

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of Midwest  
Wireless Communications, LLC, for  
Designation as an Eligible Telecommunications  
Carrier (ETC) Under 47 U.S.C. § 214(e)(2)

ISSUE DATE: August 5, 2003

DOCKET NO. PT-6153/AM-02-686

ORDER GRANTING APPROVAL AND  
REQUIRING FURTHER FILING

**PROCEDURAL HISTORY**

On May 7, 2002, Midwest Wireless Communications, LLC (Midwest) filed a petition under the federal Telecommunications Act of 1996<sup>1</sup> asking this Commission to designate it an “eligible telecommunications carrier” (ETC) in areas in central and southern Minnesota where it is currently licensed to provide cellular phone service. Midwest needs the designation to qualify for subsidies from the federal universal service fund.

On March 19, 2003, the Commission issued its ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING FURTHER FILINGS, provisionally designating Midwest an ETC and directing it to provide additional information and documents.

On April 18, 2003, Midwest made its compliance filing. On May 13 the Commission received comments from the Minnesota Department of Commerce (the Department), the Minnesota Independent Coalition (MIC), the Minnesota Office of Attorney General’s Residential and Small Business Utilities Division (OAG-RUD), and jointly from Citizens Telecommunications Company of Minnesota, Inc., and Frontier Communications of Minnesota, Inc. (Citizens/Frontier). On May 23 Midwest filed its response.

The issue came before the Commission on June 30, 2003.

**FINDINGS AND CONCLUSIONS**

**I. The Compliance Filing**

Midwest’s ETC application received preliminary approval based on a finding that Midwest had made a credible showing of its ability and intention to provide a high quality, affordable universal service offering throughout its proposed service area, and otherwise to fulfill the requirements for ETC designation. Final approval was conditioned upon Commission review and approval of a compliance filing, which was to include the following items:

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56, codified throughout title 47, United States Code.

- (a) information typically gathered from ETCs in the annual certifications,
- (b) information on rates, terms and conditions applicable to Midwest's Basic Universal Service (BUS) plan, including customer premise equipment (CPE) options and charges,
- (c) an advertising plan,
- (d) a tariff with terms and rates for the BUS, with Lifeline and Link-Up and other services which may be added to a universal service offering,
- (e) a customer service agreement with customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions and any customer remedies, and billing, payment and deposit policies, and
- (f) a list of Midwest Wireless's federal obligations regarding its service area.

On April 18, 2003, Midwest made its compliance filing and asks the Commission to grant final approval of its petition for ETC designation. Midwest provided the following items pursuant to the Commission's order:

**A. "information typically gathered from ETCs in the annual certifications"**

Midwest submitted an affidavit from its chief financial officer stating that Midwest would use all federal high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

**B. "information on rates, terms, and conditions applicable to the BUS, including customer premise equipment options and charges"**

Midwest proposes a monthly fee for BUS of \$14.99, with a \$35.00 activation fee. The subscriber could also purchase an installation service for \$45.00. Midwest disclosed that it may demand a deposit of up to \$200, depending on a potential subscriber's credit history. Midwest also listed its charges for long distance and various enhanced features.

Regarding CPE, Midwest proposes to offer CSI Wireless CPE for sale at \$299 and Telular CPE for \$360. Midwest would offer discounts to subscribers signing long-term contracts. In addition, Midwest would lease the CSI Wireless CPE for \$5 per month with a 12-month lease. Midwest filed a copy of its proposed CPE lease agreement.

**C. "an advertising plan"**

Midwest submitted a sample of its proposed advertisement and a schedule for running the ad in newspapers of general distribution. According to Midwest, the ad sizes may vary, but generally will be 2 columns wide by 4 inches long.

Midwest also proposes to advertise the availability of Lifeline and Link-Up on customer bills periodically. It will also promote the availability of the BUS rate plan, Lifeline and Link-Up on its site on the World Wide Web.

**D. “a tariff with terms and rates for the Basic Universal Service (BUS) offering, with Lifeline and Linkup and other services which may be added to a universal service offering”**

Midwest submitted a proposed tariff for the BUS plan. The tariff includes, among other things, a statement that “[a]ny amendments to this Tariff will be filed in accordance with the Commission’s Order dated March 19, 2003....”

**E. “a customer service agreement with customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions and any customer remedies, and billing, payment and deposit policies”**

Midwest submitted a proposed customer service agreement.

**F. “a list of the Company’s federal obligations regarding its service area”**

Midwest states that a new entrant, once designated an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. Midwest commits to do the following, upon receipt of a customer request for service under the BUS rate plan:

Upon receipt of a customer request for service under the BUS rate plan, (a) in areas where Midwest has facilities such that it is able to supply the requested service to that customer’s home (if an individual customer) or office (if a business customer) without additional facilities beyond the wireless local loop unit, at the time the request is made, Midwest shall initiate service, in most cases on the same day that customer requests service to begin, but in no event more than thirty (30) days from the date the customer requests service to begin; and (b) in areas where Midwest does not have facilities to supply the requested service to that customer’s home (if an individual customer) or office (if a business customer) at the time the request is made, then Midwest shall, within thirty (30) days, evaluate the obstacles to providing the requested phone service to that customer and provide the customer with the available options for the provision of such service and the estimated time frame for implementing such options.

Midwest also agrees to record instances in which Midwest is unable to provide BUS within 30 days of the time of request.

**II. Compliance Issues**

The parties raise a variety of issues about the affordability of Midwest’s BUS plan, the service quality of that plan, and the ability of public agencies to monitor the service provided pursuant to the plan. The most salient of these issues, and Midwest’s responses, are set forth below.

## **A. Affordability**

### **1. Deposit**

OAG-RUD argues that many people may not be able to afford a \$200 deposit for service, especially when added to an as-yet-unspecified deposit for leased CPE. The OAG-RUD also notes that Midwest has not stated how a customer's credit history would influence the size of the deposit required. The Department joins the OAG-RUD in arguing that Midwest should clarify its deposit requirements in its tariff and lease terms.

In response to these concerns, Midwest points out various provisions in its tariff, service agreement and equipment lease agreement elaborating on its deposit policies. In addition, Midwest clarified that no BUS subscriber would have to pay a service deposit if it choose to block all toll calls from his or her phone. And in a final effort to accommodate the parties' concerns, Midwest agreed to abandon for the present any deposit requirements for leased wireless local loop equipment. Midwest agrees to remove all references to a security deposit from the lease agreement.

The Commission finds that Midwest's deposit requirements, as clarified and modified above, are reasonable and clear.

### **2. Installation charges**

MIC notes that Midwest's installation charge of \$45 is higher than the \$35 it promised to charge. According to Midwest, however, MIC's concerns are merely semantic.

Midwest acknowledges that it agreed to limit its start-up fee to \$35. This fee, which Midwest now calls an *activation* charge, would be imposed on each BUS subscriber to help defray the one-time costs of adding a new subscriber to its system. In contrast, the fee that Midwest calls an *installation* charge is optional. A subscriber that purchased installation would receive a visit from a Midwest technician to set up the CPE. Subscribers that set up the CPE for themselves – according to Midwest, this involves merely plugging the equipment in – would be able to avoid the installation charge.

To better clarify this matter, Midwest agrees to add language from its compliance filing to its tariff: "Installation Fee applies only upon customer request for installation. Wireless local loop units may be utilized by simply providing power to the unit."

With this explanation, and the addition of clarifying tariff language, the Commission finds that Midwest has fulfilled its pledge to limit start-up fees to \$35.

### **3. Contract terms**

OAG-RUD expresses concern that customers may be misled about their contractual obligations to Midwest if they accept the BUS plan. While Midwest proposes to advertise that customers need not sign a contract, in fact Midwest requires BUS subscribers to sign a service agreement. Additionally, subscribers that need to lease equipment from Midwest would have to sign a lease agreement that contains penalties for early termination.

Midwest acknowledges that it plans to require BUS subscribers to agree to the terms of the BUS service agreement, but Midwest clarifies that no BUS customer would be required to sign a *long-term* agreement for the provision of service. A BUS subscriber would choose the duration of his or her service – from a month-to-month term to an extended one-year term – and the subscriber’s choice would be incorporated into the service agreement.

Midwest also acknowledges that it plans to require customers that lease equipment from Midwest to sign a lease agreement, and that such agreements may impose liability for early termination. But Midwest points out that the proposed penalties for terminating an equipment lease are mild. The penalty for early termination of a one-year lease, for example, would never exceed \$30.

The Commission finds the terms governing the duration of Midwest’s service contract and equipment lease to be reasonable. Similarly, the Commission finds the lease’s termination liability clause to be reasonable as well.

#### **4. Cost of customer premises equipment**

MIC and OAG-RUD each express concern about the affordability of the initial cost of obtaining service under Midwest’s BUS plan. For example, Midwest had promised to provide BUS subscribers with the option of leasing the required CPE, but MIC notes that Midwest neglects to offer the Telular phone equipment for lease. Midwest acknowledges MIC’s assertions, but argues that it is fulfilling its pledge by making the CSI Wireless CPE available for lease. The Department finds this arrangement satisfactory.

MIC also joined the OAG-RUD in expressing concern about external equipment cost. While Midwest had previously promised to install an external antenna at a customer’s premises at no additional charge if required to receive service, Midwest neglected to include that promise in its tariff, service agreement or equipment lease. Nor do these documents address customer charges for other external equipment.

In its response, Midwest agrees to state that it would install an additional antenna, when required, at no extra charge to the customer. At the hearing Midwest specifically agreed to add the following statement to its tariff: “Midwest will provide customers choosing the BUS rate plan and the wireless local loop with a Yagi type antenna, at no charge, if required to provide service.” In addition, Midwest agrees not to charge customers directly for repeaters, cell sites or other facilities required to provide service, provided that the customer request for service is reasonable.

The Commission finds that Midwest’s proposal fulfills its pledge to make CPE available for lease at \$5 per month. The Commission further finds that the addition of the clarifying language to Midwest’s tariff will demonstrate compliance with Midwest’s pledge to make certain CPE equipment available to subscribers at no additional cost.

### **B. Service quality**

#### **1. Meeting demand from new customers**

The parties disagree about what types of service requests are “reasonable.” The Department and OAG-RUD both note that Midwest’s tariff and service agreement contain no discussion about the circumstances under which Midwest would make service available to new customers. The parties found the absence of this discussion is particularly odd given that Midwest articulated its policy in its April 18, 2003 compliance filing, set forth above.

In response to these concerns, at the hearing Midwest agreed to add the language from its compliance filing to its tariff. The Commission finds this accommodation satisfactory.

## **2. Outages**

The Department notes that the Commission requires other local service providers to provide customers with advanced notice of any service interruptions due to regularly scheduled maintenance. The Department recommends that the Commission require Midwest to disclose in its service agreement whether it will offer similar notices.

In response to this concern, Midwest agrees to provide such notice to its customers, and to incorporate this pledge into its service agreement. The Commission finds this accommodation satisfactory.

## **3. Disconnections**

Similarly, the Department notes that the Commission requires other local service providers to refrain from disconnecting subscribers on a weekend or legal holiday. The Department recommends that the Commission require Midwest to disclose in its service agreement whether it will also refrain from disconnecting its services on weekends or legal holidays.

In response to this concern, Midwest agrees to incorporate into its service agreement a pledge not to disconnect service on a Sunday or United States legal holiday unless Midwest believes in good faith that it is required to do so by applicable law, rule, regulation or order. The Commission finds this accommodation satisfactory as well.

### **C. Agency monitoring**

#### **1. Service quality data**

Citizens/Frontier, the Department and OAG-RUD all recommend that the Commission require Midwest to collect and make available information relevant to its provision of service under its BUS plan.

At hearing, Midwest agreed to establish a process to track and make available to the Commission and the Department, upon request, a) orders for BUS or CPE unfilled after more than 30 days, and b) customer complaints or disputes related to BUS service quality, including reports of interrupted service. The Commission finds that the collection of this data represents a reasonable basis for monitoring the quality of Midwest's BUS plan.

#### **2. Notice of changes**

As noted above, Midwest's proposed tariff states that "[a]ny amendments to this Tariff will be filed in accordance with the Commission's Order dated March 19, 2003...." The Department notes, however, that the Commission has not yet articulated any such procedures. The Department recommends that the Commission direct Midwest to use the following procedures:

- a) Midwest should provide a written notice to the Commission and the Department immediately upon any change in prices (including CPE lease rates) or terms and conditions of its BUS plan;

b) Midwest should provide a written notice to the Commission and the Department prior to the withdrawal of the BUS offering or any portion thereof.

c) Upon a complaint, a petition from the Department, or the Commission's own motion, the Commission may investigate any change to Midwest's tariff, lease or service agreement. In its review, the Commission may consider the effect of the change on service quality, availability and affordability. After investigation, if the Commission finds that the change was not consistent with the Commission decision to approve Midwest's ETC designation, the Commission may rescind the change or revoke Midwest's ETC designation.

In support of its recommendation, the Department notes that the Commission has authority to rescind or revoke an ETC's status upon a finding that the company no longer fulfills the requirements for ETC designation.<sup>2</sup>

At hearing, Midwest agreed to these terms.

The Commission finds the Department's proposal reasonable, and will direct Midwest to act accordingly.

### **III. Conclusion and Commission Action**

The Commission finds that Midwest's filings, combined with its subsequent clarifications and concessions, satisfy the concerns that prompted the need for the compliance filing. Consequently, the Commission will affirm Midwest's designation as an ETC under 47 U.S.C. § 214(e)(2).

### **ORDER**

1. The compliance filing of Midwest Wireless Communications, LLC, is approved, and Midwest is designated as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e)(2).
2. Midwest shall make all the changes set forth above. Among other things, Midwest shall do the following:
  - A. Add to its tariff its pledge to provide external antennae and other similar equipment free of charge if required to provide service.
  - B. Include in its tariff the following language derived from its April 18, 2003 compliance filing: "Installation Fee applies only upon customer request for installation. Wireless local loop units may be utilized by simply providing power to the unit."
  - C. Include in its tariff the following language from its April 18, 2003 compliance filing:

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<sup>2</sup> See, for example, *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15174 ¶ 15 (2000).

Midwest agrees that, upon receipt of a customer request for service under the Basic Universal Service (BUS) rate plan: (a) in areas where Midwest has facilities such that it is able to supply the requested service to that customer's home (if an individual customer) or office (if a business customer) without additional facilities beyond the wireless local loop unit, at the time the request is made, Midwest shall initiate service, in most cases on the same day that customer requests service to begin, but in no event more than thirty (30) days from the date the customer requests service to begin; and (b) in areas where Midwest does not have facilities to supply the requested service to the customer's home (if an individual customer ) or office (if a business customer) at the time the request is made, then Midwest shall, within thirty (30) days, evaluate the obstacles to providing the requested phone service to that customer and provide the customer with the available options for the provision of such service and the estimated time frame for implementing such options.

- D. Establish a process to track and make available to the Commission and the Department, upon request, the following:
- Held Orders for BUS and the customer premises equipment (CPE) for more than 30 days; and
  - Customer complaints or disputes related to BUS service quality, including reports of interrupted service.
- E. Provide a written notice to the Commission and the Department immediately upon any change in prices (including CPE lease rates) or terms and conditions of the BUS plan, as raised by the Department.
- F. Provide a written notice to the Commission and the Department prior to the withdrawal of the BUS offering or any portion thereof.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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