

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-061T

IN THE MATTER OF THE APPLICATION OF WESTERN WIRELESS HOLDING CO. INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

**ORDER SETTING MATTER FOR HEARING
BEFORE COMMISSIONERS *EN BANC***

Mailed Date: April 18, 2003

Adopted Date: April 2, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an Application for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 4 *Code of Colorado Regulations* (CCR) 723-42-7 filed by Western Wireless Holding Co., Inc., a wholly owned subsidiary of Western Wireless Corporation (Western Wireless) on February 14, 2003. Western Wireless seeks ETC status in order to receive federal universal support within certain service areas of CenturyTel of Eagle, Inc. (CenturyTel), identified in an attachment to its application.

2. According to its application, Western Wireless currently provides commercial mobile radio services in Colorado, including mobile telephony, data, facsimile, 911, and voice mail. Western Wireless further represents that it has already been designated as an ETC and Eligible Provider (EP) pursuant to our rules at 4 CCR 723-41-8 and 4 CCR 723-42-7.

II. BACKGROUND

3. In Decision No. C01-476, the Commission found that because Western Wireless agreed to provide service substantially similar to that offered by certificated local exchange

carriers (CLECs) at rates, terms, and conditions applicable to CLECs, certification of Western Wireless as an EP fully complied with the requirements of § 40-15-208(2)(a), C.R.S. Additionally, pursuant to 47 U.S.C. § 241(e) and 47 C.F.R. § 54.201, the Commission must find that designating an additional ETC for an area served by a rural telephone company is in the public interest. Federal and state statutes establish the public policy of promoting competition in telecommunications markets. *See* 47 U.S.C. §§ 251-251; §§ 40-15-501 *et seq.*, C.R.S. The Commission found that designating Western Wireless as an ETC would result in benefits to the public and promote competition. Therefore, Western Wireless was designated as an ETC. However, the Commission denied Western Wireless' designation as an ETC in the CenturyTel exchanges because Western Wireless could not serve the entire CenturyTel service area as it was then defined.

4. Subsequently, in CC Docket No. 96-45,¹ before the Federal Communications Commission (FCC), the Commission filed a petition requesting the FCC to redefine the CenturyTel service area. Because the FCC took no action on the petition, according to 47 C.F.R. § 54.207(c), the Commission's redefinition plan was deemed effective on November 25, 2002.

5. Western Wireless now files this application to provide universal service offerings to rural telecommunications end users within certain CenturyTel service areas in Colorado. Western Wireless seeks ETC designation for these CenturyTel service areas.

¹ *In the Matter of the Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., A Rural Telephone Company*

III. DISCUSSION

6. Commission Rule 4 CCR 723-42-7.2 provides that an application seeking designation as an ETC shall contain, in the following order and specifically identified, the following information.

723-42-7.2.1 A statement identifying the decision(s) of this Commission and/or the Federal Communications Commission (FCC) authorizing the applicant to provide telecommunications service.

723-42-7.2.2 A statement describing the Service Area for which applicant seeks designation as an ETC. If designation for a specific Service Area, rather than a statewide designation, is sought, the application shall contain a description of such Service Area by metes and bounds and a map displaying the Service Area;

723-42-7.2.3 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d);

723-42-7.2.4 An affirmative statement that the applicant will offer the services that are supported by the Federal universal service support mechanisms under 47 U.S.C. 254(c);

723-42-7.2.5 An affirmative statement that the applicant is a Common Carrier;

723-42-7.2.6 An affirmative statement that the applicant will advertise the availability of such service and the charges therefore using media of general distribution pursuant to section 214(e)(1)(B) of the [Telecommunications Act of 1996]. The Commission establishes as guidelines to meet the requirements of section 214(e)(1)(B), that an ETC should advertise in publications targeted to the general residential market, and an ETC should place customer guide pages in the "White Pages" Directory within the ETC's Service Area. Such customer guide pages should indicate that the provider will offer basic local exchange service to all who request such service within that area; and

723-42-7.2.7 An affirmative statement that the applicant will make available Lifeline service, as defined in § 54.401, pursuant to Subpart E of 47 C.F.R. § 54, to qualifying low-income consumers.

In its application, Western Wireless responded affirmatively to each requirement of 4 CCR 723-42-7.2 to establish its eligibility to be designated as an ETC. However, it requested a waiver of the metes and bounds requirement set forth in Rule 7.2.2 due to the broad scope of the requested service areas.

7. Western Wireless' application seeks ETC designation in 28 of the CenturyTel service areas. However, of those 28 service areas, Western Wireless' licensed cellular geographic service area serves the entirety of only 9 of these requested locations and serves only parts of the remaining 19 service areas. This appears to be contrary to the requirements of federal law at 47 U.S.C § 214, and Commission rules at 4 CCR 723-42-2.7.1 and 7.2.2. Additionally, the wire centers identified in the map Western Wireless currently has on file with the Commission do not match the wire centers for which Western Wireless is seeking ETC status.

8. We find that Western Wireless' application implicates several policy issues of concern to the Commission. First, a matter currently pending before the FCC may reverse the redefinition of the CenturyTel service area into 64 separate service areas based on its wire center boundaries. Such a ruling would impact Western Wireless' application. Also, we indicated above, it appears Western Wireless may only have the ability to serve the entirety of 9 of the 28 wire centers in which it is seeking ETC designation, which appears to be contrary to the requirements of federal law and Commission rules. However, there is some indication from the FCC that it may allow a wireless carrier ETC status, notwithstanding that it serves only portions of rural incumbent local exchange carrier wire centers based on the wireless service area. Finally, we find it necessary to review in detail which wire centers Western Wireless is seeking status as an ETC because of inconsistencies between the map on file with the Commission and those wire centers for which Western Wireless seeks status.

9. Therefore, we remand this matter to the Commission *en banc* for a hearing on the application to determine the issues relevant to the application. The application was deemed complete by minute entry at the Commission's April 2, 2003 Weekly Meeting.

IV. ORDER**A. The Commission Orders That:**

1. The application of Western Wireless Holding Co., Inc., a wholly owned subsidiary of Western Wireless Corporation, for Designation as an Eligible Telecommunications Carrier Pursuant to 4 *Code of Colorado Regulations* 723-42-7 and Request for Waiver of Requirements in Rule 4 *Code of Colorado Regulations* 723-42-7.2.2 is referred to the Commission *en banc* for a hearing on the matter.

2. A prehearing conference shall be held at the following time and place:

DATE: May 13, 2003

TIME: 9:00 a.m.

PLACE: Commission Hearing Room A
1580 Logan Street, Office Level 2
Denver, Colorado

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 2, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

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Commissioners