

# Memorandum

To: Commissioners Christmann, Haugen-Hoffart and Fedorchak

From: Victor Schock, Director of Public Utilities

VS

Date: August 21, 2023

Re: Public Service Commission, USF Use Certification 47 CFR 54.314 (2024), Compliance, Case No. PU-23-16

On May 23, 2001, the Federal Communications Commission (FCC) released its Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 (FCC Order). This FCC Order requires each state public utility regulatory authority to file an annual certification to the FCC to ensure that rural telecommunications carriers receiving universal service support are using that support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

On July 26, 2001, in case PU-439-01-460, the North Dakota Public Service Commission (PSC) issued a notice of informal hearing and request for comments on this matter.

On August 15, 2001, the Rural Telephone Company Group (RTCG) filed comments in response to the PSC's request. The RTCG is an association of independent telephone companies serving customers in North Dakota's rural areas. On August 16, 2001, Western Wireless Corporation, d/b/a Cellular One (Western Wireless) filed comments limited to discussion of certification issues. These parties also commented at the informal hearing which was held as scheduled on August 22, 2001.

On August 28, 2001, the PSC issued an Order indicating that any telecommunications carrier providing local exchange service in North Dakota that desires to have PSC certification to the FCC pursuant to 47 C.F.R. §§54.313 or 54.314 shall file an affidavit with the PSC by September 14, 2001, as described in the Order, certifying that federal support they receive is used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended as required by Section 254(e).

The August 28, 2001, PSC Order was essentially a compromise position between the PSC and rural telecommunications carriers in North Dakota. In order to provide an affidavit in certification of the use of universal service support, it would be preferable to have access to each carrier's books and records in order to make a proper assessment of the use of said support. However, given that the North Dakota Legislature has not given the PSC to have such authority with rural telecommunications carriers, an alternative was

proposed. This alternative calls for each rural telecommunication carrier who desires the PSC to certify to the FCC on their behalf to file an affidavit signed by a corporate officer.

Considering that the 22<sup>nd</sup> anniversary of this implementation (and a query by Commissioner Fedorchak), I have reviewed this filing with the Broadband Association of North Dakota (BAND) and done a deeper dive into the details. My findings are as follows:

1. The Commission's certification to the FCC specifically states that our certification is based upon the signed affidavits that we have received from the carriers we are certifying for. This provides some protection to us in that we are not independently certifying the financials and/or usage of the universal service funding.
2. BAND is willing to continue discussions on the topic. My hope is that this will lead to many of their members completing their own certifications to the FCC in future years.
3. We receive a significant amount of paperwork on telecommunications carriers. I have reviewed approximately 600 pages of documents in my research of this topic. Most of those pages were annual filings and/or trade secret information.
4. Based upon item number 3, it became apparent to me that we have another efficiency and red tape reduction opportunity. North Dakota Administrative Code Section 69-09-05-12.1 requires extensive annual reports to be filed by eligible telecommunications carriers (ETCs). I suggest we consider changing this annual filing requirement in favor of to be furnished upon request of the Commission. I will add this as something to consider for the next rules package update.

Based upon this analysis, I recommend the Commission proceed with the annual certification as we have done previously and look to minimize unnecessary work on both the part of the Commission and telecommunications carriers in North Dakota.