

FCC MAIL SECTION

Federal Communications Commission

DA 98-1612

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
 DISPATCH)
 Federal-State Joint Board on) CC Docket No. 96-45
 Universal Service)
)
 Colorado Public Utilities Commission Petition)
 for Retroactive Universal Service Support)
 for Great Plains Communications)

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 1998

Released: August 14, 1998

By the Acting Chief, Common Carrier Bureau:

1. In this Memorandum Opinion and Order, we grant the Colorado Public Utilities Commission's (Colorado Commission) petition to permit Great Plains Communications (Great Plains) to receive federal universal service support retroactive to January 1, 1998.¹

BACKGROUND

2. In the Telecommunications Act of 1996 (1996 Act),² Congress amended the Communications Act of 1934 (Act)³ by, among other things, adding section 254 to the Act. Section 254(e) provides that, after the effective date of the Commission's regulations implementing section 254, "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁴ Section 214(e)(1) requires that to be designated an eligible telecommunications carrier a common carrier must, throughout its service area: (1) offer all of the services designated for support by the Commission pursuant to section 254(c) "either using its own facilities or a combination

¹ Petition for Waiver of Section 254 Filed by the Colorado Public Utilities Commission on Behalf of Great Plains Communications (filed Feb. 19, 1998) (Petition).

² Pub. L. No. 104-104, 110 Stat. 56.

³ 47 U.S.C. §§ 151, *et seq.* Hereinafter, all citations to the 1996 Act and the Act will be to the relevant section of the United States Code unless otherwise noted.

⁴ 47 U.S.C. § 254(e).

of its own facilities and resale of another carrier's services;"⁵ and (2) "advertise the availability of such services and the charges therefor through media of general distribution."⁶ Section 214(e)(2) states that,

[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.⁷

3. On May 8, 1997, the Commission released the *Universal Service Order* implementing section 254 of the Act.⁸ The *Universal Service Order* states that, consistent

⁵ 47 U.S.C. § 214(e)(1)(A).

⁶ 47 U.S.C. § 214(e)(1)(B).

⁷ 47 U.S.C. § 214(e)(2).

⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *consolidated appeal pending sub nom Texas Office of Public Utility Counsel v. FCC and USA*, No. 97-60421 (5th Cir. 1997); *Federal-State Joint Board on Universal Service*, Order on Reconsideration, CC Docket No. 96-45, 12 FCC Rcd 10095 (rel. July 10, 1997); *Changes to the Board of Directors of the National Exchange Carrier Association Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, DA 97-2477 (rel. Dec. 3, 1997); *Changes to the Board of Directors of the National Exchange Carrier Association Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444 (1997); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-160, Third Report and Order, 12 FCC Rcd 22485 (1997), as corrected by *Federal-State Joint Board on Universal Service, Erratum*, CC Docket Nos. 96-45 and 97-160 (rel. Oct. 15, 1997); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 97-21, Report and Order and Second Order on Reconsideration in CC Docket 97-21, 12 FCC Rcd 22423 (1997); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-24, Third Order on Reconsideration, 12 FCC Rcd 22801 (1997); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318 (1997) (*Fourth Reconsideration Order*), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, DA 98-158 (rel. Jan 29, 1998), *appeal pending in Alenco Communications, Inc., et al. v. FCC and USA*, No. 98-60213 (5th Cir. 1998); *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, FCC 98-120 (rel. June 22, 1998); *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998).

with section 214(e)(2), state commissions will make carrier eligibility designations,⁹ and that, as of January 1, 1998, only carriers designated as eligible can receive specific federal universal service support.¹⁰ These requirements appear in section 54.201(a)(1) of the Commission's rules.¹¹ The Commission further concluded in the *Universal Service Order* that the Administrator of the universal service support mechanisms shall not disburse funds to a carrier until the carrier provides to the Administrator a true and correct copy of the decision of a state commission designating that carrier as an eligible telecommunications carrier.¹² In Public Notices released August 14, 1997 and September 29, 1997, the Commission alerted state commissions of their obligation to designate eligible telecommunications carriers by January 1, 1998.¹³ The *September 29 Public Notice* required states to submit to the Administrator, by December 31, 1997, a list of carriers designated as eligible, and the service areas of such eligible non-rural carriers.¹⁴

4. In the *Fourth Reconsideration Order*, the Commission acknowledged that there may be situations in which a state commission is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such status before January 1, 1998.¹⁵ The Commission noted that,

[a]llowing retroactive support will permit consumers served by those carriers to benefit from the support to which those carriers would have been entitled, but for circumstances that prevented the state commission from designating the

⁹ *Universal Service Order*, 12 FCC Rcd at 8851-52, para. 135.

¹⁰ *Universal Service Order*, 12 FCC Rcd at 8851, para. 134.

¹¹ Section 54.201(a)(1) states:

Beginning January 1, 1998, only eligible telecommunications carriers designated under paragraphs (b) through (d) of this section shall receive universal service support distributed pursuant to Part 36 and Part 69 of this chapter, and subparts D and E of this part.

47 C.F.R. § 54.201(a)(1).

¹² *Universal Service Order*, 12 FCC Rcd at 8886-87, para. 198; 47 C.F.R. § 54.707.

¹³ *Listing of Changes Adopted in the May 8 Order that will Take Effect January 1, 1998*, Public Notice, 13 FCC Rcd 1956 (1997); *Common Carrier Bureau Announces Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers*, Public Notice, 12 FCC Rcd 15968 (1997) (*September 29 Public Notice*).

¹⁴ *September 29 Public Notice supra*.

¹⁵ *Fourth Reconsideration Order*, 13 FCC Rcd at 5333, para. 23.

carriers as eligible for receipt of universal service support prior to January 1, 1998.¹⁶

Accordingly, the Commission found that it is in the public interest to permit these carriers to seek retroactive support.¹⁷ The *Fourth Reconsideration Order* provides that, once the state commission has designated such a carrier, the state commission may file with the Commission a petition for waiver of section 54.201(a)(1), requesting that the carrier receive universal service support retroactive to January 1, 1998.¹⁸

5. The *Fourth Reconsideration Order* directs a state commission filing such a petition to: (1) explain why it did not designate such carrier as eligible by January 1, 1998; and (2) explain why providing support retroactive to January 1, 1998 serves the public interest.¹⁹ The provisions for retroactive support appear in section 54.201(a)(2) of the Commission's rules.²⁰

6. On February 19, 1998, pursuant to the procedures established in the *Fourth Reconsideration Order*, the Colorado Commission petitioned the Commission to permit Great Plains to receive universal service support retroactive to January 1, 1998. The Colorado Commission explained that, although Great Plains had requested designation on December 19, 1997, the Colorado Commission had been unable to designate Great Plains as an eligible telecommunications carrier prior to January 1, 1998 because of the Colorado Commission's rules.²¹ The Colorado Commission also explained that, for the reasons described below,

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; 47 C.F.R. § 54.201(a)(2).

¹⁹ *Id.*

²⁰ Section 54.201(a)(2) states:

A state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver of paragraph (a)(1) of this section requesting that the carrier receive universal service support retroactive to January 1, 1998. The state commission must explain why it did not designate such carrier as eligible by January 1, 1998, and provide a justification for why providing support retroactive to January 1, 1998, serves the public interest.

47 C.F.R. § 54.201(a)(2).

²¹ Petition at 1.

granting the petition is in the public interest.²² The Commission issued a public notice seeking comments on the petition,²³ and the United States Telephone Association (USTA) responded with comments in support thereof.²⁴

DISCUSSION

7. The petition meets the specific requirements of section 54.201(a)(2) for waiver of section 54.201(a)(1). Specifically, we find that the facts demonstrate that the Colorado Commission was unable to designate Great Plains as an eligible telecommunications carrier prior to January 1, 1998. According to the petition, Great Plains filed its application for designation as an eligible telecommunications carrier with the Colorado Commission on December 19, 1997.²⁵ The petition indicates that Great Plains had met the requirements set forth in section 214(e)(1) by making its request for designation prior to January 1, 1998.²⁶ The petition explains that, "[u]nder the procedures of the Colorado Commission and in light of the waiver requests contained within the application, it was not possible to rule on Great Plains' application prior to January 1, 1998."²⁷ We note that, pursuant to the Colorado Commission's Rules of Practice and Procedure, the Colorado Commission must issue a public notice regarding the filing of an application, and give the public not less than 10 days to intervene.²⁸ Moreover, the Colorado Commission may not set the matter for hearing any sooner than 45 days after the date the application was deemed complete.²⁹ Accordingly, the Colorado Commission adopted an Order granting Great Plains' application for designation as an eligible telecommunications carrier on February 4, 1998.³⁰ The Colorado Commission also found that the designation should be retroactive to January 1, 1998.³¹

²² *Id.*

²³ *Colorado Public Utilities Commission Seeks Retroactive Universal Service Support on Behalf of Great Plains Communications*, AAD/USB File No. 98-42, Public Notice, DA 98-421 (Mar. 19, 1998).

²⁴ Comments of the United States Telephone Association (filed Mar. 19, 1998) (USTA Comments).

²⁵ Petition at 1.

²⁶ Petition at Exhibit A, p. 4.

²⁷ Petition at 1.

²⁸ 4 CCR § 723-1, Rule 70.

²⁹ *Id.*

³⁰ Petition at Exhibit A.

³¹ Petition at Exhibit A, pp. 2, 4.

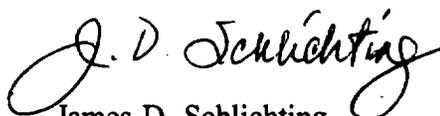
8. We find that it is in the public interest to permit Great Plains to receive federal universal service support retroactive to January 1, 1998. As the Colorado Commission and USTA maintain, it is important that Great Plains receive such support because Great Plains is a rural telephone company that relies upon the receipt of universal service support to keep its local service rates at an affordable and reasonable level.³² According to USTA, denying the petition would interrupt the flow of universal service support, and thereby would "work an undeserved, unintended, and harmful result on the operations of the company."³³ We agree with the Colorado Commission and USTA that denying the petition would prevent Great Plains from receiving universal service support for the period prior to its designation by the Colorado Commission, and thus unjustly harm Great Plains and its customers. We find that, but for the circumstances that prevented the Colorado Commission from designating Great Plains as eligible for receipt of universal service support prior to January 1, 1998, Great Plains would have been entitled to the support as of January 1, 1998. We thus conclude that waiver of section 54.201(a)(1) is warranted, and Great Plains will receive federal universal service support retroactive to January 1, 1998. We direct the Universal Service Administrative Company to provide such support to Great Plains, and to take the steps necessary to minimize any interruptions in its receipt of support.

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to section 54.201 of the Commission's rules, 47 C.F.R. § 54.201, and the authority contained in section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the Petition for Waiver of Section 254 Filed by the Colorado Public Utilities Commission on Behalf of Great Plains Communications is GRANTED.

10. IT IS FURTHER ORDERED that the Universal Service Administrative Company WILL PROVIDE to Great Plains Communications federal universal service support retroactive to January 1, 1998.

11. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted to the Universal Service Administrative Company.



James D. Schlichting
Acting Chief, Common Carrier Bureau

³² Petition at 2; USTA Comments at 2.

³³ USTA Comments at 2.