

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

JUL - 8 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Request for Review by the Frontier ILECs of a)
Decision of the Universal Service)
Administrator)
)
Federal-State Joint Board on Universal Service)
)
)

CC Docket No. 96-45

**CITIZENS COMMUNICATIONS AND FRONTIER COMMUNICATIONS
REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATOR AND
PETITION FOR WAIVER OF FCC RULE SECTION 54.802(a)**

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July 8, 2005

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To the Wireline Competition Bureau:

**REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE
ADMINISTRATOR AND
PETITION FOR WAIVER OF FCC RULE SECTION 54.802(a)**

Pursuant to sections 1.3 and 54.719-54.724 of the Commission's rules,¹ Frontier Communications, on behalf of the thirty-one (31) Citizens Communications and Frontier Communications ILECs identified in Exhibit 1 attached hereto (hereinafter "Frontier ILECs" or "Frontier"),² respectfully submit this Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver of the June 30, 2005 deadline in section 54.802 of the Commission's rules³ for filing line count data for Interstate Access Support ("IAS") for the second quarter 2005. Since 2000, the Frontier ILECs have timely filed for and received IAS Universal Service Funding. Most recently, during the second quarter of 2005, the Frontier ILECs received approximately \$9.6 million in IAS funding. Due to special circumstances, the Frontier ILECs missed the deadline prescribed in section 54.802 by two business days. As described

¹ 47 C.F.R. §§ 1.3, 54.719-54.724.

² The ultimate parent company of each of the price cap ILECs identified in Exhibit 1 is Citizens Communications Company.

³ 47 C.F.R. § 54.802.

herein, a waiver of the filing deadline is justified, and USAC's decision denying funding should be reversed.

BACKGROUND

Section 54.802 requires ETCs providing service in price cap areas to submit to USAC, **on a quarterly basis on the last business day** of March, **June**, September and December of each year, line count data showing the number of lines it serves for the period ending three months prior to the reporting date. The Frontier ILECs are "price cap" incumbent local exchange carriers and have been designated as Eligible Telecommunications Carriers ("ETC's) in their respective study areas. Since 2000, the Frontier ILECs have timely filed 40 ILEC quarterly reports to the Universal Service Administrative Company ("USAC").

On March 28th and March 30th, 2005,⁴ the Frontier ILECs collectively submitted their timely line count report for the lines served as of December 31, 2005. Per section 54.802(a), the Frontier ILECs were required to file another line count report on June 30, 2005 reflecting lines served as of March 31, 2005.⁵ The Frontier ILECs submitted the line count report two business days later,⁶ on Tuesday, July 5th, immediately upon discovering that the line count report had not been timely filed.

On that same day, July 5, 2005, USAC responded by e-mail that, while it had received the Frontier ILEC's IAS line count report, the lines would be considered ineligible for the purpose of receiving IAS universal service support because the line count report was not

⁴ Frontier historically has filed its Frontier ILEC and Citizens ILEC line count reports separately each quarter.

⁵ The June 30 filing reflects the number of lines served for January through March of the current year.

⁶ The filing deadline, June 30, fell on a Thursday. Monday, July 4, was a holiday. The Frontier ILECs made their filing on Tuesday, July 5 – i.e., two business days late. See 47 C.F.R. § 1.4(e)(1).

received by June 30, 2005.⁷ The Frontier ILECs contacted USAC representatives on the morning of July 6, 2005 and USAC indicated that support could be provided based on that quarterly filing only in the event the Commission granted a waiver of the filing deadline.⁸

DISCUSSION

Pursuant to sections 54.719-54.724, parties aggrieved by actions of the universal service Administrator may seek review of such actions.⁹ Pursuant to section 1.3 of its rules, the Commission may waive any of its rules, in whole or in part, if there is good cause to do so.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ The Commission has, on several occasions, waived reporting deadlines for USF recipients when it found that “special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”¹² In considering such cases, the Commission also takes into account “considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”¹³ Because

⁷ See Exhibit 2.

⁸ The USAC website explains: “IAS must be received at USAC by March 31, 2005. If the line count filing is received after the filing date, a petition for waiver will need to be filed with the FCC. Because USAC is not authorized to waive filing deadlines, only the FCC’s grant of a waiver will permit USAC to use your March line counts to calculate high cost support.” See <http://www.universalservice.org>.

⁹ 47 C.F.R. §§ 54-719-54.724. Where, as here, no new or novel questions are presented, the petition will be acted on by the Wireline Competition Bureau within 90 days. 47 C.F.R. §§ 54.722, 54.724.

¹⁰ 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”).

¹¹ See *In the Matter of Smithville Telephone Company, Inc.*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891, 8892 (WCB 2004); see also *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)(stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

¹² *Smithville Telephone Company*, 19 FCC Rcd at 8892.

¹³ *Id.*

conditions justifying a waiver are present in this case, the Commission should direct USAC to accept the Frontier ILECs' line count submission for the second quarter 2005.

The two-day delay in Frontier's filing resulted from special circumstances warranting a deviation from the general rule. As evidenced by the fact that Frontier has consistently filed its line counts on time for several years, Frontier had established internal oversight procedures to ensure timely filings. However, during the two weeks immediately prior to the filing due date, Frontier implemented a corporate reorganization that directly affected the personnel responsible for the line count filing. The quarterly line count filing, which previously had been handled by the Frontier Regulatory group, was transferred to the Frontier Accounting organization as part of the reorganization. Certain employee positions were eliminated in the reorganization, and responsibilities were reassigned and expanded for several employees, including the employee responsible for the quarterly line count filing. As a result of these restructuring efforts at the end of June, the internal oversight procedures used to ensure timely line count report filings were not followed.¹⁴ These circumstances led to the two-day delay in the Frontier ILECs' line count filings.

Frontier takes this lapse seriously and has taken actions to minimize the likelihood of a recurrence. Frontier has issued an internal directive clarifying organizational responsibility for ensuring that the filing is made, and Frontier has established an improved internal calendar system to ensure all periodic reports are filed on a timely basis. Frontier will also implement cross-functional oversight responsibility to ensure timely filings and will undertake efforts to file the required line count data two to four weeks before the due date. Finally, Frontier has

¹⁴ Moreover, in the past the Frontier employee responsible for the line count filing has received a reminder email from USAC prior to the due date, the employee received no such email this quarter. In addition, as of the date of this filing, USAC's website still shows the prior, March 30, 2005 filing date for IAS line counts. See www.universalservice.org ("Important Notices," "Quarterly Line Count Reports Due March 30") included in Exhibit 3.

requested its outside counsel to provide the Company with quarterly filing deadline reminders on a going forward basis.

A deviation from the general rule will serve the public interest by advancing the statutory goal of ensuring the provision of high-quality services at affordable and reasonably comparable rates to rural customers. Frontier is a rural carrier that provides high quality service in high cost areas in more than 41 study areas. Each of the 31 Frontier ILECs rely upon IAS universal service support to provide affordable telecommunications services to its customers. Without the waiver, the Frontier ILECS faces the loss of \$9.6 million in funding during the third quarter of 2005 that is used to provide affordable service to over 1.4 million customer lines in 19 states. This sum represents over fifteen percent (15%) of Frontier ILECs' planned average quarterly capital expenditures on telephone infrastructure and services. Thus, loss of this support will substantially undermine Frontier's ability to invest in its telecommunications network, which is largely located in high cost, rural areas.

A waiver also is supported by considerations of hardship and equity. The loss of \$9.6 million in support would be an excessive penalty for the submission of a filing only two business days late.¹⁵ Conversely, grant of the requested waiver will not disrupt the universal service payments received by other companies or impose undue administrative burdens on USAC. USAC has informally indicated to Frontier ILECs that it will incorporate Frontier's line count data for its internal funding and reporting calculations. Thus, grant of this waiver will not require USAC to expend additional resources or delay USAC's administration of the universal service fund. In addition, allowing USAC to use the June 30, 2005 line count will not adversely impact

¹⁵ Frontier will have learned a costly economic lesson even if its waiver request is granted and the \$9.6 million is paid to Frontier. Using even a 3% per annum interest rate, Frontier estimates that the delay in receiving this support, directly attributable to Frontier's failure to timely file, may cost Frontier more than \$20,000 a month based on the lost time value of the \$9.6 million.

the level of funding received by any other ETC. While the Frontier ILECs recognize the administrative imperative to ensure that carriers meet line count filing deadlines absent special circumstances, rote application of the rule in this case would result in inequity and unnecessary hardship to the Frontier ILECs and their rural customers.

As a further factor supporting a waiver, until last week's deadline, Frontier had a spotless record of timely USAC filings. Since the inception of the CALLS plan and the availability of IAS support, the Frontier ILECs have consistently submitted quarterly line count reports pursuant to section 54.802(a) on a timely basis. In addition, Frontier has consistently filed its annual certification with USAC pursuant to section 54.809 stating that all interstate access universal service support will be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁶

Finally, for a public company like Frontier, uncertainty about the immediate discontinuance of an existing revenue stream of this magnitude (\$9.6 million) can create issues related to required financial reports and public disclosures. In order to resolve these uncertainties as quickly as possible and minimize the potential adverse impact associated with Frontier's quarterly reporting to the financial markets, Frontier respectfully requests the Commission to expeditiously grant this petition.

CONCLUSION

Frontier profoundly regrets that it inadvertently filed its line count two days late, and has taken steps to ensure that future filings are timely. Good cause exists to waive the June 30, 2005 deadline for filing line count reports required by 42 C.F.R. § 54.802(a). As discussed above, the

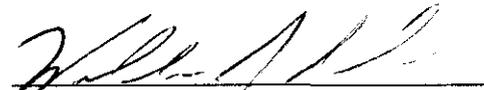
¹⁶ Price cap LECs must file a certification with the Commission and USAC stating that all interstate access universal service support will be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In contrast to the quarterly line report, the certificate is only filed annually.

late filing resulted from special circumstances involving a corporate reorganization in the days immediately before the filing that directly affected personnel responsible for the filing. The public interest will be served by the requested waiver, and further the waiver is supported by considerations of hardship and equity. Thus, the Commission should reverse USAC's decision to reject the Frontier ILECs' second quarter 2005 IAS line count filings.

Respectfully submitted,

**CITIZENS COMMUNICATIONS AND
FRONTIER COMMUNICATIONS**

By:



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Its Attorneys

July 8, 2005

DECLARATION OF KENNETH MASON

I am Kenneth Mason, Director of Government and External Affairs for the Citizens Communications telephone companies;

I have reviewed the foregoing Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver; and

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed July 8, 2005

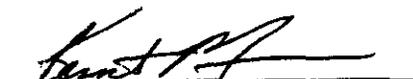

Kenneth Mason

EXHIBIT 1
Frontier ILECs

**Exhibit 1 - Citizens Communications Company
ILEC Price Cap Companies - Receiving Interstate Access Support**

<u>State</u>	<u>Current Legal Entity</u>	<u>Code</u>	<u>Study Area Name</u>	<u>COSA Code</u>
<u>Alabama</u>				
	Frontier Communications of Alabama, LLC	250306	Frontier - Alabama	RTMA
	Frontier Communications of the South, LLC	250318	Frontier - South	RTSA
<u>Arizona</u>				
	Citizens Utilities Rural Company, Inc.	452172	CTC of AZ - Mohave	CURA
	Citizens Telecommunications Company of the White Mountains, Inc.	454426	CTC of the White Mountains	CTWM
	Navajo Communications Company, Inc.	454449	Navajo Comm. - AZ	CTNA
<u>California</u>				
	Citizens Telecommunications Company of California, Inc.	542308	CTC of California - Shasta	CUCA
	Citizens Telecommunications Company of the Golden State	543402	CTC of the Golden State	CTCA
	Citizens Telecommunications Company of Tuolumne	544342	CTC of Tuolumne	CTTU
<u>Florida</u>				
	Frontier Communications of the South, LLC	210318	Frontier - South	RTSF
<u>Georgia</u>				
	Frontier Communications of Fairmount, LLC	220362	Frontier - Fairmount	RTGA
<u>Idaho</u>				
	Citizens Telecommunications Company of Idaho	474427	CTC of Idaho	CTID
<u>Illinois</u>				
	Citizens Telecommunications Company of Illinois	341183	CTC of Illinois	CTIL
	Frontier Communications of Lakeside, Inc.	341011	Frontier - Lakeside	RTLI
	Frontier Communications of Midland, Inc.	341055	Frontier - Midland	RTMT

