

Public Service Commission of West Virginia

SEP 10 2019

FCC Mailroom

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Charleston, West Virginia 25323

Charlotte R. Lane
Chairman



September 4, 2019

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, Maryland 20701
(overnight mail)

(Duplicate copy to:)
Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Universal Service Administrative Company
Vice President, High Cost Division
700 12th Street, NW, Suite 900
Washington, DC 20005

Re: CC Docket 96-45/WC Docket No. 14-58, Annual State Certification
of Support for Eligible Telecommunications Carriers Pursuant to
47 C.F.R. §54.314

Pursuant to the requirements of 47 C.F.R. §54.314, The Public Service Commission of West Virginia (WVPSC) hereby certifies to the Federal Communications Commission (FCC) and the Universal Service Administrative Company that the telecommunications carriers included in this letter are eligible to receive federal high-cost or low income support for the program years cited.

Specifically, WVPSC certifies for the carriers listed that all federal high-cost or low income support provided to such carriers within West Virginia was used during the

preceding calendar year, 2018, and will be used in the coming calendar year, 2020, only for the provision, maintenance and upgrading of facilities and services for which the support is intended. 47 C.F.R. §54.314. The certified carriers include the following:

Carriers Certified to Receive Support

Carrier	SAC¹	Type²
American Broadband & Telecommunications Co.	209031	C
Armstrong Telephone Company - Northern Division	200267	I
Armstrong Telephone Company - West Virginia	200256	I
Boomerang Wireless, LLC	209030	C
Citizens Telecommunications Co. of West Virginia, Inc.	200271	I
Citizens Telecommunications Co. of West Virginia, Inc.	204338	I
Citizens Telecommunications Co. of West Virginia, Inc.	204339	I
Frontier West Virginia Inc.	205050	I
Global Connection Inc. of America	209025	C
Hardy Telecommunications, Inc. (CLEC)	209009	C
Hardy Telecommunications, Inc. (ILEC)	200259	I
i-wireless, LLC	209022	C
Lumos Networks, LLC, dba Segra, fka FiberNet, LLC	209002	C
New Cingular Wireless PCS, LLC dba AT&T Mobility	209012	C
Q-Link Wireless, LLC	209028	C
Sage Telecom Communications, LLC	209034	C
Spruce Knob Seneca Rocks Telephone, Inc.	200257	I

¹ Study Area Code

² I – Incumbent; C – Competitive

Tag Mobile, LLC	209026	C
Telrite Corporation	209016	C
Tempo Telecom, LLC	209032	C
TerraCom, Inc.	209017	C
Tracfone Wireless, Inc.	209013	C
USCOC of Cumberland & Hardy Cellular Telephone, Inc.	209005	C
Virgin Mobile USA, L.P.	209015	C
War Telephone LLC, fka War Acquisition Corp., dba OTT Communications	200258	I
West Side Telecommunications	200277	I

This certification is the product of formal proceedings before the WVPSC. General Investigation Regarding The Use of Federal Universal Service Funding By Eligible Telecommunications Carriers in West Virginia, Case No. 19-0374-T-GI (Recommended Decision Issued, July 23, 2019, Final August 12, 2019) (attached as Attachment A). In that proceeding, WVPSC reviewed information filed by each carrier, including disclosures under 47 C.F.R. §54.313, to support this certification.

On behalf of the people of West Virginia, WVPSC expresses its appreciation for the continuing efforts of the FCC in working to expand advanced telecommunications services throughout the nation.

Sincerely yours,


Charlotte R. Lane
Chairman

MJM/sm
Enclosures

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: July 23, 2019



CASE NO. 19-0374-T-GI

GENERAL INVESTIGATION REGARDING
THE USE OF FEDERAL UNIVERSAL SERVICE
FUNDING BY ELIGIBLE TELECOMMUNICATIONS
CARRIERS IN WEST VIRGINIA.

RECOMMENDED DECISION

Eligible telecommunications carriers (ETCs) in West Virginia are appropriately using federal universal service funds (USF) as set forth below.

BACKGROUND

On March 28, 2019, the Commission opened a general investigation into the proper use of USF by ETCs in West Virginia to provide information supporting the annual certification made to the Federal Communications Commission (FCC) under 47 C.F.R. §54.314. The Commission also referred this matter to its Division of Administrative Law Judges (ALJ) for a Recommended Decision on or before August 26, 2019.

On April 1, 2019, the presiding ALJ issued a Procedural Order directing ETCs to certify that they are properly using USF and file information required by the FCC under 47 C.F.R. §54.313. That Procedural Order also directed ETCs to file information to assist with a review conducted under Rule 10.6.c of the Rules for the Government of Telephone Utilities, 150 C.S.R. Series 6 (Telephone Rules). It required carriers to file the information on or before July 1, 2019. Finally, the Order directed the Executive Secretary to publish notice of this matter and inform the public that interested parties could file comments with the Commission by July 15, 2019.

The FCC has encouraged states to annually certify carriers that are eligible for USF and file a certification letter stating that federal high-cost funds flowing to carriers in that state in the preceding and upcoming calendar year are used in accord with Section 254(e) of the Telecommunications Act of 1934 (as amended)¹ (Act). (47 U.S.C. §254(e), 47 C.F.R. §54.314. See also, In the Matter of Connect America Fund, WC Docket 10-90

¹ The statutory section states that federal USF received by ETCs must be used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended."

KAC

et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (CAF Order).) If a state commission timely files its certification with the FCC and the Administrator of the Universal Service Administrative Company (USAC), then USF for the next calendar year will be forwarded to the certified ETCs. (Id.)

Therefore, the Commission initiated this general investigation regarding the use of federal USF by ETCs in West Virginia for the preceding calendar year (2018) and the upcoming calendar year (2020). The FCC has also expressed an expectation that state commissions utilize data filed by ETCs under 47 C.F.R. §54.313 to conduct a rigorous examination of the use of USF. In the event that an ETC is not using USF support as intended, a state commission may recommend that the FCC make prospective support adjustments or recover past support amounts.² (CAF Order at ¶612.)

On April 30, 2019, Commission Staff filed an initial memorandum stating that it would tender a final recommendation as directed by the April 1, 2019 Procedural Order.

Most ETCs subsequently filed complete USF certifications in response to the April 1, 2019 Procedural Order along with forms the FCC requires.

Certain carriers also requested that the Commission maintain a portion of their filings under seal, asserting that the sealed documents contain trade secrets exempt from the provisions of the West Virginia Freedom of Information Act, codified as W.Va. Code §§29B-1-1 to 7 (WV FOIA). The carriers requesting that the Commission continue to seal a portion of their filings in this matter include USCOC of Cumberland and Hardy Cellular Telephone, Inc. (US Cellular), New Cingular Wireless PCS, LLC, dba AT&T Mobility (AT&T), War Telephone LLC (War), Spruce Knob Seneca Rocks Telephone, Inc. (SKSRT) and West Side Telecommunications (West Side).

On July 17, 2019, Staff filed a memorandum recommending that the Commission certify most ETCs to the FCC as properly using USF based on responses carriers filed to the April 1, 2019 Procedural Order. Staff stated, however, that Tempo Telecom, LLC (Tempo) failed to completely respond.³

On July 18, 2019, Staff supplemented its July 17, 2019 Memorandum. It reported that Tempo subsequently filed adequate information to allow the Commission to certify its use of USF funding to the FCC and USAC.

Specifically, Staff recommended that the Commission certify to the FCC and USAC that the following ETCs properly used USF in the prior calendar year and will continue to use USF properly in the coming calendar year:

² Alternatively, this Commission may rescind an ETC designation or refuse to certify the ETC.

³ Staff also noted that certain carriers were also newly certified as ETCs by the Commission. Those carriers should fully participate in the 2020 USF general investigation.

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Citizens Telecommunications Company of West Virginia, Inc.
6. Frontier West Virginia Inc.
7. Global Connection Inc. of America
8. Hardy Telecommunications, Inc. (CLEC)
9. Hardy Telecommunications, Inc. (ILEC)
10. i-wireless, LLC
11. Lumos Networks, LLC, dba Segra, fka FiberNet, LLC
12. New Cingular Wireless PCS, LLC dba AT&T Mobility
13. Q-Link Wireless, LLC
14. Sage Telecom Communications, LLC
15. Spruce Knob Seneca Rocks Telephone, Inc.
16. Tag Mobile, LLC
17. Telrite Corporation
18. Tempo Telecom, LLC
19. TerraCom, Inc.
20. Tracfone Wireless, Inc.
21. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
22. Virgin Mobile USA, L.P.
23. War Telephone LLC fka War Acquisition Corp. dba OTT Communications
24. West Side Telecommunications

One carrier filed a response to the Staff memoranda. The responding carrier concurred with the Staff recommendation to certify the use of USF to the FCC, but disputed the Staff recommendation regarding the protective treatment requests.

No member of the general public filed comments in this proceeding after notice by publication in a newspaper of statewide circulation.

DISCUSSION

Use of Support Certification

With regard to the use of USF, it is reasonable to accept the Staff recommendation to certify that the twenty-four telecommunications carriers listed above are eligible to continue to receive federal universal service support. Each carrier has submitted data to the Commission demonstrating compliance with the relevant FCC regulations. That data supports the Staff recommendation and enables the Commission to find that the support the listed ETCs received in the preceding calendar year, 2018, and will use in the coming calendar year, 2020, is only applied to the provision, maintenance and upgrading of facilities and services for which the support is intended, consistent with the Act.

Therefore, the Commission will certify by letter to the FCC and USAC that the ETCs listed above are properly using USF consistent with Section 254(e) of the Act.

Lifeline and Tel-Assistance Review

Under Telephone Rule 10.6, the Commission annually reviews the efforts of ETCs to participate in the Lifeline program and the state-based Tel-Assistance program. The filings demonstrate that ETCs are participating in one or both programs. ETCs should continue to participate in these programs and the Commission will continue to monitor the programs in future USF proceedings.

Requests for Protective Orders

Most ETCs did not request any type of protective order for their filings in this matter. Certain carriers, however, requested protective orders for portions of their filings, arguing that the sealed information is exempt from disclosure under WV FOIA. The carriers seeking a protective order include AT&T, US Cellular, SKSRT, War and West Side.

Three carriers seeking protective treatment filed a motion and affidavit in support of their requests. There is no need at present to make a final ruling on the pending protective treatment requests. Instead, it is reasonable to direct the Executive Secretary to continue to hold the unredacted versions of all of the sealed filings separate and apart from the remnant of this case file until the Commission receives and reviews a request for that information. By deferring consideration of the protective treatment requests, the Commission is not taking any final position on the application of WV FOIA to the sealed data.

AT&T and SKSRT, however, must file a proper protective treatment motion within ten days of this Recommended Decision becoming a final Commission Order. Each motion should be supported with an affidavit setting forth facts that justify the request. Future filings under seal should comply with Rules 4.1.5 and 4.1.6 of the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules).

Requirements for 2020 Certification Filings

In prior USF proceedings, the Commission directed all ETCs to file certain information with the Commission by July 1st of the following year to assure that it would have the necessary data available for the upcoming certification proceeding. The Commission will require similar filings on or before July 1, 2020. ETCs should (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481 and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

FINDINGS OF FACT

1. The Commission initiated this general investigation to review the use of federal USF by ETCs in West Virginia. (March 28, 2019 Commission Order.)
2. Twenty-four ETCs filed USF documentation and requested that this Commission certify that they have used federal USF support consistent with the Act in 2018 and will continue to do so in calendar year 2020. (ETC USF filings.)
3. Certain carriers requested that the Commission seal portions of their filings in this matter, asserting that the sealed data are exempt from WV FOIA. (Motions for Protective Order.)
4. AT&T and SKSRT did not file proper motions seeking a protective order for their sealed filings. (Case File Generally.)
5. Staff recommended that the Commission certify to the FCC and USAC that all ETCs that responded to the April 1, 2019 Procedural Order previously used USF support consistent with the Act and will continue to do so in calendar year 2020. (July 17, 2019 and July 18, 2019 Staff Memoranda.)

