

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

In the Matter of)	
)	
TEXAS RSA 8 SOUTH LIMITED PARTNERSHIP)	
D/B/A WESTEX WIRELESS)	
)	CC Docket No. 96-45
Petition for Waiver of)	
Sections 54.307(c)(2), 54.802(a) and 54.903(a))	
Of the Commission's Rules)	

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Texas RSA 8 South Limited Partnership d/b/a Westex Wireless (“Westex”), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. §1.925, hereby submits this request for waiver of Sections 54.307(c)(2), 54.802(a) and 54.903(a) of the Commission's rules, 47 C.F.R. §§ 54.307(c)(2), 54.802(a), 54.903(a). Westex, a commercial mobile radio service (“CMRS”) provider that is a competitive eligible telecommunications carrier (“ETC”) in a small area of western Texas, requests that the Commission waive the aforementioned rules to accept late-filed line counts so that rural consumers will continue to benefit from uninterrupted support that is critical to the company’s operations. Because Westex is a small telecommunications carrier that relies on uninterrupted universal service support to provide high-quality service and meet its ETC obligations, Westex requests expedited treatment in accordance with Section 1.925(b)(4) of the Commission’s Rules.

I. BACKGROUND AND INTRODUCTION

In January 2006, Westex obtained ETC status from the Public Utility Commission of Texas (“PUC”) in areas served by rural Wes-Tex Telephone Cooperative, Inc. and Verizon Southwest, Inc.¹ As a result of its designation, Westex became eligible to receive high-cost loop support (“HCLS”), safety net additive support (“SNA”), local switching support (“LSS”) interstate access support (“IAS”) and interstate common line support (“ICLS”). Because Westex is a small cellular carrier serving roughly 500

¹ *Order In Re: Application of Cellular South Licenses, Inc. for Designation As An Eligible Telecommunications Carrier Under 47 U.S. C. Section 214(e)(2)*, Docket No. 2001-UA-0451 (September 23, 2004).

customers in very rural areas of Texas, this form of support is critically important to the company's operations. Such support assists Westex in providing a quality universal service offering to the underserved rural communities and enables it to construct new facilities in these areas pursuant to the build-out commitments it made to the PUC in applying for ETC status.

Pursuant to Sections 54.307(c)(2) and 54.903(a)(2), Westex was required to file line counts with the Universal Service Administrative Company ("USAC") on or before October 1, 2007, in order to receive HCLS, LSS, SNA, and ICLS for lines in service as of March 31, 2007. Additionally, pursuant to Section 54.802(a), Westex was required to file a line count on or before September 28, 2007, in order to receive IAS for lines in service as of June 30, 2007. However, due to an administrative oversight, the line counts were not filed until October 4, 2007. The oversight resulted from the unexpected absence of Westex's office manager, who was temporarily reassigned to address an urgent personnel issue during the days surrounding the deadline. Westex regrets this oversight, which the office manager corrected immediately upon resuming his regular duties. As a result of the prompt correction, the line counts were received by USAC only three to four business days after the respective deadlines. Westex had never previously missed a line count or certification filing deadline, and the company has taken measures to ensure that deadlines are not missed should similar circumstances arise in the future. See Exhibit A (Affidavit of Darren J. Patrick).

The FCC Rules Sections involved in this request for waiver is as follows:

- Section 54.307(c)(2): A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.
 - (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;
 - (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;
 - (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year.

- Section 54.802(a): Each Eligible Telecommunications Carrier that is providing service within an area served by a price cap local exchange carrier shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap local exchange carrier study area disaggregated by UNE Zone if UNE Zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the aggregated residential/single-line business class lines reported include single and non-primary residential lines, single-line business lines, ISDN BRI and other related residential class lines. Similarly, the multi-line business class lines reported include multi-line business, centrex, ISDN PRI and other related business class lines assessed the End User Common Line charge pursuant to §69.152 of this chapter. For purposes of this report and for purposes of computing support under this subpart, lines served using resale of the price cap local exchange carrier's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the price cap local exchange carrier only and must be reported accordingly.
- Section 54.903(a)(2): Each rate-of-return carrier in service areas where a competitive eligible telecommunications carrier has initiated service and reported line count data pursuant to §54.307(c) shall submit the information in paragraph (a) of this section in accordance with the schedule in §36.612 of this chapter. A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in §36.612 of this chapter, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

II. ARGUMENT

The Commission has authority to waive its rules whenever there is “good cause” to do so. 47 C.F.R. 1.3; 1.925. Among other things, the Commission may exercise its discretion to waive a rule where 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* at 1157, 1159.

The interruption of support to Westex for one calendar quarter would not be in the public interest or serve the underlying purpose of the rule. The Commission has previously granted waivers of universal service filing deadlines to companies that need high-cost support for “the continued provision of service, as well as system construction and upgrades.”² For competitive ETCs such as Westex, uninterrupted high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. Westex is a small business, serving approximately 500 customers in its Texas ETC service area, and the roughly \$90,000 it receives in high-cost support per quarter constitutes a significant portion of its capital and operating budget for the rural areas it serves. Westex files annual reports with the PUC detailing all of its USF-supported investments in the state, and these projects will not be commenced, or will be substantially delayed, if funding is not provided.³ A grant of this waiver request is essential for Westex “to continue uninterrupted its efforts to maintain and promote access to quality services in its rural and high-cost areas.”⁴

Westex is offering universal service to consumers in rural Texas, and is actively working to advance Lifeline and Link-Up subscribership in the state. Westex has also made specific build-out commitments to the PUC through 2007. Given that Westex has taken on the responsibilities of an ETC, it

² *MCI, Inc., Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission’s Rules*, 21 FCC Rcd 14926, 14929 (2006)(“*MCI Waiver Order*”), quoting *Citizens Communications and Frontier Communications, Petitions for Waiver of Section 54.802(a) of the Commission’s Rules, Order*, 20 FCC Rcd 16761, 16764 (2005).

³ See *Fibernet, LLC Petition for Waiver of Section 54.307(c)(4) of the Commission’s Rules*, 20 FCC Rcd 20316, 20318 (2005)(“*Fibernet Waiver Order*”).

⁴ *MCI Waiver Order, supra*, 21 FCC Rcd at 14929.

would be grossly unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in rural Texas who are expecting continued and rapid deployment of facilities would be harmed by its denial. USAC will not be prejudiced by the late filings, which were received only three or four business days after the respective deadlines.⁵

Furthermore, the Commission has granted similar requests in which a USF deadline was missed due to a clerical oversight arising from disruptions within the filer's company.⁶ In the *MCI Waiver Order*, for example, the Commission granted a waiver of three line count filing deadlines and one certification filing deadline, all of which had occurred as the company "was in the midst of its transition from bankruptcy and was experiencing considerable work force reductions with an inability to re-staff personnel."⁷ The Commission also granted a waiver of the line count deadline set forth in Section 54.307(c) to Northeast Iowa Telephone Company, which filed its line counts late due to an administrative oversight ascribed to its general manager being on vacation.⁸ While the Commission has denied waiver requests where the filer had merely asserted it was confused about the deadline or had misinterpreted the rule,⁹ Westex asserts no such confusion. Rather, the oversight in this case was due to the unexpected

⁵ See *Benton /Linn Wireless Petition for Waiver of Section 54.307(c) of the Commission's Rules, Highland Cellular, Inc. Petition for Waiver Sections 54.307(c), 54.802(a), and 54.809(c) of the Commission's Rules, Louisa Communications LLC Petition for Waiver of Section 54.802(a) of the Commission's Rules, Nebraska Technology & Telecommunications Petition for Waiver of Section 54.802(c) of the Commission's Rules, Northeast Iowa Telephone Company Petition for Waiver of Section 54.307(c) of the Commission's Rules, United State Cellular Corporation Petition for Wavier of Section 54.307(c) of the Commission's Rules, Unity Telephone Company d/b/a Unitel, Inc. Petition for Wavier of Section 54.904(d) of the Commission's Rules, Wapsi Wireless, LLC Petition for Waiver of Section 54.307(c) of the Commission's Rules*, 20 FCC Rcd 19212, 19217 (2005) ("Benton/Lynn Waiver Order") ("The filings of all the petitioners were received within two business days of the due date. Therefore, the late filings did not impair the administration of the USF.")

⁶ *Valor Telecommunications of Texas, L.P. Request for Revision of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(a)*, 21 FCC Rcd 249 (2006); *Benton/Lynn Waiver Order, supra*; *Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations*, 16 FCC Rcd 15275 (2001).

⁷ *MCI Waiver Order, supra*, 21 FCC Rcd at 14928.

⁸ See *Benton/Lynn Waiver Order, supra*, 20 FCC Rcd at 19215-16.

⁹ See, e.g., *Corr Wireless Communications, LLC Petition for Limited Waiver of Sections 54.307(c) and 54.313(d)(3) of the Commission's Rules*, 22 FCC Rcd 5000, 5002 (2007); *South Slope Coop. Tel. Co. Petition for*

absence of key personnel, which the FCC has previously held to constitute unique circumstances warranting a waiver of the rules.¹⁰ The uniqueness of this instance is underscored by the fact that the company had never missed a line count or certification filing deadline before, and has a very strong track record of compliance with deadlines in other areas regulated by the FCC and the Texas PUC. Moreover, as discussed in the Declaration attached as Exhibit A, the company has instituted policies and procedures to ensure deadlines are observed should similar disruptions occur in the future.¹¹

III. CONCLUSION

For the reasons set forth above, Westex respectfully requests a waiver of Sections 54.307(c)(2), 54.802(a) and 54.903(a). Westex asks the Commission to accept its late-filed line counts so as to permit the uninterrupted disbursement of support that is vital to the provision of universal service.

Respectfully submitted,

**TEXAS RSA 8 SOUTH D/B/A WESTEX
WIRELESS**



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¹⁰ See, e.g., *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 22 FCC Rcd 560, 561 (2007) ("Nextel Waiver Order") (oversight due to redirection of staff to address matters related to merger with Sprint); *Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, 21 FCC Rcd 10155, 10156 (2006) (departmental reorganization directly affecting employees responsible for universal service filings); *Dixon Tel. Co. et al., Petitions for Waiver of Section 54.301 of the Commission's Rules*, 21 FCC Rcd 1717, 1718 (2006) (department head was out on medical leave and a critical e-mail was overlooked or deleted as a result); *Fibernet Waiver Order, supra*, 20 FCC Rcd at 20317 (resignation of key employee); *Alliance Communications Cooperative, Inc. et al.*, 20 FCC Rcd 18250, 18251 (2005) (disruption of accounting staff caused by corporate reorganizations and reassignments).

¹¹ See *Nextel Waiver Order, supra*, 22 FCC Rcd at 563.