

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of)	
)	
Telecommunication Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Worldcall Interconnect, Inc., Petition for)	
Designation as an Eligible Telecommunications)	
Carrier in the State of New York)	

ORDER

Adopted: April 27, 2011

Released: April 27, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we dismiss without prejudice a petition filed by Worldcall Interconnect, Inc. (Worldcall), pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (Act), and section 54.202 of the Commission’s rules, to be designated as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service support in its licensed service area in the state of New York.¹ As discussed in detail below, Worldcall’s network improvement plan, which is required for ETC designation, depends explicitly on an erroneous interpretation of the Commission’s rules and requirements. Accordingly, Worldcall’s petition, as filed, is procedurally defective.

II. BACKGROUND

2. *Statutory Requirements for ETC Designation.* Only carriers that have been designated as ETCs are eligible to receive federal universal service support.² Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.³ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier . . . that is not subject to the jurisdiction of a State commission.”⁴ Under that section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and

¹ WorldCall Interconnect, Inc., Petition for Designation as an Eligible Telecommunications Carrier in Warren and Washington Counties of the State of New York, CC Docket No. 96-45 (filed Oct. 20, 2008) (Petition); see 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202.

² See 47 U.S.C. § 254(e).

³ 47 U.S.C. § 214(e)(2); see *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming, Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc., Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000).

⁴ 47 U.S.C. § 214(e)(6).

necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁵ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁶ The Wireline Competition Bureau has delegated authority to perform ETC designations.⁷

3. *Commission Requirements for ETC Designation.* Carriers seeking designation by the Commission must file a petition containing the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is “not subject to the jurisdiction of a state commission”; (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution”; and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.⁸

4. In addition, section 54.202 of the Commission’s rules provides that an applicant seeking designation by the Commission must: (1) “[c]ommit to provide service throughout its proposed designated service area to all customers making a reasonable request for service”; (2) “[s]ubmit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its proposed designated service area”; (3) “[d]emonstrate its ability to remain functional in emergency situations”; (4) demonstrate that it will satisfy consumer protection and service quality standards; (5) demonstrate that it offers local usage comparable to that offered by the incumbent LEC; and (6) certify that it may be required to provide equal access to long distance carriers in certain circumstances.⁹

5. *Worldcall Petition.* On October 20, 2008, Worldcall filed a petition seeking designation as an ETC to provide wireless service throughout its licensed service area in the state of New York.¹⁰ Worldcall supplemented its petition with a filing on January 7, 2011,¹¹ in which it provided, among other things, a network deployment plan, as required under section 54.202(a)(1)(ii) of the Commission’s rules.¹²

III. DISCUSSION

6. *Jurisdiction.* In its petition, Worldcall provided an “affirmative statement” from the New York Department of Public Service (New York Commission) that it lacks jurisdiction to perform the

⁵ *Id.*

⁶ *Id.*

⁷ *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

⁸ *See id.* at 22948–49.

⁹ 47 C.F.R. § 54.202.

¹⁰ *See* Petition. The Bureau released a public notice seeking comment on this petition. *Comment Sought on the Petition of Worldcall Interconnect, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New York*, Public Notice, CC Docket No. 96-45, 23 FCC Rcd 17354 (2008). The Computer & Communications Industry Association filed comments in support of the application. *See* Comments of Computer & Communications Industry Association, CC Docket No. 96-45 (filed Jan. 5, 2009).

¹¹ *See* Supplement.

¹² *See* 47 C.F.R. § 54.202(a)(1)(ii).

requested ETC.¹³ Worldcall therefore has demonstrated that it is not subject to the jurisdiction of the New York Commission. Accordingly, we find that the New York Commission lacks jurisdiction to designate Worldcall as an ETC and this Commission has authority to consider Worldcall's ETC designation request.¹⁴

7. *Worldcall's Network Improvement Plan.* We conclude that Worldcall has failed to provide an acceptable network improvement plan, as required by section 54.202(a)(1)(ii) of our rules.¹⁵ As Worldcall admits, its network improvement plan is "inaccurate," "unattainable," and "not . . . sustainable," unless Worldcall would be eligible to be "reimbursed based on its own costs" without regard to the identical support rule.¹⁶ The identical support rule, set forth in section 54.307 of the Commission's rules, currently provides that competitive ETCs are eligible to receive the same amount of support, per line served, as the incumbent provider in the same area.¹⁷ Worldcall asserts, however, that the identical support rule would not apply to any support it receives as a competitive ETC because Worldcall would seek high-cost support based on its own costs.¹⁸ Specifically, Worldcall claims that the Commission, in the *Interim Cap Order*, "abandon[ed] the Identical Support Rule for those carriers that choose to conduct their own cost studies," and Worldcall intends to avail itself of this purported exception to the rule.¹⁹

8. Worldcall's assumption—that the identical support rule would not apply to a company that submits its own cost study—is incorrect. The *Interim Cap Order* provides that a competitive carrier providing its own cost data "will not be subject to the interim cap" that the order imposed.²⁰ The *Interim Cap Order* does not, however, state that a carrier submitting its own costs would be eligible to receive support without regard to the existing identical support rule, nor does the order specify an alternative methodology for calculating support. While the Commission noted in the *Interim Cap Order* that it was considering eliminating the identical support rule, it has not, to date, adopted any such rule change.²¹ We also note that Worldcall's proposed interpretation of the *Interim Cap Order* is in tension with the purpose of the order—limiting growth in high-cost support.²²

9. Accordingly, we reject Worldcall's network improvement plan because it explicitly depends on Worldcall's incorrect assumption that the identical support rule would not apply to any support it could receive as an ETC. Without an acceptable network improvement plan, Worldcall's petition fails to satisfy section 54.202(a)(1)(ii) of the Commission's rules. We therefore dismiss without prejudice Worldcall's ETC petition for failure to comply with the Commission's requirements for ETC designation.²³

¹³ Petition 5–6, Ex. A.

¹⁴ See 47 U.S.C. § 214(e)(6).

¹⁵ See 47 C.F.R. § 54.202(a)(1)(ii).

¹⁶ Supplement at 1–2. See also, e.g., Petition at 2 (asserting that Worldcall would be entitled to receive support based on its own costs rather than the local incumbent carrier's costs).

¹⁷ See 47 C.F.R. § 54.307.

¹⁸ See Petition at 1–2.

¹⁹ Petition at 2 (citing *High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*)).

²⁰ *Interim Cap Order*, 23 FCC Rcd at 8848, para. 31.

²¹ *Id.* at 8844, para. 21 & n.68.

²² *Id.* at 8834, 8837–38, paras. 1, 6–7.

²³ Because we dismiss Worldcall's petition for failure to include an adequate network plan, we decline to consider whether the petition meets the other requirements for ETC designation.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the petition of Worldcall Interconnect, Inc. for designation as an eligible telecommunications carrier in the state of New York IS DISMISSED WITHOUT PREJUDICE.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau