

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-05-653**

**ORDER**

**March 22, 2006**

On December 15, 2005, North Dakota Network Co. (NDNC) filed an application for designation as an Eligible Telecommunications Carrier (ETC) for purposes of receiving federal universal service financial support for providing universal telecommunications services. NDNC requests the ETC designation in a service area that corresponds to the area NDNC is licensed by the Federal Communications Commission (FCC) for provision of wireless personal communications services (PCS). NDNet proposes to provide universal services using a combination of its own PCS facilities and resale of other carriers' services. In support of the application was an affidavit of Steven D. Lysne, General Manager of NDNC.

On December 30, 2005, the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing. The notice scheduled an informal hearing for February 22, 2006 and provided until February 15, 2006 for receiving written comments and hearing requests. No response was received. The notice stated that the Commission could determine the matter without a hearing. The notice identified the following issues:

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.

On February 22, 2006 the Commission discussed these matters with the applicant and Commission staff during an informal hearing. NDNC provided a copy of its tariff setting forth the rates, terms and conditions of its universal service and other service offerings including lifeline and link-up.

On March 3, 2006 NDNC filed a second affidavit of Steven D. Lysne in support of the application.

On March 20, 2006 NDNC filed a third affidavit of Steven D. Lysne in support of the application.

## ETC Designation

The Telecommunications Act of 1996 (Act) provides for financial support to a common carrier that (1) offers the services established by the FCC to be 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; (2) advertises the universal services, advertises the availability of such services, and advertises the charges for such services, using media of general distribution; and (3) is designated as an ETC. An ETC must use that financial support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

To be designated as an ETC, the carrier must (1) under Code of Federal Regulations (CFR) Part 47 Subpart B, offer to telecommunications customers each of the services and functionalities designated for Universal service support; (2) under CFR Part 47 § 54.405, make available Lifeline service to qualifying low-income consumers; (3) under CFR Part 47 § 54.411, make available Link Up service to qualifying low-income consumers; 4) under CFR Part 47 Subpart F, provide services supported by universal service support mechanisms to eligible schools and libraries; and (5) under CFR Part 47 Subpart G, provide services supported by universal service support mechanisms to eligible health care providers.

For telecommunications customers, the services designated by the FCC for support by Universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low-income consumers.

In the December 14, 2005 affidavit of Steven D. Lysne, NDNC affirms that it will offer, to telecommunications customers, all services supported by the federal universal service support mechanisms using a combination of its own facilities and resale of another carrier's services. NDNC's universal service calling plan will include 2000 minutes of use of local service monthly. The local usage is anytime minutes, without time of day or day of week limits. A wireless company is subject to the requirements of FCC rules under CFR Part 20 that require deployment of 911 service. Access to operator services is activated by dialing the digit 0 (zero). In the case of wireless carriers, the FCC has not included 1+ equal access as a requirement for ETC designation; therefore NDNC's service provides customers the ability to access interexchange carriers of choice by dialing other carriers' access codes. Access to directory assistance is provided by dialing 1-NPA-555-1212. NDNC affirms that it will provide Link Up service and Lifeline service. NDNC's Lifeline service will provide a \$8.25 monthly reduction in charges for universal service. NDNC affirms its Lifeline and Link Up services will meet the requirements established by the FCC.

In the March 20, 2006 affidavit of Steven D. Lysne affirms that NDNC is in compliance with all phases of the FCC E911 requirements for wireless carriers and that

NDNC will remain compliant in their serving area expansions. Therefore, NDNC has no ongoing FCC requirement for filing or updating E911 reports.

For schools and libraries, the services designated by the FCC for support by universal service support mechanisms include all telecommunications services, internal connections including installation and maintenance, basic conduit access to the Internet including information services that consist of the transmission of information as a common carrier, the transmission of information as part of a gateway to an information service when that transmission does not involve the generation or alteration of the content of information, and electronic mail services.

For health care providers, the services supported by universal service support mechanisms include any telecommunications service of a bandwidth up to and including 1.544 Mbps.

In the December 14, 2005 affidavit of Steven D. Lysne, NDNC affirms that it intends to offer supported services to schools, libraries and health care providers. The affidavit also affirms that NDNC will advertise the availability of the supported services, and the charges for those services, using media of general distribution throughout the area(s) requested for designation.

In the March 3, 2006 affidavit of Steven D. Lysne, NDNC affirms that it will comply with the proposed new eligibility criteria in Case No PU-05-575, if adopted by the Commission

Both federal law and state law provide authority for the Commission to designate a common carrier as an ETC.

We find that it is the intent of NDNC to offer the services established by the FCC, and 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. An applicant for ETC status is not required to be providing the required universal services to 100% of a service area before receiving designation as an ETC. Facilities to serve customers are required at some reasonable time after the customer agrees to the terms and conditions of the service provided.

