

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) CC Docket No. 96-45
Federal-State Joint Board on Universal Service)
)
Pine Belt Cellular, Inc.)
Petition for Waiver of)
Section 54.209 of the Commission's Rules)
_____)

To: Wireline Competition Bureau

PETITION FOR WAIVER

Pine Belt Cellular, Inc. ("Pine Belt"), pursuant to section 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules,¹ hereby petitions the Commission for waiver of the October 1, 2007 deadline set forth in section 54.209 of the Commission's rules for the filing of an annual compliance report in relation to receipt of high-cost universal service ("USF") support.² Due to circumstances described more fully below, this report was filed past the filing deadline because Pine Belt and its outside contractor, the accounting firm of Jackson Thornton, Montgomery, Alabama, placed undue reliance on the completeness and accuracy of USAC's website and reminder materials. The reporting requirement at issue was not included on USAC's website, and the filing inadvertently was missed by Pine Belt's outside contractor. Pine Belt has filed all other necessary USF-related filings on a timely basis. The compliance report has been filed with the FCC and USAC.³

¹ 47 C.F.R. § 1.3, § 1.925. Pursuant to § 1.1105, no filing fee applies to this request.

² 47 C.F.R. § 54.209.

³ See Declaration of John C. Nettles, President, Pine Belt Cellular, Inc., attached as Exhibit 1.

Pine Belt respectfully requests that the FCC accept its annual compliance report filing as timely filed. Grant of this petition for waiver will enable Pine Belt to receive USF payments for the first quarter of 2008, and allow Pine Belt to continue to provide quality service to its rural customers. Failure to receive these funds will cause undue hardship to Pine Belt and its customers.

CIRCUMSTANCES OF HARDSHIP JUSTIFY THIS WAIVER REQUEST

Pine Belt is a small family-owned provider of cellular and personal communications services to rural and non-rural incumbent local exchange (“ILEC”) areas in Alabama. Pine Belt’s affiliate, Pine Belt Telephone is a small rural ILEC serving customers in southern Alabama. Both Pine Belt companies have a small staff of regulatory, accounting and technical professionals who allocate their time between multiple tasks for each company.

Pine Belt was certified in May 2002 by the FCC as an Eligible Telecommunications Carrier (“ETC”) for non-rural areas in Alabama.⁴ In March 2006 Pine Belt filed a Petition for Designation as an Eligible Telecommunications Carrier for the rural ILEC portions of its service territory.⁵ That petition, which is on file with the Commission, remains pending and is ripe for decision, and includes the information the Commission and USAC seeks in the annual compliance report. Pine Belt is aware of its annual reporting obligation, but missed the deadline because it thought its outside contractor was tracking and meeting all applicable deadlines.

Pine Belt has taken many actions to assure its regulatory compliance. Following Pine Belt’s initial ETC certification, Pine Belt personnel filed all necessary paperwork to receive universal service support. At the time of its initial certification, the FCC had not yet adopted the

⁴ *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-1252 (rel. May 24, 2002).

⁵ *Pine Belt Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, (filed March 2, 2006)

annual reporting requirement included in Section 54.209, and thus the requirement did not appear on its initial regulatory compliance tracking charts that Pine Belt set up to make sure filings were made on a timely basis. Following some difficulties in its compliance efforts related to its business disruptions related to Hurricane Ivan and other factors such as staff family members being deployed to the War in Iraq, and in an effort to supplement its in-house compliance efforts, Pine Belt staff began working with the outside accounting firm of Jackson Thornton in Montgomery, Alabama to put together the regulatory filings. Both Jackson Thornton and Pine Belt staff relied on a list of filing dates it compiled based on information obtained from the USAC website, e-mail newsletters and calendars. Apparently, the annual compliance filing requirement did not appear on any of these USAC sources, and thus this filing did not appear on the master filing calendar used by Jackson Thornton. Jackson Thornton made all other USAC filings on behalf of Pine Belt with an October due date in mid-September, but inadvertently missed the compliance filing because it did not appear on any of the calendars or reminder lists consulted by Pine Belt or its outside consultant.

