

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

IN THE MATTER OF THE)
APPLICATION OF NEW CINGULAR)
WIRELESS PCS, LLC, A SUBSIDIARY)
OF AT&T MOBILITY LLC, FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
NONRURAL AREAS)

Docket No. TC11-072

**Opposition of New Cingular Wireless PCS, LLC to the Petitions for
Intervention by James Valley Wireless, LLC and Native Yes We Can Foundation**

I. Introduction

James Valley Wireless, LLC (“JVW”) and Native Yes We Can Foundation (“Native”) filed Petitions to Intervene in the above-captioned proceeding. Interestingly, Native served electronically a copy of its petition on the Executive Director of the Commission but did not file the petition in the docket as required. Nevertheless, for the reason outline below, New Cingular Wireless PCS, LLC (“AT&T Mobility”) opposes these Petitions for Intervention.

II. The Petitions for Intervene Are Contrary to State Law and Must Be Denied

The subject of this docket is AT&T Mobility’s Application for Designation as an Eligible Telecommunications Carrier in Non-Rural Areas. ARSD Section 20:10:31:42 states that:

Upon request and consistent with public interest, convenience, and necessity, the commission **may**, in an area served by a **rural** telephone company, and **shall, in all other areas**, designate more than one telecommunications company as an eligible telecommunications carrier for a service area designated by the commission, as long as each additional requesting carrier meets the requirements of 47 C.F.R. Section 54.201 (January 1, 2006). (emphasis added).

Section 54.201 requires that the telecommunications carrier offer services that are supported by federal universal support mechanisms either using its own facilities or a combination of its own

facilities and resale of another carrier's services and advertise the availability of such services and charges using media of general distribution.

The Supreme Court of South Dakota addressed the question of what type of public interest analysis is required for non-rural applications and explained that if the requesting carrier meets those requirements noted above which are stated in 47 USC Section 214(e) and restated in 47 C.F.R. Section 54.201, the PUC must designate an additional ETC carrier in a non-rural exchange.¹ “The phrase ‘consistent with the public interest, convenience, and necessity,’ when read with the mandatory ‘shall’ expresses the congressional premise that in non-rural exchanges the existence of more than one ETC is in the public interest.”² Consequently, while additional public interest examination is required for applications in rural areas as indicated by use of the permissive “may” and additional language in the federal law and state regulation,³ the public interest inquiry for non-rural areas is limited to finding that the applicant meets the requirements of 47 C.F.R. Section 54.201.

JVW indicated in its Petition that pursuant to ARSD Section 20:10:32:43:07, the Commission must undertake a public interest analysis that includes “the impact of multiple designations on the universal service fund.” It raises the concern that if AT&T's application were to be granted, it may result in a reduction in high cost support for all existing South Dakota CETCs, including JVW.⁴

¹ The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, 623 N.W. 2d 474, 483 (2001).

² Id.

³ *See*, “Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.” 47 U.S.C. Section 214 (e)(2); “The commission may not , in an area served by a rural telephone company, designate more than one eligible telecommunications carrier absent a finding that the additional designation is in the public interest.” ARSD Section 20:10:32:42.

⁴ James Valley Wireless, LLC Petition to Intervene pp. 1-2.

Similarly, Native also cites a public interest analysis pursuant to the same section and claims that part of that public interest determination will be the impact of the designation on Indian tribes and tribal members residing on and off the reservation.⁵

However, as noted above, an application for designation of ETC status in non-rural areas has a limited public interest analysis based solely upon the requirements of Section 54.201. The public interest analysis required by ARSD Section 20:10:43:07 applies only to rural applications. As the basis for these Interventions is not applicable to the Application in this docket, these Petitions for Interventions must be denied.

There are additional reasons to deny the Intervention filed by Native. The Intervention was filed on July 13, 2011 which is past the deadline of July 1, 2011. Moreover, even if an expanded public interest analysis were to be applicable, an intervenor must have a direct interest in the proceeding that is distinguishable from an interest common to the public or the taxpayers in general.⁶ Native notes that AT&T Mobility is seeking designation as an ETC in rural areas of South Dakota. That is true but not with respect to this docket. Native's interest in this proceeding for non-rural areas is not distinguishable from an interest common to the public. Its Petition for Intervention should also be denied for failure to make a timely filing⁷ and for lack of a direct interest in the proceeding.

⁵ Native Yes We Can Foundation Petition to Intervene, p. 2.

⁶ ARSD Section 20:10:01:15:05.

⁷ ARSD Section 20:10:01:15:01.

III. Conclusion

For the foregoing reasons, AT&T Mobility respectfully requests that the Petitions for Intervention of JMW and Native be denied.

Dated this 22nd day of July, 2011.

NEW CINGULAR WIRELESS PCS, LLC

/s/electronically filed

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 22nd day of July upon the following:

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