

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: KIRA DALE PFISTERER

DATE: APRIL 28, 2005

RE: CASE NO. WST-T-05-1
APPLICATION OF WESTERN WIRELESS FOR ETC DESIGNATION

Before the Commission is a Motion to Dismiss filed by the Idaho Telephone Association (ITA) on April 14, 2005. ITA asks the Commission to dismiss the Western Wireless Application for ETC Designation for failure to state a claim upon which relief can be granted.

BACKGROUND

On February 17, 2005, WWC Holding Co., Inc. dba CellularOne® (“Western Wireless” or the Company) submitted an Application requesting that it be designated as a federal eligible telecommunications carrier (ETC) in certain service areas in Idaho. ETC designation would allow Western Wireless to receive federal universal service support.

On February 23, 2005, ITA filed a Petition to Intervene that the Commission granted on March 10, 2005. Order No. 29722. On March 4, 2005, Citizens Telecommunications Company of Idaho, Inc. doing business as Frontier Communications of Idaho (“Frontier”) filed a Motion to Intervene that the Commission granted on March 16, 2005. Order No. 29734.

On February 25, 2005, the Federal Communications Commission (“FCC”) adopted new guidelines pertaining to ETC designation proceedings. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 March 17, 2005 (“FCC Order”). On April 1, 2005, the Commission issued a Notice of Application, Notice of Modified Procedure, and Order allowing for a 28-day comment period. Order No. 29749. In the Notice of Application, the Commission described the recent *FCC Order* and in the Notice of Modified

Procedure, the Commission urged all parties submitting comments to address the requirements in the *FCC Order*. Comments are due April 29, 2005.

ANALYSIS

ITA argues that the Western Wireless Application should be dismissed, because it does not meet the new FCC guidelines applying to ETC designations and set forth in the *FCC Order* and final rules. In addition, ITA argues that the Commission should not process the Application under Modified Procedure to the extent the Application seeks ETC designation in rural telephone company service areas. In these areas, ITA argues, an evidentiary hearing is necessary in order to apply a fact-intensive, public-interest analysis as set forth in the *FCC Order*. Nonetheless, while ITA requests a hearing to make appropriate public-interest determination in the event the Commission considers the substance of the Western Wireless Application, ITA does not request oral argument on the Motion to Dismiss.

Western Wireless filed a timely response to ITA's Motion on April 28, 2005. Western Wireless argues that because the *FCC Order* and new ETC designation requirements only apply to those ETC applications filed with the FCC, they cannot be used to bar an application filed before this Commission. The rules simply do not apply. Moreover, the new FCC requirements only apply to those ETC applications filed after January 1, 2006, the effective date of the rules. Therefore, according to Western Wireless, even if the Commission decides to adopt these new standards in Idaho, they should not be applied to the Western Wireless Application.

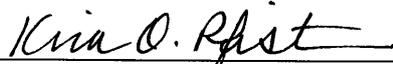
Without citing to any authority, Western Wireless suggests that applying the new rules would violate "the fundamental principal of administrative law that an application must be considered based on the rules in effect when it was filed." On this basis, Western Wireless argues that the proposed rules do not and should not apply to the Western Wireless Application. Alternatively, Western Wireless suggests that if the Commission wants to adopt the new guidelines, it should do so through a separate rulemaking docket.

With respect to ITA's request for a hearing to consider the public interest determinations relevant to Western Wireless' request for ETC designation in certain rural areas, Western Wireless suggests that the new rule merely codifies what many state commissions have already done and contemplates factors already addressed in the Western Wireless Application.

Thus, Western Wireless does not believe this public interest standard requires dismissal of the Application and does not warrant a hearing.

COMMISSION DECISION

1. Does the Commission grant or deny ITA's Motion to Dismiss the Application of Western Wireless for Designation as an ETC?
2. Does the Commission wish to decide whether to hold a hearing to consider the public interest analysis as it applies to the rural areas identified in the Western Wireless Application?



Kira Dale Pfisterer

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