

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

**IN THE MATTER OF THE FILING BY LONG) ORDER GRANTING ELIGIBLE
LINES WIRELESS, LLC FOR DESIGNATION) TELECOMMUNICATIONS
AS AN ELIGIBLE TELECOMMUNICATIONS) DESIGNATION; ORDER
CARRIER) GRANTING CERTIFICATION
) TC06-184**

On October 30, 2006, Long Lines Wireless, LLC (Long Lines) filed a Petition for Designation as an Eligible Telecommunications Carrier with the Public Utilities Commission (Commission). In its Petition, Long Lines requested designation in the counties of Union, Clay, Yankton, Bon Homme, Lincoln, Turner, Minnehaha, McCook, Lake, Moody, Brookings, Jackson, Harding, Butte, Lawrence, Custer, Fall River, Bennett, Perkins, Meade, Pennington, Shannon and Haakon. Long Lines stated that it would provide service to its entire licensed area via its own facilities, not through resale.

Long Lines' petition was incomplete and did not comply with the Commission's administrative rules. As a result, Staff sent numerous data requests in order to obtain additional information. As a result of these data requests as well as Commission questions during Commission meetings, Long Lines made numerous modifications to its original filing. Long Line's final modifications to its original filing were filed on June 23, 2008.

In its final amended filing, Long Lines requested designation in the following Qwest nonrural wire centers: N. Sioux City, Madison, Whitewood, Sioux Falls, Rapid City, Sturgis, Elk Point, Harrisburg/Tea, Colman, Hill City, Deadwood, Lead, Vermillion, Volga, Madison, Spearfish, Yankton, Belle Fourche, Canton, Flandreau, and Arlington. Long Lines requested immediate designation for these wire centers.

For service areas served by rural telephone companies, Long Lines requested immediate designation in the service areas Long Lines intends to serve in their entireties. For service areas served by rural telephone companies where Long Lines would not serve the entire services areas, Long Lines requested redefinition along with designation.

Long Lines requested immediate designation in the following service areas served by rural telephone companies:

- a. Alliance Communications Cooperative, Inc. (Splitrock): Brandon and Garretson;
- b. Alliance Communications Cooperative, Inc. (Baltic): Baltic, Crooks, Alcester, and Hudson;
- c. Beresford Municipal Telephone Co.: Beresford;
- d. Brookings Municipal Utilities: Brookings;
- e. Bridgewater-Canistota Independent Telephone Co.: Canistota and Bridgewater;
- f. Citizens Telecom Co. (MN), Frontier Citizens (MN); West Jasper;
- g. Fort Randall Telephone Company: Viborg, Tabor, Centerville, and Tyndall;

h. Heartland Telecom Company of Iowa d/b/a Hickory Tech: West Hawarden and West Akron;

i. Hills Telephone Company, Inc: North Larchwood and Valley Springs;

j. Interstate Telecom Coop Inc.: Wentworth, White, Chester, Nunda, Brookings, West Hendricks, Elkton, and Sinai;

k. Jefferson Telephone Co.: Jefferson;

l. Kadoka Telephone Co.: Kadoka;

m. PrairieWave Community Telephone, Inc. (now known as Knology Community Telephone, Inc.): Hurley, Alsen, Irene, Wakonda, Parker, Worthing, Lennox, Beresford, and Flyger;

n. RT Communications: East Newcastle;

o. Sioux Valley Telephone Co.: Humboldt, Dell Rapids, and Colton;

p. Union Telephone Co.: Hartford.

Long Lines requested designation and redefinition of the following service areas served by rural telephone companies:

a. Fort Randall Telephone Co.: Keystone and Hermosa;

b. Golden West Telephone Cooperative, Inc.: Wall, Quinn, Oral, Interior, Kyle, Creighton, Milesville, Hot Springs, Maurine, New Underwood, Wicksville, Buffalo Gap, Phillip, Pine Ridge, Enning, Wasta, Ardmore, Oelrichs, and Edgemont;

c. McCook Cooperative Telephone Company: Salem, Spencer, Center, Winfred, and Canova;

d. Vivian Telephone Co.: Custer, Lesterville, Springfield, Marion, Avon, and Scotland.

The Commission considered this matter at its February 12, 2008 meeting, its March 25, 2008 meeting, and its June 24, 2008 meeting. Action was deferred in order to obtain additional information. At its July 8, 2008 meeting, the Commission again considered this matter. The Commission has jurisdiction pursuant to SDCL 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81, and 47 U.S.C. § 214(e). The Commission voted unanimously to approve the petition, as amended.

In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a). In its filing, Long Lines

stated that it will offer all of the supported services. Long Lines noted that it is a wireless carrier that currently offers all the services via its own network. The Commission finds that Long Lines is able to offer the supported services.

A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services. . . ." 47 U.S.C. § 214(e)(1)(A). Long Lines stated that it will provide the supported services using its existing network infrastructure, or, if necessary, through a combination of its own facilities and resale of other carriers' networks. Thus, the Commission finds Long Lines meets this requirement.

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Long Lines stated that it will meet this requirement through media of general distribution that may include newspapers, magazines, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. Long Lines further committed to advertising the availability of Lifeline and Link-Up services through advertisements and reaching out to community, health, welfare, and employment offices to provide information to the potential recipients of Lifeline and Link-Up services. The Commission finds Long Lines has demonstrated that it will meet the advertising requirement.

The Commission has adopted ETC rules that are similar to the rules adopted by the FCC. See ARSD 20:10:32:42 through 20:10:32:46. As the FCC stated in its order adopting its new ETC rules, the new rules were designed to "create a more rigorous ETC designation process" and because of this more rigorous process, the "long-term sustainability of the universal service fund" would be improved. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order, ¶ 2 (rel. March 17, 2005) ("*FCC Order Regarding ETC Designations*").

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing service to customers making a reasonable request for service in the service area. Long Lines has made that commitment in its filing. Long Lines certified that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and

(2) If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost, by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna, or installing other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing, or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment.

Pursuant to ARSD 20:10:32:43.02, an applicant must provide a two year plan that explains upgrades or improvements the applicant will make in each wire center. Long Lines provided a two-year plan setting forth the upgrades and improvements it plans on making in that two year period. For those areas not covered by its two year plan, Long Lines committed to building out to those areas in the next three to five years.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations. Long Lines explained how it intended to remain functional in emergency situations. Long Lines has battery back-up at each cell site with a battery reserve of 12-16 hours and portable generators in each BTA.

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. Long Lines stated that its customer service representatives can be reached through a toll free number, dialing 611 on the handset, or via the web. Long Lines stated that its systems are engineered for 99.999% reliability and it has constant monitoring to ensure adequate capacity to handle call volumes. Long Lines further asserted that its response time to an outage is immediate and it would generally know of any trouble or outage from system alarms before it received customer complaints. In addition, Long Lines stated that it complies with the CTIA Code for Consumers for wireless carriers. Finally, Long Lines agreed to add the following language to its customer agreements:

Notwithstanding any other provisions of this agreement, the terms of this agreement are subject to the jurisdiction of the South Dakota Public Utilities Commission for the purpose of resolving any complaints and/or disputes regarding service quality and billing related matters. For all such matters, subscribers may choose to bring a complaint before the South Dakota Public Utilities Commission or be subject to mandatory arbitration

Pursuant to 20:10:32:43.05, an applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent carrier. Long Lines stated that it has a variety of rate plans that provide local usage, with five out of the six plans having unlimited local calling. Long Lines asserted that many wireless providers advertise unlimited plans but still have a cap on the amount of usage allowed. Long Lines stated that it does not cap usage on the unlimited plans.

Pursuant to 20:10:32:43.06, an applicant must certify that it will be able to provide equal access to long distance carriers if no other ETC is providing equal access within the service area. Long Lines certified that it would do so.

The Commission finds that Long Lines has met the requirements of ARSD 20:10:32:43.01 through 20:10:32:43.06.

In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest. When making this determination, the Commission must consider the following:

Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability

to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

ARSD 20:10:32:43.07.

In accordance with the public interest rule, the Commission will first consider the benefits of increased consumer choice. The Commission first notes that the FCC has stated that “the value of increased competition, by itself, is unlikely to satisfy the public interest test.” *FCC Order Regarding ETC Designations* at ¶ 44. In its prior decisions in which it designated competing carriers as ETCs in areas served by a rural telephone company, the Commission looked at the benefits of expanded local calling areas, mobility, and the provisioning of service in areas that are not currently served or are underserved. *See e.g.*, In the Matter of the Filing by WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas, *Order Designating Western Wireless as an Eligible Telecommunications Carrier*, Docket TC03-191, at ¶ 20 (September 2, 2004). Long Lines asserts that its designation as an ETC will promote competition which will help secure lower pricing and encourage the deployment of new telecommunications technologies. The Commission finds that the designation of Long Lines will bring the benefits of increased consumer choice.

Next, the Commission will consider the impact of multiple designations on the universal service fund. The FCC has stated that “analyzing the impact of one ETC on the overall fund may be inconclusive.” *FCC Order Regarding ETC Designations* at ¶ 54. However, the analysis regarding the impact of multiple designations on the universal service fund has recently been affected by an FCC order which caps the amount of universal service funds for competitive ETCs. *In the Matter of High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order (rel. May 1, 2008). In this order, the FCC capped the total annual competitive ETC support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The FCC adopted this as an interim emergency cap and stated that it will be of limited duration. Thus, the Commission finds that, at this time, multiple designations will have no or limited impact on the overall size of the universal service fund given that the support is currently capped for competitive ETCs.

The next consideration involves an analysis of the unique advantages and disadvantages of the applicant's service offerings. Long Lines asserted that it will provide “innovative and unique benefits to South Dakota such as expanded local calling areas, high quality voice services and high speed data services.” Long Lines stated that it will use its high cost support to construct new facilities which will improve wireless service quality, reduce dead spots, and extend telephone service. A possible disadvantage is that with the interim cap, other CETCs may receive less money.

However, as previously noted this cap is designed to be interim in nature, pending a more comprehensive review by the FCC of universal service funding. The Commission finds that additional facilities will help improve wireless service quality, reduce dead spots, and provide cellular service in areas where it does not exist or is of poor quality.

With respect to commitments made regarding the quality of the telephone service provided by Long Lines, the company states that it will provide high quality voice services and high speed data services with a system designed for 99.999% reliability. Long Lines stated that it provides quality service to its customers and has an experienced engineering and technical support team that provide emergency support 24 hours a day, seven days a week. Its system is reinforced by battery back ups and generators at remote and key communications sites. The Commission finds that Long Lines has committed to providing high quality wireless service.

The Commission must also consider Long Line's ability to provide the supported services throughout the designated service area within a reasonable time frame. Long Lines has committed to offering the supported services throughout the designated service area within a reasonable time frame. In its two year plan, Long Lines has committed to building a number of towers in its proposed service area. And, as previously stated, for those areas not currently covered by its two year plan, Long Lines will build out to those areas in the next three to five years.

The Commission finds that Long Lines has shown a commitment to provide the supported services in its proposed service area within a reasonable time frame. If Long Lines fails to provide services throughout its entire service area within a reasonable time frame, the Commission will have the ability to revoke Long Lines' ETC designation.

The next consideration is whether the designation of Long Lines will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. No incumbent local exchange carrier intervened in the docket or submitted any comments regarding the application. The Commission finds that no evidence was presented that demonstrated that the designation of Long Lines as an ETC would have a detrimental effect on the provisioning of universal service by any of the affected incumbent local exchange carriers.

Since Long Lines sought designation below the study area level of some of the rural telephone companies, the Commission must conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. Further, in order to be designated as an ETC in the proposed service areas of four rural companies, the rural companies' service areas must be redefined. Long Lines sought redefinition for Fort Randall Telephone Company, Golden West Telephone Cooperative Inc., McCook Cooperative Telephone Company, and Vivian Telephone Company.

Pursuant to section 214(e)(5) a service area is defined as follows:

The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) 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 [FCC] 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.

Thus, any proposed redefinitions made by the Commission must be concurred in by the FCC.

As recognized by the FCC, the Federal-State Joint Board on Universal Service expressed the following concerns regarding the redefinition of rural telephone company service areas: "(1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level." *In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum and Order, FCC 03-338, at para. 41 (rel. January 22, 2004) The Commission will first review any creamskimming concerns.

A creamskimming analysis compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. The Commission is able to consider other factors when conducting its creamskimming analysis, such as whether the incumbent has disaggregated its universal service support pursuant to 47 C.F.R. § 54.315. After a number of requested corrections, Long Lines submitted its final creamskimming analysis on May 19, 2008. This analysis supports Long Lines' position that it is not engaging in creamskimming by attempting to serve only the low-cost, high revenue customers in the rural companies' service areas. Thus, the Commission finds that the record in this proceeding does not show that Long Lines is attempting to engage in creamskimming.

With respect to the Joint Board's concern about recognizing that rural telephone companies are on a different competitive footing from other LECs, the Commission finds that there has been no showing that redefinition will reduce the rural carriers' high-cost support since no evidence was presented to show that the receipt of high-cost support by Long Lines will lessen the support that the rural carriers receive. Regarding the concern about any added administrative burdens of requiring rural telephone companies to calculate costs at something other than a study area level, the Commission notes that redefinition does not change how the rural carriers will calculate their costs.

Thus, the Commission finds it will propose that certain rural telephone areas be redefined. Consistent with its decision in the prior dockets, the Commission will again redefine service areas into groups of wire centers instead of designating each wire center separately. The Commission finds this will make it more difficult for a competitive ETC to stop providing the supported services in the most high-cost, low density wire centers while retaining its designation in the lower cost, higher density wire centers. Thus the Commission will recommend to the FCC that the study areas be redefined as follows:

- a. For Fort Randall Telephone Co., the service area should be redefined by creating another separate service area comprised of Keystone and Hermosa;
- b. For Golden West Telephone Cooperative, Inc., the service area should be redefined by creating a service area comprised of Wall, Quinn, Oral, Interior, Kyle Creighton, Milesville, Hot Springs, Maurine, New Underwood, Wicksville, Buffalo Gap, Phillip, Pine Ridge, Enning, Wasta, Ardmore, Oelrichs, and Edgemont;
- c. For McCook Cooperative Telephone Company, the service area should be redefined by creating a service area comprised of Salem, Spencer, Center, Winfred, and Canova;

d. For Vivian Telephone Co., the service area should be redefined by creating a service area comprised of Custer, Lesterville, Springfield, Marion, Avon, and Scotland.

Long Lines also requested that certification be sent to the FCC and the Universal Service Administrative Company (USAC) stating that Long Lines will use the federal universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support was intended. The Commission approves this request for certification regarding the use of federal universal service support. Thus, the Commission will send certification letters to USAC and the FCC for the service areas that are subject to immediate designation and will send certification letters for the other designated service areas if the FCC concurs in the Commission's redefinition of those service areas.

It is therefore

ORDERED, that Long Lines is designated as an ETC in the above listed areas, subject, in some service areas, to the FCC's concurrence with the proposed redefinitions; and it is

FURTHER ORDERED, that designation of Long Lines in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefintions; and it is

FURTHER ORDERED, that Long Lines is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended; and it is

FURTHER ORDERED, that the Commission approves Long Lines' Request for Certification Regarding Its Use of Federal Universal Service Support.

Dated at Pierre, South Dakota, this 26th day of August, 2008.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>Aldine Kolbo</u>
Date: <u>8/26/08</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner