

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

In the Matter of)
)
IT&E Overseas, Inc. Petition for) CC Docket No. 96-45
Protective Waiver of Section 54.209)
Of the Commission's Rules)

PETITION FOR WAIVER

IT&E Overseas, Inc. (IT&E), by its attorneys, hereby petitions the Commission for a waiver of the requirement in Section 54.209(a) and (b) of the rules to file an annual compliance report by October 1, 2007, to receive high-cost universal service support for the year 2008. IT&E requests that the Commission accept its 2008 annual compliance report filing as complete and timely filed. Grant of this petition will enable IT&E to maintain its status as an Eligible Telecommunications Carrier (ETC) and continue to receive high cost support from the universal service fund for the full year 2008, which will allow IT&E to continue providing quality service to its rural customers. Accordingly, grant of the waiver is in the public interest, convenience and necessity.

WAIVER STANDARD

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application of the instant case, and that grant of a waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

Courts have affirmed the Commission's power to waive its rules if special circumstances warrant waiver and grant of the waiver serves the public interest.¹

IT&E'S UNIQUE CIRCUMSTANCES JUSTIFY A WAIVER

IT&E provides wireless telephone service throughout Guam. IT&E has a small staff of employees and only one (1) full time regulatory employee. By order released on June 6, 2002, the Commission certified IT&E as an Eligible Telecommunications Carrier (ETC) for Guam. At the time of IT&E's initial certification, IT&E put procedures in place to comply with its obligations as an ETC. However, the Commission had not adopted the annual reporting requirement in Section 54.209 of the rules at that time and, therefore, no corresponding compliance procedure was put in place.

Due to its size and small staff of full time employees, IT&E relies on information provided by its consultants, the FCC and USAC to ensure compliance with new or revised universal service obligations. To IT&E's knowledge, it did not receive any specific notice from the FCC or USAC that it was subject to this reporting requirement at the time the requirement was implemented. Moreover, it appears that the annual compliance filing requirement did not appear on the FCC's website or on various USAC sources. In addition, after IT&E received its certification, IT&E was required to engage

¹ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

new counsel to represent it in matters before the FCC. IT&E believes that this contributed to IT&E's being unaware of the new universal service reporting obligation.

IT&E also continued to receive universal service disbursements from USAC throughout 2007 and, thus, assumed that it was in compliance with the applicable requirements. IT&E did not become aware of the reporting requirement until it received a notice from USAC on February 1, 2008, inquiring about the report IT&E should have filed on October 1, 2006 for the year 2007. At that time, IT&E also became aware that USAC had sent an earlier notice on October 13, 2007, advising IT&E that USAC had not received IT&E's report that was due on October 1, 2007 for the year 2008. The earlier email message from USAC was inadvertently overlooked by IT&E apparently because it was not specifically addressed to Mr. Borlas.

IT&E has prepared, and filed on March 25, 2008, under separate cover, the 2008 report. A copy of the public version of the 2008 ETC Compliance Report is attached hereto.

GRANT OF THIS WAIVER IS IN THE PUBLIC INTEREST

IT&E does not dispute the reasonableness of Section 54.209 of the Commission's rules and IT&E recognizes the importance of compliance with this and other universal service rules. As stated by the Commission, the purpose of the reporting requirements is to "ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes." IT&E contends its 2008 report demonstrates that IT&E is, and has been, in compliance with the conditions

of its ETC designation and that it has used universal service funds for their intended purpose. Accordingly, although IT&E's report is late filed, the purpose of the rule is met.

Further, as demonstrated in the Report, the universal service funds received by IT&E have enabled IT&E to maintain and enhance a competitive telecommunications service available to all consumers on Guam. IT&E has continued to upgrade its facilities in 2008, with the expectation that it would receive universal service funds. Waiver of the Commission's rule, therefore, such that IT&E is able to maintain its ETC designation and continue receiving universal service support would serve the public interest. On the other hand, revocation of IT&E's ETC designation would impose a penalty disproportionate to the inadvertent rule violation of a late filed report; and it would be inequitable, unduly burdensome and contrary to the public interest.

Therefore, based on the foregoing, IT&E respectfully requests that the Commission waive Section 54.209 of the Rules to accept IT&E's 2008 ETC Compliance Report and to permit IT&E to maintain its ETC designation. IT&E also requests waiver of Section 54.209(b) to allow IT&E to receive universal service support for the full year 2008.

Respectfully submitted,

IT&E OVERSEAS, INC.

/s/ Mary J. Sisak

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Dated: March 28, 2008

AFFIDAVIT

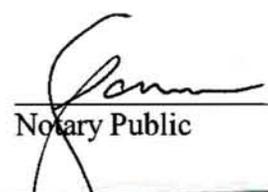
CITY OF TAMUNING)
)
GUAM, U.S.A.)

I, John M. Borlas, President of IT&E Overseas, Inc., hereby state that I am personally familiar with all of the factual statements contained in the Petition for Waiver to which this affidavit is attached. All statements contained in the Petition are true and correct based upon information and belief.



John M. Borlas

Sworn to and subscribed before me, the undersigned authority, on this 28th day of March 2008.



Notary Public

DONNA M. PERRON
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: April 11, 2009
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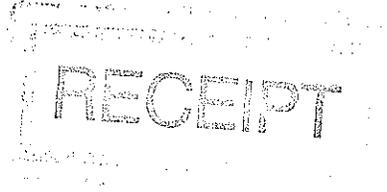
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March 25, 2008



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*LIMITED TO MATTERS AND PROCEEDINGS
BEFORE FEDERAL COURTS AND AGENCIES

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FILED/ACCEPTED

MAR 25 2008

Federal Communications Commission
Office of the Secretary

Re: **IT&E Overseas, Inc.**
Docket 96-45
2008 ETC Compliance Report

Dear Ms. Dortch :

IT&E Overseas, Inc. (IT&E), by its attorneys, hereby submits the public copy of its 2008 ETC Compliance Report. The confidential copy is being submitted separately.

Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, IT&E has requested that certain information in its filing, concerning build-out plans and financial data, be treated by the Commission as confidential and withheld from public inspection.

Please contact us if there are any questions concerning this filing.

Sincerely,

Benjamin H. Dickens, Jr.
Mary J. Sisak

Attorneys for
IT&E Overseas, Inc.

Attachment

IT&E OVERSEAS, INC.
2008 ETC COMPLIANCE REPORT

CONTENTS

- Section 1: Five-year service quality improvement plan § 54.209 (a)(1)
- Section 2: Detailed Outage Information §54.209(a)(2)
- Section 3: Unfulfilled Service Requests §54.202(a)(3)
- Section 4: Customer Complaints §54.209(a)(4)
- Section 5: Service Quality and Consumer Protection Certification §54.209(a)(5)
- Section 6: Ability to Remain Functional in Emergencies Certification §54.209(a)(6)
- Section 7: Description of Carrier's Local Usage Plan §54.209(a)(7)
- Section 8: Equal Access Certification §54.209(a)(8)

Section 1: Five-year service quality improvement plan § 54.209 (a)(1)

IT&E's service quality improvement plan is to continue to upgrade its telecommunications facilities and equipment as necessary to meet evolving service requirements and maintain high quality service throughout its service area. As a wireless service provider, IT&E upgrades and replaces facilities and equipment as necessary. IT&E will use any high-cost universal service amounts received by it to offset expenditures incurred as it continues to upgrade and replace facilities and equipment. IT&E's service quality improvement plan is attached hereto as "Confidential Exhibit A."

In addition, the Federal Universal Service Support IT&E received in 2007 is attached hereto as "Exhibit B" and IT&E's 2007 expenditures related to the provision, maintenance, and upgrading of its facilities and services is attached as "Exhibit C."

Exhibit A and Exhibit C are submitted as confidential as they contain company specific financial data and network planning information, and disclosure of the information contained therein could jeopardize IT&E's financial and competitive position.

Section 2: Detailed Outage Information §54.209(a)(2)

During 2007, IT&E experienced the following service outages that affected at least 10% of its end users for a period lasting more than 30 minutes.

Time	Description of Outage	Resolution	Service Affected	Geographic Areas Affected	Steps taken to prevent similar situation in the future	# of Customers Affected
1.5 hrs	Applications Processor (AP) down	Restored AP	CDMA	Islandwide	Traffic rerouted to additional antenna sites	40%
14:20 - 16:20	Call failure	Call Processor restarted	Prepaid system	Islandwide	System monitored by CPDI. Logs reviewed & scripts updated.	31%
20:45 - 22:00	Call failure	Call Processor restarted	Prepaid system	Islandwide	System monitored by CPDI. Logs reviewed & scripts updated.	21%
2 hrs	Island wide power problems	Power was stabilized	CDMA	Islandwide	Traffic rerouted to additional antenna sites	20%

- Notes:
1. GTA is the local exchange carrier providing T1 facilities to our antenna sites.
 2. In 2007 we upgraded our prepaid system to accommodate more customers and call features. Throughout the transition period it was necessary for CPDI (Communications Products Development, Inc.) to debug the new system several times.

