

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

In the Matter of)	
)	
Universal Service High-Cost Filing)	WC Docket No. 08-71
Deadlines)	
)	

**PETITION OF UNITED UTILITIES, INC. FOR
WAIVER OF SECTION 54.903(a)(3)**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ United Utilities, Inc. (“UUI”) respectfully requests a waiver of the March 31, 2014, deadline for filing projected data necessary to calculate prospective Interstate Common Line Support (“ICLS”) with the Universal Service Administrative Company (“USAC”) as set forth in section 54.903(a)(3) of the Commission’s rules.² Failure to grant the waiver will cause substantial harm to UUI, as well as to UUI’s remote Alaskan customers. UUI demonstrates below that good cause exists sufficient for the Commission to grant the requested waiver.

I. BACKGROUND

UUI receives ICLS support to help offset subscriber line charges, which ensures affordable service is available to UUI customers throughout rural Alaska. In order to receive ICLS, section 54.903(a)(3) of the Commission’s rules requires rate-of-return carriers to submit to USAC, projected data necessary to calculate the carrier’s prospective ICLS. Required data includes common line cost and revenue data for each of USAC’s study areas in the upcoming funding year. Carriers must submit projected data no later than March 31 for the funding year

¹ 47 C.F.R. § 1.3 (2013).

² 47 C.F.R. § 54.903(a)(3).

starting July 1 of the current year through June 30 of the following year. Carriers have three months, until June 30, to submit corrections to the projected data for the upcoming funding year. Additionally, carriers may submit updated data on June 30 for the funding year ending on that date.

UUI is a participant in the National Exchange Carrier Association (“NECA”) pool. As a member of the NECA pool, NECA submits for UUI the ICLS projected data required by section 54.903(a)(3) on behalf of its pool participants. Earlier this year, UUI contemplated leaving the NECA pool and, prior to the March 31, 2014 ICLS projected data filing deadline, UUI informed NECA that UUI was electing to withdraw from the NECA pool. UUI was not accustomed to submitting the relevant ICLS filing and, therefore, it erroneously missed the March 31, 2014 deadline. Thereafter, UUI personnel discovered the oversight and immediately alerted management. To the extent that UUI remains outside of the NECA pool, heightened management awareness of the filing requirements will prevent such an oversight in the future.

II. DISCUSSION

The Commission’s rules may be waived for good cause shown³ and “where the particular facts make strict compliance inconsistent with the public interest.”⁴ The Commission has made clear in several decisions that good cause exists and the public interest is advanced where “the

³ See 47 C.F.R. § 1.3.

⁴ *Federal-State Joint Board on Universal Service: Verizon Communications Inc. Petition for Waiver of Section 54.802(A) of the Commission’s Rules*, Order, DA 06-1861, 21 FCC Rcd. 10,155, 10,157 ¶ 6 (2006) (“Verizon Order”). See also *Petitions for Waiver of Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service*, Order, DA 11-1337, 26 FCC Rcd. 11,069, 11,073 (2011).

missed deadlines were the result of minor ministerial, clerical, or procedural errors.”⁵ Such circumstances are present here.

The Commission has previously granted petitions to waive the March 31 projected data filing deadline in several instances where a carrier has inadvertently missed the deadline and then promptly corrected its error by filing its data before June 30,⁶ the deadline to file corrected projected data.⁷ For instance, in granting a petition filed by Westgate Communications LLC d/b/a/ WeavTel (“WeavTel”),⁸ the Commission specifically found that

[g]ranting WeavTel’s waiver request will not harm the administration of ICLS because ICLS is ultimately based on actual data filed by carriers, rather than the projected data for which WeavTel missed the filing deadline. The actual data that will ultimately determine the amount of ICLS available to WeavTel is due on December 31st. Granting WeavTel’s waiver request will allow USAC to distribute ICLS to WeavTel now, based on projected data which USAC will later “true-up” with actual data.⁹

⁵ *The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various High-Cost Universal Service Filing Deadlines*, Public Notice, DA 12-39, 27 FCC Rcd. 229 (2012). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Tel. Co., L.P. v. FVV*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁶ Section 54.903(a)(3) provides carriers with the opportunity to update their March 31 filing until June 30.

⁷ See, e.g., *Federal-State Joint Board on Universal Service Westgate Communications LLC d/b/a WeavTel*, Order, DA 08-1957, 23 FCC Rcd. 12,797, 12,798-99 (2008) (finding good cause where “WeavTel filed the required data on June 27, 2007, within the window to adjust or correct projected data due on March 31, 2007.”) (“*WeavTel*”).

⁸ Similar to UUI, WeavTel was required to submit projected data for the upcoming funding year, July 1 through June 30, by March. See 47 C.F.R. § 54.903(a)(3). As the Commission explained, “[u]nlike projected data, which is filed on a funding year basis, actual data is submitted for each calendar year.... Pursuant to section 54.903(a)(4), rate-of-return carriers must submit to USAC, no later than December 31, actual data for the prior calendar year.” *WeavTel* at n. 21 (citing 47 C.F.R. § 54.903(a)(4)).

⁹ *Id.* at 12,799 (internal citations omitted). “To ensure ICLS is distributed in a predictable manner without significant lag in the distribution of support to rate-of-return carriers, the Commission requires USAC to collect and use projected data instead of waiting until actual cost data is available.” *Id.* at n. 20 (internal quotations and citations omitted). “USAC applies a ‘true-up’ to determine differences between projected

In that case, WeavTel did not file its March 30 projected data until June 27.¹⁰ Nonetheless, the Commission granted its waiver petition because WeavTel's belated submission was filed prior to the June 30 deadline for filing corrected projects. Here, UUI submitted its filing even more promptly. Indeed, UUI submitted the projected data to USAC on June 2, 2014, as demonstrated in Exhibit A attached hereto, well before the June 30, 2014, deadline for filing corrected projected data.

In WeavTel's case, the Commission determined that "WeavTel's circumstances are unique and emphasize[d] that, going forward, [the Commission] expect[s] WeavTel to file the required information with USAC and the Commission by the applicable filing deadlines."¹¹ Specifically, the Commission noted that WeavTel "missed the deadline because of procedural issues stemming from WeavTel's access to leased facilities."¹² Importantly, the Commission noted that "WeavTel *did* file the necessary data, albeit untimely."¹³ Here, the circumstances surrounding UUI's decision to withdraw from the NECA pool is likewise unique in that, as a member of the NECA pool, UUI had always relied on NECA to make the necessary filings.

data and actual data." *Id.* "True-ups ensure that carriers eventually receive ICLS that reflects their actual costs." *Id.*

¹⁰ *Id.* at 12,798.

¹¹ *Id.* at 12,799 ¶ 7.

¹² *Id.*

¹³ *Id.* (emphasis added). Generally, rate-of-return carriers meet the projected data deadlines for receipt of ICLS. The majority of rate-of-return carriers are members of the National Exchange Carrier Association's (NECA) common line pool. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 01-304, 16 FCC Rcd. 19,613, 19,683 ¶ 165 (2001). See also *WeavTel* at n. 22 (explaining that "carriers are already required to submit similar projected data to NECA and can rely on NECA to develop and file their projected data. . . . Also, rate-of-return carriers do not have an incentive to miss the deadlines for receipt of projected data because it would delay their receipt of ICLS.").

Like WeavTel, upon discovering the oversight, UUI filed this waiver and the missing projected data.

The Commission typically looks favorably on small transgressions where a carrier has taken steps to eliminate future data submission deadline errors.¹⁴ In this instance, UUI had just elected to withdraw from the pool and inadvertently overlooked the ICLS filing due March 31, 2014 – which will not be the case in the future. UUI recognizes the importance of the filing deadlines the FCC has established. It also recognizes that USAC must process a significant number of forms and that the rules are in place to ensure that the Commission and USAC are able to collect and distribute universal service funds. UUI is committed to meeting these deadlines and has taken steps to revise its internal procedures to ensure compliance with all future filing deadlines. First, UUI will automatically generate electronic reminders to personnel responsible for filing at various intervals prior to the filing deadlines. Second, UUI will assign internal deadlines to its current procedures to ensure preparation of filings in advance of the required filing deadline. Third, UUI will submit its projected data to USAC electronically to prevent any delay associated with paper filings. When considering similar commitments to

¹⁴ See, e.g., *Federal-State Joint Board on Universal Service, AT&T Communications of NY and AT&T Communications of California Petition for Waiver of Section 54.802 (A) of the Commission's Rules*, Order, DA 07-234, 22 FCC Rcd. 953, 955-56 ¶ 9 (2007) (“AT&T Order”) (relying on AT&T’s commitment to notify personnel electronically of filing deadlines at specific intervals, and to conduct regular reviews for ensuring that responsible personnel are taking necessary steps to meet deadlines); *Federal-State Joint Board on Universal Service, NPCR, Inc. Petition for Waiver of Section 54.802 (A) of the Commission's Rules*, Order, DA 07-100, 22 FCC at Rcd. 560, 563 ¶ 9 (2007) (“NPCR Order”) (relying on the “subsequent revisions that NPCR has committed to make [which] include making its Senior Tax Manager directly responsible for submitting the data to USAC and requiring that filings be sent via overnight carrier.”); Verizon Order, 21 FCC Rcd. at 10,158 ¶ 10; *Federal-State Joint Board on Universal Service, Citizens and Frontier Communications Petition for Waiver of Section 54.802 (a) of the Commission's Rules*, Order, DA 05-2829, 20 FCC Rcd. 16,761, 16,764 ¶ 10 (2005) (“Citizens/Frontier Waiver Order”) (relying on the petitioner’s commitment to implement such measures as creating a centralized compliance group to coordinate all required filings, establishing systems for tracking compliance and alerting staff of upcoming deadlines, and integrating regulatory accounting into corporate accounting functions).

ensure compliance, the Commission has previously found that “strict enforcement of the filing deadline would disproportionately penalize [the ETC] when considered in light of its actions to remedy its error.”¹⁵

Finally, UUI urges the Commission to grant its petition because doing so is in the public interest. Indeed, UUI has invested hundreds of millions of dollars to bring telecommunications service to its customers in remote areas, and it could not do so without high-cost universal support. Failure to grant the waiver will result in a break in funding and a substantial economic hardship to UUI to the detriment of citizens located in the most remote areas of the country. Indeed, the offset that UUI realizes from ICLS ensures UUI’s services remain affordable to its customers.

¹⁵ AT&T Order, 22 FCC Rcd. at 955 ¶ 6. *See also* NPCR Order, 22 FCC Rcd. at 562 ¶ 7; Verizon Order, 21 FCC Rcd. at 10,157 ¶ 8; Citizens/Frontier Waiver Order, 20 FCC Rcd. at 16,763-64 ¶ 7.

CONCLUSION

For the foregoing reasons, UUI respectfully requests that the Commission promptly grant this Petition and direct USAC to accept UUI's projected data submission for the period ending June 30, 2015.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Bagg".

John T. Nakahata
Jennifer P. Bagg
Traci D. Galbreath
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for United Utilities, Inc.

June 11, 2014

EXHIBIT A

From: HC Filings [mailto:HCFilings@hcli.universalservice.org]
Sent: Monday, June 02, 2014 10:59 AM
To: [REDACTED]
Subject: Confirmation of Email Submission from HCFilings@usac.org



Thank you for your Submission to HCFilings@usac.org. Your email has been received and will be reviewed by an Analyst shortly.

We will respond to all inquiries within 24 hours of receipt. If you have more information or need to reach us sooner, please contact us at 888-641-8722.

If your email included a form filing, please note that that *this will serve as your receipt confirmation*, that your form submission has been received by USAC, at the email address hcfilings@usac.org as of the time and date of this reply.

Thank You,

Customer Operations

Toll Free:(888) 641-8722

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