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October 11, 2012

**TO: PUBLIC SERVICE COMMISSION**

**FROM: DIVISION OF PUBLIC UTILITIES**

Chris Parker, Director  
Bill Duncan, Manager, Telecommunications and Water  
Paul M. Anderson, Utility Technical Consultant

**RE:** In the Matter of Agency Action to Establish a Permanent Certification Process in Compliance with 47 U.S.C. Section 254(e) Docket No. 12-999-09.

**ISSUE:**

The Utah Division of Public Utilities (DPU) is filing comments to Docket No. 12-999-09 prior to the Scheduling Conference to be held Thursday, October 25, 2012, at 9:00 a.m. (MST). In the Notice of Agency Action, the Commission invited all interested parties to enter an appearance and file comments regarding the permanent process for addressing the certifications that are required by the Commission in 2013 and beyond. The Utah Division of Public Utilities hereby enters its appearance in this docket.

**RECOMMENDATION:**

The Utah Public Service Commission (Commission) has initiated agency action to address on-going FCC certification requirement compliance in FCC Order 11-161 (Transformation Order), including establishing a permanent process of certification for carriers receiving federal high-cost and Connect America Fund ("CAF") support by opening this docket.

Paragraph 568 of the Transformation Order states the reasoning behind the annual Certifications:

"The billions of dollars that the Universal Service Fund disburses each year to support vital communications services come from American consumers and businesses, and recipients must be held accountable for how they spend that money. This requires vigorous ongoing oversight by the Commission, working in partnership with the states,

Tribal governments, where appropriate, and U.S. Territories, and the Fund administrator, USAC.”

Paragraph 610 envisions the States’ role in the Certification process:

“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.”

And finally, paragraph 612 defines the FCC expectations of the states:

“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. “ This paragraph raises the questions that the Division hopes to answer in this docket:

1. What is meant by a “rigorous” examination?
2. What level of examination can practically be completed with limited resources?
3. What information can reasonably be required to be provided by carriers that meets the FCC requirements while not becoming overly burdensome?

While the Division recognizes the FCC's interest in insuring proper use of these monies, the verification requirements placed on state Commissions and staff is not insignificant. For states with limited resources, these mandates present problems that may prevent states compliance to the extent envisioned by the FCC in the Transformation order.

#### Current Process for Annual Certifications

Currently, CFR 254(e) carrier certification has been accomplished by letters to the Commission from the carriers attested to by an officer of the company that all USF and CAF funds were used and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission was then required to file an annual certification letter for those carriers with the Universal Service Administrative Company (“USAC”) and the FCC stating that the carriers were in compliance. It was essentially a self-certification process with the DPU verifying that all letters from the carriers were received and recommending to the Commission that the carriers be certified.

## Future Process for Annual Certifications

While self certification has been sufficient in the past, the Transformation Order now expects a “rigorous examination” by the states of the factual information provided in the annual reporting requirements for high-cost recipients in new section 54.313 reports.

After reviewing the reports and information that 54.313 requires of high-cost recipients provided in the most recent certification, the Division believes that the information provided is not sufficient for the Division to rigorously review and determine whether high-cost funds are being utilized according to FCC guidelines. The Division proposes that the following information be provided to the Commission, in addition to that required by the FCC:

1. Provide job or projects with job numbers, their geographic area impacted, and job or project description describing what services were provisioned, funds expended, and the number of customers affected.
2. Provide a five year plan detailing the proposed upgrades to existing infrastructure that will meet the requirements of the Transformation order. (The five year build out plans described in paragraph 587 of the order may be sufficient for this requirement.)
3. Provide a complete Part 36 separations study and a Part 64 allocation study for the previous year.
4. Include an attestation statement from an officer of the company verifying that the submitted information is true and correct.

The Division believes these requirements are consistent with the Transformation Order. Paragraph 574 of the order states:

“We clarify that the specific reporting and certification requirements adopted below are a floor rather than a ceiling for the states.”

“Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.”

The Division looks forward to working with the Commission and the carriers to develop a state process that will provide an efficient and practical solution that meets the requirements of the Transformation order.

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