

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

)	
)	DOCKET NO. UT-013047
In the Matter of State)	
Certification of Support as)	ORDER REQUIRING FILING BY
Required by 47 C.F.R. § 54.314)	ELIGIBLE TELECOMMUNICATIONS
)	CARRIERS RECEIVING FEDERAL
.....)	HIGH COST SUPPORT

PROCEDURAL BACKGROUND

- 1 The Federal Communications Commission (FCC) in its most recent universal service order¹ adopted a rule requiring state commissions “that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.301, 54.305, and/or 54.307 of this part and/or part 36, subpart F of this chapter...[to] file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”² The rule states support will “only be provided to the extent that the State has filed the requisite certification pursuant to this section.” The first of the annual state certifications is due to the FCC not later than October 1, 2001.
- 2 On May 31, 2001, Commission Staff sent an electronic message to attorneys who represent independent companies, CenturyTel, Sprint/United, Public Counsel, Qwest, TRACER,³ United States Cellular, Verizon, and the Washington Independent Telephone Association and requested comments on how the Commission should proceed.
- 3 In that message, Staff stated it was considering two alternatives and requested comment on those. One was that the Commission should audit companies prior to certifying that federal universal service funds will be used only for the intended purposes. The other was that each recipient of federal universal service funds be

¹ Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in Docket No. 96-45, and Report and Order in CC Docket 00-256 (Released May 23, 2001). *See* 47 C. F. R. § 54.314

² Funds are to be used only for provision, maintenance, and upgrading of services and facilities for which the support is intended. 47 U.S.C. 254(e). *See* also RCW 80.36.600(6)(b).

³ TRACER is an acronym for Telephone Ratepayers Association for Cost-based and Equitable Rates, an organization of large commercial and industrial companies operating in Washington State.

required to indicate the accounting categories, using either FCC accounting categories or GAAP categories, in which funds will be expended.

- 4 Comments were received from United States Cellular Corporation, Verizon, and Washington Independent Telephone Association.
- 5 United States Cellular Corporation and Washington Independent Telephone Association advocate certification by the Commission to the FCC based on certifications supplied to the Commission by eligible telecommunications carriers (ETCs).⁴ Each suggests this should be acceptable because it mirrors the approach taken by the FCC with respect to carriers that are not subject to the jurisdiction of state commissions (e.g., tribally-owned carriers). For those carriers, the FCC requires a sworn affidavit executed by a corporate officer that the support will be used only for the provision, maintenance, and upgrading of facilities and services for which support is intended. *See* 47 C.F.R. § 54.314(c).
- 6 Verizon suggests requiring a filing similar to the one required of carriers seeking ETC designation. It suggests certification should include the following: 1) a statement that the company is providing the supported services; 2) a statement that the company has performed annual advertising of availability of universal service;⁵ 3) the amount of universal service support received in the current year; and 4) the loop counts associated with universal service support. Verizon then suggests that if incremental increases occur, companies should account for their use for infrastructure improvements or for reductions of implicit supports.
- 7 In its Open Meeting memo prepared for the Commission's open meeting of July 11, 2001, Staff recommended a filing requirement similar to that which Verizon suggests.

DISCUSSION

- 8 The FCC did not state in its rule the basis on which it expects state commissions to make determinations that federal universal service funds will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. This Commission is left without stated guidance on what the FCC considers sufficient information on which we can make a certification; however, the FCC's statements in its Order may be instructive.
- 9 The discussion concerning the rule is found in paragraphs 185 through 193 in the Order released on May 23, 2001. The FCC stated that because the purpose of universal service is to enable the reasonable comparability of intrastate rates, and

⁴ ETCs are carriers that have been designated by a state commission as eligible to receive universal service fund support pursuant to 47 U.S.C. § 214(e).

⁵ While Verizon characterizes the requirement as annual, it is not limited. *See* 47 U.S.C. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2).

because states have primary jurisdiction over intrastate rates, it is most appropriate for states to determine whether support is used consistent with section 254(e).

