

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Possible Changes to the
Commission's Annual Certification
Requirements Related to Eligible
Telecommunications Carriers' Use of the
Federal Universal Service Support

ISSUE DATE: July 21, 2005

DOCKET NO. P-999/M-05-741

In the Matter of a Commission Investigation to
Consider Adopting the FCC's Standards for
Designating Eligible Telecommunications
Carriers

DOCKET NO. P-999/CI-05-1169

ORDER SETTING FILING REQUIREMENTS
AND OPENING PROCEEDING TO
CONSIDER ADOPTING FCC STANDARDS
FOR DESIGNATING ELIGIBLE
TELECOMMUNICATIONS CARRIERS

PROCEDURAL HISTORY

Under the Federal Telecommunications Act of 1996, telecommunications carriers must be designated "eligible telecommunications carriers," or ETCs, to qualify for subsidies from the federal Universal Service Fund.¹ State regulatory commissions have primary responsibility for granting ETC designations, but the Federal Communications Commission (FCC) acts on designation requests from carriers who are not subject to state commission jurisdiction.²

For a state-designated ETC to receive federal Universal Service funding, the state commission must annually determine and certify to the FCC that the carrier will use the funds only to provide, maintain, and upgrade the facilities and services for which the support is intended.³ FCC-designated ETCs must meet the same standard, with the FCC making the same annual determination.⁴

¹ 47 U.S.C. § 254(e).

² 47 U.S.C. § 214 (e) (6).

³ 47 CFR 54.313-54.314.

⁴ 47 CFR 54.313-54.314.

On March 17, 2005, the Federal Communications Commission issued an Order revising its rules for designating ETCs not subject to state commission jurisdiction and adopting more stringent annual reporting standards for federally designated ETCs seeking Universal Service Fund support. The Order also encouraged state commissions to adopt the new criteria for their ETC designation proceedings and to require state-designated ETCs to file the same information as federally designated ETCs in their annual applications for certification of their eligibility for Universal Service Fund support.⁵

On May 13, 2005, this Commission issued a notice seeking comments on how to respond to the FCC's March 17 Order and inquiring whether upcoming, annual ETC filings seeking Universal Service Fund certification should include reports on their compliance with a recent Commission Order requiring them to verify the eligibility of customers participating in certain programs subsidizing the telecommunications costs of low-income households. The following persons filed comments:

- Minnesota Department of Commerce
- Residential and Small Business Utilities Division of the Office of the Attorney General
- Minnesota Independent Coalition
- Minnesota Telecom Alliance
- Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc.
- CenturyTel of Minnesota, Inc.
- Sprint Corporation
- RCC Minnesota, Inc., Wireless Alliance, L.L.C., Midwest Wireless Communications L.L.C., and WWC Holding Co., Inc.
- Seren Innovations, Inc., d/b/a Astound Broadband

On July 14, 2005, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

A. New FCC Requirements on ETC Designation and Universal Service Fund Eligibility

The FCC's March 17 Order adopted five new requirements for carriers seeking federal ETC designation and encouraged states to adopt these requirements as well:

⁵ *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket 96-45, FCC 05-46 (rel. March 17, 2005).

- (1) A five-year plan demonstrating how high-cost universal service support will be used to improve service coverage, service quality, or capacity in every wire center in which designation is sought.
- (2) Demonstrated ability to remain functional in emergency situations.
- (3) Demonstrated ability to satisfy consumer protection and service quality standards.
- (4) Local usage plans comparable to those offered by the incumbent local exchange carrier in the areas for which ETC designation is sought.
- (5) An acknowledgment that the applicant may be required to provide equal access to long distance carriers in areas in which all other ETCs relinquish their ETC designations.

The Order also adopted, and encouraged states to adopt, the following additional, annual reporting requirements for federally designated ETCs:

- (1) A progress report on each carrier's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. This information should be submitted at the wire-center level.
- (2) Detailed information on any outage, as that term is defined in 47 CFR §4.5, of at least 30 minutes in duration for any service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area, or (b) a 911 special facility (as defined in 47 CFR § 4.5(e)). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.
- (3) The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled for the past year, and a detailed account of how it attempted to provide service to those potential customers, as set forth in § 54.202(a)(1)(A).
- (4) The number of complaints per 1,000 handsets or lines.

- (5) Certification that the carrier is complying with applicable service quality standards and consumer protection rules.
- (6) Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2).
- (7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas.
- (8) Certification that the carrier acknowledges that it may be required to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

B. New FCC Requirements on Verifying the Eligibility of Low-Income Customers Participating in Telecommunications Assistance Programs

On June 10, 2005, this Commission issued an Order adopting procedures developed by the FCC to verify the income-eligibility of persons participating in the three major programs subsidizing the telecommunications costs of low-income households: the federal Lifeline program, the federal Link Up program, and the Minnesota Telephone Assistance Plan.⁶

Under these procedures, ETCs are required to survey a statistically valid sample of their customers participating in these programs and to confirm their eligibility with documentary evidence. That Order did not set compliance reporting requirements, but deferred that issue for later treatment.

II. The Issues

The Commission's May 13 notice requested comments on four issues:

- (1) Whether the Commission should make any changes in its 2005 Universal Service Fund reporting and certification process in light of the FCC's Order.
- (2) Whether the Commission should require ETCs to demonstrate compliance with the new federal ETC requirements during the 2006 Universal Service Fund reporting and certification process.

⁶ *In the Matter of Annual Consideration of Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2004*, P-999/CI-04-305, and *In the Matter of Annual Consideration of Possible Changes in the Telephone Assistance Plan Surcharge and the Telephone Assistance Plan State Credit for FY 2005*, P-999/CI-05-334, Order Establishing Verification Procedures, Accepting TAP Reports, and Maintaining Current Surcharge and Credit Levels (June 10, 2005).

- (3) Whether and how the Commission should require ETCs to include in their annual certification filings for 2005 and subsequent years, a report on the results of their annual verification of the income-eligibility of subscribers participating in the Lifeline, Link-up, and Telephone Assistance Plan programs.
- (4) Whether the Commission should explore other issues relating to its annual Universal Service Fund reporting and certification process.

These issues will be addressed in turn.

III. The 2005 Universal Service Reporting and Certification Process

A. Introduction

Under current Commission practice, ETCs seeking certification of their eligibility for support from the federal Universal Service Fund must file petitions and supporting information on or before August 1. Under FCC rules, the Commission must file its certification of ETCs' eligibility for Universal Service Fund support on or before October 1. The Commission therefore requested comments on whether it was reasonable to make changes to this year's certification process or whether any changes should be deferred to subsequent reporting and certification cycles.

B. The Comments

All commenting parties agreed that the Commission should follow existing procedures for its 2005 certification to the FCC. They concurred that, whatever the merits of the expanded filing requirements adopted by the FCC, there was simply not enough time for ETCs to prepare, and for regulators to review, these expanded filings before this year's October 1 certification deadline.

C. Commission Action

The Commission agrees with the parties that it is too late to prepare and review the expanded filings the new FCC rules envision for this certification year. The changes in the annual filing requirements adopted in this Order will therefore take effect in 2006 for certification petitions filed in that calendar year.

IV. Reporting Results of Eligibility Verification Efforts

A. Introduction

In June the Commission adopted FCC requirements that ETCs verify the income-eligibility of customers participating in the Lifeline, Link Up, and Telephone Assistance Plan programs. The Commission deferred any action on compliance filings, informational filings, or other reporting requirements. The Commission requested comments on whether the annual Universal Service Fund certification filings would be an appropriate vehicle for tracking compliance with eligibility verification requirements and monitoring the results of the verification process.

B. The Comments

While one party noted that customer eligibility for assistance programs is not directly related to ETC eligibility for Universal Service Fund support, no one objected to providing this information in future Universal Service Fund certification filings. Several commenters, however, argued that adequate data would not be available for meaningful reporting in August, when ETC annual filings are due.

C. Commission Action

While there is no inextricable link between ETCs' Universal Service Fund eligibility and their duty to conduct the FCC-mandated income-eligibility verification procedures adopted in this Commission's June 10 Order, the annual certification filings are the most efficient vehicle for monitoring compliance with that Order and tracking any eligibility or verification issues requiring Commission attention.

The Commission will therefore require ETCs subject to those verification requirements to make annual filings on their verification efforts on the same date that annual Universal Service Fund certification filings are due. ETCs may fulfill this obligation by filing the same form the FCC requires them to file annually with the Universal Service Administrative Company. This requirement, like the others adopted in this Order, will take effect for the 2006 filing year.

V. Treatment of New FCC Reporting Requirements

A. Introduction

At present the Commission certifies ETCs as eligible for federal Universal Service Fund support upon determining that they will use that support only to provide, maintain, and upgrade the facilities and services for which it is intended. The Commission makes this determination based on affidavits from corporate officers and documentation on how each ETC spent the previous year's federal Universal Service Fund support.⁷

The new FCC filing standards do not change the ultimate issue – whether the ETC will use any federal Universal Service Fund support it receives only to provide, maintain, and upgrade the facilities and services for which the support is intended – but they do require much greater detail than this Commission currently requires. The Commission therefore requested comments on whether – and if so, how – it should adopt these new filing standards.