Section 3: Unfulfilled Service Requests §54.202(a)(3)

IT&E was able to provide service to all potential customers that requested service during 2007.

Section 4: Customer Complaints §54.209(a)(4)

During 2007, IT&E received an estimated 15 customer complaints per 1,000 lines.

IT&E Customer Complaints - 2007

Description	# of complaints
Wireless Airtime Dispute / Complaint	71
Wireless Cancellation Fee Dispute / Complaint	208
Wireless Miscellaneous	5
Wireless Monthly Recurring Charge Dispute/Complaint	102
Wireless Roaming Dispute / Complaint	5
Wireless Coverage Issues	3
TOTAL	394

Date	# of lines reported to USAC in 2007
12/31/06	25,200
03/31/07	25,400
06/30/07	26,010
Ave.	25,537

Number of customer complaints per 1,000 lines: **15**

Section 5: Service Quality and Consumer Protection Certification §54.209(a)(5)

IT&E complies with applicable FCC service quality standards and consumer protection rules and those contained in the CTIA's Consumer Code for Wireless Service. See Exhibit D

Section 6: Ability to Remain Functional in Emergencies Certification §54.209(a)(6)

IT&E has fortified its network to remain functional in emergency situations. Standard network reliability features include battery back-up power at most facilities as well as generators installed at all switching facilities and 65% of its cell site locations. Further, IT&E has portable generators that can be deployed for sustained outages. In addition, IT&E's network reliability is supported by redundancy measures. See Exhibit D

Section 7: Description of Carrier's Local Usage Plan §54.209(a)(7)

See Exhibit D

Section 8: Equal Access Certification §54.209(a)(8)

See Exhibit D

CONFIDENTIAL INFORMATION

IT&E 2007 High Cost Division Disbursements

Year	Month	HCL	ICLS	Total
2007	Dec	\$28,932	\$186,645	\$215,577
2007	Nov	\$32,062	\$186,645	\$218,707
2007	Oct	\$44,779	\$186,645	\$231,424
2007	Sep	\$19,997	\$177,950	\$197,947
2007	Aug	\$17,861	\$177,950	\$195,811
2007	Jul	\$11,558	\$177,950	\$189,508
2007	Jun	\$19,969	\$138,921	\$158,890
2007	May	\$19,969	\$138,921	\$158,890
2007	Apr	\$14,191	\$138,921	\$153,112
2007	Mar	\$23,070	\$146,617	\$169,687
2007	Feb	\$23,070	\$146,617	\$169,687
2007	Jan	\$24,813	\$146,617	\$171,430
		Annual Disbursement		\$2,230,670

CONFIDENTIAL INFORMATION

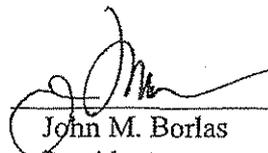
RULE 54.209(a) (5), (6), (7), AND (8) CERTIFICATIONS

IT&E Overseas, Inc. (IT&E) hereby certifies that:

- a) it is complying with applicable service quality standards and consumer protection rules;
- b) it is able to function in emergency situations as set forth in Section 54.201(a)(2) of the rules;
- c) it is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service area; and
- d) it acknowledges that the Commission may require IT&E to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

This certification is made for the 2008 annual report.

By:



John M. Borlas
President

Date:

3-13-08

DECLARATION UNDER PENALTY OF PERJURY

GUAM, U.S.A.)
)
Municipality of Tamuning)

I, John M. Borlas, President of IT&E Overseas, Inc., do hereby declare under penalty of perjury that the statements contained in the foregoing 2008 ETC Compliance Report are true and correct to the best of my knowledge, information and belief.



John M. Borlas
President
IT&E Overseas, Inc.

Dated: 3-13-08

Subscribed, Sworn to and acknowledged before me this 13th day of March, 2008.



Notary Public

DONNA M. PERRON
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: April 11, 2009
165 Marata St., #202, Tamuning, Guam 96913