- 10 The certification is characterized as a regulatory safeguard. ¶ 185. The Rural Task Force recommended the FCC delegate “oversight” to the states. ¶ 186. State certification is to “ensure” that funds are used only for the intended purposes. ¶ 187. State certification “provides the most reliable means of determining” the manner in which funds are used. *Id.* In those states where commissions have only limited regulatory authority, the FCC permitted states to make certifications for non-rural carriers based on ETC “plans to ensure compliance with section 254(e)” that are presented to the state commission prior to certification. ¶ 188. The language used in the Order tends to suggest something more might be expected of state commissions than accepting an affidavit from a company and, based on that affidavit alone, certifying to the FCC that the companies operating in the state will use the funds only for the intended purposes.
- 11 In contrast to the above material is the FCC’s approach to companies that are not under the jurisdiction of a state commission (e.g., tribally-owned carriers). Those companies need only certify in a sworn affidavit from a corporate officer that the funds will be used only for the intended purposes. ¶ 189 and 47 C.F.R. 54.314(c).
- 12 Because we were given no guidance by the FCC, and because the FCC accepts certifications from corporate officers concerning the intended use of federal high-cost support funds as sufficient for those companies that must certify to the FCC, we will certify compliance with 47 C.F.R. 54.314(a) based on the corporate officer certifications. It is appropriate given the large sum of money involved, approximately \$43 million for 2000 and nearly \$50 million for 2001, that we require those certifying how the money will be used to certify that they are in compliance with related federal statutes and Commission orders.

FINDINGS OF FACT

- 13 (1) The Commission finds that receipt of federal universal service funds is essential to preserve and advance universal service in Washington State.
- 14 (2) The Commission finds that it is imperative that it make the certification required by 47 C.F.R. § 54.314 not later than October 1, 2001.
- 15 (3) The Commission finds that the FCC has not clearly stated the basis upon which state commissions must determine that federal universal service support funds will be used only for the intended purposes.

CONCLUSIONS OF LAW

- 16 (1) Pursuant to RCW 80.36.610(1), the Commission has jurisdiction over the subject matter of these proceedings and over all Commission-designated ETCs receiving federal high-cost universal service support in Washington State.
- 17 (2) The FCC has not prescribed the manner of certification to be made by state commissions, nor has it prescribed the basis for making a determination that the federal high-cost universal service support will be used only for the intended purposes.
- 18 (3) The certification required of this Commission by 47 USC § 54.314(a) may be made on the basis of certifications from corporate officers in a manner similar to that permitted in 47 U.S.C. § 314(c).

ORDER

19 Based on the foregoing, the Commission orders as follows:

20 Each eligible telecommunications carrier in Washington receiving federal high-cost universal service support funds in 2001 and any subsequent year must provide the following to the Commission not later than September 7, 2001, and, for succeeding years, not later than August 31 of each year:

- 21 (1) A certification that, during the calendar year preceding the year in which certification is made, the ETC provided the supported services required by 47 U.S.C. § 214(e) and described in the Commission Order granting it ETC status;
- 22 (2) A certification that, during the calendar year preceding the year in which certification is made, the ETC advertised the availability of supported services and the charges for them as required by 47 U.S.C. § 214(e) and as described in the Commission Order granting it ETC status;
- 23 (3) A certification that funds received by it from the federal high-cost universal service support fund will be used only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended;
- 24 (4) For the filing due September 7, 2001, the amount of federal high-cost universal service fund support received for calendar year 2000, and for each subsequent filing, the amount of federal high-cost universal service fund support received for the calendar year preceding the year in which the filing must be made;

- 25 (5) For the federal due September 7, 2001, the quarterly loop counts on which federal high-cost universal service support was based for each quarter of the calendar year 2000, and for each subsequent filing, the quarterly loop counts on which federal high-cost universal service support was based for support received during the calendar year preceding the year in which the filing must be made.

DATED at Olympia, Washington, and effective this 25th day of July, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner