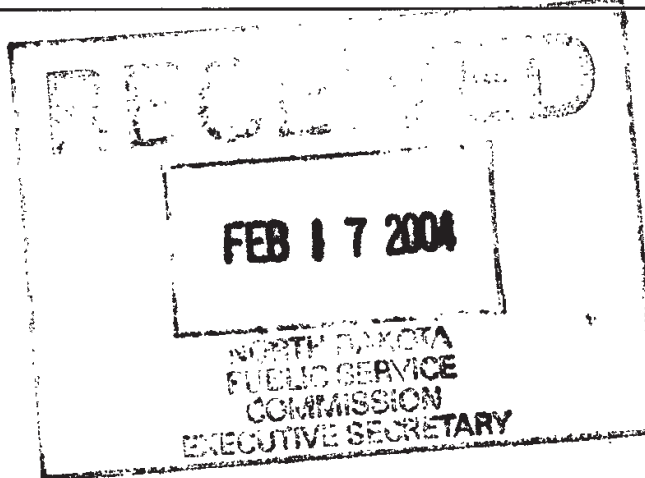


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February 13, 2004

VIA FAX (701) 328-2410 AND U.S. MAIL

William W. Binek
Chief Counsel
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: Northwest Dakota Cellular of North Dakota Limited Partnership
Designation Eligible Carrier Application, Case No. PU-1226-03-597**

**North Central RSA 2 of North Dakota Limited Partnership Designation
Eligible Carrier Application, Case No. PU-386-03-598**

**North Dakota RSA No. 3 of North Dakota Limited Partnership Designation
Eligible Carrier Application, Case No. PU-897-03-599**

**Badlands Cellular of North Dakota Limited Partnership Designation
Eligible Carrier Application, Case No. PU-1255-03-600**

**North Dakota 5-Kidder Limited Partnership Designation Eligible Carrier
Application, Case No. PU-338-03-601**

**Bismarck MSA Limited Partnership Designation Eligible Carrier
Application, Case No. PU-494-03-602**

Dear Mr. Binek:

As requested during the Informal Hearing on February 10, 2004, I am writing to address the questions raised by the Commission concerning compliance with ND Cent. Code § 49-21-01.8 in the above-captioned proceedings. For the reasons set forth below, the Commission should proceed to redefine the service area requirement consistent with state and federal law as requested by the Verizon Wireless applicants in these proceedings.

As more fully set forth in each Application, Verizon Wireless has requested the Commission to redefine the service area requirement for certain rural telephone companies as necessary to facilitate its designation as a federal eligible telecommunications carrier ("ETC").

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Response to questions raised at 2/10/04
Informal Hearing
by Northwest Dakota Cellular of North Dakota Limited

02/17/2004

CC: Comm Legal Ilona Pat.

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Section 214(e)(1) of the federal Telecommunications Act of 1996 ("Act") sets for the obligation of a common carrier designated as an ETC to offer and advertise the supported services "throughout the *service area* for which the designation is received." 47 U.S.C. § 214(e)(1). Section 214(e)(5) of the federal Act defines the term "*service area*" to mean "a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms." In the case of an area served by a rural telephone company, "*service area*" means such company's study area "unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of *service area* for such company." 47 U.S.C. § 214(e)(5) (emphasis added). The FCC's regulations further authorize the FCC and the Commission to act in concert to develop an alternative "*service area*" for a rural telephone company in accordance with 47 C.F.R. § 54.207(c)-(d). The sole requirement in establishing a "*service area*" other than the "study area" is that the FCC and this Commission each take into account the recommendations of the Joint Board and explain their rationale for reaching a different conclusion.

The North Dakota Legislature has also passed § 49-21-01.8 relating to ETC requirements. This section provides as follows, "A telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area." At the same time the Legislature passed § 49-21-01.8 in 1999, the Legislature further amended § 49-21-01.7 relating to the powers delegated to this Commission. As it relates to these proceedings, the Legislature has expressly granted the Commission the power to:

12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support *under sections 214 and 254 of the federal act.*
13. Designate *geographic service areas* for the purpose of determining universal service obligations and support mechanisms *under the federal act.*

N.D. Cent. Code § 49-21-01.7 (emphasis added).

Under the established rules of statutory interpretation, the Commission is required to construe provisions in the same statute so that effect may be given to both. N.D. Cent. Code § 1-02-07. Similarly, amendments to a statute enacted at the same legislative session are to be harmonized so that effect may be given to each. N.D. Cent. Code § 1-02-09.1. Moreover, when the Legislature enacts a statute, it is presumed that the entire statute is intended to be effective, a just and reasonable result is intended, and that the State statutes comply with the constitutions of the State and the United States. N.D. Cent. Code § 1-02-38.

Based on this framework, § 49-21-01.8 does not require an ETC to be designated only on a study area basis. Such an interpretation is inconsistent with the powers expressly delegated to

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the Commission under § 49-21-01.7(12) and (13). Specifically, the Commission has been empowered under § 49-21-01.7(12) to designate ETCs “under sections 214 and 254 of the federal act.” This delegation of power from the Legislature necessarily includes the power to redefine a rural telephone company’s “*service area*” to something less than such company’s “study area” as permitted under 47 U.S.C. § 214(e)(5) and FCC Rule 54.207. If § 49-21-01.8 were construed to restrict an ETC designation to only a study area basis, and without the opportunity for the applicant to seek to redefine the service area requirement consistent with § 214(e)(5), then the State law would have the effect of denying an applicant rights which have been conferred by federal law.

Moreover, § 49-21-01.7(13) expressly gives the Commission power to “designate geographic *service areas* . . . under the federal act.” This power likewise necessarily includes the power and authority to redefine the *service area* requirement consistent with 47 U.S.C. § 214(e)(5) and FCC Rule 54.207. This delegation of power to the Commission would otherwise be rendered meaningless if § 49-21-01.8 were construed to only permit the grant of ETC status to a company which meets the service area requirement of a study area.

Rather, the proper focus of § 49-21-01.8 is a requirement that an ETC “*offers all services supported by federal universal service mechanisms throughout*” the applicable area in which is has been granted ETC status. Such a requirement makes the State statute consistent with the obligation of an ETC under 47 U.S.C. § 214(e)(1) of the federal Act. This is particularly true since a federal ETC designation can also be conferred in areas served by a non-rural telephone company, such as Qwest, which is done on an exchange or wire center basis rather than a study area.

In addition, the Commission’s action to redefine the service area requirement as requested by Verizon Wireless is necessary to facilitate the granting of its federal ETC designation. As more fully set forth in the Applications, Verizon Wireless is licensed by the FCC to provide commercial mobile radio services within a Rural Service Area (“RSA”) or a Metropolitan Statistical Area (“MSA”). A rural telephone company’s study area is generally regarded as all of the company’s existing certificated exchange areas in a given State. Although Verizon Wireless may meet the study area requirement in certain limited instances, the vast majority of rural telephone company study areas in North Dakota do not correspond with Verizon Wireless’ CMRS licensed area or existing signal coverage area based on the RSA or MSA boundaries. Verizon Wireless has no choice but to seek redefinition of the service area requirement given the limitations on the scope of its CMRS licensed area. Verizon Wireless is incapable of serving areas beyond its FCC licensed area. If § 49-21-01.8 were construed to mandate ETC designations only on a study area basis, then Verizon Wireless would largely be foreclosed from being designated a federal ETC in North Dakota.

Alternatively, the Commission must proceed to redefine the service area requirement as requested by Verizon Wireless notwithstanding § 49-21-01.8. Any State law provision that

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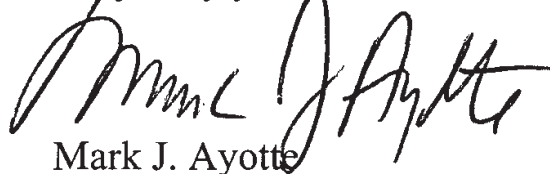
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would be construed to limit a federal ETC to providing the supported services throughout a rural telephone company's study area would be preempted and inapplicable under both 47 U.S.C. § 254(f) and 47 U.S.C. § 253(a). Section 254(f) limits a State's authority to adopting "regulations not inconsistent with the [FCC's] rules to preserve and advance universal service." Restricting ETC designations under State law to only a study area basis would be inconsistent and directly conflict with both 47 U.S.C. § 214(e)(5) and FCC Rule 54.207(b), which both expressly contemplate and permit the redefinition of the service area requirement for purposes of federal ETC designations. Similarly, Section 253(a) of the federal Act provides that no State statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate telecommunications service. Any State law that would be construed to deny designation of federal ETC status based on a study area requirement would essentially prohibit Verizon Wireless' ability to provide the supported services, and thus would be preempted under Section 253(a).

Finally, the Commission should note that the Rural Telephone Companies have withdrawn their opposition to these proceedings based on the Joint Stipulation filed by the parties. As a result, the Rural Telephone Companies have waived any objection to the Commission's action to redefine the service area requirement as requested by Verizon Wireless.

Thank you for the opportunity to provide these comments. If you should have any questions, or require any additional information, please feel free to contact me.

Very truly yours,



Mark J. Ayotte

MJA/sjc

cc: Verizon Wireless
Thomas D. Kelsch