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Federal Communications Commission
Office of Secretary

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

In re	)	
	)	
Sagebrush Cellular, Inc.	)	CC Docket No. 96-45
	)	
Petition for Waiver of	)	
47 CFR §§ 54.307(d), 54.314(a) and	)	
54.904(d)	)	

PETITION OF SAGEBRUSH CELLULAR, INC.
FOR WAIVER OF 47 C.F.R. 54.307(d), 54.314(a) and 54.904(d)

Sagebrush Cellular, Inc. ("Sagebrush") pursuant to Sections 1.3 and 1.925 of the Commission's Rules[1], respectfully requests that the Commission grant a waiver to the extent necessary of Sections 54.307(d), 54.314(a) and 54.904(d)[2] of its Rules in order to ensure that Sagebrush receives universal service funding retroactively to November 29, 2005, the date it was designated an eligible telecommunications carrier ("ETC") by the Public Service Commission of the State of Montana ("Montana PSC").

In accordance with both the Commission's Rules and policies and the ETC designation by the Montana PSC, Sagebrush anticipated the receipt of universal service funding retroactive to the date of the ETC designation. In reliance on the anticipated funding, Sagebrush has already made significant additions to its plant which has resulted in significant improvements in wireless service in its licensed areas. The infrastructure and service deployment Sagebrush has undertaken is consistent with the build-out and service commitments that Sagebrush made to the Montana PSC in its application for ETC status.

Sagebrush has only learned recently, however, that the Commission's universal service administrator, the Universal Service Administrative Company (USAC), will not, in the absence of the

[1] 47 C.F.R. §1.3, and 47 C.F.R. §1.925
[2] 47 C.F.R. §§ 54.307(d), 54.314(a) and 54.904(d).

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grant of this waiver request, disburse all of the universal service funds to which Sagebrush is otherwise entitled. The grant of the requested waiver will well serve the public interest by ensuring that the fundamental universal service policies of both the Commission and the Montana PSC are fulfilled.

I. Background and Facts: Sagebrush has expediently deployed new plant and provided expanded universal services in reliance on its expectation of the receipt of USF retroactive to the date of its designation as an ETC.

Sagebrush learned on May 15, 2006 that USAC will not disburse any universal service high cost support funds to Sagebrush for year 2005, and that it will not disburse any Interstate Common Line Support either for year 2005 or for the first six months of 2006. Prior to that date, and as addressed further in the Affidavit of Roger Del Fiacco (Attachment A), Sagebrush understood from USAC that the disbursement of funds retroactive to November 29, 2005, would be forthcoming. Until May 15, Sagebrush understood that the delay in its receipt of USF was the result of what may be best characterized as administrative delays.

On May 15, 2006, however, USAC informed Sagebrush that, in the absence of a waiver by the Commission, there would be no disbursement to Sagebrush of any ICLS funds retroactive to November 29, 2005 or for first six months of 2006. USAC staff indicated that the disbursement of 2005 and first six months of 2006 ICLS funds was dependent on the receipt of a self certification from Sagebrush to the Administrator and the Federal Communications Commission stating that all ICLS provided to Sagebrush will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[3] On May 15, 2006 USAC indicated to Sagebrush staff for the first time that an ICLS self-certification for the period July 1, 2005 to June 30, 2006 should have been filed within 60 days of the receipt of the Montana PSC's designation of

[3] 47 C.F.R. § 54.904(a)

Sagebrush as an ETC. This certification could have easily been filed along with the line counts requested by USAC if Sagebrush staff had been advised the self certification was also needed.

In addition, on May 15, 2006, USAC informed Sagebrush that, in the absence of a waiver by the Commission, it could not disburse any USF to Sagebrush for the period of November 29, 2005 through December 31, 2005, because USAC had not received an amended certification from the Montana PSC certification for the 2005 year stating that USF funds received by Sagebrush would be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[4] Sagebrush was equally surprised by this USAC determination because it was also contrary to its prior understanding from USAC that Sagebrush had fulfilled all requirements to ensure the disbursement of funds retroactive to November 29, 2005, the date of its designation as an ETC by the Montana PSC.

The May 15, 2006 conversation between staff representatives of USAC and Sagebrush was one of many in a long series of discussions that Sagebrush initiated with respect to its designation as an ETC. Sagebrush understood that it was necessary to meet specific requirements in order to ensure both that the receipt of USF would be initiated by USAC on a timely basis and that the funding would be retroactive to the date of its designation as an ETC, consistent with the Commission's Rules and policies.[5]

Sagebrush very much appreciated the assistance provided by USAC staff. USAC guided Sagebrush representatives to sources of information on the USAC website which included a "Process

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[4] *See*, 47 C.F.R. §54.314(a). USAC acknowledged that it did receive the amended certification for year 2006 funds which had been submitted by the Montana PSC on December 7, 2005, in conjunction with granting eligible telecommunications carrier (ETC) status to Sagebrush. The certification for year 2005 funding would have, of course, been due on October 1, 2004 – a point in time at which neither Sagebrush nor the Montana PSC could reasonably have anticipated that Sagebrush would be designated an ETC during year 2005. The Commission's rules anticipate these circumstances, however, and clearly provide for funding. 47 C.F.R. §54.307(d). As described, herein, Sagebrush had reasonably concluded with its understanding of confirmation from USAC, that it had fulfilled all necessary requirements for funding retroactive to the date of its ETC certification.

