

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement

ISSUE DATE: August 19, 2004

DOCKET NO. P-5695/M-04-226

ORDER APPROVING PETITION FOR ETC DESIGNATION

PROCEDURAL HISTORY

On April 19, 2000, the Commission designated WWC Holding Co., Inc. d/b/a CellularOne (Western Wireless or the Company) an eligible telecommunications carrier (ETC) in certain areas of Minnesota for the purposes of obtaining universal service support from federal universal service funds.¹

On February 12, 2004, Western Wireless filed a petition for designation as an ETC in additional areas of Minnesota for purposes of obtaining universal service support from federal universal service funds. Western Wireless requested ETC designation in the service areas of certain rural telephone companies which Western Wireless serves in their entirety. Western Wireless also requested ETC designation in rural telephone companies' wire centers where Western Wireless does not serve the entire study area.

On March 3, 2004, the Minnesota Independent Coalition (MIC) filed comments opposing the petition.

On March 25, 2004, the Department of Commerce (DOC) filed reply comments requesting that Western Wireless be required to submit additional information prior to the Commission making a determination on the merits.

On March 25, 2004, Western Wireless filed reply comments.

On April 16, 2004, Western Wireless submitted a supplemental filing to provide additional information as requested by the DOC.

¹ *In the Matter of the Petition of WWC Holding Co., Inc. f/k/a Minnesota Cellular Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. P5695/M-98-1285, ORDER ACCEPTING COMPLIANCE FILING, REQUIRING FURTHER FILING. AND TRANSFERRING AUTHORITY TO SUCCESSOR CORPORATION.

On May 13, 2004, the DOC filed supplemental comments.

On May 28, 2004, the Commission issued its ORDER REQUESTING COMMENTS AND VARYING TIME PERIOD. The Commission determined that it would apply to Western Wireless' ETC petition the same criteria it has used in earlier cases and allowed parties to file additional comments on how concerns about cream skimming and concerns for the federal universal service fund should influence the Commission's decision.

On June 8, 2004, Western Wireless filed its second supplemental filing to address the issues in the Commission's May 28, 2004 Order.

On June 25, 2004, MIC filed supplemental comments.

On June 25, 2004, the DOC filed supplemental comments recommending approval of the Company's petition.

This matter came before the Commission on August 5, 2004.

FINDINGS AND CONCLUSIONS

I. Background

The federal Telecommunications Act of 1996 (the Act)² was designed to open the nation's telecommunications markets to competition. Its universal service provisions were designed to keep competition from driving rates to unaffordable levels for "low-income consumers and those in rural, insular, and high cost areas"³ by subsidizing those rates. Only carriers that have been designated ETCs are eligible to receive these subsidies.⁴

In order to promote access to telecommunications by people with low income, Congress provided programs to subsidize both the cost of initiating residential telephone service (Link Up⁵) and ongoing residential telephone bills (Lifeline⁶).

Congress directed the Federal Communications Commission (FCC) to work with the states through a Federal-State Joint Board to overhaul existing universal service support systems.⁷ The Act required the FCC to determine which services qualified for subsidies. It authorized the states

² Pub. L. No 104-104, 110 Stat. 56, codified throughout title 47, United States Code.

³ 47 U.S.C. § 254(b)(3).

⁴ 47 C.F.R. § 54.201(a)(1).

⁵ 47 C.F.R. § 54.411.

⁶ 47 C.F.R. § 54.401.

⁷ 47 U.S.C. § 254.

to determine which carriers qualified for universal service funding. The Act's term for these carriers was "eligible telecommunications carriers" (ETCs).⁸

II. The Legal Standard

A. ETC Designation

Applications for ETC status are governed by federal and state law.⁹ The Act's § 214 requires an ETC to offer certain designated services throughout its ETC-designated service area, use its own facilities or a combination of its own facilities and resale of another carrier's service in providing these services, and advertise the availability and price of these services.¹⁰ While the list of designated services may change over time,¹¹ FCC rule 47 C.F.R. § 54.101(a) currently designates the following services:

- voice grade access to the public switched network
- local usage
- touch-tone service or its functional equivalent
- single-party service
- access to emergency services, including 911 and enhanced 911
- access to operator services
- access to interexchange services
- access to directory assistance
- toll limitation for qualifying low-income customers

This Commission has the responsibility for designating ETCs in Minnesota except where it lacks jurisdiction over an applicant.¹² The Commission evaluates an application based on the criteria of the Act, the FCC, and the state itself.¹³ State-imposed criteria must be "competitively neutral" so as not to favor incumbents, competitors, or any particular technology.¹⁴

⁸ 47 U.S.C. § 214(e).

⁹ 47 U.S.C. §§ 254, 214; 47 C.F.R. § 54.101; Minn. Rules parts 7811.1400 and 7812.1400.

¹⁰ 47 U.S.C. § 214(e)(1).

¹¹ 47 U.S.C. § 254(c)(1).

¹² 47 U.S.C. § 214(e)(6).

¹³ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (state may impose own criteria, in addition to federal criteria, when evaluating requests for ETC status).

¹⁴ 47 U.S.C. § 254(b)(7); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Report and Order, 12 FCC Rcd 8776, 8801-03 ¶¶ 46-51 (1997).

The Commission must grant ETC status to any qualified applicant, provided that the applicant is not seeking to serve exchanges in which the incumbent telephone company is a rural telephone company. For these areas the state commission must first make a finding that designating more than one carrier is in the public interest.¹⁵ This requirement reflects Congressional concern that some thinly-populated areas might not be able to support more than one carrier.

B. Service Area Disaggregation

A carrier must offer and advertise the required basic services throughout any “service area” for which the carrier is designated an ETC. While state commissions establish service area boundaries, those boundaries typically coincide with the service territory boundaries or exchange area boundaries of incumbent landline carriers. The Act defines “service area” as:

a geographic area established by a State commission ... for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.¹⁶

For rural telephone companies, the Act established a default definition of “study area” that comprised the company’s entire service area within a state. This default definition assigns all of a rural telephone company’s exchanges to one large service area.

The Act authorized the states and the FCC to agree to re-define an incumbent’s service area, dividing the territory into multiple areas for universal service purposes. In considering whether to disaggregate a rural telephone company’s service territory, the state and the FCC must consider three factors identified by the Joint Board:¹⁷ 1) the risk of “cream skimming,” 2) the regulatory status accorded rural telephone companies under the 1996 Act, and 3) any additional administrative burdens that might result from the disaggregation.¹⁸

¹⁵ 47 U.S.C. § 214(e)(2). Each grant of ETC status must be consistent with the public interest, convenience and necessity. Minn. Rules part 7811.1400, subp. 2; 7812.1400, subp.2. “Rural telephone company” is defined at 47 U.S.C. § 153(47).

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

¹⁷ 47 C.F.R. § 54.207(c)(1)(ii).

¹⁸ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (Joint Board Recommendation).

A state may disaggregate a non-rural telephone company's service area at its own discretion. But a rural telephone company's service area may not be disaggregated without the mutual consent of the state and the FCC.¹⁹

C. Recent Legal Developments

Recent developments at the federal level were addressed in the Commission's May 28, 2004 ORDER REQUESTING COMMENTS AND VARYING TIME PERIOD in the current docket. In that Order, the Commission considered the factors addressed in the Federal Communications Commission's (FCC) decisions in the *Virginia Cellular* order,²⁰ the *Highland Cellular* order,²¹ and the *Recommended Decision* of the Federal-State Joint Board on Universal Service²² and concluded that the Commission's traditional analysis already addressed the main issues articulated by the FCC and the Joint Board. The Commission determined that it would continue to apply the same criteria the Commission has used in earlier cases when evaluating whether to grant ETC status to commercial mobile radio service providers. The Commission noted that the FCC and the Joint Board placed new emphasis on concerns about cream-skimming and the effect of ETC designations on the federal universal service fund and invited further comments on these matters in the current docket.

III. The Company's Petition

Western Wireless was granted preliminary ETC status by the Commission on October 27, 1999.²³ The Order gave the Company preliminary ETC status for its proposed service area, which covered roughly the northern third of the state.²⁴

In its current petition Western Wireless has requested ETC status in additional areas of the State. Western Wireless seeks ETC designation throughout the rest of its licensed service area except in wire centers that are only partially in Western Wireless's service area.

¹⁹ 47 C.F.R. § 54.207(c).

²⁰ *In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, DA 04-999 Memorandum Opinion and Order, 69 FR 8958 (released January 22, 2004).

²¹ *In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 04-37 (released April 12, 2004).

²² *In the Matter of the Federal-State Joint Board on Universal Service*, FCC 04 JT-1 Recommended Decision (released February 27, 2004).

²³ *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P5695/M-98-1285, ORDER GRANTING PRELIMINARY APPROVAL AND REQUIRING FURTHER FILINGS (October 27, 1999).

²⁴ The Company's ETC designation in Docket No. P5695/M-98-1285 became final on April 21, 2000.

As set forth in Attachment 1 of the Company's February 12, 2004 filing, the Company seeks immediate ETC designation in the following rural telephone company study areas, which the Company serves in their entirety: 1) Christensen Communications Company d/b/a Madelia Telephone Company, 2) Dunnell Telephone Co., 3) New Ulm Telecom, Inc., 4) Red River Rural Telephone Association, and 5) Winsted Telephone Company.²⁵

Western Wireless also requested designation as an ETC in certain rural telephone companies' wire centers, where Western Wireless does not serve the entire study area. These wire centers are set forth in Attachment 2 to its February 12, 2004 filing. Western Wireless requested ETC designation in the following: 1) 20 wire centers of Century Tel of MN, Inc., 2) 1 wire center of Federated Telephone Cooperative, 3) 2 wire centers of KMP Telephone Co., 4) 3 wire centers of Loretel System, Inc., 5) 2 wire centers of Mid-State Telephone Co., 6) 2 wire centers of Sleepy Eye Telephone Co., 7) 4 wire centers of Twin Valley-Ulen Telephone Co., Inc., and 8) 17 wire centers of Sprint-Minnesota, Inc.

The Company requested that the Commission redefine the service area standard for these companies from the study area to the wire center level to enable Western Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

Western Wireless requested ETC status in these additional areas subject to the same conditions already in effect for its ETC designation in other areas of the State. Western Wireless stated it intended to extend its basic universal service offerings to the newly designated areas, including its advertising plan and customer service agreement.

IV. Positions of the Parties

A. Western Wireless

Western Wireless stated that it provides each of the supported services identified by the FCC throughout the requested designated areas over its existing network infrastructure.

Western Wireless argued that granting it ETC status will serve the public interest. It will allow rural consumers an increased choice of providers. Because Western Wireless' network supports the provisions of data services, customers will be able to combine basic universal services with advanced services, if they so choose. Further, Western Wireless provides an expanded local calling area and provides consumers the benefits of mobility. In addition to increased choices, rural consumers can expect lower rates and better service resulting from competition in the marketplace.

²⁵ For areas served by a rural telephone company, Section 214(e)(5) of the federal Telecommunications Act of 1996 provides that the ETC's designated service area must be that rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange area in a given State. *In the Matter of Federal-State Joint Board of Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 172, n.434 (rel. May 8, 1997).

Western Wireless also argued that the designation of Western Wireless as an ETC in the requested designated areas will not result in any significant adverse impact to any rural telephone company. It argued that all of the areas that Western Wireless is seeking designation are capable of supporting an additional ETC.

Western Wireless argued that it was not appropriate for the Commission to consider any impact on the federal universal service fund as a result of the designation of Western Wireless as an ETC in this docket. It argued that funding mechanisms and levels of support to designated ETCs were solely within the province of the FCC.

Nevertheless, Western Wireless argued that Western Wireless ETC designation as requested herein would not impact the federal universal service fund. It argued that projected support for Western Wireless would constitute only 0.04 percent of the total distribution from the federal fund, which is not an amount that would burden the federal universal service fund.

Western Wireless argued that there is no intentional cream-skimming when a commercial mobile radio service carrier is seeking designation based on the carrier's licensed boundaries, which is the case herein. Further, Western Wireless argued that there will be no unintended effects of cream-skimming. Western Wireless argued that the DOC analyzed the costs of serving wire centers in the areas where Western Wireless is seeking ETC designation and concluded that granting Western Wireless' request for redefinition" would not create significant opportunities for cream-skimming."²⁶

Further, three of the companies (Federated Telephone Cooperative, Mid-State Telephone Co. and Sleepy Eye Telephone Co.) in whose service areas Western Wireless is seeking ETC designation have already filed to disaggregate and target their high-cost support. Disaggregating the study area eliminates any concern of cream-skimming in that area.

B. The DOC

The DOC stated that Western Wireless made a credible showing, supported by facts and commitments, of its capability and intent to provide and advertise an affordable, quality offering, including the nine federally supported services, throughout its proposed service area.

The DOC noted that Western Wireless had stated in its petition that it would adhere to the same compliance matters previously submitted and approved under the Western Wireless ETC Order,²⁷ including the advertising plan and customer service agreement. The DOC stated that the customer service agreement contains the terms and conditions relating to its BUS service offering. The DOC stated that the basic universal service offering proposed by Western Wireless has been found by the Commission to be affordable in previous dockets.

²⁶ ORDER REQUESTING COMMENTS AND VARYING TIME PERIOD, May 28, 2004.

²⁷ See footnote 23, supra.

Regarding cream-skimming, the DOC concluded that rural carriers would not be harmed by the redefinition of their study areas to conform to the licensed service area of Western Wireless. The DOC stated that carriers would not be required to recalculate costs as a result of the service area redefinition.

The DOC recommended that Western Wireless be designated an ETC throughout its proposed expanded service area for the purpose of receiving federal universal support. It recommended that Western Wireless' request to redefine the service area of the incumbent local exchange carriers in whose territory Western Wireless seeks to provide service be approved.

Further the DOC recommended that Western Wireless be required to make a compliance filing. Western Wireless should be required to:

- Update its tariff to disclose any costs to the end user customer of the steps which Western Wireless has committed to take in order to fulfill, upon a reasonable request from the customer, its obligation to provide service in areas in which it does not currently have adequate coverage.
- Provide details regarding the frequency and scheduling of its proposed BUS/Lifeline/Linkup advertising.
- Advertise the availability of Lifeline, Linkup, and its BUS offering on its website.

C. MIC

MIC argued that an ETC petition's impact on the universal service fund should be part of the Commission's public interest determination. MIC argued that the Western Wireless ETC designation will have a significant impact on the federal universal service fund but that Western Wireless has not demonstrated that the ETC designation would yield adequate public interest benefits sufficient to outweigh the added impact on the fund.

Further, MIC argued that Western Wireless has not made any commitment related to the quality or expansion of its services. It offered no assurances that it will address service problems, expand its coverage or invest in any network upgrades.

V. Commission Action

The Commission finds that it is in the public interest to designate Western Wireless as an ETC in the areas requested by the Company. The Commission notes the Company's intention to adhere to the same commitment it made in Docket No. P-5695/M-98-1285, which the Commission found critical to the public interest. In that docket, the Commission found that the Company had satisfied the criteria for ETC designation, the Commission makes the same finding in the current docket.

However, the Commission agrees with the DOC that the Company should be required to:

- Update its tariff to disclose any costs to the end user customer of the steps which Western Wireless has committed to take in order to fulfill, upon a reasonable request from the customer, its obligation to provide service in areas in which it does not currently have adequate coverage.

- Provide details regarding the frequency and scheduling of its proposed BUS/Lifeline/Linkup advertising.
- Advertise the availability of Lifeline, Linkup, and its BUS offering on its website.

Western Wireless is requesting redefinition for wire centers located entirely within its licensed boundaries in each study area. The Commission reviewed the appropriateness of redefining the service area of a rural telephone company by considering whether there was an opportunity for cream skimming, whether there was any effect of redefinition on the rural telephone company's regulatory status and whether there were any additional administrative burdens that may result from redefinition.

The Commission finds that the rural carriers affected by the redefinition requested by Western Wireless would not be harmed by the redefinition of their study areas to conform to the licensed service area of Western Wireless. The Commission recognizes and accepts the DOC's conclusion, based on the DOC's analysis of the costs of serving wire centers in the service areas in which Western Wireless is seeking ETC designation, that granting Western Wireless' request would not create significant opportunities for cream-skimming. The Commission agrees that there was no evidence showing that Western Wireless was proposing to serve only the low-cost areas of any carrier's study area to the exclusion of the high-cost areas.

Further, the Commission finds that there was no evidence of any effect of redefinition on the rural carriers' regulatory status and no additional administrative burdens placed on local exchange carriers as a result of such redefinition of the service area.

For these reasons, the Commission will approve Western Wireless' petition for ETC designation in the service area requested by the Company, and will approve the redefinition of certain study areas as requested by the Company.

ORDER

1. The Commission approves Western Wireless' petition for ETC designation and approves the Company's petition to expand its service area as described in the Company's February 12, 2004 filing, attachments 1 and 2.
2. The Commission approves the Company's request to redefine certain study areas as set forth in the Company's February 12, 2004 filing, attachment 2.
3. Within 30 days of the date of this Order, the Company shall:
 - a. submit an update of its tariff to disclose any costs to the end user customer of the steps which Western Wireless has committed to take in order to fulfill, upon a reasonable request from the customer, its obligation to provide service in areas in which it does not currently have adequate coverage;
 - b. submit details regarding the frequency and scheduling of its proposed BUS/Lifeline/Linkup advertising;

- c. advertise the availability of Lifeline, Linkup, and its BUS offering on its website.
4. Western Wireless shall petition the FCC regarding the matter of the redefinition of the service area as set forth herein.
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), or 1-800-627-3529 (MN relay service).