

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of ALLTEL Communications, Inc., ALLTEL Wireless of Wisconsin RSA#1, LLC and ALLTEL Wireless of Wisconsin RSA#7, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin	7131-TI-101
Application of NPCR, Inc., d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin	8081-TI-101
Application of Metro Southwest PCS, LLP for Designation as an Eligible Telecommunications Carrier in Wisconsin	8123-TI-100
Application of Brown County MSA Cellular Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin	8159-TI-100
Application of Wisconsin RSA #3 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin	8194-TI-101
Application of Wisconsin RSA #4 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin	8195-TI-101
Application of Wisconsin RSA #10 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin	8201-TI-101
Application of Nsighttel Wireless, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin	8202-TI-101
Application of Midwest Wireless Wisconsin, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin	8203-TI-100
Application of Wausau Cellular Telephone Company Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin	8250-TI-100

**COMMENTS BY ILEC DIVISION OF THE WISCONSIN STATE
TELECOMMUNICATIONS ASSOCIATION**

INTRODUCTION

The following Comments are submitted to the Public Service Commission of Wisconsin (the “Commission”) by the ILEC Division of the Wisconsin State Telecommunications Association, which includes the incumbent local exchange carriers listed on Attachment A (collectively the “ILEC Division”).

These Comments address the questions set forth in this Commission’s September 12, 2003 Notice Requesting Comments whether to grant the wireless applicants listed above collectively the "Applicants". For the reasons set forth in these Comments, this Commission should deny the application of the Applicants for designation as an ETC for receipt of funding from the federal universal service fund (“Federal USF”). As the alternative at a minimum this Commission should order a contested case proceeding to evaluate the Applicants application.

ISSUES

1. Is the applicant technically capable of providing service in all areas for which the applicant has requested ETC status within a reasonable period of time after receiving a customer request for service?

The significance of technical capability to the applicants’ ability to serve customers is dependent on the combination of: 1) the size of the no signal shadows; and 2) The Applicants willingness to make the investments necessary to provide service to *all customers* on request.

However, all local service providers, which include CMRS providers that are designated as ETCs, are obligated to make all essential telecommunications services available to *all customers* in the area for which designation as an ETC is received. PSC 160.13(1) reads in part as follows:

This Commission may designate a telecommunications provider as an eligible telecommunications carrier. Such a provider is eligible to receive universal service funding under both applicable federal and state universal service programs for an area, if it meets all of the following requirements: (A) *Holds itself ready to offer service to all customers in the area, except that those customers with a demonstrated inability to pay for service may be denied service in accordance with ss. PSC 165.051 and 165.052.*

(Emphasis added.)

The FCC has provided no basis for equivocation in the commitment to provide service *after* designation, saying in part:

As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer. We believe the ETC requirements should be no different for carriers that are not incumbent LECs. *A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC.*

(Emphasis added.) At ¶ 17.

2. Does, or can, the applicant propose lifeline and linkup programs that meet either state and federal, or purely federal, guidelines?

It is unknown whether the Applicants LINKUP and LIFELINE proposals meet the requirements of PSC 160.061. Careful inquiry by this Commission will be needed to determine whether such a Program would comply with requirements.

3. Does the applicant meet, or fail to meet, requirements for ETC designation other than those listed above?

The Applicants may assume that it is not required to provide interlata equal access because the FCC has not required *Cellular Mobile Radio Service (“CMRS”) providers* to offer interlata equal access. However, by requesting designation as an ETC, the Applicants have separated themselves from the status of other, regular CMRS providers and have made themselves subject to the requirements of an ETC, which have been determined by this Commission.

This Commission expressly considered CMRS providers in the context of the essential telecommunications services and determined that CMRS providers that are designated as ETCs must provide all essential services. PSC 160.03 reads in part:

- (1) *Each local exchange service provider shall make available to all its customers at affordable prices all essential telecommunications services.*
(Emphasis added.)

The obligation of each local exchange service provider to make available all essential telecommunications service is clear. It is also clear that all CMRS providers that are designated as ETCs are “local exchange service providers.” PSC 160.02(7) reads in part:

“Local exchange service provider” means any commercial mobile radio service provider that has been designated as an eligible telecommunications carrier under s. PSC 160.13

4. Is it in the public interest to forgo those portions of the essential services list not duplicated by federal rules?

As an ETC, the Applicants would be required to provide *all* essential telecommunications services. For the reasons set forth herein, this Commission should not grant the applicant waivers from several of the requirements of an ETC.

5. What, if any, exceptional or unique circumstances might justify adopting different requirements, pursuant to Wis. Admin. Code § PSC 160.01(2)(b)?

Incumbent LECs are subject to the authority of this Commission to determine the circumstances under which facilities must be extended to serve customers. The same obligations and Commission oversight should apply to the Applicants.

It is highly probable that resolving these obligations and the scope of this Commission's ongoing oversight will require this Commission to determine material disputed facts, since the Applicants application to this Commission indicates not to apply a portion of the list of essential service requirements. Accordingly, a contested case proceeding will be most appropriate to resolve these critical customer service issues.

6. Is it in the public interest to designate the applicant as an ETC in each rural exchange for which that status is requested?

By requesting designation as an ETC, the Applicants have requested significant financial advantages that are not generally available to CMRS providers. By requesting these advantages, the Applicants must also accept the responsibilities and obligations that accompany those advantages.

The Applicants ask this Commission to adopt different requirements for operations that are specified for an ETC by 160.13 Wis. Admin. Code. To the contrary, it is clear that state commissions retain the authority to impose additional requirements for designation as an ETC for Federal USF funding as well as for state USF funding.

In *Texas Office of Public Utility Council v. FCC*, 183 F3d 393 (5th Cir. 1999), the court reversed an FCC Order that prohibited states from imposing any additional requirements when designating carriers as eligible for federal universal service support. The court said in part:

[T]he FCC erred in prohibiting the States from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. [N]othing in the subsection prohibits the states from imposing their own eligibility requirements. This reading makes sense in light of the states' historic role in ensuring service quality standards for local service. Therefore, *we reverse that portion of the Order prohibiting the states from imposing any additional requirements when designating carriers as eligible for federal universal service support.*

(Emphasis added.) At 418.

Under this holding, this Commission has the authority to impose additional requirements on competitive ETCs seeking designation for areas served by *both* “rural telephone companies” and non-rural telephone companies. This Commission’s authority to impose additional requirements is all the more clear in making the “public interest” determination required before designation of an additional ETC in areas served by rural telephone companies.¹

7. If ETC designation is granted, should it be granted for parts of service territories?

The Applicants have requested designation for portions of certain rural service territories. Disaggregation would include separating contiguous local exchange areas and even subdivision of single exchange areas. This level disaggregation would far exceed the FCC’s guidelines.² Evaluating whether to disaggregate service areas of rural telephone companies is likely to require this Commission to resolve material factual disputes.

CONCLUSION.

The Applicants request for ETC designation raises critical public policy issues which will have effects far beyond the scope of this proceeding.

The ILEC Division believes that with the 10 pending ETC designations, it must strongly suggest that the Commission cannot make public interest findings based on the facts presented solely in comments. The Commission needs to conduct an investigation or hearings to develop a record

¹ Section 214(e)(2) reads in part:

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.

² In the *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776 (1997), the FCC said in part:

We conclude, as did the Joint Board, that rural telephone companies' study areas will be used as their designated service areas, although we encourage states to consider disaggregating a rural telephone company's study area *into service areas composed of the contiguous portions of that study area*. ...

At ¶ 129 (Emphasis added.) *Contiguous portions* of a LECs service area would include all exchanges that were adjacent.

on which to based their decision before it can rule that it is in the public interest to designate more than one ETC in rural company study areas.

For the reasons set forth above, this Commission should deny the Applicants request for designation as an ETC. In the alternative, this Commission should initiate a contested case proceeding to further evaluate the Applicant request for ETC designation.

Dated: September 18, 2003

Respectfully submitted,

ILEC Division of the WSTA

By _____
Todd Schafer, Chair