

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of American Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement

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ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION AND REDEFINING SERVICE AREA REQUIREMENT

PROCEDURAL HISTORY

On July 5, 2005, American Cellular Corporation (ACC or Company) filed a petition for designation as an eligible telecommunications carrier (ETC) for purposes of obtaining universal service support from federal universal service funds. ACC requested ETC designation in the service areas of certain rural telephone companies which ACC serves in their entirety. ACC also requested ETC designation in rural telephone companies' wire centers where ACC does not serve the entire study area.

On October 23, 2005, the Commission found ACC's application to be incomplete and directed ACC to supplement its filing.

On November 7, 2005, ACC filed supplementary information.

On December 2, 2005, the Commission received comments from Citizens Telecommunications Company of Minnesota, LLC (Citizens), and the Minnesota Department of Commerce (the Department).

On December 21, 2005, ACC filed reply comments.

The Commission met on January 19, 2006, to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

The federal Telecommunications Act of 1996 (the Act)¹ 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"² by subsidizing those rates. Only carriers that have been designated ETCs are eligible to receive these subsidies.³

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.⁴ The Act required the FCC to determine which services qualified for subsidies. It authorized the states to determine which carriers qualified for universal service funding. The Act's term for these carriers was "eligible telecommunications carriers" (ETCs).⁵

II. The Legal Standard

In its October 25, 2005 Order in this matter, the Commission determined that it would review ACC's application for ETC status based on the ETC standards in effect at the time of the Company's initial filing (July 5, 2005) rather than based on requirements adopted by the Commission subsequent to that filing.⁶

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

² 47 U.S.C. § 254(b)(3).

³ 47 C.F.R. § 54.201(a)(1).

⁴ 47 U.S.C. § 254.

⁵ 47 U.S.C. § 214(e).

⁶ See *In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/M-05-1169, ORDER ADOPTING REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED (October 31, 2005).

A. ETC Designation

Applications for ETC status are governed by federal and state law.⁷ 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.⁸ While the list of designated services may change over time,⁹ 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

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.¹⁰

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

⁸ 47 U.S.C. § 214(e)(1).

⁹ 47 U.S.C. § 254(c)(1).

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

For rural telephone companies, the Act established a default definition of “study area” that comprises 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.

But the Act also provides for “redefining” a service area to divide it into multiple areas for universal service purposes. In considering whether to disaggregate a rural telephone company’s service territory, the state and the FCC consider three factors identified by the Joint Board:¹¹ 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.¹²

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.¹³

III. The Company’s Petition

A. ETC Designation

ACC sought immediate ETC designation for the entire study areas or redefined wire centers served by Qwest, Arrowhead, Arvig, Benton, Blackduck, Callaway, CenturyTel of Minnesota, CenturyTel of Northwest Wisconsin, Citizens/Frontier, Consolidated, Crosslake, Eagle Valley, East Otter Tail, Emily, Federated Telephone, Federated Utilities, Gardonville, Johnson, Loretel, Lowry, Melrose, Mid-State, Midwest, Northern, Osakis, Park Region, Peoples, Rothsay, Runestone, Starbuck, Twin Valley - Ulen, United, Upsala, Valley, West Central, Wilderness, and Wolverton.

According to ACC, it satisfies each of the following requirements for ETC designation because

1. it is a Common Carrier;
2. it provides each of the nine supported services;
3. it will offer and advertise the availability of, and charges for, the supported services;
4. it will provide services throughout its designated areas; and
5. designating ACC as an ETC will serve the public interest.

ACC indicated that it is willing to comply with the requirements imposed by the Commission on previously-designated wireless ETCs like Midwest Wireless, RCC Minnesota and Western Wireless.

¹¹ 47 C.F.R. § 54.207(c)(1)(ii).

¹² 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).

¹³ 47 C.F.R. § 54.207(c).

The Company also included a copy of its proposed advertising plan and a list of service plans eligible for USF. Among its service plans is a Basic Universal Service Offering with unlimited local usage at \$20.29 per month.

ACC also requested that the Commission certify ACC's use of support effective on the date of the Company's ETC designation. The Company stated that this would allow it to receive high-cost universal service support starting on the date of the ETC designation.

B. Service Area Redefinition

Finally, ACC requested that the Commission redefine the Company's service area standard from the study area to the wire center level in areas served by the Paul Bunyan Rural Telephone Cooperative (Paul Bunyan) and Red River Rural Telephone Association (Red River) to enable the Company to meet the federal ETC requirements under 47 U.S.C. § 214(e).

IV. ACC's Supplemental Filing Regarding ETC Designation

At the October 13, 2005 hearing on this matter, the Department stated that ACC's initial filing was incomplete in several respects but that ACC had subsequently provided it with adequate information in response to Information Requests. In the Department's view, the information provided it by ACC would, if filed with the Commission, satisfy the ETC filing requirements.

In its October 25, 2005 Order, the Commission found that the information in question is not part of the record of this matter and that ACC's filing was incomplete. The Commission directed ACC to file the information with the Commission.

On November 7, 2005, ACC's supplemental filing responded to the outstanding ETC requirements as follows:

- **Facilities:** ACC provided a list and description of its existing network facilities and signal coverage in each of the areas in which ETC designation is sought.
- **Commitment to Provide Service upon Reasonable Customer Request:** ACC committed to undertake various steps to provide service to customers within the designated service areas in the event they do not receive adequate signal coverage at their primary residence. ACC also identified six new facility construction projects that are intended to expand network coverage in the areas of Crane Lake, Nett Lake, Babbitt, Silver Bay, Lutsen and Grand Marais.
- **Description of Basic Universal Service (BUS) Offering:** ACC described a BUS offering, including unlimited local usage and expanded local calling areas. The BUS offering is also described in the informational tariff and Customer Service Agreement.
- **Advertising Plan:** ACC updated its advertising plan describing the availability of its service offerings, including that of Lifeline and Link-Up for qualified consumers.

- **Informational Tariff and Customer Service Agreement:** The Company provided an informational tariff describing the supported services, features, pricing and local calling areas for the BUS. ACC also filed a revised Customer Service Agreement to include customer service and consumer protection provisions.

V. **Positions of the Parties Regarding ETC Designation**

A. **The Department**

The Department stated that ACC has 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, and that its designation is in the public interest. The Department recommended Commission approval of ACC's ETC petition.

B. **Citizens**

Citizens recommended that the Commission deny ACC's ETC petition unless ACC demonstrates compliance with all the Commission's criteria and standards for ETC designation. According to Citizens, ACC has failed to show that it will have the ability to provide service to all customers in the area in which it seeks designation. Citizens also claims that ACC's filing does not comply with the ETC designation criteria recently adopted by the Commission by not providing a two-year network improvement plan, a commitment for specific start and completion dates for the promised construction projects, and other ETC eligibility requirements by the FCC.

VI. **Commission Analysis and Action Regarding Request for ETC Designation**

A. **Newly Adopted ETC Designation requirements Inapplicable**

In its October 31, 2005 Order adopting the FCC's new standards for designating ETCs, the Commission made it clear that the newly adopted standards did not apply to petitions for ETC status that had already been filed with the Commission.¹⁴ At page 9, the Commission stated:

The Commission will apply the [new criteria], pursuant to the decisions discussed above in this Order, to petitions filed with the Commission **after** the date of this Order [Emphasis supplied.]

¹⁴ *In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/M-05-1169, ORDER ADOPTING FCC REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED (October 31, 2005).

Moreover, in its October 25, 2005 Order in this matter the Commission specifically addressed the question whether ACC's petition would be required to meet the FCC's new standards or the FCC adopted by the Commission as of the date ACC filed its request (July 5, 2005). In that Order the Commission stated:

Prior to the return of the current matter for review, the Commission will issue an Order in Docket No. P-999/M-05-1169 adopting certain Federal Communications Commission (FCC) requirements regarding the designation of eligible telecommunications carriers (ETCs). The Commission finds it appropriate, therefore, to clarify its intent that when ACC's application comes back before the Commission, the Commission will continue its review based on the Commission standards existing at the time of ACC's initial filing, July 5, 2006.

B. Threshold Requirements

The Commission finds that ACC has shown that it meets the threshold eligibility requirements:

- it is a common carrier;
- it provides each of the nine supported services;
- it will offer and advertise the availability of, and charges for the supported services throughout the service area; and
- its designation is in the public interest.

C. Adequacy of ACC's Ability and Commitment to Serve

Citizens has claimed that federal law requires that ACC provide universal service to all customers in the areas for which it seeks ETC status. The FCC, however, has repeatedly held that an applicant for ETC designation is not required to demonstrate that it currently provides ubiquitous service throughout its requested service areas. Instead, the FCC has stated that an applicant must merely demonstrate an ability and commitment to provide service upon reasonable request.¹⁵

In this case, ACC has explained in detail its capabilities and willingness to provide service in the requested service areas consistent with the obligations of an ETC. The Company has described its existing network facilities and has demonstrated the extent of its signal coverage in each of the areas in which designation as an ETC is requested. Moreover, ACC has committed to implementing a multi-step service extension process to provide service to customers in a designated area in the event they do not receive adequate signal coverage and stated that if it determines there is no possibility of providing service without constructing a new cell site, it will report to the Commission the proposed cost of construction, the Company's position on whether the request for service is reasonable, and whether high-cost funds should be expended on the request.

Consistent with previous Commission Orders in which the Commission has accepted these types

¹⁵ See *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*, CC Docket 96-45, Declaratory Ruling, FCC 00-248, 17 (rel. Aug. 10, 2000).

of service commitments as sufficient for purposes of granting ETC designation therefore the Commission determines that ACC has adequately shown its ability and willingness to serve customers in the designated areas.

Based on this analysis and findings, the Commission concludes that the Company meets the Commission's requirements for designation as an eligible telecommunications carrier (ETC).

VII. Redefinition of Service Areas

A. ACC's Request

ACC requested the redefinition of the service areas where it will be required to serve in the exchanges served by the Paul Bunyan Rural Telephone Cooperative (Paul Bunyan) and Red River Rural Telephone Association (Red River) because its FCC license restricts its service coverage to some portions of those companies' service areas. ACC sought conditional ETC designation in those areas pending approval of the redefinition of the service areas by both the Commission and the FCC.

B. The Department's Comments

The Department initially recommended that the Commission should not start consideration of this issue until after ACC made its supplemental filing. The Department also noted, however, that it found no evidence of deliberate or unintentional cream skimming in ACC's redefinition proposal.

After ACC filed its supplemental comments, the Department recommended that the Commission approve the Company's petition for redefinition and submit the redefinition to the FCC for concurrence.

C. Commission Analysis and Action

None of the parties, including Minnesota Independent Coalition (MIC) and Citizens, the interveners, have objected to ACC's request to redefine the service area requirement in the exchanges served by Paul Bunyan and Red River.

In order to redefine the service area requirement, both the Commission and the FCC are required to consider three factors set forth in recommendations made by the Federal-State Joint Board on Universal Service. The three considerations are: 1) the risk that an ETC applicant will seek designation only in low-cost, high-support areas, a practice known as "cream skimming"; 2) any effect redefinition may have on the rural telephone company's regulatory status; and 3) any additional administrative burdens that may result from redefinition.

Based on the record established in this case, the Commission finds that ACC's request for redefinition does not create a risk of either intentional cream skimming or any unintentional

effects of cream skimming, service area redefinition will have no effect upon Paul Bunyan's or Red River's regulatory status, and redefinition will not create any administrative burdens

The Commission will therefore approve the Company's proposal and support the Company's petition to the FCC to concur in the redefinition of the service areas of Paul Bunyan Rural Telephone Cooperative and Red River Rural Telephone Association to the individual wire center level..

ORDER

1. Based on a finding discussed above in Section V of this Order that American Cellular Corporation (ACC or the Company) meets the Commission's requirements for designation as an eligible telecommunications carrier (ETC), the Commission hereby approves the Company's petition for ETC designation.

Consistent with that finding and approval, the Commission certifies to the FCC that ACC will use all the federal high-cost support that it will receive for the provision, maintenance and upgrading of facilities and services for which the support is intended pursuant to 47 U.S.C. § 254(e).

2. Based on a finding discussed above at Section VI of this Order that ACC's petition meets the Commission's requirements for redefining service areas, the Commission hereby approves ACC's petition to redefine the service areas of Paul Bunyan Rural Telephone Cooperative and Red River Rural Telephone Association at the wire center level.

Consistent with that finding and approval, the Commission will support the Company's petition to the FCC for concurrence.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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