

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	
	)	CC Docket No. 96-45
United States Cellular Corporation	)	
	)	
Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations	)	
	)	

**ORDER**

**Adopted:** July 9, 2004

**Released:** July 9, 2004

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant a request from the United States Cellular Corporation (USCC), a competitive eligible telecommunications carrier (ETC), for a waiver of certain quarterly filing deadlines for line-count data set forth in section 54.307(c) of the Commission's rules.<sup>1</sup> As outlined below, USCC has demonstrated special circumstances that warrant the waiver of the line-count filing requirements for the funding periods in question. The grant of USCC's waiver request will allow it to receive high-cost universal service support for the first and second quarters of 2002.

**II. BACKGROUND**

Competitive ETCs receive high-cost universal service support to the extent that they capture lines from an incumbent local exchange carrier (LEC) or serve new subscriber lines in an incumbent LEC's service area.<sup>2</sup> Before a competitive ETC can begin receiving support, certain information must be filed with the Universal Service Administrative Company (USAC). First, the relevant state commission must file a certification stating that all high-cost support received by the competitive ETC will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."<sup>3</sup> Second, a competitive ETC must file the number of working loops it serves in the incumbent carrier's

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<sup>1</sup>*Submission of Supplementary Information Pursuant to Section 54.307 of the FCC's Rules*, Request for Waiver of United States Cellular Corporation, filed March 20, 2002.

<sup>2</sup>47 C.F.R. § 54.307(a).

<sup>3</sup>47 C.F.R. § 54.313; 47 C.F.R. S 54.314. The certification requirements for non-rural carriers are found in section 54.313 of the Commission's rules and the certification requirements for rural carriers are found in section 54.314 of the Commission's rules. *See id.* In instances where carriers are not subject to state jurisdiction, an ETC may self-certify to the Commission and USAC. 47 C.F.R. § 54.313(b); 47 C.F.R. § 54.314(b).

service area on a quarterly basis.<sup>4</sup> Specifically, line-count data are due on July 31 of each year, and quarterly updates are due September 30, December 30, and March 30 of each year.<sup>5</sup> For non-rural carriers, USAC uses line-count data filed on September 30 to calculate first-quarter support for the following year, line-count data filed on December 30 to calculate second-quarter support, and line-count data submitted on March 30 to calculate third- and fourth quarter support.<sup>6</sup>

2. Prior to the *Rural Task Force Order*, which was released on May 23, 2001, rural incumbents and their competitors were required to file line-count data annually and could provide quarterly updates to USAC on a voluntary basis.<sup>7</sup> Quarterly updates were required in non-rural carrier study areas.<sup>8</sup> In the *Rural Task Force Order*, the Commission concluded that, upon competitive entry in rural study areas, carriers must file quarterly line-count updates to prevent overpayments of support.<sup>9</sup> When the Commission revised section 54.307, however, the new rule retained the second sentence of subsection (c), which specified that competitive ETCs serving non-rural carrier service areas were required to file quarterly line-counts. The rule did not specify whether the same obligation applied to competitive ETCs serving rural carrier service areas.<sup>10</sup>

3. These provisions were further modified in the Commission's *MAG Order*, which was released on November 8, 2001.<sup>11</sup> The *MAG Order* required that all competitive ETCs submit line-count data on a quarterly basis.<sup>12</sup> The portion of the *MAG Order* establishing mandatory line-count quarterly filing requirements for competitive ETCs, however, did not become effective until January 8, 2002.<sup>13</sup>

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<sup>4</sup>47 C.F.R. § 54.307(c).

<sup>5</sup>*Id.*

<sup>6</sup>See *Federal-State Joint Board on Universal Service*, Twentieth Order on Reconsideration, CC Docket No. 96-45, FCC 00-126, 15 FCC Rcd 12070, 12077, para. 17, n.25 (2000).

<sup>7</sup>See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11298, para. 133 (2001) (*Rural Task Force Order*).

<sup>8</sup>*Rural Task Force Order*, 16 FCC Rcd at 11298, para. 132.

<sup>9</sup>*Id.*

<sup>10</sup>See *Rural Task Force Order* at Appendix A, amended rule 54.307(c).

<sup>11</sup>*Federal-State Joint Board on Universal Service*, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Order*).

<sup>12</sup>*Id.* at 19685-86, para. 170.

<sup>13</sup>In the Federal Register publication of the *MAG Order*, the Commission stated that all rules were effective "except for the amendments to §§ 54.307(b) and (c),... which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the (continued....)"

Furthermore, the Commission amended its rules to eliminate the second sentence of subsection (c) of section 54.307, thus clarifying that the quarterly filing obligations applied to competitive ETCs in both rural and non-rural carrier service areas.<sup>14</sup> The effective date of the *MAG Order* rules, including the quarterly line-count rules, therefore, was after the December 30 deadline for the second quarter of 2002 line-count filing.

4. As a result of these changes, USCC asserts that it believed line-count filings were voluntary until after the new rules' effective date. USCC filed its line-count data for the first quarter of 2002 on October 17, 2001, after the September 30, 2001 deadline. Its line-count data for the second quarter of 2002 were filed on January 13, 2002, after the December 30, 2001 deadline had passed.<sup>15</sup> On January 29, 2002, USAC informed USCC that neither filing was accepted.<sup>16</sup> In its petition for waiver, USCC argues that, during the time period surrounding the missed filing deadlines, the Commission's rules were changed several times, and that, as of the time of its petition, the effective date of the rules had not been announced.<sup>17</sup> USCC further asserts that, even absent any confusion about the rule and its effective date, the problems that it faced with regard to the Commission's new geo-coding regulations for wireless ETCs constitute extenuating circumstances that justify a waiver.<sup>18</sup>

### III. DISCUSSION

5. We find that good cause exists to waive section 54.307(c) of the Commission's rules in order to allow USCC to receive universal service support for the first and second quarters of 2002. Generally, the Commission's rules may be waived for good cause shown.<sup>19</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>20</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>21</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>22</sup> Moreover, in demonstrating whether a waiver is warranted, the

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Federal Register announcing the effective date of those sections." 66 FR 59719 (November 30, 2001). The Commission later announced that 47 CFR § 57.307(c) was effective January 8, 2002. 67 FR 15490 (April 2, 2002).

<sup>14</sup>See *MAG Order*, 16 FCC Rcd at 19747 (Appendix A, Final Rules, amended rule 54.307).

<sup>15</sup>*Submission of Supplementary Information Pursuant to Section 54.307 of the FCC's Rules*, Request for Waiver of United States Cellular Corporation, filed March 20, 2002 (Petition).

<sup>16</sup>Petition at 4.

<sup>17</sup>Petition at 11. See n.14, *supra*. At the time of USCC's filing of its petition, the April 2, 2002 Federal Register notice announcing the January 8, 2002 effective date had not been released.

<sup>18</sup>Petition at 3.

<sup>19</sup>47 C.F.R. § 1.3.

<sup>20</sup>*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>21</sup>*WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>22</sup>*Northeast Cellular*, 897 F.2d at 1166.

burden of proof rests with the petitioner.<sup>23</sup>

6. We find that USCC reasonably believed that quarterly line counts were not mandatory prior to the effective date of the *MAG Order*. USCC is correct that prior to the *Rural Task Force Order*, the submission of line-count data was voluntary for ETCs. The applicable rule, as modified after the *Rural Task Force Order*, did not specifically address rural carriers' obligations with respect to quarterly line-count filings. Although the Commission clarified those obligations and rules in the *MAG Order*, these clarifications did not become effective until January 8, 2002. We conclude, therefore, that because it was reasonable for USCC to believe that line-count filings were not mandatory until January 8, 2002, we find that USCC has demonstrated that special circumstances exist to justify a waiver of section 54.307 of the Commission's rules to allow it to receive high-cost universal service support for the first and second quarters of 2002.<sup>24</sup>

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and sections 0.91, 0.291, and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.307(c) of the Commission's rules, 47 C.F.R. 54.307(c) filed by United States Cellular Corporation on March 20, 2002, IS GRANTED, to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief, Wireline Competition Bureau

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<sup>23</sup>*Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>24</sup>Because we have found sufficient cause to grant this waiver to USCC based on the ground described above, we do not need to address USCC's alternate argument that it was unable to obtain sufficient geo-coding data before these deadlines.