[5] *See*, Report and Order, In the Matter of Federal-State Joint Board On Universal Service, CC Docket No. 96-45, FCC 05-46, Adopted: February 25, 2005 and Released: March 17, 2005, para. 92; *see also,* 47 C.F.R. §54.307(d)

Overview" description of the filing requirements and a "Checklist for a New Carrier Seeking High Cost Support."[6] Working together with USAC representatives to ensure that it met all necessary filing requirements, Sagebrush followed the guidelines and checklist provided by USAC:

1. Sagebrush submitted to USAC the amended October 1, 2005 certification by the Montana PSC as required by Section 54.314(a) of the Commission's Rules.
2. Sagebrush submitted to USAC a copy of the Final Order of the Montana PSC granting ETC status to Sagebrush.[7]
3. Sagebrush submitted to USAC quarterly FCC form 525 for prior period line counts back to period 9/30/2004 to cover the periods from October 1, 2005 and forward.
4. Sagebrush applied for a Study Area Code (SAC) and was assigned 489006.
5. Sagebrush submitted Life Line and Link up filings (form 497).

Sagebrush was not only appreciative of the assistance it obtained from USAC, but gratified to receive oral confirmation in the course of phone conversations on January 12, 2006 and February 15, 2006 that Sagebrush had met all requirements and could anticipate the receipt of funds in March 2006 which would reflect retroactive amounts to November 29, 2005, the date of the ETC designation.

In reliance on this understanding, Sagebrush continued with its very aggressive program to extend its coverage and its provision of universal services consistent with the commitment it made to the Montana PSC. Sagebrush is a Commercial Mobile Radio Service ("CMRS") provider serving very rural areas of Montana. As noted by the Montana PSC in its Final Order designating Sagebrush as an ETC, the rural study areas in which Sagebrush has been designated an ETC include tribal reservation areas and are among two of the least densely populated study areas in the continental United States.[8] In granting the Sagebrush request for ETC designation, the Montana PSC adopted

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[6] These documents printed from the USAC website and utilized by Sagebrush are provided in Attachment B.

[7] A copy of the Final Order of the Montana PSC designating Sagebrush as an ETC is provided at Attachment C ("ETC Designation Order").

[8] ETC Designation Order at pp. 10 and 14.

rigorous build-out and service requirements,[9] noting that Sagebrush is committed to the rapid provision of lifeline services to qualifying subscribers that reside on the reservations located within the service areas.[10]

The ETC Designation Order required Sagebrush to provide its first report "on its progress in expanding its wireless coverage to achieve its goals" within 6 months of its designation as an ETC.[11] Accordingly, Sagebrush, in reliance on both its designation as an ETC and its conversations with USAC regarding the fulfillment of the requirements to receive USF retroactive to the date of its designation as an ETC, committed to immediate and significant capital investment to expand the scope and quality of the service within its service area. Subsequent to its designation as an ETC on November 29, 2005, Sagebrush has deployed eight (8) additional cell sites covering approximately 640 square miles. Site acquisition is complete and equipment is on order for an additional thirteen sites with anticipated turn up in 3rd quarter 2006. Sagebrush has done significant outreach efforts on both the Fort Peck and Crow reservations. As of this filing enhanced lifeline wireless service is provided to over 1,700 residents of the two tribal reservation areas.

These achievements in the provision of additional universal service by Sagebrush were undertaken in reliance on its expectation of the receipt of USF retroactive to the date of its designation as an ETC. While Sagebrush was concerned with the initial administrative delay in the disbursement of USF, it was confident that the anticipated funds would be forthcoming based on the discussions with USAC staff throughout the first quarter of 2006. Sagebrush undertook diligent efforts to ensure that it fulfilled all requirements necessary to receive the anticipated USF retroactive to November 29, 2005, and regrets the necessity of this waiver request.

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[9] ETC Designation Order at pp. 8 – 13.

[10] *Id* at p. 4.

[11] *Id* at p. 10.

II. Grant of the waiver request under the existing circumstances is equitable and will ensure the implementation of the Commission's policy.

As described in Section I above, Sagebrush has already made substantial new investment in facilities to provide additional universal services within its service area, and it has specific capital investment plans for year 2006 which are dependent on receipt of the anticipated USF retroactive to the date it was designated an ETC, consistent with the Commission's policy. The Commission has, in fact, determined that in order to ensure that universal service support is available to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date.[12]

Consistent with this policy, the Commission established a rule to provide newly designated carriers with the opportunity to file required line-count data within 60 days of the carrier's ETC designation date in order to receive timely USF retroactive to the date of the designation.[13] The Commission has, in fact, noted that the adoption of this rule would eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis.

Unfortunately, however, the existing circumstances require Sagebrush to seek the waiver of filing deadline rules. The facts, as set forth in Section I above, demonstrate that there is no question regarding the intent and good faith effort of Sagebrush to fulfill the filing requirements within the 60 day timeframe subsequent to its designation as an ETC by the Montana PSC. Most critically, Sagebrush did provide the line-count data which USAC has indicated is essential to its projections of USF requirements. In addition, Sagebrush endeavored to work closely with USAC to ensure that all necessary requirements were met. Sagebrush not only utilized the "Checklist for a New Carrier Seeking High Cost Support" and the "Process Overview" provided by USAC, but it also obtained multiple confirmations from USAC that all requirements had been met. Accordingly, confident that

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[12] *See*, Report and Order, In the Matter of Federal-State Joint Board On Universal Service, CC Docket No. 96-45, FCC 05-46, Adopted: February 25, 2005 and Released: March 17, 2005, at para. 92.

