

**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 26<sup>th</sup> day of October 2011.

CASE NO. 11-0818-T-GI (REOPENED)

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

**COMMISSION ORDER**

The Commission grants a reconsideration petition and defers a request for protective treatment.

**BACKGROUND**

On June 13, 2011, the Commission initiated its annual investigation into the fitness of Eligible Telecommunications Carriers (ETCs) for continued Universal Service Fund (USF) support for the upcoming calendar year.

On June 23, 2011, through July 1, 2011, eighteen ETCs filed requests for certification to continue to receive USF support in 2012. Two additional carriers filed late certification requests. Five carriers, including Alltel Communications, LLC dba Verizon Wireless (Verizon Wireless) requested that the Commission seal portions of their USF filings. Verizon Wireless sought protective treatment for three portions of its filing including future business plans within its service improvement plan and its 2010 outage data. It asserted that this information qualified as a trade secret that is exempt from the West Virginia Freedom of Information Act, codified at W.Va. Code §29B-1-1 et seq. (WV FOIA).

On July 5, 2011, Commission Staff filed an initial memorandum stating that it would investigate this matter.

On August 16, 2011, Staff filed a memorandum recommending that the Commission certify the eligibility of carriers that responded to the June 13, 2011 Commission Order for continued USF support. Staff also recommended that the Commission certify four additional carriers that recently obtained ETC status in West

Virginia. Staff subsequently recommended that the Commission certify two additional carriers as eligible to receive continued USF. September 7, 2011 Staff Memorandum.

The Commission certified twenty-six ETCs to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) as eligible to continue to receive USF because the carriers are using those funds as provided by Section 254(e) of the Telecommunications Act of 1934 as amended and codified at 47 U.S.C. §254(e) (Act). The Commission also deferred a portion of the protective treatment request Verizon Wireless filed, but declined protective treatment for its 2010 outage information. September 19, 2011 Commission Order.

On September 23, 2011, Staff filed a memorandum recommending that the Commission supplement its certification to the FCC and USAC by adding Cintex Wireless, LLC (Cintex) to the list of carriers previously certified under Section 254(e) of the Act.

On September 27, 2011, the Commission certified Cintex to the FCC and USAC under Section 254(e) of the Act.

On September 29, 2011, Verizon Wireless requested reconsideration of the Commission Order denying its request to seal its 2010 outage information. Verizon Wireless argued that the outage information is (i) a trade secret and (ii) should also be sealed for national security considerations. It cited a 2004 FCC decision to presumptively protect outage information from disclosure under the federal FOIA statute in support of its argument.

On September 30, 2011, Staff responded in opposition to the Verizon Wireless reconsideration request. Staff noted that the reconsideration request raised nothing new and argued that Verizon Wireless failed to show that the outage information it submitted is a trade secret. Staff also argued that granting the reconsideration request will prompt a flood of similar requests based on purported national security considerations.

## DISCUSSION

After reviewing the reconsideration request Verizon Wireless filed regarding its 2010 outage information, the Commission will grant the motion and defer consideration of the full protective treatment request instead of denying the motion. The Commission is mindful of its statutory obligation to make government records available to the public whenever possible. W.Va. Code §29B-1-1. It notes, however, that no one has requested the outage data Verizon Wireless filed. Therefore, it will direct the Executive Secretary to hold that information separate and apart from the remnant of the file until someone requests that data. In the event that the Commission receives a request for that data under the WV FOIA, it will give Verizon Wireless a brief opportunity to contest the matter. The Commission emphasizes that it is not making any final judgment on the qualification

of outage data for protective treatment under WV FOIA by deferring the protective treatment request from Verizon Wireless.

### **FINDINGS OF FACT**

1. The Commission previously rejected a request to seal the 2010 outage information Verizon Wireless appended to its annual USF filing. September 19, 2011 Commission Order.

2. Verizon Wireless requested that the Commission reconsider its denial of protective treatment for the 2010 outage information Verizon Wireless filed in this proceeding. Verizon Wireless Petition for Reconsideration.

3. No one has requested the 2010 outage data Verizon Wireless included with its annual USF filing.

### **CONCLUSION OF LAW**

It is reasonable to defer the full June 30, 2011 request for protective treatment from Verizon Wireless because no one has requested that information.

### **ORDER**

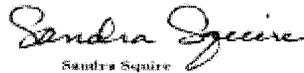
IT IS THEREFORE ORDERED that the June 30, 2011 Motion for Confidential Treatment Verizon Wireless filed is deferred in full until the filing of a request under the WV FOIA. The Executive Secretary shall maintain the unredacted versions of the data it filed under seal separate and apart from the rest of the file pending further Order.

IT IS FURTHER ORDERED that the remainder of the September 19, 2011 Commission Order remains in full force and effect.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on other parties of record and on Staff by hand delivery.

A True Copy. Teste:

  
Sandra Squire  
Executive Secretary

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