GRANT OF THIS WAIVER REQUEST IS IN THE PUBLIC INTEREST

Section 1.3 of the Commission's rules specifies that the Commission may grant a waiver of the application of any of its rules for "good cause shown." Section 1.925(b)(3) provides that the Commission may waive a rule when the specific facts make strict compliance with a rule inconsistent with the public interest. The Commission may take into account considerations of hardship, equity or more effective implementation of overall policy on an individual basis, and

courts have affirmed the Commission's power to waive its rules if special circumstances warrant a waiver, and grant of the waiver serves the public interest.⁶

Pine Belt respectfully submits that good cause exists to grant a waiver of the Commission's rules to permit Pine Belt to receive high cost support for the first quarter of 2008. Section 54.209 of the Commission's rules, entitled "Annual reporting requirements for designated eligible telecommunications carriers" provides that a common carrier designated as an ETC shall provide certain annual reporting information by October 1 of each year.

The Pine Belt personnel and outside consultants Jackson Thornton responsible for filing regulatory reporting discovered that the filing had been missed after receiving an e-mail notice from USAC on October 12, 2007. Upon receiving this communication from USAC, and discussing this matter with Jackson Thornton personnel, the responsible Pine Belt personnel immediately began preparing the report, and after discussions with counsel, the annual compliance filing was made on October 30, 2007.

Absent grant of the requested waiver, USAC, pursuant to Section 54.209, will withhold from Pine Belt USF high cost funding for the first quarter of 2008. This amount of funding represents a loss of approximately \$22,563 to Pine Belt, funds that otherwise could be used by Pine Belt to provide the wireless services in Alabama relied on by its customers both for routine and emergency purposes. Loss of this funding imposes hardship on Pine Belt and its customers.

Pine Belt recognizes that USAC simply is administering FCC rules that require annual reporting. Pine Belt does not take deadlines lightly. Pine Belt works diligently to allocate its limited financial resources to provide both the highest possible quality of service to the public and also to comply with all of the many regulatory deadlines. Pine Belt hired and worked with

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. 1990).

the third party vendor Jackson Thornton to assist its compliance efforts. Prior to receipt of the e-mail notice from USAC dated October 12, 2007 both Pine Belt and Jackson Thornton were under the impression that all required filings had been made. Upon notice of the missed filing, Pine Belt took action to promptly come into compliance when its inadvertent failure to file the annual compliance report was brought to its attention by USAC.

Earlier this year the Wireline Competition Bureau granted a waiver to the similarly named (but unrelated company) Pine Cellular Phones, Inc. ("Pine Cellular") when an oversight by its third party vendor resulted in a late USAC filing.⁷ Although the Bureau, citing an earlier grant of a waiver to Northwest Dakota Cellular, notes that it generally does not grant waivers merely based on the failure of third parties, it did find in *Pine Cellular* that strict enforcement of the filing deadline would disproportionately penalize Pine Cellular for the mistake.⁸

In this case, USAC has received all other required filings from Pine Belt, and is in possession of all other necessary data to make the calculations for the first quarter 2008 payment, because Pine Belt has made all other necessary submissions. All the line count data that USAC needs to make the USF payments to Pine Belt were timely filed, and therefore, Pine Belt respectfully submits that grant of this waiver will not cause undue administrative burden on the USAC or the FCC. Waiver of the rule would serve the public interest by permitting Pine Belt to continue to provide quality service to its customers. Failure to grant a waiver would result in undue hardship and penalty to Pine Belt.

In the case involving Citizens Communications and Frontier Communications, decided in October 2005, the Bureau waived a late filing to permit receipt of funds based on the principle of

⁷ *Pine Cellular Phones, Inc. Petition for Waiver of Section 54.307 of the Commission's Rules*, CC Docket 96-45, DC 07-239, (Wireline Comp. Bur., released January 26, 2007).

⁸ *Pine Cellular at para. 5, citing Northwest Dakota*, 21 FCC Rcd at 9181, para. 7.

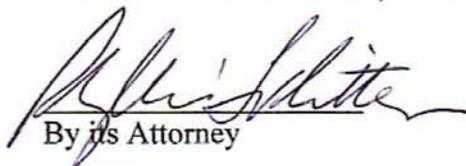
hardship and equity.⁹ In the *Citizens/ Frontier Waiver Order* the Bureau notes that loss of funding in rural, insular high cost area could undermine investments in network, and the ability of the carrier to ensure that customers have and maintain adequate service. Although the amount of support at issues in *Citizens/Frontier* was much higher, the principle is the same—hardship is caused to a rural carrier when support is lost. Here Pine Belt's customers should not be punished for its vendor's failure to file a compliance report, especially when the information contained in the report is not required for USAC to calculate the payments.

Thus, Pine Belt petitions the Commission to waive the rule to permit Pine Belt to receive first quarter 2008 funds, because to do so would benefit customers, and would be only a minor administrative inconvenience to USAC, because it already has all the information it needs to make the payments in question.

Therefore, for all the reasons stated above, Pine Belt respectfully requests that the Commission waive application of the deadline set forth in Section 54.209 of its rules, and treat Pine Belt's annual compliance report as timely filed for purposes of payment of USF support for the first quarter of 2008.

Respectfully submitted,

PINE BELT CELLULAR, INC.



By its Attorney

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Date: October 30, 2007

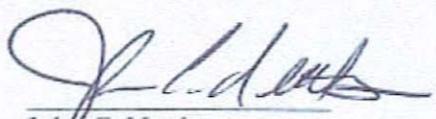
⁹ See *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 9181.

Declaration of John C. Nettles

I, John C. Nettles, do hereby declare under penalty of perjury as follows:

1. I am President of Pine Belt Cellular, Inc. ("Pine Belt").
2. This Declaration is submitted in support of Pine Belt's Petition for Waiver (the "Waiver Petition").
3. I employed the outside consulting and accounting firm Jackson Thornton to work with my personnel to make all necessary USAC compliance filings. I was under the impression that all necessary paperwork had been filed to receive 2008 USF support. However, I have been informed that the annual compliance report, due October 1, 2007, was made on October 30, 2007 due to an inadvertent omission on the deadline filings list, as described in the Petition.
5. I further declare that, absent the requested waiver, Pine Belt will lose approximately \$22,563.00 in funds that otherwise would be used to provide the wireless services in Alabama relied on by its customers both for routine and emergency purposes.
6. I further declare that I have reviewed the aforementioned Waiver Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

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



John C. Nettles
President

Date 10/30/2007

Exhibit 2

Declaration of Rod Ballard

I, Rod Ballard, do hereby declare under penalty of perjury as follows:

1. I am a certified public accountant and Principal in the accounting firm Jackson Thornton in Montgomery, Alabama. I specialize in telecommunications regulatory issues.
2. This Declaration is submitted in support of Pine Belt Cellular Inc.'s ("Pine Belt") Petition for Waiver of Section 54.209 of the Commission's Rules filed in Common Carrier Docket No. 96-45 ("Waiver Petition"). I have been retained to provide accounting and consulting services to Pine Belt, including reviewing Universal Service Fund issues, and assuring Pine Belt's regulatory compliance with the rules and policies of the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC").
3. I declare and certify as follows: Jackson Thornton maintains, in consultation with Pine Belt Cellular, Inc. a regulatory filing calendar. This regulatory filing calendar is developed in part based upon information provided by the website of USAC and its e-newsletters. The filing in question did not appear on USAC's calendar.
4. I have been asked to quantify for Pine Belt the lost high cost revenue for Pine Belt for first quarter of 2008. This amount is \$22,563.00. Pine Belt has filed with USAC all the required the data and paperwork for reimbursement from the high cost fund. As Pine Belt's Waiver Petition details, Pine Belt is seeking an FCC order to obtain first quarter 2008 funds. I make this declaration to assist Pine Belt's attempt to obtain the universal service funds necessary to serve its rural customers.
4. Pine Belt's service territory comprises one of the poorest rural areas in Alabama, and indeed the United States. Pine Belt's rural service area is

expensive to serve and Pine Belt could use these high cost funds to serve rural customers.

5. I declare that to the best of my knowledge, Pine Belt has taken steps to assure future regulatory compliance. Pine Belt's President, John C. Nettles, has retained me to assist him and his staff to make regulatory filings and supervise FCC and USAC filing and regulatory compliance efforts.
5. I further declare that I have reviewed Pine Belt's records and discussed the facts with Pine Belt's President and his staff, and the facts stated above are based upon my personal knowledge and review, and are true and correct to the best of my knowledge and belief.

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



Rod Ballard

Date: 10/30/07