Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Range Telephone Cooperative, Inc.'s	)	CC Docket No. 96-45
Petition for Waiver of the FCC's	)	
Universal Service Rules	)	
	)	

Comments of Range Telephone Cooperative, Inc.'s on Its Petition for Waiver Of the Commission's Universal Service Rules

On March 28, 2007, Range Telephone Cooperative, Inc. ("Range") filed a petition requesting a temporary waiver of section 54.307(c) of the Commission's rules. On June 19, 2007, the Commission released a Public Notice seeking comment on Range's petition, among others.[1] As stated in its petition, affidavits supporting its petition, and various supplemental ex parte filings, Range believes good cause exists to grant its waiver petition. In these comments, Range summarizes the arguments it has already made in this proceeding for why it believes good cause exists to grant its petition and urges the Commission to grant Range's petition as expeditiously as possible.

I. Factual Background

Range is a small facilities-based local exchange carrier serving rural parts of southeastern Montana and northeastern Wyoming. Range is also a facilities-based, competitive eligible telecommunications carrier ("CETC") in Montana providing service in portions of Qwest Communications, Inc.'s service territory. Range's CETC business serves about 872 lines in the town of Forsyth, Montana—a small town about 100-miles

[1] *Comment Sought on Petitions Requesting Waiver of Various Filing Requirements Related to the Universal Service Program,* CC Docket No. 96-45, DA 07-2700, Public Notice (rel. June 19, 2007) (*"Public Notice"*).

northeast of Billings, Montana. One of the primary reasons Range began offering competitive services in Forsyth is because the incumbent carrier does not provide any advanced services in the Forsyth area, including broadband.

Range was certified as a CETC by the Montana Public Service Commission on March 21, 2006. Federal Communications Commission rules require all ETCs to submit quarterly line-count data to the Universal Service Administration Corporation ("USAC").[2] Newly designated CETCs are eligible to receive universal service support as of their CETC effective date provided that they submit their relevant line count data within 60 days of their CETC effective date.[3]

On March 24, 2006—three days after it received its CETC certification from the Montana Public Service Commission—Range submitted its high cost model ("HCM") line count data for lines as of September 30, 2005, and its interstate access support ("IAS") line count data for lines as of December 31, 2005. This filing complied with the Commission's filing rules set-forth in Section 54.307(c)(4) (as to HCM line count information) and Section 54.802(a) (as to IAS line count information). After this March 24, 2006 filing, Range's then-Chief Financial Officer, Robin Stephens, began communicating with USAC staff as to the line count data Range needed to submit pursuant to Section 54.307(d), known as the 60-day waiver rule. On May 16, 2006, Range submitted a variety of filings as required under the 60-day waiver rule. On that same date, Range also submitted line count data information that was not due until June 30, 2006. Specifically, Range submitted its IAS line count data as of March 31, 2006. Mr.

---

[2] *See generally* 47 C.F.R. § 54.307.
[3] 47 C.F.R. § 54.307(d).

Stephens has also sworn in a previously submitted affidavit[4] that he has a good faith belief that on May 16, 2006, he filed the necessary HCM line count data for lines as of December 31, 2005—the line count data submission at issue in this matter.

After May 16, 2006, Mr. Stephens repeatedly contacted USAC staff and asked if Range was current with all line count data that needed to be submitted during the 60-day waiver period as well as all line count data that was due June 30, 2006. Mr. Stephens has affirmed this good faith belief in an affidavit submitted in this proceeding whereby Mr. Stephens states that between March 2006 and August 2006, he had multiple conversations with USAC staff whereby USAC told him they had received all the necessary line count data information for Range to receive support back to its ETC effective date.[5] The affidavit shows that at least some of these conversations occurred after June 30, 2006—the date by which fourth quarter 2005 HCM line count data was due. Accordingly, Mr. Stephens' good faith belief that Range had submitted all line count information, including line count data that was due June 30, 2006, was justified as USAC told him they had received everything needed for Range to receive HCM support.

Range believes it is possible USAC disregarded the HCM line count data filing that was submitted on May 16, 2006, as USAC appears to have been only concerned with obtaining line count data that was due during the 60-day waiver period at that time. Range's presumption is strengthened by the fact that USAC appears to have requested, and Range provided to it on May 16, 2006, copies of its IAS line count data as of December 31, 2005—information which Range had previously provided to USAC on March 24, 2006. In this case, the affect of disregarding that line count data (if indeed that

[4] *See* Letter to Marlene H. Dortch dated April 30, 2007, from Jason B. Williams, filed in CC Docket No. 96-45, "Affidavit of Robin Stephens" ("Stephens' First Affidavit").
[5] *See* Stephens' First Affidavit.

is what has occurred) is to punish Range because it filed its line count data 45-days before the deadline.

II. Standard of Review

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.[6] The Commission may exercise its discretion in determining whether waiving a rule is appropriate based on the particular facts make strict compliance inconsistent with the public interest.[7] In addition, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[8] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[9]

III. Good Cause Exists to Grant Range's Petition.

Good cause exists for the Commission to grant Range's waiver petition in this case. By taking into account considerations of hardship, equity and more effective implementation of the Commission's overall policy objectives, the Commission should determine that special circumstances in this case warrant a deviation from its quarterly line count rules. Range further asserts that such deviation will serve the public interest.

A. Consumers in the Forsyth Exchange Will Undergo Undue Hardship if Range's Petition Is Not Granted.

Broadband service did not exist in the Forsyth exchange until Range began providing service there. Large portions of the rural Forsyth exchange still have no access to any type of broadband service. Range is committed to building-out its network to

---

[6] 47 C.F.R. § 1.3.
[7] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
[8] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.
[9] *Northeast Cellular*, 897 F.2d at 1166.

provide broadband access to every consumer living in the Forsyth exchange. Range sought approval as a CETC so that it could receive USF support to build-out access for supported universal services.[10] Range is investing substantial amounts of its own capital into the Forsyth exchange so that consumers living there can have access to broadband services. If Range's waiver petition is denied, Range will have to use its capital investment money earmarked to build-out broadband facilities to pay for basic telecommunications services designed to be supported with USF dollars.

