

25. FCC rule 54.101(a)(3) provides that dual tone multi-frequency (“DTMF”) signaling or its functional equivalent shall be supported by Federal universal service funds.⁴ WW’s affidavit indicates it uses out-of-band digital signaling and in-band multi-frequency (“MI?”) signaling which are functionally equivalent to DTMF signaling. Sprint PCS’s affidavit indicates it currently offers dual tone multi-frequency signaling or its functional equivalent. The KCC finds that WW and Sprint PCS provide dual tone multi-frequency signaling or its functional equivalent. The KCC concludes WW and Sprint PCS are in compliance with FCC rule 54.101(a)(3).

26. FCC rule 54.101(a)(4) provides that single-party service or its functional equivalent shall be supported by Federal universal service funds.⁵ WW’s affidavit indicates it offers a dedicated message path for the length of all customer calls which constitutes single-party service. Sprint PCS’s affidavit indicates it currently offers single-party service or its functional equivalent. The KCC finds that WW and Sprint PCS provide single-party service or its functional equivalent. The KCC concludes WW and Sprint PCS are in compliance with FCC rule 54.101(a)(4).

27. FCC rule 54.101(a)(5) provides that access to emergency services including access to 911 and enhanced 911 shall be supported by Federal universal service funds.⁶ WW’s

⁴Dual tone multi-frequency signaling is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time. 47 C.F.R. §54.101(a)(3).

⁵Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission. 47 C.F.R. §51.101(a)(4).

⁶Access to emergency services includes access to 911 and enhanced 911 services, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code “911” to call emergency services through a Public Service Access Point (PSAP)

affidavit indicates it offers access to 911. Sprint PCS's affidavit indicates it currently offers access to 911 emergency services and operator assistance and complies with all FCC requirements pertaining to the deployment of enhanced 911 service. The FCC has stated that wireless companies are not required to provide all of the E911 services until (1) the year 2001 and (2) a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers and establishes a cost recovery mechanism.⁷ See Universal Service Order at ¶ 73. WW indicates that currently no public emergency service provider in Kansas has made arrangements for the delivery of ANI or ALI from WW. The KCC finds that WW and Sprint PCS provide access to emergency services as currently defined by the FCC rules. The KCC concludes WW and Sprint PCS are in compliance with FCC rule 54.101(a)(5). WW and Sprint PCS will be required to provide all of the E911 services (1) by year 2001 and (2) when a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers and establishes a cost recovery mechanism.

28. FCC rule 54.101(a)(6) provides that access to operator services shall be supported by Federal universal service funds.* WW's affidavit indicates it provides customers access to operator services. Sprint PCS's affidavit indicates it currently offers access to operator services.

operated by the local government. Enhanced 9 11 is defined as 9 11 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 9 11 and enhanced 9 11 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. 47 C.F.R. § 54.101(a)(5).

⁷ ANI refers to Automatic Numbering Information, which enables the Public Service Access Point (PSAP) to call back if the call is disconnected. ALI refers to Automatic Location Information, which permits emergency service providers to identify the geographic location of the calling party.

* Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. 47 C.F.R. 54.101(a)(6).

The KCC finds that WW and Sprint PCS provide access to operator services. The KCC concludes that WW and Sprint PCS are in compliance with FCC rule 54.101(a)(6).

29. FCC rule 54.101(a)(7) provides that access to interexchange services shall be supported by Federal universal service funds.⁹ WW's affidavit indicates it provides customers the ability to make and receive interexchange or toll calls through direct interconnection arrangements with several IXCs. Sprint PCS's affidavit indicates it currently offers customers access to interexchange service.

30. The KCC finds that neither the Federal Act nor the FCC rules requires a carrier to provide equal access to interexchange service to become ETCs and qualify for federal universal service support. The KCC finds that Section 332(c)(8) of the Federal Act, in fact, prohibits requiring CMRS providers to provide equal access to toll services as a condition to becoming ETCs.¹⁰ The KCC finds that WW and Sprint PCS provide access to interexchange service. The KCC concludes that WW and Sprint PCS are in compliance with FCC rule 54.101(a)(7).

