its citizens — by strictly applying rules that are impossible for states and competitive carriers to comply with. RCC requests expedited action on this Petition in order to ensure that consumers experience the benefits that were intended to result from RCC’s designation sooner, rather than later. RCC has made substantial commitments to construct additional facilities in Washington’s rural and high-

¹⁰ *Id.*

¹¹ *Id.*

¹² See *Guamcell Waiver Order, supra*, at ¶ 6. See also *Connecticut Department of Public Utility Control, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Rural Carriers*, CC Docket No. 96-45, DA 02-3046 at ¶ 7 (Tel. Acc. Pol. Div. rel. Dec. 11, 2002).

¹³ *RFB Waiver Order* at ¶ 9.

cost areas. In the absence of expedited action, RCC may be forced to delay system construction and upgrades planned for 2003 based on anticipated high-cost universal service support.

IV. ERRATUM

RCC hereby submits an Erratum to correct an error on page 7 of its Petition. Specifically, on the third line of the Conclusion section, “July 14, 2002” should be changed to “August 14, 2002”. This error was merely typographical and its correction does not change the substance of the Petition, which otherwise contains the correct date references.¹⁴

V. CONCLUSION

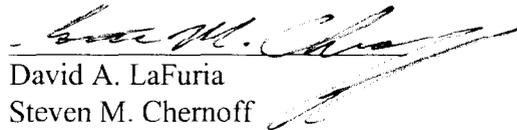
For the reasons stated herein, RCC submits that granting a waiver of the filing deadlines set forth in Sections 54.307(c), 54.802(a), and 54.903(a)(2) of the Commission’s rules to allow RCC to receive high-cost universal service support beginning as of August 14, 2002, is appropriate, consistent with the Commission’s statutory goal of preserving and advancing universal service, and will serve the public interest. Expedited action is requested to minimize delays in construction and upgrading of infrastructure and provision of quality competitive service to consumers in Washington’s rural and high-cost areas. Without such support, RCC may be forced to slow the construction of planned system upgrades, which would ultimately punish consumers. RCC is entitled to high-cost support and such funding will enable RCC to invest in its network and improve and expand its cellular network in Washington.

¹⁴ See Petition at p. 3 (“Without a grant of this Petition, RCC will forgo high-cost support for its provision of universal service between August 14, 2002, and December 31, 2002.”)

Respectfully submitted,

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August 19, 2003

CERTIFICATE OF SERVICE

I, Janelle T. Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 19th day of August, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Supplement and Erratum filed today to the following:

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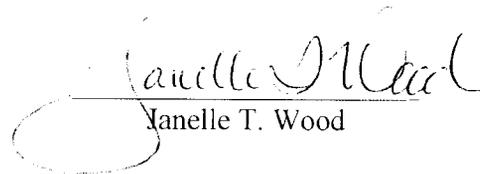
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