Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Universal Service High-Cost Filing Deadlines	)	WC Docket No. 08-71
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Petition of Virgin Islands Telephone Corp. d/b/a Innovative Telephone for Waiver of Section 54.903(a) of the Commission's Rules	)	
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	)	

PETITION OF VIRGIN ISLANDS TELEPHONE CORP. D/B/A INNOVATIVE TELEPHONE FOR WAIVER OF RULE 54.903(A) OF THE COMMISSION'S RULES

Pursuant to Section 1.3 of the Commission's rules,[1] the Virgin Islands Telephone Corp. d/b/a Innovative Telephone ("Innovative") respectfully requests a waiver of the March 31, 2011 filing deadline to submit quarterly line count data used to calculate interstate common line support ("ICLS"), as set forth in section 54.903(a) of the Commission's rules.[2] In support of its petition, Innovative states as follows:

I. BACKGROUND

Pursuant to section 54.903(a) of the Commission's rules, in order to receive ICLS, a rate-of-return carrier must submit to the Universal Service Administrative Company ("USAC") FCC Form 507, which contains information regarding the total number of residential, single-line

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1 47 C.F.R. § 1.3.

2 47 C.F.R. § 54.903(a).

business, and multi-line business lines served by that carrier. Innovative was required to submit this data no later than March 31, 2011 for the quarterly line count as of September 30, 2010.[3]

For many years, NECA submitted Form 507 to USAC on Innovative's behalf. This relationship continued for the September 30, 2010 and December 31, 2010 submissions of Form 507 that occurred subsequent to Innovative's conversion to price cap regulation effective July 1, 2010. Unbeknownst to Innovative personnel, NECA ceased filing Form 507 on the Company's behalf after December 31, 2010, which necessitated that Innovative submit its own Form 507 to USAC for the March 30, 2011 filing date. Compounding the situation, the individual at Innovative who was responsible with interfacing with NECA regarding these issues has been out on medical leave since late February, and normal communications with NECA personnel that might have facilitated better coordination regarding the filing of Form 507 did not take place. As a result, Innovative did not timely file its quarterly Form 507 by March 31, 2011 but was not aware at the time that this deadline had been missed.

On April 7, 2011, USAC emailed a consultant for Innovative in response to questions from the consultant regarding ICLS issues. In this email, USAC indicated that it had not received the quarterly Form 507 by the March 31, 2011 deadline. After conducting a brief investigation, Innovative filed the Form 507 the next day – April 8, 2011 – six business days after the March 31, 2011 deadline.

Since this incident, Innovative has reviewed its internal procedures and has taken steps to ensure ongoing compliance with the quarterly filing requirements in section 54.903. First, all

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[3] Innovative is no longer subject to rate-of-return regulation. However, in allowing Innovative to convert from rate-of-return regulation to price cap regulation, the Commission permitted Innovative to continue to receive ICLS, calculated at its 2009 per-line disaggregated amounts and frozen at those per-line levels going forward. *See Virgin Islands Telephone Corporation Petition for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, Order, 25 FCC Rcd 4824 (2010).

relevant Innovative personnel have been made aware of the Form 507 reporting requirements under price cap regulation and been advised that NECA no longer serves as the Company's agent for this purpose. Second, Innovative has designated and trained the appropriate personnel with primary and back-up responsibility for preparing and submitting Form 507 in the case of any future personnel absences. Finally, Innovative has improved management oversight responsibilities to ensure that Form 507 filings are submitted to USAC in a timely manner.

II. DISCUSSION

The Commission may waive its rules for good cause shown.[4] The Commission may exercise its discretion to waive a rule when "the particular facts make strict compliance inconsistent with the public interest."[5] In deciding whether to grant a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[6]

In connection with required USAC filings, the Wireline Competition Bureau ("Bureau") routinely has found good cause to grant a waiver of applicable filing deadlines when the eligible telecommunications carrier ("ETC") has filed the required data only days after the filing deadline

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4 47 C.F.R. § 1.3.

5 *Verizon Communications Inc., Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, 21 FCC Rcd 10155, ¶ 6 (WCB 2006) ("*Verizon Order*"). The Commission has considerable discretion as to whether to waive its rules. *See Office of Communication of United Church of Christ v. FCC,* 911 F.2d 803, 812 (D.C. Cir. 1990) (upholding the Commission's grant of a waiver "[g]iven the deference due the agency in matters of this sort"); *City of Angels Broadcasting, Inc. v. FCC,* 745 F.2d 656, 663 (D.C. Cir. 1984) (noting that the scope of review of a waiver determination by the Commission "is narrow and constrained"). As the D.C. Circuit has observed, the Commission's waiver determinations are entitled to heightened deference because "the agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety-value procedure for consideration of an application for exemption based on special circumstances." *AT&T Wireless Services, Inc. v. AT&T,* 270 F.3d 959, 965 (D.C. Cir. 2001) (internal quotation marks omitted).

6 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

and has taken steps to ensure future compliance.[7] For example, just last month, the Bureau granted a waiver of section 54.802(a), which sets forth deadlines for the filing of line count data for carriers receiving Interstate Access Support. The Bureau found good cause when: (i) the carrier's office manager, who was the sole employee responsible for such filings, and its general manager were out of town just before the filing deadline; (ii) the line count data was filed eight business days late; and (iii) the carrier revised its internal procedures to ensure compliance with all future filing deadlines by implementing automated calendar reminders and having two people instead of one person responsible for filing the quarterly reports.[8]

Similarly, in 2010, the Bureau granted a waiver of the line count filing deadlines under section 54.802(a) and 54.307(c), which governs line count data filings by competitive ETCs, to a carrier – CommuniGroup of Jackson, Inc. – that had inadvertently missed the applicable filing deadlines due to a combination of employee error and a change in staff.[9] Once the mistake was brought to the carrier's attention, it promptly filed the line count data electronically – eleven business days after the deadline. The carrier also revised its internal procedures to establish a reporting compliance group. Under these circumstances, the Bureau found good cause to waive the filing deadline.

The Bureau's reasoning applies equally here. First, Innovative inadvertently failed to file FCC Form 507 by the March 31, 2011 deadline due to changes in its relationship with NECA

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7 *See, e.g., Verizon Order*, ¶ 8 (granting waiver of section 54.802(a) when Verizon submitted data two business days late); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, Order, 25 FCC Rcd 843, ¶ 22 (WCB 2010) (*"Consolidated Waiver Order"*) (granting requests for waiver of various high-cost universal service support filing deadlines); *NPCR, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, 22 FCC Rcd 560 (2007) (same).

8 *Petitions for Waiver, F&B Communications Inc.*, Order, DA 11-560 (rel. Mar. 29, 2011).

9 *Consolidated Waiver Order*, ¶ 13.

and the absence of an employee who was responsible for coordinating with NECA. Once the error was discovered, Innovative promptly filed Form 507 within six business days after the March 31, 2011 deadline. Second, Innovative has revised its internal procedures to ensure compliance with all future filing deadlines.

Under the circumstances, and consistent with applicable precedent, the Commission should grant the requested waiver.

III. CONCLUSION

For the foregoing reasons, Innovative respectfully requests that the Commission promptly grant this petition, waive section 54.903(a) of its rules, and direct USAC to accept the Company's Form 507 with quarterly line count data as of September 30, 2010.

Respectfully submitted,

By: *Bennett L. Ross*

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April 14, 2011

DECLARATION OF MIKE CUMBERMACK

I, Mike Cumbermack, hereby declare that the facts contained in the foregoing Petition of the Virgin Islands Telephone Corp. d/b/a Innovative Telephone for Waiver of Section 54.903(a) of the Commission's Rules are true and correct to the best of my knowledge, information, and belief.

Executed on April 14, 2011.

By: Michael Cumbermack

Mike Cumbermack
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