

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Petition of Cellco Partnership and its Subsidiaries and Affiliates to Amend and Consolidate Eligible Telecommunications Carrier Designations in the State of South Dakota and to Partially Relinquish ETC Designation

DOCKET NO. TC10-090

**JAMES VALLEY WIRELESS, LLC'S OPPOSITION
TO MOTION TO COMPEL**

James Valley Wireless hereby opposes the "Motion to Compel Discovery Responses from James Valley Wireless" ("Motion to Compel") filed April 21, 2011, by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"). In summary, the Motion to Compel seeks information that is completely and totally irrelevant to the above-captioned proceeding. The critical issue before the Commission is whether Verizon Wireless is qualified to be designated as an ETC in the State of South Dakota. The qualifications of James Valley Wireless to be an ETC are not at issue before the Commission. Further, Commission determination of the qualifications of Verizon Wireless to be an ETC is not a comparative exercise between Verizon Wireless, on the one hand, and James Valley Wireless and other CETCs, on the other hand. The application of Verizon Wireless must stand or fall on its own – as evaluated by the Commission pursuant to the broad "public interest" standard and the more specific qualification factors set forth by Section 214 of the Communications Act, SDCL 49-31-78 and A.R.S.D. 20:10:32:42.

Background

This proceeding arises from the mergers of Verizon Wireless and RCC in 2008 and Verizon Wireless and Alltel Corporation ("Alltel") in 2009. The FCC approved the Verizon Wireless/RCC merger on July 31, 2008, and it approved the Verizon Wireless/Alltel merger on

November 8, 2008.¹ In approving the Verizon Wireless/Alltel merger, the Federal Communications Commission required Verizon Wireless to divest all of its tangible and intangible assets, including all of its customers, across the entire State of South Dakota. Verizon Wireless consummated the RCC merger transaction on August 7, 2008, and the Alltel merger transaction on January 9, 2009.

On September 3, 2010, more than 19 months after consummating its merger with Alltel, and more than two years after consummating its merger with RCC, Verizon Wireless filed with the Commission a self-styled application to "amend and consolidate" the Eligible Telecommunications Carrier ("ETC") designations held by several entities, including WWC License, LLC ("WWC"), a subsidiary of Alltel Communications, LLC and RCC Minnesota, Inc., to "reflect" Verizon Wireless as the designated ETC entity (the "Application").

Clarifying the True Intent of the Verizon Wireless Application

As noted above, Verizon Wireless seeks to characterize its application as a request to "amend and consolidate [ETC] designations" awarded to WWC License, LLC ("WWC") and RCC Minnesota, Inc. ("RCC") long before Verizon Wireless acquired these entities. James Valley Wireless submits that this characterization is highly misleading as to what Verizon Wireless is really seeking. In fact, the Application is really a veiled, *post facto* request for the Commission to designate Verizon Wireless as a new ETC in South Dakota as part of a deceptive attempt by Verizon Wireless to try to legitimize prior line count filings made with the Universal Service Administrative Company ("USAC") that has resulted in the unauthorized receipt by Verizon Wireless of millions of dollars of high-cost support.

¹ See *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) and *Application 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 Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444 (2008).

In its Motion to Compel, Verizon Wireless further states that "[t]he purpose of the relief requested in the [Application] is so that the Commission, Staff, and most importantly, consumers understand that the collective Verizon Wireless operations are responsible for compliance with the universal service requirements and obligations throughout the entire area where WWC and RCC are designated as ETCs and that all customers served by Verizon Wireless are treated exactly the same for universal service purposes."² If Verizon Wireless were truly concerned about consumers, it would have (1) filed its Application immediately after its acquisitions of RCC and WWC, or, at a minimum, immediately after its June 22, 2010, divestiture of all of the assets and customers of WWC; and (2) made clear that its Application was an application to be designated as a new ETC in South Dakota. Instead, Verizon Wireless has operated under the fiction that RCC and WWC still provide service in South Dakota for the purposes of collecting high-cost support, while Verizon Wireless is the actual service provider and network operator, and the outward business and marketing entity with which consumers interact.

Standard for a Motion to Compel

The standard for a trial court (and this Commission) to apply in ruling on a discovery motion is whether the information sought is "relevant to the subject matter of the action."

Kaarup vs. St. Paul Fire & Marine. Co., 436 N.W 2d 17 (SD 1989). In *Maynard v. Hereen*, 563 N.W.2d 830 (SD 1997) the court considered the scope of discovery and held

for the most part, [the scope of discovery is to be] broadly construed." *Bean v. Best*, 76 S.D. 462, 80 N.W.2d 565 (1957). SDCL 15-6-26(b) provides, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" ...Nonetheless, while not limited in scope to only the admissible evidence, discovery requests must be "reasonably calculated to lead to the discovery of admissible evidence." SDCL 15-6-2(b). No overbroad or "carte blanche" disclosure, unduly burdensome or lacking in specificity, should be allowed.

² Motion to Compel at p. 1.

The issue before this Commission is whether it should grant Verizon's self- styled petition to "amend and consolidate" the ETC designations of WWC and RCC and allow Verizon to retroactively gain the benefit of those designations. The discovery requests that Verizon has directed to James Valley relate to James Valley's qualifications for ETC designation. James Valley is not on trial in this proceeding – Verizon is. So the old trial tactic of putting the opponent on trial should be treated for what it is, a distraction from the real issue, which is Verizon Wireless' lack of candor with this Commission (a conclusion already reached by staff at other state Commissions) and its backdoor attempt to be granted ETC designation – a status Verizon Wireless does not deserve, much less qualify for. Therefore, Verizon Wireless' Motion to Compel should be denied.

Specific Responses to Motion to Compel

Interrogatory No. 6: Process for Responding to Requests for Service

Verizon Wireless requests that James Valley Wireless be compelled to provide information about how it determines whether a request for service qualifies as a reasonable request for service in accordance with the requirements of 47 C.F.R. § 54.202 and A.R.S.D. 20:10:32:43.01. James Valley Wireless reiterates that such request is not relevant to the merits of Verizon Wireless' ETC application. The qualifications of James Valley Wireless to be an ETC are not at issue before the Commission. Further, Commission determination of the qualifications of Verizon Wireless to be an ETC is not a comparative exercise between Verizon Wireless and James Valley Wireless or any other CETC in South Dakota. Thus, Verizon Wireless is incorrect in its assertion that "if James Valley Wireless' process is less robust or effective than Petitioners', that will demonstrate the hypocrisy of James Valley Wireless' argument."³ To be qualified as an ETC, Verizon Wireless must meet the standards of this

³ Motion to Compel at p. 6.

Commission for responding to reasonable requests for service. The application of Verizon Wireless must stand or fall on its own. The manner in which James Valley Wireless meets this standard is not at issue in this proceeding.

Interrogatory No. 7: ETC Compliance Documents

Verizon Wireless requests that James Valley Wireless identify and produce each of James Valley Wireless' ETC-related compliance filings. Verizon Wireless notes that in pre-filed testimony, James Valley Wireless' witness alleged that Verizon Wireless' compliance filings and certifications may be incomplete, inadequate or misleading.

James Valley Wireless reiterates that such request is not relevant to the merits of Verizon Wireless' ETC application. James Valley's certification and compliance filings are not at issue before the Commission. Further, Commission determination of the qualifications of Verizon Wireless to be an ETC is not a comparative exercise between Verizon Wireless and James Valley Wireless or any other CETC in South Dakota. Thus, Verizon Wireless would have no reason or justification to introduce James Valley Wireless' filing at the hearing.⁴ By contrast, the adequacy and veracity of the ETC certifications and compliance filings made by WWC and RCC, under the direction of Verizon Wireless, are vitally important to the Commission's evaluation of Verizon Wireless' qualifications to be designated as an ETC.

Interrogatory No. 13: USF Projections for James Valley Wireless

Verizon Wireless requests that James Valley Wireless provide an estimate of what it expects to receive in USF support for calendar years 2011, 2012 and 2013. Verizon Wireless asserts that the information sought is relevant to the assertion that James Valley has a "pecuniary interest" in this proceeding.⁵ Verizon Wireless further asserts that it "is entitled to

⁴ See Motion to Compel at p. 7.

⁵ Motion to Compel at p. 8.

learn the extent of James Valley Wireless' pecuniary interest, *i.e.*, the amount of USF it anticipates receiving."⁶

James Valley Wireless has demonstrated that it has a direct "pecuniary interest" in this proceeding. As James Valley explained in its Supplemental Response, James Valley is a CETC in South Dakota, and it collects high-cost support from the federal universal service fund. In 2009 and 2010, total uncapped high-cost support sought by all CETCs in South Dakota exceeded the statewide cap. This is a matter of public record, available in USAC Tables HC 01 and HC 01A for the relevant periods. Verizon Wireless/Alltel/WWC received the vast majority of high-cost support in South Dakota. The unlawful support sought by Verizon Wireless/Alltel/WWC was responsible for the total statewide level of uncapped support exceeding the statewide cap. The filing by Verizon Wireless/Alltel/WWC of unauthorized line counts has reduced the amount of high-cost support received in South Dakota by James Valley and other competitive ETCs in the state. In other words, *but for* the unlawful actions of Verizon Wireless, James Valley would have collected more high cost support.

The projected support that James Valley Wireless expects to receive in 2011, 2012 and 2013 is entirely irrelevant. First, James Valley has demonstrated that it suffered financial harm. To the extent such a showing is required to obtain intervenor status in this proceeding, James Valley Wireless has made that showing. The precise amount of financial harm already suffered by James Valley, or the harm that may be suffered by James Valley in the future, is not at issue in this proceeding. James Valley reiterates that it is the qualifications of Verizon Wireless – not James Valley – that are at issue in this proceeding. In assessing the qualifications of Verizon Wireless to be designated as an ETC, it is important for the Commission to determine whether Verizon has filed unauthorized line counts, and thereby collected high-cost support to which it

⁶ *Id.*

was not entitled, as this reflects on the candor and veracity of Verizon Wireless – the ETC applicant.

Request for Production of Documents No. 4: Subscriber Line Count Reports Submitted to USAC by James Valley Wireless

Verizon Wireless requests that James Valley Wireless be compelled to produce the subscriber line reports it has submitted to USAC. Verizon Wireless asserts that "[t]here may be information in James Valley Wireless' line count reports that [Verizon Wireless] can use to rebut ... allegations [of improper Verizon Wireless line count filings].

James Valley reiterates yet again that it is the qualifications of Verizon Wireless – not James Valley– that are at issue in this proceeding. In assessing the qualifications of Verizon Wireless to be designated as an ETC, it is important for the Commission to determine whether Verizon has filed unauthorized line counts, and thereby collected high-cost support to which it is not entitled, as this reflects on the candor and veracity of Verizon Wireless – the ETC applicant.

Further, as set forth in the pre-filed testimony of James Valley Wireless, the genesis of these unauthorized line counts are the acquisitions of RCC and Alltel by Verizon Wireless, the subsequent divestiture of all of Alltel's assets across the State of South Dakota, and the fact that Verizon Wireless has never been authorized as an ETC in South Dakota. None of these factors are in the least bit relevant to James Valley Wireless, which has not acquired or been acquired by another carrier, has not divested any assets, and has obtained its own ETC designation from the State of South Dakota, or James Valley Wireless' line count filings – all of which were filed pursuant to James Valley Wireless' ETC designation from this Commission.

James Valley Wireless further submits that Verizon Wireless' production request is not only irrelevant, but in reality is nothing more than a burdensome "fishing expedition" designed to harass the much smaller James Valley Wireless.

Conclusion

For the foregoing reasons, James Valley respectfully submits that the Motion to Compel filed by Verizon Wireless should be DENIED in its entirety.

Dated this 29th day of April 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **James Valley Wireless, LLC's Opposition to Motion to Compel** was served electronically on the 29th day of April 2011 upon the following:

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