

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

AT&T MISSOURI’S POST-TRIAL BRIEF

The Commission should deny the Application of Northwest Missouri Cellular Limited Partnership (“NWMC”) for designation as an eligible telecommunications carrier (“ETC”) in the area encompassing the Stanberry wire center, the single AT&T Missouri¹ wire center in which NWMC seeks ETC designation.² NWMC’s Application fails to meet both Section 214(e) of the federal Telecommunications Act of 1996 (47 U.S.C. § 214(e)) as well as the Commission’s newly adopted ETC rules governing requests for ETC designation. (4 CSR 240-3.570(2)(A)(1)-(10)).³

I. SUMMARY

NWMC’s testimony at the May 31, 2006, hearing on the merits forcefully brought home the reasons why NWMC’s Application should be denied in the Stanberry wire center. First, NWMC failed to demonstrate that it would provide any meaningful additional signal coverage in the Stanberry area as required by Section 214(e) and 4 CSR 240-3.570(2)(A)(3). Instead, its signal coverage witness conceded that NWMC’s current network already provides an acceptable quality of service to a *_____.* Second, NWMC has not

¹ Southwestern Bell Telephone, L. P. d/b/a AT&T Missouri (“AT&T Missouri”).

² NWMC’s Application, para. 8 & Appendix D, p. 3.

³ The Commission’s Final Order of Rulemaking was published in the Missouri Register on May 15, 2006. 31 Mo. Reg. 790. The rules were published in the Code of State Regulations on May 31, 2006, and became effective June 30, 2006, pursuant to Section 536.021.8, RSMo 2005 (Supp.). The parties agree that the Commission’s new rules should be applied to NWMC’s Application, and thus withdrew from the Issues List filed May 22, 2006 the question of whether the Commission should use its new ETC rules to evaluate NWMC’s Application.



specifically demonstrated its ability to provide emergency service as required by Section 214(e) and 4 CSR 240-3.570(2)(A)(4).

Third, while NWMC has asserted that its proposed Lifeline rates “would be below those offered by the ILECs[,]”⁴ AT&T Missouri’s evidence is un rebutted that when all appropriate Lifeline discounts are deducted from the Rate Group A rates applicable to AT&T Missouri’s Stanberry customers, those customers pay just \$0.15 before applicable 911/Relay Missouri charges, not \$13.65, as NWMC represented. On the other hand, NWMC’s “Option 1” and “Option 2” Lifeline customers would pay \$9.70 and \$13.70, respectively.⁵ NWMC has not demonstrated compliance with this requirement of Section 214(e) or 4 CSR 240-3.570(2)(A)(10).

Finally, NWMC has failed to meet its burden to show that granting it ETC status would be consistent with the public interest. NWMC’s public policy consultant conceded that her testimony suggesting that the public interest showing is inapplicable in non-rural wire centers “would have to be altered” to take into account the FCC’s ETC Designation Order⁶ and the requirements of the Commission’s new ETC rules, both of which require a public interest showing in all wire centers for which ETC designation is sought. In addition, what little public interest evidence NWMC mounted was undercut both by its admission that “[f]ive for sure, possibly six” wireless carriers (counting NWMC) provide service in the area in which NWMC seeks ETC status⁷ and by NWMC’s failure to show that consumers are not already adequately served by these providers.

Only two weeks ago, the FCC noted that “[t]here is widespread agreement that the [f]und is currently under significant strain.”⁸ USF fund disbursements continue to rise while the

⁴ Bundridge Direct, p. 9 & Appendix K.

⁵ Bundridge Direct, Appendix K.

⁶ Tr. 69; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (“ETC Designation Order”).

⁷ Tr. 67.

⁸ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 17.

assessable revenue base declines.⁹ These unwelcome developments underscore the several reasons for which the Commission should deny NWMC's Application for ETC status.

II. DISCUSSION OF THE SPECIFIC ISSUES TO BE DECIDED

Issue 1: 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?

