

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

In the Matter of)
)
BRISTOL BAY CELLULAR PARTNERSHIP) File No. _____
)
Petition for Waiver of the) CC Docket 96-45
Federal Communications Commission's Rules)
Concerning the Administration of the)
Universal Service Fund)
)
To: Wireline Competition Bureau

PETITION FOR WAIVER

Bristol Bay Cellular Partnership ("Bristol Bay" or "Petitioner"), by its attorneys, and pursuant to Section 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, respectfully requests a waiver of Section 54.307(b) of the Federal Communications Commission's rules, 47 C.F.R. § 54.307(b), specifically, the requirement that subscriber line count data submitted for purposes of obtaining Universal Service Fund support be submitted based upon the subscriber's billing address.

I. Introduction.

On September 29, 2006, the Regulatory Commission of Alaska designated Petitioner as an Eligible Telecommunications Carrier ("ETC") under Section 214 of the Communications Act of 1934, as amended, in the Incumbent Local Exchange Carrier ("ILEC") study areas of Bristol Bay Telephone Cooperative and Nushagak Electric & Telephone Cooperative, Inc. in Alaska.¹ Due to the unique nature of the physical landscape in Alaska and in particular the two rural study areas that Petitioner serves, Petitioner requests a waiver of the requirement that line count filings

¹ *Order Approving Petition For Eligible Telecommunications Carrier Status, Requiring Filing , and Closing Docket In the Matter of the Request by Bristol Bay Cellular Partnership*, Docket U-06-48, (September 29, 2006) and *Order Approving Petition For Eligible Telecommunications Carrier Status, Requiring Filing , and Closing Docket In the Matter of the Request by Bristol Bay Cellular Partnership for Designation as a Carrier Eligible to Receive Federal Universal Service Support*, Docket U-06-50, (September 29, 2006).

made pursuant to Section 54.307(b) of the Commission's rules be based upon consumers' billing address. Petitioner requests authority to file line counts based upon the service area within which a subscriber primarily or exclusively uses his or her wireless telephone. As demonstrated herein, the unique circumstances set forth below provide good cause for granting a waiver to permit Bristol Bay to use the area of primary use as the basis for identifying a customer location for purposes of preparing line counts. Moreover, the underlying purpose of the rule will not be served by its strict enforcement.

II. Background and Facts

Bristol Bay initiated cellular service in 1990 in the King Salmon/Naknek/Dillingham area, attempting to offer the best service possible to the rural portions of Alaska, which would not otherwise receive wireless telecommunications service. In order to continue to expand and improve service in these high-cost areas, applied for and was ultimately designated Eligible Telecommunication Carrier on September 29, 2006. Since it began providing service in 1990, Petitioner has built up a subscriber base of approximately 1,244 in the two study areas for which it has been granted ETC status.

On information and belief, after reasonable investigation, all of Petitioner's subscribers provided service within the ETC service areas use their telephones service exclusively, or almost exclusively, within the study areas where Petitioner is designated. On information and belief, after reasonable investigation, approximately 487 of Petitioner's subscribers have a billing address within the study areas where Petitioner provides service and is designated as an ETC. The remainder, or approximately 757 customers receiving service in these ETC areas, have billing addresses (some at Post Office boxes) outside of Petitioner's ETC service area. On

information and belief, after reasonable investigation, many, if not most, of these 757 billing addresses are NOT the respective local residence addresses and or service location of the subscribers in question. That is, roughly 2/3 of Petitioner's customers reside within the ETC service area, use their phones primarily within the service area, but have a billing address outside the ETC service area.

Section 54.307(b) states that, "Competitive eligible telecommunications carriers providing mobile wireless service in an incumbent LEC's service area shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area." Since Petitioner has only approximately one-third of its customers with a billing address within its ETC service area, Petitioner is ineligible to receive most of the high-cost support it should be receiving, in order to meet its ETC obligations.

Petitioner's inability to claim the majority of its high-cost support thwarts the entire purpose of the high-cost mechanism, to enable carriers operating in high-cost areas to provide access to telephone service and to improve service throughout the designated ETC service area. Without the ability to access high-cost support, it is a significant barrier to Petitioner's efforts to improve and expand service in its ETC service area.

Request for Waiver

The Commission has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. § 1.3. Additionally, Section 1.925(b)(3) of the FCC's rules provides for a waiver where it is demonstrated 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.

Federal courts have held that the Commission may exercise its discretion to waive a rule where, *inter alia*, particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“*WAIT Radio*”). As further explained in *WAIT Radio*, the Commission is charged with administration of its responsibilities consistent with the public interest.

That an agency may discharge its responsibilities by promulgating rules of general application, which, in the overall perspective, establish the public interest for a broad range of situations, does not relieve it of an obligation to seek out the public interest in particular, individualized cases. In fact, the Commission’s right to waive its rules is not unlike an obligation in that it is a *sine quo non*-to its ability to promulgate otherwise rigid rules. It is the necessary “safety valve” that makes the system work. *See, WAIT Radio*, 418 F.2d at 1157, 1159.

There is ample good cause for a waiver. Strict enforcement of Section 54.307(b) in this case would not serve the purpose of the rule, or the public interest, because strict enforcement would be detrimental to consumers who stand to benefit from the provision of high-cost support. The underlying purpose of Section 54.307(b) is to ensure that ETC’s are receiving support based upon the number of customers they exclusively serve.

In this instance, Petitioner’s subscribers use Petitioner’s service within Petitioner’s ETC designated service area, but do not have a billing address within the ETC service area. As a result, Petitioner is effectively precluded from obtaining a substantial amount of high-cost support, which is intended to be used to meet its commitment to offer and advertise its service throughout the designated ETC service area. The FCC has stated numerous times that it seeks to

encourage the spread of telecommunications services to rural areas.² In this case, Bristol Bay's ability to improve service to its high-cost areas and meet its federal carrier of last resort obligation to serve all consumers upon reasonable request is significantly compromised unless it receives obtains a waiver.

Furthermore, the unique circumstances surrounding the offering of service in rural Alaska villages warrants special consideration by the Commission when enforcement of FCC rules threaten the ongoing viability of service provided by an Alaskan carrier.³ The size and terrain of a state such as Alaska make the provision of service particularly difficult. The extremely rural nature of Petitioner's service area is the primary reason why most customers do not have billing addresses within Petitioner's ETC service area and thus makes compliance with this billing address rule technically infeasible and economically prohibitive for Petitioner.⁴

In its Order amending Section 54.307(b) to add the billing address requirement, the Commission stated that since mobile carriers did not provide service from a fixed point that a customer's billing address is "a reasonable surrogate" for the customer's location. However, the Commission also acknowledged that primary use could potentially be reasonable so long as there were the necessary "primary use" databases in existed existence to track customers.⁵ Such databases did not routinely exist at the time of the Order. Since the implementation of the

2 *Report and Order In the Matter of Federal-State Joint Board on Universal Service* 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

3 *Id*

4 Bristol Bay serves about 1,244 customers through eight separate, stand-alone cellular systems in Alaska the study areas for which it has received ETC status within RSA 2.

5 *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket no. 96-45 and Report and Order in CC Docket 00-256* 16 FCC Rcd 11,244, 11314 (May 23, 2001).

Federal Mobile Telephone Sourcing Act (“MTSA”)⁶ in 2000, Petitioner now has the ability to accurately determine the resident location, service location and primary use area of its subscribers. Furthermore, at the time the rule was adopted, the Commission left open the possibility of allowing for the use of a different location address for wireless subscribers, stating “we may revisit this approach in the future.”⁷

Irrespective whether the Commission revisits the billing address rule in a future rulemaking proceeding, Petitioner should not be disadvantaged solely because a majority of its customer base receives their bill at a location other than their residences. To strictly apply the billing address rule would defeat the purpose of the high-cost program in this case and deny severely impact the delivery of facilities-based service to consumers located in some of the most rural areas of our country for which the support was intended.

Indeed, the Commission has granted multiple waivers of its rules where enforcement would deny support to carriers in rural areas. Most recently, in September 2006, the FCC granted Verizon Communications, Inc. a waiver of Section 54.802(c) of the Commission's rules where the facts were such that grant of a waiver was necessary to ensure continued USF support to Verizon. In that case, the Commission stated, that the “loss of IAS funding could impact the high-cost areas served by Verizon. We are concerned that the loss of the funding may undermine Verizon’s investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. . . . Here, the requested waiver would enable Verizon to continue uninterrupted its efforts to maintain and promote access to advanced services in its

6 See, 4 U.S.C. §§ 116-126 (2000).

7 *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket no. 96-45 and Report and Order in CC Docket 00-256* at 11315.

high-cost areas.”⁸

In granting other waivers, the Commission has even acknowledged that smaller service providers suffer even more at the loss of USF support. In granting the Petitions for Waiver of Section 54.301 filed by Dixon Telephone Company, Lexcom Telephone Company and Citizens Telephone Company of Higginsville, Missouri so that those companies could receive Local Switching Support (“LSS”) the Commission stated that, “the loss of LSS has a much greater impact on a small carrier’s capacity to ensure that consumers have and maintain access to service at just, reasonable, and affordable rates than the loss of other types of universal service support. Indeed, the loss of LSS for an entire calendar year in these instances may have a significant effect on the rates that Petitioners charge consumers. Likewise, the loss of LSS may adversely affect Petitioners’ ability to continue to provide quality service to consumers.”⁹ Such is the case for Petitioner for whom loss of support in the extremely rural areas of Alaska would severely impact Petitioner’s ability to provide affordable, quality service to its subscribers *throughout the area where it has been designated.*

8 *Order In the Matter of Federal-State Joint Board on Universal Service Verizon Communications Inc Petition for Waiver of Section 54.802(a) of the Commission’s Rules*, CC Docket 96-45, DA 06-1861 (September 12, 2006)

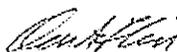
9 *Order In the Matter of Federal-State Joint Board on Universal Service Dixon Telephone Company, Lexcom Telephone Company, Citizens Telephone Company of Higginsville, Missouri Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date*, CC Docket 96-45, DA 06-418 (February 23, 2006)

Conclusion

For the reasons set forth above, Petitioner requests this reasonable waiver of the Commission's billing address rule for competitive ETCs seeking high-cost support under Section 54.307(b by allowing the use of residence location, primary use location and service location for reporting subscriber line counts). The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Petitioner requests that a waiver be granted as proposed.

Respectfully submitted,

BRISTOL BAY CELLULAR PARTNERSHIP



By: _____
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November 10, 2006

DECLARATION

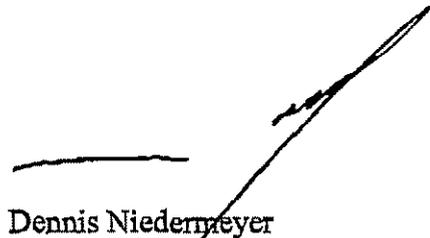
I, Dennis Niedermeyer, hereby state and declare:

1. I am the Manager of the General Partner of Bristol Bay Cellular Partnership, Cellular Radiotelephone Service provider in Alaska RSA 2 - Bethel.

2. I am familiar with the facts contained in the foregoing Petition For Waiver, and I verify that those facts are true and correct to the best of my knowledge, information and belief, except that for those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of November 2006.



Dennis Niedermeyer
Manager of General Partner of
Bristol Bay Cellular Partnership

CERTIFICATE OF SERVICE

I, Donna Brown, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 10th day of November, 2006, sent by hand delivery, a copy of the foregoing PETITION FOR WAIVER to the following:

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/s/
Donna Brown