

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
Guam Cellular and Paging, Inc. d/b/a)
Saipancell)
)
Petition for Designation as an)
Eligible Telecommunications Carrier)
on the island of Saipan)
in Commonwealth of the Northern)
Mariana Islands)

CC Docket No. 96-45

To: Wireline Competition Bureau

REPLY COMMENTS OF GUAM CELLULAR AND PAGING, INC.

Guam Cellular and Paging, Inc., d/b/a Saipancell ("Saipancell"), by its attorneys and pursuant to the Commission's Public Notice, DA 02-1005 (rel. May 1, 2002), hereby files these Reply Comments in the above-captioned proceeding.

On February 19, 2002, Saipancell submitted a Petition for Eligible Telecommunications Carrier Status ("ETC") on the island of Saipan to the Commission. Saipancell amended its Petition on May 8, 2002 to include a letter from the Commonwealth Telecommunications Commission ("CTC") declining jurisdiction over Commercial Mobile Radio Service Providers ("CMRS") for ETC designation purposes. On April 22, 2002, the Micronesian Telephone Company ("MTC") filed its Opposition to Saipancell's Petition. None of the issues raised by MTC warrants a delay in granting Saipancell's Petition. For the reasons set forth below, the Commission should grant Saipancell's Petition expeditiously to enable the benefits of competition to be enjoyed by the residents of Saipan.

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I. The FCC is the appropriate authority to review Saipancell’s Petition.

Saipancell’s Petition is appropriately before the Commission. Under 47 U.S.C. 214(e)(6), a carrier may petition the FCC for ETC designation when the applicable state utilities commission has declined to exercise jurisdiction for ETC designation purposes. According to the Commission, “an ‘affirmative statement’ from a state commission may consist of any duly authorized letter, comment, or state commission order indicating that the body lacks jurisdiction to perform the requested designation for a particular carrier.”¹

As required by 47 U.S.C. 214(e)(6), Saipancell has provided an “affirmative statement” from the CTC in the form of a letter stating that it does not intend to exercise jurisdiction for ETC designation purposes. The FCC has found similar letters adequate to constitute an “affirmative statement” from the state authority.²

Although the statute cited by MTC authorizes the Commonwealth Telecommunications Commission (“CTC”) to designate ETCs, it does not require the CTC to do so. It would appear quite clear from the governor’s letter that the state does not wish to undertake designation of ETCs. Were the FCC to send this petition back to Saipan, Saipancell would likely find itself requesting the CTC to perform an ETC designation in the face of an explicit declaration that they have no intention of doing so.

The Commission has placed this matter on public notice, and has provided a copy to the relevant authorities in Saipan. MTC has served its comments on the Commonwealth Utilities Corporation. CTC has not requested that the Petition be dismissed and returned to it. The FCC cannot force the CTC to do what it has declined to do, and there is no reason to create a

¹ *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, Memorandum Opinion and Order, DA 02-174 (rel. January 25, 2002), Note 14 (“Guam Order”).*

² *See, e.g., Guam Order, ¶8.*

jurisdictional controversy where none exists. Accordingly, the FCC should reject the MTC's position and process Saipancell's Petition expeditiously.

II. The Commission May Consider Saipancell's Disaggregation Request Without Additional Input From the CTC.

MTC argues that the state's concurrence with a proposed service area definition is required before the Commission may redefine the service area of a rural LEC. This assumes, however, that the state has jurisdiction over ETC designation matters. As explained above, the state commission has declined to exercise jurisdiction for ETC designation purposes. Therefore, the FCC and not the CTC is the appropriate regulatory body to make a decision regarding the redefinition of the LEC's service area for ETC designation purposes.

In a recent decision describing the procedure rural LECs must follow to disaggregate their service areas for purposes of calculating universal service support, the Commission explained that it would assume jurisdiction over disaggregation proposals that are not subject to state jurisdiction. Specifically, the Commission held:

In adopting this mechanism we recognize, as did the Rural Task Force, that in limited instances certain carriers may not be subject to the jurisdiction of a state, e.g., tribally-owned carriers. In such limited circumstances, the Commission would be the appropriate regulatory authority for the administration of the disaggregation and targeting of support by such carriers.³

It follows, therefore, that if the Commission has authority to exercise jurisdiction to disaggregate for support purposes it necessarily has authority to exercise jurisdiction to redefine service areas for ETC designation purposes. Unlike disaggregation for support purposes, redefining rural LEC

³ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order and Twenty-Second Order on Reconsideration*, CC Docket No. 00-256, 16 FCC Rcd. 11244, (May 23, 2001) ("MAG Order"), at N. 373.

service areas for ETC purposes pursuant to Section 54.207 of the Commission's rules will in no way affect how the incumbent LEC calculates its costs.

While Saipancell believes the Commission has authority to redefine MTC's service area without additional input from the CTC, the Commission may seek the concurrence of the CTC if it deems necessary. FCC Rule Section 47 C.F.R. §54.207 authorizes the FCC to propose a redefinition of a rural LEC service area on its own motion. Although Saipancell believes that it is not necessary, the Commission has ample information to make the necessary findings concerning redefinition of MTC's service area and to obtain the CTC's concurrence, should it so choose.

III. Redefinition of MTC's Service Area Would Serve The Public Interest By Promoting Competition.

Redefinition of MTC's service area for ETC designation purposes will foster competition – one of the principal goals of the Telecommunications Act.⁴ If MTC's service area is not redefined, residents of Saipan will continue to have only one choice of basic service providers. The Commission has held that designating competitive ETCs in rural areas will serve the public interest by encouraging infrastructure investment and the provision of advanced services in underserved communities.⁵ It has also repeatedly held that there is no evidence that competitive entry in even remote areas will have negative effects on incumbent carriers.⁶ A grant of Saipancell's Petition will enable the company to accelerate its construction schedule throughout its licensed service area and bring competitive services to customers who might otherwise never see such benefits.

⁴ See Telecommunications Act of 1996, Public Law, 104-104, 100 Stat. 56 (1996).

⁵ See e.g., *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, at 8802-3, 8944 (“*First Report and Order*”); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming* (2000) (“*Western Wireless*”), 16 FCC Rcd 48, at 55; *Guam Order*, ¶15 .

⁶ See e.g., *Western Wireless*, 16 FCC Rcd at 57.

The Commission has always favored dividing up non-contiguous service areas, such as that of MTC, in order to facilitate competitive entry by wireless carriers.⁷ It would be difficult to find a better example of non-contiguous service areas than in the case of MTC, since MTC's service area is comprised of a chain of islands. Each island should be classified as a separate service area for ETC designation purposes, and Saipancell should be designated on Saipan. If MTC's service area is not redefined, the status quo will be preserved and residents of Saipan will be prevented from enjoying the benefits of competition indefinitely.

The public interest analysis must take into consideration the fact that it is not feasible for any telecommunications carrier to provide high-quality local exchange service to customers in most remote areas, unless high-cost support is provided. In the absence of high-cost support, wireless service will only be seen as a convenience, and will not offer rural customers a choice of local service providers that many urban customers enjoy today. With high-cost support, a wireless carrier such as Saipancell will be able to improve its network and offer alternative services, which will spur competitive offerings from incumbents, all to the customer's benefit.

MTC alleges that Saipancell may be cream skimming because it is serving a lower cost exchange. The possibility of even inadvertent cream skimming is now greatly reduced because incumbent LECs now have the ability to disaggregate support so as to more accurately target high cost support to high-cost areas.⁸ According to MTC, its cost per loop on Tinian and Rota are much higher than its costs on Saipan.⁹

⁷ *First Report and Order*, at 8882-2.

⁸ *MAG Order, supra*.

⁹ MTC's suggestion that Saipancell resell MTC's service on other islands is not workable. Saipancell would not be able to extend any new service to customers under a resale arrangement, and those customers it could serve would only receive a duplicate of the incumbent's service. In short, customers would not be served by a resale requirement.

Apparently, MTC is not concerned about cream skimming, because it could have revised its support levels on each island by submitting a plan of disaggregation under either Path 2 or Path 3 on May 15, 2002. Its complaint about the possibility of Saipancell cream skimming its lowest costs customers is disingenuous. Having chosen Path 1, MTC is now estopped from complaining about the possibility of cream skimming. If the FCC is concerned about the possibility of inadvertent cream skimming, it may open a proceeding under Path 2 on its own motion to require MTC to disaggregate support among the islands comprising its study area.

MTC apparently misinterpreted the statements in Saipancell's Petition concerning the special status of the rural carrier, in this case MTC. As Saipancell explained in its Petition, in deciding whether to award ETC status to Saipancell, the Commission will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. §214(e)(2). Part of this analysis includes weighing the impact that designation of a competitive ETC will have on the incumbent LEC. It is MTC's rural status and the impact of Saipancell's designation on MTC that the Commission will consider, not the impact on Saipancell. Consistent with previous Commission decisions, the Commission should find that it is not "self-evident that rural telephone companies cannot survive competition from wireless providers."¹⁰ Moreover, nothing in the designation of a competitive ETC in Saipan will lessen MTC's status as a rural telephone company or otherwise disturb the special status it has been accorded under Section 251 of the Act.

IV. Conclusion

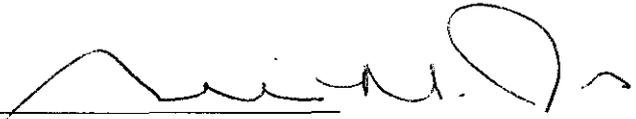
MTC wishes to forestall competitive entry, thereby preserving its monopoly on the island of Saipan. For the reasons set forth above, Saipancell respectfully requests the Commission to

¹⁰ *Western Wireless*, 16 FCC Rcd at 57.

reject the arguments of MTC and grant Saipancell's Petition for designation as an ETC on the island of Saipan.

Respectfully submitted,

Guam Cellular and Paging, Inc.

By 

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June 17, 2002

CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 17th day of June, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY COMMENTS OF GUAM CELLULAR AND PAGING, INC. filed today to the following:

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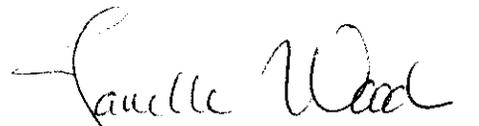
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*** Via Hand Delivery**