

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

In the Matter of)	
)	
Telecommunications Carriers Eligible to Receive Universal Service Support)	WC Docket No. 09-197
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition of Allied Wireless Communications Corporation for Waiver of Various Sections of The Commission’s Universal Service Fund Filing Deadlines)	WC Docket No. 08-71

To: Chief, Wireline Competition Bureau

WAIVER – EXPEDITED ACTION REQUESTED

**ALLIED WIRELESS COMMUNICATIONS CORPORATION
PETITION FOR WAIVER**

Allied Wireless Communications Corporation (“Allied Wireless” or the “Company”)¹, pursuant to Sections 1.3 and 1.925 of the Commission’s Rules, respectfully requests that the

¹ Allied Wireless is wholly-owned by Atlantic Tele-Network, Inc. (“ATNI”), a publicly-traded corporation headquartered in Beverly, Massachusetts. Allied Wireless also holds the largest ownership interest in Georgia RSA #8 Partnership which was also granted ETC status in Georgia and recently filed a similar Petition for Waiver with the Commission. *See Georgia RSA #8 Partnership Petition for Waiver of Sections 54.313, 54.314 and 54.307(d) of the Commission’s Rules, WC Docket No. 08-71 (filed Oct. 27, 2010); 47 C.F.R. § 54.313, § 54.314 and § 54.307(d); see also Wireless Competition Bureau Seeks Comment on the Georgia RSA #8 Partnership Petition for Waiver of a Universal Service High-Cost Filing Deadline, Public Notice, WC Docket No. 08-71, DA 10-2101 (rel., Nov. 1, 2010).* In June 2009, ATNI filed a series of applications with the FCC, jointly with Cellco Partnership d/b/a Verizon Wireless and certain of its subsidiaries (“Verizon Wireless”) (collectively, “the FCC Applicants”), pursuant to Sections 214 and 310(d) of the Act. In these applications, the FCC Applicants sought FCC approval for the assignment or transfer of control of certain wireless licenses and related authorizations from subsidiaries of Verizon Wireless to a holding company to be indirectly owned by ATNI. *See Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, Public Notice, DA 09-1515 (rel. July 9, 2009).* *See Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 09-119, Memorandum Opinion and Order, DA 10-661 (rel. Apr. 20, 2010).* Ultimately, these licenses and related authorizations were acquired by Allied Wireless upon consummation of the transaction on April 26, 2010. The transaction also aided Verizon Wireless in fulfilling its divestiture obligations under the FCC’s order approving the merger of Verizon Wireless and Alltel Corporation. *See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC, WT Docket No. 08-95, Memorandum Opinion and Order, 23 FCC Rcd 17444 (2008); see also Final Judgment, United States of America et al. v. Verizon Communications Inc., and Alltel Corporation, No. 1:08-cv-01878 (D.D.C. Oct. 30, 2008) (“Verizon-Alltel Final Judgment”).*

Commission grant a waiver of Sections 54.313, 54.314 and 54.307(d), 54.809(a), 54.904(a) and 54.904(d) (collectively, the “Applicable Rules”) of the Commission’s Rules stemming from the Company’s recent Eligible Telecommunications Carrier (“ETC”) designation by the Georgia Public Service Commission (“GPSC”).² Grant of the requested waiver would make the Company eligible for universal service high-cost support as of April 26, 2010, the effective date of the GPSC’s ETC designation of the Company. Grant of this Petition is in the public interest because it will benefit all Georgia residents within the Company’s ETC designated service area, restore a similar level of high-cost funding to the ETC designated area, and fulfill the goals of the *Verizon Wireless–Alltel Order* by helping to establish a strong and effective competitor in the wireless marketplace.³

I. BACKGROUND

Until April 26, 2010, the Management Trustee for Alltel Communications, LLC was receiving USF funding through the ETC designation held by Alltel Communications, Inc. (“Alltel”) for the areas that Allied Wireless has been designated ETC. However, because the Verizon divestitures were required to be structured as asset sales, rather than corporate mergers,⁴ Allied Wireless was not assigned the ETC designations for the areas identified in Exhibit 1 of the

² See *Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Order Granting ETC Status, Docket No. 31734 (designation effective as of Apr. 26, 2010 by Sept. 21, 2010 PSC vote); see also *Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Corrected Order Granting ETC Status (designation effective as of April 26, 2010 by Nov. 2, 2010 PSC vote (Exhibit 1) (“*Corrected Order*”).

³ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and de Facto Transfer of Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (“*Verizon Wireless-Alltel Order*”).

⁴ See *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17518, 17519 (¶¶ 163, 167) (explaining that the divestiture must be accomplished through the sale of divestiture assets to third party purchasers, or through transfer to a divestiture trustee “who shall be solely responsible for accomplishing disposal” of the assets).

Corrected Order. As a result, Allied Wireless needed to apply to the Georgia PSC for ETC designation. Allied Wireless promptly filed its ETC designation application (the “Designation Application”) on April 15, 2010 (five days prior to receiving FCC approval for the transfer/assignment of the licenses and eleven days prior to the Closing Date).

On September 21, 2010, the GPSC voted to grant Allied Wireless’ application for ETC designation *nunc pro tunc* – effective April 26, 2010 – so that any USF support, which had been interrupted (due to the change in ownership of the former Alltel assets) was not lost as a result of the change in ownership. An initial Order was released by the GPSC on October 14, 2010. Subsequently, as noted earlier, the GPSC issued a *Corrected Order* on November 2, 2010. The *Corrected Order* removed certain wire centers from Exhibit 1, wire centers that were erroneously included in the original Oct. 14, 2010 Order. The GPSC states, in both the Orders that “this Order will remain in full force and effect until further Order of the Commission” and “that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.”⁵

II. FCC RULES FOR WHICH WAIVER IS REQUESTED

Section 54.313(d)(vi) and Section 54.314(d)(6) require that in the case of “newly designated carriers,” the state public service commission involved must file a certification with the FCC and the Universal Service Administrative Corporation (“USAC”) within 60 days of the effective date of the carrier’s ETC designation stating that “all federal high-cost support provided to [the carrier] will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁶ Section 54.307(d) requires “newly designated carriers” to file with USAC line count data within 60 days of the effective date of the carrier’s

⁵ See e.g., *Corrected Order*, at 9.

⁶ 47 C.F.R. § 54.313(d)(vi); 47 C.F.R. § 54.314(e)(6).

designation as an ETC in order to be eligible to receive high-cost support.⁷ Section 54.809 and Section 54.904 require, respectively, that in order to receive (i) Interstate Access Support (“IAS”) and (ii) Interstate Common Line Support (“ICLS”), an ETC must file a certification stating that all IAS and ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which support is intended. These certification must be filed with USAC and the Commission on the date that the ETC first files its line count information, and thereafter, on June 30 of each year.⁸

III. REQUEST FOR WAIVER

It was simply not possible for Allied Wireless (or the GPSC) to comply with the literal terms of Sections 54.313(d)(vi) and 54.314(d)(6) of the Commission’s Rules. The Georgia PSC initially granted ETC designation to Allied Wireless on September 21, 2010, retroactive to April 26, 2010. Thus, it would have been impossible for the Georgia PSC to file the required certifications within 60 days of April 26, 2010. Similarly, Allied Wireless could not have submitted line count data by the 60-day deadline of June 25, 2010, in accordance with Section 54.307(d) of the Commission’s Rules, because there was no way of knowing, until September 21, 2010 (the date the Georgia PSC granted Allied Wireless’ request for ETC designation) that the 60-day clock would begin running as of April 26, 2010. With respect to Section 54.809 and Section 54.904, while Allied Wireless was able to timely file its 2010 IAS and ICLS certifications by the June 30, 2010 deadline and did so knowing that it might be designated an

⁷ Allied Wireless filed its annual Interstate Access Support (“IAS”) and Interstate Common Line Support (“ICLS”) certifications for 2010 by the annual June 30th deadline. Section 54.809 and Section 54.904 require, respectively, that in order to receive IAS and ICLS, an ETC must file a certification stating that all IAS and ICLS received by it will be used only for the provision, maintenance, and upgrading of facilities and services for which support is intended. These certifications must be filed with USAC and the Commission on the date that the ETC first files its line count information, and thereafter, on June 30 of each year. *See* 47 C.F.R. § 54.809(a) and (c); 47 C.F.R. § 54.904(a) and (d). As a result, Allied Wireless is not seeking waivers of Sections 54.809(a) and 54.904(a) and (d) of the Commission’s rules for its 2010 IAS and ICLS certifications.

⁸ 47 C.F.R. §§ 54.809(a) and (c) and 54.904(a) and (d).

ETC in the July 1, 2010-June 30, 2011 timeframe, Allied Wireless was not able to file its 2009 IAS and ICLS certifications by the June 30, 2009 deadline because Allied Wireless was not yet even existence at the certification deadline.⁹

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

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰

Federal courts have also recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”¹¹ Accordingly, the Commission may “exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹²

IV. DISCUSSION

There are compelling reasons for the FCC to grant expeditiously the requested waiver. This case presents unique and unusual circumstances that would make the literal application of the Applicable Rules inequitable and contrary to the public interest. Further, the underlying purpose of the Applicable Rules would not be served by their literal application in this case.

⁹ Allied Wireless filed its 2009 IAS and ICLS certifications with USAC and the FCC on June 30, 2010 – the same date Allied Wireless filed its 2010 IAS and ICLS certification filings – but after the deadlines set forth in Sections 54.809 and 54.904 of the Commission's Rules.

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹² *Northwest Cellular Telephone Co.*, 897 F.2d at 1166 (citing *WAIT Radio*, 418 F.2d at 1159).

The circumstances of the Allied Wireless–Verizon Wireless transaction clearly are unique and unusual. The Alltel divestitures were *required* by the Consent Decree to be structured as asset sales rather than corporate mergers. As a result of the transaction, Allied Wireless required a new ETC designation and promptly reapplied for ETC status in Georgia. Thus, the requirement imposed by the Consent Decree created a gap between the time when Allied Wireless acquired the Verizon Wireless assets and the time when Allied Wireless was able to secure favorable action from the Georgia PSC on its request for ETC designation. Allied Wireless attempted to minimize this gap by requesting ETC designation even prior to the consummation of the transaction to acquire these properties, but it had no control over the timing of the Georgia PSC’s action on its request.

Application of the literal terms of the Applicable Rules would also be highly inequitable, and entirely contrary to the public interest, because of the unique circumstances of this case. The very purpose of the Verizon Wireless–Alltel divestitures was “to eliminate the anticompetitive effects of the Verizon-Alltel merger in certain markets.”¹³ Particularly to address this concern, the Consent Decree required that the buyer of the divested assets should have the “capability (including the ... *financial* capability) of competing effectively in the provision of mobile wireless telecommunications services.”¹⁴ In its *Verizon Wireless–AWCC Order*, the Commission recognized that it was “authoriz[ing] a new operator in the U.S.” in order “to promote mobile wireless competition”¹⁵

Unless the Petition is granted, Allied Wireless – the new entrant that the FCC and DOJ sought to foster – would be forced to compete without at least six months of critical universal

¹³ *Verizon Wireless-AWCC Order*, 25 FCC Rcd at 3772 (¶ 18).

¹⁴ *Verizon-Alltel Final Judgment* at 11-12 (emphasis added).

¹⁵ *Verizon Wireless-AWCC Order*, 25 FCC Rcd at 3764 (¶ 1).

service support funds that are material to its infrastructure build-out to better serve customers in high-cost areas. Meanwhile, Georgia's much larger competitors, *including Verizon Wireless*¹⁶ and Sprint,¹⁷ have continued to receive funding during this period. In fact, if the waiver is not granted, the perverse result would be that Verizon Wireless – the company required to divest assets in order to prevent anti-competitive consequences – will have been eligible to receive high-cost support for more than a six-month period for the same area where Allied Wireless would be denied such support. This result would be patently contrary to the goals that led the Commission and DOJ to order the divestitures on terms that permit a new competitor to step into Alltel's shoes and compete effectively.

Expeditious grant is also in the public interest because delay imperils service to customers in these rural portions of Georgia – customers that historically have benefited from universal service funding disbursed to service providers. Moreover, grant of this waiver will impose no additional burden on the universal service fund. Alltel was already a designated ETC in the area that Allied Wireless has been designated ETC and for the same customers that Allied Wireless will be eligible to receive support. In addition, under the interim cap on high-cost disbursements to competitive ETCs adopted by the FCC in 2008,¹⁸ the ETC designation of Allied Wireless in Georgia will have absolutely no impact on the size of the federal universal service fund.

¹⁶ Verizon Wireless acquired ETC status in Georgia when it acquired Alltel, the ETC-designated entity.

¹⁷ *Federal-State Joint Board on Universal Service, Sprint Corporation*, CC Docket No. 96-45, Order, 19 FCC Rcd 22663 (WCB 2004).

¹⁸ *High-Cost Universal Service, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

V. FCC PRECEDENT

The FCC has addressed requests for the waiver of filing deadlines for newly designated carriers only a couple of times since 2005, when the FCC amended Sections 54.313 and 54.307 to add a provision specifically applicable to newly designated carriers.¹⁹

In 2005, the Commission approved retroactive eligibility for universal support in *Qwest – Nebraska*, which presents a set of facts similar to those presented in this case.²⁰ As a result of new cost benchmarks set forth in a December 24, 2003, Commission Public Notice, non-rural carriers in two additional states, Nebraska and South Dakota, were eligible to receive non-rural high-cost support beginning in 2004. Qwest argued that non-rural carriers in Nebraska became eligible, for the first time, to receive high-cost support after the October 1, 2003, certification filing deadline had passed. The Nebraska Public Service Commission did not, however, submit the required certification with the Commission until March 16, 2004.²¹ Nonetheless, the Commission found that:

good cause exists to waive the certification filing deadlines in Section 54.313 in order to allow the Petitioners to receive high-cost universal service support for the first and second quarters of 2004. The Petitioners have demonstrated that special circumstances warrant a deviation from the filing deadlines in Section 54.313. ... Because the Petitioners and their respective state commissions were not aware of their eligibility for non-rural high-cost support prior to October 1, 2003, however, they could not have met, under any circumstances, the October 1, 2003 certification filing deadline. ... In these instances, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certification.²²

¹⁹ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005).

²⁰ *Qwest Corporation (Nebraska) Petition for Waiver of Section 54.313 of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 19200 (WCB 2005) (*Qwest – Nebraska*).

²¹ The South Dakota PSC did not submit its certification until March 25, 2004. *Id.* at 19202.

²² *Qwest-Nebraska*, 20 FCC Rcd at 19203-04 (¶ 9). The FCC directed USAC to distribute retroactive support on a phased-in basis. *Id.* at ¶ 9, n. 34.

Significantly, the FCC granted retroactive eligibility from the March 16, 2004 date on which the Nebraska PSC filed its certification to January 1, 2004, and the FCC found that such special circumstances outweighed any processing difficulties that USAC might face.²³ Allied Wireless, not unlike Qwest-Nebraska, could not have filed any earlier because of special circumstances completely and totally outside of its control.

In 2009, the FCC denied the request of Centennial USVI Operations Corp. (“Centennial”) for waiver of Sections 54.307(d) (and 54.314(d)) of the Rules.²⁴ However, the situation here is very different than the situation in the *Centennial Order*. Unlike Centennial, Allied Wireless is seeking the continuation of high-cost support for the *same* customers and the *same* system that was already receiving high-cost support. But for the requirement of the Consent Decree that the Verizon divestitures must to be structured as asset sales rather than corporate mergers, Allied Wireless would simply have stepped into the shoes of Alltel and continued receiving high-cost support. By contrast, Centennial was a first-time applicant for high-cost support in the U.S. Virgin Islands.