⁹Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. 47 C.F.R. §54.101(a)(7).

¹⁰Equal access is the ability to access the long distance carrier to which a customer is presubscribed by dialing a 1+ number. Section 332(c)(8) states that CMRS providers shall not be "required to provide equal access to common carriers for the provision of toll service." 47 U.S.C. § 332(c)(8). The FCC states that requiring CMRS providers to provide equal access in order to receive universal support is contrary to the mandate of section 332(c)(8) and that,

[C]ompetitive neutrality does not require that, in areas where incumbent LECs are required to offer equal access to interexchange service, other carriers receiving universal service support in that area should also be obligated to provide equal access . . . [S]tatutory and policy considerations preclude us from imposing "symmetrical" service obligations on all eligible carriers, including the obligation to provide equal access to interexchange services, as a condition of eligibility under section 214(e). *Universal Service Order* at ¶ 78-79.

31. The KCC concludes that WW and Sprint PCS are in compliance with 47 C.F.R. §54.201(d)(1) because they offer each of the services supported by federal universal service support mechanisms in 47 C.F.R. § 54.101(a).

B. Advertising

32. Sprint PCS's affidavit indicates it advertises the universal services and charges using media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2).¹¹ WW's affidavit indicates it currently advertises its wireless services through several different media, including newspaper, television, radio and billboard advertising. WW indicates it currently advertises in publications targeted to the general residential market. WW indicates it will use the same media of general distribution it currently employs throughout the areas served to advertise its universal service offerings and charges and will comply with any advertising requirement adopted by the KCC or FCC. The KCC finds that WW and Sprint PCS advertise the universal services and charges using media of general distribution in accordance with 47 C.F.R. §54.201(d)(2).

33. Having determined that WW and Sprint PCS offer the services supported by federal universal service support mechanisms, and advertise the availability of such services using media of general distribution, the KCC concludes that WW and Sprint PCS meet the requirements of Section 214(e)(1).

C. Service Area Designation

34. Section 214(e)(2) of the Federal Act states, in pertinent part, that:

¹¹A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received: . (2) Advertise the availability of such services and the charges therefore using media of general distribution. 47 C.F.R. 54.201(d).

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission . . . shall in the case of all [non-rural] areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1).

Section 214(e)(5) of the Federal Act states, in pertinent part, that “service area” is:

[A] geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms

K.S.A. 66-1,187(k)(2) provides that “operating area” or “service area” in the case of a non-rural local telephone company means “such carrier’s local exchange service area or areas as approved by the commission.”

35. In accordance with Section 214(e)(2), (5) and K.S.A. 66-1,187(k)(2), WW and Sprint PCS have requested ETC designation in several non-rural service areas designated by the KCC. Kansas wire centers are the service area currently designated by the KCC for universal service support. See Docket 99-GIMT-326-GIT, Order issued September 30, 1999 (Order #10), ¶ 56. To receive universal service support an ETC must offer service throughout the wire center for which it seeks support. The KCC finds that WW and Sprint PCS’s affidavits show the applicants offer the universal services throughout several non-rural Kansas wire centers. The KCC concludes that WW and Sprint PCS are in compliance with Section 214(e)(2) and (5) in the non-rural wire centers identified in Exhibits A and B.

36. The KCC concludes that WW and Sprint PCS should be granted ETC designation for federal universal purposes in the non-rural wire centers identified in Exhibits A & B. The KCC declines, at this time, to grant WW and Sprint PCS ETC designation for state universal

service purposes. The KCC concludes that prior to becoming eligible for state universal service support, ETCs should meet quality of service standards to ensure that all Kansans have access to a first class telecommunications infrastructure. Although Section 332(c)(3)(A) of the Federal Act precludes the KCC from imposing rate and entry regulation on CMRS providers, it does not preclude it from imposing quality of service standards on CMRS providers. In addition, the Fifth Circuit Court of Appeals recently ruled that states may impose additional eligibility requirements on carriers otherwise eligible to receive federal universal service support “in light of the states’ historical role in ensuring service quality standards for local service.” *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421, 1999 WL 556461 at *11 (5th Cir. July 30, 1999). Furthermore, state law requires all local exchange carriers and telecommunications carriers to comply with quality of service standards. K.S.A. 66-2002(I) (1997). For these reasons, all carriers, including wireless providers, should be required to comply with quality of service standards established by the KCC prior to becoming eligible for state universal service funds.

37. Staff recently filed a memorandum with the KCC recommending that the KCC open a generic docket to develop quality of service standards which will be applicable to wireless carriers. See Docket 00-GIMT-584-GIT. Staff stated that the quality of service standards currently in place for wireline service are not compatible with wireless service. Staff recommended that the KCC ask for comment from interested parties on various issues related to establishing quality of service standards for wireless service. The KCC encourages interested parties to participate in this proceeding to help establish standards which will ensure that KUSF distributions are made in a competitively neutral manner.

38. The KCC also declines to grant WW and Sprint PCS ETC designation for wire centers served by rural telephone companies.¹² Prior to granting ETC designation in a wire center served by a rural telephone company, the KCC must first determine that designating additional ETCs is in the public interest. See 47 U.S.C. 214(e)(2). All wire centers in Kansas served by Sprint Telephone Company are rural wire centers. For this reason, Exhibits A and B exclude wire centers served by Sprint Telephone Company. To determine whether it is in the public interest to designate additional ETCs, the KCC establishes the following procedural schedule:

WW and Sprint PCS Direct Testimony Due	March 3, 2000
Intervenor Direct Testimony Due	March 24, 2000
Staff Direct Testimony Due	April 7, 2000
WW and Sprint PCS Rebuttal Testimony Due	April 17, 2000
Hearing	May 9 and 10, 2000 9:30 a.m. First Floor Hearing Room

THE COMMISSION, THEREFORE, ORDERS THAT:

WW and Sprint PCS are designated ETCs in the non-rural telephone company service areas identified in Attachments A and B for federal universal service purposes. WW and Sprint PCS must offer the universal services and advertise their availability using media of general

¹²A rural telephone company is any local exchange carrier operating entity to the extent that such entity – (A) provides common carrier service to any local exchange carrier study area that does not include either – (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996. 47 u.s.c 153(37).

distribution throughout the wire centers for which they have been designated ETCs. WW and Sprint PCS are denied ETC designation for state universal service purposes at this time. WW and Sprint PCS shall first be required to meet the quality of service standards to be established in Docket 00-GIMT-584-GIT. WW and Sprint PCS are denied ETC designation in the wire centers served by rural telephone companies at this time. A procedural schedule is established, as set forth above, to determine whether it is in the public interest to designate WW and Sprint PCS ETCs in Kansas wire centers served by rural telephone companies.

Any party may file a petition for reconsideration of this order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

IT IS SO ORDERED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: JAN 18 2000

STATE CORPORATION COMMISSION

JAN 19 2000

 Locket Room

Jeffrey S. Wagaman
Executive Director

MD

Exhibit A

SWBT Wire Centers Covered by Western Wireless

Abilene	Iola
Andale	Jewell
Anthony	Kingman
Arkansas City	Lincoln
Attica	Lindsborg
Auburn	Lyons
Belleville	Manhattan
Beloit	Mankato
Blue Rapids	Maple Hill
Burns	Marion
Canton	Marquette
Cedar-vale	Marysville
Chapman	McPherson
Chase	Minneapolis
Cheney	Mount Hope
Clay Center	Nickerson
Concordia	Ottawa
Cottonwood Falls	Paola
Dover	Peabody
Ellsworth	Sabetha
Emporia	Salina
Enterprise	Scandia
Eureka	Seneca
Florence	Severy
Frankfort	Solomon
Garden Plain	Washington
Gypsum	Waterville
Halstead	Wellington
Hamilton	Williamsburg
Hanover	Winfield
Harper	Yates Center
Hartford	
Herrington	
Howard	
Humbolt	

*Coverage could vary slightly depending on recent expansion of home territory by WW.

Exhibit B

SWBT Wire Centers Covered by Sprint PCS*

Andale
Andover
Benton
Bonner North
Bonner Springs
Colwich
Corporate Woods
Crestwood
Desoto
Drexel
Dupont
Eudora
Garden Plain
Jackson
Hedrick
Kechi
Lawrence
Lecompton
Lenexa
Mount Hope
Mulvane
Murray
Newton
Olathe
Parkview-Maize
Sedgewick
Shawnee
Stanley
Sunset
Topeka-Amherst
Topeka-Central
Towanda
Valley Center
Wichita
Wichita-Amherst

*Coverage could vary slightly depending on recent expansion of home territory by SPCS.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of GCC License Corporation's)
Petition for Designation as an Eligible)
Telecommunications Carrier.)

Docket No. 99-GCCZ-156-ETC

Application of Sprint Spectrum L.P. (d/b/a)
Sprint PCS) For Designation as an Eligible)
Telecommunications Carrier for Purposes of)
Receiving Federal and State Universal Service)
support)

Docket No. 99-SSLC-173-ETC

ORDER #7: ON RECONSIDERATION

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds as follows:

I. Background

1. On January 18, 2000, the Commission granted GCC License Corporation d/b/a Western Wireless ("WW") and Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") ETC designation in Kansas for federal universal service purposes.

2. On February 4, 2000, WW filed a motion for clarification and reconsideration. On February 7, 2000, Southwestern Bell Telephone Company ("SWBT"), Sprint PCS and the Independent Telecommunications Group, Columbus et al. ("Columbus") and the State Independent Alliance ("SLA") filed timely petitions for reconsideration.

Quality of Service Standards

3. WW and Sprint PCS request reconsideration of the Commission's decision to deny them ETC status for Kansas universal service purposes until quality of service standards are established and implemented. WW states it provides high quality service that could meet any standards adopted by the Commission and that denying it state ETC status for noncompliance with yet to be adopted rules is unfair, discriminatory, unlawful and contrary to the factual record. WW states that imposing rules which may or may not be adopted at some future time violates K.S.A.77"501 et seq. WW asserts that, rather than deny it state ETC status, the Commission should designate it an ETC for KUSF purposes conditioned on WW's compliance with the service quality standards adopted by the Commission. WW states that, alternatively, the Commission should clarify that it will grant state ETC designation to WW at the conclusion of the service quality proceeding based solely on WW's self-certification that it will comply with any applicable service quality regulations. WW argues that the Commission should not put off final resolution nor should its allow other parties to use the quality of service docket to further delay its ETC designation.

4. Sprint PCS asserts the Commission does not have jurisdiction to impose quality of service standards on wireless carriers. It also brings up numerous other legal arguments why the Commission cannot implement quality of service standards for wireless carriers, as well as other reasons why such standards should not be imposed. Sprint PCS has also raised these issues in Docket No. 00-GIMT-584-GIT. Jurisdiction to implement quality of service standards will be addressed in that docket.

5. The Commission grants WW and Sprint PCS reconsideration on this issue. The Commission finds WW's and Sprint PCS's requests that they be designated ETCs for KUSF purposes to be reasonable. WW agrees that its ETC designation may be conditioned on its

compliance with all applicable service quality rules adopted in a future proceeding. As stated above quality of service issues will be addressed in Docket No. 00-GIMT-584-GIT. Whether wireless carriers will be subject to quality of service standards and, if so, the nature of those standards will be, addressed in that docket. The Commission, therefore, concludes that WW and Sprint PCS should be designated ETCs for state universal service support purposes. The ETC designation applies to SWBT and Sprint service territory for state universal service support because SWBT and Sprint are defined as non-rural companies by the State Act. K.S.A. 1998 Supp. 66-1,187(1).

Compliance with 47 C.F.R. 54.101(a)(2), (8) and (9)

6. WW, SIA and Columbus request that the Commission make findings of fact and conclusions of law regarding whether WW provides access to directory assistance and toll blocking for qualifying low-income consumers as required by 47 C.F.R. §§ 54.101(a)(8) and (9). SIA and Columbus also request reconsideration of the Commission's finding regarding local usage. SIA and Columbus claim that the record does not contain evidence which shows that WW and Sprint PCS provide any amount of local usage free of charge.

7. The Commission grants WW, SIA and Columbus their requests to make findings of fact and conclusions of law regarding directory assistance and toll blocking for qualifying low-income consumers. WW states in its affidavit that it provides its customers the ability to place calls to directory assistance. WW also states that WW will provide toll blocking and will participate in Lifeline upon being designated an ETC. WW further states that currently it provides toll blocking services for international calls and customer selected toll calls and will provide the same service to its Lifeline customers, at no charge, as part of its universal service offering. Sprint PCS states in its affidavit that it currently offers customers access to directory

assistance and toll blocking to qualifying low-income consumers when such consumers subscribe to Lifeline service. On the bases of their affidavits, the Commission finds that WW and Sprint PCS provide access to directory assistance and will provide toll blocking to qualifying Lifeline customers upon being designated an ETC. The KCC concludes that WW and Sprint PCS are in compliance with FCC rule 54.101 (a)(8) and (9).

8. The Commission denies SIA's and Columbus' request for reconsideration of the Commission's decision regarding local usage. In its affidavit, WW states it will meet the local usage requirement by including local usage, free of charge, as part of its universal service offerings. In its affidavit, Sprint PCS states it currently offers local usage. The Commission takes WW and Sprint PCS at their word – and intends to hold them to their words – that they will comply with any minimum local usage requirements adopted by the FCC. The Commission finds that the FCC has not yet adopted minimum local usage requirements.

Compliance with K.S.A. 66-1,187(p)

9. WW also requests reconsideration of the Commission's decision to not rule on whether WW currently complies with K.S.A. 66-1, 187(p). WW asserts that WW should be granted ETC status for state universal service support because it complies with K.S.A. 66-1,187(p). WW also requests that the Commission find that K.S.A. 66-1,187(p)'s requirement that an ETC provide equal access to interexchange carriers, is inconsistent with and preempted by 47 C.F.R. § 54.101(a)(7) and 47 U.S.C. § 332(c)(8).

10. The Commission grants WW's request for reconsideration of this issue. The KCC finds that K.S.A. 66-1,187(p) is preempted by 47 C.F.R. § 54.101(a)(7) and Section 332(c)(8) of the Federal Act. Section 332(c)(8), in fact, specifically prohibits requiring CMRS providers to

provide equal access to toll services as a condition to becoming ETCs.¹ Further, K.S.A. 66-2015 specifically prohibits the Commission from enforcing any provision of the State Act that is specifically preempted by the Federal Act. For these reasons, WW's request for reconsideration is granted.

ETC Designation for Federal USF in Sprint Telephone Company Wire Centers

11. WW also requests reconsideration of the Commission's decision to deny WW ETC designation in Sprint Telephone Company wire centers for the federal USF. WW states that although Sprint provides service in rural telephone company service areas, it is not a rural telephone company according to 47 U.S.C. § 153(37). WW states that, in Order #5, the Commission listed Sprint as a non-rural telephone company and in Order #16 in Docket No. 99-GIMT-326-GIT, the Commission determined that Sprint is not a rural telephone company.

12. The Commission denies WW's request for reconsideration on this issue. Under federal law and for federal universal service purposes, Sprint Telephone Company - Kansas, is a rural telephone company:

The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity – (A) provides common carrier service to any local exchange carrier study area that does not include either – (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as

¹Equal access is the ability to access the long distance carrier to which a customer is presubscribed by dialing a 1+ number. Section 332(c)(8) states that CMRS providers shall not be "required to provide equal access to common carriers for the provision of toll service." 47 U.S.C. § 332(c)(8). The FCC states that requiring CMRS providers to provide equal access in order to receive universal support is contrary to the mandate of section 332(c)(8) and that,

[C]ompetitive neutrality does not require that, in areas where incumbent LECs are required to offer equal access to interexchange service, other carriers receiving universal service support in that area should also be obligated to provide equal access. [S]tatutory and policy considerations preclude us from imposing "symmetrical" service obligations on all eligible carriers, including the obligation to provide equal access to interexchange services, as a condition of eligibility under section 214(e). *Universal Service Order* at ¶ 78-79.

defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. 153(37).