Exhibit 1 - Citizens Communications Company ILEC Price Cap Companies - Receiving Interstate Access Support

Minnesota

Citizens Telecommunications Company of Minnesota, LLC	361123	CTC of MN - Lakes	CTLK
	367123	CTC of MN - South	CTSO
Frontier Communications of Minnesota, Inc.	361367	Frontier - Minnesota	VITC

Montana

Citizens Telecommunications Company of Montana	484322	CTC of Montana	CTMT
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Nebraska

Citizens Telecommunications Company of Nebraska	371128	CTC of NE - Fort Kearney	CTFK
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Nevada

Citizens Telecommunications Company of Nevada	554431	CTC of Nevada - North	CTNN
	554432	CTC of Nevada - South	CTNS

New Mexico

Navajo Communications Company, Inc.	494449	Navajo Comm. - NM	CTNM
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New York

Citizens Telecommunications Company of New York, Inc.	154532	CTC of NY - Upstate	CTUP
	154533	CTC of NY - Red Hook	CTRH
	154534	CTC of NY - Western Counties	CTWC
Frontier Communications of AuSable Valley, Inc.	150072	Frontier - AuSable Valley	RTAV
Frontier Communications of Seneca Gorham, Inc.	150122	Frontier - Seneca Gorham	RTSG
Frontier Communications of Sylvan Lake, Inc.	150128	Frontier - Sylvan Lake	RTSL

Oregon

Citizens Telecommunications Company of Oregon	533401	CTC of Oregon	CTOR
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Pennsylvania

Frontier Communications of Breezewood, LLC	170149	Frontier - Breezewood	RTBT
Frontier Communications of Canton, LLC	170152	Frontier - Canton	RTCT

Exhibit 1 - Citizens Communications Company ILEC Price Cap Companies - Receiving Interstate Access Support

	Frontier Communications of Oswayo River, LLC	170194	Frontier - Oswayo River	RTOS
<u>Tennessee</u>				
	Citizens Telecommunications Company of Tennessee L.L.C.	294336	CTC of Tennessee	CTTN
	Citizens Telecommunications Company of the Volunteer State LLC	290577	CTC of the Volunteer State	CTVS
<u>Utah</u>				
	Citizens Telecommunications Company of Utah	504429	CTC of Utah	CTUT
	Navajo Communications Company, Inc.	504449	Navajo Comm. - UT	CTNU
<u>West Virginia</u>				
	Citizens Telecommunications Company of West Virginia	204338	CTC of WV - St. Mary's (Rural)	CTCW
		204339	CTC of WV - Bluefield (Urban)	CTGW
		200271	CTC of WV - Mountain State	CTMW
<u>Wisconsin</u>				
	Rhineland Telephone LLC	330870	CTC of Wisconsin - Crandon	CTCR
		330941	CTC of Wisconsin - Rib Lake	CTRL

EXHIBIT 2
USAC Email Notifying Petitioner of Rejection of Line Count Filing

-----Original Message-----

From: HC FILINGS [mailto:HCfilings@telcordia.com]

Sent: Tuesday, July 05, 2005 3:20 PM

To: Desrocher, Michael

Cc: HC FILINGS

Subject: RE: Citizens/Frontier IAS Form 2, Lines as of March2005

Mike,

We are in receipt of the Citizens/Frontier IAS line counts that you submitted earlier today for lines served as of March 31, 2005, and due by June 30, 2005. Please note that these lines will be entered as ineligible for the purposes of receiving IAS, USF support. However, as you are aware, you have the option of filing an appeal to obtain an FCC (refer to: <http://www.universalservice.org/hc/overview/appeals.asp>).

Please let me know if I can be of further assistance.

Best Regards,

Devent Carter
IAS Manager
USAC
877-877-4925
hcfilings@hcli.universalservice.org

-----Original Message-----

From: michael.desrocher@frontiercorp.com
[mailto:michael.desrocher@frontiercorp.com]

Sent: Tuesday, July 05, 2005 11:59 AM

To: HC FILINGS

Subject: Citizens IAS Form 2 (attn. Devent Carter)

Mr. Carter,
Attached please find the IAS Form 2 for Citizens's properties.

Thanks
Mike

EXHIBIT 3
USAC Website

Graphics Off

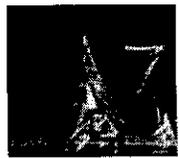


High Cost Low Income Rural Health Care Schools & Libraries

Overview

- Annual Report
- Board of Directors
- Corporate By-Laws
- FCC Filings
- Employment

The Universal Service Administrative Company (USAC) administers the Universal Service Fund (USF), which provides communities across the country with affordable telecommunication services.



Services Provided

- Contributions
- Disbursements
- Newsletters

IMPORTANT NOTICES

- Quarterly Line Counts Due March 30th (3/25/2005)
- DRAFT -- New FCC Form 525, Competitive Carrier Line Count Report, Available for Review (3/22/2005)
- New Contact Information for all 499 filings and inquiries (12/14/04)
- Congress passes one year USAC exemption from Anti Deficiency Act (12/09/04)
- Red Light Rule Effective November 1, 2004 (11/03/04)

Tools

- Form 499 Online Data Collection System

Forms

- Billing, Collections, & Disbursements
- High Cost
- Low Income
- Rural Health Care
- Schools & Libraries (E-rate)

QUICK LINK

- Form 499 On Data Collectio
- Board Meetin Schedules
- FCC Website

SITE SEARCH

go Search Help

CONTACT INFO

- Contact Us
- Report Fraud, Waste, and Abuse with a Whistleblower Hotline!
- Report Form Non-Compliance

SITE HELP

- FAQ's
- Get Help!
- Site Map
- Site Tour
- Website Policy

HEADLINES

The Proposed Contribution Factor for the 3rd Quarter (July-September) of 2005 Is 10.2% (6/15/2005)

The factor is listed in (DA No. 05-1664) (Dkt No 96-45) [PDF, 137kb]. For more information please visit the FCC "Contribution Factors & Quarterly Filings" page.

Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers (8/31/04)

ANNOUNCEMENTS

The Universal Service Administrative Company Adds to Management Team (6/30/2005)

HIGH COST

FCC Addresses Minimum Requirements for ETC Designations (3/23/2005)

RURAL HEALTH CARE

The Application Window for Funding Year 2005 (7/1/2005 - 6/30/2006) Is Now Open! (4/18/05)

ICLS FCC Form 508 for 2005-2006 Program Year Due 3/31/05 (3/22/2005)

RHCD provides Hints and Tips for FY2005 - How to get your FCC-FRN, E-certification, Form 465-Internet or Telecommunications: Which should I select? (4/15/05)

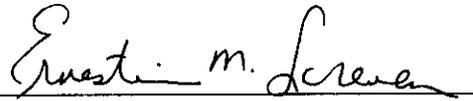
LOW INCOME

Companies can check the status of their ...

CERTIFICATE OF SERVICE

I, Ernestine M. Screven, hereby certify that on this 8th day of July, 2005, I caused a copy of the foregoing Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver to be served by U.S. First Class Mail, postage prepaid, to the following:

Karen M. Majcher
Vice President, High Cost
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

A handwritten signature in cursive script that reads "Ernestine M. Screven". The signature is written in black ink and is positioned above a horizontal line.

Ernestine M. Screven