

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

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

ISSUE DATE: October 6, 2003

DOCKET NO. P-999/M-03-1211

ORDER CERTIFYING ETCs' 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.¹ Though subsequently amended, these rules continue to set forth the uses for these funds and require states to certify annually that eligible telecommunications carriers (ETCs)² would use the funds only for the provision, maintenance and upgrading of facilities and services for which the subsidies are intended.

On December 23, 2003, the Commission issued its ORDER CERTIFYING ETCs' USE OF FEDERAL HIGH-COST SUBSIDY.³ As part of that order, the Commission established a procedural schedule for future certifications as follows:

¹ *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).

² An ETC must offer certain minimal telecommunications services within its designated area, advertise that it does so, and continue to offer and advertise these services until the Commission relieves it of its ETC duties. 47 U.S.C. § 214.

³ *In the Matter of Annual Certifications Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support*, Docket No. P-999/M-02-1403.

- August 1 - ETCs seeking certification file petitions including 1) an affidavit from a corporate officer of the ETC stating that any support received will be used only for its intended purpose, and 2) additional documentation pertaining to the previous year's federal high-cost support received and the ETC's operating and capital expenditures.
- August 20 - Interested parties file comments.
- August 30 - Interested parties file reply comments.

By August 4, 2003, the Commission had received certification petitions on behalf of the 97 telecommunications service providers listed in the Attachment.⁴

On August 20, 2003, the Commission received comments from the Minnesota Department of Commerce (the Department).

By September 2, 2003, the Commission had received reply comments from Midwest Wireless Communications, LCC (Midwest); from a coalition of independent telephone companies (the Minnesota Independent Coalition, or MIC); and jointly from Citizens Telecommunications Company of Minnesota and Frontier Communications of Minnesota, Inc. (Citizens/Frontier).

The matter came before the Commission on September 25, 2003.

FINDINGS AND CONCLUSIONS

I. Background

The federal Telecommunications Act of 1996⁵ (the Act) triggered a revision of the federal subsidies for telecommunications service in high-cost areas.⁶ 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).

According to the rules implementing this part of the Act, no eligible telecommunications carrier in Minnesota may receive the federal high-cost support unless this Commission files –

⁴ Mid-State Telephone Company filed twice: once for Mid-State Telephone Company (Mid-State) and once for KMP Telephone Company d/b/a Mid-State Telephone Company (KMP). While Mid-State and KMP have merged, MIC explains that these entities continue to be treated as two separate companies for some regulatory purposes because the National Exchange Carriers Association assigned them separate study area codes.

⁵ Pub. L. No. 104-104, 110 Stat. 56 (codified throughout title 47, United States Code).

⁶ Federal subsidy programs for high-cost areas are codified at 47 C.F.R. §§ 54.301, 54.305, 54.307, 54.309, 54.311 and part 36, subpart F.

an annual certification with the [Universal Service Administrative Company]⁷ and the [FCC] 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.⁸

II. Party Positions

Each petitioner filed an affidavit from a company official stating that the company would use the federal high-cost subsidies received in 2004 only for their intended purposes. The petitioners also filed data supporting their affidavits.

The Department recommends that the Commission approve the current petitions. In addition, the Department proposes to scrutinize future petitions to determine whether the subsidies are necessary to accomplish the FCC's goals, whether each carrier is using its subsidy in accordance with federal law, and whether there is unnecessary spending of public money.

While MIC supports the Department's recommendation to approve the petitions, MIC joins Citizens/Frontier and Midwest in expressing reservations about the Department's interpretation of the laws governing the subsidies. But the Department's interpretations need not be addressed in the current docket, MIC argues, because all parties are in agreement to grant approval to the current petitions.

III. Commission Action

The Commission has reviewed the affidavits, the supporting documents, and the Department's recommendations. On this basis, the Commission will grant the petitions and certify to the federal agencies that the attached list of ETCs will use the federal high-cost subsidies received in 2004 only for the provision, maintenance and upgrading of facilities and services for which the subsidies are intended. This is consistent with the Commission's rulings on past certification requests.⁹

⁷ The Universal Service Administrative Company is a private, not-for-profit organization responsible for administering the federal Universal Service Fund to promote access to affordable telecommunications services throughout the United States and its territories. 47 C.F.R. § 54.5.

⁸ 47 C.F.R. § 54.313(a) (pertaining to non-rural carriers); 47 C.F.R. § 54.314(a) (pertaining to rural carriers).

⁹ *In the Matter of Annual Certifications related to Eligible Telecommunications Carriers' (ETCs) Use of the Federal Universal Service Support*, Docket No. P-999/M-01-1219 ORDER CERTIFYING ETC's USE OF FEDERAL HIGH-COST SUBSIDY (October 9, 2001); *In the Matter of Annual Certifications Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support*, Docket No. P-999/M-02-1403 ORDER CERTIFYING ETC's USE OF FEDERAL HIGH-COST SUBSIDY (December 23, 2002).

Whatever the merits of the Department's proposal to subject future petitions to greater scrutiny, the Commission finds that it exceeds the scope of the current docket, which addresses only current petitions. Consequently, the Commission will take no action on the proposal at this time.

The Commission will so order.

ORDER

1. The petitions for certification are granted.
2. The Commission certifies to the FCC and the Universal Service Administrative Company, based on the affidavits from the ETCs and on additional materials, that the petitioning ETCs will use the federal high-cost subsidies received in 2004 only for the provision, maintenance and upgrading of facilities and services for which the subsidies are intended. The certification letter, including the list of petitioning ETCs, is attached.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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