

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-25  
Public Service Commission, on )  
its own motion, to establish )  
guidelines for the purpose ) PROGRESSION ORDER #4  
of certifying the use of )  
federal universal service )  
support. ) Entered: October 16, 2001

BY THE COMMISSION:

1. On August 21, 2001, the Commission entered Progression Order #1 in this docket, establishing self-certification as the Commission's process for verifying whether all federal high-cost support will be used for its intended purpose, pursuant to 47 C.F.R § 54.314. Progression Order #1 required each rural incumbent local exchange carrier and/or eligible telecommunications carrier to file a notarized copy of an affidavit certifying whether federal high-cost support is being used consistent with section 254(e) of the Telecommunications Act of 1996<sup>1</sup> on or before September 14, 2001.

O P I N I O N   A N D   F I N D I N G S

2. Although Progression Order #1 did not contemplate receiving filings after the September 14, 2001 deadline, there may be other carriers that wish to receive universal service funds that did not file an affidavit by that deadline.

3. FCC rules and regulations set a schedule of deadlines for State Commission to file certifications. See 47 C.F.R. § 54.314(d). Carriers for which certifications are filed on before October 1 will receive support for all four quarters of the succeeding year. Carriers for which certifications are filed on or before January 1 will receive support for the second, third and fourth quarters of that year. Carriers for which certifications are filed on or before April 1 will receive support for the third and fourth quarters of that year. Carriers for which certifications are filed on or before July 1 of will receive support for the fourth quarter of that year. Id.

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<sup>1</sup> 47 U.S.C. § 254(e).

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4. Therefore, the Commission will continue to accept affidavits on this docket and will file corresponding certifications with the FCC and USAC in a timely fashion. To ensure that the Commission will have adequate time to enter an order approving affidavits, carriers should file affidavits at least one month prior to the applicable FCC deadline.

5. The Commission finds that the following carrier filed a properly completed affidavit:

WWC License LLC, also known as Western  
Wireless Corporation

6. Accordingly, the Commission will provide certification to USAC and the FCC that the above-listed carrier will use federal high-cost support only for the provision, maintenance, and upgrading of facilities and/or service for which the support is intended in accordance with section 254(e) of the Telecommunications Act of 1996, as amended.

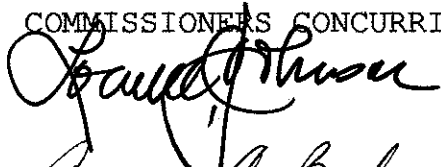

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the affidavit filed by the above-referenced carriers is approved.

MADE AND ENTERED at Lincoln, NE this 16<sup>th</sup> day of  
October, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
  
Chairman

//s//Frank E. Landis

ATTEST:

  
Executive Director

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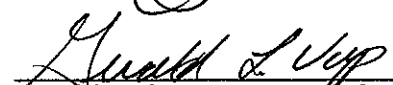
Commissioners Rod Johnson and Gerald L. Vap dissenting:

We write separately to renew our objection to the Commission's action today which furthers the ability of Western Wireless to receive federal universal service support. We believe that the Commission is divested of the subject matter jurisdiction and cannot take these post-appeal steps to effectuate its November 21, 2000, order after the perfection of the appeal. We also believe certifying to the FCC that Western Wireless as an Eligible Telecommunications Carrier will use high-cost support in accordance with 254(e) violates the automatic stay rule provided in *Neb. Rev. Stat. § 75-134(3) (Cum. Supp. 2000)*.

Once the appeal was perfected, the Commission was divested of subject matter jurisdiction. *Norwest Bank Nebraska, N.S. v. Bellevue Bridge Comm'n*, 7 Neb. App. 750, 585 N.W.2d 505 (1998). We believe this Commission lacks jurisdiction to enter any additional orders affecting Western Wireless' ability to receive federal universal service support until the Nebraska Supreme Court issues its mandate. Any formal action on the part of this Commission without subject matter jurisdiction is void. Moreover, *Neb. Rev. Stat. § 75-134(3) (Cum. Supp. 2000)* provides that except in certain limited circumstances, which are inapplicable here, an order appealed to the Court of Appeals shall be held in abeyance until a mandate is issued by the court or by Nebraska Supreme Court. Accordingly, we believe the Commission's present action, effectively violates the automatic stay rule found in *Neb. Rev. Stat. § 75-134(3) (Cum. Supp. 2000)*.

The Commission's order approving the affidavit filed by Western Wireless with the intent on forwarding it to the FCC, is an additional step which facilitates Western Wireless' operations as an Eligible Telecommunications Carrier and its ability to receive federal universal service funds. We believe this action is premature and that the Commission should wait until the appeal process has been completed before taking any further action.

  
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Commissioner Rod Johnson

  
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Commissioner Gerald L. Vap

ATTEST:

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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