



PUBLIC NOTICE

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DA 03-3112

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON WESTERN WIRELESS CORPORATION PETITION TO REJECT RURAL TELEPHONE COMPANY SELF-CERTIFICATION FILED BY VALOR TELECOMMUNICATIONS OF TEXAS, LP, FOR THE STATE OF OKLAHOMA

CC Docket No. 96-45

Released: October 8, 2003

Comment Date: 30 days after publication in the Federal Register
Reply Date: 45 days after publication in the Federal Register

On June 30, 2003, Valor Telecommunications of Texas, LP (Valor) filed a rural self-certification letter stating that it meets the criterion set forth in section 153(37)(D) of the Act for all its study areas in the states of Texas (which includes a small portion in Arkansas), Oklahoma, and New Mexico.¹ Valor had previously self-certified its Texas and New Mexico study areas as rural telephone company study areas on June 27, 2000.² Valor states that it now also meets the criterion for certification of its Oklahoma study area as a rural telephone company study area as a result of a merger among Valor Telecommunications of Texas, LP, Valor Telecommunications of Oklahoma, LLC, and Valor Telecommunications of New Mexico, LLC.³

¹ Letter from Jerry M. Allen, Valor Telecommunications, to Marlene H. Dortch, Secretary, FCC (filed June 30, 2003) (Oklahoma Self-Certification). The Commission defines rural carriers as those carriers that meet the definition of a rural telephone company in section 153(37) of the Communications Act (Act), as amended. *See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, CC Docket No. 96-45, 97-160, 14 FCC Rcd 20156, 20350-58 (1999); 47 U.S.C. § 153(37). Since July 1, 2000, the Commission has required rural carriers serving study areas with more than 100,000 access lines to self-certify their rural telephone company status pursuant to section 153(37) of the Act. *Id.* Section 153(37)(D) of the Act provides that a local exchange carrier operating entity is deemed a rural telephone company to the extent that such entity “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)(D).

² Letter from Jerry M. Allen, Valor Telecommunications, to Sheryl Todd, Universal Service Branch, Accounting and Audits Division, FCC (dated June 27, 2000).

³ Oklahoma Self-Certification at 1.

On September 16, 2003, Western Wireless Corporation (Western Wireless) filed a petition requesting that the Commission reject Valor's self-certification as a rural carrier in the state of Oklahoma.⁴ Western Wireless previously filed a similar petition to reject Valor's self-certification as a rural telephone company in Texas and New Mexico, and the Commission asked for and received public comment on that petition.⁵ Western Wireless now claims, similar to its arguments in its petition opposing Valor's self-certifications in Texas and New Mexico, that Valor does not qualify as a rural telephone company in Oklahoma under section 153(37)(D) because Valor was not a local exchange carrier on the date of enactment of the Telecommunications Act of 1996 (1996 Act) and Valor did not have "less than 15 percent of its access lines in communities of more than 50,000" on the date that the 1996 Act was adopted.⁶ Western Wireless further argues that any interpretation of section 153(37)(D) that would allow Valor to qualify as a rural telephone company as a consequence of its purchase of exchanges from GTE would subvert the Commission's policy to "prevent carriers from subdividing study areas to gain an advantage under the [universal service] rules."⁷ Western Wireless also argues that it would be anti-competitive for Valor's claimed rural telephone company status to potentially prejudice the Eligible Telecommunications Carrier (ETC) status of competitive entrants.⁸ Finally, Western Wireless argues that Valor cannot use an internal corporate reorganization as a means to acquire rural telephone company status.⁹

We invite comment on Western Wireless's petition to reject Valor's self-certification as a rural telephone company in the state of Oklahoma. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **30 days after publication of this notice in the Federal Register**, and reply comments on or before **45 days after publication of this notice in the Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁴ *Petition to Reject Valor's Self-Certification as a Rural Telephone Company in Oklahoma, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed September 16, 2003) (WW Petition).

⁵ *See Western Wireless Petition to Reject Rural Telephone Company Self-Certification filed by Valor Telecommunications Southwest, LLC*, Public Notice, DA 00-1882, 15 FCC Rcd 15123 (Com. Car. Bur. 2000).

⁶ WW Petition at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2-5. We note also that Valor has a petition for waiver of section 54.305 of the Commission's rules pending before the Commission. Waiver of this rule would allow Valor to receive federal high-cost universal service support based on its average loop cost, rather than have its levels of universal service support capped at the per-line amount that GTE, the previous owner of the lines, received prior to its transfer of the exchanges to Valor in the year 2000. *See* 47 C.F.R. § 54.305; *Valor Telecommunications of Texas, L.P., Petition for Waiver of Section 54.305 of the Commission's Rules*, CC Docket 96-45 (filed April 11, 2003). The Bureau sought and received comment on this petition for waiver in a Public Notice. *Wireline Competition Bureau Seeks Comment on Valor Telecommunications of Texas, L.P. Petition for Waiver of Section 54.305 of the Commission's Rules*, Public Notice, DA 03-1458 (released April 30, 2003).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7386 , TTY (202) 418-0484.