

Before the  
Federal Communications Commission  
Washington, DC 20554

2001 MAR 15 P 12: 01

In the Matter of )  
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Federal-State Joint Board on )  
Universal Service )  
 )  
West Virginia Public Service )  
Commission )  
 )  
Request for Waiver of State )  
Certification Requirements for )  
High-Cost Universal Service Support )  
For Non-Rural Carriers )

RECEIVED

CC Docket No. 96-45

**ORDER**

**Adopted: March 9, 2001**

**Released: March 13, 2001**

By the Commission:

1. In this Order, we grant the Petition of the West Virginia Public Service Commission (West Virginia Commission) for a waiver of the calendar year 2001 state certification requirements for high-cost universal service support in areas served by non-rural carriers.<sup>1</sup> This waiver will permit non-rural carriers in West Virginia to receive federal high-cost universal service support for calendar year 2001, including the first quarter of calendar year 2001. We believe that this waiver is in the public interest and is necessary to ensure that consumers in high-cost areas served by non-rural carriers in West Virginia are not harmed by the West Virginia Commission's failure to timely file the required certification with the Commission prior to October 1, 2000.

**I. BACKGROUND**

2. In its *Ninth Report and Order* on universal service, the Commission, building upon the framework established in its *Universal Service Order* and *Seventh Report and Order*, set forth a federal high-cost support mechanism to enable non-rural carriers' rates for services supported by universal service to remain affordable and reasonably comparable in all regions of the nation.<sup>2</sup> Among other things, the federal high-cost universal service support mechanism

<sup>1</sup> Public Service Commission of West Virginia's Request for Leave to File its State Certification of Federal Universal Service Support Eligibility Out-of-Time, CC Docket No. 96-45, filed January 29, 2001 (Petition).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8766 (1997) (*Universal Service Order*); *Federal-State*

established in the *Ninth Report and Order* set forth specific certification requirements with which states wishing to receive federal universal service high-cost support for all non-rural carriers within their territory must comply.<sup>3</sup> These state certifications must state that all federal high-cost support received by non-rural carriers in the state will be used in a manner consistent with section 254(e) of the Communications Act.<sup>4</sup> The Commission concluded that, absent the timely filing of such certification by their state commission, non-rural carriers in a state would not receive federal high-cost universal service support for the applicable certification period.<sup>5</sup>

3. The Commission set forth specific certification periods in its rules. Under section 54.313(c)(2)(i) of the Commission's rules, states were required to file their certifications by October 1, 2000 in order for non-rural carriers serving high-cost areas in the state to receive support for the first, second, third, and fourth quarters of calendar year 2001.<sup>6</sup> If a state does not file before October 1, 2000, but files its certification before January 1, 2001, non-rural carriers in that state will receive support for only the second, third, and fourth quarters of calendar year 2001.<sup>7</sup>

4. On October 23, 2000, the West Virginia Commission submitted its section 54.313 certification on behalf of Verizon West Virginia, the only non-rural carrier in the state of West Virginia.<sup>8</sup> In its certification letter, the West Virginia Commission recognized that its filing was untimely, and requested that the Commission nevertheless accept its certification for funding for the entire calendar year of 2001.<sup>9</sup> The West Virginia Commission stated that its failure to meet the October 23, 2001 deadline was "inadvertent" and resulted from the fact that universal service funding requirements for the year 2001 in West Virginia had not been calculated as of October 1, 2000.<sup>10</sup> The West Virginia Commission subsequently filed a separate petition requesting that the Commission consider the West Virginia Commission's October 23, 2000 certification letter out-

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*Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Record 8077 (1999) (subsequent history omitted) (*Seventh Report and Order*).

<sup>3</sup> See *Ninth Report and Order*, 14 FCC Rcd at 20481-88, paras. 93-110. See also 47 C.F.R. § 54.313 *et seq.* This requirement is hereafter referred to as "section 54.313 certification."

<sup>4</sup> *Ninth Report and Order*, 14 FCC Rcd at 20483-84, para. 97. 47 U.S.C. § 254(e) requires that carriers use high-cost support only for the "provision, maintenance, and upgrading of facilities and services for which the support is intended."

<sup>5</sup> *Ninth Report and Order*, 14 FCC Rcd at 20484, para. 98.

<sup>6</sup> 47 C.F.R. § 54.313(c)(2)(i).

<sup>7</sup> See 47 C.F.R. § 54.313(c)(2)(ii).

<sup>8</sup> Letter of Charlotte R. Lane, Chairman, West Virginia Public Service Commission, to Magalie Roman Salas, Secretary, FCC, filed October 23, 2000.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 2.

of-time and allow non-rural carriers in West Virginia to receive federal high-cost universal service funding for the entire calendar year 2001.<sup>11</sup>

## II. DISCUSSION

5. As an initial matter, we note that the West Virginia Commission's October 23, 2000 certification does, under the Commission's rules, ensure that non-rural carriers in West Virginia will be able to receive high-cost support for the second, third, and fourth quarters of calendar year 2001.<sup>12</sup> At issue here is whether or not the West Virginia Commission is entitled to a waiver of the October 1, 2000 filing deadline to ensure that non-rural carriers serving in West Virginia will also receive high-cost support for the first quarter of calendar year 2001.

6. The Commission may waive any provision of its rules on its own motion and for good cause shown.<sup>13</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup> In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>16</sup>

7. We conclude that special circumstances exist to justify a waiver of section 54.313(c)(2)(i) of our rules as requested by the West Virginia Commission. Specifically, we find that the potential harm that would be suffered by customers of non-rural carriers in West Virginia, as a consequence of the West Virginia Commission's failure to timely file its section 54.313 certification before the October 1, 2000 deadline, justifies a waiver in this instance. We note that the potential harm caused by loss of one quarter of annual federal high-cost support is particularly egregious in a state such as West Virginia, which historically has service costs in excess of the national average.<sup>17</sup> We believe, therefore, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant the Petition and thus provide federal high-cost support to non-rural carriers in West Virginia for the first quarter of 2001.

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<sup>11</sup> Petition at 2.

<sup>12</sup> States that file their certifications prior to January 1, 2001 are entitled to receive federal high-cost support for non-rural carriers for the second, third and fourth quarters of calendar year 2001. See 47 C.F.R. § 54.313(c)(2)(ii).

<sup>13</sup> 47 C.F.R. §1.3.

<sup>14</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>15</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>16</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>17</sup> According to the most recent publicly-available Bureau data, the average per-line cost per month in West Virginia was \$35.69, well in excess of the national average per-line cost per month of \$23.35. See Common Carrier Bureau, Wirecenter Support Spreadsheet, Revised Model Results (January 20, 2000), at [www.fcc.gov/ccb/apd/hcpm](http://www.fcc.gov/ccb/apd/hcpm).

8. While we are, as a general matter, reluctant to grant waivers of Commission rules, especially waivers of the section 54.313 certification requirements, we note that the West Virginia Commission has made the necessary certification, albeit untimely. We thus have no reason to believe that non-rural carriers in the state of West Virginia will use federal high-cost support for the first quarter of 2001 in a manner contrary to the direction of section 254 of the Act. Although we are granting the waiver of section 54.313 of our rules and conclude in this Order that non-rural carriers serving in West Virginia shall be allowed to receive federal high-cost universal service support for the entire calendar year of 2001, we caution the West Virginia Commission that, in subsequent program years, it should take steps to ensure that all applicable certifications necessary to secure federal high-cost support are filed with the Commission before the expiration of the applicable filing deadline.

### III. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 U.S.C. § 1.3, that the Petition for waiver of section 54.313(c)(2)(i) of the Commission's rules, 47 C.F.R. § 54.313(c)(2)(i), filed by the West Virginia Public Service Commission on January 29, 2001, IS GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary