

ORDER NO. 13 461

ENTERED DEC 11 2013

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1652

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

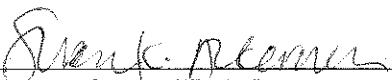
2013 Annual Recertification of Eligible
Telecommunications Carriers.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

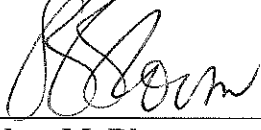
This order memorializes our decision, made and effective at the public meeting on December 10, 2013, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Dated this 11th day of Dec., 2013, at Salem, Oregon.


Susan K. Ackerman
Chair


John Savage
Commissioner




Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

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ITEM NO. CA10

PUBLIC UTILITY COMMISSION OF OREGON

STAFF REPORT

PUBLIC MEETING DATE: December 10, 2013

REGULAR _____ CONSENT X EFFECTIVE DATE December 10, 2013

DATE: December 3, 2013

TO: Public Utility Commission

FROM: Kay Marinos *KM*

THROUGH: *JE* Jason Eisdorfer and *BC* Bryan Conway

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1652) 2013 Annual Recertification of Eligible
Telecommunications Carriers.

STAFF RECOMMENDATION:

Staff recommends that the Commission:

1. Certify, pursuant to the requirements of 47 C.F.R. § 54.314, to the appropriate use of federal Universal Service Fund (USF) high-cost support in Oregon, and to the continuing eligibility of the carriers listed in Exhibit A to receive such support; and
2. Accept the 2013 annual reports of all eligible telecommunications carriers (ETCs) required by Commission Order No. 06-292, as amended by Order No. 13-228.

DISCUSSION:

A. Background

Section 214(e)(2) of the Telecommunications Act of 1996 (Act) authorizes state public utility commissions to designate telecommunications carriers eligible to receive federal USF support. The Commission first exercised this authority in December 1997 when it designated Oregon's incumbent local exchange carriers (ILECs) as ETCs.¹ Since then, the Commission has designated several wireless carriers and non-ILEC wireline carriers (collectively referred to as competitive ETCs or CETCs) to receive federal USF high-

¹ See Order No. 97-481, Docket UM 873.

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cost and Lifeline (low-income) support.² The Commission has also granted limited designations to several carriers for the purpose of receiving only Lifeline support.³ These carriers are commonly referred to as Lifeline-only ETCs.

Section 54.314(a) of the FCC rules requires states that want their ETCs to continue receiving federal high-cost support funds to file annual certifications with the FCC. The certification must state that all federal high-cost support provided to ETCs within the state "was used in the preceding calendar year 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." Normally, the state must provide this annual certification to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) by October 1 of each year in order for the ETCs to continue receiving high-cost support. However, this year's deadline was extended to December 16 due to delays in approval by the Office of Management and Budget (OMB) of parts of the new FCC reporting forms that the ETCs are required to file.⁴

Each year since 2006, ETCs have submitted reports to support the Commission's annual certification (also referred to as "recertification") for the use of high-cost funds, as well as to demonstrate their ongoing compliance with ETC designation requirements. The Commission established requirements for the reports in Docket No. UM 1217, Order No. 06-292. The order requires each ETC to formally file specific information designed to demonstrate that it: offers the supported services; will provide, and advertise, the supported services throughout its designated service area; offers and advertises low-income services (Lifeline and Oregon Telephone Assistance Program – OTAP); is able to remain functional in emergencies; is committed to service quality and consumer protection; and uses support funds for their intended purposes. The required reports are generally comparable for all ETCs, with one significant exception. CETCs that receive high-cost support must submit a network improvement plan explaining how they used support funds in the previous year and how they will use support funds in the coming two years. For reasons explained in the Order, ILEC ETCs are not required to submit such plans.

² Currently, the wireless carriers designated for federal high-cost support in Oregon are AT&T Mobility LLC, United States Cellular Corporation, and Eagle Telephone System, Inc. dba Snake River PCS. The wireline competitive carriers designated for high-cost support are Comspan Communications, Inc. and Warm Springs Telecommunications Company.

³ The current Lifeline-only ETCs are Cricket Communications, Virgin Mobile, TracFone Wireless, and T-Mobile West LLC. Numerous applications for designation by other carriers (all prepaid calling providers) are pending.

⁴ See Public Notice, DA 13-1707, WC Docket Nos. 10-90 and 11-42, released August 6, 2013.

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B. ETC Reports Related to High-Cost Support

In its 2011 USF Transformation Order,⁵ the FCC made significant changes to the types of support available under the federal USF high-cost program. The FCC also changed its rule 54.314 governing state certification of ETCs. Under the previous rule, states were required to certify only the ETCs receiving high-cost support in the serving areas of the rural ILECs. Under the revised rule, and for certification this year, states must certify the eligibility of all ETCs that receive numerous types of federal high-cost support in the state. Per the new definition in Section 54.5 of the FCC rules, high-cost support now includes not only the ILEC "rural" high-cost support, but price-cap ILEC frozen support, phased-down CETC high-cost support, interstate-access related support for which ETCs previously self-certified, and new support provided through the Connect America Fund (CAF) and Mobility Funds. For the calendar year 2013, Oregon ILECs will receive approximately \$60 million of federal high-cost support and CETCs approximately \$13 million. The ILEC high-cost support does not include CAF Phase I Incremental Support that is also available to price-cap ILECs. This support is to be used over a three-year period to deploy broadband-capable infrastructure. CenturyLink has opted to receive approximately \$4.4 million of this support and Frontier has opted to receive approximately \$1.2 million to be spent in Oregon. Additionally, Snake River PCS won approximately \$7500 in the Mobility Fund Phase I reverse auction to upgrade facilities to provide 3G services in Keating, Oregon.

As part of its Transformation Order and a subsequent order reforming its Federal Lifeline program,⁶ the FCC established new annual reports that all ETCs must file by July 1 of each year. The ETCs must complete these reports on-line at the USAC website and submit copies of the reports to the FCC and the states. Given the changes in the federal USF programs and the new reporting requirements, Staff requested earlier this year that the Commission open a docket to review and consider changes to the ETC requirements established in Order No. 06-292. Phase I of that docket (UM 1648), addresses reporting requirements for annual certification. Phase II will address initial designation requirements.

Based on requirements described in FCC rules, Staff concluded that many of the items included in the current Oregon reports would also be included in the new FCC reports. In an effort to eliminate duplication and ease reporting burdens on the ETCs, Staff held a workshop and reached a partial stipulation with parties in the docket to modify current

⁵ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 11-161, released November 18, 2011.

⁶ See *In the Matter of Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42 et al., FCC 12-11, released February 6, 2012.

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reporting requirements for this year. On June 19, the Commission issued Order No. 13-228 adopting the partial stipulation and amending Order No. 06-292 to provide for modified annual reporting requirements for the 2013 reporting year only. The order did not adopt permanent changes to the Commission's annual reports because the FCC reports were still under development at that time. Permanent changes will be considered later based on an assessment of this year's experience with the new FCC reports.⁷

The modified reporting requirements for this year require ETCs to file copies of FCC reports, in lieu of reports previously required. The reports address requirements in three specific sections of FCC rules. Section 54.304 pertains to data used to calculate support for the intercarrier compensation (ICC) related portion of the CAF. This data is included in annual interstate access rate filings submitted to the FCC. Section 54.313 of the FCC rules requires information related to high-cost support and Section 54.422 requires information related to Lifeline support.⁸ The FCC combined the information required by the latter two sections into one new report named "Form 481." In addition to copies of the FCC reports, Order 13-228 also requires that each ETC receiving federal high-cost support in Oregon submit an affidavit attesting to appropriate use of the support funds. A sample of the affidavit is included as Exhibit B to this memo. And lastly, CETCs that receive high-cost support are required (as in previous years) to file a network plan that details how they used support funds received last year and how they plan to use funds expected in the following two years.

The Order retained the previous deadline of July 15 for submission of network plans and affidavits, and determined that copies of the FCC reports were to be filed 14 days after each was due to the FCC. Given the FCC's July 1 due date, it was expected that all reports would be filed by July 15. However, due to events beyond Staff's control, the filing of reports actually occurred in stages and extended beyond July and well into October.

The FCC had instructed USAC to develop the standardized reporting form, Form 481, based on requirements in its rules. But when it became apparent that some parts of the form had not received OMB approval, the FCC released an order⁹ on June 10 waiving the July 1 due date for reporting, with one exception. The local exchange rates required pursuant to section 54.313(h) of the FCC rules, that fall below a floor for support, were

⁷ See October 1, 2013, Letter from Staff Attorney Johanna Riemenschneider to ALJ Arlow in Docket No. UM 1648 regarding plans to revisit ETC report requirements in early 2014.

⁸ Reports pursuant to Section 54.1009 of the FCC rules were also included in the order, but the FCC has determined that those reports will not be due until 2014.

⁹ See *In the Matter of Connect America Fund*, WC Docket No. 10-90, Order, released June 10, 2013.

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still due by July 1. The order also waived the October 1 deadline for state annual certification of its ETCs, but did not set new specific deadlines because a date for OMB approval was still unknown. On August 6, 2013, the FCC released a notice that set October 15 as the filing date for the remainder of the Form 481, and December 16 as the deadline for state certification pursuant to section 54.314 of the FCC's rules (the certification at issue in this memo).¹⁰ However, filing deadline complications continued when the federal government shut down on October 1. The first day of the shutdown, the FCC posted a notice on its website that if the shutdown lasted longer than October 15, the reports were still due to USAC and the states on that date, and a new deadline for filing with the FCC would be determined after the agency returned to work. The FCC re-opened on October 17 and issued a notice extending the due date for FCC reports to October 31.

In summary, despite Staff's attempts to simplify this year's reporting, this was undoubtedly the most confusing and frustrating in recent history, for the ETCs as well as for Staff. The FCC's decisions resulted in filings that occurred in four different waves instead of the one-time event originally envisioned. Despite the confusion, all Oregon ETCs filed the required reports with the Commission in this docket by the associated deadlines. However, it is difficult to ascertain whether all of the ETCs' FCC filings met FCC standards as this was the first year the Form 481 was employed and the requirements were modified several times. Given the new reports, and the confusion surrounding them, Staff's recommendation for high-cost annual certification for this year rests largely on the affidavits submitted by the carriers and the CETC network plans.

Staff reviewed the confidential network improvement plans of each CETC to verify that support funds received in 2012 were spent as planned, and that projects planned for 2013 and 2014 represent appropriate use of support funds. This year's plans reflect the five-year phase-out of CETC support required by the FCC Transformation Order that began in July of 2012 and ends in July of 2016. Due to the reduction in support, the CETCs are forced to reduce expenditures on new sites, and use much of the support to cover maintenance costs of previously built sites instead.

Based on the affidavits submitted by the ETCs and the network plans of the CETCs, and because the continued receipt of federal high-cost support is vital to Oregon carriers' abilities to provide affordable service throughout the state, Staff recommends that the Commission certify that the ETCs listed in Exhibit A to this memo are authorized to receive federal USF high-cost support pursuant to 47 C.F.R. § 54.314, and that the support received was and will be used for the intended purposes.

¹⁰ See Public Notice, DA 13-1707, WC Docket Nos. 10-90 and 11-42, released August 6, 2013.

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C. ETC Reports Related to Lifeline (Low-income) Support

All ETCs that receive high-cost support funds must also offer Lifeline services per 47 C.F.R. § 54.422. However, a carrier can be designated as an ETC to receive only Lifeline support, and not high-cost support. In Oregon, those carriers are currently Cricket Communications, Virgin Mobile dba Assurance Wireless, TracFone Wireless dba SafeLink Wireless, and T-Mobile. During 2013, these carriers will have received over half of the approximately \$8.6 million of federal Lifeline funding received by all Oregon ETCs, including the ILECs.

All ETCs submitted copies of their FCC reports for Lifeline support to the Commission as required in Order 13-228. Although the FCC requires all ETCs to submit certain items related to Lifeline in the Form 481, the information is very limited for Lifeline-only ETCs that were designated by a state commission and not the FCC. However, this is not extremely troubling for Staff because the Commission's OTAP personnel are very aware of each ETC's Lifeline performance and they regularly receive reports required by the program. As with the reports related to high-cost support, this year's reports relating to Lifeline support will be re-visited as part of the Docket UM 1648 follow-up early next year.

PROPOSED COMMISSION MOTION:

An order be issued in Docket UM 1652:

1. Certifying that all federal high-cost support provided to the ETCs listed in Exhibit A within Oregon was used in the preceding calendar year (2012) and will be used in the coming calendar year (2014) only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, and that the ETCs listed in Exhibit A are eligible to receive federal universal service high-cost support pursuant to 47 C.F.R. § 54.314; and
2. Accepting the 2013 annual reports of all ETCs currently designated in Oregon.

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Exhibit A
Eligible Telecommunications Carriers
Certified to Receive Federal Universal Service Fund High-Cost Support

Company	USAC Study Area Code
1 Asotin Telephone Company	532404
2 Beaver Creek Cooperative Telephone Co.	532359
3 Canby Telephone Association	532362
4 Cascade Utilities, Inc.	532371
5 CenturyTel of Oregon, Inc. dba CenturyLink	532361
6 CenturyTel of Eastern Oregon, Inc. dba CenturyLink	532361
7 Citizens Telecommunications Company of Oregon.	533401
8 Clear Creek Mutual Telephone Company	532363
9 Colton Telephone Company	532364
10 Eagle Telephone System, Inc.	532369
11 Frontier Communications Northwest Inc.	532416
12 Gervais Telephone Co.	532373
13 Helix Telephone Company	532376
14 Home Telephone Company	532377
15 Molalla Communications Company	532383
16 Monitor Cooperative Telephone Company	532384
17 Monroe Telephone Company	532385
18 Mt. Angel Telephone Company	532386
19 Nehalem Telecommunications, Inc.	532387
20 North-State Telephone Company	532388
21 Oregon-Idaho Utilities, Inc.	532390
22 Oregon Telephone Corporation	532389, 533336
23 People's Telephone Company	532391
24 Pine Telephone System, Inc.	532392
25 Pioneer Telephone Cooperative	532393
26 Qwest Corporation dba CenturyLink QC	535163
27 Roome Telecommunications, Inc.	532375
28 Scio Mutual Telephone Association	532397
29 Stayton Cooperative Telephone Company	532399
30 St. Paul Cooperative Telephone Association	532396
31 Trans-Cascades Telephone Company	532378
32 United Telephone Co. of the Northwest dba CenturyLink	532400
33 AT&T Mobility LLC	539010
34 Comspan Communications, Inc.	539005
35 Eagle Telephone System, Inc. dba Snake River PCS	539007
36 United States Cellular Corporation	539002
37 Warm Springs Telecommunications Company	539012

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Exhibit B
Sample Affidavit

AFFIDAVIT CERTIFYING USE OF UNIVERSAL SERVICE FUNDS

I, _____ [name of company officer], being of lawful age and duly sworn, on my oath, state that I am the _____ [title] of _____ [Company name] and that I am authorized to execute this Affidavit on behalf of the Company, and the facts set forth in this Affidavit are true to the best of my knowledge, information and belief.

Pursuant to the requirements of the Federal Communications Commission, 47 C.F.R. § 54.314, _____ [Company name] hereby certifies to the Public Utility Commission of Oregon that it is eligible to receive federal high-cost support for the program years cited.

I attest that all federal high-cost support provided to _____ [Company name] in Oregon was used in the preceding calendar year (2012) and will be used in the coming calendar year (2014) only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

DATED this _____ day of _____, 2013.

By: _____ (Officer's Name)

Its: _____ (Officer's Title)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2013.

Notary public in and for the State of _____

My Commission Expires: _____