

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

In the Matter of)	
)	
Universal Service Administrative Company)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service)	

ORDER

Adopted: May 22, 2012

Released: May 22, 2012

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the Universal Service Administrative Company (USAC) a limited waiver of section 54.717(f) of the Commission's rules to extend the filing deadline by which USAC's independent auditor must submit its draft audit report for calendar year 2011.¹ For the reasons stated below, we find that USAC has demonstrated that good cause exists to permit USAC's independent auditor to submit USAC's calendar year 2011 draft audit report to the Commission's Office of Inspector General (OIG) no later than August 1, 2012.

II. BACKGROUND

2. USAC is the administrator of the federal universal service support mechanisms.² In 1998, to foster greater accountability, the Commission adopted section 54.717 of its rules, which established an annual audit requirement for USAC.³ Pursuant to section 54.717 of the Commission's rules, USAC must "obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether [USAC] is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse."⁴ Section 54.717(f) of the Commission's rules requires USAC to instruct its auditors to submit a draft of USAC's required audit report to the Commission's Office of Inspector General within 105 calendar days after the end of the audit period (i.e., April 15 of each year, except for leap years, in which case the due date is April 14).⁵

3. The September 9, 2008 Memorandum of Understanding (MOU) between the Commission

¹ Letter from David Case, Universal Service Administrative Company, to Mark Stephens, Chief Financial Officer, Office of Managing Director, Federal Communications Commission, CC Docket No. 96-45 (dated Mar. 27, 2012) (Petition); 47 C.F.R. § 54.717(f).

² 47 C.F.R. § 54.701(a); *see Changes to the Board of Directors of the National Exchange Carrier Association and Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25069-70, para. 20 (1998) (*USAC Order*).

³ *USAC Order*, 13 FCC Rcd at 25068, para. 18; 47 C.F.R. § 54.717.

⁴ 47 C.F.R. § 54.717.

⁵ 47 C.F.R. § 54.717(f).

and USAC requires, among other things, that USAC obtain Commission approval prior to awarding any competitive contracting actions in excess of \$250,000.⁶ In its petition, USAC stated that following completion of the 2010 annual audit required by section 54.717 of the Commission's rules, USAC's multi-year contract with its auditor, PricewaterhouseCoopers (PwC), ended.⁷ As a result, USAC initiated a competitive procurement to retain a licensed accounting firm to perform USAC's annual audit for calendar year 2011 as required by section 54.717 of the Commission's rules.⁸ Consistent with the MOU's requirement to obtain Commission approval for competitive contracting actions in excess of \$250,000, on May 20, 2011, USAC also requested Commission staff approval to conduct this competitive procurement.⁹ Following several months of discussions, on December 5, 2011, Commission staff approved USAC initiating the procurement and issuing a request for proposals.¹⁰ On February 7, 2012, USAC completed all procurement activities and requested Commission staff approval to award a contract to DP George and Company, LLC (DP George) to perform USAC's calendar year 2011 annual audit.¹¹ The Commission's Deputy Managing Director approved USAC's request on February 24, 2012.¹²

4. According to USAC, work on the USAC annual audit by USAC's outside auditors must begin no later than November of each year to ensure that the deadline of April 15 of the following year is met.¹³ Although work on the 2011 audit began under an accelerated schedule, because of the delay in completing the procurement, USAC asserts that it needs a waiver because the extensive work necessary to comply with section 54.717(f) would not be completed by the April 14, 2012 audit filing deadline.¹⁴ Accordingly, USAC seeks a waiver of section 54.717(f) of the Commission's rules for the audit period ending December 31, 2011 and an extension of the deadline until August 1, 2012.¹⁵

III. DISCUSSION

5. We find that good cause exists to grant USAC a limited waiver of the draft audit filing deadline in section 54.717(f) of the Commission's rules. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the

⁶ *Id.* at 4; Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at 7 (Sept. 9, 2008) (2008 FCC-USAC MOU), *available at* <http://transition.fcc.gov/omd/usac-mou.pdf>.

⁷ *See* Petition at 1.

⁸ *See* Petition at 1; 47 C.F.R. § 54.717.

⁹ *See* Petition at 2; Email from Jay Beard, Universal Service Administrative Company, to David Reed, Assistant Chief Financial Officer, Office of Managing Director, Federal Communications Commission (dated May 20, 2011).

¹⁰ *See* Email from David Reed, Assistant Chief Financial Officer, Office of Managing Director, Federal Communications Commission, to Jay Beard, Universal Service Administrative Company (dated Dec. 5, 2011).

¹¹ *See* Petition at 2.

¹² *See* Petition at 2; Letter from Dana Shaffer, Deputy Director, Office of Managing Director, Federal Communications Commission, to Richard Belden, Universal Service Administrative Company (dated Feb. 24, 2012).

¹³ *See* Petition at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹⁹

6. USAC asserts in its waiver request that, although DP George is now working under an accelerated schedule to complete the 2011 47 C.F.R. § 54.717 audit, it could not be completed by the April 14, 2012 deadline.²⁰ As explained above, USAC contends a waiver is warranted due to the delays in the audit procurement approval process to ensure compliance with the MOU accompanied by the extensive audit work necessary to comply with 47 C.F.R. § 54.717.²¹ We find that USAC's explanations for the delay in initiation of its calendar year 2011 audit are reasonable, and given the timing of the initiation of the audit work it would have been very challenging for USAC to complete the audit work necessary to meet the requirements of section 54.717(f) of the Commission's rules by April 14, 2012.

7. Further, grant of this waiver and extension is consistent with past limited waivers, which allowed USAC's auditor sufficient time to file its draft audit reports.²² The Bureau previously concluded that waivers and extensions were appropriate in those instances because they would result in more accurate and complete draft audit reports, and would cause no harm because Commission audit staff, USAC, and the independent auditor still would review the draft audit reports once submitted and comply with all other provisions of section 54.717 of the Commission's rules.²³

8. Ultimately, in 2003, the Commission permanently extended the deadline for the submission of USAC's annual audit report draft from 60 days to 105 days after the end of the audit period.²⁴ In its order permanently extending the deadline for USAC's annual draft audit reports, the Commission found that no harm would result by providing the independent auditor an additional 45 days to submit the draft audit report because the extended audit deadline still would provide Commission audit staff and the

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008) (*Network IP*); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ See Petition at 2.

²¹ *Id.*

²² See *Universal Service Administrative Company; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.* Order, CC Docket Nos. 96-45, 97-21, 24 FCC Rcd 7376, 7377-78, paras. 6-10 (Wireline Comp. Bur. 2009) (finding a waiver of 47 C.F.R. § 54.717(f) would result in a more accurate and complete draft audit report and would cause no harm because Commission audit staff, USAC, and the independent auditor still would review the draft audit reports once submitted and comply with all other provisions of 47 C.F.R. § 54.717); *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Petition for Rule Change of Section 54.717(f) of the Commission's Rules and Regulations*; Order, CC Docket Nos. 96-45, 97-21, 18 FCC Rcd 6063, 6064, para. 4 (2003) (*Audit Deadline Extension Order*) (noting that USAC had received audit draft filing deadline extensions on behalf of the independent auditor for the 1998, 2000, 2001, and 2002 annual audits).

²³ See, e.g., *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 17 FCC Rcd 3698, 3700, para. 7 (Com. Car. Bur. 2002) (*2002 Audit Deadline Waiver Order*).

²⁴ See generally *Audit Deadline Extension Order*; see also 47 C.F.R. § 54.717(f).

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independent auditor sufficient time to review the draft audit report and comply with the other provisions of section 54.717 of the Commission's rules.²⁵

9. Consistent with precedent, we conclude that the prior rationales for both permanently and temporarily extending USAC's draft audit report filing deadlines apply to USAC's instant waiver request. Specifically, the requested deadline extension would: (1) serve the public interest by resulting in a more accurate and complete draft audit report; and (2) cause no harm because Commission staff, USAC, and the independent auditor still would be required to comply with all audit provisions of section 54.717 of the Commission's rules.²⁶ We find that granting USAC's instant waiver request similarly will serve the public interest and will cause no harm.

10. For the reasons stated above, we grant USAC a limited waiver of the draft audit report deadline set forth in section 54.717(f) of the Commission's rules.²⁷

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 254, 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 request for waiver filed by USAC of section 54.717(f) of the Commission's rules, 47 C.F.R. § 54.717(f), IS GRANTED.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²⁵ See *Audit Deadline Extension Order*, 18 FCC Rcd at 6064, para. 4.

²⁶ See e.g., *2002 Audit Deadline Waiver Order*, 17 FCC Rcd at 3700, para. 7; see also *Audit Deadline Extension Order*, 18 FCC Rcd at 6064, para. 4.

²⁷ 47 C.F.R. §§ 54.717(f), 1.3.