⁷ *In the Matter of Annual Certifications Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support*, P-999/M-02-1403, Order Certifying ETCs Use of Federal High-Cost Subsidy (December 23, 2002).

B. The Comments

1. Minnesota Independent Coalition

The Minnesota Independent Coalition, representing over 80 small, incumbent local exchange carriers, urged the Commission not to impose any additional annual filing requirements on incumbent ETCs. The Coalition argued that incumbents are already subject to extensive consumer protection and service quality regulation and that further requirements are unnecessary.

2. Minnesota Telecom Alliance

The Minnesota Telecom Alliance, representing various incumbent local exchange carriers, competitive local exchange carriers, and wireless carriers, urged the Commission to reject the FCC's recommendation to require carriers to file five-year investment plans on a wire-center basis. The Alliance argued that technical and market conditions were changing too rapidly to make five-year plans meaningful and that most carriers did not maintain investment data on a wire-center basis.

3. Seren Innovations, Inc. d/b/a Astound Broadband

Seren Innovations opposed adopting the FCC filing requirements as needlessly burdensome. The Company argued that since the state conducts proceedings to designate ETCs, sets requirements for their performance, and monitors their performance, the state would be aware of performance problems without the lengthy filings required under the FCC rules.

4. Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc.

Citizens and Frontier urged the Commission to adopt the new FCC filing requirements but to apply them differently to incumbent carriers than to competitive carriers. The Companies argued that the traditional regulatory requirements that bind incumbents replace many of the FCC's filing requirements and that incumbents should therefore be exempt from many of the FCC's requirements.

5. RCC Minnesota, Inc., Wireless Alliance, L.L.C., Midwest Wireless Communications L.L.C., and WWC Holding Co., Inc.

These wireless carriers opposed adopting the new FCC filing requirements, arguing that current Minnesota regulatory requirements permit the Commission to protect the public interest to the same degree that the new FCC requirements would. They also argued that if the Commission did adopt the FCC requirements, the requirements should be adapted to be less focused on compliance with ETC standards and more focused on eligibility for Universal Service Fund support.

6. CenturyTel of Minnesota, Inc.

CenturyTel stated that it had reviewed and concurred in the comments filed by Citizens and Frontier, which recommended adopting the FCC filing requirements and applying them differently to incumbent and competitive carriers.

7. Sprint Corporation

Sprint opposed adopting the FCC filing requirements both on grounds that the Commission already possessed the information and regulatory tools required to protect the public interest and on grounds that the FCC requirements were, in many regards, onerous, duplicative, or off the mark.

8. The Department of Commerce

The Department recommended adopting the new FCC filing requirements to increase ETCs' accountability for their use of Universal Service Fund support, to provide additional assurance that those funds will be used for the improvement of the telecommunications network, and to promote consistency between states in certification standards.

9. Residential and Small Business Utilities Division of the Office of the Attorney General

The RUD-OAG concurred in large part with the comments of the Department, emphasizing that it, too, saw a need for more rigor in certifying eligibility for Universal Service Fund support. The Division opposed adopting the FCC's practice of treating wireless providers' compliance with the Wireless Code of Conduct as adequate evidence of commitment to consumer protection and service quality, however, stating that the Minnesota Legislature has rejected the Code as an adequate measure of Minnesota's consumer protection and service quality standards.

C. Commission Action

The Commission concurs with the Federal Communications Commission and the other Minnesota regulatory bodies who commented in this case, that it is appropriate to move to a more rigorous annual process for certifying ETCs' eligibility for federal Universal Service Fund support.

First, entitlements under the Fund appear to be growing, justifying increased scrutiny. In calendar year 2003, Minnesota ETCs drew some \$59,000,000 from the Fund. In calendar year 2005, Minnesota ETCs are projected to draw \$31,000,000 during the third quarter alone. These are significant sums, collected as mandatory surcharges from telecommunications subscribers, and their disbursement merits careful regulatory oversight.

Further, federal and state regulators now have substantial experience with the new subsidy system established by the Telecommunications Act of 1996 and can establish effective administrative structures beyond the bare-bones requirements initially adopted to avoid being overly-prescriptive.

Finally, this Commission has historically given the most careful consideration to initiatives commended to state commissions by the FCC, both to honor principles of comity and to share in the advantages of that agency's broad-based, nation-wide regulatory perspective. Here, the FCC's recommended move toward more focused and detailed review of Universal Service Fund certification appears entirely appropriate.

For all these reasons, the Commission will adopt the new FCC reporting requirements, beginning with calendar year 2006. The Commission will, however, adapt the FCC filing requirements in two ways to more accurately reflect the needs of Minnesota carriers: (1) carriers may choose to file their annual progress reports on two-year service quality improvement plans, instead of five-year plans; and (2) carriers may choose to file information on a service-area basis, instead of on a wire-center basis.

It is clear from the comments of the parties that in Minnesota, the costs of preparing five-year plans would outweigh the benefits, since much of the information relating to the latter part of the five-year period would be speculative. Similarly, the costs of requiring carriers to report required information on a wire-center basis would be high, since they do not maintain records on that basis and would have to develop allocation procedures, while the benefits would be low, since the accuracy and reliability of the data would be compromised. With these modifications, then, the Commission will adopt the new FCC filing requirements for the annual Universal Service Fund certification petitions of ETCs.

The Commission will also adopt a new procedural schedule, set forth below, to reflect the increased complexity of the new filings:

- June 1 — ETC certification petitions
- August 1 — Initial Comments
- August 20 – Reply Comments
- October 1 – Commission Certification to FCC

VI. Other Issues to be Explored

A. Introduction

The Commission also requested comments on whether it should investigate other issues related to the FCC's recent Eligible Telecommunications Carrier rulemaking. Three commenting parties – the Department, the RUD-OAG, and Citizens/Frontier – recommended opening a proceeding to consider changes in Minnesota's standards for designating Eligible Telecommunications Carriers in light of the recent changes in the FCC standards.

The other commenting parties either opposed this recommendation or were silent on the issue.

B. Commission Action

With ETC designation standards, as with annual certification filing requirements, the FCC is urging state commissions to consider and adopt its new standards for designating ETCs. Those standards closely track the filing requirements, which are in fact designed to monitor ETCs' continued compliance with the initial designation requirements.

The Commission concurs with the commenting parties that it should open a proceeding to consider adopting or adapting the FCC's new ETC designation standards, or to consider other changes in the current ETC designation process. The Commission will ask its staff to take all steps necessary to launch that proceeding, including issuing notices, soliciting comments, and returning to the Commission as necessary for procedural and substantive guidance.

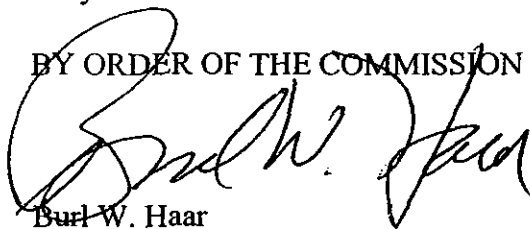
The Commission will so order.

ORDER

1. Beginning in calendar year 2006, eligible telecommunications carriers filing annual petitions for certification of eligibility for support from the federal Universal Service Fund shall comply with the annual filing requirements adopted by the Federal Communications Commission in CC Docket 96-45, FCC 05-46, with the following modifications:
 - (a) Carriers may file progress reports based on two-year service quality improvement plans instead of five-year plans; and
 - (b) Carriers may file information on a service-area basis instead of on a wire-center basis.
2. Beginning in calendar year 2006, eligible telecommunications carriers filing annual petitions for certification of eligibility for support from the federal Universal Service Fund shall follow the following procedural schedule:
 - June 1 — ETC certification petitions
 - August 1 — Initial Comments
 - August 20 — Reply Comments
 - October 1 — Commission Certification to FCC
3. Beginning in calendar year 2006, all eligible telecommunications carriers, whether or not they file petitions for certification of eligibility for support from the federal Universal Service Fund, shall file annual reports on the results of their verification of the income-eligibility of subscribers participating in the Lifeline, Link-up, and Telephone Assistance Plan programs, as required under the Commission's June 10, 2005 Order in docket P-999/CI-05-334. These reports shall be filed on or before June 1 and may consist of the same form the Federal Communications Commission requires them to file with Universal Service Administrative Company.

4. The Commission hereby opens a proceeding to examine possible changes to its processes, procedures, and standards for designating eligible telecommunications carriers under 47 U.S.C. § 214, *In the Matter of a Commission Investigation to Consider Adopting the FCC's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/CI-05-1169. The Commission authorizes the Executive Secretary to issue notices, solicit comments, and take other steps necessary to launch the proceeding.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(SEAL)

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