[13] 47 C.F.R. §54.307(d)

it had met the requirements to obtain USF support retroactive to the day of its ETC designation, Sagebrush proceeded with the implementation of the build-out and service commitments it had made to the Montana PSC.

Sagebrush's confidence that it had met all necessary requirements was further supported by a plain reading of the Commission's applicable rule:

> Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), **provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date**. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c) of this section.[14]

Consistent with the underscored and emphasized portion of the rule cited above, Sagebrush did submit the data required by Section 54.307(b) of the Commission's Rules within 60 days of its designation as an ETC. Consistent with its understanding from USAC (prior to the May 15 conversation), Sagebrush understood that it had qualified to receive the retroactive support.

No factual issue exists with respect to Sagebrush's good faith attempt to comply with all applicable requirements. Nor is there any issue with respect to the clear intent of both the Montana PSC and Sagebrush regarding the requirement that Sagebrush use both high-cost support and ICLS "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[15]

The understanding of this requirement is demonstrated throughout the Montana PSC's ETC Designation Order and by the actions that Sagebrush has already taken to implement its build-out and service commitments. Moreover, Sagebrush and the Montana PSC did submit the October 1, 2005

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[14] *Id* (Emphasis added).

[15] *See*, 47 C.F.R. §54.314(a) and §54.904(a).

certification regarding the use of high-cost support funds for year 2006; and, Sagebrush fully understands and will fulfill its requirement to self-certify by June 30, 2006 its use of ICLS funds.

What was unclear and, in fact, unknown to Sagebrush prior to the May 15 conversation with USAC was any expectation that Sagebrush would make two additional certification filings during the 60 day period after its designation as an ETC: 1) an additional certification by the Montana PSC addressing the use of funds received for the period of November 29, 2005 through December 21, 2005;[16] and 2) a self-certification regarding the use of ICLS funds that would have been due on June 30, 2005 if Sagebrush had been an ETC at that time. Accordingly, Sagebrush seeks a waiver to the extent required of the associated rules setting forth these deadlines.[17]

Sagebrush fully respects the Commission's Rules and the need for sound processes, including filing deadlines that ensure that the universal service program is properly administered. The circumstances presented here, however, support the grant of the requested waiver both in order to ensure that the Commission's underlying policies are carried out, and as a matter of equity.

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon showing of good cause. In addition, Section 1.925(b)(3) provides that the Commission may grant a waiver request if it is shown that: 1) the underlying purpose of the Commission's Rules would be frustrated in the absence of the requested waiver; or 2) the application of the rules without waiver under the factual circumstances would be inequitable, unduly burdensome or contrary to the public interest.[18]

In this instance, both of the above-cited criteria are met. The reasonableness of the Commission's rules requiring timely certifications is neither questioned nor compromised. There is

[16] Sagebrush respectfully notes that the Montana PSC's understanding that Sagebrush will utilize USF support only for permissible purposes is clear. The Montana PSC indicates that it relies on a self-certification process and that it would prospectively "consider a more in depth review" in the event that "this approach appears inadequate for a specific carrier." *See*, ETC Designation Order, p.11.

[17] 47 C.F.R. §§ 54.307(d), 54.314(a) and 54.904(d).

[18] 47 C.F.R. Sec. 1.925(b)

no factual question of the good faith intent of Sagebrush to comply with all the filing requirements on a timely basis in order to meet the 60 day time-frame established by Section 54.307(d) of the Commission's rules. The very underlying purpose of that rule – the provision of "universal service support to newly designated ETCs on a timely basis"[19] – will, in fact, be frustrated in the absence of the requested waiver.[20]

Similarly, the underlying purpose of the certifications required by Sections 54.314(a) and 54.904(a) will not be served by denial of this waiver request. The facts clearly demonstrate that Sagebrush is fully respectful of the certification requirements and processes, and that Sagebrush intends to utilize both high-cost support payments and ICLS only for permissible uses. Denying Sagebrush eligibility as of the date of its ETC designation for USF high cost support and ICLS because of the failure to provide the certifications for prior periods, however, will frustrate the underlying purpose of the Commission's rules regarding the distribution and utilization of USF.[21] The grant of the requested waiver will ensure that Sagebrush may maintain its infrastructure deployment plan on a timely basis.

Moreover, grant of the waiver request under these circumstances is appropriate as a matter of equity in the manner suggested by Section 1.925(b)(3)(ii) of the Commission's Rules.[22] There is no question that Sagebrush attempted in good faith to fulfill all necessary filing requirements, and that it

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[19] Report and Order, In the Matter of Federal-State Joint Board On Universal Service, CC Docket No. 96-45, FCC 05-46, Adopted: February 25, 2005 and Released: March 17, 2005, at para. 92.

[20] USAC will not disburse any USF for the period of November 29, 2005 through December 31, 2005 or first quarter year 2006 ICLS in the absence of the grant of the requested waiver.

[21] Sagebrush again notes that in its good faith effort to meet all requirements, it did submit the amended October 1, 2005 certification by the Montana PSC. Working diligently with USAC to fulfill all requirements, Sagebrush respectfully submits that it understood that it had met all requirements, and it did not know that a state certification for 2005 was required in addition to the ETC Designation Order, nor that it was required to file the ICLS self certification that would have been due on June 30, 2005 had Sagebrush been designated and ETC at that time.

