

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of)
Northwest Missouri Cellular Limited Partnership)
for Designation as a Telecommunications)
Company Carrier Eligible for Federal Universal) Case No. TO-2005-0466
Service Support Pursuant to § 254 of the)
Telecommunications Act of 1996.)

**POSTHEARING BRIEF OF
NORTHWEST MISSOURI CELLULAR LIMITED PARTNERSHIP**

COMES NOW Applicant Northwest Missouri Cellular Limited Partnership (“NWMC”) and submits the following Posthearing Brief.

Introduction

On May 24, 2006, NWMC submitted a comprehensive Prehearing Brief in this matter. Pursuant to the Commission's Order Adopting Procedural Schedule, Posthearing Briefs were limited in length and purpose. Specifically Posthearing Briefs were limited to ten pages and were to "generally update" Prehearing Briefs based upon evidence adduced at the hearing. To comply with these requirements NWMC will follow the format of it's Prehearing Brief.

I. Issue One

Telecommunications companies seeking eligible telecommunications carrier (“ETC”) status must meet the requirements of Section 214(e)(1) throughout the service area for which designation is received. Section 214(e)(1) requires a carrier to offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and to advertise the availability of such services and the charges therefore using media of general distribution. Does NWMC meet the requirements of Section 214(e)(1) throughout the service area for which it seeks designation?

No party apparently seriously contests the fact that NWMC meets the requirements of Section 214(e)(1). The company has demonstrated that it will offer and advertise the required services throughout the service area for which it seeks designation.

A. NWMC provides the core services required to qualify for universal service support.

The core services and functions required to be offered by an ETC are specified in Section 54.101(a) of the FCC's rules:

- Voice grade access to the public switched network;
- Local usage;
- Dual tone multi-frequency signaling or its functional equivalent;
- Single-party service or its functional equivalent;
- Access to emergency services;
- Access to operator services;
- Access to interexchange service;
- Access to directory assistance; and
- Toll limitation for qualifying low-income consumers.¹

NWMC has conclusively established that it can and will provide all of the listed functions and services.

¹ On December 30, 1997, the FCC changed its definition of toll-limitation services in its Fourth Order on Reconsideration of the Universal Service Report and Order, CC Docket Nos. 96-45, *et al.* The FCC stated, "We define toll-limitation services as either toll blocking or toll control and require telecommunications carriers to offer only one, and not necessarily both, of those services at this time in order to be designated as eligible telecommunications carriers." *Id.* at 210.

B. NWMC will advertise the core universal services.

Pursuant to § 254(c) of the Act, an ETC must advertise, using media of general distribution, the availability of and charges for the core services required to qualify for universal service support. Again, no party has contested the fact that NWMC does this required advertising and will expand its advertising upon grant of its application.

II. Issue Two

ETC designations by a state commission must be consistent with the public interest, convenience and necessity pursuant to Section 214(e)(2). The Federal Communication Commission's ("FCC's") *ETC Designation Order* determined that this public interest standard applies regardless of whether the area is served by a rural or non-rural carrier. Is granting ETC status to NWMC consistent with the public interest, convenience and necessity throughout the service area for which NWMC seeks ETC designation?

The parties opposing NWMC's application have, for a variety of unfounded reasons, contended that granting ETC status to NWMC is not consistent with the public interest. Contrary to their assertions granting NWMC ETC status will promote the public interest because it will enable NWMC to bring wireless service, including E911 and CDMA, to many unserved, under-served, remote and difficult-to-reach locales and it will increase competition for primary telephone service in remote areas. Moreover, Lifeline and Linkup customers would have the ability to choose wireless service that would otherwise be unavailable to them. (Tr. p. 76).

A. USF support will result in increased competition in rural areas.

The FCC has long recognized that promoting competition in specific telecommunications service markets has multiple public interest benefits (*e.g.*, cost-based pricing, higher quality and more innovative services, increased consumer choice and a

decreased need for regulatory oversight). As a result, stimulating competition, whenever possible, is a paramount FCC policy objective. NWMC nonetheless acknowledged at the hearing that increased competition by itself is unlikely to satisfy the public interest test. (Tr. p. 68). It was for that reason NWMC presented evidence demonstrating the benefits USF support would bring to the public in its designated areas.

B. USF support will maximize consumer welfare.

Section 214(e)(2) of the Act is concerned with maximizing consumer welfare. As Bundridge testified, affording USF support to NWMC will advance consumer welfare in numerous ways:

USF support will allow NWMC to continue to bring wireless service to rural parts of its FCC-licensed service area despite the high costs of providing service in this market.²

USF support will allow NWMC to provide E911 services that are critical to public safety, particularly in the rural-most portions of the service area.³ In fact NWMC is the only wireless provider offering service in Worth County and with USF support would make enhanced 911 service available. (Tr. p. 165).

USF support will allow NWMC to provide enhanced CDMA coverage to significant portions of its FCC-licensed service area (some of the most rural portions of the market) that still do not have such coverage.⁴ (Tr. pp. 135-136).

USF support will allow NWMC to provide additional cell sites and improved coverage in its service area through new cell site construction; in addition to providing service, this will bring wireless E911 services to rural areas that currently lack E911.⁵

² Bundridge Direct 10:3-17.

³ Bundridge Direct 10:18-21.

⁴ Bundridge Direct 10:22 – 11:2.

⁵ Bundridge Direct 11:2 – 12:9.

USF support will allow NWMC to provide wireless E911 service to any compatible handset in NWMC's coverage area, whether or not the user is a NWMC customer.⁶

C. NWMC is committed to providing quality service to requesting customers throughout its designated service area.

OPC expressed concern that absent imposition of the Commission's quality of service and billing standards rules applicable to wireline companies that customers will not be adequately protected. NWMC has affirmatively committed to comply with all consumer safeguards addressed in the Commission's newly adopted ETC rule. (Tr. p. 166). This commitment includes adoption of the Cellular Telecommunications and Internet Association ("CTIA") Consumer Code for Wireless Service. Further, NWMC has met all FCC consumer privacy requirements and in fact has gone beyond those standards by adopting more restrictive internal requirements. (Tr. pp. 168, 173-174 and Exs. 13 and 14). Finally, NWMC committed to document all consumer complaints, including those related to billing and collection and to report how all complaints were resolved to the Commission on an annual basis. (Tr. p. 177).

In light of the Commission's newly promulgated ETC rule, it would be inappropriate and possibly unlawful to impose additional rules and conditions on a wireless ETC applicant. All interested parties had full opportunity to participate in the Commission's rulemaking and failure to have successfully advocated consumer protection positions in that proceeding should not be reason to reopen those issues in an individual contested case proceeding. OPC is of course free to seek amendment to the Commission's new ETC rule in another rulemaking proceeding.

⁶ Bundridge Direct 12:10 – 13:11.

D. NWMC will advertise supported services throughout its designated service area.

This issue has been adequately addressed in NWMC's Prehearing Brief and herein above.

E. ETC designation for NWMC will greatly enhance lifeline and link-up service available in rural Missouri.

This issue has been adequately addressed in NWMC's Prehearing Brief and herein above.

F. USF policy arguments relating to ETC designation for wireless carriers are not at issue in this application.

Various parties continue to raise policy arguments against granting wireless carriers, such as NWMC, ETC status. These policy arguments have little to do with the NWMC Application. The current federal statutory requirements and regulatory processes allow CMRS carriers to obtain universal service support. Without taking any position as to merits of the arguments advanced in the ongoing policy debate, NWMC respectfully submits that it is not relevant to the consideration of NWMC's Application and that grant of the NWMC Application will neither prejudice those arguments when they are considered in the proper forum nor insulate NWMC from any subsequent changes in the rules regarding access to USF. An exchange between Commissioner Murray and NWMC witness Zentgraf sum up the issue succinctly:

Q. But as it exists today, isn't it our obligation to follow the rules that have been set out by the FCC and those that this Commission has adopted, and in terms of granting ETC status regardless of what it may do to the fund because the fund is poorly devised?

A. Exactly. I wholeheartedly agree. I do believe that that's what we need to do. We need to follow the rules that are in play today. We can't stop how the fund is

being done today. Not to say that it isn't gonna be looked at tomorrow, and when it does, it may change for all of us. (Tr. pp. 74-75).

The NWMC Application is before this Commission under an established set of rules and statutory requirements. Denial of NWMC's Application will not affect the ability of wireless carriers in other states to draw upon the USF; it will only affect the ability of the citizens of rural Missouri to benefit from those federal funds. The grant of the NWMC Application will, in and of itself, place an insignificant burden on the USF. Accordingly, the Commission should avoid consideration of generalized policy issues which are presently being fully considered by the Joint Board, Congress and the FCC. Those ongoing deliberations have no bearing on the designation of NWMC as an ETC nor should this Commission weigh those arguments at all in ruling on the NWMC Application; knowing full well that any ETC designation will be subject to any changes ultimately adopted in those proceedings.

III. Issue Three

In addition to the standards set out in the FCC's *ETC Designation Order*, the Commission has promulgated rules to be used in evaluating ETC applications. A final Order of Rulemaking for these rules, designated as 4 CSR 240-3.570, was published in the Missouri Register on May 15, 2006. Does NWMC meet the requirements of the Commission's ETC rules?

Rather than attempting to address each provision of the Commission's new ETC rule, NWMC will focus on the specific provisions addressed during the hearing. First, Staff contends that NWMC has failed to commit to meet the requirements of 4 CSR 240-3.570(2) (A) 8 and 10. Those provisions require a statement that the carrier will satisfy the consumer privacy protection standards in the federal rules and that the carrier commit to offer a local usage plan comparable to those offered by the incumbent local exchange carrier. Staff's concerns are totally unfounded. NWMC, as indicated above, meets and

exceeds the rules addressing consumer privacy. (See (Tr. pp. 168, 173-174 and Exs. 13 and 14). Similarly, NWMC has confirmed its commitment to continue offering local usage plans comparable or superior to those offered by the incumbent LECs. (See, Tr. pp. 70-72 and 104-106).

The provisions of the Commission's ETC rule that drew the most attention during the hearing were those related to the required plans for use of the high cost support. Various parties sought to show that NWMC's plan was flawed and not sufficient to meet the rules requirements. The Commission's rule requires a two (2) year plan demonstrating, with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted. NWMC has submitted a five (5) year plan rather than a two (2) year plan in part because the FCC requires a five year plan and in part because NWMC wished to provide as much information as possible. NWMC acknowledged at hearing that there were aspects of the five year plan that would require modification. (Tr. pp. 72, 73, 140, 141 and 148). In the end NWMC was unequivocal in its commitment to use all USF support received on only appropriate facilities and to account for those expenditures to the Commission on an annual basis. (Tr. p. 165).

Any perceived deficiencies in NWMC's five year plan are clearly offset by NWMC's sworn commitment to build out the seven specified tower sites as quickly as possible given the level of funding available. (Tr. pp. 140-141). NWMC used its best effort to project a five year plan but candidly acknowledged that it was and is at all times subject to change. (Tr. pp. 73, 140-141). NWMC believes it is impossible to predict the

future and that it's best effort to do so combined with it's commitment to report and be accountable to this Commission for expenditures of support received is more than adequate justification for it to be granted ETC status.

V. Conclusion

For the foregoing reasons, the Commission should: (1) designate NWMC as a telecommunications carrier eligible under the provisions of Section 54.201(d) of the FCC's rules to receive federal universal service support; and (2) issue such other orders as are deemed necessary or convenient in this matter.

Respectfully submitted,

LATHROP & GAGE L.C.

Dated: July 10, 2006

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