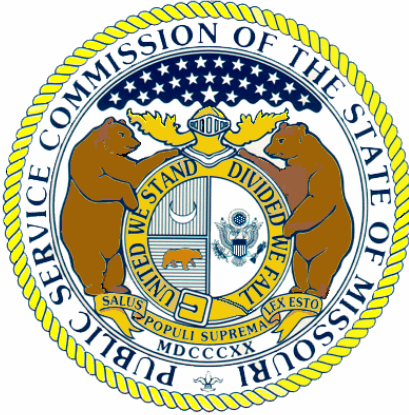


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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

REPORT AND ORDER

Issue Date: September 21, 2006

Effective Date: October 1, 2006

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 Company Carrier Eligible for Federal Universal Service Support Pursuant to § 254 of the Telecommunications Act of 1996.)
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Table of Contents

Appearances	2
Procedural History	2
Overview	4
Findings of Fact	6
Northwest Missouri Cellular	6
The Intervenors	7
Service Offerings by NWMC	7
Compliance with 4 CSR 240-3.570 – Uncontested Items	8
4 CSR 240-3.570(2)(A)1 – Intended Use of High-Cost Support	9
4 CSR 240-3.570(2)(A)2 – Only USF Supportable Services	10
4 CSR 240-3.570(2)(A)3 – Expenses Would Not Otherwise Occur	12
4 CSR 240-3.570(2)(A)4 – Ability to Remain Functional in an Emergency	14
4 CSR 240-3.570(2)(A)5 – Public Interest	15
4 CSR 240-3.570(2)(A)10 – Local Usage Plan Comparable to ILEC’s Plan	17
Conclusions of Law	21
4 CSR 240-3.570 – Uncontested Items	24
4 CSR 240-3.570(2)(A)1 – Intended Use of High-Cost Support	25
4 CSR 240-3.570(2)(A)2 – Only USF Supportable Services	26
4 CSR 240-3.570(2)(A)3 – Expenses Would Not Otherwise Occur	27
4 CSR 240-3.570(2)(A)4 – Ability to Remain Functional in an Emergency	28
4 CSR 240-3.570(2)(A)10 – Local Usage Plan Comparable to ILEC’s Plan	28
4 CSR 240-3.570(2)(A)5 – Public Interest	29
Conclusion	31
Ordered Paragraphs	32

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REGULATORY LAW JUDGE: Nancy Dippell, Deputy Chief Regulatory Law Judge.

REPORT AND ORDER

Syllabus: This order grants Northeast Missouri Cellular Limited Partnership's (NWMC) application for status as an eligible telecommunications carrier (ETC) for federal universal service fund (USF) purposes.

Procedural History

On June 3, 2005, NWMC filed an application for designation as an eligible telecommunications carrier for federal universal service fund purposes under Section 254 of the Telecommunications Act of 1996. NWMC sought ETC designation throughout its

FCC-licensed service area¹ in Missouri with respect to all local exchange carrier wire centers in NWMC's FCC-licensed service area with the exception of the Pattonsburg wire center.²

NWMC seeks ETC designation in the entire study areas of the rural telephone companies: Rock Port Telephone Company, Holway Telephone Company, IAMO Telephone Company, Iowa Telecom Services, d/b/a Iowa Telecom – North, and Oregon Farmers Mutual Telephone Company. In addition, NWMC seeks ETC designation in portions of the rural study areas of the rural telephone companies: Alltel Missouri, Inc., Grand River Mutual Telephone Corporation, and Sprint Missouri, Inc. NWMC also seeks ETC designation in the non-rural telephone company area served by Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, with respect to the Stanberry wire center.

Grand River initially intervened, but later withdrew from the case. Spectra Communications Group, LLC, d/b/a CenturyTel, and CenturyTel of Missouri, LLC (collectively referred to as "CenturyTel"), Holway, and AT&T Missouri intervened in opposition to NWMC's request for ETC designation. The Office of the Public Counsel and the Staff of the Missouri Public Service Commission also oppose the application.

The parties filed prehearing briefs on May 24, 2006. An evidentiary hearing was held on May 31, 2006. On July 11, 2006, the parties, with the exception of the Office of the Public Counsel, filed post-hearing briefs. Exhibit 14, containing NWMC's privacy policy, was filed after the hearing. There was no objection to the exhibit and it is hereby admitted into the record.

¹ Also known as a Cellular Geographic Service Area (CGSA).

² Exhibit 5, Direct Testimony of Jonathon D. Reeves, Appendix C.

Overview

Under Section 214(e)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, a telecommunications carrier may be designated as an eligible telecommunications carrier and thereby receive universal service support so long as the carrier, throughout its service areas: (a) offers the services that are supported by Federal universal service support mechanisms under Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including services offered by another ETC); and (b) advertises the availability of and charges for such services using media of general distribution.

Section 54.201(b) of the Code of Federal Regulations states that the Commission shall, on its own motion or upon request, designate a common carrier an ETC so long as the carrier meets the requirements of Section 54.201(d), which restates the requirements found in Section 214(e)(1) of the Act. Section 214(e)(2) of the Act and Section 54.201(c) of the Federal Communication Commission's rules state that the Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area the Commission designates, provided each additional requesting carrier satisfies Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's rules. Before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that such designation is in the public interest.

The FCC set out additional requirements for the ETC designation process in its *Designation Order*.³ The requirements are that the applicant must:

- (1) Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects universal service support;
- (2) Demonstrate its ability to remain functional in emergency situations;
- (3) Demonstrate that it will satisfy consumer protection and service quality standards;
- (4) Offer local usage plans comparable to those offered by the incumbent local exchange carrier in the areas for which it seeks designation; and
- (5) Acknowledge that it may be required to provide equal access if all other ETCs in the designated area relinquish their designations pursuant to section 214(e)(4) of the Act.⁴

The FCC also set out the analytical framework that the FCC will use to determine whether the public interest would be served by granting the applicant an ETC designation. The state utility commissions were encouraged by the FCC to apply the same type of fact-specific analysis when determining whether the public interest would be served. The state commissions were encouraged to consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.⁵

³ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, (March 17, 2005).

⁴ *Designation Order*, para. 2.

⁵ *Designation Order*, para. 41.

In addition, the Commission has set out its own rule regarding applications for ETC designation at 4 CSR 240-3.570. The Commission's rule adopts the minimum requirements and the analytical framework suggested by the FCC in its *Designation Order* with a few additional requirements. The Commission's rule also only requires a two-year build-out plan.⁶ Thus, by analyzing NWMC's compliance with the Commission's ETC rule, the Commission is assured that the applicant has met all the necessary qualifications for ETC designation. This case is the first time the Commission has decided an ETC designation case under this new rule.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Northwest Missouri Cellular

NWMC is licensed by the FCC to provide commercial mobile radio service in the rural counties of Atchison, Gentry, Holt, Nodaway, and Worth within the state of Missouri, under FCC Call Sign KNKN816.⁷ NWMC is a Missouri partnership. NWMC is not certificated to provide telecommunications services in Missouri by this Commission.

⁶ 4 CSR 240-3.570(2)(A)2.

⁷ Ex. 5, p. 3, Ins. 8-12.

NWMC has requested ETC designation for the following wire centers: Stanberry, Albany, Grant City, Allendale, Barnard, Conception Junction, Denver, Darlington, Gentry, Graham, New Hampton, Parnell, Ravenwood, Sheridan, South Hamburg Missouri, Watson, Rock Port, Fairfax, Westboro, Tarkio, Craig, Mound City, Elmo, Burlington Junction, Skidmore, Maitland, Oregon, Maryville, Pickering, Hopkins, Clearmont, South Bradyville Missouri, and King City.

The Intervenors

All of the intervenor companies are incumbent local exchange companies (ILEC) that provide basic local and other telecommunications services in their respective service areas, as certificated by the Commission and pursuant to Commission approved tariffs. Each is a carrier of last resort and is an ETC providing service to the public throughout its respective service area. In addition, five other wireless carriers currently provide service in the area for which NWMC seeks ETC designation.⁸ No evidence was presented to show that any residents in the service areas of the incumbents are being denied access to the public switched network or service in the incumbents' service areas.

Service Offerings of NWMC

NWMC produced the testimony of three witnesses regarding its service offerings. NWMC alleges that it provides, or will provide, all the required service offerings and no party contested that NWMC provides: 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

⁸ Exhibit 10, Rebuttal Testimony of William J. Warinner, p. 45.

for qualifying low-income consumers. With regard to these services, the Commission finds that NWMC offers or will offer the core services and functions required by an ETC.

In addition, NWMC will advertise the availability of and charges for these core services, using media of general distribution. NWMC will also advertise the availability of Lifeline and Link-Up services to qualifying customers and take steps to comply with the advertising requirement in 47 U.S.C. § 254(c).⁹

Compliance with 4 CSR 240-3.570 – Uncontested Items

NWMC provided testimony showing that it complied with certain provisions of the Commission's ETC rule. No party contested the fact that NWMC provided the populations affected by construction plans, its existing tower locations, and an estimated budget.¹⁰ There was also no contest to NWMC's allegations that it will: advertise the availability of its services and the charges for those services;¹¹ provide Lifeline and Link-Up discounts and that it will advertise those discounts appropriately;¹² provide equal access if necessary;¹³ and follow the Cellular Telecommunications and Internet Association's (CTIA) customer code.¹⁴ There was also no contest to the fact that NWMC has provided a plan outlining the method for handling unusual construction or installation charges.¹⁵ NWMC will also abide by the consumer privacy protection standards and applicable service quality standards as

⁹ Ex. 2, p. 5-6.

¹⁰ 4 CSR 240-3.570(2)(A)1.

¹¹ 4 CSR 240-3.570(2)(A)6.

¹² 4 CSR 240-3.570(2)(A)7.

¹³ 4 CSR 240-3.570(2)(A)9.

¹⁴ 4 CSR 240-3.570(2)(B).

¹⁵ 4 CSR 240-3.570(2)(C).

provided by the federal rules.¹⁶ Therefore, the Commission finds that NWMC provides, or will provide if granted ETC status, these uncontested items as set out in 4 CSR 240-3.570.

4 CSR 240-3.570(2)(A)1 – Intended Use of High-Cost Support

NWMC provided both written and oral testimony regarding the upgrades it intends to make to its system over the next five years. Included in its written testimony were Appendices F,¹⁷ G,¹⁸ H,¹⁹ M,²⁰ O,²¹ and P,²² which were intended to comply with the requirements of 4 CSR 240-3.570(2)(A)1 for showing the intended use of high-cost support, including detailed descriptions of construction plans with start and end dates, populations affected by construction plans, existing tower site locations, and estimated budgets. Appendices M and P include budget information and year-by-year proposals for spending the USF support if ETC designation is granted. Appendices F, G, H, and O show the current coverage and the proposed coverage after the implementation of a five-year plan. Appendices D and E show the population densities and changes.²³

NWMC first filed its application while the Commission was in the process of promulgating its ETC rule. It later supplemented its testimony in order to try to comply with the provisions of the new rule. Because the Commission's rule differs slightly from the FCC's requirements, NWMC submitted a five-year build-out plan, the FCC requirement,

¹⁶ 4 CSR 240-3.570(A)8; 47 C.F.R. 64 Subpart U.

¹⁷ Ex. 5, Appendix F (Revised).

¹⁸ Ex. 5, Appendix G (Revised).

¹⁹ Ex. 5, Appendix H.

²⁰ Ex. 3, Appendix M.

²¹ Ex. 6, Appendix O.

²² Ex. 4, Appendix E.

²³ Appendix E also shows by implication (*i.e.*, "24 months after support") the ending dates of the proposed new cell site locations.

instead of the two-year plan required by the Commission's rules. The submission of the five-year plan has caused some problems with NWMC presenting its case. Holway argues that NWMC has failed to provide sufficient details of its build-out plan and has failed to state starting and ending dates for the construction. While the Commission prefers to receive as much detail as possible, NWMC provides sufficient details for the Commission to make its decision.

The Appendices state the proposed plans' beginning and ending dates as "Year 1," "Year 2," etc., this is sufficiently specific for the Commission. The Commission encourages any future applications or compliance filings to include as specific information as possible, but given that NWMC could not know when, or if, its ETC status would be granted, the general dates are sufficient. In addition, Staff did not indicate that it had any difficulty in determining the proposed start and end dates of the proposed upgrades in its review of the application. Furthermore, the Commission will not punish NWMC for providing a five-year plan, which is technically more detail than the rule requires.

4 CSR 240-3.570(2)(A)2 – Only USF Supportable Services

As stated above, NWMC filed a five-year plan instead of a two-year plan. The plan is supposed to show how the USF support will be spent and that it will only be used for USF supportable services. NWMC estimates receiving \$1,468,614 in USF support annually if its application is granted.²⁴ Appendices M and P²⁵ are intended to show how these funds will be spent.

²⁴ Exhibit 1, Direct Testimony of Kathryn G. Zentgraf, p. 15, Ins. 22-23.

²⁵ Ex. 3 and Ex. 4, respectively.

Included in Year 1 figures is an expenditure for EVDO (Evolution Data Only).²⁶ EVDO is a data service.²⁷ NWMC agrees that EVDO is not a USF supportable service.²⁸ Mr. Bundridge on behalf of NWMC testifies that USF support will “be used to deploy and extend advanced wireless services including high-speed wireless data through EVDO technology . . . to rural areas that would otherwise remain unserved from this technology.”²⁹ This statement seems clear on its face that NWMC intends to use USF monies to deploy EVDO, an unsupportable service. During cross-examination and redirect examination at the hearing, however, Mr. Bundridge attempted to clarify the company’s position.

Mr. Bundridge testified that the five-year budget submitted was a “rolling plan.”³⁰ Because of the lack of certainty with the timing of matters, such as permits from the Department of Natural Resources, NWMC has presented a plan for building new cell sites and upgrading its facilities that could occur over the next five years, or, if the USF money is available, some of those new sites and upgrades will be made in the next 18 months to two years. NWMC committed to spending the USF monies only on supportable services and understands that it will have to report those numbers to the Commission on an annual basis under the new ETC rule.³¹

The Commission finds that NWMC’s presentation of its five-year plan was extremely confusing. However, the Commission recognizes that this is a new process and

²⁶ Ex. 3, Appendix M; Ex. 4, Appendix P.

²⁷ Tr. p. 50; Ex. 4, p. 5.

²⁸ Tr. p. 50, Ins. 1-7.

²⁹ Ex. 4, p. 5, Ins. 8-11.

³⁰ Tr. p. 140.

³¹ Tr. p. 165-166.

that it may take several applications to get some clarity in the filings. The Commission finds Mr. Bundridge's explanation of why unsupportable EVDO was included in the budget to be credible. The Commission finds that NWMC intends to spend its USF support only on supportable services in the next two years. At its annual certification, NWMC shall provide a budget which is clear and does not contain items which are not supportable, or which would have been made regardless of the USF support.

4 CSR 240-3.570(2)(A)(3) – Expenses Would Not Otherwise Occur

NWMC provided maps of the geographic coverage areas before and after its proposed improvements. The maps were broken down on a wire center basis. The appendices to the various testimony included projected dates for the improvements as discussed above. NWMC also provided estimated budgets for the projects and the estimated populations affected by the improvements.

AT&T Missouri argued that NWMC did not demonstrate any meaningful improvement in signal coverage in the Stanberry wire center, or otherwise demonstrate how funding will be used to further the provision of supported services in that area.³² Thus, AT&T Missouri argues that this exchange should be excluded from ETC designation.

NWMC provided the testimony of Jonathan D. Reeves to sponsor the maps showing its current signal coverage³³ and the signal coverage after the implementation of its proposed upgrades.³⁴ The coverage maps show current "minimum signal coverage"³⁵ in

³² *AT&T Missouri's Post-Trial Brief*, p. 1 (filed July 10, 2006).

³³ Ex. 6, *Supplemental Direct Testimony of Jonathan D. Reeves*, Appendix O.

³⁴ Ex. 5, *Direct Testimony of Jonathan D. Reeves*, Appendix H.

³⁵ Tr. pp. 42, 206.

green, and a lack of signal in white.³⁶ A “minimum signal coverage” was defined by the witness during the *in camera* portion of the hearing.³⁷ NWMC admitted that the maps are designed to be simplistic.³⁸ The coverage maps could have been provided in more detail as demonstrated by the Rebuttal Testimony of Glenn H. Brown.³⁹ The Commission, however, finds the evidence provided by NWMC to be sufficient to demonstrate how each of the wire centers will benefit from added coverage.

Mr. Reeves testified during the *in camera* portion of the hearing as to two reasons why an area which already has signal may benefit from the proposed additional signal coverage.⁴⁰ In comparing the coverage before and after improvements, the coverage maps indicate that each of the wire centers for which NWMC seeks ETC designation will benefit from the proposed upgrades. Thus, the Commission finds that NWMC has shown that it will provide improved coverage, service quality, or capacity in each of the wire centers where ETC designation is requested, including the Stanberry wire center.

Another significant issue is whether NWMC will be spending USF support on improvements that it would not have made without receiving such support. As NWMC admits, Appendices M and P⁴¹ include maintenance on existing cell sites that it will spend even if ETC designation is not granted.⁴² As set out above, however, Mr. Bundridge

³⁶ Tr. p. 192-194.

³⁷ Tr. pp. 190-206.

³⁸ Tr. p. 204.

³⁹ Ex. 9, Schedule GHB-4HC.

⁴⁰ Tr. p. 219.

⁴¹ Ex. 4 and Ex. 5, respectively.

⁴² Tr. p. 147.

testified that NWMC will condense its five-year plan as necessary to be certain that it spends all of the USF monies it receives on supportable items.⁴³ The Commission finds Mr. Bundridge's clarification to be credible. Based on that clarification, the Commission determines that NWMC has provided sufficient evidence showing how it intends to spend its expected USF support on expenditures other than those it would have made without USF support.

Mr. Bundridge also provided testimony that improvements, including the seven additional cell sites, could only be made with USF support.⁴⁴ Mr. Bundridge testified that if NWMC received more money than estimated, then NWMC would speed up the implementation of some items in order to spend that money on supportable services.⁴⁵ The Commission finds that NWMC intends to spend all its USF support on supportable services in the next two years and that the improvements would not be made without USF support.

4 CSR 240-3.570(2)(A)4 – Ability to Remain Functional in an Emergency

Mr. Bundridge testified about NWMC's ability to remain functional in the event of an emergency.⁴⁶ NWMC has a fully redundant network, with extensive battery backup and three emergency generators.⁴⁷ NWMC's system is also configured to automatically reroute traffic around damaged facilities.⁴⁸ In addition, NWMC's switch is designed for additional overhead traffic to accommodate traffic spikes, and the code division multiple access

⁴³ Tr. p. 140, 147-149.

⁴⁴ Ex. 3, p. 5; Ex. 4, p. 7.

⁴⁵ Ex. 4, pp. 5-6; Tr. p. 140.

⁴⁶ Ex. 2, pp. 21-22; Ex. 3, pp. 5-6.

⁴⁷ Ex. 2, pp. 21-22; Ex. 3, pp. 5-6.

⁴⁸ Ex. 3, p. 6.

(CDMA) technology allows for increased volume with a reduced “overall footprint and quality.”⁴⁹

Only AT&T Missouri suggests that NWMC’s testimony on this point is insufficient.⁵⁰ Mr. Stidham suggests that NWMC has not provided sufficient detail about how the system is designed for the Commission to make a determination about emergency capabilities.⁵¹ Neither the Commission’s Staff nor any other party objected to the sufficiency of this testimony. The Commission finds that the information provided is sufficiently detailed for it to make a decision regarding this element. The Commission further finds that NWMC has demonstrated its ability to remain functional in an emergency.

4 CSR 240-3.570(2)(A)5 – Public Interest

Granting NWMC an ETC designation will benefit the public by enabling NWMC to bring wireless service, including E911 and CDMA, to many remote locales and by increasing competition for primary telephone service in remote areas. In addition, Lifeline and Link-Up customers will have access to service that would otherwise be unavailable to them.⁵²

An ETC grant to NWMC will bring the benefits of advanced technologies to the remote areas of NWMC’s service area.⁵³ These advancements in technology include an enhanced CDMA coverage⁵⁴ and EVDO. Although EVDO is not a supported service, by

⁴⁹ Ex. 3, p. 6.

⁵⁰ *AT&T Missouri’s Post-Trial Brief*, pp. 4-5; Exhibit 11, *Rebuttal Testimony of James E. Stidham, Jr.*, pp. 6-8.

⁵¹ Ex. 11, pp. 6-8.

⁵² Tr. p. 76.

⁵³ Ex. 2, pp. 10-12.

⁵⁴ Tr. pp. 135-136.

upgrading the network it becomes more likely that advanced technologies, such as EVDO, will be rolled out in the rural areas. Thus rural areas will become more in line with the types of services offered in urban areas.

In addition, NWMC will provide additional enhanced 911 (E911) coverage in the most rural areas. The ILECs argue that NWMC did not provide evidence that the other wireless carriers serving in NWMC's service area do not already provide E911 service and, therefore, the Commission cannot determine that E911 service will be enhanced. However, NWMC is the only wireless provider offering service in Worth County.⁵⁵ Therefore, at least with regard to that county, 911 service will be enhanced.

The ETC designation will also bring the benefits of wireless service to the current Lifeline subscribers of the various ILECs. Without ETC status, NWMC will not be able to offer Lifeline discounts. NWMC's Lifeline plan would give qualifying consumers a \$1.75 monthly discount. However, to benefit from a \$1.75 discount, a low-income customer seeking only the Lifeline plan would need to pay for a handset and pay an activation fee of up to \$30 (a discount is offered to Link-Up customers). These costs could be paid out over a period not to exceed one year without interest. Even though the service is more expensive than the ILEC's plan, the service received has additional features and benefits.

An additional benefit to some Lifeline subscribers is an increased local calling scope. Another benefit of granting the ETC designation is the mobility that wireless service provides. Finally, the addition of local calling plans similar to traditional landline basic service will enhance and increase competition for basic local service in these rural areas.

⁵⁵ Tr. p. 165.

The grant of ETC status to NWMC would result in USF support in the amount of \$1,468,614 annually. That represents approximately .0357% of the total high-cost support received by all carriers from the USF.⁵⁶

The Commission finds that benefits to the public outweigh the potential detriments of granting ETC status.

4 CSR 240-3.570(2)(A)10 – Local Usage Plan Comparable to ILEC’s Plan

NWMC currently offers several different calling plans. NWMC will continue to offer a wide selection of plans.⁵⁷ In addition, if designated as an ETC, NWMC intends to offer two local usage plans available only to Lifeline customers and one “ILEC-equivalent” plan available to any customer. These plans are designed to be comparable to that of the ILEC.⁵⁸

The first of those plans will offer unlimited local calling and mobility in the area served by the subscriber’s home cell site at a fixed monthly price of \$17.95 (\$9.70 per month after applying the local exchange service discount of \$1.75 and the federal line charge discount of \$6.50⁵⁹). The subscriber’s outbound local calling area will correspond to the traditional ILEC calling area for that subscriber’s address. Calls could be originated by the NWMC Lifeline subscriber to any numbers within the ILEC exchange from any location within the subscriber’s home cell site serving area. Calls could also be received within this area. The home cell site area will be defined to include coverage from all NWMC cell sites

⁵⁶ Ex. 1, pp. 15-16.

⁵⁷ Ex. 2, p.6; Appendix J.

⁵⁸ EX. 2, pp. 6-8; Ex. 3, pp. 11-12; Tr. pp. 104-106.

⁵⁹ In the Stanberry exchange, the subscriber line charge should be \$5.25. Mr. Bundridge testified, however, that NWMC would offer the service at the same overall price as offered in the other exchanges in order to avoid customer confusion. (Tr. p. 121-122.)

necessary to encompass the subscriber's entire corresponding ILEC exchange area. The plan would also include several vertical features, including call waiting, call forwarding, 3-way calling, caller ID, and voice mail, for no additional charge.⁶⁰

The second Lifeline-only plan will allow for unlimited inbound and outbound local calling and mobility through out the entire service area for which NWMC is designated as an ETC, for a flat \$21.95⁶¹ (\$13.70 per month after applying the local exchange service discount of \$1.75 and the federal line charge discount of \$6.50⁶²). Subscribers of this plan will receive toll-free calling within the geographic area encompassing multiple telephone exchanges served by all local exchange carrier wire centers for which ETC designation is being sought. The plan will also include the same vertical features as listed above at no additional charge.⁶³

The first Lifeline-only plan will not allow roaming on other carriers' networks for routine calls. Both the plans will, however, allow for ubiquitous access to 911 for the NWMC Lifeline subscriber even in a roaming situation. NWMC is unable to provide either of these two plans without USF support.⁶⁴

NWMC will also offer discounts of 50% off of its \$35 activation fee to Link-Up subscribers along with a deferred schedule for payment of the charges accessed for commencing service. The consumer will not pay interest for a period of up to one year.⁶⁵

⁶⁰ Ex. 2, p. 7.

⁶¹ Ex. 4, p. 2.

⁶² The subscriber line charge is \$5.25 in the Stanberry exchange.

⁶³ Ex. 2, p. 8.

⁶⁴ Ex. 2, p. 8.

⁶⁵ Ex. 2, p. 8.

In addition, in order to initiate service a new Lifeline-only customer would have to pay the discounted activation fee and would need to purchase a wireless handset.⁶⁶ NWMC will provide information to the customer regarding the lowest cost handset available and even has a program for the purchase of used handsets.⁶⁷

NWMC is committed to continuing to offer its local usage plans and will attest to those plans being offered when it seeks its annual ETC certification with the Commission as required in 4 CSR 240-3.570(4).⁶⁸

The “ILEC-equivalent” plan will offer the same features and services as the first Lifeline plan discussed above, but will be available to all NWMC subscribers at a price of \$17.95 per month.⁶⁹

NWMC provided Appendix K⁷⁰ to show how its local calling plan rate will compare with the rates of the ILECs. The total monthly charges for the ILECs, including the various surcharges and E911 taxes, range from \$12.03 for Rock Port Telephone Company to \$20.98 for Iowa Telecom Rate Group 4. Appendix K, however, does not show the ILEC charges after the applicable Lifeline discounts are applied. For instance, AT&T Missouri’s rates in the Stanberry exchange, Rate Group A rates, are only \$.15 before the applicable 911 and Relay Missouri charges, not \$13.65 as shown on Appendix K. Thus, NWMC’s Lifeline customers in the Stanberry exchange under its first option would pay \$9.70 as compared to \$.15 for AT&T customers. NWMC’s customers purchasing the ILEC-

⁶⁶ Ex. 4, p. 3.

⁶⁷ Tr. p. 95.

⁶⁸ Tr. pp. 105-106.

⁶⁹ Ex. 2, p. 9.

⁷⁰ Ex. 2, Appendix K.

equivalent plan would pay \$17.95 compared to \$13.60 for basic service from AT&T's Stanberry customers.

While the NWMC rates are greater than those charged by the ILECs, the levels of services are not identical. Each of the current NWMC plans includes multiple vertical services. Adding the tariff rates for those features to the rates charged by the ILECs would result in substantially greater monthly rates. In addition, one of NWMC's Lifeline plans will offer a larger calling scope than the ILEC. Furthermore, NWMC's customers will have limited mobility, though there may be dead spots and the possibility of dropped calls⁷¹ which is not expected with traditional landline service.

Both ILEC basic local subscribers and NWMC Lifeline and Link-Up subscribers will have unlimited local calling.⁷² Furthermore, NWMC will abide by any local usage requirements set by the FCC.

With regard to credit checks of Lifeline customers, NWMC intends to require a credit check where the Lifeline customer chooses the second option and thus has the ability to incur roaming charges. NWMC does not have the ability to limit roaming charges. Under the first Lifeline plan, the company will not require a credit check.⁷³ Public Counsel argues that Lifeline customers should not be subject to credit checks unless they have a past unpaid account with the company.⁷⁴

⁷¹ Tr. p. 110.

⁷² Tr. p. 71.

⁷³ Tr. p. 97.

⁷⁴ Exhibit 7, *Rebuttal Testimony of Barbara Meisenheimer*, p. 17.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

AT&T Missouri, Holway Telephone Company, Iamo Telephone Company – Missouri, Iowa Telecom – North, Oregon Farmers Mutual Telephone Company, Rock Port Telephone Company, Alltel Missouri, Inc., Sprint Missouri, Inc., and Grand River Mutual Telephone Company, are each a “telecommunications company” and a “public utility” as those terms are defined in Section 386.020, RSMo 2000, and are therefore fully subject to the regulatory jurisdiction of the Commission. Each of the companies is an incumbent local exchange carrier and has been designated as an ETC for purposes of receiving federal USF support.

Each of these companies, with the exception of AT&T Missouri, is a rural telephone company as defined by the Federal Telecommunications Act of 1996. AT&T Missouri is a non-rural telephone company.

The commercial mobile radio service provided by NWMC is specifically excluded from the statutory definition of “telecommunications service.”⁷⁵ Thus, NWMC is not subject to the general regulatory jurisdiction of the Commission. Under the authority granted to the Commission by the FCC, NWMC has requested that the Commission designate it as an ETC for purposes of receiving federal universal service support.

Under the Commission’s ETC rule, by applying for designation as an ETC, NWMC voluntarily subjects itself to the Commission’s jurisdiction regarding ETC “status

⁷⁵ Section 386.020(53)(c), RSMo.

and USF funding and the acceptance of any additional rules made applicable to” ETCs.⁷⁶ NWMC admits that the Commission’s rule should be applied in this case⁷⁷ and, therefore, NWMC is subject to the Commission’s jurisdiction as set out in the ETC rule.

The purpose of the Universal Service Fund is to provide financial support to carriers that use the support to advance universal service principles. Before a carrier can receive support from the USF, the carrier must be designated as an ETC by the state commission with jurisdiction over the service area where the carrier seeks to apply its USF support.⁷⁸

The state commission must first confirm that the petitioning carrier offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act.⁷⁹ Second, the state commission must confirm that the petitioning carrier advertises the availability of such services and charges using media of general distribution.⁸⁰ After making those determinations, the Commission must determine if the request is in the public interest.⁸¹

The FCC issued an order setting forth additional guidance to be used in conjunction with a public interest finding for competitive ETC designations in areas served

⁷⁶ 4 CSR 240-3.570(4)(G).

⁷⁷ See, *Issues List*.

⁷⁸ 47 U.S.C. § 214(e).

⁷⁹ 47 C.F.R. § 54.101.

⁸⁰ 47 U.S.C. § 214(e).

⁸¹ 47 U.S.C. § 214(e)(2).

by rural telephone companies.⁸² In addition, the FCC has issued an order in the *Highland* case⁸³ that helps define the public interest standard.

On March 17, 2005, the FCC issued a decision⁸⁴ regarding how it will evaluate applications for ETC status, and recommending that the states use similar guidelines.

Paragraph 41 of the *Report and Order* states:

41. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact specific public interest analysis it has developed in prior orders. First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a cream skimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. Based on this analysis, the Commission will deny designation if it concludes that the potential for cream skimming is contrary to the public interest. The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews. (*footnotes omitted*)

The footnote to the "prior orders" the FCC references in the above paragraph refers to both the *Virginia Cellular Order*⁸⁵ and the *Highland Cellular Order*.⁸⁶ The FCC wrote in paragraph 28 of the *Virginia Cellular Order*:

⁸² *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004).

⁸³ *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004).

⁸⁴ 1 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46. Rel. March 17, 2005. ("*Report & Order*")

⁸⁵ FCC 03-338, CC Docket 96-45, Released January 22, 2004.

⁸⁶ FCC 04-37, CC Docket 96-45, Released April 12, 2004.

In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. *In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.* (italics added)

The same italicized phrase is contained in paragraph 22 of the *Highland Cellular Order*.

In addition, the carrier must meet the requirements of the Commission's rule governing ETC designations.⁸⁷ The Commission's rule largely incorporates the requirements set out by the FCC.

The Commission has found that NWMC offers the services that are supported by federal universal service support. The Commission has also found that NWMC advertises the availability of those services using media of general distribution. Thus, the Commission concludes that NWMC has met the requirements set out in Section 214(e)(1)(A) and (B).

4 CSR 240-3.570 – Uncontested Items

No party contested the fact that NWMC complied with portions of the ETC rule. Therefore, based on the uncontested facts, the Commission concludes that NWMC has complied with the following portions of the ETC rule: (1) providing the populations affected by construction plans, its existing tower locations, and an estimated budget,⁸⁸

⁸⁷ 4 CSR 240-3.570.

⁸⁸ 4 CSR 240-3.570(2)(A)1.

(2) advertising the availability of its services and the charges for those services;⁸⁹ (3) providing Lifeline and Link-Up discounts and advertising those discounts appropriately;⁹⁰ (4) providing equal access if necessary;⁹¹ (5) following the CTIA's customer code;⁹² (6) providing a plan outlining the method for handling unusual construction or installation charges;⁹³ and (7) abiding by the consumer privacy protection standards and applicable service quality standards as provided by the federal rules.⁹⁴ Therefore, the Commission concludes that NWMC provides, or will provide if granted ETC status, these uncontested items as set out in 4 CSR 240-3.570.

4 CSR 240-3.570(2)(A)1 – Intended Use of High-Cost Support

The Commission found that NWMC provided a sufficiently detailed plan for the Commission to make its decision. The start and end dates included in the plan were less than clear, but were sufficient for the Commission to make its decision. The Commission concludes that NWMC has provided a statement of intended use of its high-cost support including a detailed description of construction plans with start and end dates and estimated budget amounts. The Commission further concludes that NWMC shall, as a condition of its grant of ETC status, file a plan outlining more specifically the proposed starting and ending dates of proposed USF supportable upgrades for the first two years of USF support. The revised budget and build-out plan shall condense the five-year plan to

⁸⁹ 4 CSR 240-3.570(2)(A)6.

⁹⁰ 4 CSR 240-3.570(2)(A)7.

⁹¹ 4 CSR 240-3.570(2)(A)9.

⁹² 4 CSR 240-3.570(2)(B).

⁹³ 4 CSR 240-3.570(2)(C).

⁹⁴ 4 CSR 240-3.570(A)8; 47 C.F.R. 64 Subpart U.

include only those items for which USF is intended as set out in 4 CSR 240-3.570(2)(A)2.A.⁹⁵ This condition is reasonable in that it will allow the Commission to more easily review the certification filings that NWMC will need to make on an annual basis.

4 CSR 240-3.570(2)(A)2 – Only USF Supportable Services

The Commission previously found that NWMC’s five-year budget in conjunction with Mr. Bundridge’s testimony was sufficient for the Commission to make a decision regarding what services NWMC will provide using USF support. The Commission also found that the services would only be provided in Missouri. The Commission, therefore, concludes that NWMC has met the requirement to show that high-cost 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 for which it was granted. In addition, the Commission concludes that it is reasonable to require NWMC, as a condition of the grant of ETC status, to provide a revised estimated budget showing only the USF supportable items for which it proposes to spend USF funds in the next two years. This condition will help facilitate the Commission’s future review and ensure that USF monies were spent only on supportable services.

Furthermore, the Commission concludes that under the ETC rule, failure to demonstrate “that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that

⁹⁵ The Commission has found in Case No. TO-2006-0172, Report and Order (issued September 21, 2006), that expenses for income tax and depreciation are not USF supportable items.

support was used in addition to any expenses the ETC would normally incur,⁹⁶ shall result in the Commission refusing to certify NWMC for USF support .⁹⁷

4 CSR 240-3.570(2)(A)3 – Expenses Would Not Otherwise Occur

AT&T argued that NWMC did not demonstrate any meaningful improvement in signal coverage in the Stanberry wire center, or otherwise demonstrate how funding will be used to further the provision of supported services in that area.⁹⁸ Thus, AT&T argues that this exchange should be excluded from ETC designation. The Commission has found that the coverage maps provided by NWMC show sufficient detail for it to reach its decision in this matter. The maps were broken down on a wire center basis and the appendices to the various testimony included projected dates for the improvements as discussed above.

The Commission concludes that the evidence provided by NWMC demonstrates how each of the wire centers will benefit. The Commission also concludes that NWMC will provide improved coverage, service quality or capacity in each of the wire centers where ETC designation is requested, including the Stanberry wire center.

The Commission also found that NWMC will be spending USF support only on improvements that it would not have made without receiving such support. NWMC's Appendices M and P⁹⁹ included budgets for unsupportable items and expenses that it would make regardless of the ETC designation. When those items are removed, the remaining amounts in the first two years of the budget do not add up to the expected \$1,468,614 in USF support. However, the testimony clarified that NWMC will make the

⁹⁶ 4 CSR 240-3.570(4)(D).

⁹⁷ 4 CSR 240-3.570(5)(E).

⁹⁸ *AT&T Missouri's Post-Trial Brief*, p. 1 (filed July 10, 2006).

⁹⁹ Ex. 4 and Ex. 5, respectively.

USF supportable improvements as laid out in the five-year plan as necessary so that it spends funds on cell towers and services that it would not have otherwise spent without the USF funds. The Commission concludes, based on the five-year plan and the testimony, that NWMC intends to spend all its USF support on supportable services in the next two years and that the improvements would not be made without USF support.

As a condition of its ETC designation, the Commission will require NWMC to provide a new two-year budget which excludes the improvements and upgrades the company would have made regardless of USF support and in compliance with 4 CSR 240-3.570(2)(A)2.A as specified above.

4 CSR 240-3.570(2)(A)4 – Ability to Remain Functional in an Emergency

Only AT&T suggests that NWMC's has not provided sufficient detail about how the system is designed for the Commission to make a determination about emergency capabilities. Neither the Commission's Staff nor any other party objected to the sufficiency of this testimony. Based on the evidence provided, including rerouting calls, redundant networks, the system not operating at capacity, and back-up generators, the Commission concludes that NWMC has demonstrated its ability to remain functional in an emergency.

4 CSR 240-3.570(2)(A)10 – Local Usage Plan Comparable to ILEC's Plan

NWMC will offer local calling plans that are designed to be comparable to that of the ILEC. Although the NWMC rates are more than those charged by the ILECs, the level of services is also increased. Each of the current NWMC plans includes multiple vertical services and some will offer a larger calling scope than the ILEC. Furthermore, NWMC's customers will have limited mobility. While the offerings are not identical, the Commission

concludes that NWMC offers a local usage plan that is comparable to those offered by the ILECs.

The Commission further concludes that requiring a credit check of Lifeline customers who do not have unpaid accounts with the company is not a reasonable requirement. In order to protect Lifeline customers, the Commission finds that it is reasonable to condition the grant of ETC designation upon NWMC offering service to Lifeline customers without requiring a credit check.

4 CSR 240-3.570(2)(A)5 – Public Interest

Section 214(e)(2)¹⁰⁰ of the Act, as well as the FCC regulations,¹⁰¹ and the Commission's rule¹⁰² govern the designation of ETC status. Section 214(e)(2) of the Act states, in relevant part:

Upon request and consistent with the public interest, convenience and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

The Commission's ETC rule also requires that the applicant for ETC designation demonstrate that the designation is in the public interest.¹⁰³ Thus, the Commission must determine if the designation of an additional ETC is in the public interest.

¹⁰⁰ 47 U.S.C. § 214(e)(2).

¹⁰¹ 47 C.F.R. § 54.201, *et seq.*

¹⁰² 4 CSR 240-3.570.

¹⁰³ 4 CSR 240-3.570(2)(A)(5).

The FCC has held that an increase in competition is in the public interest. This is based on the fact that one of the main goals of the Telecommunications Act of 1996 was to increase competition. Thus, under the FCC's analysis, having NWMC designated as an ETC will have some benefit of increasing competitive choice. In the current case NWMC presented evidence showing increased competition in the form of new service offerings. The Commission concludes, based on the record before it, that there will be some benefit of increased competition by designating NWMC an ETC.

The second factor that the FCC considered is the impact on the Universal Service Fund. The impact on the fund of NWMC's annual USF support of \$1,468,614 is not in and of itself a significant portion of the fund as a whole. The FCC acknowledged, however, that there were concerns about the overall impact of designating multiple carriers, including wireless, as ETCs.

The ILECs believe a stricter analysis should be done. The ILECs suggest that the Commission must look to the Universal Service Principles in Section 254(b) to determine the impact on the USF. The ILECs also believe that the USF will grow too rapidly with the addition of wireless companies. The Commission is also concerned with the rapid growth of the Universal Service Fund, and awaits further guidance from the FCC and the United States Congress on improvements to the USF. The Commission must, however, resolve the case before it.

The Commission has found that the advantages that NWMC will provide include mobility, access to emergency services, and an increased local calling scope for some customers. Disadvantages include such things as dead spots and dropped calls. Granting NWMC an ETC designation will benefit the public by enabling NWMC to bring wireless

service, including E911 (specifically in Worth County) and CDMA, to many remote locales and by increasing competition for primary telephone service in remote areas. In addition, Lifeline and Link-Up customers will have access to service that would otherwise be unavailable to them.¹⁰⁴ The Commission concludes that the benefits to the public in rural Missouri of granting NWMC ETC status will outweigh the potential detriments to the USF.

Another disadvantage of wireless service is that the company is not subject to the mandatory quality of service standards with which the landline companies must comply. NWMC has committed to complying with the CTIA Consumer Code for Wireless Service and any applicable federal quality of service standards. Furthermore, the Commission has set out additional conditions in this order for the annual certification. In addition, enforcement of the Commission's ETC rule will ensure that the USF support is being used appropriately.

Finally, NWMC has committed that it is willing to accept carrier-of-last-resort status and there was no evidence that suggested NWMC was currently unable to serve the areas where ETC designation is requested. In addition, the ETC rule provides what the company must do to provide service if requested in an area where coverage does not exist. Thus, the Commission concludes that NWMC has the ability to serve the area.

Based on all the foregoing facts, the Commission concludes that the benefits to the public of granting NWMC ETC status outweigh the detriments of granting ETC status.

Conclusion

The Commission determines that the grant of ETC status to NWMC is in the public interest because NWMC has provided evidence to show that the public benefits from

¹⁰⁴ Tr. p. 76.

designating NWMC an ETC for USF purposes will outweigh the detriments of doing so. The Commission conditions this grant of ETC designation on the conditions set out above regarding filing of additional information and continued compliance with the Commission's ETC rule. If NWMC does not strictly abide by the Commission's ETC rule, especially the provisions requiring that funds be spent only on USF supportable services, the Commission shall not certify NWMC as an ETC on an annual basis and shall rescind this ETC designation.

NWMC has shown that it intends to bring additional services and technology to rural telecommunications customers within the state of Missouri. NWMC has further shown that by granting NWMC ETC status, these rural customers will have better signal coverage, enhanced 911 capabilities, and more competitive choices for telecommunications service.

NWMC has met its burden to show that a grant of ETC status in the requested wire centers is "consistent with the public interest, convenience, and necessity." Therefore, the Commission shall grant NWMC's application for ETC designation.

IT IS ORDERED THAT:

1. Northwest Missouri Cellular Limited Partnership's application to be designated an eligible telecommunications carrier for federal universal service fund purposes is granted conditioned on compliance with the items set out in ordered paragraphs 2-4 below.

2. Northwest Missouri Cellular Limited Partnership shall file no later than September 26, 2006, a revised budget and build-out plan as specified in the body of this order which fulfills the requirements for only items for which support is intended as set out in 4 CSR 240-3.570(2)(A)2.A.

3. Northwest Missouri Cellular Limited Partnership shall strictly abide by the provisions of 4 CSR 240-3.570.
4. Northwest Missouri Cellular shall not require a credit check for Lifeline customers.
5. Exhibit 14 is admitted into the record.
6. All objections not ruled on are overruled and all motions not granted are denied.
7. This Report and Order shall become effective on October 1, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur and certify
compliance with the provisions of
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of September, 2006.