According to the FCC, Sprint Telephone Company - Kansas, is a company comprised of three study areas, each of which falls below the number of access lines necessary to be considered a non-rural telephone company. For federal universal service purposes, Sprint Telephone Company - Kansas is considered a rural telephone company and, pursuant to federal law, the Commission must make a public interest finding before designating an additional ETC for Sprint's territory. Under state law and for state universal service purposes, however, Sprint Telephone Company - Kansas is a non-rural telephone company. K.S.A. 1,187(l) excludes any local exchange carrier "which together with all of its affiliates has 20,000 or more access lines in the state" from the definition of rural telephone company. Thus, WW's petition for reconsideration of its federal ETC designation is denied.

Correction to Wire Centers Listed in Exhibit A

13. WW also requests reconsideration of the Commission's list of wire centers in Exhibit A. WW states that Fort Scott, Hutchinson and Newton were omitted from Exhibit A despite the fact that WW serves those wire centers. WW also states that Abilene, Anthony, Auburn, Cedar Vale, Dover, Maple Hill and Waterville are not served by WW and should be removed from Exhibit A. WW also requests that the Commission articulate the factors it intends to consider in determining the "public interest" for purposes of ETC designation in rural telephone company wire centers.

14. The Commission grants WW's request for reconsideration for the purpose of more accurately reflecting which wire centers WW serves. Revised Exhibit A (attached) reflects the revisions WW has requested. The Commission also grants WW's request that the Commission articulate the factors it will consider in determining the public interest for ETC designation in rural telephone company wire centers, however, those factors will be listed and discussed in a separate order.

Whether Applicants Must Currently Offer the Universal Services Before Being Designated ETCs

15. SIA and Columbus claim that the Act requires an applicant to be actually offering the nine FCC-required services throughout the service areas at the time of application, not merely indicate a willingness to provide them. SIA and Columbus assert that the affidavits filed by WW and Sprint PCS, upon which the Commission made its decisions in Order #6, are insufficient to find that WW and Sprint PCS offer the required services. SIA and Columbus request that the Commission allow the parties to participate in a hearing and file testimony on this issue.

16. The Act appears to treat ETC designation as a linear process:

A common carrier *designated* as an eligible telecommunications carrier under paragraph (2), (3), or (6) *shall* be eligible to receive universal service support in accordance with section 254 of this title and *shall*, throughout the service area for which the designation is received -

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e)(1), emphasis added.

17. The plain meaning of this language is that once a carrier has been designated an ETC, it shall offer and shall advertise the supported services. The designation comes first; the obligation to offer and advertise the supported services follows. Similarly, the FCC Order adopting its universal service rules makes the same finding:

[A] carrier must meet the section 214(e) criteria as a condition of its being designated an eligible carrier and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support. . . .”

In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, FCC 97-157, ¶ 137, (May 7, 1997).

18. Not only does viewing ETC designation as a linear process square with the plain meaning of the statute, it squares with the underlying policy of opening the nation’s telecommunications markets to competition. Requiring ETC applicants to actually offer and advertise universal service packages throughout their service areas before designating them ETCs would be inherently anti-competitive. It would require them to serve without providing the subsidies that make that service possible. It would, for all practical purposes, give incumbents a lock on serving high-cost areas, and on the subsidies they carry. This was clearly not the intent of Congress, and the Commission rejects the claim that ETC applicants must be actually providing the precise services for which they seek universal service subsidies at the time of application. Regardless, the affidavits filed by WW and Sprint PCS clearly indicate that they currently offer and are able to provide all of the services and functionalities identified in 47 C.F.R. § 54.101(a). Of the nine FCC-mandated services an ETC must provide, WW and Sprint PCS currently offer eight. As for the ninth, toll limitation to qualifying low income customers, no WW or Sprint PCS customers are currently eligible for Lifeline support. Qualifying low income customers are participants in the federal Lifeline program, which WW and Sprint PCS

cannot join until they have been designated ETCs. Both companies have stated in their affidavits that they possess the technical capability to offer toll limitation upon designation. The Commission denies SIA and Columbus reconsideration of this issue.

Certificate of Convenience and Authority

19. SIA and Columbus further request reconsideration of the Commission's decision to not require the applicants to obtain a certificate of convenience and authority. SIA and Columbus state the Commission has authority under state and federal law to require WW and Sprint PCS to obtain a certificate of convenience and authority prior to receiving ETC designation. They state the Commission has authority under state and federal law to require the applicants to obtain a certificate and that requirement of certification should be a part of any public interest analysis but they provide no legal support in their petition for this contention. The Commission denies reconsideration of this issue.

Rural Telephone Company Service Areas

20. SIA and Columbus claim the Commission determined that the service area for rural telephone companies is at the wire center level. They request reconsideration of this determination. SIA and Columbus argue that although the Commission determined in Docket No. 99-GIMT-326-GIT that wire centers would be the universal service support areas for non-rural telephone company service areas, it did not do so for rural telephone companies. The Commission made no determination regarding rural telephone company service areas in these dockets. The discussion of this issue and the Commission's findings are limited to non-rural companies. See ¶¶ 34-36 of Order #6. The Commission therefore can neither grant nor deny reconsideration on this issue, since it made no finding on it.

Affordability of Universal Services

21. SWBT requests reconsideration of the Commission's decision to not require WW and Sprint PCS to adhere to an affordability standard. SWBT asserts that the FCC has instructed state commissions to decide affordability for their states and the Fifth Circuit Court of Appeals has ruled that states may impose additional eligibility requirements on carriers eligible to receive federal universal service support.

22. In Order #10 in Docket 99-GIMT-326-GIT, the Commission ruled that insufficient evidence had been presented in that proceeding to establish an affordable rate. The Commission admitted that the term affordable "may very well be impossibly vague and relative" and that reconciling the term "affordable" with the phrase "just and reasonable" rates may prove to be impossible. Docket No. 99-GIMT-326-GIT, Order issued September 30, 1999, ¶ 112. The Commission determined that affordability would be reexamined in a future proceeding. The Commission has not yet conducted that proceeding, thus, no determination regarding an affordable rate has been established. To require WW and Sprint PCS to adhere to an as yet undetermined affordability standard that no current ETC has been required to meet would not be fair, equitable, or competitively neutral. Further, the Commission observes that it does not price regulate wireless carriers or telecommunications carriers. K.S.A. 1998 Supp. 66-2005(v). It appears the Legislature trusts consumers to determine whether a particular service, provided by a competitive carrier, is affordable or not. The Commission believes this is a reasonable assumption. It is in the interest of new ETCs to provide services that compare favorably to the services provided by the incumbent, both in terms of price and quality in order to attract customers. The Commission declines to grant SWBT reconsideration on this issue.

Adjunct Wireless Services

23. SWBT seeks reconsideration of the Commission's decision to not address adjunct services such as mobile wireless service, data, or roaming. SWBT asserts that these services should not qualify for universal service support.

24. SWBT offers no legal support for its contention that services such as mobile wireless service should not qualify for universal service support and neither state law nor federal law make a distinction between mobile and fixed wireless service. The issue is whether the ETC provides the required services, not the particular technology it uses in providing them. The Commission denies SWBT reconsideration on this issue.

