

Docket Number: TC16-001
Subject Matter: Fourth Data Request
Request to: IM Telecom, LLC d/b/a Infiniti Mobile
Request from: South Dakota Public Utilities Commission Staff
Date of Request: September 26, 2016
Responses Due: October 7, 2016

- 4.1. In any jurisdiction in which IM Telecom has applied for ETC designation, has commission staff ever recommended denial of a filing by IM Telecom? If yes, please explain the circumstances.

Response to 4-1: While no commission staff has recommended denial of any of Infiniti Mobile's initial applications for designation as an ETC, on October 8, 2015, Administrative Law Judge Ben Jackson, of the Oklahoma Corporation Commission ("OCC") issued his Report of the Administrative Law Judge in Case No. PUD 201400305, which denied Infiniti Mobile's request to "expand" Infiniti Mobile's ETC designation to cover the remaining geographic area of Oklahoma (the "Oklahoma Expansion Petition), including those areas served by rural local exchange carriers ("RLECs"). The Oklahoma Expansion Petition was filed October 24, 2014. Infiniti Mobile requested such extension pursuant to the Telecommunications Act of 1996, Pub. L. 104-104, 47 U.S.C. § 214(e)(2). In Oklahoma, the standard of review for companies seeking designation in service areas of rural local exchange carriers ("RLECs") is significantly more stringent, requiring an analysis of the public interest impact of how designating a Company as an ETC will affect universal service in in the study area of such existing RLECs. Based on the recommendation of local counsel during the pendency of this proceeding, Infiniti Mobile provided only proposed service area maps and limited financial information upon the request of Staff in the aforementioned proceeding. The OCC's review was extremely limited in scope given that Company management did not provide great detail with respect to financial resources. Given the heightened standard of review, the OCC deemed Infiniti Mobile's responses insufficient.

The Administrative Law Judge based the denial on the following: (1) failure to provide a list of exchanges describing Infiniti Mobile's requested expanded service area; (2) failure to provide a detailed business plan outlining the economics and details of how Infiniti Mobile proposed to serve customers statewide; (3) failure to present a comprehensive advertising plan identifying publications with a statewide circulation; (4) failure to provide evidence to corroborate the resolution of duplicate subscriber errors; (5) failure to provide data on dropped calls and poor coverage; and (6) the uncertain impact on RLECs in the State of Oklahoma. As provided, Infiniti Mobile was acting on the advice of local counsel in respect to the failures enumerated above.

Infiniti Mobile continues to serve as an ETC in only non-rural exchange areas in Oklahoma. Infiniti Mobile was the first entity to request such an expansion into rural service areas, and no such entity has been approved to date. The OCC is very protective of the Rural ILECs service territories, and the expansion request was always considered novel and unlikely, but pursued by Infiniti Mobile, nonetheless. The omission of the denial of this expansion request in the instant proceeding was not to intentionally mislead Commission Staff, but rather was not considered a pertinent fact for disclosure.