

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

IN THE MATTER OF THE FILING BY JAMES)	ORDER GRANTING
VALLEY WIRELESS, LLC FOR DESIGNATION)	ELIGIBLE
AS AN ELIGIBLE TELECOMMUNICATIONS)	TELECOMMUNICATIONS
CARRIER)	DESIGNATION; ORDER
)	GRANTING CERTIFICATION
)	TC09-024

On May 14, 2009, the Public Utilities Commission (Commission) received a petition from James Valley Wireless, LLC (JVW) for designation as an eligible telecommunications carrier (ETC). JVW requested that its operation be designated as eligible to receive all available support from the Federal Universal Service Fund (USF) including, but not limited to, support for rural, insular and high-cost areas and low-income customers. JVW requested that it be designated as an ETC in the Aberdeen exchange of Qwest. JVW also requested that certification be sent to the FCC and the Universal Service Administrative Company (USAC) stating that JVW will use the federal universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support was intended.

On May 21, 2009, the Commission electronically transmitted notice of the filing and the intervention deadline of June 5, 2009, to interested individual and entities. No Petitions to Intervene were filed. On October 6, 2009, the Commission received a Supplemental Filing from JVW.

At its October 20, 2009, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 214. The Commission voted unanimously to approve the petition.

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, JVW stated that it will offer all of the supported services. The Commission finds that JVW 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). JVW stated that it will provide the supported services using its existing wireless network infrastructure throughout the entire Aberdeen exchange. Thus, the Commission finds JVW 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). JVW 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. JVW further

committed to advertising the availability of Lifeline and Link-Up services by reaching out to community, health, welfare, and employment offices to provide information to potential recipients of Lifeline and Link-Up services. The Commission finds JVW 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. JVW has made that commitment in its filing. JVW 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. JVW provided a two-year plan setting forth the upgrades and improvements it plans on making in that two year period.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations. JVW explained how it intended to remain functional in emergency situations. JVW stated that it has “battery back-ups and diesel generators at its central office, which are capable of running indefinitely in the event of a major electrical outage.”

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. JVW stated that it has an “experienced engineering and technical support team that provides on-call emergency support 24 hours a day, seven days a week. JVW's response time to an outage report is normally less than one hour.” JVW further stated that it will commit to the CTIA consumer Code for Wireless Service.

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. JVW stated that its rate plans are comparable with the plans offered by Qwest.

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. JVW certified that it would do so.

The Commission finds that JVW 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 begin by considering 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). JVW asserts that its designation as an ETC will "advance universal service, promote competition and facilitate the provision of advanced communications services to the residents of South Dakota." The Commission finds that the designation of JVW 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. In addition, the Commission notes that the Aberdeen exchange does not receive any high cost funding. ETCs in the Aberdeen exchange are eligible to receive Lifeline and Link-Up funds.

The Commission will next consider any unique advantages and disadvantages of the applicant's service offerings and JVW's commitments regarding its telephone service quality. JVW stated that its network "consists of newly constructed electronic equipment and towers bringing the very best in bandwidth capacity, network survivability, reduced power consumption, and call reliability." In addition JVW stated that it provides improved customer service "staffed by local residents who live in the affected areas and know the people that they serve." JVW states that its network provides "superior wireless coverage to that provided by other wireless providers." In addition, JVW provides on-call emergency support 24 hours a day, each day. JVW further stated that its designation "as an ETC will help address the health and safety risks associated with geographic isolation in rural communities." JVW noted that if granted ETC designation, "JVW will be able to offer Lifeline and Link-up programs, to what is anticipated to be a growing number of eligible consumers due to the effects of the economic downturn." No evidence was presented that there were disadvantages to JVW's service offerings. The Commission finds that JVW's facilities improve wireless service quality and customer service and that it has committed to providing high quality wireless service.

The Commission must also consider JVW's ability to provide the supported services throughout the designated service area within a reasonable time frame. JVW states it is currently serving the entire Aberdeen exchange with its wireless network.

The next consideration is whether the designation of JVW will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. Qwest, as the incumbent local exchange carrier, did not intervene or submit comments in this docket. Qwest is a non-rural carrier that does not receive high cost funds for the exchange of Aberdeen. The Commission finds that no evidence was presented to show that the designation of JVW as an ETC would have a detrimental effect on the provisioning of universal service by the incumbent local exchange carrier.

JVW also requested that certification be sent to the FCC and the Universal Service Administrative Company (USAC) stating that JVW 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.

It is therefore

ORDERED, that JVW is designated as an ETC in the Aberdeen exchange; and it is

FURTHER ORDERED, that JVW 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 JVW's Request for Certification Regarding Its Use of Federal Universal Service Support.

Dated at Pierre, South Dakota, this 3rd day of November, 2009.

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><i>Delaine Kolbe</i></u>
Date: <u>11/5/09</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner