

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

In the Matter of	)	
	)	
Petitions for Waiver of Universal Service High-Cost Filing Deadlines	)	WC Docket No. 08-71
	)	
USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company	)	
Petition for Waiver of Sections 54.809(c), 54.904(d), 54.313(d) and 54.314(d) of the Commission’s Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2016

Released: June 8, 2016

By the Commission:

I. INTRODUCTION

1. In this order, we deny an application for review, filed by USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company (U.S. Cellular), of a decision by the Wireline Competition Bureau (Bureau) denying U.S. Cellular’s request for waiver of universal service high-cost support filing deadlines required by sections 54.809(c) and 54.904(d) of the Commission’s rules.<sup>1</sup> We conclude that U.S. Cellular has failed to establish any grounds to overturn the Bureau’s decision.

II. BACKGROUND

2. *Applicable Rules.* Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>2</sup> Support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>3</sup> For many years, the Commission has relied upon various certification and data filing requirements to implement this statutory requirement. We note that the specific certifications at issue in this case were largely superseded by the uniform framework for accountability that the Commission adopted in the *USF/ICC Transformation Order*.<sup>4</sup>

<sup>1</sup> USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company Application for Review, WC Docket No. 08-71 (filed May 21, 2009) (U.S. Cellular Application for Review); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines; LBH, L.L.C. Petition for Waiver of Section 54.802(a) of the Commission’s Rules et al.*, Order, 24 FCC Rcd 4806 (WCB 2009) (*U.S. Cellular Waiver Order*). See also 47 CFR §§ 54.809, 54.904.

<sup>2</sup> 47 U.S.C. § 254(e).

<sup>3</sup> *Id.*

<sup>4</sup> In the *USF/ICC Transformation Order*, the Commission eliminated the certification requirements that previously existed for different support mechanisms for most carriers and adopted a new uniform framework for accountability. *Connect America Fund et al.*; Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17849-62, paras. 569-614 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

3. Prior to the *USF/ICC Transformation Order*, to receive Interstate Access Support (IAS), an ETC, among other requirements, was required to file a certification with USAC and the Commission pursuant to section 54.809(a) of the Commission's rules, stating that all IAS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>5</sup> A carrier's certification was due on the date the carrier first filed its line count data information with the Universal Service Administrative Company (USAC), and, thereafter, on June 30 of each year.<sup>6</sup>

4. Additionally, to receive Interstate Common Line Support (ICLS), an ETC, among other requirements, was required to file a certification with USAC and the Commission pursuant to section 54.904(a) of the Commission's rules, stating that all ICLS received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>7</sup> This certification was due to USAC and the Commission on the date that the ETC first filed its line count data, and thereafter on June 30 of each year.<sup>8</sup>

5. *U.S. Cellular's Application for Review*. On February 25, 2008, U.S. Cellular was designated an ETC by the West Virginia Public Service Commission.<sup>9</sup> On July 18, 2008, U.S. Cellular requested a waiver of the certification filing deadlines required by sections 54.809(c) and 54.904(d) of the Commission's rules to allow it to receive \$1.78 million in IAS and ICLS.<sup>10</sup> U.S. Cellular's certifications were due on March 17, 2008, the date on which it filed its initial line count data.<sup>11</sup> U.S. Cellular did not file the required certifications until June 26, 2008, more than three months after they were due.<sup>12</sup> U.S. Cellular alleged that it missed the filing deadlines because its regulatory compliance staff was overburdened during March 2008 responding to unforeseen data requests from regulatory agencies and entities, including a USAC audit.<sup>13</sup> The Bureau denied US Cellular's petition, finding that U.S. Cellular

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<sup>5</sup> 47 CFR § 54.809(a). In addition, ETCs were required to file certain line count data with USAC. 47 CFR § 54.802(a).

<sup>6</sup> 47 CFR § 54.809(c).

<sup>7</sup> 47 CFR § 54.904(a). In addition, ETCs were required to file certain line count data with USAC. 47 CFR §§ 54.903, 54.307.

<sup>8</sup> 47 CFR § 54.904(d). In the *MAG Order*, the Commission adopted a mechanism for accepting untimely filed ICLS certifications, whereby the carrier does not become eligible for ICLS until the second calendar quarter after the certification is untimely filed. See *Multi-Association Group (MAG) Plan For Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, et al.*, Second Report and Order and Further Notice of Proposed Rulemaking, *et al.*, 16 FCC Rcd 19613, 19688, para. 176 (2001) (subsequent history omitted) (*MAG Order*).

<sup>9</sup> See USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company, Petition for Waiver of Sections 54.809(c), 54.904(d), 54.313(d) and 54.314(d) of the Commission's Rules, WC Docket No. 08-71, at 2 (filed July 18, 2008) (U.S. Cellular Waiver Petition).

<sup>10</sup> U.S. Cellular Waiver Petition at 3; 47 CFR §§ 54.809(c) and 54.904(d). U.S. Cellular originally claimed it would lose \$1.56 million in IAS and ICLS support, but later claimed that estimate to be understated because it based its original figures off of support actually withheld, which did not include support USAC had erroneously paid out. U.S. Cellular Application for Review at 7, n.20. Although U.S. Cellular also requested a waiver of sections 54.313(d) and 54.314(d) of the Commission's rules, the Bureau found that waiver of these rule sections was unnecessary because the West Virginia Public Service Commission filed the required data within 60 days of the date it designated U.S. Cellular an ETC. U.S. Cellular Petition at 3; see also 47 CFR §§ 54.313(d), 54.314(d).

<sup>11</sup> 47 CFR §§ 54.809(c), 54.904(d).

<sup>12</sup> U.S. Cellular Waiver Petition at 19.

<sup>13</sup> *Id.* at 3-4.

had not demonstrated that there was good cause to waive the deadlines because it had not promptly made the filing within a few days of the deadline and had not provided evidence of extenuating circumstances.<sup>14</sup>

6. *Standard of Review.* Section 1.115 of the Commission's rules specifies the factors that warrant Commission consideration of the issues presented in an application for review of action taken pursuant to delegated authority.<sup>15</sup> The Commission considers, among other things, whether the action taken is in conflict with case precedent or established Commission policy; whether it was based upon an erroneous finding as to an important or material question of fact; or whether there was prejudicial procedural error.<sup>16</sup> Here, US Cellular alleges that the Bureau's order conflicts with applicable precedent.<sup>17</sup>

### III. DISCUSSION

7. We conclude that U.S. Cellular has failed to establish any basis to overturn the Bureau's decision that U.S. Cellular failed to demonstrate that there is good cause to waive the applicable sections of the Commission's rules, and thus we deny U.S. Cellular's application for review.<sup>18</sup> We conclude that under the precedent that existed at the time US Cellular filed its waiver request,<sup>19</sup> U.S. Cellular failed to establish good cause for waiver. As U.S. Cellular acknowledges,<sup>20</sup> the Commission historically has weighed multiple factors in determining whether a petitioner has demonstrated that there is good cause to waive a high-cost filing deadline. Of necessity, each case is resolved based on the specific facts presented.

8. First, we conclude that the Bureau's decision that U.S. Cellular had failed to establish special circumstances did not conflict with existing precedent or policy. U.S. Cellular claimed to have missed the filing because of "unique difficulties brought on by redirection of staff to USAC audit-related tasks" and because it was understaffed due to the departure of a key employee.<sup>21</sup> Although in the past the Bureau granted waivers of high-cost filing deadlines in some situations where the filing was missed due to a clerical oversight, those cases are distinguishable and do not justify a finding of special circumstances here. In the cases that U.S. Cellular cites to support its claims, these petitioners presented additional facts, not present here, that helped establish good cause to grant those waiver petitions. For example, the filings

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<sup>14</sup> *U.S. Cellular Waiver Order*, 24 FCC Rcd at 4810, para. 10.

<sup>15</sup> 47 CFR § 1.115. See also 47 U.S.C. § 155(c)(4)-(7).

<sup>16</sup> 47 CFR § 1.115(b)(2).

<sup>17</sup> U.S. Cellular Application for Review at 1-2.

<sup>18</sup> Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). 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*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> We note that the Commission subsequently concluded in 2014 that it would require strict adherence to filing deadlines for the new regime of certifications adopted in the *USF/ICC Transformation Order*. *December 2014 Connect America Order*, 29 FCC Rcd at 15693, para. 138. Under that standard, we would deny the waiver request. We consider here whether the Bureau's action is consistent with precedent that pre-dates this decision.

<sup>20</sup> Letter from David A. LaFuria and Steven M. Chernoff, Attorneys, U.S. Cellular, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 08-71, at 1-2 (filed June 2, 2010) (U.S. Cellular June 2 *Ex Parte*).

