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March 10, 2004

Ms. Carole Washburn
Washington Utilities
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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Re: Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for
Designation as an Eligible Telecommunications Carrier,
Docket No. UT-043011

Dear Ms. Washburn:

On February 20, 2004, AT&T Wireless PCS of Cleveland, LLC, AT&T Wireless Services of Washington, LLC, Spokane Cellular Telephone Company, Yakima Cellular Telephone Company, Bremerton Cellular Telephone Company, Olympia Cellular Telephone Company, Inc., Bellingham Cellular Partnership and Hood River Cellular Telephone Company, Inc. (collectively "AWS") submitted to the Washington Utilities and Transportation Commission ("Commission") a Petition for Designation as an Eligible Telecommunications Carrier ("Petition"), pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, (the "Act") and 47 C.F.R. § 54.201.

The Washington Independent Telephone Association ("WITA") and its member companies respectfully request that the Commission not approve the AWS Petition at an open meeting. For the reasons set forth below, WITA requests that the Commission review the AWS Petition through a formal adjudication process, pursuant to WAC 480-07-305.

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Analysis

Section 214(e)(2) of the Act provides the Commission with the authority to review petitions for ETC status. In order to be eligible to receive federal universal service support, a common carrier applicant must demonstrate under Section 214(e)(1) and 47 C.F.R. § 54.101(a) that it offers nine essential services “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).” The ETC applicant must also advertise the availability of its services.

Furthermore, Section 214(e)(2) of the Act requires that for each rural telephone company service area, the Commission must determine whether it is in the public interest to grant an applicant ETC status. In a recent decision involving Virginia Cellular, the Federal Communications Commission (“FCC”) has made it clear that a cursory review of an application is not appropriate. As stated by the FCC:

While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.¹ (Emphasis added).

The Joint Board has issued its Recommended Decision.² In the beginning of its discussion of the substantive issues, the Joint Board used the word “rigorous” no less than four times in the first three paragraphs to describe the type of review that applies to an ETC application.³ As stated by the Joint Board: “The ETC application and designation process should be one that is rigorous. A rigorous ETC designation process will ensure that only fully qualified applicants receive designation as ETCs and that ETC designees are prepared to serve all customers within the designated service area.”⁴ (Emphasis

¹ Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (2004) (Virginia Cellular) at ¶ 4.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (Released February 27, 2004) (Recommended Decision).

³ Recommended Decision at ¶ 9-11.

⁴ Recommended Decision at ¶ 9.

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added). The Joint Board emphasized this point when it stated: "Rigorous review of ETC applications assumes added importance in areas served by rural carriers."⁵

The FCC described this rigorous review of ETC applications to be a balancing of the benefits and costs which is a fact-specific exercise.⁶ It is an exercise in which the applicant bears the burden of proof.⁷

The FCC concluded that the value of increased competition, by itself, is insufficient to satisfy the public interest test in rural telephone company service areas.⁸ The FCC then listed several factors that should be considered as part of this cost/benefit analysis:

- The benefits of increased competitive choice
- The impact of multiple designations on the universal service fund
- The unique advantages and disadvantages of the competitors' service offerings
- Any commitments made regarding quality of telephone service provided by competing providers
- The competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable timeframe⁹

The FCC found that it was important that the application be reviewed to determine whether the potential for cream skimming of rural telephone company service areas exist.¹⁰ As pointed out by the Joint Board, "If a service area redefinition is proposed, the existing rules also require the states and the Commission to analyze the Joint Board's previously expressed concerns about cream skimming in the particular area covered by the ETC application."¹¹

⁵ Recommended Decision at ¶ 17.

⁶ Virginia Cellular at ¶ 28.

⁷ Virginia Cellular at ¶ 26.

⁸ Virginia Cellular at ¶ 4.

⁹ Virginia Cellular at ¶ 4.

¹⁰ Virginia Cellular at ¶ 32.

¹¹ Recommended Decision at ¶ 55.

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On the face of the Petition submitted by AWS, the Commission lacks the facts to make the public interest determination.¹² For example, AWS does not identify how many customers it currently serves in the rural telephone company service areas for which it seeks ETC designation. That information is needed before the Commission can weigh the impact of the designation on the universal service fund. As another example, there is nothing in AWS's Petition that allows the Commission to weigh the unique advantages and disadvantages of the competitor's service offering. AWS does not provide any of its service plans with its Petition. In any case, weighing the advantages and disadvantages would be a fact-specific exercise.

There is another issue that should be inquired into: How many ETCs should be designated for a high-cost, low-density service area. If the AWS Petition is granted, the Asotin Telephone Company service area will have four ETCs. For a rural area serving a little over a thousand access lines, that seems to be overkill. This is an issue that the Joint Board felt deserves particular attention in high-cost, low-density service areas.¹³ Moreover, even if wireless service is deemed to offer benefits other than those provided by wireline service, where the ETC applicant seeks to provide wireless service to a service area for which another wireless ETC has already been designated, the public benefit to be derived from the additional wireless ETC designation would seem susceptible to question.

There are still other examples of how the factual basis for granting AWS' Petition is lacking. AWS asserts that its licenses cover entire counties. That is a factual issue to be determined. Even if it is true, undoubtedly AWS does not provide service to every part of every county. Where service is not provided, AWS's Petition does not describe its ability to satisfy its obligations to serve all of the designated service areas within a reasonable timeframe. Again, that is a fact-specific exercise.

¹² Given the recent announcement of the agreement between Cingular Wireless and AWS, where all of the stock of AWS will be sold, it is questionable whether AWS can demonstrate its intent to provide services and meet the service levels requirement.

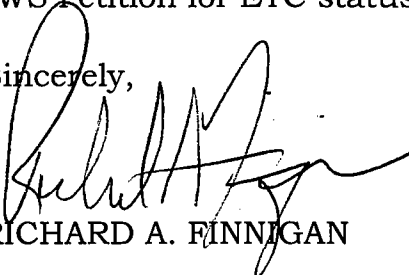
¹³ See Recommended Decision at ¶ 43.

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Conclusion

The guidelines of the Act, the FCC rules and the recent decision in Virginia Cellular require that any petition for ETC status be carefully weighed for any deficiencies in content and on the merits for satisfying the public interest test. Such review should not be conducted in summary fashion without a formal hearing. For these reasons, WITA and its member companies respectfully request that the Commission open a formal adjudication proceeding to review and decide the AWS Petition for ETC status.

Sincerely,



RICHARD A. FINNIGAN

RAF/km

cc: Chairwoman Showalter
Commissioner Hemstad
Commissioner Oshie
Bob Shirley
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