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Public Service Commission of Wisconsin
RECEIVED: 07/28/06, 11:44:16 AM

Filed Via Electronic Regulatory Filing (ERF) System

July 28, 2006

Ms. Sandra Paske, Secretary to the Commission
Public Service Commission of Wisconsin
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

RE: Biennial Review of Universal Service Fund Rules, Docket 1-AC-198

Dear Ms. Paske:

On behalf of the Incumbent Local Exchange Carrier Division of the Wisconsin State Telecommunications Association, I file the attached Comments in the above referenced docket. These Comments are filed pursuant to the Notice Of Hearing dated June 2, 2006.

If you have any problems with this filing, please contact the Wisconsin State Telecommunications Association at (608) 256-8866.

**WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION
ILEC DIVISION**

By: /s/ Doug Wenzlaff
Doug Wenzlaff
CEO and General Manager, Solarus
On behalf of the ILEC Division,
Wisconsin State Telecommunications
Association

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Biennial Review of Universal Service)
Fund Rules)
)

1-AC-198

**COMMENTS OF THE ILEC DIVISION OF THE WISCONSIN STATE
TELECOMMUNICATIONS ASSOCIATION**

INTRODUCTION

The Incumbent Local Exchange Carrier (“ILEC”) Division of the Wisconsin State Telecommunications Association (“WSTA ILEC Division”) submits these Comments pursuant to the Public Service Commission of Wisconsin’s (the “Commission’s”) June 2, 2006 Notice of Hearing in this docket. *Biennial Review of Universal Service Fund Rules*, Public Service Commission of Wisconsin Docket 1-AC-198, Notice of Hearing (June 2, 2006) (hereinafter, the “*Notice of Hearing*”). The WSTA ILEC Division is an interested party in this docket because it includes all of Wisconsin’s ILECs, all of which could be directly affected by this issues raised in this docket.

The WSTA ILEC Division is in agreement with the Comments filed by the WSTA in this docket. However, with respect to the issue of assessing commercial mobile radio service (“CMRS”) providers for the state Universal Service Fund

(“USF”), the WSTA ILEC Division respectfully requests that the Commission reverse its earlier decisions and begin assessing CMRS providers.

COMMENTS

The Wisconsin statutes require that *all* telecommunications providers to contribute to the state USF. Wis. Stat. §196.218(3)(a)1. In fact, the statute is even broader in that it allows the Commission to assess a “person” to contribute to the fund, if the Commission finds that the person is providing a service the competes with a telecommunications service in the state. Wis. Stat. § 196.218(3)(a)2. In this context, CMRS providers clearly fit within the types of providers contemplated by the statute.¹

For a short period in the year 2000, the Commission applied this statute to CMRS providers. However, the Commission reversed course and exempted CMRS providers from assessment base pursuant to the allowances of Wis. Stat. § 196.218(3)(b). *Administration of the Universal Service Fund*, Public Service Commission of Wisconsin Docket No. 05-GF-104, Order at 1 (November 8, 2000) (the “*November 2000 Order*”). The Commission made this decision because “CMRS is an emerging telecommunications market” that was “adjunct to wireline service” and because CMRS providers could not collect monies by way of a surcharge. *Id.* The exemption in the *November 2000 Order* was later extended to the present day. *Administration of the*

¹ The Federal Communications Commission (“FCC”) reached this conclusion many years ago and has required assessments from wireless carriers for purposes of the federal USF. *See e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21255, ¶ 6 (1998) (setting the “safe harbor” level for USF assessment of wireless carriers)

Universal Service Fund, Order, Public Service Commission of Wisconsin Docket No. 05-GF-104 at 1 (December 20, 2001) (the “*December 2001 Order*”).

I. **THE REASONS FOR EXEMPTING WIRELESS PROVIDERS NO LONGER APPLY**

It would be difficult for anyone to argue that wireless service is an “emerging” technology anymore. Recently the FCC reported data that shows that there are more wireless numbers assigned in the country than wireline numbers. *See* Federal Communications Commission, Industry Analysis and Technology Competition Bureau, *Local Telephone Competition: Status as of June 30, 2005* at 2 (April 2006) (reporting 178.2 million wireline subscribers and 191.3 million wireless subscribers as of June 30, 2005). In Wisconsin, wireless has not surpassed wireline levels, but the two technologies are very close in the number of subscribers. *See id.* at Table 7 (reporting 3,370,193 access lines served by landline carriers in Wisconsin) and Table 14 (reporting 3,191,174 wireless subscriptions in Wisconsin).

The WSTA ILEC Division recognizes that many of the numbers reported in the FCC data reflects situation where customers are supplementing wireline service and purchasing one or more wireless subscriptions along with their landline. Regardless of this, the fact remains that wireless technology and the use thereof has grown dramatically in the past 5 years. It is no longer the nascent technology that it once was.

Additionally, the FCC issued an interpretation of the Telecommunications Act of 1996 that would preempt any Wisconsin statutes that would either prohibit or require CMRS providers to place a surcharge on their customer bills. *In the Matter of*

Truth-In-Billing and Billing Format, CC Docket 98-170, *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-In-Billing*, GC Docket 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking at ¶ 30 (March 18, 2005) (the “*FCC Truth-In-Billing Order*”)(citing 47 U.S.C. § 332(c)(3)(A) (finding that any state regulations that require or prohibit the use of line-item billing amounts constitutes impermissible rate regulation). If the Commission follows the *FCC Truth-In-Billing Order*, it would not apply the requirements or prohibitions of Wis. Stat. § 196.218(e) and (f) to CMRS providers, but would leave each carrier to decide how to recover the USF assessment amount. Such an action would be in compliance with the *FCC Truth-In-Billing Order* and allow the assessment of CMRS providers to resume.

It may be argued that, because so many people have both a wireline and wireless phone, including wireless providers in the assessment base would have the effect of “double assessing” consumers for the state USF. This argument must fail because the issue here is simply the assessment base. Since the total amount that needs to be assessed will remain the same (assuming the Commission does not seek and the Legislature does not change the current appropriation levels (*see*, Section II. below)), customers with both wireline and wireless phones will continue to pay roughly the same amount into the fund, with portions of the assessment being paid on each of the bills the customer receives.

II. ASSESSING CMRS PROVIDERS IS NOT A BLANK CHECK FOR ADDITIONAL PROGRAMS TO BE FUNDED BY TELECOMMUNICATIONS CUSTOMERS

The WSTA ILEC Division believes very strongly that increasing the assessment base by including CMRS providers is not a justification, or an indication of any support, for increasing the size or scope of the state USF. The current size of the USF and the current appropriation amounts are sufficient to fund the programs funded through the state USF. Indeed, recent increases to the size of the assessment amount have gone to fund programs and initiatives that are not generally viewed as “USF programs.” *See e.g.*, 2005 Wisconsin Act 25 (increasing the appropriation for library funding from the USF).

The WSTA ILEC Division believes that the assessment base for the state USF should include CMRS providers. However, increasing the number of providers that are subject to the USF assessment is not a reason to increase the total amount that providers are assessed.

III. ASSESSING CMRS PROVIDERS SHOULD BE MET WITH THE INCLUSION OF WIRELESS EQUIPMENT UNDER THE USF AND REPRESENTATION ON THE USF COUNCIL

As was noted at the recent (June 14th) hearing in this docket, many of the USF programs administered by the Commission are generally geared towards wireline-based services. As an example, the Telecommunications Equipment Purchase Program (TEPP) does not currently authorize the purchase of certain wireless-based devices such as Blackberry products. While these devices may be very beneficial to a disabled person, particularly given mobile nature of the devices, they are not currently

available to USF recipients. Including these types of devices may make the program more difficult to administer since it may result in a greater incentive to fraudulently use USF funding. However, it would only be fair to extend the availability of equipment choices along with the assessment requirements.

Additionally, the USF Council does not currently have any representation from wireless providers. Should the assessment base extend to these providers, fairness dictates that they should have a voice on the council that advises the Commission on the implementation of USF programs in the state.

CONCLUSION

The WSTA ILEC Council believes that, subject to the limitations and conditions addressed above, the Commission should resume the assessment of CMRS providers for purposes of the state USF.

Dated this 28th day of July, 2006.

WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION ILEC DIVISION

By: /s/ Doug Wenzlaff
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On behalf of the ILEC Division,
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