<sup>21</sup> U.S. Cellular Application for Review at 1; U.S. Cellular June 2 *Ex Parte* at 3.

were filed promptly after the deadline,<sup>22</sup> the ETC took substantial steps to make the filing on time and relied on representations that the filing would be forwarded to the appropriate place,<sup>23</sup> the ETC was at risk for losing an entire year of local switching support (LSS),<sup>24</sup> or the company was emerging from bankruptcy.<sup>25</sup> Here, in contrast, the filing was made months late, and U.S. Cellular claims it missed the deadline because of a clerical oversight caused by a routine USAC audit.<sup>26</sup> USAC audits are an essential tool for ensuring that high-cost support is being used for its intended purposes, and ETCs are on notice that as a condition of accepting high-cost support they will be required to undergo USAC audits and also comply with various reporting and certification requirements. Thus, we expect that ETCs will ensure that they have enough resources to cooperate with USAC audits and also meet their other ETC obligations. Accordingly, we conclude that a filing delay caused by a routine USAC audit does not support a finding of special circumstances.

9. While our conclusion that the Bureau did not err in concluding U.S. Cellular had failed to demonstrate special circumstances is dispositive, we also are not persuaded by U.S. Cellular's other arguments. We disagree with U.S. Cellular's claim that the Bureau acted inconsistent with precedent by denying the waiver petition even though U.S. Cellular claims to have filed the certifications immediately upon discovering that it had not met the deadline.<sup>27</sup> The cases U.S. Cellular cites where the Bureau had granted waivers for petitioners that filed immediately upon discovery are distinguishable from U.S. Cellular's situation. In those cases, the petitioners were emerging from bankruptcy,<sup>28</sup> had taken

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<sup>22</sup> *Federal-State Joint Board on Universal Service; Benton/Linn Wireless, LLC Petition for Waiver of Section 54.307(c) of the Commission's Rules et al.*, Order, 20 FCC Rcd 19212, 19215, para. 7 (WCB 2005) (filing one business day after the deadline); *Federal-State Joint Board on Universal Service; NPCR, Inc. Petition for Waiver of Section 54.802(A) of the Commission's Rules*, Order, 22 FCC Rcd 560 (WCB 2007) (*NPCR Waiver Order*) (filing one business day after the deadline); *Federal-State Joint Board on Universal Service; Verizon Communications Inc. Petition for Waiver of Section 54.802(A) of the Commission's Rules*, Order, 21 FCC Rcd 10155 (WCB 2006) (filing two business days after the deadline); *Federal-State Joint Board on Universal Service; FiberNet LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, Order, 20 FCC Rcd 20316 (WCB 2005) (*FiberNet Waiver Order*) (filing five business days after the deadline).

<sup>23</sup> *Federal-State Joint Board on Universal Service; Valor Telecommunications of Texas, L.P. Request for Review of Decision of Universal Service Administrator; Petition for Waiver and/or Clarification of Filing Deadline in 47 C.F.R. Section 54.802(a)*, Order, 21 FCC Rcd 249, 251-52, paras. 5, 9 (WCB 2006) (*Valor Waiver Order*) (granting a waiver of the IAS line count deadline where the ETC filed the data with USAC's previous vendor and reasonably relied on the vendor's representations that the filing would be forwarded to the appropriate party).

<sup>24</sup> *Petition for Waiver of Universal Service High-Cost Filing Deadlines; Federal-State Joint Board on Universal Service, Northeast Iowa Telephone Company, Petition of Waiver of the Section 54.301(b) Submission Date for Projected 2008 Local Switching Support Data*, Order, 24 FCC Rcd 4818, 4819, para. 4 (WCB 2009) (*Northeast Iowa Waiver Order*); *Federal-State Joint Board on Universal Service; Dixon Telephone Company, et al.*, Order, 21 FCC Rcd 1717, 1719, para. 8 (WCB 2009) (*Dixon Waiver Order*); *Federal-State Joint Board on Universal Service; Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, 19 FCC Rcd 8891, 8893, para. 5 (WCB 2004) (*Smithville Waiver Order*); *Federal-State Joint Board on Universal; Alliance Communications Cooperative, Hills Telephone Company, Inc., et al.*, Order, 20 FCC Rcd 18250, 18253, para. 8 (WCB 2005) (*Alliance Waiver Order*) (all finding good cause to waive the section 54.301(b) deadline finding that the loss of an entire year of LSS would result in substantial hardship).

