# Public Service Commission
# of West Virginia

201 Brooks Street, P.O. Box 812
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Michael A. Albert
Chairman

Received & Inspected
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FCC Mail Room

September 8, 2016

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Federal Communications Commission
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(overnight mail)

(Duplicate copy to:)
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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, the 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

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the preceding calendar year, 2015, and will be used in the coming calendar year, 2017, 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 | SAC[1] | Type[2] |
|---|---|---|
| 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 |
| Budget Prepay, Inc. | 209029 | C |
| Cellspan, Inc. | 209033 | C |
| Cintex Wireless, LLC | 209018 | 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 |
| Gateway Telecom, LLC, dba StratusWave Communications, LLC | 209001 | C |
| Global Connection Inc. of America | 209025 | C |
| Hardy Telecommunications, Inc. (CLEC) | 209009 | C |
| Hardy Telecommunications, Inc. (ILEC) | 200259 | I |
| i-wireless, LLC | 209022 | C |

[1] Study Area Code
[2] I – Incumbent; C – Competitive

| | | |
|---|---|---|
| Lumos Networks, LLC, 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 |
| Tag Mobile, LLC | 209026 | C |
| Telrite Corporation | 209016 | C |
| Tempo Telecom, LLC | 209032 | C |
| TerraCom, Inc. | 209017 | C |
| Total Call Mobile, Inc. | 209027 | C |
| Tracfone Wireless, Inc. | 209013 | C |
| US Connect, LLC | 209024 | C |
| USCOC of Cumberland & Hardy Cellular Telephone, Inc. | 209005 | C |
| USCOC of Cumberland & Hardy Cellular Telephone, Inc. (Mobility Fund) | 208001 | C |
| Virgin Mobile USA, L.P. | 209015 | C |
| War Telephone LLC dba OTT Communications | 200258 | I |
| West Side Telecommunications | 200277 | I |
| West Virginia PCS Alliance, LC dba NTELOS | 209909 | C |
| West Virginia PCS Alliance, LC dba NTELOS (Mobility Fund) | 208002 | C |

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. 16-0433-T-GI (Recommended Decision Issued, August 11, 2016, Final August 31, 2016) (attached as

Attachment A). In that proceeding, the 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, the WVPSC expresses its appreciation for the continuing efforts of the FCC in working to expand advanced telecommunications services throughout the nation.

Sincerely yours,

Michael A. Albert
Chairman

MJM/sm
Enclosures

**PUBLIC SERVICE COMMISSION**
**OF WEST VIRGINIA**
**CHARLESTON**

FINAL
8/31/2016

Issued: August 11, 2016

CASE NO. 16-0433-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).

## BACKGROUND

On April 7, 2016, 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 September 1, 2016.

On April 13, 2016, 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, 2016. 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, 2016.

The FCC previously 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

[1] This 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."

Docket 10-90 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 (2015) and the upcoming calendar year (2017). 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 May 9, 2016, Commission Staff filed an initial memorandum stating that it would tender a final recommendation as directed by the April 13, 2016 Procedural Order. Staff also requested that each ETC file a copy of its most recent FCC Form 555 to assist with its review.

Most ETCs subsequently filed complete USF certifications in response to the April 13, 2016 Procedural Order along with forms the FCC requires carriers to file with the Commission.

Certain carriers also requested that the Commission maintain a portion of their USF 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 Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia (Citizens), Frontier West Virginia Inc. (Frontier WV), USCOC of Cumberland and Hardy Cellular Telephone, Inc. (US Cellular), New Cingular Wireless PCS, LLC dba AT&T Mobility (AT&T), Armstrong Telephone Company Northern Division (Armstrong Northern), Armstrong Telephone Company West Virginia Division (Armstrong WV) and War Telephone Company, dba OTT Communications (War). West Side Telecommunications (West Side) filed information under seal without a motion seeking protective treatment.

On July 21, 2016, 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 13, 2016 Procedural Order. Staff stated, however, that certain carriers failed to file sufficient information.

In response to the July 21, 2016 Staff Memorandum, the presiding ALJ directed the carriers Staff cited to comply with the April 13, 2016 Procedural Order forthwith. The Procedural Order also directed Staff to provide an updated recommendation to

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

include carriers that belatedly provided adequate information to allow the Commission to certify their proper use of USF to the FCC. (July 22, 2016 Procedural Order.)