Thus, the Commission's denial of Range's waiver petition may have the affect of unnecessarily delaying the deployment of broadband services in the Forsyth exchange, creating continued hardship for the consumers living there by denying them the ability to access broadband services. By granting Range's waiver petition, the Commission will give Range the tools necessary to ensure that every person living in the Forsyth exchange that wants broadband service will be able to get it.

B. The Commission's Granting of Range's Waiver Petition Will Ensure that Consumers in the Forsyth Exchange Will Have Access to the Same Services As Those Consumers Living In Urban Areas.

Section 254(b) of the Telecommunications Act of 1996 states that one of the principles of universal service is to ensure that those living in rural and high cost areas have access to "advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas." Consumers living in urban areas of the United States can generally choose among several broadband service providers in their area. Even in Montana's larger cities, consumers can choose from a

[10] *See* 47 C.F.R. § 54.101.

variety of high-speed Internet service providers.[11] But in the Forsyth exchange, many consumers do not have the ability to access broadband.

Range is committed to building-out broadband availability throughout the Forsyth exchange. If Range's waiver petition is denied, Range may be forced to delay its deployment of broadband services in the Forsyth exchange, placing consumers living there on unequal footing with consumers living in urban areas as Forsyth consumers will not have access to "advanced telecommunications and information services" as required by the Act. The Commission's granting of Range's waiver petition would be consistent with Section 254(b) of the Act as doing so would ensure that Range has the necessary funding to deploy broadband services to everyone living in the Forsyth exchange. Thus, the Commission's granting of Range's wavier petition will ensure that consumers in the Forsyth exchange will have access to broadband services, the same types of services that are currently available to consumers living in urban areas.

C. Granting Range's Petition Will Be Consistent With the Commission's Policy Goal of Encouraging the Deployment of Broadband Services.

This Commission, Congress and the President have all recognized the deployment of broadband as a national policy priority.[12] If Range's waiver petition is denied, consumers living in large portions of the Forsyth exchange may continue to remain

---

[11] In Missoula, Montana, for example, consumers may choose from nearly 20 different providers of high speed Internet services.

[12] *See, e.g. Statement of Chairman Kevin J. Martin, Federal Communications Commission,* Before the Committee on Commerce, Science and Transportation, U.S. Senate, Feb. 1, 2007 (stating that broadband deployment has been the FCC's top priority); Statement of Rep. Ed Markey (D-MA) to Consumer Federation of America, Feb. 1, 2007 (http://markey.house.gov/index.php?option=com_content&task=view&id=2577&Itemid=141) (stating that the overarching goal of the House Subcommittee on Telecom's agenda is to fashion together a policy blueprint to make broadband service ubiquitous and affordable for every American); in April 2004, the White House issued a statement that it was the Bush administration's goal that "universal, affordable access for broadband technology by the year 2007" (http://www.whitehouse.gov/infocus/technology/economic_policy200404/innovation.pdf).

without access to broadband services. This would be contrary to Section 254 of the Act's mandate that all consumers, even those living in rural and high cost areas have access to advanced telecommunications and information services.[13] Thus, granting Range's waiver petition in this case would be consistent with the Commission's overall policy objective of ensuring it is doing all it can to speed the deployment of broadband services.

D. The Public Interest Would Be Served In Granting Range's Waiver Petition.

As described above, a mistake of fact and miscommunication occurred between USAC and Range regarding line count data submissions. Range had a good faith belief it had filed all necessary line count data with USAC because USAC had told them it had received all such line count data. It appears there may have been confusion as to the period in question for the filing of such line count data as Range always files its line count data well-before the line count deadlines.[14] This confusion has resulted in a denial of funding to Range, which ultimately harms consumers living in the Forsyth exchange because, as described above, many of them do not have access to any broadband provider at this time.

More importantly, as highlighted above, special circumstances exist in this case because the incumbent carrier does not offer broadband services in the Forsyth exchange. Granting Range's waiver petition will serve the public interest by ensuring Range has the

---

[13] *See supra,* pp. 5-6.

[14] Range has a history of filing its line count data submissions more than one month before the various Commission submission deadlines. For example, Range submitted its HCM line count data as of September 30, 2006, and IAS line count data as of June 30, 2006, on December 1, 2006—more than 30 days before it was due. Range submitted its HCM line count data as of March 31, 2006, and IAS line count data as of June 30, 2006, on August 24, 2006—37 days before it was due. Range submitted its HCM line count data as of September 30, 2006, and IAS line count data as of December 31, 2006, on February 16, 2007—43 days before it was due.

necessary tools to deploy broadband services throughout the Forsyth exchange. Accordingly, the Commission should grant Range's waiver petition.

IV. Conclusion

Good cause exists to grant Range's waiver petition. Absent a grant of this waiver request, Range may be forced with the possibility of delaying the deployment of network infrastructure which will adversely affect the ability of people living in the Forsyth exchange to have access to broadband services. Such results are contrary to, and inconsistent with, the statutory principles, policies and objectives of universal service. Accordingly, Range urges the Commission to grant its waiver petition.

Respectfully Submitted,
Range Telephone Cooperative, Inc.

By: _____

Jason B. Williams
Christian, Samson, Jones &
Chisholm, PLLC
310 W. Spruce
Missoula, MT 59801
(406) 721-7772
Its Attorneys

Dated: July 19, 2007