

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 27th day of August, 2002.

CASE NO. 02-1234-T-GI

GENERAL INVESTIGATION REGARDING

Certification of the disposition of federal universal service funding by incumbent local exchange telecommunications carriers and competitive eligible telecommunications carriers in West Virginia for calendar year 2003.

COMMISSION ORDER

TO INITIATE A GENERAL INVESTIGATION

On August 20, 2002, Commission Staff (Staff) filed a petition, pursuant to Rule 12.6 of the Commission's Rules of Practice and Procedure and W. Va. Code § 24-1-1(f)(2), to initiate a general investigation regarding certification of the disposition of federal universal service funding by incumbent local exchange telecommunications carriers (ILECs) and competitive eligible telecommunications carriers (ETCs) in West Virginia for calendar year 2003.

As grounds for its petition, Staff states that the Federal Communications Commission (FCC) issued its High Cost Support Order[See FootNote ¹](#) and its Inputs Order[See FootNote ²](#) in its on-going universal service proceeding on November 2, 1999. As a result of these orders, on and after January 1, 2000, non-rural carriers within the state of West Virginia are eligible to receive additional high-cost support from the federal universal service fund. The FCC requires that “. . . states that wish to receive federal universal service high-cost support for non-rural carriers within

their territory to file a certificate with the Commission[See FootNote ³](#) stating that all federal high-cost funds flowing to non-rural carriers in that state will be used in a manner consistent with Section 254(e).” High Cost Support Order, at ¶ 97. Moreover, “. . . a non-rural carrier in a particular state will not receive forward-looking support until the state files an appropriate certification with the Commission.” Id. at ¶ 98.

The FCC made it clear that “[t]his certification requirement is applicable to non-rural incumbent LECs, and competitive eligible telecommunications carriers seeking high-cost support in the service area of a non-rural LEC.” Id. at ¶ 97. Moreover, the certification must be filed annually and applies to all non-rural carriers that the state certifies as eligible to receive federal universal service high-cost support during that annual period. Id.

Under the FCC's rules, the timing of the filing of the certification by the states is crucial. In the

second and subsequent years of the high-cost support program, if the Commission files a certification with the FCC prior to October 1, then universal service funds for the next calendar year will be forwarded to non-rural carriers. 47 C.F.R. § 54.313(c). If the certification is not filed by October 1, then the number of calendar quarters for which the non-rural carrier receives funding is reduced. [See FootNote ⁴](#)

Staff related that, pursuant to the FCC's Rural Carrier Support Order, [See FootNote ⁵](#) in its universal service proceeding, “the mandate in section 254(e) applies to *all* carriers, rural and non-rural, that are designated as eligible [telecommunications carriers] under section 214(e) of the Act.” Rural Carrier Support Order, at ¶ 187 (emphasis original). Accordingly, states that wish to receive federal universal service high-cost support for rural carriers within their boundaries must likewise now file the same certification as previously required only for non-rural carriers. Id. & ¶¶ 190-92.

In order to allow West Virginia ILECs and competitive ETCs to receive full, uninterrupted universal service support for the entire calendar year 2003, and for those carriers' customers to receive the benefit of this support, Staff recommended that the Commission issue an order initiating a general investigation regarding the disposition of universal service funds by all ILECs and competitive ETCs within the state.

Staff further recommended that the Commission direct such carriers to file verified statements demonstrating that they use universal service support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with Section 254(e) of the Telecommunications Act of 1996, by September 9, 2002. Papers regarding use of universal service funding that have been previously filed should be lodged in this proceeding and carriers should amend these filings to include the requisite verification, if not previously provided.

Finally, Staff recommends that the Commission post the carriers' verified statements on the Commission's website, at <http://www.psc.state.wv.us>, and that notice of the Commission's order, and the internet posting of carriers' verified statements, be published once in the Charleston Gazette and Daily Mail and that interested persons be invited to file comments with the Commission by September 16, 2002.

ORDER

IT IS THEREFORE ORDERED that a general investigation regarding the disposition of universal service funds by all incumbent local exchange telecommunications carriers (ILECs) and competitive eligible telecommunications carriers (ETCs) within West Virginia is hereby initiated.

IT IS FURTHER ORDERED that incumbent local exchange telecommunications carriers and competitive eligible telecommunications carriers shall file verified statements demonstrating that they use universal service support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with Section 254(e) of the Telecommunications Act of 1996, by September 9, 2002.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall file documents regarding use of universal service funding, that have been previously filed by the above mentioned carriers, in this case proceeding.

IT IS FURTHER ORDERED that incumbent local exchange telecommunications carriers and competitive eligible telecommunications carriers amend previously filed documents to include the

requisite verification, if not previously provided.

IT IS FURTHER ORDERED that the Commission post the carriers' verified statements on the Commission's website, at <http://www.psc.state.wv.us>.

IT IS FURTHER ORDERED that the Commission's Executive Secretary publish this order once, in the Charleston Gazette and Daily Mail, and note that interested persons are invited to file comments with the Commission by September 16, 2002. Such comments must be addressed to: Executive Secretary, 201 Brooks Street, Charleston, WV 25323.

___IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:

**Sandra Squire
Executive Secretary**

ARC
JJW/lfg
021234c.wpd

Footnote: 1 ¹“Ninth Report and Order and Eighteenth Order on Reconsideration,” *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Rel. Nov. 2, 1999).

Footnote: 2 ²“Tenth Report and Order,” *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Rel. Nov. 2, 1999).

Footnote: 3 ³The FCC's rules also require a copy of the certification to be filed with the administrator of the Universal Service Administrative Corporation (USAC). See *High Cost Support Order*, at ¶ 97 & 47 C.F.R. § 54.313(a).

Footnote: 4 ⁴For example, if certification is filed after October 1, but before January 1 of the next calendar year, the non-rural carrier received funding in the second, third and fourth quarters. 47 C.F.R. § 54.313(c)(3)(ii). Certifications filed after January 1, but before April 1, entitle the non-rural carrier to support in the third and fourth quarters. Certification after April 1, but before July 1, entitles the non-rural carrier to support in the fourth quarter. Failure to file certification by July 1, precludes non-rural carriers from receiving any support during that calendar year. 47 C.F.R. § 54.313(c)(3)(iii) - (v).

Footnote: 5 ⁵“Fourteenth Report and Order, etc.,” *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 & 00-256, FCC 01-157 (Rel. May 23, 2001).