

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson	Chair
David C. Boyd	Commissioner
J. Dennis O'Brien	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition of Cellco Partnership and its Affiliates (Verizon Wireless or Verizon) to Amend and Consolidate Eligible Telecommunications Carrier (ETC) Designations

ISSUE DATE: April 25, 2011

DOCKET NO. P-6182, 6152, 5695/M-10-862

ORDER DENYING PETITION

PROCEDURAL HISTORY

On August 4, 2010, Cellco Partnership d/b/a Verizon Wireless (Verizon) filed a petition labeled “Joint Petition to Amend and Consolidate ETC Designations in the State of Minnesota.”

By November 12, 2010, the Commission had received comments from the Minnesota Department of Commerce (the Department) and T-Mobile Central, LLC (T-Mobile). Verizon filed three rounds of supplemental comments thereafter.

The Commission met on March 31, 2011, to consider this matter.

FINDINGS AND CONCLUSIONS

I. Summary

The Commission will deny Verizon’s petition at this time, finding that Verizon’s caption of its petition failed to indicate that Verizon was seeking designation as an ETC. This mischaracterization deprived potentially interested persons appropriate notice of the actions requested and their possible consequences. The Commission does not reach the substance of Verizon’s request.

II. Introduction

The federal Universal Service Fund subsidizes certain telecommunications service providers to enhance access for people throughout the nation – including low-income consumers and those in rural, insular, and high cost areas – to telecommunications and information services of comparable

quality and at comparable prices to those in urban areas.¹ To become eligible for the subsidy – that is, to be declared an eligible telecommunications carrier (ETC) -- a provider must demonstrate that it will provide certain basic services throughout a designated service area, and will advertise that the services are available.² In addition, where the carrier would provide service in competition with a rural telephone company, the carrier must demonstrate that receiving ETC designation would be in the public interest.³

An ETC receives subsidies in proportion to the number of lines it serves within its designated service area. To control the cost of this subsidy program, in 2008 the Federal Communications Commission (FCC) capped the aggregated amount of subsidy it pays to competitive ETCs within each state – that is, to ETCs other than incumbent local exchange carriers.⁴ Consequently the choice to grant ETC status to a new competitive service provider may have the result of reducing the amount of subsidy available for all other competitive ETCs in the state. But the inverse does not necessarily follow: When a competitive ETC agrees to reduce the amount of subsidy it receives, funds are not necessarily reallocated to other ETCs.⁵

While Verizon provides wireless telecommunications throughout much of Minnesota, it has not previously requested or applied for ETC designation in the state. However, Verizon has acquired Minnesota's three Minnesota wireless ETCs: WWC Holding Co., Inc. (WWC), Midwest Wireless Communications, Inc. (Midwest), and RCC Minnesota, Inc. (RCC).⁶ As a condition of acquiring RCC and WCC, Verizon agreed to divest itself of certain assets and customers in areas in which the merger would have provided Verizon with undue market power, including in RCC's and

¹ 47 U.S.C. § 254(b).

² See 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. Chap. 54. See also Minn. Rules, part 7811.0100, subp. 15; part 7811.1400; 7812.0100, subp. 15; part 7812.1400.

³ 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; part 7812.1400, subp. 2.

⁴ *High Cost Universal Service Support, Federal –State Joint Board on Universal Service*, WC Docket No. 05-227, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (USF Interim Cap Order).

⁵ *In the Matter of High Cost Universal Service Support*, WC Docket No 05-337, CC Docket 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (September 3, 2010) (Corr Wireless Order).

⁶ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer of Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463 (2008).

While Verizon owns Minnesota's three wireless ETCs, various wireless carriers have ETC petitions pending. See, for example, *In the Matter of a Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Docket No. P-6823/M-09-802; *In the Matter of T-Mobile Central, LLC, Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No. P-6856/M-11-123.

WWC's service areas.⁷ In addition, Verizon agreed to forgo future subsidies for serving high-cost areas, with the total amount gradually phased out by 2013.

III. Positions of the Parties

A. Verizon

Verizon asks to the Commission to designate Verizon and its affiliated legal entities as ETCs in the service areas of Midwest, RCC and WWC. To this end, Verizon asks the Commission to amend and consolidate its prior determinations granting ETC status to Midwest, RCC, and WWC.

In support of its petition, Verizon states that its subsidiaries Midwest, RCC, and WWC now operate as part of Verizon and do business under the Verizon Wireless brand name. Consolidation would be logical and provide administrative efficiency by reducing the need for duplicative overhead and redundant filings, Verizon argues. Verizon also claims to fulfill all the requirements for ETC designation within Midwest's, RCC's, and WWC's service areas.

Granting Verizon's petition would produce two consequences in particular. First, it would consolidate Midwest's, RCC's, and WWC's reporting requirements into a single annual report;⁸ in particular, Verizon proposes to eliminate certain reporting requirements that the Commission imposed on RCC⁹ and WWC¹⁰ as a condition of ETC designation.

In addition, granting the petition would authorize Verizon to receive "federal high-cost universal service support throughout the Designated Area for all eligible lines served by Verizon Wireless and its subsidiaries and affiliates...."¹¹ While this might result in reallocation of existing subsidies among competitive ETCs, Verizon notes that it owns all the competitive wireless ETCs currently designated by this Commission, and is willing to bear the consequences of its own proposal.

⁷ Specifically, Verizon agreed to divest customers and assets in the following Cellular Market Areas: Minnesota 1 (Kitson) 2 (Lake of the Woods), 7 (Chippewa), 8 (Lac Qui Parle), 9 (Pipestone), and 10 (Le Sueur).

⁸ See *In the Matter of a Commission Investigation to Consider Adoption the Federal Communications Commission 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) at 9-11.

⁹ *In the Matter of the Petition of RCC Minnesota, Inc. and Wireless Alliance, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket No. P-6182, 6183/M-02-1503, Order Granting Conditional Approval and Requiring Additional Filings (July 31, 2003); Order Granting Approval and Requiring Modifications to Compliance Filing (October 15, 2003); *In the Matter of Petition of RCC Minnesota, Inc., for Designation as an Eligible Communications Carrier*, Docket No. PT-6182/M-07-243, Order (April 25, 2007).

¹⁰ *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) at 22.

¹¹ Verizon petition at 4.

Verizon opposes the suggestion that it re-file its petition and request designation as an ETC. Verizon argues that this procedure would serve no purpose because Verizon would simply re-file the same information and serve it on the same parties.

B. T-Mobile

T-Mobile is seeking a Commission designation as a competitive ETC.¹²

While making no recommendation on whether to grant Verizon's petition, T-Mobile urges the Commission to scrutinize whether granting the petition would serve the public interest and promote the goals of universal service, giving special consideration to two factors:

- Due to the FCC's cap on the aggregate amount of high-cost subsidies paid to competitive ETCs within each state, the choice to designate a new competitive ETC may result in reducing subsidies available to other competitive ETCs.
- Verizon divested itself of RCC and WWC customers – that is, customers that may have taken service in reliance on the ETC subsidies. Following divestment, the only customers Verizon serves in RCC's and WWC's service areas are Verizon customers – including customers that agreed to subscribe to Verizon's service, and that Verizon agreed to serve, even without any subsidies.

T-Mobile questions whether permitting Verizon to receive the benefits of these subsidies for serving existing customers would achieve the purposes for which the subsidies are provided.

C. The Department

The Department concludes that granting Verizon's petition would have the effect of designating Verizon an ETC. And the Department concludes that Verizon's petition fails to fulfill the requirements of an ETC application.

First, as T-Mobile argued, granting Verizon's petition may have the effect of authorizing Verizon to begin receiving subsidies for Verizon's current customers. This could have the effect of reducing the amount of subsidies available for other ETCs. The Department shares T-Mobile's concern that this result raises doubts that granting the petition would be in the public interest.

Second, while Verizon has filed much of the information required for ETC designation, the Department concludes that Verizon has failed to provide the two-year plan required of all new ETCs demonstrating how the subsidies would be used to improve coverage, service quality, or capacity.¹³ The Department argues that if Verizon is seeking ETC status, Verizon should file its

¹² See *In the Matter of T-Mobile Central, LLC, Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No. P-6856/M-11-123, T-Mobile petition (February 8, 2011).

¹³ See *In the Matter of a Commission Investigation to Consider Adopting the FCC's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/CI-05-1169, Order Adopting FCC's Standards for Designating Eligible Telecommunications Carriers, as Modified (October 31, 2005).

own plan addressing the next two years. According to the Department, the plan should demonstrate how high-cost universal service support would be used to improve coverage, service quality, or capacity -- in every wire center, or on a service-area-wide basis – throughout the area in which Verizon seeks designation. In addition, the Department states that the plan should make clear the specific lines, customers, and facilities for which Verizon seeks support.

Instead, Verizon cites to the plans previously filed by Midwest, RCC, and WWC, and to its 2010-2011 plan.

Finally, the Department argues that the heading of Verizon’s petition – “Joint Petition to Amend and Consolidate ETC Designations in the State of Minnesota” – obscures the nature of the filing. In particular, it obscures the idea that Verizon is seeking universal service subsidies for lines that had not previously been eligible for subsidies – with the potential consequence of reducing the amount of subsidies available for other ETCs in Minnesota. The Department questions whether this heading gave parties adequate notice of the nature of the filing and of the stakes involved.

Consequently the Department recommends that the Commission reject the current petition without prejudice. According to the Department, Verizon would then have the option to re-file its petition in a manner that addressed the concerns identified by the Department.

IV. Commission Action

The Commission finds that the manner in which Verizon captioned its petition obscured the questions the petition raises and the issues at stake. These questions include the following:

- Whether Verizon has fulfilled the requirements to be designated an ETC within the service areas of Midwest, RCC, and WWC.
- Which of Verizon’s affiliates should also be designated an ETC.
- Whether granting Verizon’s request, permitting Verizon to receive additional subsidies for serving its legacy customers, would serve the public interest.
- Whether granting Verizon’s request, permitting Verizon to receive additional subsidies potentially at the expense of other ETCs, would serve the public interest.

Consequently the Commission will adopt the Department’s recommendation to deny the petition. If Verizon seeks ETC status, Verizon should state that intention plainly in the heading of its filing in order to provide all parties will appropriate notice of the nature of the petition. Even if Verizon re-files the same information, parties may respond differently when they have clearer notice of the petition’s consequences.

Finding Verizon’s application inadequate, the Commission will decline to address revising the compliance filing requirements for RCC or WWC.

ORDER

1. The petition filed by Cellco Partnership d/b/a Verizon Wireless is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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