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Federal Communications Commission
Office of the Secretary

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

In the Matter of	)	
	)	
Dixon Telephone Company	)	Docket No. 96-45
	)	
Petition of Waiver of the Section 54.301 Local Switching Support Data Submission Reporting Date	)	

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Dixon Telephone Company ("DIXON") pursuant to Section 1.3 of the Commission's Rules[1] hereby requests a waiver, to the extent necessary, of Section 54.301(b) of the Commission's rules specifically with respect to the Local Switching Support ("LSS") submission date for projected data from an incumbent local exchange carrier.[2] As a result of an inadvertent oversight, DIXON did not report projected data pursuant to Sections 54.301(b) and (f) of the rules and the Universal Service Administrative Company's ("USAC") requirements until October 26, 2005, twenty five days after the date set fourth in the rule. This data is used by USAC to project and determine the calculation of Local Switching Support ("LSS") and the amount of Universal Service dollars to be funded through contributions.

[1] 47 C.F.R. § 1.3.
[2] *See* 47 C.F.R. § 54.301(b).

I. Background

USAC requires that average schedule companies submit projected information that allows USAC to calculate LSS amounts for inclusion in the Universal Service Fund program for a coming year. The rules require incumbent local exchange carriers ("LECs") that have been designated an Eligible Telecommunications Carrier ("ETC") and serve 50,000 or fewer access lines within a study area to file LSS projections no later than October 1 of the year preceding the calendar year in which the LEC expects to receive LSS. For average schedule companies, projected access lines, interstate access minutes data and number of exchanges used in the calculation of LSS is submitted in order to receive LSS for periods in the next year.[3]

On October 13, 2005, DIXON management received a telephone call from Norm St. Laurent of the National Exchange Carrier Association (NECA) inquiring about the LSS filing. Mr. St. Laurent indicated that because DIXON did not participate in NECA's traffic sensitive pool, NECA does not file for DIXON. For unknown reasons, DIXON did not receive the data collection instructions, forms, or request letters for this filing. Mr. Howard Hunt at DIXON immediately contacted Mr. Jeff Naig of Kiesling Associates LLP (Kiesling) to see if Kiesling filed this on Dixon's behalf.[4] Mr. Naig indicated that Kiesling had not filed this on Dixon's behalf. Mr. Hunt requested Kiesling handle this issue on Dixon's behalf. Mr. Naig contacted the National Exchange Carriers Association ("NECA") to determine what needed to be filed and how to go about filing it.[5] The NECA contact suggested that Kiesling send the filing to USAC on Dixon's behalf as soon as possible. Also the NECA contact informed Mr. Naig that a waiver

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[3] *See* 47 C.F.R. § 54.301(f).

[4] DIXON did timely file with the State of Iowa, and the State filed with the Commission and USAC on September 20, 2005, prior to October 1, 2005, its state certification for HCL, LSS, and LTS.

[5] Much of the reporting of data, and subsequent dollar disbursements for the various Universal Service support components, including LSS, are typically coordinated through NECA with USAC. Consequently, NECA is involved in the processes with USAC. However, DIXON does not participate in the traffic sensitive pool administered by NECA. DIXON files its own interstate traffic sensitive access service tariff.

of the Commission's Section 54.301 would be required and sent a copy of a waiver prepared and filed by another rural ILEC. Mr. Naig contacted James Becker of Kiesling on October 13, 2005 and requested he assist Dixon with this filing and waiver petition.

Mr. Becker of Kiesling prepared the projected data and sent it data by electronic mail to USAC at about 2 p.m. on October 26, 2005. The data submission also included a request for contact information to make sure USAC has the correct contact information for DIXON.

Mr. Becker also immediately began preparing this Petition.

II. Basis for Relief

Pursuant to Section 1.3 of the Commission's rules, the Commission may grant a waiver of the application of any of its rules for "good cause shown."[6] As noted by the Court of Appeals for the D.C. Circuit, agency rules are generally presumed valid.[7] However, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[8] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[9] Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.

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[6] DIXON notes that for wireless carriers, Section 1.925(b)(3) of the Commission's rules provides more specific waiver criteria including a showing that: (i) The underlying purpose of the rules 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. *See* 47 C.F.R. §1.925(b). As explained herein, the facts and circumstances for DIXON are consistent with these waiver criteria and weigh in favor of grant of the request.

[7] *See WAIT Radio v. FCC*, 418 F.2d 1164, 1166 (D.C. Cir. 1990, cert. denied, 409 U.S. 1027 (1972)("WAIT Radio").

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

[9] *Wait Radio* at 1159; and *Northeast Cellular* at 1166.

DIXON respectfully submits that all of the circumstances described above weigh in favor of the grant of a waiver. Strict application of the October 1, 2005 submission requirements date, particularly when the data was submitted twenty days later, would be contrary to the public interest. Allowing DIXON to receive LLS during 2006, now that it had filed the necessary data, will not cause any harm or burden for any other party.

The underlying purpose of the LSS universal service support program is to provide cost recovery to small LECs for the costs of their switching investment and expenses. As such, LSS has been a substantial portion of DIXON's recovery of its switching costs for many years.[10] The purpose of LSS is to provide support to companies with smaller switches and consequently relatively higher switching costs so that companies such as DIXON do not have to recover these relatively higher costs through intrastate, basic rates. The availability of LSS thereby avoids potentially higher basic rates that would be contrary to the established universal service principles of affordability and comparability. These purposes would be frustrated were DIXON not to receive the LSS for 2006. DIXON's overall cost recovery would be thrown into disarray. DIXON's overall ratemaking result would have to be adjusted and/or some of its plans for capital expenditures and network improvements would have to be curtailed or reevaluated were LSS disbursements not available to the company. These results are inconsistent with the principles of universal service which support the deployment of modern networks and the availability of advanced services in rural areas as those served by DIXON. Therefore, a grant of the waiver will service the same public interest objectives that the overall Universal Service Plan was designed to address. And without LSS support, those purposes will be frustrated in a manner not consistent with the public interest.

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[10] DIXON estimates that its monthly LSS should be approximately $16,619. For its estimated 615 access lines, LSS should provide $2.25 per month for each access line.

The oversight in a data collection process that allows USAC approximately two months for the processing of such data is a circumstance relevant to an otherwise strict application of the reporting date rule. A short difference under a strict application would deny DIXON of LSS cost recovery, and would subject DIXON to burdens associated with that cost recover denial.

Moreover, grant of the waiver request can be easily accommodated by USAC, without burden to any other carrier, within the already existing universal service process. DIXON filed its projected accounting data well before the time period in which it is intended to be applied, and DIXON had previously been a recipient of LSS from its beginning. There would be not reason for USAC to expect that a local exchange carrier serving 633 access lines would jump to over 50,000 access lines from one period to the next. Thus, not only did USAC have actual notice on October 26, 2005, but USAC had at least some level of notice on October 1, 2005 that the omission of what had been a constant stream of data and LSS participation was most likely a simple error.

The LSS process already utilizes a "true-up adjustment" process that corrects the results of projected data from eligible LEC's with those carriers' submission of actual LSS amounts at a later point in time.[11] LSS true-up adjustments take place as much as 15 months after the end of the calendar year for which actual data is submitted.[12] USAC incorporates the results of the true-up process into its recalculations of total universal service fund needs in the calculation of the universal service contribution factor. As such, DIXON's data and LSS disbursement, upon expedited action by the Commission, can be included and "trued-up" through the already established process.[13]

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[11] *See* 47 C.F.R. § 54.301(e).
[12] 47 C.F.R. § 54.301(e)(2)(iv).
[13] If the waiver can be granted and the correction can be made on an expedited basis, the essentially negligible impact on the quarterly contribution factors can be reflected in the next USAC calculation. It is not clear to DIXON

III. Request for Expedited Action

Unless and until the Commission grants DIXON's waiver request, it will be forced to forego the LSS cost recovery revenues. As stated above, this cost recovery support is needed and used by DIXON to support its ongoing costs and capital improvements to upgrade its network and provide advanced services. DIXON has already submitted the projected data to USAC. Moreover, expedited action will allow USAC to reflect this correction in the overall universal service plan as soon as possible.

DIXON respectfully submits that the facts with respect to the precipitating events, the policy considerations associated with the grant of the waiver request, and the implications of granting the waiver are clear and straightforward. Upon grant of the waiver, USAC can adjust the LSS disbursements to correct the past amounts using the ongoing true-up process. Accordingly, DIXON requests expedited action by the Commission so that USAC can be properly notified as soon as practical so that future settlements and USAC's calculations can be corrected as soon as possible. In the absence of expedited action, DIXON may be forced to pursue ratemaking changes inconsistent with universal service objectives and curtail, delay, or scale back planned network upgrades and other capital projects. This result would impose needless hardship on DIXON to pursue alternative cost recovery options and would work to penalize unnecessarily its end users that would be denied the benefits the LSS revenue would have supported.

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whether USAC's projections that led to its calculation on the first quarter 2006 contribution factor may have actually included LSS expectations for DIXON, since DIXON has been a participant for LSS for a considerable amount of time, and the methods that USAC utilizes may depend on various statistical projections. In any event, the true-up process already recognizes corrections and any correction to recognize DIXON's LSS amounts would represent a very small inconsequential percentage of the overall fund and expected true-up activity.

IV. Conclusion

For the reasons stated herein, DIXON submits that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will allow DIXON to receive LSS disbursements for the year 2006 consistent with the statutory goal of preserving and advancing universal service for the rural customers served by DIXON. This result will be consistent with the public interest. Expedited action is requested to minimize the time that DIXON will be prevented from receiving the LSS cost recovery support that it expected to receive. Without the LSS support, it will be the customers of DIXON that will be burdened with potential rate changes, curtailed upgrades, or delays in the availability of advanced services. With the grant of the waiver, DIXON will merely receive the LSS that was intended under the universal service plan policies, and the grant of the waiver will not adversely affect any other carrier or customer.

Respectfully submitted,

DIXON TELEPHONE COMPANY

By:_____
Howard M. Hunt, Jr., General Manager

October 26, 2005

DECLARATION

I, James Becker, Consultant, Kiesling Associates LLP ("Kiesling"), do hereby declare under penalties or perjury that I have read the foregoing "Petition for Waiver – Expedited Action Request," and the information contained therein that pertains to Kiesling is true and accurate to the best of my knowledge, information and belief.

Date:_____

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James Becker
Consultant