

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS)
COMMISSION and THE UNITED STATES OF)
AMERICA,)

Respondents.)

No. 00-1428

RECEIVED

NOV 15 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**MOTION OF FEDERAL COMMUNICATIONS COMMISSION
TO HOLD IN ABEYANCE AND TO DEFER FILING OF CERTIFIED INDEX
TO THE RECORD**

In this case, the United States Telecom Association (“USTA”) has petitioned for review of an August 10, 2000, declaratory ruling of the Federal Communications Commission.¹ Meanwhile, two other parties, both of whom have filed motions to intervene in the above-captioned case, have filed petitions for reconsideration of the Commission’s August 10 ruling. In light of these pending requests for reconsideration, the Commission respectfully moves that this case be held in abeyance until the Commission acts on the reconsideration petitions and that the filing of the certified index

¹ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10, 2000).

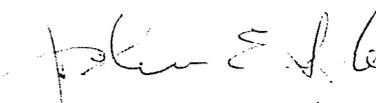
to the record be deferred pending action by the Commission on the reconsideration petitions.

In the declaratory ruling that is on review in this case, the Commission provided guidance to assist state commissions in fulfilling their obligation under section 214(e)(1) of the Communications Act of 1934, as amended, (the “Act”)² to designate carriers as eligible for federal universal service support. While USTA has petitioned for judicial review of the Commission’s declaratory ruling, two other parties – Project Telephone Company & Range Telephone Cooperative, and South Dakota Independent Telephone Coalition – have petitioned for Commission reconsideration of the same ruling. Those reconsideration petitions are now pending before the Commission.

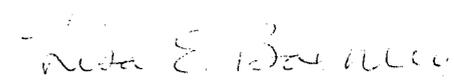
When petitions for judicial review of a Commission order and petitions for agency reconsideration of the same order have been filed by different parties, this Court’s usual practice is to hold the review proceeding in abeyance pending agency action on reconsideration. *See Wrather-Alvarez Broadcasting, Inc. v. FCC*, 248 F.2d 646, 649 (D.C. Cir. 1957). Consistent with this practice, the Commission respectfully asks the Court to “hold [this] appeal in abeyance pending the Commission’s further proceedings, keeping the record open for supplementation to reflect those proceedings.” *Wrather-Alvarez*, 248 F.2d at 649. Such an approach would promote judicial economy and efficiency. Finally, the Commission moves to defer filing of the certified index to the record until the Commission has ruled on the petitions for reconsideration pending before it.

² 47 U.S.C. § 214(e)(1).

Respectfully submitted,



John E. Ingle
Deputy Associate General Counsel



Lisa E. Boehley
Counsel

Federal Communications Commission
Washington, D.C.
(202) 418-1740

Nov. 9, 2000

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Telecom Association, Petitioner,

v.

Federal Communications Commission and USA, Respondents.

Certificate Of Service

I, Sharon D. Freeman, hereby certify that the foregoing "Motion Of Federal Communications Commission To Hold In Abeyance And To Defer Filing Of Certified Index To The Record" was served this 9th day of November, 2000, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

John B. Adams
Kraskin, Lesse & Cosson
2120 L Street, N.W.
Suite 520
Washington DC 20037

Richard D. Coit
South Dakota Independent Telephone Coalition
207 East Capitol, Suite 206
P.O. Box 57
Pierre SD 57501

Counsel For: Project Telephone Company, Inc.

Counsel For: South Dakota Independent Telephone Coalition, Inc.

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington DC 20037

William F. Maher, Jr.
Halprin, Temple, Goodman & Maher
555 12th Street, N.W.
Suite 950 North
Washington DC 20004

Counsel For: South Dakota Independent Telephone Coalition, Inc.

Counsel For: United States Telecom Association

Catherine G. O'Sullivan
United States Department of Justice
Antitrust Div., Appellate Section., Rm. 10535
Patrick Henry Bldg., 601 D Street, N.W.
Washington DC 20530

James Bradford Ramsay
NARUC
1101 Vermont Ave.
Suite 200
Washington DC 20005

Counsel For: USA

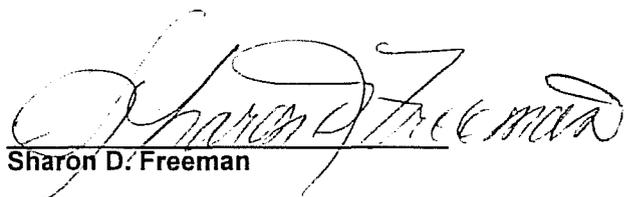
Counsel For: National Ass'n of Regulatory Utility Comm'rs

Lawrence E. Sarjeant
United States Telecom Association
1401 H Street, N.W., Suite 600
Washington DC 20005-2164

Rolayne Ailts Wiest
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol
Pierre SD 57501

Counsel For: United States Telecom Association

Counsel For: South Dakota Public Utilities Commission


Sharon D. Freeman