CONCLUSIONS OF LAW

1. The twenty-four ETCs Staff recommended should be certified by letter to the FCC and USAC as eligible to continue to receive federal universal service support because they used that support in the prior calendar year only for the provision, maintenance and upgrading of facilities and services for which the support is intended and will continue to do so in the upcoming calendar year.
2. To facilitate certification filings for next year, it is reasonable to direct carriers to file information listed in the relevant discussion above with this Commission regardless of the opening of a new general investigation.
3. The Executive Secretary will continue to segregate the material subject to the protective treatment motions filed in this matter until the Commission receives and reviews a WV FOIA request for that information. (General Investigation Regarding the Use of Federal Universal Service Funding, Case No. 14-0566-T-GI (Commission Order, September 16, 2014).)
4. AT&T and SKSRT should file proper protective treatment requests within ten days of this Recommended Decision becoming a final Commission Order. (Procedural Rule 4.1.6.)

ORDER

IT IS THEREFORE ORDERED that a certification be issued to the FCC and USAC, once this Recommended Decision becomes a final Commission Order, stating that the following carriers used federal high-cost and other universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the preceding calendar year and will do so in the coming calendar year:

1. American Broadband & Telecommunications Company
2. Armstrong Telephone Company - Northern Division
3. Armstrong Telephone Company - West Virginia
4. Boomerang Wireless, LLC
5. Citizens Telecommunications Company of West Virginia, Inc.
6. Frontier West Virginia Inc.
7. Global Connection Inc. of America
8. Hardy Telecommunications, Inc. (CLEC)
9. Hardy Telecommunications, Inc. (ILEC)
10. i-wireless, LLC
11. Lumos Networks, LLC, dba Segra, fka FiberNet, LLC
12. New Cingular Wireless PCS, LLC dba AT&T Mobility
13. Q-Link Wireless, LLC
14. Sage Telecom Communications, LLC
15. Spruce Knob Seneca Rocks Telephone, Inc.
16. Tag Mobile, LLC
17. Telrite Corporation
18. Tempo Telecom, LLC
19. TerraCom, Inc.
20. Tracfone Wireless, Inc.
21. USCOC of Cumberland and Hardy Cellular Telephone, Inc.⁴
22. Virgin Mobile USA, L.P.
23. War Telephone LLC fka War Acquisition Corp. dba OTT Communications
24. West Side Telecommunications

IT IS FURTHER ORDERED that on or before July 1, 2020, all ETCs designated by this Commission to receive high-cost or other support shall (i) certify their proper use of universal service support by affidavit on or before that date, (ii) file information required under 47 C.F.R. §54.313, (iii) include copies of the most recent FCC Form 481 and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

⁴ Not including the Mobility Fund.

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

IT IS FURTHER ORDERED that the requests for protective orders filed in this matter are deferred until the filing of a request under WV FOIA. The Executive Secretary shall maintain all sealed responses separate and apart from the rest of the file pending further Order. If the Commission receives a request to inspect any of the sealed information, the Commission will afford the affected carrier a brief opportunity to respond to each WV FOIA request.

IT IS FURTHER ORDERED that AT&T and SKSRT file proper requests for a protective order supported by an affidavit attesting to relevant facts within ten days of this Recommended Decision becoming a final Commission Order.


IT IS FURTHER ORDERED that on the effective date of this Recommended Decision, this matter is removed from the active docket of Commission cases.

The Executive Secretary is ordered to serve this Order upon the Commission and its Staff by hand delivery, upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by United States Certified Mail, return receipt requested.

Leave is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen days of the date of this Order. If exceptions are filed, the parties filing exceptions shall certify that all parties of record have been served the exceptions.

If no exceptions are filed, this Order shall become the Order of the Commission, without further action or order, five days following the expiration of the fifteen day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions by filing an appropriate petition in writing with the Executive Secretary. No such waiver, however, will be effective until approved by order of the Commission.


Matthew J. Minney
Deputy Chief Administrative Law Judge

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