<sup>25</sup> *Federal-State Joint Board on Universal Service, MCI, Inc. Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission's Rules*, Order, 21 FCC Rcd 14926, 14929, para. 9 (WCB 2006) (*MCI Waiver Order*).

<sup>26</sup> See U.S. Cellular Application for Review at 2; U.S. Cellular Waiver Petition at 3.

<sup>27</sup> U.S. Cellular did not discover the missed deadline until late June, when USAC published the May 2008 disbursements and U.S. Cellular noticed that its payments did not include IAS or ICLS. U.S. Cellular Application for Review at 4; U.S. Cellular June 2 *Ex Parte* at 5.

<sup>28</sup> *MCI Waiver Order*, 21 FCC Rcd at 14929, para. 9.

substantial steps to making a filing and relied on assurances the filing would be sent to the right vendor,<sup>29</sup> or were facing the loss of an entire year's LSS<sup>30</sup> or Safety Valve Support.<sup>31</sup> Such circumstances were not presented here. We therefore conclude the Bureau did not act contrary to precedent or policy in finding that the delay in filing weighed against a finding of good cause.<sup>32</sup>

10. We are not persuaded by U.S. Cellular's arguments that, because it stands to lose a percentage of its total high-cost support that is comparable to the percentage of total high-cost support at stake in circumstances when the Bureau waived LSS filing deadlines, the Bureau should have granted U.S. Cellular's petition.<sup>33</sup> Simply put, we do not view the precedent established in the LSS context to be applicable here, in a situation involving IAS and ICLS. When granting waivers in the LSS context, the Bureau historically took into account that any length of a delay in filing would result in an ETC losing all of its LSS support for an entire year if a petition for waiver was denied.<sup>34</sup> In the IAS and ICLS context prior to the 2011 *USF/ICC Transformation Order*, the considerations were different because ETCs that filed late IAS and ICLS certifications were subject to support reductions that were proportional to the delay in filing.<sup>35</sup> And even if such precedent were relevant, we would conclude that precedent would not require grant of a waiver here. As the Bureau has more recently recognized in another case, "[h]olding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support."<sup>36</sup> We also find that U.S. Cellular's claims that it is "more harmful to rural citizens" if an ETC loses ICLS support instead of LSS support are unsubstantiated.<sup>37</sup>

11. Similarly, we are not persuaded that the cases that U.S. Cellular cites to support its claim that the Bureau has granted waivers in other situations mandate grant of a waiver here. In other cases where waiver was granted, the Bureau typically relied on other facts not present here, in addition to the hardship caused by a reduction in support.<sup>38</sup> And while the Bureau did not explicitly address U.S.

<sup>29</sup> *Valor Waiver Order*, 21 FCC Rcd at 251-52, paras. 5, 9.

<sup>30</sup> *Petitions for Waiver of Universal Service High-Cost Filing Deadlines; Flat Rock Telephone Co-Op, Inc (SAC #341012) Petition for Waiver of Section 54.301(e)(1) Filing Deadline for Submission of True-Up Data for Local Switching Support for a Rural Incumbent Local Exchange Carrier, et al.*, Order, 25 FCC Rcd 4637, 4639, para. 4 (WCB 2010); *Northwest Iowa Waiver Order*, 24 FCC Rcd at 4819, para. 4; *Dixon Waiver Order*, 21 FCC Rcd at 1719, para. 8; *Smithville Waiver Order*, 19 FCC Rcd at 8893, para. 5; *Alliance Waiver Order*, 20 FCC Rcd at 18253, para. 8.

<sup>31</sup> *See Federal-State Joint Board on Universal Service, CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC, Petition for Waiver of Section 36.612(a)(3) of the Commission's Rules*, Order, 21 FCC Rcd 14633, 14635, para. 7, n. 23 (WCB 2006) (*CenturyTel Waiver Order*) (distinguishing annual deadlines for SVS support from filing line counts and certifications on a quarterly basis for other types of support).

<sup>32</sup> *U.S. Cellular Waiver Order*, 24 FCC Rcd at 4810, para. 10 & n.39 (citing various orders where a waiver was denied because the filing was made more than a month past the filing deadline).

<sup>33</sup> U.S. Cellular June 2 *Ex Parte* at 7 & Attach.

<sup>34</sup> *See supra* note 24.

<sup>35</sup> 47 CFR 54.809(c); *MAG Order*, 16 FCC Rcd at 19688, para. 176.

<sup>36</sup> *Coral Wireless d/b/a Moby PCS Request for Review of the Decision of the Universal Service Administrator et al.*, Order, 29 FCC Rcd 9540, 9542 para. 8 (WCB 2014)

<sup>37</sup> U.S. Cellular June 2 *Ex Parte* at 7.

<sup>38</sup> *See* U.S. Cellular Application for Review at 6-8 (citing *Fibernet Waiver Order*, 20 FCC Rcd 20316; *MCI Waiver Order*, 21 FCC Rcd 14926; *Valor Waiver Order*, 21 FCC Rcd 249; and *Alliance Waiver Order*, 20 FCC Rcd 18250 which are all described above); Letter from David A. LaFuria, Counsel to United States Cellular Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-71, Attach. at 8 (filed May 21, 2010) (citing *NPCR Waiver Order*, 22 FCC Rcd 560 which is described above and also *Federal-State Joint Board on Universal Service; Citizens*

(continued....)

Cellular's claims regarding hardship, its history of compliance, the new policies and procedures it has implemented to avoid future missed deadlines, and the potential burden on USAC caused by the delayed filing,<sup>39</sup> we conclude that the Bureau did not act inconsistent with precedent based on the totality of circumstances, particularly given U.S. Cellular's failure to promptly cure and its failure to provide evidence of extenuating circumstances.<sup>40</sup> We note that that Bureau subsequently held that a history of compliance and procedures for future compliance "are things [the Bureau] expects from all recipients of federal universal service support, not special circumstances."<sup>41</sup>

12. We are not persuaded that the Bureau has violated the principle of competitive neutrality by denying U.S. Cellular's petition for waiver.<sup>42</sup> U.S. Cellular claims that the Commission has granted petitions for waiver filed by incumbent local exchange carriers (LEC) that have facts that are "based on factual scenarios virtually identical to those resulting in a denial of a competitive ETC's waiver request."<sup>43</sup> As we discussed at length above, the Commission historically considered the totality of circumstances when determining whether to grant a waiver of filing deadlines. The cases that U.S. Cellular cites to support its claim that it was treated unfairly all involved facts that are lacking in this situation.<sup>44</sup>

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*Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, Order, 20 FCC Rcd 16761 (WCB 2005) where the ETC at issue filed its line count report two business days late).

<sup>39</sup> U.S. Cellular Application for Review at 5-9; U.S. Cellular June 2 *Ex Parte* at 2-6.

<sup>40</sup> See, e.g., *Universal Service High-Cost Filing Deadlines; HTC Services, Inc. Petition for Waiver of Section 54.802(A) Deadlines for Submission of Line Count Data by Eligible Telecommunications Carriers Seeking Portable Interstate Access Support*, Order, 23 FCC Rcd 15333 (WCB 2008) (denying a petition where the petitioner claimed that USAC would not be burdened by the delayed filing, promised to implement procedures to avoid missing future deadlines, and claimed to be in full compliance with all other applicable requirements; finding that the petitioner "did not provide evidence of any extenuating circumstances sufficient to demonstrate the good cause required for [the Bureau] to grant a rule waiver"); *HTC Service, Inc. Petition for Waiver of Section 54.802(a) Deadlines for Portable Interstate Access Support*, CC Docket No. 96-45 (filed May 2, 2008). See also *Federal-State Joint Board on Universal Service; Northwest Dakota Cellular of North Dakota Limited Partnership et al. Petition for Waiver of Section 54.307 of the Commission's Rules*, Order, 21 FCC Rcd 9179, 9181-82, para. 7 (WCB 2006) (finding good cause to waive a filing deadline in part because the third party the ETC relied upon to make filings "has taken steps to ensure that it will not file late in the future," but also "most importantly" because the filing was made the next business day following the deadline); *Universal Service High-Cost Filing Deadlines, Federal-State Joint Board on Universal Service; Advanced Communications Technology, Inc. (SAC 519004)-Form 525 Filing Appeal et al.*, Order, 23 FCC Rcd 15325 (WCB 2008) (finding good cause to grant petitions for waiver of various high-cost filing deadlines where the entities had "revised their internal procedures to ensure compliance with the Commission's rules," but also "because the petitioners promptly filed the required data" between one and 13 business days after the deadline).

<sup>41</sup> *Federal-State Joint Board on Universal Service, Washington RSA No. 8 Limited Partnership; Easter Sub-RSA Limited Partnership D/B/A Inland Cellular Petition for Waiver of Section 54.307(c) and Section 54.802(A) of the FCC's Rules*, Order, 26 FCC Rcd 16349, 16352, para. 8 (WCB 2011).

<sup>42</sup> U.S. Cellular June 2 *Ex Parte* at 6-7.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> U.S. Cellular June 2 *Ex Parte* at 7 (citing *Federal-State Joint Board on Universal Service; North River Telephone Cooperative Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d)*, Order, 21 FCC Rcd 14937 (WCB 2006) where the petitioner mistakenly filed the wrong certification by the filing deadline; *Federal-State Joint Board on Universal Service; Puerto Rico Telephone Company Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, 18 FCC Rcd 26325 (WCB 2003) where the petitioner relied on an informational error on USAC's website, and the *CenturyTel Waiver Order*, 21 FCC Rcd 14633; *Valor Waiver Order*, 21 FCC Rcd 249 and other cases described above where the Bureau waived LSS filing deadlines).

13. We also disagree with U.S. Cellular's claims that there is an ambiguity regarding when the section 54.809 and 54.904 certifications were due.<sup>45</sup> As the Bureau noted,<sup>46</sup> the Commission's rules at the time stated that these certifications were due on the date the ETC first filed the applicable line count data.<sup>47</sup> U.S. Cellular filed the relevant line count data on March 17, 2008, and thus the certifications were also required to be filed that day.

14. Finally, we are not persuaded by U.S. Cellular's argument that the Bureau's decision conflicts with prior Bureau precedent that could be read to suggest the certifications were due the June 30 prior to U.S. Cellular being designated as an ETC or within 60 days of U.S. Cellular being designated as an ETC.<sup>48</sup> In 2005, the Commission adopted a 60-day grace period for newly designated ETCs.<sup>49</sup> New ETCs had 60 days from being designated as ETCs to file the required data and certifications to begin receiving high-cost support as of their designation order.<sup>50</sup> But even if the Bureau had found that the 60-day filing period for new ETCs applied, the fact remains that U.S. Cellular still would have missed that deadline by a substantial margin. U.S. Cellular was designated as an ETC on February 25, 2008 and did not file its certifications until 122 days later, on June 26, 2008.<sup>51</sup> Moreover, if the relevant deadline was the June 30th prior to U.S. Cellular being designated as an ETC, we are not persuaded that there would have been good cause to accept certifications that were filed so long after U.S. Cellular was designated, particularly when the Commission had adopted a 60-day deadline for all other ETC data and certifications. Accordingly, we conclude the Bureau did not act inconsistent with precedent or policy in denying U.S. Cellular's petition for waiver.

15. For the reasons discussed above and the reasons set out in the Bureau's order,<sup>52</sup> we will deny the application for review.

#### IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 1.3 and 1.115 of the Commission's rules, 47 CFR §§ 1.3, 1.115 that this order IS ADOPTED.

17. IT IS FURTHER ORDERED that the Application for Review, filed by USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company, IS DENIED.

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<sup>45</sup> U.S. Cellular Application for Review at 9-12; U.S. Cellular Petition for Waiver at 16-18.

<sup>46</sup> *U.S. Cellular Waiver Order*, 24 FCC Rcd at 4810, para. 10.

<sup>47</sup> 47 CFR §§ 54.809(c), 54.904(d).

<sup>48</sup> U.S. Cellular Application for Review at 9-12; U.S. Cellular Petition for Waiver at 16-18 (citing *Federal-State Joint Board on Universal Service; Cellular South Licenses, Inc. Petition for Waiver of Section 54.904(d) of the Commission's Rules*, Order, 22 FCC Rcd 5658 (WCB 2007) and *Federal-State Joint Board on Universal Service; Sage Brush Cellular, Inc. Petition for Waiver of Filing Deadline in 47 C.F.R. Sections 54.307(d), 54.314(a) and 54.904(d)*, Order, 22 FCC Rcd 15139 (WCB 2007)).

<sup>49</sup> *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 6371, 6411, para. 92 (2005).

<sup>50</sup> *Id.* We note that the issue of whether the 60-day filing period for new ETCs applies to the certifications at issue in this case is moot going forward given that the Commission eliminated these certifications in 2011. *USF/ICC Transformation Order*, 26 FCC Rcd at 17858, 17862, paras. 605, 614.

<sup>51</sup> U.S. Cellular Waiver Petition at 1, 19.

<sup>52</sup> *U.S. Cellular Waiver Order*, 24 FCC Rcd at 4810-11, paras. 10-12.

18. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a) this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary