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

FILED/ACCEPTED
JUL 23 2008
Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Yukon Telephone Company, Inc. (SAC #613025)	)	
Petition for Waiver of Section 54.904(d) Filing Deadline	)	
For Submission of Annual Interstate Common Line Support	)	
Certification for a Rural Rate-of-Return Carrier	)	

PETITION FOR WAIVER OF SECTION 54.904(d) DEADLINE
FOR ANNUAL INTERSTATE COMMON LINE SUPPORT CERTIFICATION

Yukon Telephone Company, Inc. ("Yukon"; Study Area Code 613025), by its attorney and pursuant to Section 1.3 of the Commission's Rules, requests waiver of the June 30, 2008 deadline established by Section 54.904(d) of the Rules for the filing of its annual certification with the Universal Service Administrative Company ("USAC") that its Interstate Common Line Support ("ICLS") for the period from July 1, 2008 through June 30, 2009 will be used only for the intended purposes.

Yukon simultaneously transmitted its annual ICLS certifications by First Class United States mail, postage prepaid, in what it believed to be a prudent and timely fashion on Wednesday, June 25, 2008, to both of the required filing destinations: (1) the Commission's Office of the Secretary; and (2) USAC's Washington, DC office. Previously, Yukon had found five (5) days to be a more than adequate period to allow delivery of First Class mail from its Wasilla, Alaska post office to destinations in Washington, DC. However, it appears that the copy mailed to the Office of the Secretary was not received by the Commission until Monday, July 7, 2008 (an extraordinary and unanticipated twelve days after it was mailed), and that the

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copy mailed to USAC was also not received until Wednesday, July 2, 2008 (a full week after it was mailed).

The requested waiver is needed because what appears to be an unforeseen and uncontrollable delay or mix-up in the delivery of First Class mail by the United States Postal Service threatens the receipt by Yukon of approximately $108,240 of critically needed ICLS to which it would otherwise be entitled during the period from July 1, 2008 to December 31, 2008.[1]

Good cause exists for the requested waiver because: (1) Yukon made material and substantial attempts to comply with all of its ICLS filing requirements for 2008-2009, including its ICLS projection and line count data filings as well as its ICLS certifications; (2) Yukon made a timely and good faith effort to prepare and submit its annual ICLS certifications by the June 30, 2008 deadline, but appears to have been prevented by unanticipated and uncontrollable United States Postal Service delays or mix-ups from completing the filing of its certifications with the Commission and USAC by the deadline; (3) grant of the requested waiver will have no significant adverse impact upon USAC's administration of the ICLS program; (4) the loss or substantially delayed receipt of approximately $108,240 of ICLS will impair the ability of Yukon to invest in new and upgraded telecommunications infrastructure, and may ultimately result in service quality decreases or local service rate increases for its rural Alaska customers; and (5) the loss of approximately $108,240 of ICLS would constitute an excessive penalty for Yukon and its customers for what was an unintentional and uncontrollable delay in mail delivery.

[1] It is Yukon's understanding from the USAC website (http://www.universalservice.org/hc/incumbent-carriers/step06) that ICLS certifications received after June 30 but before September 30 render a recipient ineligible without a waiver for distributions of ICLS for the third and fourth quarters of that calendar year. In Yukon's case, it is estimated that it would otherwise be entitled to approximately $18,040 of ICLS per month (or a total of $108,240) for the period from July 1, 2008 to December 30, 2008.

I

Background

Yukon is an Alaska rural incumbent local exchange carrier ("ILEC") headquartered in the city of Wasilla in south central Alaska (mailing address: 6270 E Beechcraft Rd, Wasilla, Alaska 99654). It serves a total of approximately 647 access lines in three sparsely populated exchanges serving the areas in and around the following rural Alaska communities: (1) the city of Ruby (2000 population: 188) in the Yukon-Koyukuk Census Area in central Alaska; (2) the city of Tanana (2000 population: 308) in the Yukon-Koyukuk Census Area in central Alaska; and (3) the hamlet of Whittier (2000 population: 182) in the Valdez-Cordova Census Area in south central Alaska. These three exchanges constitute the entire local exchange service area of Yukon, as well as its entire Alaska study area (Study Area No. 613025).

Yukon is a rural telephone company, an ILEC, and a Rate of Return carrier that operates on a cost basis. It has been an eligible telecommunications carrier ("ETC") since the Telecommunications Act of 1996 was first implemented.

II

Good Cause Exists for Waiver of the Section 54.904(d) Deadline

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

A. Material and Substantial Compliance Efforts

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by Yukon to comply with all of the requirements and filings necessary to qualify for and receive ICLS for the 2008-2009 period.

Yukon, either directly or through the National Exchange Carrier Association ("NECA") as its representative, has complied fully and in a timely manner with the ICLS data filing requirements of Section 54.903(a) of the Commission's Rules (including the submission of projected common line cost and revenue data, actual common line cost and revenue data, and line counts) since these requirements became effective in late 2001. Yukon has not missed any of these Section 54.903(a) filing deadlines, and is currently up-to-date with respect to all of its ICLS data submission obligations for the 2008-2009 period.

Yukon also made a material, substantial, timely and good faith effort to comply with the subject June 30, 2008 ICLS certification deadline. Its President signed the certifications on Wednesday, June 25, 2008, and copies were taken to the Wasilla, Alaska post office that day and placed in First Class United States mail, postage prepaid, for delivery both to the Commission and to USAC's Washington, DC office. During recent years, Yukon has found a five-day mailing period to be more than sufficient to ensure delivery of First Class mail from Wasilla to Washington, DC, and never suspected that there might be a problem getting the subject ICLS certifications Yukon to the Commission and USAC by June 30, 2008.

In sum, since ICLS was added to the Universal Service Fund ("USF") programs, Yukon has made substantial, material, timely and good faith efforts to comply with the ICLS filing requirements and procedures of the Commission and USAC.

B. Uncontrollable Mail Delay or Mix-Up

The Commission has frequently waived deadlines that were missed due to unforeseen and uncontrollable conditions. It has found that policy and equitable considerations, as well as the avoidance of undue hardship, warrant the grant of waivers to allow the acceptance and consideration of late filings in such circumstances. See, for example, *Farmers Mutual Telephone Company*, DA 08-925 (Wireline Comp. Bur. April 21, 2008) (annual Section 54.314(d) state certification filing deadline waived to allow Local Switching Support ("LSS") recipient to receive support when confusion between it and the Idaho Public Utility Commission regarding new state ETC requirements resulted in a late-filed certification); *Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc.*, DA 05-3024 (Wireline Comp. Bur. November 22, 2005) (Section 54.301(b) LSS deadline waived to accept projected LSS data submission filed four months late due to disruptions caused by corporate reorganizations and employee reassignments); *Smithville Telephone Company,* 19 FCC Rcd 8891 (Wireline Comp. Bur. May 18, 2004) (Section 54.301(b) LSS deadline waived to accept a projected LSS data submission filed four months late due to disruptions caused by the death of the carrier's president and the illness of its regulatory accountant); *Metricom, Inc. Request for Waiver of Section 27.208(A) of the Commission's Rules,* 13 FCC Rcd 890 (Wireless Tel. Bur. 1998) (waiver of payment deadline when bank error in transmitting payment caused delay); *Application of Fred Farley for Authority to Construct and Operate a Domestic Public Cellular radio Telecommunications Service,* 4 FCC Rcd 4670 (Comm. Carr. Bur. 1989) (waiver of deadline because clerical error caused improper filing on due date).

Here, Yukon delivered its ICLS certifications to the Wasilla post office for mailing to both the Commission and USAC on Wednesday, June 25, 2008, five days in advance of the Monday, June 30 deadline. This had previously been more than sufficient time for the United States Postal

Service to deliver first class mail from Wasilla to Washington, DC. That some sort of United States Postal Service mix-up occurred is indicated by the fact that the Yukon certifications were mailed simultaneously in Wasilla, but were received in USAC's Washington, DC office and in the Commission's mailroom in the same city five (5) days apart (with the certification being received by USAC on July 2, but not by the Commission until July 7). Equity requires that Yukon's substantial compliance efforts be recognized and that the Section 54.904(d) deadline be waived in order to avoid the imposition of undue hardship for a wholly uncontrollable and unexpected delay in the delivery of Yukon's certification to USAC.

C. No Adverse Impact on USF Administration

USAC has received Yukon's relevant projected common line cost and revenue data and line counts in timely fashion for it to incorporate Yukon's estimated ICLS funding into its USF contribution and disbursement plans and programs for 2008 and 2009. The relatively brief delay from June 30 to July 2 in USAC's receipt of Yukon's ICLS certification will not disrupt or delay USAC's administration of the ICLS program or other federal USF programs. Hence, grant of Yukon's requested waiver will not adversely impact administration of the USF programs.

D. Adverse Impacts upon Investment, Local Rates and Jobs

In contrast, the loss of all or a significant portion of the approximately $108,240 of ICLS to which Yukon would otherwise be entitled for the second half of 2008 period would be a severe blow to the Yukon and its rural Alaska. That amount represents approximately 16 percent of Yukon's annual revenues.

Revenue losses of this magnitude are extremely onerous and disruptive for small companies like Yukon, particularly when they are not accompanied by any offsetting loop or

other cost reductions. Yukon will have no choice but to reduce its cash outlays, or increase its revenues from other sources, in order to offset such a substantial ICLS loss.

One option would be to increase the local service rates paid by Yukon's rural customer-members. The projected $108,240 of ICLS represents an average of $167.30 for each of Yukon's approximately 647 access lines. Rate increases to recover such amounts constitute an unwarranted penalty to Yukon's customers for an unforeseen and uncontrollable mail delay, and do not advance the fundamental Universal Service principle of just, reasonable and affordable rates.

In the alternative, the loss of approximately $108,240 of ICLS revenues will impair the ability of Yukon to invest in infrastructure additions and upgrades, thereby reducing the future services and service quality available to its rural member-customers. In addition to eliminating $108,240 in potential cash reserves available for equipment purchases and down payments, the potential ICLS revenue loss will make it more difficult for Yukon to obtain infrastructure investment loans at reasonable interest rates by reducing the assets and financial ratios used by bankers to evaluate and price such loans.

Yet another alternative for offsetting a loss of $108,240 of ICLS is to reduce operating expenses. Whereas rural telephone companies take very seriously their responsibilities as significant employers in rural communities, it may not be possible for a small company like Yukon to weather a $108,240 revenue loss without cutting jobs or salaries. In the very small rural communities in Yukon's service area, the loss or temporary lay-off of even a couple of telephone cooperative jobs can cause significant disruptions and hardships.

E. Excessive and Onerous Penalty

Penalties and forfeitures are not favored by the law, and should be enforced only when they are within both the spirit and letter of the law. *United States v. One Ford Coach*, 307 U.S. 219, 226 (1939). In determining whether penalties and fines are excessive, courts have examined whether they are "so disproportionate to the offense as to shock public sentiment" or "contrary to the judgment of reasonable people concerning what is proper under the circumstances." *Hindt v. State*, 421 A.2d 1325, 1333 (Del. 1980).

The imposition of an effective penalty of approximately $108,240 upon Yukon for an unanticipated and uncontrollable mailing delay would be wholly disproportionate to the alleged "offense" and would be deemed "excessive" in the judgment of virtually all reasonable people. In this respect, it should be noted that Section 503(b)(2)(B) of the Act imposes a smaller maximum penalty of $100,000 upon a common carrier for a willful violation of a law or regulation.

III

Conclusion

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of Yukon's requested waiver of the Section 54.904(d) annual ICLS certification deadline. Yukon has complied with the critical Section 54.903(a) ICLS revenue, cost and line count requirements and deadlines, and has exerted substantial efforts to comply fully and in good faith with the Section 54.904(d) certification deadline only to be frustrated by an unexpected and uncontrollable mail delivery delay. Whereas grant of the requested waiver will not disrupt or impair USAC's administration of ICLS and other universal service programs, the potential loss or delayed receipt

by Yukon of the approximately $108,240 of ICLS to which it is otherwise entitled during the second half of 2008 would impose severe and unwarranted hardships upon its customers, employees and investment plans and constitute an excessive and onerous penalty for an unanticipated and uncontrollable delay in mail delivery.

Good cause having been shown, the Commission is requested to waive the Section 54.904(d) ICLS certification deadline, and to order USAC to distribute to Yukon the approximately $108,240 of ICLS to which Yukon is otherwise entitled during the second half of 2008.

Because the ICLS at stake is so substantial and critical for Yukon, the Commission is requested to act expeditiously upon this petition.

Respectfully submitted,
YUKON TELEPHONE COMPANY, INC.

By Gerard J. Duffy
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Its Attorney

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Dated: July 23, 2008

DECLARATION

I, Paula Eller, hereby declare, under penalty of perjury, as follows:

1. I am the Secretary of Yukon Telephone Company, Inc. ("Yukon").

2. I have reviewed Yukon's "Petition for Waiver of Section 54.904(d) Deadline for Annual Interstate Common Line Support Certification," dated July 23, 2008, and declare that the factual statements and representations therein are true and correct to the best of my knowledge, information and belief.

Paula G. Eller
Signature

July 23, 2008
Date