We find that it is the intent of NDNC to advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

### **Service Area Designation**

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5) defines service area:

- (5) **SERVICE AREA DEFINED--** The term "service area" means 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 Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

NDNC is licensed by the FCC to provide commercial mobile radio services in Basic Trading Area 299 (BTA 299), the Minot BTA. BTA 299 includes Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Rolette, Ward, and Wells Counties in North Dakota. The incumbent local exchange companies serving these counties are rural telephone companies and include Dakota Central Telecommunications Cooperative, Midstate Telephone Company, North Dakota Telephone Company, Northwest Communications Cooperative, Reservation Telephone Cooperative, SRT Communications, Inc., Turtle Mountain Communications, and West River Telecommunications,

To be designated as an ETC, an applicant is required to provide universal service throughout rural "study areas", which are defined to be the same as rural service areas.

For purposes of federal universal service funding, the study areas established by the FCC and listed by the Universal Service Administrative Company for the incumbent local exchange companies serving in the counties listed include:

<b>Study Area Name</b>	<b>Local Exchange Companies in the Study Area</b>
Dakota Central Telecommunications Cooperative	Dakota Central Telecommunications Cooperative Dakota Central Telecom I, Inc.
Midstate Telephone Company	Midstate Telephone Company
Nemont Telephone Cooperative, Inc.	Nemont Telephone Cooperative, Inc. Missouri Valley Communications, Inc.
North Dakota Telephone Company	North Dakota Telephone Company
Northwest Communications Cooperative	Northwest Communications Cooperative, a Cooperative Association
Reservation Telephone Cooperative	Reservation Telephone Cooperative
SRT Communications, Inc.	SRT Communications, Inc.
United Telephone Mutual Aid Corporation	United Telephone Mutual Aid Corporation Turtle Mountain Communications, Inc.
West River Telecommunications Cooperative	West River Telecommunications Cooperative

On July 31, 2003, in Case No. PU-2048-03-235, the Commission designated NDNC as an ETC for the same study area/universal service support area served by SRT Communications, Inc. NDNC now requests to expand its ETC designation throughout its FCC licensed service area, BTA 299, with the exception of Divide County.

NDNC partitioned out the PCS “F Block” for Divide County to Nemont Communications, Inc.

Since the boundaries of BTA 299, do not correspond with the study area/universal service support area boundaries of the incumbent local exchange companies, it is necessary to redefine, under CFR Part 47 § 54.207(c), the ETC service area that will be designated for NDNC. NDNC requests that its service area include the following wire centers:

<b>Study Area Name</b>	<b>Wire Centers Included in NDNC Service Area</b>
Dakota Central Telecom Cooperative	Bowdon, Sykeston
Midstate Telephone Company	Portal, Stanley
North Dakota Telephone Company	Balta, Drake, Fessenden, Harvey, Rugby, Velva
Northwest Communications Cooperative	Bowbells, Columbus, Flaxton, Lignite, Powers Lake
Reservation Telephone Company	Douglas, Emmet, Garrison, Kenmare, Makoti, Max, New Town, Norma, Parshall, Plaza, Roseglen, Ross, Ryder, Spencer
United Telephone Mutual Aid Corporation	Bottineau, Dunseith, Kramer, Rolla, Rolette, Souris, Willow City
West River Telecommunications	Mercer, Riverdale, Turtle Lake, Underwood, Washburn

NDNC’s requested service area would not include the following wire centers:

<b>Study Area Name</b>	<b>Wire Centers NOT INCLUDED in NDNC Service Area</b>
Dakota Central Telecom Cooperative	Edmunds, Carrington, Courtney, Grace City, Gackle, Medina, Streeter , Windsor, Woodworth, Ypsilanti
Midstate Telephone Company	Medora
Nemont Telephone Cooperative, Inc.	Ambrose, Fortuna, East Westby, Williston
North Dakota Telephone Company	Cando, Crary, Devils Lake, Esmond, Fort Totten, Hampden, Knox, Leeds, Maddock, McVile, Minnewaukan, New Rockford, Oberon, Pekin, Penn, Sheyenne, Starkweather, Tolna, Warwick, Webster
Northwest Communications Cooperative	Alamo, Crosby, Epping, Grenora, Marmon, McGregor, Noonan, Ray, Round Prairie, Tioga, Wildrose
Reservation Telephone Company	Alexander, Arnegard, Keene, Mandaree, Squaw Gap, Watford City
United Telephone Mutual Aid Corporation	Bisbee, Langdon, Milton, Munich, Rock Lake, Sarles, Wales, Walhalla
West River Telecommunications	Beulah, Carson, Center, Elgin, Flasher, Fort Yates, Glen Ullin, Golden Valley, Goodrich, Hazen, Hebron, McLaughlin, McClusky, New Salem, Pick City, St. Anthony, Selfridge, Stanton, Zap

*Factors for Consideration in Redefinition of Study Areas*

The Act and the FCC’s regulations authorize the FCC and the Commission to act in concert to develop an alternative service area standard for areas served by rural telephone companies in accordance with CFR Part 47 § 54.207(c)-(d). In defining a

service area other than a study area, we are required to take into account three factors: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>1</sup>

The first factor is the risk that a competitor would selectively target service only to the low cost areas of a rural incumbent LEC's study area. During the informal hearing, NDNC and the Commission discussed that the risk of cream skimming is small because incumbent rural telephone companies can now use a process known as "disaggregation," which allows these companies to target their per-line support to better reflect the actual costs of serving different portions of their study areas.

NDNC's request to expand ETC status to serve more rural communities within its licensed BTA area, and NDNC's commitment to provide universal service throughout the proposed designated service area, minimizes concerns regarding cream skimming.

We find no evidence in this proceeding of rural cream skimming effects in redefining the service area requirement as requested by NDNC.

The second factor to consider is the regulatory status enjoyed by rural telephone companies under the Act. NDNC contends in its application that redefinition will not compromise or impair the unique treatment of rural companies under section 251(f) of the Act. The rural companies will retain the statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c).

In the *Virginia Cellular ETC Order* the FCC determined that (1) the high-cost universal service mechanisms support all lines served by ETCs in rural areas; (2) receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives; (3) to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve; and (4) redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.<sup>2</sup>

Based on the evidence in our proceeding concerning the factors similar to those considered by the FCC in the *Virginia Cellular ETC Order*, we conclude that there is little likelihood of harm to the rural companies because of impacts to universal service

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, adopted December 31, 2003, released January 22, 2004 (*Virginia Cellular ETC Order*)

<sup>2</sup> *Id.* ¶ 43

mechanism support. No evidence in this proceeding regarding the regulatory status enjoyed by rural telephone companies under the Act leads us to conclude that NDNC's request for redefined study area requirements should not be granted.

The third factor to consider is whether any administrative burdens might result from the redefinition of the service area requirement. NDNC contends in its application that there are no administrative costs to consider because any federal universal service support available to a competitive ETC in areas served by one of the rural companies would be determined based on the per-line support available to the rural company itself under CFR Part 47 § 54.307(a). The redefinition requested by NDNC does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. No evidence in this proceeding regarding administrative burdens for rural telephone companies leads us to conclude that NDNC's request for redefined study area requirements should be denied.

### *State Statute Considerations*

North Dakota Century Code § 49-21-01.8 provides that "[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."

North Dakota Century Code § 49-21-01.7 relating to powers of the Commission, specifically grants the Commission the power to:

12. Designate telecommunications companies as eligible telecommunications carriers to receive universal 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.

In Case No. PU-1226-03-597 the Commission determined that under these sections, an ETC is required to offer all services supported by federal universal service mechanisms throughout the applicable area in which it has been granted ETC status.

The Commission's action to redefine the service area requirement as requested by NDNC is necessary to facilitate the granting of the federal ETC in the areas of the rural telephone companies' service areas that fall within NDNC's FCC licensed CMRS coverage area.

### **Public Interest**

In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

NDNC is a wholly-owned subsidiary of SRT Communications, Inc. and has been registered in North Dakota as a provider of PCS, as a reseller of local exchange services since October 2002, and as a reseller of interexchange services since March 1999. NDNC currently serves more than 10,000 subscribers in North Dakota under the trade name SRT Wireless.

In Case No. PU-2048-03-235 the Commission found NDNC's initial ETC designation in the public interest because it would facilitate competition not only between landline and wireless service, but also among wireless services throughout the SRT Communications universal service support area for which NDNC was designated. The Commission finds that expanding NDNC's ETC designation as requested is in the public interest because it will facilitate such competition throughout the rest of NDNC's licensed BTA.

NDNC contends in its application that the use of USF to provide universal services and extend wireless networks in rural ND benefits the public interest by ensuring these networks will be available to deliver services to ND consumers. Increased competition can be expected to lead to better service and provision of new innovated services. NDNC will provide the benefits of mobility, larger local calling areas, and where requested by the PSAP, GPS location assistance for customers dialing 911.

The Commission agrees and finds that designation of NDNC as an ETC in portions of the areas served by rural telephone companies corresponding to its FCC licensed BTA is in the public interest because it will enable NDNC to bring new services, new technologies and a choice of universal service providers to customers of North Dakota's rural telephone companies.

### **Conclusion**

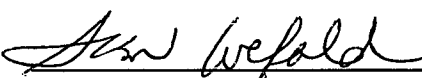


Based on the evidence in this proceeding, NDNC is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding and it is in the public interest NDNC be designated as an ETC in the requested designated service area.

## Order

The Commission orders:

1. North Dakota Network Co. is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested conditioned upon FCC approval of the requested redefined study area requirements under CFR Part 47 § 54.207(c).

### PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner