

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

)
In the Matter of a Request for Agency Action) DOCKET NO. 12-999-05
for Creation of a Telecom Working Group to)
Address Possible Streamlined Procedures for) NOTICE OF CLOSING OF DOCKET
Approving Changes Mandated by the FCC)
)
)
In the Matter of Agency Action to Establish a) DOCKET NO. 12-999-07
Temporary Certification Process in)
Compliance with 47 U.S.C. Section 254(e)) NOTICE OF AGENCY ACTION AND
) TECHNICAL CONFERENCE
)

ISSUED: July 31, 2012

By The Commission:

PROCEDURAL BACKGROUND

On May 18, 2011, the Division of Public Utilities (“Division”) filed a request for agency action “with the purpose of addressing new filing and other requirements imposed by the Federal Communications Commission (“FCC”) Report and Order (the “*Transformation Order*”) reforming the Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”) regulatory schemes.” See Request for Agency Action, at 1, filed May 18, 2012, Docket No. 12-999-05. As requested, the Commission opened a docket (Docket No. 12-999-05) and scheduled a technical conference. Subsequently, the request for agency action was withdrawn and the technical conference was canceled. In place of the technical conference, the Commission held a scheduling conference to determine a process for addressing Commission actions required by the *Transformation Order*. Thus, Docket No. 12-999-05 is hereby closed.¹

¹ In light of this action, no further response to URTA’s July 11, 2012 request for clarification is necessary.

NOTICE OF AGENCY ACTION

By this new docket (Docket No. 12-999-07), the Commission now initiates agency action to address the sole issue of implementing a temporary process under which carriers receiving federal high-cost and Connect America Fund (“CAF”) support will submit to the Division for its examination the annual section 54.313 reports in connection with the Commission’s annual section 254(e) certifications. Paragraphs 607-614 of the FCC *Transformation Order* (attached to this notice as “Attachment A”) set forth the FCC’s new certification requirements. The Commission intends to adopt a more permanent process for addressing these new requirements in a docket to be opened later this year. This docket (Docket No. 12-999-07) will establish the process for making the initial certifications to meet the new FCC requirements by the December 1, 2012 deadline.

This notice of agency action is commenced by the Commission pursuant to Utah Code Ann. § 63G-4-201.

This adjudicative proceeding will be conducted formally according to the provisions of Sections 63G-4-204 through 63G-4-209 of the Utah Code Ann. and applicable statutes and rules.

Each respondent/party must file a written response within 30 days of the mailing date of this notice of agency action. The respondent’s/party’s response shall state its appearance in this docket and provide comment on the Commission’s implementation, on a temporary basis, of the following process under which carriers receiving federal high-cost and CAF support will meet the requirements of Paragraphs 607-614 of the *Transformation Order*. The Commission

anticipates this process will work as follows: (1) Any carrier receiving federal high-cost and CAF support shall file a section 54.313 report with the Division by August 15, 2012; (2) The Division shall examine the reports submitted, along with all information available to it, and as to each carrier shall certify, to the Commission, whether it complies with Paragraphs 607-614 of the *Transformation Order*, by September 14, 2012; and (3) The Commission will certify to the FCC on or before October 1, 2012.

A technical conference will be held as noticed below.

A hearing, if needed, will be scheduled by the Commission in a subsequent notice.

Melanie Reif, Administrative Law Judge of the Commission, shall be the presiding officer for this adjudicative proceeding, and her contact information is as follows: 160 East 300 South, 4th Floor, Salt Lake City, Utah 84111, Tel. (801) 530-6717.

NOTICE OF TECHNICAL CONFERENCE

Notice is hereby given that a Technical Conference in this matter (Docket No. 12-999-07) will be held on **Thursday, September 6, 2012, at 9:00 a.m. (MST), Fourth Floor Room 401**, Heber M. Wells State Office Building, 160 East 300 South, Salt Lake City, Utah. This conference will address the proposed certification process and any comments filed in this docket.

Individuals wishing to participate by telephone should contact the Public Service Commission two days in advance by calling (801) 530-6716 or call toll-free 1-866-PSC-UTAH (1-866-772-8824) and they will then be provided with a bridge number. Participants attending

DOCKET NOS. 12-999-05 and 12-999-07

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by telephone should then call the bridge number at least five minutes prior to the conference to ensure participation.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during any proceeding should notify the Commission at 160 East 300 South, Salt Lake City, Utah 84111, (801) 530-6716, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah this 31st day of July, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 31st day of July, 2012, as the Notice of Closing of Docket and Notice of Agency Action and Technical Conference of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DH#232022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of July, 2012, a true and correct copy of the foregoing was served upon the following as indicated below:

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Administrative Assistant

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Agency Action to Establish a)
Temporary Certification Process in) DOCKET NO. 12-999-07
Compliance with 47 U.S.C. Section 254(e))
) NOTICE OF AGENCY ACTION:
) ATTACHMENT A
)

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.”² 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.³ States take different approaches in how they develop a factual basis to support this certification, however.⁴ 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,⁵ 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.⁶ In the Notice, we sought comment on how to harmonize certifications and ensure that they are meaningful.⁷

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

² 47 U.S.C. § 254(e).

³ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers).

⁴ For example, the Michigan Public Service Commission requires ETCs to provide information each year in connection with renewal of their designations. See Michigan Commission *USF/ICC Transformation NPRM* Comments at 4. And as stated in the GAO High-Cost Report, “[s]tates most frequently require carriers to submit affidavits that future support will be used for its intended purpose; plans for quality, coverage, or capacity improvements; and evidence that past support was used for its intended purposes.” GAO High-Cost Report at 33.

⁵ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers), 54.809 (IAS), 54.904 (ICLS)

⁶ GAO High-Cost Report at 38.

⁷ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4696, para. 475.

rules, which require only a certification with respect to the coming year.⁸ 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.⁹ 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.¹⁰ 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.¹¹

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)

⁸ Current sections 54.313 and 54.314 of our rules provide that states "must 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." 47 C.F.R. §§ 54.313(a) and 54.314(a).

⁹ See State Members *USF/ICC Transformation NPRM* Comments at 140; Frontier *USF/ICC Transformation NPRM* Comments at 25; Nebraska Commission *USF/ICC Transformation NPRM* Comments at 16; Kansas Commission *USF/ICC Transformation NPRM* Comments at 24, 27; Missouri Commission *USF/ICC Transformation NPRM* Comments at 5, 9-11; Washington Commission *USF/ICC Transformation NPRM* Comments at 4-6; Greenlining *USF/ICC Transformation NPRM* Comments at 10.

¹⁰ The State Members noted that the basic model of requiring states to make annual certifications is sound, but should be updated to include the new provider of last resort duties assigned to broadband providers. State Members Comments at 140. Another commenter supported federal standards "so states that exercise authority over ETCs have the ability to gather information from ETCs ensuring USF support is being used appropriately." Missouri Commission *USF/ICC Transformation NPRM* Comments at 9.

¹¹ 47 C.F.R. §§ 54.313 and 54.314.

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.¹² 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.¹³ 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.¹⁴

613. Fourth, we streamline existing certifications. Today, we have two different state certification rules, one for rural carriers and one for non-rural carriers. There is no substantive difference between the existing certification rules for the two classes of carriers, and as a matter of administrative convenience, we consolidate all certifications into a single rule. Moreover, because the net effect of the changes that we are implementing to our high-cost programs is, as a practical matter, to shift the focus from whether a company is classified as "rural" versus "non-rural" to whether a company receives all support through a forward-looking model or competitive process or, instead, based in part on embedded costs,¹⁵ it does not make sense to maintain separate certification rules for "rural" and "non-rural" carriers. We see no substantive difference in the certifications that should be made. Thus, we eliminate the certification

¹² Because ETCs of Mobility Fund Phase I support that receive support pursuant to other high-cost mechanisms are subject to the reporting requirements of new section 54.313, those companies' certifications will be based on the factual information in the annual reports they file pursuant to both new section 54.313 and section 54.1009 of the Mobility Fund rules.

¹³ This should help address the concern of the State Members of the Federal-State Joint Board on Universal Service that, under the annual certification process as it exists today, "a State has only one remedy, denial of certification." State Members *USF/ICC Transformation NPRM* Comments at 140.

¹⁴ ETC Designation Order, 20 FCC Rcd at 6402, para. 72 ("If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.")

¹⁵ See Section VII.C.1. above.

requirements currently found in sections 54.313 and 54.314 of our rules¹⁶ and implement new rule 54.314.

614. Finally, we also eliminate carriers' separate certification requirements for IAS and ICLS. As discussed above, we are eliminating IAS as a standalone support mechanism, and this obviates the need for IAS-specific certifications.¹⁷ Although ICLS will remain in place for some carriers, those carriers will certify compliance through new section 54.314. However, to ensure there is no gap in coverage, those carriers will file a final certification under section 54.904 due June 30, 2012, covering the 2012-13 program year. Thus, by this Order, we eliminate section 54.809 and, effective July 2013, section 54.904 of our rules.¹⁸ And as discussed in section VII.C.1. above, we also eliminate section 54.316 of our rules, relating to rate comparability.¹⁹

¹⁶ Current section 54.313 requires certifications with regard to support pursuant to sections 54.309 and 54.311. 47 C.F.R. § 54.313. Current section 54.314's requirements pertain to support pursuant to sections 54.301, 54.305, and 54.307, as well as part 36, subpart F. 47 C.F.R. § 54.314.

¹⁷ See Section VII.C.1. above.

¹⁸ Sections 54.809 and 54.904 require carriers receiving IAS and ICLS support, respectively, to file a certification stating that all such support "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. §§ 54.809 and 54.904.

¹⁹ Section 54.316 requires that states certify as to rate comparability for areas served by non-rural carriers. 47 C.F.R. § 54.316.

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Temporary Certification Process in) DOCKET NO. 12-999-07
Compliance with 47 U.S.C. Section 254(e))
) NOTICE OF AGENCY ACTION:
) ATTACHMENT B
)

The NOTICE OF AGENCY ACTION was sent to the persons whose electronic addresses appear on this Attachment B to the Notice of Agency Action, on July 31, 2012:

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