Subsequent to the July 22, 2016 Procedural Order, each carrier Staff cited in its July 21, 2016 Memorandum responded to the April 13, 2016 Procedural Order.

On August 9, 2016, Staff filed a further memorandum to update its recommendation. Staff recommended that the Commission certify every ETC that responded to either the April 13, 2016 or July 22, 2016 Procedural Orders.

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:

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

Certain carriers filed a response to the Staff memoranda. The responding carriers concurred with the Staff recommendation to certify their 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 thirty-one telecommunications carriers listed above are eligible to continue to receive federal universal service support. Each carrier has submitted data to the Commission supporting the Staff recommendation. That data enables the Commission to find that the support that the listed ETCs received in the preceding calendar year, 2015, and will use in the coming calendar year, 2017, 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 these 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 sealed filings in this matter include:

| Carrier | Filings Under Seal |
|---|---|
| Armstrong Northern and Armstrong WV | Five year plans and maps attached to FCC Form 481. |
| AT&T | Service Improvement Plans and outage reporting. |
| Citizens and Frontier WV | Outage reporting, unfulfilled service |

| | |
|---|---|
| | requests and broadband pricing attached to FCC Form 481. |
| US Cellular | Outages and unfulfilled service requests attached to FCC Form 481. Portion of FCC Form 690. |
| War | Portions of FCC Form 481 including its five-year plan, and CAF ICC data. |
| West Side | CAF ICC data. |

Nearly all carriers seeking protective treatment filed a motion and affidavit in support of their protective treatment 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 the sealed filings separate and apart from the remnant of this case file until the Commission receives and reviews a request for that information. West Side, however, did not file a motion and affidavit supporting its sealed filing. West Side will submit a proper protective treatment motion and supporting affidavit within ten days of this Recommended Decision becoming a final Commission Order. 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.

Requirements for 2017 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 3, 2017. 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, FCC Form 690 (if applicable) 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. (April 7, 2016 Commission Order.)

2. Thirty-one ETCs filed USF documentation and requested that this Commission certify that they have used federal USF support consistent with the Act in 2015 and will continue to do so in calendar year 2017. (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. Staff recommended that the Commission certify to the FCC and USAC that all ETCs that responded to the April 13, 2016 or July 22, 2016 Procedural Orders previously used USF support consistent with the Act and will continue to do so in calendar year 2017. (July 21, 2016 and August 9, 2016 Staff Memoranda.)

5. West Side did not move for a protective order for the documents it filed under seal.

## CONCLUSIONS OF LAW

1. The thirty-one 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. West Side must file a motion requesting protective treatment for its sealed filing within ten days of the Recommended Decision becoming a final Commission Order. (See, Rule 4.1.f of the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1.)

## 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. Budget Prepay, Inc.
6. Cellspan, Inc.
7. Cintex Wireless, LLC
8. Citizens Telecommunications Company of West Virginia, Inc.
9. Frontier West Virginia Inc.
10. Gateway Telecom, LLC, dba StratusWave Communications, LLC
11. Global Connection Inc. of America
12. Hardy Telecommunications, Inc. (CLEC)
13. Hardy Telecommunications, Inc. (ILEC)
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16. New Cingular Wireless PCS, LLC dba AT&T Mobility
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18. Sage Telecom Communications, LLC
19. Spruce Knob-Seneca Rocks Telephone, Inc.
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21. Telrite Corporation
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24. Total Call Mobile, Inc.
25. Tracfone Wireless, Inc.
26. US Connect, LLC
27. USCOC of Cumberland and Hardy Cellular Telephone, Inc.
28. Virgin Mobile USA, L.P.
29. War Acquisition Corp., dba OTT Communications
30. West Side Telecommunications
31. West Virginia PCS Alliance, LC dba NTELOS

IT IS FURTHER ORDERED that on or before July 3, 2017, 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, FCC Form 690 (if applicable) and FCC Form 555, (iv) describe their efforts to promote low income programs, and (v) include their Study Area Code.

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 the 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 West Side file a proper motion supported by an affidavit requesting that the Commission issue a protective order for the data filed under seal in this matter 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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