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Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Bill Duncan, Telecommunications / Water Manager
Casey J. Coleman, Utility Technical Consultant

Date: July 11, 2012

Re: In the Matter of a Request for Agency Action for Creation of a Telecom Working Group to Address Possible Streamlined Procedures for Approving Changes Mandated by the FCC Docket No. 12-999-05

BACKGROUND:

The Commission issued an order in this Docket requesting parties file comments in preparation for the scheduling conference to be held July 19, 2012. One area of the FCC Order that the Division believes it is important to discuss in this working group and as part of this docket is the Section 254(e) Annual Certifications as requested by the FCC. Within the order the FCC maintains that States will have the responsibility to conduct the annual certifications to verify ETCs are using the provided support as required. The language in the order specifically states that the states have an “integral role” in this certification and the expectation is that the reviews will be “rigorous” in nature.

The Division would like clarification from parties of the process that will be developed as a result of this Docket that will be followed by the Division to ensure “that a carrier shall use support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”

Specifically, the Division is seeking clarification on the level of review that is needed to meet the “rigorous” standard established by the FCC.

The applicable section of the FCC’s order is included below to allow all parties to read the requirements established by the FCC.

3. Annual Section 254(e) Certifications

607. *Background.* As noted above, section 254(e) requires that a carrier shall use “support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The Commission currently requires states to annually certify with respect to ETCs they designate that this statutory requirement is met in order to receive HCLS, SVS, SNA, HCMS, or LSS.

States take different approaches in how they develop a factual basis to support this certification, However Federally-designated ETCs are required to make an annual certification directly to this Commission in order to receive HCLS, SVS, SNA, HCMS, LSS, IAS, or ICLS, but the Commission has not specified what factual basis must support such certifications. GAO found inconsistencies in the certification process among states and questioned whether such certifications enabled program administrators to fully assess whether carriers are appropriately using high-cost program support. In the Notice, we sought comment on how to harmonize certifications and ensure that they are meaningful.

608. *Discussion.* We modify our rules to streamline and improve ETCs’ annual certification requirements.

609. First, we require that states – and entities not falling within the states’ jurisdiction (i.e., federally-designated ETCs) – certify that all federal high-cost and CAF support was used in the preceding calendar year and will be used in the new calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, regardless of the rule under which that support is provided. This corrects a defect in our current rules, which require only a certification with respect to the coming year. The certifications required by new section 54.314 will be due by October 1 of each year, beginning with October 1, 2012. The certification requirement applies to all recipients of high-cost and CAF support, including those that receive only Phase I Mobility Fund support.

610. Second, we maintain states’ ongoing role in annual certifications. Several commenters take the position that responsibility for ensuring USF recipients comply with their public interest obligations should remain with the states. As discussed above, we agree that the **states should play an integral role** in assisting the Commission in monitoring compliance, consistent with an overarching uniform national framework. States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.

611. Under our reformed rules, as before, some recipients of support may be designated by the Commission rather than the states. States are not required to file certifications with the Commission with respect to carriers that do not fall within their jurisdiction. However, consistent with the partnership between the Commission and the states to preserve and enhance universal service, and our recognition that states will continue to be the first place that consumers may contact regarding consumer protection issues, we encourage states to bring to our attention issues and concerns about all carriers operating within their boundaries, including information regarding non-compliance with our rules by federally designated ETCs. We similarly encourage Tribal governments, where appropriate, to report to the Commission any concerns about non-compliance with our rules by all recipients of support operating on Tribal lands. Any

such information should be provided to the Wireline Competition Bureau and the Consumer & Governmental Affairs Bureau. Through such collaborative efforts, we will work together to ensure that consumer interests are appropriately protected.

612. Third, we clarify that we expect a **rigorous examination of the factual information provided in the annual section 54.313 reports prior to issuance of the annual section 254(e) certifications.**

Because the underlying reporting requirements for recipients of Mobility Fund Phase I support differ from the reporting requirements for ETCs receiving other high-cost support, Mobility Fund Phase I recipients certifications will be based on the factual information they provide in the annual reports they file pursuant to section 54.1009 of the Mobility Fund rules. We expect that states (or the ETC if the state lacks jurisdiction) will use the information reported in April of each year for the prior calendar year in determining whether they can certify that carriers' support has been used and will be used for the intended purposes. In light of the public interest obligations we adopt in this Order, a key component of this certification will now be that support is being used to maintain and extend modern networks capable of providing voice and broadband service. Thus, for example, if a state commission determines, after reviewing the annual section 54.313 report, that an ETC did not meet its speed or build-out requirements for the prior year, a state commission should refuse to certify that support is being used for the intended purposes. In conjunction with such review, to the extent the state has a concern about ETC performance, we welcome a recommendation from the state regarding prospective support adjustments or whether to recover past support amounts. As discussed more fully below, failure to meet all requirements will not necessarily result in a total loss of support, to the extent we conclude, based on a review of the circumstances, that a lesser reduction is warranted. Likewise, we will look at ETCs' annual 54.313 reports to verify certifications by ETCs (in instances where the state lacks jurisdiction) that support is being used for the intended purposes.

cc: Trisha Schmid, Assistant Attorney General
Justin Jetter, Assistant Attorney General
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