

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Assist Wireless, L.L.C. )  
for Designation as an Eligible Telecommunications ) **File No. RA-2011-0384**  
Carrier in the State of Missouri )

## ORDER GRANTING APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Issue Date: November 7, 2011

Effective Date: November 17, 2011

**Syllabus:** In this order, the Missouri Public Service Commission grants eligible telecommunications carrier (“ETC”) status to Assist Wireless, L.L.C. (hereafter “Assist Wireless”) for the purpose of receiving federal universal service fund low-income support.

### **Background**

Assist Wireless is a Tennessee corporation whose principal offices are located at 1407 Texas Street, Suite 402, Fort Worth, TX 76102. The nature of Assist Wireless’ business is the provision of wireless services on a common carrier basis. Because the company is a mobile wireless telecommunications provider, its operations are not regulated by the Commission.<sup>1</sup>

On May 27, 2011<sup>2</sup>, Assist Wireless requested designation as an ETC solely to provide Lifeline and Linkup services to qualifying Missouri customers. The application was filed pursuant to Section 214(e)(1)-(2) of the federal Communications Act of 1934, as amended (the Act), Section 54.201 *et seq.* of the rules of the Federal

---

<sup>1</sup> Staff Recommendation and verified Memorandum, page 1, paragraph 2, filed October 31, 2011.

<sup>2</sup> Calendar references are to 2011 unless otherwise stated.

Communications Commission (“FCC”), and the rules and regulations of the Commission, including 4 CSR 240-2.060 and 4 CSR 240-3.570.

The Commission issued notice and set a deadline for intervention. No person or entity sought intervention in this matter. No party has objected to the application. And no party has requested a hearing. Staff filed its Recommendation, with its verified Memorandum on October 31, requesting that the Commission grant Assist Wireless’ application.

The application is within the Commission’s jurisdiction to decide.<sup>3</sup> Because no law requires a hearing this is a non-contested case.<sup>4</sup> Non-contested cases do not require formal proceedings or hearings before the Commission, and as such, there is no evidentiary record.<sup>5</sup> Consequently, the Commission bases its decision on the verified filings.

### **Discussion**

The federal Universal Service Fund was established in the Telecommunications Act of 1996 (“Act”). The stated purpose of the fund is to ensure that telephone customers in rural and high cost areas, as well as low-income customers, have access

---

<sup>3</sup> 47 U.S.C. § 214(e)(2).

<sup>4</sup> Section 536.010(4) defines a “contested case” as “a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.”

<sup>5</sup> *Sapp v. City of St. Louis*, 320 S.W.3d 159, 163 (Mo. App. 2010). “The key to the classification of a case as contested or noncontested is the requirement of a hearing. The term “hearing,” as used in section 536.010(4) means a proceeding at which a ‘measure of procedural formality’ is followed. Procedural formalities in contested cases generally include: notice of the issues (section 536.067); oral evidence taken upon oath or affirmation and the cross-examination of witnesses (section 536.070); the making of a record (section 536.070); adherence to evidentiary rules (section 536.070); and written decisions including findings of fact and conclusions of law (section 536.090).” (Internal citations omitted). *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 507 (Mo. banc 2009).

to quality telecommunications services at reasonable and affordable rates.<sup>6</sup> To meet that goal, the Universal Service Fund redistributes money paid into the fund by telecommunications customers to telecommunications service providers who serve rural and high cost parts of the country.

Before a telecommunications service provider is eligible to receive funding from the Universal Service Fund, it must be designated as an Eligible Telecommunications Company, referred to by the acronym ETC. Section 214(e)(6) of the Act provides, in pertinent part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.

Assist Wireless is authorized to do business in Missouri. It is not delinquent or non-compliant with any Commission reporting or assessment requirements. The Commission's Staff states that Assist Wireless has met all state and federal requirements to become designated as an ETC. In fact, Staff asserts that its investigation included determining if the company would be in compliance with pending proposed modifications to the Commission's rules.<sup>7</sup>

Assist Wireless requests waivers of Commission Rules 4 CSR 240-3.570(2)(A)1-3 (requiring filings regarding the intended use of high-cost support) and 4 CSR 240-3.570(4) (annual certification filing requirements). Assist Wireless states that these

---

<sup>6</sup> 47 U.S.C. 254(b).

<sup>7</sup> See File Numbers TX-2011-0415 and TW-2012-0012.

regulations are applicable only for carriers seeking high-cost support. Staff did not object to the Commission granting the waivers.

### **Decision**

The Commission finds the assertions in the Application and its supplements, and Staff's Memorandum and Recommendation to be true. The Commission must grant Assist Wireless eligible telecommunications carrier designation if it satisfies all federal and state requirements including offering the services set out in Section 254 of the Act and advertising the availability of those services using media of general distribution.<sup>8</sup> The Commission finds that Assist Wireless has met all federal and state requirements and that it is in the public interest to grant the ETC application. Therefore, the Commission will designate Assist Wireless as an eligible telecommunications carrier.

The Commission may waive regulations based upon good cause.<sup>9</sup> Good cause exists to waive those regulations due to Assist Wireless' application being limited to seeking only federal low-cost USF support.

### **THE COMMISSION ORDERS THAT:**

1. Assist Wireless, L.L.C. is designated as an eligible telecommunications carrier throughout the service areas of the Incumbent Local Exchange Carriers set forth in Exhibit B to the application, under the provisions of 47 U.S.C. §§ 214 and 254, to receive low-income (Lifeline and LinkUp) federal universal service fund support.

2. The requirements of 4 CSR 240-3.570(2)(A)1-3 and 4 CSR 240-3.570(4) are waived.

3. This order shall become effective on November 17, 2011.

---

<sup>8</sup> 47 U.S.C. § 214(e)(1),(2) and (6).

<sup>9</sup> Commission Rules 4 CSR 240-2.015(1) and 3.015(1).

4. This case shall be closed on November 18, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Harold Stearley, Deputy Chief Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 7<sup>th</sup> day of November, 2011.