

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**North Dakota Network Co.
Designated Eligible Carrier
Application**

Case No. PU-2048-03-235

ORDER

July 31, 2003

On May 6, 2003, North Dakota Network Co. (NDNet), a wholly owned subsidiary of SRT Communications, Inc. filed an application for designation as an Eligible Telecommunications Carrier (ETC) for receiving federal universal service support for the study area/universal service support area served by SRT Communications, Inc (SRT). NDNet proposes to provide universal services using a combination of its own wireless personal communications service facilities and resale of other carriers' services.

The Commission issued a Notice of Opportunity for Hearing on June 4, 2003 that identified issues to be considered by the Commission:

1. The qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.

The Commission issued a Notice of Opportunity for Hearing on June 4, 2003. The Commission received no comments or requests for hearing. An informal hearing was held in this matter on July 16, 2003. The Commission can determine the matter without a hearing.

On July 11, 2003 NDNet filed an affidavit of Steven D. Lysne, Chief Executive Officer and General Manager of SRT, in support of the application of NDNet for designation as an ETC. On July 24, 2003, NDNet filed a Supplemental Affidavit of Steven D. Lysne.

Under 47 U.S.C. § 214(e)(1), a common carrier that is designated as an eligible telecommunications carrier must, throughout its designated service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. The Commission has adopted rules for the advertising requirements of eligible carriers in North Dakota Administrative Code § 69-09-05-12. NDNet states that it is licensed and presently provides service in North Dakota, and that its universal service calling plan will include all services required for universal service support. NDNet states that the supported

services will be offered throughout the proposed study area, and the services will be advertised as required.

Under 47 C.F.R. § 54.405; 47 C.F.R. § 54.411, as part of its obligations as an eligible telecommunications carrier, the carrier is required to make available Lifeline and Link Up services to qualifying low-income consumers. NDNNet states that its universal service calling plan will include the Lifeline and Link Up services as required. NDNNet states that its universal service calling plan will include 2000 minutes of local calling per month that is not subject to time-of-day or day-of-week limits. NDNNet experience over the latest 10 months is that persons who purchase calling plans with 2000 monthly minutes of use actually use 571 of those minutes, on average. On average, 2.02% of subscribers use over 2000 minutes. NDNNet states that its offering of 2000 monthly minutes of use meets legal standards of universal service as the Federal Communications Commission (FCC) has indicated that varying amounts of local usage is acceptable where a minimum local usage requirement has not yet been decided by the FCC. NDNNet has stated that it will comply with any minimum local usage requirement adopted by the FCC. The Commission finds that NDNNet's offering of 2000 minutes of local calling per month that is not subject to time-of-day or day-of-week limits is acceptable and the Commission agrees that NDNNet must, in the future, provide at least any minimum local usage adopted by the FCC.

NDNNet states that, because it has few subscribers, it is not subject to the FCC's quarterly filing requirements that affect large and nation-wide CMRS carriers concerning the deployment of wireless E911 systems. NDNNet states it is subject to a one-time filing requirement to report about E911 implementation, with filing due on August 1, 2003. At the July 16 informal hearing, the Commission requested that NDNNet make quarterly reports about the status of E911 deployment. NDNNet states that it will file E911 reports and will file with the Commission a copy of its August 1, 2003 report to the FCC. NDNNet will also update the report as required by the FCC or as directed by the Commission. We find that, because NDNNet is a small, non-nationwide wireless carrier, it should file with the Commission a copy its August 1, 2003 report to the FCC and should file annual updates to that report. NDNNet should also make a final report when all phases of E911 implementation have been completed.

NDNNet intends to file a universal service tariff after the Commission makes its order designating NDNNet as an eligible telecommunications carrier.

The Commission finds that NDNNet is a common carrier and has the intent and ability to offer and advertise the supported services set forth in 47 C.F.R. § 54.101(a) in the study area of SRT Communications, Inc. NDNNet qualifies as an Eligible Telecommunications Carrier as defined by the Telecommunications Act of 1996, 47 U.S.C. § 214 and 47 C.F.R. § 54.1 et seq., for the purpose of receiving federal universal service support.

Under 47 U.S.C. § 214(e)(2) the Commission may designate more than one common carrier as an eligible telecommunications carrier in an area served by a rural

telephone company. However, before designating an additional carrier the Commission must find that the designation is in the public interest. NDNNet has stated that the designation of NDNNet as an additional ETC will facilitate competition and provide choices for consumers, not only a choice between landline and wireless service, but also a choice between cellular technology and PCS technology and competition between wireless ETCs regarding pricing, service quality and customer service. NDNNet has also stated that monopoly markets do not become competitive markets by the addition of only one additional seller; a duopoly market is not a competitive market.

The Commission finds that designating NDNNet as an addition ETC in the study area of SRT is in the public interest.

Order

The Commission orders:

1. North Dakota Network Co. is designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support in the same study area/universal service support area served by SRT Communications, Inc. as of July 31, 2003.
2. North Dakota Network Co. is designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support in the study area of SRT Communications, Inc. conditioned upon the filing of a tariff for its universal service offering.
3. North Dakota Network Co. shall file with the Commission a copy its August 1, 2003 report to the FCC describing the status of its wireless E-911 implementation in North Dakota. North Dakota Network Co. shall also file with the Commission annual updates to that report and shall make a final report when all phases of E911 implementation have been completed.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Leo M. Reinbold
Commissioner