

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED
JAN - 7 2009
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Midstate Telecom, Inc.)
)
Petition for Waiver of FCC Rules)
Section 54.307(c) and Section 54.802(a))

WC 08-71
~~cc~~ Docket No. 96-45

PETITION FOR WAIVER
OF THE COMMISSION'S UNIVERSAL SERVICE RULES

Midstate Telecom, Inc. ("Midstate" or the "Company"), in accordance with 47 C.F.R. § 1.3, hereby requests that the Federal Communications Commission (the "Commission" or "FCC") grant a waiver of the data submission reporting requirements set forth in Section 54.307(c) and Section 54.802(a). Midstate respectfully requests the waiver because it missed the December 30, 2008, deadline to submit lines served as of June 30, 2008, for calculation of High Cost Model Support and the December 31, 2008, deadline to submit lines served as of September 30, 2008, for calculation of Interstate Access Support. In support of its Petition, the Company states as follows:

I. Introduction and Background

Midstate is a small competitive local exchange carrier serving approximately 1,075 access lines in Chamberlain, South Dakota. Midstate brought high speed Internet, video and calling features to the Chamberlain exchange that did not previously exist. The Company also opened a customer service office in Chamberlain to better serve customers and is the only local provider to have a customer service office in the exchange. Midstate was designated as an eligible telecommunications carrier ("ETC") by the South Dakota Public Utilities Commission on July 20, 2006.

Pursuant to Commission rules, in order to receive high cost universal service support, a competitive ETC must file line count data with USAC no later than July 31, September 30, December 30 and March 30 of each year. The data should reflect working lines that the competitive ETC served as of December 31, March 31, June 30 and September 30, respectively.¹ Also pursuant to Commission rules,

¹ 47 C.F.R. § 54.307(b)-(c).

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in order to receive Interstate Access Support, a competitive ETC must submit to USAC by the last business day of March, June, September and December of each year the number of lines served by the competitive ETC for the period ending three months prior to the reporting date.²

The most recent quarterly submissions were due by December 30, 2008, and December 31, 2008. The employee responsible for submitting the line counts dutifully prepared the forms on Monday, December 22, 2008, and called FedEx to arrange for a pick-up (FedEx pick-up #5). The package was placed in the building next to Midstate's office in Kimball, South Dakota – the prearranged location where FedEx also delivers packages shipped to Midstate. FedEx was to have picked up the package on December 23, 2008, and then delivered it to USAC the next afternoon. However, on January 5, 2009, the Midstate employee handling the line count submission was notified that the package was still in the building next door. She called FedEx but was told that they had no way of determining if the driver had been to the building for the scheduled pick-up. The Form 525 was then immediately submitted to USAC electronically. (See attached email receipt confirmation). Midstate is fully aware of the consequences for missing a filing deadline and, with the exception of the December 2008 dates, has otherwise been timely in its submissions to USAC. In the future, the Company will submit the Form 525 electronically rather than by way of a delivery service.

II. Argument

Universal service support is important for the maintenance of Midstate's network, as well as for future expansion plans. Universal service support has enabled the Company to provide competitive choice and quality service offerings to consumers in rural South Dakota.

The Commission may waive a rule where the facts in a particular instance make strict compliance inconsistent with the public interest.³ The Company believes that strict enforcement of the filing deadline in this case would truly disadvantage it and, consequently, harm the very consumers intended to benefit from the federal high cost universal service program. The public interest will be served if Midstate

² 47 C.F.R. § 54.802(a)-(c).

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

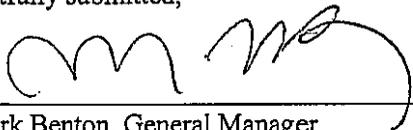
continues to receive sufficient and uninterrupted universal service support, thereby facilitating the provision of a competitive choice and quality service to underserved areas of rural South Dakota.

III. Conclusion

For the reasons stated above, Midstate respectfully requests that the Commission grant its petition for waiver and direct USAC to accept the relevant line count information so that the Company can receive the universal service support at issue. Midstate believes it has demonstrated that the Company and its subscribers will be adversely affected if the waiver request is not granted.

DATED this 6th day of January 2009.

Respectfully submitted,

By: 

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Cindy Grosvenor

From: Kathy [ktaylor@midstatesd.net]
Sent: Tuesday, January 06, 2009 12:32 PM
To: Cindy Grosvenor
Subject: FW: FCC FORM 525 - Midstate Telecom, Inc.

From: HC FILINGS [mailto:HCfilings@telcordia.com]
Sent: Monday, January 05, 2009 5:16 PM
To: Kathy Taylor
Subject: RE: FCC FORM 525 - Midstate Telecom, Inc.

EMAIL RECEIPT CONFIRMATION!

From: Kathy Taylor [mailto:ktaylor@midstatesd.net]
Sent: Monday, January 05, 2009 6:00 PM
To: HC FILINGS
Subject: FCC FORM 525 - Midstate Telecom, Inc.

Please find attached the FCC Filings for Midstate Telecom, Inc. for HCM and IAS, plus the certification to go along with these. Please verify that you have received. Thank you.