

PUBLIC SERVICE COMMISSION OF WISCONSIN

**Application of i-wireless, LLC, for Designation as an Eligible
Telecommunications Carrier**

9604-TI-100

FINAL DECISION

This is the Final Decision in the investigation to determine whether to designate i-wireless, LLC, (i-wireless) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive federal and state Universal Service Fund (USF) monies. i-wireless is seeking designation solely for the purpose of receiving USF support for the low income programs. This Final Decision designates i-wireless as an ETC only for the purposes of receiving Low-Income support.

Introduction

i-wireless filed a petition for designation as an ETC on November 21, 2012.¹ This application was affected by changes by Federal Communications Commission (FCC) actions during the pendency of the application. The Commission issued a notice requesting comments on April 12, 2013, with comments due on or before May 1, 2013. No comments were filed.

i-wireless requested ETC designation throughout its service territory, for the purpose of receiving low income program support. The list of wire centers for which i-wireless seeks ETC designation is shown in Exhibit 6 of its application. i-wireless will use the d/b/a/ name of “Access Wireless.”

¹ A copy of the application can be found on the Commission’s Electronic Regulatory Filing (ERF) system under PSC REF # 183571. Additional application information can be found in ERF under docket number 9604-TI-100.

Findings of Fact

1. i-wireless is a cellular mobile radio reseller offering prepaid wireless service in the wire centers served by Sprint.

2. i-wireless has committed to providing service to all requesting customers, and to advertising the availability of its service, throughout area in which it is designated as an ETC, as required under 47 U.S.C. § 214(e) and Wis. Admin. Code § PSC 160.13.

3. i-wireless has committed to providing service that meets most of the requirements set forth in Wis. Admin. Code § PSC 160.13. i-wireless has sought modification of the other requirements, as discussed below.

4. i-wireless has an approved compliance plan filed with the FCC, as required to obtain forbearance from the “own-facilities” requirement found in 47 U.S.C. § 214(e)(1)(A).

5. i-wireless’s business plan and status as a prepaid wireless provider together with the administrative difficulty of applying some requirements of Wis. Admin. Code ch. PSC 160 creates an unusual circumstance that justifies adopting different requirements concerning the pay phone requirement, the minimum monthly charge, and the minimum monthly discount.

6. It is reasonable to adopt a requirement concerning pay phones other than the one set forth in Wis. Admin. Code §§ PSC 160.13(1)(d) and 165.088. It is reasonable to require i-wireless to work with other providers to ensure that there is at least one pay phone in each municipality.

7. It is reasonable to require i-wireless to provide a monthly credit in the form of minutes, in lieu of the dollar discounts set forth in Wis. Admin. Code § PSC 160.062(2)(b).

8. It is reasonable to *not* require i-wireless to charge a minimum monthly fee, as set forth in Wis. Admin. Code § PSC 160.062(2)(c).

9. It is reasonable to require that i-wireless discontinue service to, and collection of Lifeline support related to, any Lifeline phone with no usage in a 60-day period.

10. It is reasonable to require that i-wireless file periodic reports, as described in the opinion section of this Decision, on the numbers of phones disconnected due to no usage in a 60-day period.

11. It is reasonable and in the public interest to designate i-wireless as an ETC for the purpose of receiving Lifeline support in the areas indicated in its application and consistent with this Decision.

Conclusions of Law

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02 and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of Wis. Stat. ch. 196 and the Federal Telecommunications Act of 1996 to make the Findings of Fact and to issue this Decision.

2. The Commission has the authority to adopt different ETC requirements under Wis. Admin. Code § PSC 160.01(2)(b).

Opinion

ETC status was created by the 1996 Telecommunications Act and codified in 47 U.S.C. § 214(e)(2). Under FCC regulations 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201(b), state commissions designate providers as ETCs. Designation as an ETC is required if a provider is to

receive federal universal service funding. ETC designation is also required to receive funding from the state universal service High Rate Assistance Credit program.

The FCC has established a set of minimum criteria that all ETCs must meet, which is codified at 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a), *et seq.* States have the authority to adopt additional requirements, provided that the additional requirements are “not inconsistent with the [Federal Communication] Commission’s rules to preserve and advance universal service.” 47 U.S.C. § 254(f). The United States Court of Appeals for the Fifth Circuit upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

The Commission promulgated Wis. Admin. Code ch. 160 and specifically Wis. Admin. Code § PSC 160.13 to govern ETC designations and requirements in Wisconsin. Those rules established the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission.

i-wireless plans to offer prepaid wireless Lifeline service without a monthly fee, in much the same manner as other providers previously designated as ETCs by the Commission.² Under its proposal, i-wireless would supply the Lifeline customer with a cell phone at no monthly charge. In place of the traditional Lifeline service discount to the monthly rate, i-wireless would provide a set amount of minutes, without charge, each month. Doing so would normally be at odds with Wis. Admin. Code § PSC 160.062(2)(c), which requires a minimum monthly charge for service.³ i-wireless seeks the same treatment as other prepaid wireless providers, namely

² Other providers include TracFone Wireless, Inc. (TracFone) (docket 9385-TI-100); Nexus Communication, Inc. (docket 7648-TI-101); and Millennium 2000, Inc., (docket 9593-TI-100).

³ Wis. Admin. Code § PSC 160.062(2)(c) states: “Notwithstanding par. (b), in no case shall the Lifeline monthly rate be less than \$3 or more than \$15.”

that no minimum charge apply. The Commission has the authority to do so under Wis. Admin. Code § PSC 160.01(2)(b).⁴

In the TracFone docket, the Commission expressed concern that the lack of a minimum charge would eliminate automatic notification that a customer had lost, abandoned or otherwise ceased using the service. With traditional service, this becomes apparent when the customer stops paying his or her bills. In the earlier dockets, the Commission required the companies to develop a plan to monitor usage, to cease receiving subsidies for inactive phones, and to report certain information to the Commission on a quarterly basis. More recently, the FCC has imposed similar requirements. i-wireless has committed to discontinue service to any cell phone that does not have usage in a two-month period, and to not seek USF reimbursement from the Lifeline program for that phone. That commitment, coupled with the reporting requirements, would meet the objectives the Commission set forth in previous dockets.

i-wireless has requested that the monthly discount set forth in Wis. Admin. Code § PSC 160.062(2)(b) not be applied to it. Instead, i-wireless will provide a monthly discount in the form of a set number of minutes of use to such customers. Initially, i-wireless would provide customers a minimum of 250 free minutes, in lieu of the monthly credit. In the future, this equivalency may change. The Administrator of the Telecommunications Division has delegated authority to approve or deny changes to the monthly minute allocation. Changes to the number of minutes may be approved without reopening the docket, issuing a notice or providing opportunity for comment.

⁴ Wis. Admin. Code § PSC 160.01(2)(b) states: “Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.”

Providing free monthly minutes of service in lieu of a monthly discount is an alternative approach to Lifeline service. i-wireless's business plan and status as a prepaid wireless provider together with the administrative difficulty of applying some requirements of Wis. Admin. Code ch. PSC 160 creates an unusual circumstance that justifies adopting different requirements concerning these items. The Commission adopted a different method of applying discounts and a different minimum charge in earlier dockets. It is reasonable to modify the monthly discount requirement in the administrative rules and adopt a similar approach to i-wireless as has been adopted in past dockets.

Also, in the earlier prepaid wireless ETC dockets, the Commission required the companies to make quarterly filings of the number of customers who were deactivated after 60 days of non-usage and the number of days between the 60th day and deactivation, reported as a range and an average. It is reasonable to apply the same reporting requirements to i-wireless.

i-wireless has also requested a waiver from the requirement that an ETC provide a pay phone in each municipality, as set forth in Wis. Admin. Code §§ PSC 160.13(1)(d) and PSC 165.088. In earlier dockets, the Commission determined that it would be burdensome and redundant for each prepaid wireless provider to provide a pay phone. Given this, it is reasonable to apply waiver of this requirement as has been done in the past. i-wireless is required to work with the other providers in their service areas to jointly ensure that pay phones are available.

The FCC has determined that an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural provider.⁵ The Commission finds that it is in the public interest to designate i-wireless as an ETC in the areas for which i-wireless requests such

⁵ In the Matter of Federal-State Joint Board on Universal Service, 20 FCC Rcd. 6371, 6373, ¶ 3 (2005).

designation. The Commission finds that i-wireless meets the requirements for ETC designation, for the limited purpose of obtaining Lifeline support.

As part of the public interest determinations for other ETCs, the Commission has considered whether there is a concern that an ETC will “cream skim” the most profitable customers. While it may not be necessary to do so in the Lifeline-only ETC context,⁶ the Commission staff has investigated this issue. Since i-wireless has requested ETC status for the entirety of its service territory, the Commission finds no evidence of cream-skimming in this docket.

Order

1. i-wireless is designated as an ETC, for the purpose of receiving Lifeline support, throughout the wire centers identified in Exhibit 6.

2. i-wireless is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding, for Lifeline service, pursuant to 47 U.S.C. § 254(2). This Decision constitutes the Commission’s certification to that effect.

3. i-wireless is not required to meet the requirement under Wis. Admin. Code § PSC 165.088 that it provide a pay phone in each incorporated municipality. i-wireless is required to work with other providers in its service territory to jointly ensure that pay phones are available.

4. i-wireless does not have to meet the monetary discount or minimum charge requirements under Wis. Admin. Code § PSC 160.062(2), but i-wireless is instead required to

⁶ The FCC has identified that with respect to at least some low-income, wireless ETCs that are not seeking high-cost support, “cream skimming” is not a significant concern. *NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F. R § 54.207(b) Cricket Communications, Inc. Petition for Forbearance*, 26 FCC Rcd 13,723, 13,729 (2011).

Docket 9604-TI-100

provide 250 minutes of free service per month to Lifeline customers. The Commission delegates to the Administrator of the Telecommunications Division the authority to approve changes to that number of minutes. Changes to the number of minutes may be approved without reopening the docket, issuing a notice or providing opportunity for comment.

5. i-wireless shall deactivate any Lifeline phone that has had no usage in a 60-day period. i-wireless may not collect Lifeline support for phones deactivated in this manner.

6. i-wireless shall report, on a quarterly basis, the number of customers who were deactivated after 60 days of non-usage and the number of days between the 60th day and deactivation, reported as a range and an average.

7. Jurisdiction is maintained.

8. This Final Decision is effective the day after the date of service.

Dated at Madison, Wisconsin, 7 May 2013

For the Commission:



Gary A. Evenson
Acting Administrator
Telecommunications Division

GAE: DL:00722427

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
610 North Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.⁷ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013
DL: 00698858

⁷ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.