Alternative Provider Status/Primary Line/Rate Structures/Class of Service

25. SWBT seeks reconsideration of the Commission's decision to grant ETC status to WW and Sprint PCS based on various questions it believes granting such status raises. SWBT poses the following questions: (1) does the designation of ETC also satisfy the "alternative provider" status for K.S.A. 66-2005(p) and 47 U.S.C. 271; (2) if the Commission pursues support for the primary line only, as it has ruled in Docket No. 99-GIMT-326-GIT, how will SWBT recover the cost of its wireline service if it is not providing the customer's primary line; (3) if the Commission does not have authority to impose rate structures for universal service on wireless carriers, what impact will that have on current universal service support objectives and rate regulated LECs; (4) what class of service applies for support in a wireless situation and how will eligible categories of service be designated and; (5) how should state universal service requirement standards be applied to wireless carriers.

26. The questions SWBT's raises should, in most instances, be addressed by the Commission in other contexts, not in the context of an application for ETC designation. With respect to question one, SWBT should raise the issue of the effect of an alternative provider in

the context of a Section 27 1 proceeding or in a petition requesting deregulation of a service.

With respect to questions two and three, SWBT should raise these issues in Docket No. 99-GIMT-326-GIT because they appear to relate directly to the Kansas universal service fund. It is, however, not clear to the Commission how its lack of authority to rate regulate wireless providers will affect universal service support. Questions four needs to be addressed before an ETC can begin to receive support from the KUSF.

27. The Commission directs WW and Sprint PCS to work with Staff regarding implementation issues that must be determined before support is paid out in order to ensure that distributions are competitively neutral. K.S.A. 1998 Supp. 66-2008(c). The issue of differentiation between residential, single line business and multiline business lines is clearly one such issue. Another issue which needs to be made clear is how wireless carriers define local service. There may also be other issues that need to be worked out to ensure competitive neutrality. We direct WW, Sprint PCS and Staff to file a report on these issues with recommended resolutions. The report should be served on the parties to this docket, who will have ten days from the date of mailing plus three for mailing to file comments on the recommendations..

28. As to question five, SWBT's argument that ETCs should comply with all requirements imposed on local exchange carriers by the State Act finds no support in the State Act. K.S.A. 1998 Supp. 66-2005(a) imposes those requirements on local exchange carriers, which are defined in K.S.A. 1998 Supp. 66-1,187(h). Local exchange carriers are those telecommunications public utilities or their successors which provided switched local exchange service on or before January 1, 1996. The State Act also addresses ETCs. It specifies payment of KUSF support to carriers "deemed eligible under subsection (e)(l) of section 214 of the

federal act and by the commission.” K.S.A. 1998 Supp. 66-2008(c). Had the Legislature intended that the requirements it imposed on local exchange carriers should also be imposed on ETCs, it clearly would have included such a provision in the Act. SWBT’s request for reconsideration on this issue is denied.

THE COMMISSION, THEREFORE, ORDERS THAT:

(A) Sprint PCS and WW are designated ETCs for state universal service purposes in non-rural company service territory, as defined by the State Act.

(B) Sprint PCS’s petition regarding jurisdiction to implement quality of service standards shall be addressed in Docket No. 00-GIMT-584-GIT.

(C) Sprint PCS and WW are in compliance with requirements to provide directory assistance and toll blocking.

(D) WW’s wirecenter list is corrected as set out on Exhibit A.

(E) SLA’s and Columbus request for reconsideration of rural telephone company service area designation is neither granted nor denied.

(F) Certain issues raised by SWBT should be addressed in other dockets, as set out above.

(G) WW and Sprint PCS are directed to work with Staff to resolve certain issues related to distribution of KUSF support. Staff. WW and Sprint PCS shall file a report on those issues and comment shall be allowed as set out above.

(H) Reconsideration of all other issues is denied.

(I) Any party may file a petition for reconsideration of this order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

(J) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

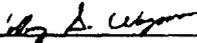
IT IS SO ORDERED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: FEB 29 2000

ORDER MAILED

FEB 29 2000



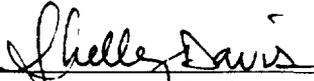
Jeffrey S. Wagaman
Executive Director

MD/EP

0035, 0036, 0037, 0038.

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Declaratory Ruling" was served on this 3rd day of November 2000, by first class, U.S. mail, postage prepaid to the following parties:


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