

THE STATE CORPORATION COMMISSION-
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of a General Investigation to)
Ensure Compliance with Section 254(e) of the) Docket No. 01-GIMT-595-GIT
Federal Telecommunications Act of 1996.)

**ORDER 1: OPENING DOCKET TO EXAMINE METHODS OF ENSURING
COMPLIANCE WITH SECTION 254(e) OF THE FEDERAL
TELECOMMUNICATIONS ACT OF 1996,
ASSESSING COSTS AND ESTABLISHING PROCEDURAL SCHEDULE**

NOW, the above-captioned matter comes for consideration and determination before the State Corporation Commission of the State of Kansas (“Commission”). Having reviewed its files and being fully advised of all matters of record, the Commission finds and concludes as follows:

1. Section 254(e) of the Federal Telecommunications Act of 1996 provides that carriers receiving universal service support shall use the support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The FCC, in the *Further Notice of Proposed Rulemaking* in CC Docket 96-45, FCC 01-8, released January 12, 2001, stated at paragraph 2 1, that

[t]he Rural Task Force also proposes extension of the section 254(e) certification process to rural carriers. Under this process state regulatory commissions would provide the Commission with annual certifications indicating that the carriers in their states receiving federal universal service support will use the support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Also, in the *Ninth Report & Order and Eighteenth Order on Reconsideration* in the same docket, FCC 99-306, released November 2, 1999, the FCC stated, at paragraph 93:

Section 254(e) of the Act states that carriers must use universal service support “only for the provision, maintenance and upgrading of facilities and services for which the support is intended.” In the *Seventh Report and Order*, the Commission concluded that carriers receiving federal universal service high-cost support must apply that support in a manner consistent with section 254(e). The Commission also concluded that, if it finds that a carrier has not applied its high-cost support in a manner consistent with section 254, the Commission has the authority to take appropriate enforcement action.

This order continues, at paragraph 95 to state, in part:

[w]e anticipate that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being Applied in a manner consistent with section 254, and then certify to the Commission that federal high-cost support received by non-rural carriers in their states is being used appropriately. Because the support that will be provided by the methodology described in this Order is intended to enable the reasonable comparability of *intrastate* rates, and states have primary jurisdiction over intrastate rates, we find that it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).

The Commission, therefore, finds that it is necessary to open this docket to explore fulfilling the current requirements for non-rural carriers and the anticipated requirements for rural carriers, as set forth, above.

2. The Commission issues this order to open a docket to determine a mechanism to monitor how companies receiving universal service support, both federal and Kansas universal service support, utilize that support. To that end, the Commission solicits comments from incumbent and competitive local exchange carriers and wireless service providers certificated in the state of Kansas on how the Commission can best monitor how universal service support is utilized by companies receiving such support and suggestions on developing a monitoring mechanism to reach that goal.

3. The Commission sets an initial deadline for entries of appearance to be filed by Friday, February 16, 2001. The Commission establishes Friday, March 9, 2001, as the deadline for

initial comments, and Friday, March 30, 2001, as the deadline for reply comments. After completing its analysis of the comments, Staff should recommend future procedural steps to the Commission.

4. K.S.A. 66-1502(a) authorizes the Commission to assess the expenses of an investigation, opened on its own motion, against the public utilities if the expenses reasonably attributable to such investigation exceed the sum of \$100. The Commission makes all incumbent and competitive local exchange carriers and wireless service providers operating in the state parties to this investigation. The Commission will utilize members of its Staff in this investigation, and as deemed appropriate by the Commission, employ special assistants and consultants to investigate all matters connected with this proceeding. The Commission finds that the expenses reasonably attributable to this investigation will exceed \$100. The Commission concludes that the costs of this proceeding should be assessed to the incumbent and competitive local exchange carriers operating in this state. Wireless carriers will be assessed for costs attributable to their participation. This order constitutes notice of the assessment of the costs and the assessment will begin three business days after this order is mailed. Incumbent and competitive local exchange carriers and wireless carriers are hereby given notice that they may request a hearing as to the necessity of the investigation or the assessment of costs, in accordance with the provisions of the Kansas Administrative Procedure Act.

5. All parties to this docket will be served with this order and any other orders making substantive decisions. All parties that intend to actively participate in the docket and that wish to receive copies of comments and procedural orders must file an entry of appearance in order to be included on the restricted service list. Entries of appearance shall be filed no later than February 16, 2001, and Staff shall then prepare a service list and provide it to all parties that have entered appearances for the purpose of service of comments and pleadings.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. This docket shall be opened for the purpose of determining mechanisms to ensure compliance with Section 254(e) of the Federal Telecommunications Act of 1996.
- B. The procedural schedule set out above is adopted.
- C. All incumbent and competitive local exchange companies and wireless carriers are made parties to this docket, and costs are assessed as set out above.
- D. Entries of appearance shall be filed as set out above.
- E. Any party may file a petition for reconsideration of this Order within fifteen (15) days of the date this Order is served. If service is by mail, service is complete upon mailing and three (3) days may be added to the above time frame.
- F. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.


BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: JAN 22 2001

ORDER MAILED

JAN 23 2001

 Executive Director

Jeffrey S. Wagaman
Executive Director

CRH