In addition, in the Centennial case, the Commission appeared to take issue with the fact that the United States Virgin Islands (“USVI”) PSC was attempting to retroactively designate Centennial as an ETC in the USVI as of December 2, 2006, despite the fact that the USVI legislature did not authorize the USVI PSC to designate CMRS providers as ETCs until December 2007 and Centennial did not actually apply to the USVI PSC for ETC designation until February 2008. In contrast, the GPSC clearly has jurisdiction over competitive ETC applications and has exercised that authority over CETCs for several years dating back to the

²³ It should be noted that even if the “newly designated carrier” provisions of Sections 54.313(d)(vi) and 54.307(d) had been in effect, the Nebraska PSC certification filing still would have been outside the 60-day period.

²⁴ *Centennial USVI Operations Corp. Petition for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71 and CC Docket No. 96-45, Order, 24 FCC Rcd 4821 (WCB Apr. 21, 2009) (“*Centennial Order*”).

ETC designation provided by the GPSC to Alltel in 2007. Moreover, the period of time for which Allied Wireless is seeking retroactive high-cost support is limited to only approximately five months.

Recently, the Commission was asked by ATNI, in connection with its purchase of divested Verizon Wireless assets in North Carolina, to approve a retroactive effective date for ETC designation.²⁵ The facts presented by ATNI were the same as those presented in this request. ATNI ultimately withdrew its waiver request in order to expedite FCC consideration of ATNI's underlying application for ETC designation. However, in its Order, the Commission stated that:

We therefore do not rule on this aspect of AWCC's petition.... Given that we do not address the merits of ATN[I]'s request for a retroactive designation, our decision here should have no bearing on pending state proceedings regarding the appropriate effective date of any ETC designation.²⁶

Allied Wireless, with the assistance of the GPSC and its staff, has attempted to rectify the situation as quickly as possible.²⁷ Allied Wireless filed a comprehensive ETC application, including a comprehensive five-year service improvement plan, with the GPSC shortly after the Allied Wireless-Verizon transaction was consummated. In addition, the GPSC reviewed and voted to approve the Company's ETC designation in approximately five months – a significant effort. In short, Allied Wireless, in coordination with the GPSC, has moved as quickly as possible in attempting to resolve this matter and have done so with the interests of the rural

²⁵ *Petition for Eligible Telecommunications Carrier Designations in the State of North Carolina*, WC Docket No. 09-197 and CC Docket No. 96-45, Order, DA 10-1652, 2010 WL 3415615 (WCB Aug. 30, 2010) (“*AWCC North Carolina Designation Order*”).

²⁶ *AWCC North Carolina Designation Order* at ¶ 8, n. 24.

²⁷ In contrast, in the Centennial case, the USVI PSC's rural high-cost certification was filed more than a year after the 60-day deadline date.

Georgia residents in mind – customers who stand to benefit significantly by the Commission’s expedited grant of this Petition.

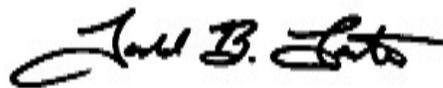
VI. CONCLUSION

Expedited grant of the Allied Wireless’ Petition is in the public interest, because it will restore the level of high-cost support to the Company’s ETC designated area to the direct benefit of the rural customers served by Allied Wireless and it will fulfill the goals of the *Verizon Wireless–Alltel Order* to establish strong and effective competition in the wireless marketplace.

Allied Wireless respectfully requests that the Bureau grant its Petition expeditiously so that Allied Wireless is eligible to receive high-cost support as of April 26, 2010 – the Closing Date of the Allied Wireless-Verizon Wireless transaction.

Respectfully submitted,

**ALLIED WIRELESS COMMUNICATIONS
CORPORATION**



Todd B. Lantor
Robert S. Koppel
LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Counsel to Allied Wireless Communications Corporation

November 2, 2010