

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Annual Certifications related to  
Eligible Telecommunications Carriers' (ETCs)  
Use of the Federal Universal Service Support

ISSUE DATE: October 9, 2001

DOCKET NO. P-999/M-01-1219

ORDER CERTIFYING ETC's USE OF  
FEDERAL HIGH-COST SUBSIDY

**PROCEDURAL HISTORY**

On May 23, 2001, the Federal Communications Commission (FCC) issued new rules governing the distribution of federal funds to subsidize local telephone service in high-cost areas.<sup>1</sup> The rules set forth the uses for these funds, and require states to certify that eligible carriers would use the funds for their intended purposes.

On August 3, 2001, the Commission issued a notice inviting eligible telecommunications carriers (ETCs) to submit affidavits and other materials supporting the assertion that they would use the federal funds for their intended purposes. The notice also established a procedural schedule.

By August 20, 2001, the Commission had received requests for certification from every ETC but two.<sup>2</sup> The list of petitioning companies is included in the appendix to this order.

By September 4, 2001, the Commission had received comments from the Department of Commerce (the Department) and the Office of the Attorney General's Residential and Small Business Utilities' Division (OAG-RUD).

By September 14, 2001, the Commission had received reply comments from Citizens Telephone Company of Minnesota; Frontier Communications of Minnesota; Mankato Citizens Telephone Company; the Minnesota Independent Coalition (representing 83 companies); Mid-Communications, Inc. and Heartland Telecommunications Company of Iowa; OAG-RUD; Sprint Minnesota, Inc.; and WWC Holding Company Inc. (Western Wireless).

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<sup>1</sup>*Federal-State Joint Board on Universal Service and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice to Rulemaking, CC Docket No. 00-256, Report and Order (FCC 01-157, released May 23, 2001).

<sup>2</sup>The Commission did not receive petitions from Citizens Telephone Company of North Dakota (which serves few Minnesota customers and is seeking certification in North Dakota) and Qwest Corporation.

The Commission met to consider this matter on September 19, 2001.

## FINDINGS AND CONCLUSIONS

### **I. Background**

The federal Telecommunications Act of 1996 triggered a revision of the federal subsidies for telecommunications service in high-cost areas. It articulated a goal that all Americans, including Americans in rural, insular and high cost areas, should have access to telecommunications services at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b)(3).

In 1997 the FCC announced its plans for revising the federal subsidies.<sup>3</sup> Specifically, the FCC planned to establish new subsidy guidelines for non-rural telephone companies first, and for rural telephone companies later.<sup>4</sup>

In 1999 the FCC adopted rules governing the allocation of federal high-cost subsidies to *non-rural* telephone companies.<sup>5</sup> It established a list of services for which federal subsidies should be used,<sup>6</sup> and asked states to certify that the subsidies would be used for the intended purposes. Late certification would result in reduced subsidies. 47 U.S.C. § 54.313.

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<sup>3</sup>*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (*Federal USF Docket*), Report and Order, 12 FCC Rcd 8776 (1997).

<sup>4</sup>“Rural telephone company” is defined at 47 U.S.C. § 153(37). A non-rural telephone company is an incumbent telephone company that does not meet the definition of a rural telephone company.

<sup>5</sup>*Federal USF Docket*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20439 (1999), *pets. for review pending sub nom., Qwest Corp. v. FCC*, 10<sup>th</sup> Cir. No. 99-9546 and consolidated cases (1999).

<sup>6</sup>According to 47 C.F.R. § 54.101(a), federal high-cost subsidies are intended to be used to support –

- voice grade access to the public switched network,
- local usage,
- dual tone multi-frequency signaling (touch tone),
- single-party service,
- access to emergency services, such as 911 or enhanced 911 (E911) offered by local governments,
- access to operator services,
- access to interexchange service,
- access to directory assistance, and
- toll blocking for qualifying low income consumers.

On May 23, 2001, the FCC established new rules governing the distribution of federal high-cost subsidies to *rural* telephone companies.<sup>7</sup> These rules also ask states to certify that the subsidies would be used for their intended purposes. Again, late certification – that is, later than October 1, 2001 – would result in reduced subsidies. 47 U.S.C. § 314. Roughly 90 Minnesota rural telephone companies are eligible for the federal subsidies. This rulemaking triggered the current docket.

## **II. Petitions and comments**

### **A. In general**

Each petitioner provided an affidavit from a company official that the company would use the federal high-cost support received in 2002 only for its intended purposes. Most also provided financial data demonstrating that anticipated receipts from the federal program would not exceed anticipated expenses to be incurred for the intended purposes.

OAG-RUD recommends that the Commission grant the petitions that it had reviewed. (Apparently OAG-RUD did not receive copies of all petitions.) It cautioned the Commission not to delay its certification, because the resulting reduction in federal subsidies could cause higher rates for Minnesota consumers.

The Department recommended that the Commission grant certification upon conditions set forth below.

### **B. Department proposal**

The Department argues that the task of determining whether the federal subsidies are warranted requires greater scrutiny than the Commission has provided in this docket, or indeed more than the Commission could provide currently. To determine whether the funds are needed to provide the services specified by the FCC, the Commission may need to conduct an earnings investigation. But the Commission lacks the authority to pursue earnings investigations of companies operating under an “alternative regulation plan.” Minn. Stat. §§ 237.76 - 237.79. Most Minnesota telephone companies have elected to operate under such plans. But the Department argues that these companies have the discretion to change their election and submit themselves to earnings investigations. The Department recommends that the Commission grant certification to only the companies that agree to be subject to earnings investigations.

Additionally, the Department proposes that the Commission establish a standard for determining whether a company’s rates are “reasonably comparable” to rates in urban rates. Generally, the Department would ask that companies charging noncompliant rates be directed to make revenue-neutral changes in their rate structures to bring their rates within the “reasonably comparable” standard. Alternatively, the Department might investigate their earnings.

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<sup>7</sup>*Federal USF Docket and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice to Rulemaking, CC Docket No. 00-256, Report and Order (FCC 01-157, released May 23, 2001).

### **C. Comments on Department proposal**

Western Wireless supports the Department's proposal insofar as it would not apply to Western Wireless.

No other party supports the proposal. The other parties variously argue as follows:

- The FCC asks the Commission merely to certify that the money would be *used* for the intended purpose, not that it is *needed* for that purpose. As such, the Department is asking the Commission to exceed the role prescribed for it by the FCC.
- The FCC demonstrates the degree of scrutiny required for this certification when it established the necessary documentation required of telecommunications providers that are not subject to any state's jurisdiction. Specifically, the FCC requests only an affidavit.
- Other states grant certification based solely on affidavits.
- The Department's proposal is contrary to the legislative intent of the alternative regulation plan statutes, if not contrary to the statutes themselves.
- The Department's proposal could imperil the flow of federal subsidies to Minnesota, resulting in rate increases.
- Any proposal to establish a standard gauging whether a rate is "reasonably comparable" should also gauge whether the service is "reasonably comparable."
- Whatever the merits of the Department's policies, its proposal exceeds the scope of the current docket. The Department's policy objectives should be addressed in other dockets.
- The time constraints of the current docket do not permit an adequate consideration of the Department's proposal.

### **D. Commission analysis and action**

Each petitioning ETC has filed an affidavit of its intent to use the federal high-cost subsidies for their intended purposes, and no party has challenged the substance of the affidavits. The only question is whether this constitutes a sufficient basis for the Commission's certification to the FCC. The petitioners and the OAG-RUD claim that it does; the Department disagrees, and proposes a different basis for analysis.

The Commission must be mindful of the federally-imposed deadline on this docket. And ultimately this deadline simplifies the Commission's analysis.

Whatever the merits of the Department's proposal, its scope is daunting. It would convert the focus of this docket from examining affidavits to restructuring the nature of telecommunications regulation in Minnesota. The Commission is disinclined to adopt such a proposal without ample notice to all stakeholders, exhaustive briefings by all parties, and lengthy deliberations. The Department's September 4 filing does not provide sufficient time for these procedural steps to occur before the October 1 deadline.

Further, it seems unreasonable to require more than 90 telephone companies to make snap decisions about surrendering their statutory right to an alternative regulation plan, on peril of losing the federal subsidies that some have been receiving for years. The timing of the Department's filing does not permit adequate examination of the paradigm shift it proposes. In short, these issues cannot be adequately examined in the context of this docket.

Having reviewed the affidavits and other dockets in the record, the Commission will certify to the FCC that the ETC's will use the federal subsidies for their intended purposes.

**III. Draft letter**

The Commission circulated a draft of a letter it might send to the FCC if it granted certification. In the interest of tracking the requirements of the FCC's new rule § 54.314(c) more closely, MIC asks that the Commission add to the draft letter the following statement:

Based on those affidavits and additional documentation, the MPUC certifies that the ETCs listed on the Attachment to this letter will only use Federal High Cost support received in 2002 for the provision, maintenance, and upgrading of facilities and services for which that support is intended.

No party has spoken in opposition to MIC's proposal. The Commission finds that the language proposed by MIC expresses the Commission's conclusion, and will approve it.

**ORDER**

1. The petitions for certification are accepted.
2. The Commission certifies to the FCC that, based on the affidavits from the ETCs and on additional materials, the ETC's will use the federal High-Cost support for its intended purposes.
3. The Commission's draft FCC certification letter shall be amended to add the following sentence:

Based on those affidavits and additional documentation, the MPUC certifies that the ETCs listed on the Attachment to this letter will only use Federal High Cost support received in 2002 for the provision, maintenance, and upgrading of facilities and services for which that support is intended.

A copy of the letter is appended to this order.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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