

Decision No. C03-0975

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NOS. 00K-255T AND 00A-174T

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IN THE MATTER OF THE APPLICATION OF WWC HOLDING CO., INC. FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER PURSUANT  
TO 4 CCR 723-42-7.

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DOCKET NO. 00A-171T

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IN THE MATTER OF THE APPLICATION OF WWC HOLDING CO., INC. FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS PROVIDER  
PURSUANT TO 4 CCR 723-42-7.8.

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**DECISION GRANTING MOTION FOR CLARIFICATION**

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Mailed Date: September 2, 2003

Adopted Date: August 8, 2003

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of a Motion for Clarification or, in the Alternative, Motion to Reopen the Record, and for Shortened Response Time, filed by WWC Holding Co., Inc. (Western Wireless), on July 23, 2003. Specifically, Western Wireless seeks clarification from the Commission that it has been granted Eligible Telecommunications Carrier (ETC) designation in the service areas of CenturyTel of Eagle, Inc. (CenturyTel), effective upon redefinition of those wire centers on November 27, 2002. In the alternative, Western Wireless requests that the Commission reopen the record in this matter, take notice of our decision on the North East Colorado Cellular (NECC) motion (which was similar to this motion), and grant Western Wireless ETC designation. Additionally, Western Wireless filed a Motion for Substitution of Counsel on July 23, 2003.

2. Now, being duly advised in the matter, we grant Western Wireless' Motion for Clarification and Motion for Substitution of Counsel consistent with the discussion below.

## **II. DISCUSSION**

3. In June 2003, NECC filed a motion with the Commission, which sought clarification that Commission Decision No. R01-1298 granted NECC status as an ETC in the service area of CenturyTel, and that ETC status was effective as of November 27, 2002. The settlement agreement entered into between NECC, Commission Staff (Staff), and the Colorado Office of Consumer Counsel (OCC) provided that NECC would be designated as an ETC pending the resolution of the Commission's proceeding on redefinition, and pending any necessary Federal Communications Commission (FCC) approval of initial disaggregation of CenturyTel service areas. The FCC concurred with this Commission's proposed CenturyTel service area redefinition, and that FCC decision became final by operation of law on November 27, 2002.

4. In NECC's motion for clarification, it argued that nothing in the stipulation required NECC to return to the Commission for further action following the FCC's approval of this Commission's decision regarding redefinition. NECC argued that because it had met all the requirements of the stipulation (our decision on redefinition, and the FCC's approval of that decision by operation of law on November 27, 2002), its designation as an ETC was effective on November 27, 2002. We agreed with NECC and clarified that it had been granted ETC status as of November 27, 2002.

5. Western Wireless now argues that NECC's stipulation was closely modeled after, and is functionally identical to the stipulation reached between Staff, OCC, and Western

Wireless, regarding its similar application for designation as an ETC and Eligible Provider (EP) in this docket. Further, Western Wireless indicates that after a hearing, recommended decisions were issued by an administrative law judge in the NECC and Western Wireless dockets, approving the stipulations and approving the ETC and EP applications. Western Wireless further represents that these two events took place in identical legal and policy environments where this Commission had not yet chosen to redefine the service areas of CenturyTel for the purposes of ETC designation.

6. According to Western Wireless, in our Decision No. C01-629, clarifying Decision No. C01-476, the Commission confirmed that it merely “deferred” designation of Western Wireless in CenturyTel service areas. Western Wireless contends that given the Commission’s subsequent clarification that Western Wireless’ designation as an ETC and EP was deferred, and the Commission’s confirmation that the only obstacle to designation as an ETC and EP was the need for a redefinition of CenturyTel’s service areas, the implication is that Western Wireless would obtain ETC status upon completion of redefinition proceedings with respect to CenturyTel’s service areas. Western Wireless maintains that this interpretation is consistent with our recent decision to grant NECC’s motion for clarification of its ETC status that redefinition became effective on November 27, 2002. Therefore, Western Wireless argues that we should harmonize our NECC decision with respect to its ETC designation and clarify that Western Wireless obtained ETC designation on November 27, 2002 as well.

7. Western Wireless also emphasizes that granting it the relief requested will not render the proceedings in Docket No. 03A-061T moot. Western Wireless stresses that the

application for ETC designation in that docket requests designation in an additional nine CenturyTel service areas.<sup>1</sup>

8. In responses to Western Wireless' motion for clarification, OCC and Staff take no position as to whether we should or should not grant the motion. OCC explains that it does not object to a grant of the motion since designating Western Wireless as an ETC in the proposed wire centers was contemplated in the original stipulation, once the CenturyTel redefinition proceedings were complete.

9. Staff requests that if we grant the motion for clarification, we further clarify the following: 1) that a grant of ETC status necessarily indicates that Western Wireless is designated an ETC in the CenturyTel wire centers identified in Attachment 2 to the stipulation and settlement agreement; and 2) that Western Wireless is bound to the rates, terms, and conditions contained within the stipulation and settlement agreement, and the rates, terms, and conditions it has on file with the Commission for its ETC/EP eligible plans for those CenturyTel wire centers in which it receives ETC designation.

10. Finally, Western Wireless also filed a motion for substitution of counsel on July 23, 2003. Western Wireless requests an order substituting Andrew R. Newell, Dudley P. Spiller, and Gorsuch Kirgis, LLP for Robert W. Nichols and Nichols & Associates as counsel of record for Western Wireless in this docket.

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<sup>1</sup> At the hearing in Docket No. 03A-061T, Western Wireless witness James Blundell testified that the effect of the Motion for Clarification would be to limit the application in Docket No. 03A-061T to five wire centers: Branson, Campo, Cheyenne Wells, Holly, and Walsh. These wire centers are not included in the application in the instant docket.

### **III. ANALYSIS**

11. We agree with Western Wireless' assertion that in Commission Decision No. C01-476 we deferred designation of Western Wireless as an ETC in CenturyTel's service areas. We further agree that given the Commission's subsequent clarification that Western Wireless' designation as an ETC/EP was deferred, and the Commission's confirmation that the only obstacle to designation as an ETC/EP was the redefinition of CenturyTel's service areas, the clear import of those orders is that Western Wireless would obtain ETC status upon the completion of the CenturyTel redefinition proceedings. This interpretation is also consistent with our recent decision to grant NECC's motion for clarification of its ETC status.

12. We further agree that granting this motion for clarification will harmonize this docket with our decision in the NECC motion for clarification. We agree that the two carriers were, and are, similarly situated and are entitled to evenhanded treatment from the Commission. As Western Wireless contends, the most appropriate reading of our previous orders in this docket supports the designation of Western Wireless as an ETC within the CenturyTel service areas, effective upon redefinition of the relevant service areas. In the case of CenturyTel's service areas, that redefinition became effective on November 27, 2002. As such, we grant Western Wireless' motion for clarification that its status as an ETC in the relevant CenturyTel service areas was effective on November 27, 2002.

13. However, we also find it appropriate to include the language requested by Staff and OCC. Therefore, we further find that the designation of Western Wireless as an ETC in the CenturyTel wire centers identified in Attachment 2 is subject to the stipulation and settlement agreement approved by the Commission in this docket in Decision No. C01-476. We also find that Western Wireless shall be bound by the rates, terms, and conditions contained within the

stipulation and settlement agreement as approved by the Commission. Western Wireless shall also be bound by the rates, terms, and conditions it has on file with the Commission for its ETC/EP eligible plans for those CenturyTel wire centers in which it receives ETC designation.

14. Western Wireless' two supplemental filings will be construed as motions for leave to file replies to Staff's and OCC's responses. We deny both motions for failure to show good cause. As a side note, calling a pleading a "supplement" does not remove the requirement to seek Commission leave to file a reply pleading.

15. Finally, we grant Western Wireless' motion for substitution of counsel.

#### **IV. ORDER**

##### **A. The Commission Orders That:**

1. The Motion for Clarification filed by WWC Holding Co, Inc., on July 23, 2003, is granted.

2. The Motion to Shorten Response Time filed by WWC Holding Co., Inc., on July 23, 2003, is denied as moot, as all parties filed responses to the motion prior to the response time request deadline.

3. WWC Holding Co., Inc.'s motions for leave to file supplemental pleadings are denied.

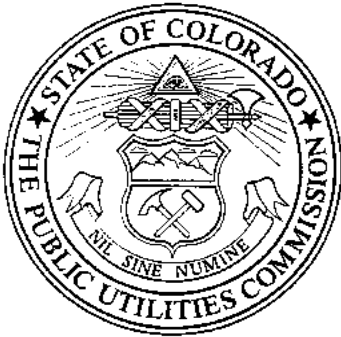
4. The Motion for Substitution of Counsel filed by WWC Holding Co., Inc., on July 23, 2003, substituting Andrew R. Newell, Dudley P. Spiller, and Gorsuch Kirgis, LLP for Robert W. Nichols and Nichols & Associates as counsel of record for WWC Holding Co., Inc., is granted.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 8, 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

JIM DYER

Commissioners