Pursuant to Section 214(e)(1) of the Act and the FCC's implementing orders, an ETC applicant must meet each of the following "eligibility" requirements:¹⁰

- (1) submit a network improvement plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area;¹¹
- (2) demonstrate its ability to remain functional in emergency situations;¹²
- (3) demonstrate that it will satisfy appropriate consumer protection and service quality standards;¹³
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation;¹⁴ and

⁹ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 18.

¹⁰ See also, 47 C.F.R. § 54.202(a).

¹¹ ETC Designation Order, paras. 21-23.

¹² ETC Designation Order, para. 25.

¹³ ETC Designation Order, para. 28.

¹⁴ ETC Designation Order, para. 33.

(5) certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers if all other ETCs withdraw from the market.¹⁵

NWMC does not meet the first of these five requirements in the single AT&T Missouri wire center area in which NWMC seeks ETC designation. Additionally, NWMC has not demonstrated that it meets the second requirement.

A network plan that describes improvements or upgrades on a wire center-by-wire center basis: NWMC claims that its new cell site construction plan would afford signal coverage benefits to consumers in the AT&T Missouri Stanberry wire center area.¹⁶ However, NWMC’s signal coverage witness gave no indication that the added coverage would be meaningful. For example, at the hearing he explained that his Appendix O map depicted * _____

_____ ¹⁷ _____

_____.*¹⁸ He conceded that * _____

_____ ¹⁹ _____

_____ *

NWMC’s ability to remain functional in emergency situations: NWMC has not provided sufficient evidence demonstrating that it ”is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.”²⁰

With regard to traffic rerouting, NWMC speaks of a “redundant network design” that “allows the system to avoid most customer-affecting service outages,”²¹ but NWMC provides no

¹⁵ ETC Designation Order, para. 35.

¹⁶ Reeves Direct, p. 7 & Appendix E (Revised), p. 2.

¹⁷ In-Camera Tr. 214; see, Reeves Supplemental Direct, Appendix O.

¹⁸ In Camera Tr. 218.

¹⁹ In-Camera Tr. 214.

²⁰ ETC Designation Order, para. 25.

²¹ Bundridge Direct, p. 22.



detail which actually describes the design.²² NWMC also claims that its “switching infrastructure is configured in a manner to allow traffic to automatically reroute around damaged facilities should a particular link to the PSTN be interrupted.”²³ However, NWMC has not described the switching configuration nor has it explained how the configuration actually can be counted on to provide reliable redundancy and rerouting in the event that facilities are damaged.²⁴

With regard to the management of traffic spikes, NWMC claims that “the normal operation of the switch allows for significant overhead traffic above and beyond ‘normal’ use” and that “the nature of the CDMA technology allows the cell sites to operate under heavier loads than designed at the trade-off of overall footprint and quality.”²⁵ Nothing has been submitted explaining precisely what is meant by the broad terms “normal operation,” “significant overhead traffic,” “heavier loads than designed” or “trade-off of overall footprint and quality.”

For these reasons, NWMC does not meet the requirements of Section 214(e)(1) with respect to AT&T Missouri’s Stanberry wire center area.

Issue 2: 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 FCC’s public interest analysis includes “an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor’s service offering.”²⁶ NWMC has not

²² Stidham Rebuttal, p. 7.

²³ Bundridge Supplemental Direct, p. 6.

²⁴ Stidham Rebuttal, p. 7.

²⁵ Bundridge Supplemental Direct, p. 6.

²⁶ ETC Designation Order, para. 18.

met its burden to show that granting it ETC status would be consistent with the public interest. Thus, NWMC's Application should be denied with respect to the Stanberry wire center.

NWMC's public policy consultant conceded that her testimony suggesting that the public interest showing is inapplicable in non-rural wire centers "would have to be altered" to take into account the FCC's ETC Designation Order and the requirements of the Commission's new ETC rules, both of which require a public interest showing in all wire centers for which ETC designation is sought.²⁷ NWMC's witness also suggested that granting its ETC Application would promote competition and increase consumer choices and cites to various pre-ETC Designation Order FCC decisions so stating.²⁸ However, the FCC's ETC Designation Order unequivocally determined that "in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test."²⁹ NWMC's witness knew of no later-issued FCC order holding otherwise,³⁰ and there is none. Moreover, granting NWMC ETC status would add little if anything to increased competition and consumer choice given NWMC's concession that there are "[f]ive for sure, possibly six" wireless carriers (counting NWMC) that provide service in the area in which NWMC seeks ETC status.³¹

NWMC also claims that granting it ETC status would result in additional consumer benefits because, while NWMC has better coverage than its competition, its coverage would benefit from enhanced CDMA coverage.³² However, since NWMC provided no detail regarding the actual coverage afforded by any of NWMC's several competitors, it cannot be concluded that

²⁷ Tr. 69; ETC Designation Order, para. 42; 4 CSR 3.570(2)(A)(5).

²⁸ NWMC's Application, paras. 24-27; Zentgraf Direct, pp. 23-25.

²⁹ ETC Designation Order, para. 44. (further citations omitted).

³⁰ Tr. 68.

³¹ Tr. 67. Apart from itself, NWMC identified Sprint, Dobson, US Cellular, T-Mobile and stated that "AT&T may be there as well." Tr. 66-67.

³² Bundridge Supplemental Direct, p. 6.

NWMC would actually provide CDMA coverage that is not already being provided to consumers by other wireless carriers.

NWMC also suggests that granting its ETC Application would yield additional public health and safety benefits, noting that with a cell phone (whether or not active), an individual can call 911 using NWMC's network. However, all wireless carriers provide access to 911 if there is a signal from the wireless carrier's network and the individual uses a handset of compatible technology.³³ Consequently, granting NWMC's application might afford public health and safety benefits only if NWMC had shown that none of the other holders of wireless licenses operating within NWMC's licensed territory provide a compatible, usable signal. NWMC did not make that showing. Moreover, NWMC did not demonstrate that 911 service is unavailable from the several other wireless carriers providing service in the areas in which NWMC seeks ETC status. Thus, there is no basis upon which to conclude that granting NWMC's Application would provide Missourians any meaningful public health and safety benefits.

Finally, expanding the size of the federal USF by the amount of high-cost support funds that NWMC would receive is not in the public interest. Only two weeks ago, the FCC noted that "[t]here is widespread agreement that the [f]und is currently under significant strain."³⁴ Disbursements have grown (from approximately \$4.4 billion in 2000 to \$6.5 billion in 2005) and are expected to grow even more in the coming years, even as the assessable revenue base declines, thus placing upward pressure on the contribution factor (from 5.9% in 1Q 2000, to 8.9% in

³³ Stidham Rebuttal, p. 12. Significantly, wireless E911 service would not be limited to NWMC subscribers. NWMC's wireless E911 service is available to any compatible handset in NWMC's coverage area, whether or not the user is a NWMC customer, the customer of a competitor or not even a customer of any service provider. The NWMC network routes all 911 calls regardless of the status of the caller. This is even true for a customer whose wireless phone service has been disconnected. Stidham Rebuttal, n.16.

³⁴ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 17.

4Q2004, to 10.9% in 2Q 2006).³⁵ Although the impact on the overall fund of but a single ETC designation by a single state commission may be small, the FCC has specifically noted that collectively, state decisions regarding ETC status “have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund.”³⁶

Issue 3: 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?

NWMC does not meet the requirements of several of the Commission’s ETC rules:

A network plan that describes improvements or upgrades on a wire center-by-wire center basis: Commission Rule 3.570(2)(A)(3) requires that an ETC applicant demonstrate that universal service support “shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation.” As shown earlier herein (in connection with Issue 1), NWMC claims that its new cell site construction plan would improve signal coverage in AT&T Missouri’s Stanberry wire center area.³⁷ However, NWMC has not specifically demonstrated any significant added coverage; rather, it appears that the additional signal coverage that NWMC would provide Stanberry area residents is marginal at best.

The ability to remain functional in emergency situations: Commission Rule 3.570(2)(A)(4) requires that an ETC applicant demonstrate its “ability to remain functional in emergency situations [and] that the carrier has a reasonable amount of back-up power to ensure

³⁵ In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, et al., Report and Order and Notice of Proposed Rulemaking, FCC 06-95 (rel. June 27, 2006), para. 18.

³⁶ ETC Designation Order, para. 60.

³⁷ Reeves Direct, p. 7 & Appendix E (Revised).

functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.” As shown earlier herein (in connection with Issue 1), NWMC does not provide sufficient evidence demonstrating that it “is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.”

The public interest: Commission Rule 3.570(2)(A)(5) requires that an ETC applicant demonstrate that “the [C]ommission’s grant of the applicant’s request for ETC designation would be consistent with the public interest, convenience and necessity.” As shown earlier herein (in connection with Issue 2), NWMC’s Application fails to satisfy the FCC’s public interest criteria. The Commission’s own newly adopted ETC rules do not prescribe any specific factors that the Commission should consider when assessing whether the ETC applicant has met its burden of proof. AT&T Missouri urges the Commission to use the factors used by the FCC. Indeed, the FCC “strongly encourages state commissions to consider the same factors in their public interest reviews”³⁸ and no party has argued that the Commission should do otherwise. Under that analysis, it cannot be said that granting NWMC’s Application would be in the public interest.

NWMC’s commitment to provide Lifeline: Commission Rule 3.570(2)(A)(10) requires that an ETC applicant commit to provide Lifeline and Missouri USF discounts at rates, terms and conditions comparable to those of the ILECs providing service in the requested ETC service area. NWMC asserts that its proposed Lifeline rates “would be below those offered by the ILECs.”³⁹ However, NWMC compares its rates to AT&T Missouri’s Rate Group A rates and Rate Group B rates without reducing AT&T Missouri’s rates to account for the Lifeline discounts provided by

³⁸ ETC Designation Order, para. 41.

³⁹ Bundridge Direct, p. 9 & Appendix K (depicting Lifeline rate comparisons and showing NWMC’s Option 1 rate as \$9.70 and its Option 2 rate as \$13.70 and showing the AT&T Missouri Flat Rate Group A rate as \$14.85 and its Flat Rate Group B rate as \$16.74.


the federal USF's Low Income fund and the further support provided by the Missouri USF. Both reductions must be applied to AT&T Missouri's rates in order to afford an accurate comparison.⁴⁰ When the applicable Lifeline discounts are applied to AT&T Missouri's rates in the Stanberry exchange (i.e., Rate Group A rates), customers pay \$0.15 before applicable 911/Relay Missouri charges,⁴¹ not \$13.65, as is represented by NWMC.⁴² On the other hand, NWMC's "Option 1" and "Option 2" Lifeline customers would pay \$9.70 and \$13.70, respectively.⁴³

III. CONCLUSION

For the foregoing reasons, AT&T Missouri respectfully requests that the application of NWMC for designation as an ETC in AT&T Missouri's Stanberry wire center be denied. NWMC's limited proof directed solely to Stanberry is deficient, and to the extent NWMC relied on proof directed to the requested ETC area as a whole in order to support its request for ETC designation in Stanberry, that proof is likewise deficient.

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⁴⁰ Stidham Rebuttal, p. 8.

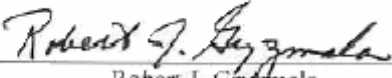
⁴¹ I.e. \$7.15 (basic rate) plus \$5.25 (SLC) or a subtotal of \$12.40 in charges; less \$5.25 (Ties One), \$1.75 (Tier Two), \$1.75 (Tier Three) and \$3.50 (MoUSF) or a subtotal of \$12.25 in discounts; \$12.40 less \$12.25 equals \$0.15.

⁴² Bundridge Direct, Appendix K.

⁴³ Bundridge Direct, Appendix K.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on July 10, 2006.


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