

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by RCC
Minnesota, Inc. and Wireless Alliance, L.L.C.
for Designation as an Eligible
Telecommunications Carrier Under 47 U.S.C.
§ 214(e)(2)

ISSUE DATE: November 4, 2002

DOCKET NO. PT-6182/M-02-1503

ORDER REQUIRING ADDITIONAL
FILING, VARYING TIME PERIOD AND
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On September 10, 2002, RCC Minnesota, Inc. and Wireless Alliance, LLC, together as the affiliates of Rural Cellular Corporation providing service in Minnesota (collectively RCC) submitted a Petition for Designation as an Eligible Telecommunications Carrier (ETC).¹ RCC requested that the Commission designate it as eligible to receive all available support from the federal Universal Service Fund (USF) including support for rural, insular and high-cost areas and low income customers.

RCC made a corrected filing on September 16, 2002, upon receipt of a Commission Notice of Deficient Filing of Protected Data.

On September 23, 2002, Minnesota Independent Coalition (MIC) filed a Petition to Intervene and a Challenge to Completeness of the Petition.

On September 30, 2002, Citizens Telecommunications Company of Minnesota, Inc. (Citizens) filed Comments and a Petition to Intervene, MIC filed comments, and the Department of Commerce (DOC) filed comments.

On October 4, 2002, RCC filed its response to MIC's Challenge to Completeness of Petition.

On October 10, 2002, MIC filed reply comments to the initial comments filed by Citizens and the DOC. Citizens also filed a response to the DOC's comments.

¹ Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214 (e)(2) and Section 54.201 of Federal Communications Commission's (FCC) rules, 47 C.F.R. § 54.201.

On October 11, 2002, RCC filed a response to the initial comments of MIC.

On October 16, 2002, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

This Order addresses only procedural matters pertaining to the request of RCC for designation as an ETC provider and makes no determination on the merits. Specifically it addresses the completeness of RCC's application, the 180-day review period, the issue of further proceedings, and RCC's request to waive the CLEC requirement in Minn. Rule part 7811.1400, subp.2.

I. Summary of RCC's Petition

RCC, a Commercial Mobile Radio Service carrier providing mobile service² and interstate telecommunications services,³ requested that the Commission designate it an ETC and eligible to receive all available support from the federal Universal Service Fund.

RCC seeks ETC designation in areas where it is currently licensed to provide Personal Communications Service (PCS) and cellular service, generally in the northern and central part of Minnesota.

Specifically, RCC seeks immediate ETC designation in 68 Qwest wire centers that it intends to cover and in the study areas of 36 local exchange carriers (LECs) that it intends to cover in their entirety. In addition, RCC is requesting the Commission to disaggregate or redefine the study areas of several rural LECs because RCC intends to serve only certain wire centers, or portions thereof, in these areas.

RCC stated that it provides all the services required by federal regulation⁴ throughout its licensed service area, and that it provides a variety of local usage levels. RCC indicated that it uses its own facilities including its own wireless antennas, towers, and mobile switching offices.

II. Jurisdiction

The Commission has jurisdiction over the designation of ETC's pursuant to 47 U.S.C. § 214(e).

² As defined in 47 U.S.C. §153(27).

³ As defined in 47 U.S.C. §254(d) and 47 C.F.R. §54.703(a).

⁴ 47 C.F.R. § 54.101(a).

III. Completeness of RCC's Petition and the Start of the 180-day Review Period

A. Position of the Parties

1. MIC⁵

MIC argued that the petition must provide the basic information on all issues that the Commission must consider. MIC states that RCC's petition is not complete because it does not:

- include a price list or a tariff showing the type, prices and terms of service for which RCC seeks universal service support;
- indicate the total amount of Federal Universal Service Fund (USF) funding which it will receive if the petition is granted.

Further, it argued that without the necessary information regarding the services for which it would be seeking USF funding, the affordability of those services and the total amount of USF funding that it anticipates, the Commission cannot begin a reasonable review to determine whether designating RCC as an competitive ETC is in the public interest.⁶

MIC recommended that the petition be dismissed or the 180-day time period set by Minn. Rule part 7811.1400, subp. 12 should be suspended until more complete information is provided.

2. DOC

Although RCC described a basic universal service package and offers a pricing plan, the DOC argued that it was not clear from the petition whether RCC was seeking universal support for all its cellular offerings or for its basic package only. Further, the DOC argued that RCC did not describe its service offerings in sufficient detail for the Commission to determine whether its offerings were affordable, or even whether all of the offerings included all of the supported services.

The DOC stated that RCC did not include a formal advertising plan with its petition, nor has it provided details regarding its plans to advertise its universal service offerings and the availability of Lifeline and Linkup, federal telephone service discount programs, for qualifying customers.

Further, the DOC argued that RCC has not submitted a tariff or price list which includes the terms and conditions of its universal service offerings nor has it submitted a list or description of the facilities used to provide service.

The DOC recommended that RCC be required to submit further information prior to the Commission evaluating the merits of the case. It recommended that the 180 day time period to make a determination on RCC's request begin upon the receipt of the following information:

⁵

Minnesota Independent Coalition consists of over 60 small rural local exchange carriers including a number of small rural local exchange carriers which provide local exchange service in the area for which RCC seeks certification as an ETC.

⁶ As required by 47 U.S.C. § 214(e)(2) and Minn. Rule, part 7811.1400, subp. 2.

- a formal tariff incorporating RCC's service quality plan, and showing the prices, terms, and conditions of all offered services for which RCC seeks universal service support;
- an advertising plan;
- a list of facilities used to provide service in the service area in which RCC seeks ETC certification.

3. Citizens

Citizens stated that it was in agreement with the DOC's recommendations for additional information to be submitted prior to the 180-day time period starting.

4. RCC's Reply

RCC argued that the Challenge to Completeness of Petition filed by MIC should be denied and the Commission should proceed with the consideration of RCC's petition in accordance with the 180-day time period for final resolution starting from September 10, 2002, the date RCC filed its petition.

RCC argued that MIC's Challenge to Completeness is a delaying tactic in order to preserve the monopoly status that many MIC members currently enjoy. It argued that only incumbent local exchange carriers (ILECs) receive federal USF support, which gives the ILECs a clear competitive advantage. Unless RCC is designated an ETC it cannot receive such support and the ILECs maintain their competitive advantage.

Further, RCC argued that the additional information sought by the MIC is irrelevant to the issues to be addressed in designating RCC as an ETC. It argued that it has agreed to provide a basic universal service option that provides unlimited local calling at a flat fee of \$14.99 and that the rates charged by RCC for enhanced feature packages is not relevant to the ETC designation inquiry. The only relevant inquiry is the affordability of the basic service offering provided by RCC.

B. Commission Action on the Completeness of the Application and the Start of the 180-day Review Period

The Commission agrees with the parties that in order to meaningfully review the merits of RCC's application additional information is required. The Commission will require RCC to file additional information that is necessary for the Commission to critically evaluate such issues as affordability of rates, service quality, and reliability of service.

The Commission will order RCC to file the following information that was not included in RCC's application:

- price list or tariff showing the type, prices and terms of service, including local usage levels and calling areas, for which RCC seeks universal service support;
- an advertising plan;
- a list of facilities used to provide the service in the service area in which RCC seeks certification.
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Further, the 180-day time period for Commission action will not begin until the above information is filed.

IV. Further Procedures

A. Position of the Parties

1. DOC

The DOC stated that many of the factual, policy and legal issues raised by the RCC petition are similar to those being addressed by the Commission in the Midwest Wireless case.⁷ The DOC recommended that , if no unique issues are identified in the RCC case, that the Commission conduct an expedited proceeding at the close of the Midwest Wireless case to evaluate the merits of RCC's position.

At the hearing before the Commission, the DOC agreed that the facts in the RCC case were unique and recommended that the Commission refer this to the Office of Administrative Hearings for a contested case proceeding.

2. MIC and Citizens

Both MIC and Citizens recommended that this matter be referred to the Office of Administrative Hearings for a contested case proceeding. They both argued that the facts in this case were unique and therefore were best addressed in a contested case proceeding.

3. RCC

RCC did not object to the matter being referred for a contested case hearing but did request that the Commission process its Petition in accordance with the schedule set forth in Minn. Rules, part 7811.1400.

B. Commission Action on Further Proceedings

The Commission refers this matter to the OAH for a contested case proceeding upon receipt of RCC's filing of the material listed in section III B, above. It recognizes that a contested case proceeding would be the most efficient way to develop a full and complete record in the limited time available.

V. RCC's Request for a Waiver of the CLEC Requirement for an ETC Designation

A. RCC's Request

RCC requested that the Commission waive Minn. Rule 7811.1400, subp.2, which provides in part:

⁷ *In the Matter of the Petition by Midwest Wireless Communications, L.L.C. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2)*, Docket No. P-573/AM-02-686. A Contested Case Hearing before an ALJ is scheduled for November 4-8, 2002, with the ALJ's report due on December 31, 2002 and Commission action expected in March 2003.

Designation of CLECs upon petition. Upon request and consistent with the public interest, convenience and necessity, the commission may designate a competitive local exchange carrier (CLEC) as an ETC and eligible to receive universal service support from the federal universal service support mechanisms under section 254 of the federal act and any state universal service fund

It argued that the Commission recognized in its Minnesota Cellular Order⁸ that one of the goals of the federal universal service rules is to open telecommunications markets to cable and wireless providers. In that Order the Commission did not require Western Wireless to be certificated as a CLEC to be granted ETC designation.

B. Commission Action

The Commission will not require that RCC be designated a CLEC in order to be given ETC status. It did not require Western Wireless to be designated a CLEC and will not require this of RCC.⁹ The Commission recognizes the federal directives and benefits of opening the telecommunications markets to other providers and supports designating ETC status on a competitively neutral basis.

VI. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kathleen Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7602.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

⁸ *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285, ORDER GRANTING PRELIMINARY APPROVAL AND REQUIRING FURTHER FILINGS, October 27, 1999.

⁹ *Id.*

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Lillian Brion Public Utilities Telephone Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)297-7864; or Karen Hammel, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-1852.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are RCC Minnesota, Inc. and Wireless Alliance, LLC, the Minnesota Department of Commerce, the Minnesota Independent Coalition, and Citizens Telecommunications Company of Minnesota, Inc. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on November 12, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission is required to act on the Companies' filing within 180 days of the filing of the petition. Minn. Rule part 7811.1400, subp. 12. Pursuant to this Order, the 180 day time period will start upon RCC's filing of the additional information required by the Commission.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of this time constraint. Parties should note the time constraints and be prepared for the expedited hearing schedule that time frame requires.

VII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VIII. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Tuesday, November 12, 2002, at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101
3. RCC shall file the following:
 - tariffs or price lists showing the list, prices and terms of offered services including local usage levels and calling areas, for which RCC seeks universal service support;
 - an advertising plan;
 - a list of facilities used to provide the services in the service area in which RCC seeks certification.

Upon the filing of this information, the 180-day time period for disposition of this case shall start.

4. The petitions for intervention by Citizens and MIC are granted.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Petition by RCC Minnesota, Inc. and Wireless Alliance, L.L.C. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2) MPUC Docket No. PT-6182,6181/M-02-1503
OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kathleen Sheehy, Office of Administrative Hearings, Suite, 1700, 100 Washington Square, Minneapolis, Minnesota 55401; (612) 341-7602.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____