

**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

**COMMENTS OF PUBLIC SERVICE TELEPHONE COMPANY**

Public Service Telephone Company (PST), by its attorneys, hereby files comments opposing the Petition for Waiver filed by Allied Wireless Communications Corporation (Allied), in which Allied requests a waiver of Sections 54.313, 54.314, 54.307(d), 54.809(a), 54.904(a) and 54.904(d) of the Commission's rules. As demonstrated herein, Allied's request does not meet the requirements for grant of a waiver and, therefore, it should be denied.

It is well established 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."<sup>1</sup> In its *2005 ETC Order*,<sup>2</sup> the Commission established the general rule for various filing deadlines that newly designated ETCs must meet in order to receive universal service support back to the date of ETC designation. With respect to the filings required by Sections 54.307, 54.313 and 54.314

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<sup>1</sup> *WAIT Radio v. FCC*, 418 F.2d. 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) (*2005 ETC Order*).

of its rules, the Commission modified the filing deadlines for newly designated ETCs to allow them to receive high cost support back to the designation date if the required filings were made within 60 days of ETC designation. In doing so, the Commission found that some time limits were necessary "for administrative efficiency and predictability."<sup>3</sup> Therefore, the Commission found that if the new filing dates are not met, "the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis."<sup>4</sup>

The Commission also modified Section 54.809 of its rules to adopt a quarterly certification schedule for Interstate Access Support (IAS) to allow carriers that file late to receive support for part of the year, but not the entire year.<sup>5</sup> The Commission adopted a similar process in connection with Interstate Common Line Support (ICLS) pursuant to section 54.904 of the rules, in an earlier proceeding.<sup>6</sup> Accordingly, the Commission's general rule is to allow ETCs to receive support from the date of designation only if the filing deadlines are met.

Allied argues that it has demonstrated good cause for a departure from the Commission's general rule for a number of reasons. Among them, Allied alleges that various factors beyond its control made it impossible to meet the Commission's filing deadlines. According to Allied, a Consent Decree required Verizon to divest the Alltel licenses as an asset sale rather than a corporate merger, which required Allied to obtain a new ETC designation and this "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 Public Service

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<sup>3</sup> Id. at ¶92.

<sup>4</sup> Id.

<sup>5</sup> Id. at ¶94.

<sup>6</sup> Id. at ¶93.

Commission (Georgia PSC) on its request for ETC designation."<sup>7</sup> Allied also argues that it was "not possible" for Allied or the Georgia PSC to comply with the Sections 54.313, 54.314 and 54.307 of the rules because the Commission "granted ETC designation to Allied Wireless on September 21, 2010, retroactive to April 26, 2010."<sup>8</sup> Therefore, according to Allied, "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 ... that the 60-day clock would begin running as of April 26, 2010."<sup>9</sup> Allied also alleges that although it timely filed its 2010 IAS and ICLS certifications by the June 30, 2010 deadline, it was not able to file its 2009 IAS and ICLS certifications by the June 30, 2009 deadline as required by Section 54.809 and 54.904 of the rules because Allied was not in existence on June 30, 2009. According to Allied, it filed its 2009 IAS and ICLS certifications on June 30, 2010.<sup>10</sup>

### **ALLIED HAS NOT SHOWN GOOD CAUSE TO OBTAIN A WAIVER**

#### **A. Allied has not Demonstrated Unique Circumstances**

There is a notable, material omission in Allied's argument which demonstrates that the inability to meet the Commission's filing deadlines under Sections 54.307, 54.313 and 54.314 of the rules was the result of Allied's own actions. Specifically, the GPSC Corrected Order Granting ETC Status, attached to Allied's petition for waiver, shows that Allied filed a letter with the GPSC on August 9, 2010, requesting that its ETC designation be made retroactive to April

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<sup>7</sup> Petition at 6.

<sup>8</sup> Id. at 4.

<sup>9</sup> Petition at 4.

<sup>10</sup> Allied Petition at 5, n.9.

26, 2010.<sup>11</sup> Thus, Allied did not request retroactive ETC designation until more than 60 days after the date it selected for such retroactive designation. PST notes that Allied filed its original ETC petition before the GPSC on April 15, 2010 and, according to Allied, it completed the transaction to acquire the Alltel licenses on April 26, 2010. It is not clear why Allied waited until August 9, 2010 to seek retroactive designation from the GPSC. In fact, if Allied had made its request for retroactive designation on April 26, 2010, it may well have been possible for the GPSC to grant its request before June 26, 2010 and the filing deadlines could have been met. Further, the only reason Allied could not know that the 60 day clock was running as of April 26, 2010, was because it did not make the request for retroactive designation until August 9, 2010. If Allied had made the request on April 26, 2010, it certainly would have known the clock was running, as would the GPSC. Thus, the reason it was impossible for Allied to meet the Commission's filing deadlines was not because of the Consent Decree, the closing date of the transaction, or the GPSC's order date. Rather, it is clear that it was Allied's failure to request retroactive designation until after the deadlines established in the Commission's rules, which made compliance impossible.

The additional reason cited by Allied to support its waiver, that it was not able to secure action by the GPSC, arises only because the GPSC and Allied took the extraordinary approach of seeking high cost support not only back to the date of state commission action, as contemplated by the Commission's rules, but back to a date before state commission action. It is not clear that such action is allowed by the Act or that the Wireline Competition Bureau (WCB) has designated authority to grant the retroactive receipt of high cost support back to a date before

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<sup>11</sup> See, attachment to Allied Petition, Corrected Order Granting ETC Status, at 5.

state commission action, and for these reasons alone, the waiver should be denied. In addition, it should be denied because it amounts to a back-door attempt to circumvent the purpose of the Commission's rules concerning filing deadlines for newly designated ETCs, namely to ensure administrative efficiency and predictability. In this regard, it must be noted that if Allied's ETC designation was effective as of the date of GPSC action, no waiver would be required, as intended by the Commission's rules.

With respect to Sections 54.809 and 54.904 of the rules, Allied argues that it was not able to file its 2009 IAS and ICLS certifications by the June 30, 2009 deadline, in order to receive support effective April 26, 2010, because Allied was not in existence on June 30, 2009. According to Allied, it filed its 2009 IAS and ICLS certifications on June 30, 2010. However, when the Commission modified Section 54.809 and 54.904 of the rules, it specifically did so in a manner such that a newly designated ETC might not receive support as of the effective date of its designation. Thus, effect of the rules in this case is exactly what the Commission contemplated when modifying these sections in the *2005 ETC Order* and, therefore, Allied's request for waiver of these sections also should be denied.

#### B. Allied's Public Interest Argument is Without Merit

Allied also argues that its waiver petition should be granted because application of the literal terms of the rules would be inequitable and contrary to the public interest. According to Allied, the Verizon Wireless-Alltel divestiture was "to eliminate the anticompetitive effects of the Verizon-Alltel merger in certain markets."<sup>12</sup> Allied argues that if the waiver is not granted, "Verizon Wireless- the company required to divest assets in order to prevent anti-competitive

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<sup>12</sup> Allied Petition at 6, citing *Verizon Wireless-AWCC Order*, 25 FCC Rcd at 3772.

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."<sup>13</sup>

As an initial matter, it is not clear that Verizon Wireless is eligible to receive support for the same area covered by Allied's waiver petition. Although Allied claims Verizon Wireless acquired ETC status in Georgia when it acquired Alltel, PST notes that Verizon Wireless has a petition pending before the GPSC seeking amendment and consolidation of its ETC designation.<sup>14</sup> However, even if Verizon Wireless is able to receive high-cost support and the Verizon Wireless-Alltel divestiture was required to eliminate the anticompetitive effects of the Verizon-Alltel merger, it does not follow that Allied is entitled to any universal service support or to universal service support for the same time period as Verizon. On the contrary, Allied has no right to universal service support. Notably, Allied does not cite to any Commission statement in the divestiture proceeding or elsewhere to support the argument that Allied, or any other entity acquiring Alltel licenses, would automatically be designated as an ETC and able to obtain universal service support from the date of license acquisition. In any event, even without universal service support, Allied is a competitor in the areas where it acquired Alltel's licenses. Accordingly, the competitive goals of divestiture have been achieved.

Allied also argues that grant of its waiver is in the public interest because "delay imperils service to customers in these rural portions of Georgia" and grant of the waiver will impose no additional burden on the universal service fund. However, Allied has stated that it has provided the supported services to consumers since its acquisition of the Alltel licenses. In addition, even if the waiver is denied, Allied still will be able to receive high cost support. PST notes that in a

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<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Application for Amendment and Consolidation of ETC Designations in the State of Georgia*, Georgia Public Service Commission Docket No. 10396 (Aug. 17, 2010).

similar case, *Centennial USVI Operations*,<sup>15</sup> even though the WCB denied a waiver request where the United States Virgin Island Public Service Commission (USVIPSC) released an order designating Centennial USVI Operations Corp. (Centennial) as an ETC and retroactively set the effective date of Centennial's designation, the WCB found that the effective date of Centennial's ETC designation was the release date of the USVIPSC order.<sup>16</sup> The WCB should take a similar action here. Accordingly, there is no support for an allegation of harm to consumers and the Commission should reject this argument.

With respect to the argument that the waiver will impose no additional burden on the universal service fund, Allied argues that this is so because support is capped and Alltel received support for the area now served by Allied. Neither argument justifies a waiver. As stated previously, Allied is not entitled to be designated an ETC or to receive universal service support simply because Alltel was an ETC. In addition, the fact that the fund is capped does not create "special circumstances" justifying a waiver of the filing deadlines, as this would apply to every competitive ETC. Further, it is unrelated to the purpose of the Commission's rules establishing filing deadlines. Accordingly, this argument also should be rejected.

## **CONCLUSION**

As shown herein, Allied needs a waiver of the Commission's rules to receive high cost support back to the effective date of its ETC designation because of two interrelated facts caused by its own actions; namely, Allied's decision to seek a back-dated ETC designation and Allied's failure to do so in a timely fashion. It is not at all clear that Allied's request for retroactive

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<sup>15</sup> *Petition for Waiver of Universal Service High-Cost Filing Deadline; Federal-State Joint Board on Universal Service; Centennial USVI Operations Corp. Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules, Order*, WC Docket No. 08-71; CC Docket No. 96-45, 24 FCC Rcd 4821 (2009) (*Centennial USVI Order*).

<sup>16</sup> *Id.* at ¶ 10.

designation is even allowed by the Communications Act. However, what is clear is that Allied failed to pursue this novel approach in a manner that would allow it to meet the Commission's filing deadlines. In this respect, Allied's situation is no different than that of any other carrier that does not pay attention to Commission filing deadlines. Further, the alleged harm to Allied if the waiver is not granted is no different than the harm any other ETC would experience if it missed a universal service filing deadline and did not receive support for some part of the year. In fact, significantly, this result is the exact result contemplated by the Commission in its *2005 ETC Order*. Accordingly, for these reasons and the other reasons discussed herein, Allied's Petition for Waiver should be denied.

Respectfully submitted,

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Dated: December 9, 2010

## Certificate of Service

I hereby certify that on December 9, 2010, a copy of the forgoing Comments of Public Service Telephone Company was served on each of the following via electronic mail or U.S. Postal Service, as indicated:

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