

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: DISAGGREGATION OF FEDERAL HIGH-COST SUPPORT FOR RURAL CARRIERS | DOCKET NO. USP-01-2 |
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**SECOND ORDER ESTABLISHING PROCEDURES FOR
DISAGGREGATION OF FEDERAL HIGH-COST SUPPORT FUNDS**

(Issued October 16, 2001)

On May 23, 2001, the Federal Communications Commission (FCC) issued 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” (the FCC Order). The FCC Order generally adopted the recommendations of the Federal-State Joint Board on Universal Service and the Rural Task Force (RTF) regarding reform of universal service funding for rural carriers. The FCC Order delegates certain responsibilities to state regulatory authorities such as the Utilities Board (Board).

One of those delegated responsibilities is the subject of this docket: Each rural telecommunications carrier providing local exchange service in Iowa and receiving federal universal service funding will have to elect one of three options, or “Paths” in the FCC’s terminology, regarding disaggregation of its universal service funding. See 47 C.F.R. § 54.315. These carrier decisions must be filed with the Board, which will then have to certify those elections to the FCC and the Universal Service Administrative Company (USAC) by March 12, 2002.

On September 7, 2001, the Board issued an order in this docket proposing certain procedures for the fulfillment of this delegated duty. Because the certification of carrier disaggregation plans is due at the FCC on or before March 12, 2002, the Board found it necessary to proceed under the Board's existing general procedural rules, as modified and amplified by this order. Accordingly, the Board proposed to order the affected rural carriers in Iowa to make an election and file with the Board as follows:

1. If a carrier takes Path Two (custom disaggregation), it would file its plan with the Board no later than November 30, 2001, to allow time for Board review proceedings (whatever form they may take, which cannot be determined until the number of Path Two filings is known).

2. If a carrier takes Path Three (standard disaggregation), it would self-certify its plan to the Board (and USAC) no later than February 11, 2002. The plan would be filed with the Board and USAC, as well.

3. If a carrier takes Path One (no disaggregation), it would certify that decision to the Board (and USAC) no later than February 11, 2002. These deadlines will permit the Board to make the necessary certifications to the FCC and USAC by March 12, 2002.

In order to simplify and standardize the path election process as much as possible, the Board also proposed the following filing guidelines for carrier certifications:

1. Proposed filing guidelines for carriers selecting Path One, Two, or Three should include the following information:

(a) Each affidavit filed should be titled "Certification of Disaggregation Plan for Federal Universal Service Funds by [Company Name]" (the company name must be the same name shown on the carrier's tariff as filed with the Board);

(b) Name, address, and telephone number of the individual(s) to be contacted concerning the plan being filed;

(c) The Study Area Code (SAC) number that has been assigned to the carrier under the Federal Universal Service Fund program;

(d) A statement declaring the selected path for disaggregation; and

(e) The affidavit must be executed by an authorized corporate officer.

2. Carriers selecting Path Two or Three should file additional information

including:

(f) A listing of the zones with the per line support amount for each category of support (high-cost loop support, LSS, and LTS) in each zone and the percentage of each category of support allocated to each zone;

(g) A description of the rationale used including the methods and data for targeting support (if benchmarks are used, they should be identified and supported) and a statement describing the plan's compliance with the applicable requirements of 47 C.F.R. § 54.315.

(h) A description of each zone that is adequate to permit competitors to identify the support available for each line; and

(i) Maps meeting the requirements of IAC 22.20(3) with each zone identified.

3. Carriers selecting Path Three should file additional information

including:

(j) A statement within the affidavit indicating that support would be disaggregated to the wire center level or into no more than two cost zones per wire center. The statement may also indicate a different level of disaggregation if it has been previously determined by the Board to be appropriate; and

(k) A discussion of how the plan complies with the self-certification guidelines in the FCC Order and 47 C.F.R. § 54.315(d) and (e).

In the September 7, 2001, order, the Board emphasized that these were proposed guidelines. The Board directed its staff to hold a workshop, open to any interested persons, to discuss these proposed guidelines, along with any other issues that may arise in connection with carrier elections regarding disaggregation. The workshop was held on September 13, 2001. Based upon the industry comment received at that workshop, the Board now adopts its proposed guidelines, as set forth in the September 7, 2001, order, as a statement of the procedures and deadlines to be applied in this docket, with a few additional comments and clarifications.

The first clarification concerns the availability of Path Three (self-certified disaggregation) to carriers serving territories in which a competitive carrier is also certified as an eligible telecommunications carrier (ETC) pursuant to 199 IAC 39. The FCC Order provides that carriers experiencing this type of competition cannot self-certify under Path Three but must instead seek Board approval of a disaggregation and targeting plan under Path Two. Some incumbent carriers in Iowa serve territories in which a potential competitive carrier has been approved for certification as an ETC, but has not yet received a certificate of public convenience or necessity pursuant to Iowa Code § 476.29 (2001). Those incumbents asked whether the existence of an approved, but not yet certificated, competitor made Path Three unavailable to the incumbent.

The Board has reviewed the FCC Order and is of the opinion that the limitation on the availability of Path Three applies only to carriers with “study areas in which a

competitive carrier *has been designated as an eligible telecommunications carrier prior to the effective date of these rules ...*,” (referring to the FCC’s disaggregation rules). (FCC Order at paragraph 155, emphasis added.) Where a competitive carrier has been approved for ETC status, but has not yet received a certificate under § 476.29, the competitive carrier has not yet been “designated” as an ETC and cannot yet receive federal universal service funding. Therefore, the Board concludes that the existence of a potential competitive carrier with ETC status does not prevent an incumbent carrier from self-certifying a disaggregation and targeting plan under Path Three. That option is unavailable only if the competitive carrier is designated as an ETC and holds a certificate of public convenience and necessity from this Board.

The second clarification concerns another question asked by the workshop participants; it concerns the ability of the carriers to make an initial election and then change their position at some point in the future. Some of the carriers expressed a concern that the proposed schedule did not allow sufficient time for evaluation of their alternatives. In particular, they were concerned that they may not be able to fully evaluate a Path Two (custom disaggregation) plan by November 30, 2001. The Board appreciates this concern, but the Board is also constrained by the FCC’s deadline and the potential need to docket and hear a number of separate Path Two proceedings in the limited time between November 30, 2001, and March 12, 2002.

However, it appears there may be a solution to this problem. The FCC’s order modified the RTF recommendations by clarifying that carriers that initially elect Path One or Path Three may subsequently petition the Board for a change to a different disaggregation and targeting methodology, see FCC Order at paragraphs 149-154.

The FCC states that when considering modification requests of this nature, the state commissions must “safeguard against anti-competitive manipulation of the disaggregation and targeting of support that could occur with such requests.” (Id. at paragraph 154.)

Thus, it appears carriers may initially opt for Path One or Three while continuing to study the other options. Then, when the carrier determines the best of the available options, the carrier can petition the Board for modification of its disaggregation plan. In the absence of any objection or anticompetitive effect, the Board will be able to review the modification under the same standards that would have applied if the modification had been the carrier's initial election. Thus, the carrier can effectively delay a final election at the cost of a slightly increased risk of having to defend its election at hearing. This will not be a perfect solution in all cases, and it would clearly be better if the carriers are able to make their final determination within the time frames proposed in the Board's September 7, 2001, order, but it appears this is the best available alternative for carriers that are unable, for whatever reason, to make a final determination in the limited time remaining for an initial election.

Finally, the Board will clarify a question regarding the number and service of the certification filings. First, carriers should file with the Board an original and three copies of their path selection. Second, carriers should also serve one complete copy of the filing on the Consumer Advocate Division of the Iowa Department of Justice, 310 Maple Street, Des Moines, Iowa 50319. Finally, in the case of a Path One or

Path Three election, the carrier shall also serve a complete copy of the filing on USAC at 2120 L Street, N.W., Suite 600, Washington, DC 20037.

IT IS THEREFORE ORDERED:

1. Rural telecommunications carriers in Iowa receiving federal universal service funding are required to make a disaggregation election pursuant to 47 C.F.R. § 54.315 and the FCC's "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 Docket No. 00-256," issued in CC Docket Nos. 96-45 and 00-256 on May 23, 2001, adl as described in this order and the Board's order issued in this docket on September 7, 2001.

2. The Board retains jurisdiction to issue further orders in this docket as may be appropriate.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 16th day of October, 2001.