[22] *See*, WAIT Radio v. F.C.C., 418 F.2d 1153 at 1159, June 24, 1969. ("On the contrary a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis.")

understood from USAC that it had done so. The grant of the requested waiver will not frustrate the purpose of the strict filing date deadlines to the extent that the purpose of the filing requirement is to ensure that the Commission and USAC are able properly to project, collect, and distribute all universal service mechanisms in a timely and accurate manner.[23]

Conclusion

Subsequent to the November 29, 2005 ETC Designation Order of the Montana PSC, Sagebrush has worked expediently to implement the universal service build-out and service commitments that it has undertaken. Sagebrush did so initially in reliance on its understanding that it was eligible for USF as of the date of its designation as an ETC, and subsequently in reliance on its understanding that it had fulfilled all requirements necessary to obtain the anticipated funding. The facts demonstrate that Sagebrush worked diligently with USAC in order to ensure that it met all the requirements on a timely basis. Only on May 15, 2006, did Sagebrush learn, contrary to its prior understanding from USAC, that USAC required two additional certifications for prior periods in order to disburse the high-cost support and ICLS that Sagebrush anticipated and relied upon. As demonstrated herein, good cause exists under the instant factual circumstances and in accordance with the Commission's Rules and policies to grant this waiver request both as a matter of equity and to ensure that the underlying purpose of the Commission's Universal Service Fund rules and policies are carried out.

Respectfully Submitted,

Sagebrush Cellular, Inc.

By: Stephen G. Kraskin

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June 5, 2006

[23] As noted in Section I, above, there is no question that the critical line-count data was filed within the 60 day time-frame set forth in Section 54.307(d).

ATTACHMENT A

AFFIDAVIT

STATE OF MONTANA))
)
COUNTY OF DANIELS)

I, Roger P. Del Fiacco, CPA, being duly sworn, hereby states as follows:

I hereby state and affirm that I am employed by Sagebrush Cellular, Inc. ("Sagebrush") and its affiliates as a Cost Study and Regulatory Analyst. I assumed this position on December 5, 2005, and was immediately assigned by my colleague Kathy Greenwood the task of coordinating with the Universal Service Administrative Company ("USAC") to ensure that Sagebrush met all the filing requirements necessary for receive USF retroactive to November 29, 2005, the date on which the Montana Public Service Commission granted the Sagebrush application for status as an Eligible Telecommunications Carrier ("ETC").

Ms. Greenwood had previously initiated contact with USAC in anticipation of the granting of the Sagebrush application for ETC status. USAC had provided her with a checklist of requirements that had to be met in order to obtain the funding for which Sagebrush ultimately qualified on November 29, 2005. I had discussions with USAC representatives on December 8 and 9, 2005, during which I went through the list of requirements in order to ensure that the list was complete with respect to the requirements for Sagebrush to obtain USF retroactive to the date it was designated an ETC by the Montana PSC.

I was assured that the list was complete. The list did not include either a state commission certification of the anticipated use of high-cost support by Sagebrush for the period of November 29, 2005 through December 31, 2005; nor did the list include a self-certification of the use of ICLS that would have been due on June 30, 2005 if Sagebrush had been an ETC at that time. Subsequent to my discussions with USAC, I initiated the work necessary to complete the requirements set forth on the list:

1. On behalf of Sagebrush on December 12, 2005, I submitted to USAC the October 1, 2005 certification by the Montana PSC as required by Section 54.314(a) of the Commission's Rules, and a copy of the Final Order of the Montana PSC granting ETC status to Sagebrush. I sought and received confirmation from USAC that it received these documents.

2. On behalf of Sagebrush on December 12, 2005, I applied for a Study Area Code (SAC) and was assigned 489006.

3. On behalf of Sagebrush on December 19, 2005, I submitted to USAC quarterly FCC Form 525 for prior period line counts back to period 9/30/2004 to cover the periods from 10/1/2005 and forward. I certified the accuracy of the submission. I sought and received confirmation that USAC received the submission.

On January 12, 2006, I called USAC to ensure that all was in order for Sagebrush to begin to receive USF payments retroactive to November 29, 2005 and going forward. I was assured that USAC had received all that was necessary to start the transmission of USF to Sagebrush retroactive to November 29, 2005. After a little more than a month had passed and Sagebrush had still not received any USF, I again called USAC on February 15, 2006. I was again assured that USAC had everything that was required and that Sagebrush would begin to receive USF in March 2006 for past periods retroactive to November 29, 2005. It was suggested that I call back again in early March and USAC would be able to provide me with the approximate amount of funding that would be transmitted.

When I followed up on March 7, 2006, I was informed that USAC did not have in its possession the Montana PSC Final Order granting ETC status to Sagebrush. As a result, USAC could not distribute funds to Sagebrush in March. I indicated to USAC that I had previously sent the order and confirmed its receipt. As requested, I resent the Order that day and again confirmed receipt. I also confirmed again that USAC was in receipt of everything necessary for Sagebrush to receive funds retroactive to November 29, 2005. The USAC staff person indicated that he would check. I received a subsequent voice mail confirming that USAC had everything that was required, and that funds should start flowing to Sagebrush in April 2006.

I contacted USAC again on April 12, 2006 to ask for information regarding when the payments would begin. After checking on this, USAC informed me that Sagebrush was not eligible because the USAC system indicated that our line count information had not been timely filed. Specifically, I understood that the concern was that the 9/30/04 line counts which were due from ETCs by March 30, 2005 had not been filed by that date. I explained that Sagebrush had not filed by that date because it was not designated an ETC until November 29, 2005. I reminded USAC that we had filed the line count data within 60 days of our designation as an ETC, consistent with FCC requirements. The USAC staff person said that he would check on this and call me back.

I received a call back from USAC and was informed that USAC would have to get approval from the FCC to transmit USF to Sagebrush based on the line count data filed within 60 days of the ETC designation. Additionally I was told that this approval process was only a formality, and that Sagebrush could expect to receive payments in May 2006 for periods retroactive to November 29, 2005. Once again, I asked for confirmation that USAC had everything required of Sagebrush in order for it to receive the funds and was assured that all was in order. Accordingly, I attributed the problems and delays to internal administrative issues within USAC.

During the week of May 8, 2006 my colleague Ms. Greenwood spoke with USAC and confirmed that USAC was transmitting funds to Sagebrush. The amounts of the funds did not appear correct to me. On Monday, May 15, 2006, I called USAC and was informed that the payments to be transmitted did not include funds for the period of November 29, 2005 through December 31, 2005. In addition, the transmission of funds did not include any ICLS. When I asked why, I was told for the first time that in order to receive ICLS funds, Sagebrush was

required during the 60 days after our ETC designation to file the self certification that would have been due by June 30, 2005 if we had been an ETC at that time. In addition, I was told that in order to receive any funds for the November 29 through December 31, 2005 period, we should have obtained a certification regarding our use of funds for that period that would have been filed by October 30, 2004 if Sagebrush had been an ETC at that time. I was frustrated and shocked. I reminded USAC that I had on several occasions, both within the 60 days subsequent to our ETC designation and thereafter, confirmed that USAC had everything it needed to transmit USF to Sagebrush retroactive to November 29, 2005.

In response, it was suggested that I speak directly with the USAC person in charge of the High Cost program, Karen Majcher. I followed up that day with a lengthy conversation with Ms. Majcher regarding the entire matter and process. Among other things, I was informed that the only recourse for Sagebrush was to seek a waiver from the FCC.

Further, Affiant sayeth not.

Roger P. Del Fiacco, CPA

Roger P. Del Fiacco, CPA

Subscribed and sworn to before me this 1 day of June, 2006.

Patricia J Kanning

Patricia J Kanning

NOTARY PUBLIC

COMMISSION EXPIRES:

May 6, 2007

Patricia J. Kanning
NOTARY PUBLIC for the State of Montana
Residing at Flaxville, Montana
My Commission Expires May 6, 2007

required during the 60 days after our ETC designation to file the self certification that would have been due by June 30, 2005 if we had been an ETC at that time. In addition, I was told that in order to receive any funds for the November 29 through December 31, 2005 period, we should have obtained a certification regarding our use of funds for that period that would have been filed by October 30, 2004 if Sagebrush had been an ETC at that time. I was frustrated and shocked. I reminded USAC that I had on several occasions, both within the 60 days subsequent to our ETC designation and thereafter, confirmed that USAC had everything it needed to transmit USF to Sagebrush retroactive to November 29, 2005.

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Patricia J Kanning

Patricia J Kanning

NOTARY PUBLIC

COMMISSION EXPIRES:

May 6, 2007

Patricia J. Kanning
NOTARY PUBLIC for the State of Montana
Residing at Flaxville, Montana
My Commission Expires May 6, 2007

Process Overview

In order to receive any High Cost Support (HCS), a carrier is required to make certain general filings. In order to receive support for a specific component, a carrier is required to make certain component specific filings. To simplify the application and filing process for both general and component specific filing requirements, USAC designed the following **Filing Requirements and Deadlines Tool**. This tool can assists carriers by determining the typical filings a carrier is required to make. The tool breaks the filing requirements and deadlines out by carrier type and also by component. The tool also provides links to: general information about the support components; required forms and sample letters; and instructions.

RELATED DOCUMENTS:

- Filing Requirements & Deadlines Tool
- ETC Designation Process
- New Carrier Checklist
- HC FAQ
- Certified Carriers

General Filing Requirements

In order to be eligible to receive High Cost Support (HCS), a carrier must complete various filings by certain deadlines. The general filing requirements include:

- Provide general information and obtain a SPIN – **Form 498**
- Obtain a Study Area Code (SAC):
  - CETCs receive a SAC from USAC
  - ILECs receive a SAC from NECA.
- Submit **ETC designation order** (from State or FCC) to USAC
- Provide Contributions Data - **Form 499**
- File **Line Counts** (and Updates)
- File **Cost and Investment Data** (and Updates)
- State or Self Certifications

Component Specific Filings:

Once these general filing requirements have been met, there are also component-specific filings. The component-specific filings requirements can vary between the different HCS components or sub-components. See the **Filing Requirements and Deadlines Tool** for more information.

ILEC and CETC Eligibility:

ILEC Eligibility: If you are an ILEC and have questions about which components you may be eligible to receive, see the general definitions of each component or sub-component below.

CETC Eligibility: As a rule, if you are a CETC, you may only receive support for a particular component if the ILEC in your area is eligible to receive support for that component.

Component Descriptions:

High Cost Loop (HCL) support provides support for the "last mile" of connection for rural companies in service areas where the cost to provide this service exceeds 115 percent of the national average cost per line.

Safety Net Additive (SNA) support is support above the cap for carriers that make significant investment in rural infrastructure in years in which the high cost loop fund is capped. To receive support in a particular study area, a carrier must show that growth in telecommunications plant in service (TPIS) per line is at least 14 percent greater than the study area's TPIS in the prior year.

Safety Valve Support (SVS) is additional support, above the high cost loop cap, that is available to rural carriers that acquire high cost exchanges and make substantial post-transaction investments to enhance network infrastructure.

Local Switching Support (LSS) provides interstate assistance which is designed to reduce the high fixed switching costs for companies serving fewer than 50,000 lines.

Interstate Access Support (IAS) helps to offset interstate access charges for price cap companies. Only price cap carriers, or competitive carriers serving in the service area of a price cap carrier, are eligible to receive interstate access support.

High Cost Model (HCM) support is forward looking support for non-rural carriers. HCM is based on a forward-looking economic cost model. The model generates the statewide average cost per line, which is then compared to the national average cost to determine eligibility for forward-looking support.

Interstate Common Line Support (ICLS) helps to offset interstate access charges for rate-of-return companies. Only rate-of-return carriers, or competitive carriers serving in the service area of a rate-of-return carrier, are eligible to receive interstate common line support.

Questions:
If you require more detailed information about what each of these filing requirements entail please View the **FAQs** or contact the High Cost Low Income Division customer Service Center at 1-877-873-4727

Checklist for a New Carrier Seeking High Cost Support

1. **Obtain a SPIN**
The SPIN, or service provider identification number, is used to identify a carrier receiving universal service support under the various support mechanisms. Use the Form 498 to apply to USAC for a SPIN. View Form 498.

2. **Submit a copy of the order designating your company as an ETC**
In order to receive universal service support under the high cost programs, you must be an eligible telecommunications carrier, or ETC. Generally, your state public utilities commission is responsible for designating carriers as ETCs within your state, but in certain limited instances, the FCC will make the designation. Details about the ETC designation process available in the FAQs.

Once you have obtained ETC status, you must submit a copy of the designation order to USAC at the following address:

USAC
444 Hoes Lane
RRC 4A1060
Piscataway, NJ 08854

Toll-Free: (877) 877-4925
Fax: (866) 873(USF)-4666
E-mail: HC Filings

3. **Submit line count information**
Detailed information about required data submissions is available in the FAQs and general filing guidelines.

4. **Submit Form 499**
You submit this form, in which you report your interstate and international end-user telecommunications revenue information, so that USAC can determine how much you will be required to contribute to the universal service fund. The Form 499 must be filed by all providers of telecommunications services within the United States, with very limited exceptions, if their annual contribution to the federal universal service support mechanisms is expected to exceed $10,000 for the year. The Form 499-A and Form 499-Q are the telecommunications reporting worksheets that must be completed. These forms contain very detailed filing instructions and provide contact numbers should you have questions. Form 499-A and Form 499-Q are available at www.universalservice.org/forms.

The filing schedule for the Form 499-A and Form 499-Q is as follows:

February 1	File Form 499-Q
April 1	File Form 499-A
May 1*	File Form 499-Q
August 1	File Form 499-Q
November 1	File Form 499-Q

* the first Form 499-Q is due on May 11, 2001

Submission of Data by Competitive ETCs

- In the RTF Order, the Commission clarified that competitive carriers serving in the service area of a rural carrier should be treated exactly the same as competitive carriers serving in the service area of a non-rural carrier with respect to the initial submission of line count data. That is, competitive carriers servicing in the service area of either a rural or a non-rural incumbent carrier may submit initial line counts and receive support on a regular quarterly basis.
- For example, a competitive carrier may submit initial line count information at any quarterly interval (March 30, July 31, September 30, or December 30), and may begin receiving support on a quarterly basis. While all carriers are required to submit data on July 31 of each year, competitive carriers may make their initial submissions at any quarterly interval and need not wait until July 31 to make their initial submissions.

ATTACHMENT C

Service Date: December 7, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF SAGEBRUSH CELLULAR, INC., Application for Designation as an Eligible Telecommunications Carrier	))))	UTILITY DIVISION DOCKET NO. D2004.1.7 ORDER NO. 6687a

FINAL ORDER

Introduction, Procedural Background, and Organization

On January 16, 2004, Sagebrush Cellular, Inc. (SCI), filed before the Public Service Commission (PSC, MPSC, or Commission) a petition for designation as an eligible telecommunications carrier (ETC). The area for which designation is requested includes the telephone exchanges served by Nemont Telephone Cooperative, Inc., (Nemont), Project Telephone Company, Inc. (Project), and Valley Telecommunications, Inc. (VTI).[1] In its petition for designation SCI lists all of the statutory requirements for designation as an ETC. SCI states that it meets these requirements. The requirements generally include that SCI offer all nine of the supported services, advertise and promote its service offerings, and its designation be in the public interest. Designation as an ETC would allow SCI to receive federal universal service fund (USF) support for qualifying services provided to customers in the areas that SCI serves.

On April 26, 2004, the PSC noticed SCI's application and established an intervention deadline. The PSC granted intervention to Cable & Communications Corporation, dba Mid-Rivers Cellular (CCC), Mid-Rivers Telephone Cooperative (MRC), the Montana Consumer Counsel (MCC), the Montana Telecommunications Association (MTA), and 3 Rivers PCS,

[1] On April 27, 2004 NTCI filed with the MPSC notice of its intent to combine with VTI.

Inc.(3 Rivers). [2]

On June 29, 2005, SCI filed testimony of Shawn Hanson, the general manager of SCI. On July 12, 2005, SCI filed a stipulation between SCI, CCC, and MRC, noting that CCC and MRC withdraw any objections that they may have had to SCI's application. On July 12, 2005, 3 Rivers filed a notice withdrawing as an intervenor in the proceeding. On July 19, 2005, SCI filed an agreement between SCI and MTA, noting MTA's agreement not to object to SCI's designation as an ETC.[3] On August 31, 2005, the PSC issued a procedural order setting forth discovery dates and a tentative January 19, 2006 hearing date. On September 9, 2005, the PSC served the first of two rounds of discovery upon SCI.[4] SCI filed on September 16, 2005, an objection to one of the PSC's data requests.[5]

Numerous entities have filed comments regarding SCI's petition. Attached to Hanson's pre-filed testimony are affidavits or letters in support of SCI's petition. On July 14, 2005, Belfry Public Schools filed with the PSC a letter in support of SCI's ETC petition.

Discussion, Findings of Fact, and Conclusions of Law

SCI Testimony

On June 29, 2005, SCI filed its initial direct testimony. The testimony serves to demonstrate that SCI will meet the requirements necessary to be designated as an ETC in the Montana service areas of Nemont and Project. SCI asserts it will ubiquitously offer high quality

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[2] In a June 27, 2005 Notice of Staff Action, the reference to Mid-Rivers Cellular was corrected to refer to Mid-Rivers Telephone Cooperative, Inc.

[3] In a September 30, 2005 letter to the MPSC, MITS explained that all intervenors with the exception of the MCC signed petitions indicating no objection to the approval of SCI's ETC application.

[4] The only discovery in this docket was issued by the MPSC. Relevant responses to data requests are identified in this order (e.g., See DR PSC -001).

[5] SCI objects to DR PSC -004(c) in how it asked for information about entities that are not a party to the proceeding. Notwithstanding its objection, SCI responded by identifying the download and upload speeds for broadband services that each of Nemont and Project offer. SCI also provided the percentages of Nemont's and Project's customers, 77.6 percent and 93 percent respectively, that have access to broadband services. In a supplemental data response, SCI explained that 82.8 percent of Project's and 82.4 percent of Nemont's wireline customers are capable of receiving ADSL. See DR PSC -004(c).

wireless telecommunications services in these areas. In order to do so, SCI states it needs to build on its current network.

SCI understands that ARM 38.5.3201 provides the purpose and scope of the PSC's authority under federal and state statutes, including an evaluation of whether an ETC application satisfies the public interest. SCI witness Hanson concludes that SCI qualifies as an ETC and adds that SCI will offer the nine supported services, predominately by means of using its own facilities.[6] SCI states it will also advertise the supported services by means of media of general distribution. SCI understands that ARM 38.5.3203 places on SCI the responsibility to demonstrate that it has met the requirements to be designated an ETC. SCI understands that ARM 38.5.3206 allows the PSC to revoke an ETC designation if the ETC fails to demonstrate that it has met the PSC's requirements.

Hanson testifies that SCI will be and remain in compliance with ARM 32.5.3209. With reference to this rule, Hanson lists the six criteria that an ETC must satisfy in order to meet the minimum and the ongoing requirements for ETC designation and maintenance. He explains how SCI will offer each of the required nine services and functionalities that are supported.[7] Voice-grade access will be achieved by means of interconnecting (transport, etc.,) both SCI's and Nemont's networks and SCI's and Project's networks -- once SCI serves in Project's service area. Local usage will be comparable to the plans of each of these incumbent local exchange carriers (ILECs) and the usage blocks will match or exceed the geographic area that each ILEC covers.[8] DTMF (touch tone) is achieved by use of a Nortel switch. Single-party or equivalent service is achieved by means of a dedicated message path. SCI will provide emergency service by means of Phase I E911 access. SCI notes, however, to have received from the FCC an

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[6] SCI does not intend to rely on roaming agreements to meet its 98 percent coverage requirement. See DR PSC -005.

[7] These nine services include: voice-grade access to the public switched telecommunications network (PSTN), local usage, dual tone multi-frequency (DTMF) signaling or a functional equivalent, single-party service (or an equivalent), access to each of emergency, operator interexchange (IXC) and directory services and, finally, toll limitation for qualifying low-income consumers.

[8] SCI has price plans that start at $20 per month. DR PSC -007.

extension to provide specific caller location data.[9] As a designated ETC, SCI states that it will be able to rapidly convert its network to digital, which will enable its customers, in turn, to convert their phones to digital with GPS capability. Operator service access is achieved by way of trunks that connect SCI's switch office to Nemont's network and that will connect to Project's network; each ILEC has or will have operator service trunks to Qwest. SCI will provide interexchange carrier (IXC) service by way of Associated Network Partners, Inc., a long distance company. SCI's Nortel switch can also provide for equal access, if SCI is required to do that. Hanson identified Qwest as the provider of directory services. SCI will make available toll-limitation service to qualifying low-income consumers by means of prohibiting toll calls.

SCI commits to advertise SCI's services in newspapers in the counties of Stillwater, Yellowstone, Carbon, Big Horn, Phillips, Valley, Daniels, Sheridan and Roosevelt. SCI will also provide its customers service information and it will advertise its services on its website.

SCI commits to provide the supported services in all designated service areas and to all customers that make reasonable service requests. These customers will include low-income, low-density, rural, insular and high-cost customers. SCI's services will be reasonably comparable, and will be offered at rates that are reasonably comparable, to similar services offered in urban areas. SCI will also offer Lifeline service to qualifying subscribers and it will extend Enhanced Lifeline wireless service to qualifying subscribers that reside on one of the reservations located within either of the Nemont or the Project service areas.[10] To this end, both USAC and the FCC have reviewed SCI's outreach plans.

As for coverage, SCI states that within 3 years of its designation SCI will extend coverage

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[9] SCI explained the relationship between wireless carrier size (its "Tier") and its E911 obligations. See DR PSC -001. SCI asserted to be E911 capable although it only provides Phase I information to local public safety answering points (PSAPs). The apparent goal is to have all PSAPs in Montana Phase II E911 capable within the next two years. The FCC has required SCI to provide by June 20, 2006 GPS capable phones to 95 percent of its customers. See DR PSC -006. SCI also explained the difference between Type I and Type II interconnections. A Type I interconnection connects ILECs to wireless carriers so that directory, operator 911 and special access (e.g., 800) can be achieved. Type II is for a trunk-side connection that allows for the exchange of various types of switched traffic (mobile to land, land to mobile, emergency operator and 800 etc.) Type 2a and Type 2B connections also exist. SCI has used Type I interconnection with Nemont. See DR PSC -019.

[10] The tribal lands within Nemont's and Project's study areas include the Fort Peck Indian Reservation and a portion of the Crow Indian Reservation.

to 98 percent of "potential subscribers" within the designated service areas of Nemont. In the case of Project's service area, SCI commits to achieve 98 percent coverage within 5 years of its designation. Although SCI has not initiated wireless service in Project's area, it intends to achieve 28.3 percent coverage of potential subscribers within four months of its designation, a goal Hanson asserts that SCI can achieve given that it has access to eight existing tower facilities in Project's area. SCI explained that it will lease physical space at these tower site locations from NCI, an affiliate.

SCI also commits to satisfy applicable consumer protection and service quality standards. It will do so by ensuring adherence to PSC rules ARM 38.5.3301 through 38.5.3371, as required. In this regard, Hanson also assured the PSC that SCI will support signal strength of at least -104 dBm (decibels per milliWatt).

Hanson testified that SCI will offer a local usage plan that is comparable to the one that each ILEC offers. He added that SCI also intends to comply by defining local usage in the same manner as specified for the same local calling areas of Nemont and Project; Hanson's assertion that this definition will be "at the minimum" appears to mean that the calling scope could be greater. SCI may define a broader geographic area for usage blocks which do not increase the monthly flat rate for the service packages that customers select.

In reference eleven "factors," Hanson explains why SCI's designation is in the public interest (ARM 38.5.3210). SCI has demonstrated its ability to provide the nine services supported by the federal universal service mechanism and will, as does SCI's affiliates, comply with all laws that govern ETCs. SCI adds that the service areas of Nemont and Project can "sustain an additional ETC." This is apparently because SCI views cellular service as a complementary and, increasingly, essential service. In this regard, Hanson observed that although 94 percent of households retain landline service, two thirds of the United States households in 2004 have at least one cellular phone. Hanson reasoned, therefore, that the effect on the ILEC ETCs of designating SCI as an ETC will be minimal because wireless service is a complement to wireline service.

Hanson asserts that SCI's CDMA digital platform is compatible with broadband and other advanced services.[11] To offer broadband services SCI may deploy "fixed wireless" using the licensed 700 MHz spectrum. SCI can also provide "equal access" in the unlikely event that an ILEC ETC ceases to provide such service. SCI intends to offer service almost exclusively by means of using its own facilities. As an aside, Hanson testified that in the Nemont area the existing provider's use of just three towers provides only a negligible enhancement to SCI's coverage.

While he cannot estimate the impact on the availability of universal service funds, Hanson testifies that the increased amount of funding from SCI's designation as an ETC will be de minimis. He adds that the PSC's new rules will "weed out" those providers who may be motivated primarily to cream-skim.

Continuing with his explanation as to why it is in the public interest to designate SCI, Hanson explains why SCI's designation also supports the seven universal service principles. First, quality service will be provided by SCI at rates comparable to those offered by each ILEC. Lifeline, Link up, and Enhanced Lifeline services will also be available. Second, designating SCI as an ETC will advance universal service by ensuring that "all" regions of the nation have access to advanced services. SCI's designation and the resulting build out to achieve 98 percent coverage will ensure that the most rural and isolated customers in the Nemont and Project service areas have access to services comparable to those offered in urban areas. SCI commits to continue to contribute to the USF regardless of whether it is designated an ETC. The PSC's designation of SCI will help to ensure that predictable, appropriate, and sufficient mechanisms exist to preserve universal service. Approval of SCI's petition will aid in supporting the public

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[11] CDMA refers to code division multiple access which is a digital packet-based access technique generally used in radio frequency systems (Newton's Telecom Dictionary, 21st Edition). SCI explained that the CDMA platform is capable of delivering advanced services adding that a SCI affiliate is evaluating the technical ability to provide broadband data using the 700 MHz spectrum. See DR PSC -0010. Based on initial trials conducted by an SCI affiliate, the 700 MHz equipment may provide broadband that is comparable to a DSL product, with symmetrical speeds of 900 Kbps at distances of up to 8.2 miles. SCI does not however currently provide broadband, high speed data services.