

**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 29th day of September 2009.

CASE NO. 09-0784-T-GI

GENERAL INVESTIGATION
REGARDING CERTIFICATION OF
FEDERAL UNIVERSAL SERVICE
FUNDING FOR ELIGIBLE
TELECOMMUNICATIONS CARRIERS
IN WEST VIRGINIA.

COMMISSION ORDER

The Commission finds that certain eligible telecommunications carriers (“ETCs”) in West Virginia are appropriately using federal universal service funds (“USF”) and that rates in rural areas served by non-rural incumbent carriers are comparable to rates charged in urban areas nationwide.

BACKGROUND

The Federal Communications Commission (“FCC”) requires states to annually certify which carriers are eligible for USF and file a certificate stating that all federal high-cost funds flowing to rural and non-rural carriers in that state will be used in accordance with Section 254(e) of the Telecommunications Act of 1934 (as amended)¹ (“Act”). *See*, 47 U.S.C. §254(e), 47 C.F.R. §§54.313 and 54.314. If a state commission files a certification with the FCC prior to October 1, then USF for the next calendar year will be forwarded to rural and non-rural carriers. *Id.* Therefore, the Commission initiated this general investigation (“GI”) regarding the certification of federal USF for ETCs in West Virginia for calendar year 2010.

¹This section states that federal USFs received by ETCs must be used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.”

On March 17, 2005, the FCC strengthened its reporting requirements for ETCs to ensure that high-cost universal service support continues to be used for its intended purposes. See, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (Rel. March 17, 2005). The FCC encouraged state commissions to adopt the same annual reporting requirements for all ETCs, not just competitive ETCs. Id. at ¶ 71. The FCC also recognized that 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 conditions imposed by the state. Id. at ¶ 72. On May 17, 2005, this Commission adopted the annual reporting requirements of the FCC in addition to the reporting requirements of previous years, including the requirement that all ETCs file verified statements certifying that they use universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

Pursuant to 47 C.F.R. §54.316, each state must annually review the residential rates in areas served by non-rural incumbent local exchange carriers to urban rates nationwide and certify to the FCC and Universal Service Administrative Company (“USAC”) whether the rates are reasonably comparable. Verizon West Virginia Inc. (“Verizon WV”) is the only non-rural incumbent local exchange carrier in West Virginia. Only carriers serving such non-rural service areas are required to make rate comparability certifications.

The Commission directed that the verified statements of the carriers be posted on the Commission website, directed that notice of its Order and the internet posting of the verified statements be published once in the Charleston Gazette and Charleston Daily Mail and invited interested persons to file comments with the Commission by July 16, 2009. See Commission Order, May 18, 2009.

On May 22, 2009, The Commission granted the petition to intervene filed by the Consumer Advocate Division.

The following ETCs filed their respective documentation and requests that the Commission certify to the FCC and the USAC their eligibility to continue to receive federal high-cost support in calendar year 2010:

1. Alltel Communications, LLC.
2. New Cingular Wireless PCS, LLC d/b/a AT & T Mobility
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. FiberNet, LLC
7. Gateway Telecom, LLC, dba StratusWave Communications, LLC
8. Hardy Telecommunications, Inc. CLEC
9. Hardy Telecommunications, Inc. ILEC
10. Sprint Nextel Corporation
11. Spruce Knob-Seneca Rocks Telephone, Inc.

12. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
13. Verizon West Virginia Inc.
14. War Telecommunications
15. West Side Telecommunications
16. West Virginia PCS Alliance, LC dba NTELOS
17. TracFone Wireless

Staff filed a Final Joint Staff Memorandum recommending that the Commission certify to the FCC that the seventeen ETCs filing in this proceeding are adequately in compliance with all applicable ETC/USF requirements in the current reporting period. See, August 3, 2009 Staff Memorandum.

As of the date of this Order, all ETCs have filed a 2009 Lifeline disclosure. See, case file generally.

DISCUSSION

Use of High-Cost Support Certification - All Carriers

With regard to the use of USFs, the Commission finds and concludes that the following telecommunications carriers should be certified to receive Federal Universal Service support during calendar year 2010, because they use federal 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 Act:

1. Alltel Communications, LLC.
2. New Cingular Wireless PCS, LLC d/b/a AT & T Mobility
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. FiberNet, LLC
7. Gateway Telecom, LLC, dba StratusWave Communications, LLC
8. Hardy Telecommunications, Inc. CLEC
9. Hardy Telecommunications, Inc. ILEC
10. Sprint Nextel Corporation
11. Spruce Knob-Seneca Rocks Telephone, Inc.
12. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
13. Verizon West Virginia Inc.
14. War Telecommunications
15. West Side Telecommunications
16. West Virginia PCS Alliance, LC dba NTELOS
17. TracFone Wireless

Therefore, the Commission finds and concludes that it should certify by letter to the FCC and the USAC that all federal high-cost support will be used by the above-listed ETCs only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Act.

Rate Comparability Certification - Non-rural ILEC Service Areas

The Commission concludes that the rates charged by the incumbent non-rural carrier, Verizon WV, to residential customers in rural areas of West Virginia are comparable to rates charged in urban areas for purposes of 47 U.S.C. §254(e). Three of the four residential calling plans available to all Verizon WV customers in West Virginia, including those in rural areas, have basic rates that fall below the national urban benchmark of \$36.52 per month set forth in the FCC's Reference Book on Rates, Price Indices and Expenditures for Telephone Service, (2008 Edition).² The fourth calling plan, Frequent Caller, has basic rates that are only \$1.02 above the benchmark (including federal excise taxes). The Commission finds that the one dollar and four cents by which the Frequent Caller plan exceeds the urban benchmark to be *de minimis*. The finding of the Commission is also supported by the following facts:

1. Since 1988 the rates charged to residential customers in West Virginia have been uniform geographically throughout the state.
2. "Local calling areas" are uniformly defined throughout West Virginia and consist of all adjacent wire centers and wire centers within twenty-two air miles of the customer's home wire center. This means that every residential customer in every Verizon WV wire center in West Virginia, rural or urban, has a large local calling area, usually in excess of fifty miles in diameter. These large local calling areas benefit residential customers by reducing the need to make long distance calls for normal daily activities.
3. Every residential customer in every Verizon WV wire center has the choice of the same four calling plans. Since the rate plans are optional, no customer is forced to purchase service under any particular plan.
4. The Frequent Caller Plan is an optional calling plan that provides flat-rate local calling across a very large area. Customers do not have to choose that plan, because there are other alternative calling plans available from Verizon WV and competitive carriers. Moreover, that plan gives customers flat-rate local calling for calls that are normally billed as long distance calls in other, more urban states.

²As of the date of this Order, the FCC has not released a 2009 Reference Book. The Commission has, therefore, used the 2008 national urban benchmark.

Additional Rate Comparability Certification - Competitive ETCs

The Commission also reviewed the comparability of the residential rates of competitive ETCs charged in rural areas of West Virginia served by Verizon WV and determined that they are reasonably comparable to rates charged in urban areas. Most of these carriers³ offer residential rates to customers in rural wire centers served by Verizon WV that fall below the national urban benchmark. To the extent that some of these competitive ETCs offer basic calling plans with rates that are above the national urban benchmark, the Commission finds that plans are nevertheless comparable to urban rates nationwide because these plans include calling features that are not federally supported such as long distance calling and vertical services, the existence of uniform residential rates, uniformly defined "local calling areas" in West Virginia and the existence of competitive carriers offering alternative calling plans.

Therefore, the Commission finds and concludes that it should certify by letter to the FCC and the USAC that residential rates in area served by Verizon WV are comparable to urban rates nationwide.

Annual Lifeline Verification Certifications

On July 10, 2007, the FCC issued Public Notice DA 07-3088, "Deadline for Annual Lifeline Verification Surveys," requiring ETCs in a state with its own state-based Low-income program to submit a certification, signed by an officer of the company to USAC by August 31 of each year, attesting that the ETC has complied with the state verification procedures. Pursuant to the notice of the FCC, each state with a state-based Low-income program is required to establish state-specific verification procedures. The state procedures should include how ETCs verify continued eligibility and to whom the results should be submitted.

W.Va. Code §24-2C-4 sets forth the procedures in West Virginia for its state-based low-income program called "Tel-Assistance." The West Virginia Department of Health and Human Resources ("DHHR") verifies initial and continuing eligibility of Tel-Assistance recipients. ETCs communicate with DHHR and verify continuing eligibility. The Commission is responsible for establishing the procedures governing the application for and providing of Tel-Assistance.

As directed in the May 18, 2009 Commission Order, all ETCs have filed an acceptable copy of the annual Lifeline verification certification.

³The Commission considered the filings of (1) Alltel Communications, Inc., (2) New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, (3) Fibernet, LLC, (4) Gateway Telecom, LLC, dba StratusWave Communications, (5) Sprint Nextel Corporation, (6) USCOC of Cumberland and Hardy Cellular Telephone, Inc., and (7) West Virginia PCS Alliance, LC dba NTELOS.

Requests for Protective Treatment

A number of the filers in this matter requested protective treatment of certain information. The majority of the filers, however, did not request protective treatment. As it is possible to issue this Order and the corresponding certification letter without including any of the proprietary information, the Commission concludes that there is no need to rule on the requests for protective treatment at this time. The Commission shall direct its Executive Secretary to maintain such information separate and apart from the rest of the file. Should there be a request filed with the Commission in the future to make such information public, the Commission shall require the entity seeking protective treatment to argue its request for protective treatment at that time.

Requirements for Certification Filings for Next Year

In prior USF proceedings, the Commission directed all ETCs to file certain information with the Commission the following year, to assure that the Commission would have the necessary information available for its next certification letter to the FCC. The Commission shall similarly require such filings be made on or before July 1, 2010.

FINDINGS OF FACT

1. The Commission initiated this GI regarding the certification of federal USF for ETCs in West Virginia during calendar year 2010. See, May 18, 2009 Commission Order.
2. In accordance with the July 1, 2009 filing deadline, seventeen ETCs filed their respective documentation and requests that the Commission certify to the FCC and USAC their eligibility to continue to receive federal high-cost support in calendar year 2010. See, Case file generally.
3. Staff filed its Final Joint Staff Memorandum recommending that the Commission certify to the FCC that the seventeen ETCs filing in the instant proceeding are adequately in compliance with all applicable ETC/USF requirements in the current reporting period. See, August 3, 2009 Staff Memorandum.
4. All carriers filed a an acceptable copy of the 2009 Lifeline disclosure.

CONCLUSIONS OF LAW

1. The Commission finds and concludes that the following telecommunications carriers should be certified by letter to the FCC to receive Federal Universal Service support during calendar year 2009, because they use federal 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 Act:

1. Alltel Communications, LLC.
2. New Cingular Wireless PCS, LLC d/b/a AT & T Mobility
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. FiberNet, LLC
7. Gateway Telecom, LLC, dba StratusWave Communications, LLC
8. Hardy Telecommunications, Inc. CLEC
9. Hardy Telecommunications, Inc. ILEC
10. Sprint Nextel Corporation
11. Spruce Knob-Seneca Rocks Telephone, Inc.
12. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
13. Verizon West Virginia Inc.
14. War Telecommunications
15. West Side Telecommunications
16. West Virginia PCS Alliance, LC dba NTELOS
17. TracFone Wireless

2. The Commission concludes that the rates charged by the incumbent non-rural carrier, Verizon WV, to residential customers in rural areas of West Virginia are comparable to rates charged in urban areas nationwide for purposes of 47 U.S.C. §254(e).

3. The Commission concludes that the rates of competitive ETCs charged in rural areas of West Virginia served by Verizon WV are reasonably comparable to rates charged in urban areas nationwide.

4. To facilitate certification filings for next year, it is reasonable for the Commission to mandate specific filing requirements within this Order.

ORDER

IT IS THEREFORE ORDERED that a certification be issued to the FCC and USAC stating that the following carriers are using Federal 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 Act:

1. Alltel Communications, LLC.
2. New Cingular Wireless PCS, LLC d/b/a AT & T Mobility
3. Armstrong Telephone Company - Northern Division
4. Armstrong Telephone Company - West Virginia
5. Citizens Telecommunications of West Virginia, Inc.
6. FiberNet, LLC
7. Gateway Telecom, LLC, dba StratusWave Communications, LLC

8. Hardy Telecommunications, Inc. CLEC
9. Hardy Telecommunications, Inc. ILEC
10. Sprint Nextel Corporation
11. Spruce Knob-Seneca Rocks Telephone, Inc.
12. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
13. Verizon West Virginia Inc.
14. War Telecommunications
15. West Side Telecommunications
16. West Virginia PCS Alliance, LC dba NTELOS
17. TracFone Wireless

IT IS FURTHER ORDERED that it is appropriate to certify to the FCC and USAC that the above-stated carriers are eligible to continue receiving Federal Universal Service support for calendar year 2010, based on the verified statements submitted to the Commission.

IT IS FURTHER ORDERED that it is appropriate to certify to the FCC and USAC that the residential rates charged by Verizon WV and competitive ETCs in rural areas of West Virginia served by Verizon WV are reasonably comparable to urban rates nationwide.

IT IS FURTHER ORDERED that by July 1, 2010, regardless of whether the Commission has yet instituted the 2010 annual certification proceeding, all ETCs providing service in areas served by a non-rural incumbent local exchange carrier shall file, for the purposes of making the rate comparability determination, the following information:

- (1) Monthly line charge
- (2) Average monthly usage
- (3) Any federal subscriber line charge
- (4) Any federal universal service credit
- (5) Any federal universal service surcharge
- (6) Any local number portability surcharge
- (7) Any telecommunications relay service surcharge
- (8) Any E-911 surcharge
- (9) Federal excise tax
- (10) Any other mandatory surcharges that apply to their listed basic calling plan.

IT IS FURTHER ORDERED that on or before July 1, 2010, regardless of whether the Commission has yet instituted the 2010 annual certification proceeding, all ETCs designated by this Commission shall, in addition to the information detailed above for the then most recent calendar year, also file:

- (1) progress reports on the five-year service quality improvement plan for the ETC, including maps detailing progress towards meeting its plan targets, an

explanation of how much universal service support was received during the most recent calendar year, and how the support was used during that period to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

- (2) for the most recent calendar year, detailed information on any outage lasting at least thirty minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas and wire centers affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) the total number of requests for service from potential customers within its service areas that were unfulfilled for the most recent calendar year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the total number of complaints and the number of complaints per thousand handsets or lines during the most recent calendar year;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the Commission quality of service standards, and the CTIA Consumer Code for Wireless Service;
- (6) certification that the ETC is able to function in emergency situations including a description of the emergency facilities of the ETC;
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas;
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area; and
- (9) their Study Area Code(s), whether the filer is a rural carrier and/or a non-rural carrier, and whether the filer is an incumbent or a competitive carrier.

IT IS FURTHER ORDERED that on or before July 1, 2010, all ETCs designated by this Commission shall file a copy of the annual Lifeline verification compliance certification referenced in FCC Public Notice DA 07-3088 and above.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission shall docket in this proceeding a copy of the Commission letter to the FCC issued pursuant to this order.

IT IS FURTHER ORDERED that the Executive Secretary shall maintain all confidential versions of ETC filings in this matter separate and apart from the rest of the file.

IT IS FURTHER ORDERED that, on entry hereof, this proceeding shall be removed from the Commission docket of active cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order on all ETCs by United States First Class Mail and on Staff by hand delivery.

A True Copy, Testes


Sandra Squire
Executive Secretary

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