

Agenda Date: March 12, 2004
Item Number: A1

Docket: UT-043011

Company Name: 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., subsidiary licensees of AT&T Wireless Service, Inc. (collectively "AWS")

Staff: Robert Shirley, Telecommunications Policy Analyst

Recommendation:

Designate AWS (d/b/a AT&T Wireless) as an Eligible Telecommunications Carrier (ETC) for the exchanges listed in Exhibits B and C of the petition, and direct AWS to provide a map of its service areas in .shp format.

Discussion:

AWS's Petition for ETC Designation

AWS is a commercial mobile radio service (CMRS) provider authorized by the FCC to provide service in Washington. It provides voice and data service over two networks. *Petition*, ¶ 7. In addition to voice service, it offers high-speed wireless data transmission over its general packet radio service network.¹ *Id.* Subscribers may purchase handsets that permit them to use both networks. *Id.* AWS has licenses to serve areas described by the boundaries of 31 of Washington's 39 counties.² AWS is headquartered in Redmond, Washington, and serves more than 20,000,000 customers nationwide. *Petition*, ¶ 3. AWS petitioned for designation as an ETC on February 20, 2004, for its licensed service areas that coincide with some or all of the exchange areas operated by wireline carriers Qwest, Verizon Northwest, Sprint-United Tel. NW-WA, Asotin Tel., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., Ellensburg Tel. Co., Hat Island Tel. Co., Hood Canal Tel. Co, Inc., Inland Tel. Co. - WA, Kalama Tel. Co., Lewis River Tel. Co., d/b/a TDS Telecom, McDaniel Tel. Co., d/b/a TDS Telecom, Mashell Telecom, Inc., St. John Telephone and Telegraph, Tenino Tel. Co., Toledo Tel. Co., Inc., Western Wahkiakum County Tel. Co., Whidbey Tel. Co., and Yelm Tel. Co. *Id. at Exhibits B and C.* AWS did not petition for designation in geographic areas where it is licensed to serve only portions of exchanges; it may do so in the future. *Id.*, ¶ 32.

¹ Staff is unaware of any other wireless ETC in Washington that operates a general packet radio service network in addition to its voice network.

² AWS is not licensed to provide service in Chelan, Douglas, Okanogan, Walla Walla, Columbia, Ferry, Stevens, and Pend Oreille counties. *See* Petition at Exhibit A. Additionally, within the counties for which it is licensed, there are some areas where AWS does not have facilities to serve customers and it has excluded those locations from its petition. *See* Petition at ¶¶31-33, and Exhibits B, C, and D.

Background

One feature of the federal Telecommunications Act of 1996 was the creation of eligible telecommunications carriers (ETCs). ETCs are common carriers designated by state commissions (and by the Federal Communications Commission (FCC) if a state lacks jurisdiction) as eligible to receive federal universal service support funds. *47 U.S.C. § 214(e)*. An ETC must provide services supported by federal funds throughout the geographic area for which it is designated, and it must advertise the availability of those services in media of general distribution. *47 U.S.C. § 214(e)(1)*. In exchange for support, ETCs must provide nine services and offer discounts to low-income consumers through Lifeline and Link Up. *47 C.F.R. §§ 54.101 and 54.400 et seq.*

AWS Provides the Federally Required Services

In its petition, AWS states that it provides the nine federally required services. *Petition*, ¶¶ 15-25. AWS also states it will participate in both the Lifeline and Link Up programs. *Id.*, ¶ 26. AWS states in its petition that it will offer qualifying low-income consumers 145 minutes of service at \$19.99 per month, which is 100 more minutes than its regular \$19.99 plan. *Id.*, ¶ 27.

AWS states further that it will participate in the Washington Telephone Assistance Program (WTAP). *Petition*, ¶ 28. AWS commits to work with the Washington Department of Social and Health Services (DSHS) to ensure proper implementation of the program.³ *Id.*, ¶ 28.

AWS Has Sufficiently Demonstrated Its Ability to Provide Service

The Commission previously has determined that an affidavit or an unsworn statement made under penalty of perjury is sufficient to demonstrate a petitioner's ability to provide the required services.⁴ AWS has provided an affidavit to the effect that it provides or will provide the required services and that it will meet the requirements for an ETC throughout the area for which it seeks designation. *Affidavit of Karl Korsmo, Exhibit E*.

³ DSHS permits qualifying consumers to use wireless carriers to obtain local telephone service supported by WTAP if the consumer could receive service from a wireline carrier only by purchasing a service extension. *See* WAC 388-273-0020(2). Companies providing WTAP service must charge the commission-ordered rate of \$8.00 and seek reimbursement for the difference between that price and their lowest priced, flat-rate service from WTAP and the Lifeline program. The reimbursement available to a wireless ETC is the same as for a wireline ETC, and is based in part on the incumbent's rates in a given location. The maximum reimbursement is \$19.00, but it is much lower in most locations. Average federal and state reimbursement is approximately \$10.50 (which, when combined with the customer's \$8.00 results in revenue of approximately \$18.50 for the carrier). WTAP supports only local service, so carriers are not reimbursed for bundled services (e.g., call forwarding, voice mail), but they may offer the services for a price (and the customer may decline the service) or donate bundled services.

⁴ *In the Matter of the Petition of Sprint Corporation for Designation as an Eligible Telecommunications Carrier*, WUTC Docket No. UT-031558, Order Granting Petition for Designation as an Eligible Telecommunications Carrier (October 29, 2003) at ¶ 6.

ETC Designation Must Be in the Public Interest

Before designating carriers as ETCs, state commissions must determine whether the designation is in the public interest. *47 U.S.C. § 214(e)(2)*. In non-rural areas, state commissions *must* designate more than one ETC. In an area served by a rural telephone company, state commissions *may* designate more than one ETC in the area if the state commission determines that such designation is in the public interest. *Id.* AWS seeks designation in areas already served by non-rural and rural telephone companies, and by other wireless carriers and by wireless ETCs.

Congress did not elaborate on the meaning of “public interest.” In making the public interest determination for ETC designations in areas served by rural carriers, this Commission has considered whether the additional ETC will benefit customers as contemplated by the federal Telecommunications Act of 1996.⁵ Specifically, this Commission has held that customers will benefit from competition because additional customer choices will bring downward pressure on prices, greater availability of innovative products, and more attention to customer service. The Washington Supreme Court has affirmed this Commission’s interpretation of the public interest when designating ETCs in areas served by rural carriers.⁶

The Commission also has focused on RCW 80.36.300 in deciding whether an additional ETC in areas served by rural carriers is in the public interest. RCW 80.36.300 sets forth the state’s policies to maintain and advance the efficiency and *availability* of telecommunications services, to ensure that customers pay reasonable rates for their services, and to promote *diversity of supply* of telecommunications services *throughout the state*.⁷ The Commission has also considered competitive and technological neutrality.⁸ The FCC adopted the principle of competitive and technological neutrality and stated that it is applied when “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over

⁵ The purposes of the Act are to promote competition in the local telecommunications markets and to preserve and advance universal service.

⁶ *Washington Ind. Tel. Ass’n v. Washington Utils. & Transp. Comm’n*, 149 Wn.2d 17, 28, 65 P.2d 319 (2003).

⁷ See *In the Matter of the Petition of RCC Minnesota, Inc., d/b/a Cellular One For Designation as an Eligible Telecommunications Carrier*, WUTC Docket No. UT-023033, Order Granting Petition for Designation as an Eligible Telecommunications Carrier, ¶ 10 (August 14, 2002) (*RCC Order*); *In The Matter of The Petition of Inland Cellular Telephone Company, d/b/a Inland Cellular, Eastern Sub-RSA Limited Partnership, and Washington RSA No. 8 Limited Partnership For Designation As An Eligible Telecommunications Carrier*, WUTC Docket No. UT-023040, Order Granting Petition for Designation as an Eligible Telecommunications Carrier, ¶¶ 15 & 65 (August 30, 2002) (*Inland Order*).

⁸ *In the Matter of the Petition of United States Cellular Corp., et al. for designation as Eligible Telecommunications Carriers*, Docket No. UT-970345, Third Supplemental Order, (Jan 27, 2000) ¶ 30.

another, and neither unfairly favor nor disfavor one technology over another.”⁹ While not stated previously in a Commission order, increasing the availability of telecommunications services and diversity of supply of seems consistent with competitive and technological neutrality.

Granting AWS’s Petition is Consistent With FCC’s Decision Designating Additional ETCs in Areas Served By Rural Carriers

Granting AWS’s Petition for ETC designation is consistent with the FCC’s designation of additional ETCs in areas served by rural carriers.¹⁰ Recently, the FCC reaffirmed its long-standing criteria for gauging whether the designation of an additional ETC in areas served by rural carriers is in the public interest.¹¹ In the *Virginia Cellular* order, the FCC stated that it will “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.”¹² In its prior decisions regarding ETC designation, this Commission has examined all but the impact of designation on the federal universal service fund. The Commission declined to consider the impact that an individual ETC designation would have on the universal service fund because it considered statements about the possibility of a cap or restructuring of the fund to be speculative.¹³ In addition, the FCC controls the fund in all respects and could take action to alter operation of the fund. However, this Commission cannot take any action that would affect the operation of the fund, so Staff recommends the Commission not now change its position and

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 8, 1997) (“First Report and Order”) ¶ 47.

¹⁰ See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 18133 (2001); see also *Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, 17 FCC Rcd 23532 (Wir. Comp. Bur. 2002).

¹¹ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular Order*).

¹² *Virginia Cellular Order* at ¶ 28.

¹³ *RCC Order* at ¶¶ 35 and 66; *Inland Order* at ¶ 66. Subsequent to the filing of AWS’s petition, the Federal-State Joint Board on Universal Service issued a Recommended Decision that, among other things, recommends the FCC change its rules concerning distribution of support. It recommends support for only “primary lines” and asserts this will reduce or eliminate growth in the federal universal service fund. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (FCC 04J-1), Recommended Decision (Rel. Feb. 27, 2004) (*2004 Recommended Decision*), ¶¶56-87. Adoption of the recommendation is by no means certain; indeed, the FCC rejected a similar, if not identical, recommendation in the past. *Id.*, ¶ 59.

attempt to include in its test for determination of the public interest what impact designation of AWS might have on the federal fund.¹⁴

Commission Should Not Follow Verizon Northwest's Comments to Withhold Designation Pending Future FCC Action

Verizon Northwest calls attention to the recommended decision of the Federal-State Joint Board on Universal Service and comments that the Commission should not take action because it risks having its decision nullified or reversed if the FCC changes its rules concerning designation of ETCs. *Verizon Comments, p. 1*. Its comments allude to the elimination of interstate access support (IAS) and the cap of \$650 million annually placed on the segment of federal support that replaced IAS for interstate price-cap companies. Verizon did not quantify the expected affect on support it receives. Verizon proposes the Commission take no action while the FCC studies issues related to multiple ETC designations. *Id., p. 2*.

The FCC designed this segment of the fund so that amounts received by interstate price-cap carriers would be affected by changes in the national local service market, including changes caused by competition from ETCs. *47 C.F.R. § 54.806, 807*. Verizon's monthly per-line support from the \$650 million is determined by a complex formula and several factors related to over 150,000,000 lines operated nationwide by BellSouth, SBC, Sprint, Verizon and other interstate price-cap carriers. The factors include: changes in the number of lines served across the nation by interstate price-cap companies; changes in revenue per-line of the 150,000,000 lines served by those companies; the UNE Zone prices (or the lack thereof) for those companies; and changes in the number of lines served nationally by ETCs in areas also served by those interstate price-cap companies. *Id.* Because of the large number of lines taken into account in the complex calculations, staff cannot estimate the affect of designation of AWS on Verizon Northwest, but concludes it should be quite small because of the many lines and factors involved, and may not even be apparent in any quarter in which there are counter-balancing changes affecting the more than 150,000,000 lines on which the calculation is based.

¹⁴ The Commission may benefit from a review of the context in which the FCC's concern arises for the high-cost fund. In 1999, the federal High-Cost Fund (HCF) distributed about \$1 million to non-incumbent ETCs and \$1.7 billion to incumbent (rural and non-rural) ETCs. The projection for 2003 was \$106 million for non-incumbent ETCs and \$3.2 billion for incumbent ETCs. Thus the projected growth in HCF support for incumbent ETCs was 93% of the total growth; non-incumbent ETCs were projected to go from an annual \$1 million to an annual \$100 million (7% of the projected growth). See *Reply Comments of the Ad Hoc Telecommunications Users Committee*, In the Matter of Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, RM-10822 (February 13, 2004) at page 8 (citing "*Universal Service in Rural America: A Congressional Mandate at Risk*," Stuart Polikoff, OPASTCO White Paper published 2003, A-4, Table 3). The Recommended Decision of the Joint Board includes similar information concerning the increase in support for non-incumbent ETCs, but does not compare it to increases in support for incumbents. *2004 Recommended Decision*, ¶ 67, n.183.

Staff suggests the potential for a small change in support for Verizon Northwest in a manner intended by the FCC is not sufficient to tip the scale against designation when the benefits for consumers of increased competition, including increased competition between wireless ETCs, are weighed on the other arm of the scale.

Staff also recommends against waiting to designate AWS based on speculation about uncertain FCC action that may be years away, if it even occurs. If the Commission waits on FCC action, AWS will be placed at a competitive disadvantage in comparison to wireline and wireless ETCs. In comparison, designation now will, at worst, place AWS and its customers in the same position as other ETCs and their customers with respect to any future FCC action.

AWS Petitions for Designation in Areas Served by Non-Rural and Rural ILECs, and Served by Wireless Carriers and Wireless ETCs

AWS has petitioned for ETC designation for most exchanges served by Qwest, Sprint-United, and Verizon, non-rural carriers as that term is used in the Telecommunications Act of 1996.¹⁵ *Petition, Exhibit B.* AWS also petitions for designation in many exchanges served by rural telephone companies. *Petition, Exhibit C.*

Designation of AWS is in the Public Interest

In previous proceedings when the Commission has considered designation of a second or third ETC, representatives of rural companies have argued that additional designations are not in the public interest because they could result in a diminution of revenue to the incumbent that could jeopardize the incumbent's ability to serve its customers. The concern, as understood by Staff, is that the loss of too much market share could result in insufficient revenue to meet fixed and variable costs that would be incurred to serve remaining customers.

The Commission has responded in the past that FCC rules do not result in a reduction of federal high-cost fund support when another ETC receives support. Those rules are the same today as when previous designations were made.¹⁶ The way in which costs are supported for rate-of-return rural companies actually results in an increase in federal support on a per-line basis if competition results in a reduction of the total number of lines served by a rural ILEC.

In addition, it is important to note that no incumbent has asked the Commission to increase its revenue requirement in the four years during which rural incumbents have faced competition

¹⁵ Sprint-United appears in the petition as a rural company rather than a non-rural company. The Commission treated it as a non-rural telephone company in Docket No. UT-980311. Because staff recommends the same action on this petition with respect to geographic areas served by rural and non-rural telephone companies, the Commission need not decide the correct classification of Sprint-United in order to make a determination on the petition.

¹⁶ The Recommended Decision of the Joint Board is just that. With respect to public interest determinations, the Joint Board has recommended "permissive guidelines" be adopted by the FCC and acknowledges that Congress delegated the public interest determination under 47 U.S.C. § 214(e)(2) to state commissions. *2004 Recommended Decision*, ¶¶ 5-7.

from wireless ETCs. This observation supports a conclusion that designation of additional ETCs has not harmed consumers that receive basic telecommunications service from rural incumbents.

Designation will also increase the availability of telecommunications services and the diversity of supply of those services throughout the state. Diversity of supply suggests that services need not be identical, and designation of AWS will add a wireless service to compete with wireline and wireless ETCs. This promotes competitive neutrality and technological neutrality because wireless service is permitted to participate in federal support mechanisms without having to be identical to wireline service; consequently, it is a technological alternative that consumers may choose based on its attributes. In the case of AWS, that includes access to its general packet radio service network as well as its voice network.

Recommendation:

The petition of AWS promotes customer choice and brings to consumers the benefits that result from competition. This is consistent with efforts to insure that all customers, no matter where located, receive the benefits that competition in the telecommunications sector can provide. Designation of AWS as an ETC also will preserve and advance universal telecommunications service consistent with federal and state law. Granting the petition would be in the public interest. Staff also recommends that AWS be directed to prepare a map of its geographic service areas in .shp format and submit it to the Commission and to the Universal Service Administrative Company (USAC) within six months of designation as an ETC.