

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of an Investigation into the
Merits of Disaggregating the Service Area of
Frontier Communications of Minnesota, Inc.**

ISSUE DATE: September 1, 2000

DOCKET NO. P-405/CI-00-79

**ORDER DETERMINING THAT
FRONTIER'S SERVICE AREA BE
DISAGGREGATED**

PROCEDURAL HISTORY

On October 27, 1999, the Commission issued an Order¹ granting preliminary approval to Minnesota Cellular Corporation (now WWC Holding Co., Inc., hereafter Western Wireless) for designation as an “eligible telecommunications carrier” (ETC) under the Federal Telecommunications Act of 1996² (the 1996 Act). This Commission designation was requested by Western Wireless so that it would be eligible to receive federal universal service funds. The Commission granted preliminary ETC status for all of Western Wireless’ proposed service area.

Further, in the October 27, 1999 Order the Commission found that it was in the public interest to designate Western Wireless an ETC in the portions of its proposed service area that were served by rural telephone companies. In this Order the Commission rejected the claim of Frontier Communications of Minnesota (Frontier) that it was a rural telephone company.

¹ ORDER GRANTING PRELIMINARY APPROVAL AND REQUIRING FURTHER FILINGS, October 27, 1999, Docket No. P-5695/M-98-1285.

² Pub.L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of title 47, United States Code).

On February 10, 2000 the Commission issued an Order on Reconsideration³ finding that Frontier was a “rural telephone company” under the 1996 Act.⁴ The Commission rescinded its preliminary designation of Western Wireless as an ETC for the portions of Frontier’s service area which the company sought to serve. This rescission was necessary because Western Wireless could not serve all of the exchanges comprising Frontier’s Minnesota study area, as required for rural telephone companies.

In the February 10, 2000 Order the Commission opened an investigation into the merits of disaggregating Frontier’s service area into something less than its entire study area.

On June 13, 2000 Western Wireless filed comments with the Commission and on June 14, 2000 the Department of Commerce (DOC) and Frontier filed comments with the Commission.

Reply comments were received from the DOC on July 5, 2000, from Frontier on July 10, 2000 and from Western Wireless on July 11, 2000.

This matter came before the Commission on August 15, 2000.

FINDINGS AND CONCLUSIONS

I. The Issues in this Case

There are two issues to be addressed by the Commission in the present matter. The first issue is whether the Commission should disaggregate Frontier’s service area so that a federal ETC may serve only a portion of Frontier’s study area in Minnesota. The second issue is how or on what basis such disaggregation should be done. Whether Western Wireless, specifically, should be given federal ETC status for any of Frontier’s service areas is not an issue in this case.

II. Background and Legal Standard

In order to receive federal universal service funds a carrier must be designated an ETC. The State Commissions have responsibility for making this designation.⁵ To be designated an ETC, a common carrier must offer and advertise all of the supported services set forth in

³ ORDER ACTING ON PETITIONS FOR RECONSIDERATION AND OPENING INVESTIGATION, February 10, 2000, Docket No. P-5695/M-98-1285.

⁴ 47 U.S.C. § 153(37).

⁵ 47 U.S.C. § 214(e)(6).

the 1996 Act⁶ throughout the service area for which it seeks designation. The 1996 Act defines the term “service area” as a “geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.”⁷ In those areas served by a rural telephone company, the term “service area” means a company’s “study area,” unless the State and the Federal Communications Commission (FCC) establish a different definition of the service area for a company after taking into account recommendations of the Federal-State Joint Board on Universal Service.⁸

A rural local exchange carrier’s study area is generally defined as all of the company’s existing certificated exchange areas in a given State.⁹ In the present situation, since Frontier is a rural telephone carrier under the 1996 Act, the term “study area” refers to the area covering all of Frontier’s existing exchanges in Minnesota.

The State and the FCC, however, can establish a different definition for the service area.¹⁰ The FCC identified three factors, initially recommended by the Joint Board, which should be considered by the Commission and the FCC when determining the appropriateness of disaggregating a rural telephone company’s service area. The first factor to be considered is the risk of cream skimming, i.e., a competitive ETC selectively targeting service to low-cost exchanges of the rural telephone company. Second, consideration should be given to the regulatory status given rural local exchange carriers under the 1996 Act. Finally, the Commission should consider whether any additional administrative burdens might result from the disaggregation.¹¹

After the Commission approves a redefinition of the service area of a rural telephone company either the Commission or another party can submit a petition to the FCC for the redefinition of the service area.¹² The petition must include the proposed service area definition and the State Commission’s ruling or other official statement detailing the reasons for adopting the proposed definition. The new service area definition must take into account recommendations of any Federal-State Joint Board convened to provide recommendations

⁶ 47 C.F.R. § 54.101(a).

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

⁸ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

⁹ In the Matter of Federal-State Joint Board on Universal Service, First Report and Order, CC Docket 96-45, 12 FCC rcd. 8776, ¶ 172, fn. 434 (rel. May 8, 1997).

¹⁰ See footnote 8, above.

¹¹ In the Matter of Federal-State Board on Universal Service, CC Docket 96-45, 12 FCC Rcd. 87 (rel. Nov. 8, 1996)

¹² 47 CFR § 54.207(c)(1).

regarding the definition of service area.¹³

Once a petition is submitted seeking the FCC's consent, the FCC has 14 days within which to issue a public notice.¹⁴ The FCC may then choose to initiate a proceeding to consider the petition. If the FCC has not acted within 90 days after the public notice, the proposal is deemed approved and may take effect according to State procedures.¹⁵

III. Positions of the Parties

A. The DOC

1. Regarding Disaggregation of Frontier's Service Area

The DOC recommended that the Commission disaggregate Frontier's service area to define such service territory as something other than the company's entire study area. Without disaggregation, only a CLEC willing and able to serve all of Frontier's widespread exchanges would be able to be designated a federal ETC and be able to participate in any high-cost federal universal service program.

The DOC argued that it is in the public interest to define the service areas in a way that encourages competitive local exchange carriers (CLECs) to serve all or part of the Frontier territory. If Frontier's service area is not disaggregated, Frontier's customers would be denied the benefits of competition from carriers who are not able to serve the entire study area. If the service area is disaggregated, the benefits of Western Wireless' fixed wireless service and possibly service from other CLECs can be made available to customers in certain portions of Frontier's area.

The DOC in making its recommendation relied on its interpretation of applicable federal law. The DOC stated that the FCC's purpose in defining the service area of a rural incumbent local exchange carrier (ILEC) as the company's entire study area was to prevent CLECs from providing service only to low-cost areas served by the local ILEC.¹⁶

The DOC indicated that allowing Western Wireless ETC designation to serve those exchanges for which it has federal wireless authority will not be picking-off the low cost exchanges. The 29 exchanges included in Western Wireless' authorized wireless coverage area include lower-density, higher-cost exchanges. Frontier's higher-density, lower-cost exchanges in the Twin Cities metropolitan area are not in Western Wireless' coverage area.

¹³ 47 CFR § 54.207(c)(1)(ii).

¹⁴ Ibid at subd.(c)(2).

¹⁵ Ibid at subd.(c)(3)(ii).

¹⁶ See footnote 9, at ¶189.

The DOC also noted that the FCC addressed the concerns of wireless carriers and the difficulty of serving exchanges that are expansive and non-contiguous by encouraging state commissions to consider redefining the service areas of rural carriers to consist of only the contiguous portions of the rural ILEC study area.¹⁷

In response to Frontier's comments that there is no reason to disaggregate Frontier's service area now because Frontier receives no universal service funds, and therefore a CLEC would not be able to receive such funds, the DOC indicated that disaggregation should take place now so that Western Wireless and any other approved federal ETC could immediately take advantage of any new high-cost universal service fund program for which Frontier becomes eligible. The DOC argued that delaying disaggregation will delay the designation of federal ETC status in parts of Frontier's territory and may delay the provision of competitive local exchange service in these exchanges.

2. How Should the Service Area be Disaggregated

The DOC recommended disaggregating to the exchange level. Each Frontier exchange would be established as a separate service area for the purpose of federal ETC determination. The DOC stated that CLECs currently serve one or more of Frontier's exchanges without serving all of them. This would allow CLECs who are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve.

The DOC indicated that another approach to disaggregation could be to split off those exchanges that are within the authorized wireless service area of Western Wireless. The DOC argued, however, that such an approach was too specific to one provider and does not provide for the future when other CLECs may wish to get ETC status for a portion of Frontier's territory.

3. Comments on the Issues Raised by the Joint Board

The DOC argued that none of the concerns raised by the Joint Board should deter the Commission from approving the disaggregation of the service area from the study area to the individual exchange area. The first concern raised was the concern that a competitive ETC would selectively target service to only the lowest cost exchanges of the rural LEC's study area but would receive federal universal service payments based on the higher study area average cost. The DOC indicated that such a concern is not applicable because Frontier receives no federal high cost universal service support.

The second concern of the Joint Board was that the special status of rural telephone companies conferred by the 1996 Act be recognized. The disaggregation of Frontier's service area from the study area to the individual exchange does not change the careful

¹⁷ Ibid.

consideration the Commission must give to any application by a CLEC for federal ETC status in one or more Frontier exchange.

The final concern of the Joint Board was whether there would be additional administrative burdens due to the disaggregation. Because Frontier receives no high-cost support in Minnesota, this is not an issue at this time.

B. Western Wireless

1. Regarding Disaggregation of Frontier's Service Area

Western Wireless requested that the Commission disaggregate Frontier's service area for purposes of ETC designation. Western Wireless noted that Frontier is certificated to provide service in 45 scattered exchanges throughout Minnesota. Western Wireless is licensed and provides the FCC's supported services in 29 of the Frontier exchanges. Western Wireless, however, is precluded from being designated as an ETC in any of the Frontier exchanges because Western Wireless cannot serve them all.

Western Wireless argued that the disaggregation of Frontier's service area is necessary to promote competition and advance universal service. It argued that disaggregation is in the public interest because it will allow Western Wireless to bring new services and technologies to customers of Frontier, who now have no choice of providers. Frontier's wide-ranging study area poses an impenetrable barrier not only to Western Wireless but to any other competitive carrier, especially cellular carriers seeking ETC status. Because competitor and incumbent service territories are geographically different, it would be nearly impossible for any other competitive carrier to compete with Frontier.

2. How Should the Service Area be Disaggregated

Western Wireless supports the position and recommendation of the DOC that Frontier's service area be disaggregated on an exchange by exchange basis. The company claims that disaggregation on an individual exchange basis will preserve and advance universal service by establishing designated service areas that are more reflective of areas actually served. Western Wireless also believes that smaller service areas based on individual Frontier exchanges will be more accessible to new ETC providers and thus further the universal service goals and competition.

3. Comments on the Issues raised by the Joint Board

Regarding the issue of cream-skimming, Western Wireless indicated the risk of cream-skimming is not present. Western Wireless asserted that it seeks disaggregation so that it can be designated an ETC in those areas in which it is licensed and has the ability to provide facilities-based services. Included in these areas are areas of lower density and higher costs; excluded are the more urban areas which presumably represent areas of higher density and lower costs. Further, smaller service areas will be more accessible to new ETC providers

thereby furthering competition.

The Company mentioned that the disaggregation of Frontier's service area on an individual exchange basis will not compromise or impair Frontier's unique treatment as a rural telephone company under the 1996 Act. Frontier retains statutory exemptions from interconnection, unbundling and resale requirements¹⁸ even if its service area is disaggregated for purposes of ETC designations. Further, the 1996 Act requires that the public interest be a factor when considering the designation of ETC's in Frontier's service area.¹⁹ This public interest factor remains as an effective check to prevent the designation of an ETC which may seek to target only low cost areas. These factors indicate that Frontier's status as a rural telephone company will not impair Frontier's treatment as a rural telephone company.

Western Wireless argued that because Frontier receives no high-cost support from the federal Universal Service Fund, the third factor identified by the Joint Board, the question of additional administrative burdens, is not an issue.

C. Frontier's Comments

1. Regarding Disaggregation of Frontier's Service Area

Frontier stated that it does not receive any federal universal service funding, notwithstanding the fact that it is a "rural telephone company." A rural telephone company may receive funding for three cost components if it meets eligibility requirements; however Frontier does not meet these requirements. Since an ETC's federal universal support is based on the federal universal support that the incumbent LEC receives for serving the same area,²⁰ Western Wireless cannot receive any federal universal support for serving any Frontier area in Minnesota. Because of this, Frontier argues that the present proceeding on disaggregation of Frontier's service area serves no practical purpose. Frontier also questions how the public interest could benefit from the proposed disaggregation when there is no financial benefit to Western Wireless as a competitor.

Frontier also argued that the Commission's authority extends only to the disaggregation of service areas, not study areas, and requests that to the extent the Commission considers disaggregation, it should consider disaggregation of "service areas," not Frontier's "study area." Frontier argued that neither the 1996 Act nor the rules authorizes disaggregation of "study areas" but there are provisions for disaggregating "service areas".

Frontier also indicated concern that there could be a significant potential for unknown

¹⁸ 47 U.S.C. § 251(c).

¹⁹ 47 U.S.C.214(e)(2).

²⁰ 47 C.F.R. § 307.

administrative costs if Frontier's service area is disaggregated.

2. How Should the Service Area be Disaggregated

Frontier recommends that any disaggregation should be based on contiguous areas. Frontier argued that the 29 exchanges Western Wireless has the authority to serve are functionally contiguous and if there is disaggregation it should be based on these areas.

Frontier stated that the proposed disaggregation on the exchange level is far more extensive than Western Wireless needs to provide service and includes 16 exchanges that are outside of Western Wireless' service area. It argued that with disaggregation on the exchange level nothing would prevent another carrier coming in and providing ETC service only to Frontier's low-cost individual exchanges. Until the Commission knows whether Frontier will receive any universal service support and how such support would be determined and distributed, Frontier argued that it is premature to impose disaggregation on an individual exchange basis.

IV. Commission Action

The Commission agrees with the DOC in recognizing that the goals of increasing competition, customer choice, new technologies and innovative services would be served if CLECs could serve all or part of Frontier's territory. The Commission recognizes that Frontier currently receives no federal high-cost subsidies and that CLECs would currently be able to receive only the same high-cost subsidies that Frontier is eligible to receive. However, the Commission believes that disaggregating at this time is appropriate to avoid delays in the ability of CLECs to receive any high-cost universal funding for which Frontier may become eligible.

Delaying disaggregation will delay the designation of federal ETC status for parts of the Frontier territory and may delay competitive local exchange services in those exchanges. Without disaggregation only a CLEC willing and able to serve the entire Frontier study area will be eligible to be designated a federal ETC and be eligible for any federal high-cost subsidies that become available. Further, delaying disaggregation causes uncertainty about the ability to receive any universal service funds in the future and may delay or discourage CLECs from providing service at all in Frontier's service area.

The Commission also agrees that the Frontier service area should be disaggregated on an exchange by exchange basis as this would allow CLECs which are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve. Frontier is currently a multi-exchange rural telephone company. Frontier's current Minnesota study area is comprised of 45 separate exchanges located in the Southwestern, South Central and the Twin Cities areas of the state. The most logical way to disaggregate is by individual exchange areas. Redefining Frontier's service area into 45 separate service areas based on individual exchanges for ETC designation will promote competition by eliminating a barrier to entry into the universal services market.

In reaching its conclusions on redefining the service area of Frontier, a rural local exchange carrier, the Commission considered the concerns cited by the Federal-State Joint Board. The Commission concludes that the concerns raised by the Joint Board do not preclude the disaggregation of Frontier’s service area from the study area to the individual exchange area.

The Commission recognizes that the cream skimming issue, when a CLEC chooses to provide service in a low-cost exchange but may receive federal universal service payments based on the higher study area average cost, does not apply to Frontier at this time because Frontier currently receives no federal high-cost universal support. For the same reason, the issue of increased administrative expenses to Frontier does not apply at this time.

The Commission also considered the concern of the Joint Board that the special status of a rural telephone company that is conferred by the 1996 Act be recognized. The Commission has expressly determined that Frontier is a rural telephone company under the 1996 Act. This determination entitles Frontier to special status under the Act²¹ and the statutory exemptions granted under this provision, exemptions from interconnection, unbundling and resale requirements, will remain in effect even if Frontier’s service area is disaggregated. Further, the disaggregation of Frontier’s service area from the study area to the individual exchange does not reduce the careful consideration, including a determination of public interest, that the Commission must give to any application by a CLEC for ETC status in Frontier’s service area.

The Commission is in agreement that the Commission has authority to change the “service area” not the “study area” of a rural telephone company and will change the caption of this proceeding, which inadvertently used the term “study area.”

For all of these reasons, the Commission will authorize the Executive Secretary to file a petition with the FCC to disaggregate Frontier’s service area on an individual exchange basis for ETC purposes.

Western Wireless, in its earlier petition for designation as a ETC, indicated its intention to be designated an ETC in certain exchanges in Frontier’s service area. For this reason, the Commission will direct Western Wireless to request the addition of the Frontier exchanges to the area for which it has received designation as an ETC.

ORDER

- 1. The Commission determines that Frontier’s service area be disaggregated on an individual exchange basis for ETC purposes.**

²¹ 47 U.S.C. § 251(f).

2. The Commission's authorizes the Executive Secretary to file an application with the FCC requesting consent to its proposed alternative service area definition for Frontier's Minnesota service territory.
3. The caption in this docket P-405/CI-00-79 is hereby changed from referring to Frontier's "study area" to Frontier's "service area."
4. Western Wireless shall file a petition with the Commission to request addition of the Frontier exchanges to the area for which it has received designation as a federal ETC.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

**Burl W. Haar
Executive Secretary**

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