

BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

FILED
PUBLIC SERVICE COMMISSION
OF WYOMING
DEC 30 2008

IN THE MATTER OF THE PETITION OF)
GOLD STAR COMMUNICATIONS, LLC,)
d/b/a SILVER STAR PCS, FOR) Docket No. 62042-2-TA-08
DESIGNATION AS AN ELIGIBLE) Record No. 11935
TELECOMMUNICATIONS CARRIER)

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE
(Filed December 30, 2008)

On October 27, 2008, Gold Star Communications, LLC (Gold Star) filed its petition for designation as an eligible telecommunications carrier (ETC) which, if granted, would permit it to receive federal universal service high cost funds. As indicated in its application, Gold Star provides a Commercial Mobile Radio Service (CMRS) and is a common carrier as defined by the code of federal regulations.

In its application, Gold Star walks through the various requirements for becoming an ETC, as set forth in federal statute as well as federal and state rules, and then goes on to explain how it meets each of these requirements. These requirements consist of a wide range of matters including, but not limited to, providing specified supported services, advertising its services to the general public, and demonstrating the carrier's technical, financial, and managerial ability to provide various aspects of service. The Office of Consumer Advocate (OCA) leaves it to the Wyoming Public Service Commission to determine whether it agrees with Gold Star that each of these specific requirements has been met. Instead, the OCA wishes to focus its comments purely on the aspect of whether granting the application would serve the public interest.

The underlying statute that frames the eligible telecommunications requirements and the state commission's role in determining whether a carrier has met those requirements is found at 47 U.S.C. 214 (e). For the purposes of these comments, we point the Commission's attention to the last sentence of 47 U.S.C. 214(e)(2):

Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.¹

The federal statute does not, at section 214, delineate the criteria that should be used to determine the public interest. However, 47 U.S.C. 214(e)(1) does refer back to the fact that the purpose of becoming an eligible telecommunications carrier is to become eligible to receive support “in accordance with section 254” of the 1996 federal Act. Section 254 of the 1996 federal Act provides much more guidance on public interest matters, as it sets forth the principles for the preservation and advancement of universal service and the policies upon which universal service decisions should be based. These principles include the provision of quality services at “just, reasonable and affordable rates” and “specific and predictable support mechanisms” among others.

Section 254(f) provides additional direction to the states relative to their role in the overall national telecommunications plan by indicating that “[a] State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” It is thus clear that the Wyoming Public Service Commission has a role to play in granting or not granting Gold Star’s application, but in doing so, none of the Commission’s rules or regulations should be viewed or interpreted in any manner that would be inconsistent with the federal policy. It is with this background that the OCA encourages the Commission to determine whether granting Gold Star’s ETC application is in the public interest.

On page 7, at Section V of its application, Gold Star concludes that designating it as an ETC will “serve the public interest.” In support of this conclusion, it indicates that it will allow it to (1) maintain rates for its local exchange services that are affordable and reasonable comparable to rates being charged for the same services in urban areas; and (2) upgrade its telecommunications facilities and equipment as necessary to meet

¹ Page 7 of the application indicates that Gold Star is seeking ETC designation for its federally licensed areas, which clearly appear to include some or all of the service area of Silver Star Communications, a rural telephone company. The licensed area also appears to include some of the territory served by Qwest, a non-rural carrier in Wyoming.

evolving service requirements and maintain high quality service. The OCA questions the accuracy of the first statement regarding the comparability of rates to urban areas given the Commission's most recent comments to the Federal Communications Commission. Specifically, in a document dated November 26, 2008², the Wyoming Public Service Commission submitted comments to the FCC indicating that the current federal universal service fund was insufficient with the result being high service rates and non-rural rates in Wyoming that are not comparable to rates in urban areas. Given the Commission's recent and on-going view of insufficiency of the fund, it is not at all clear from Gold Star's application how this comparability would come about in its territory simply by granting it ETC status.

This is even more mysterious given the universal service fund order released by the FCC on May 1, 2008³ that adopted an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive. With two limited exceptions⁴, the order caps the total annual competitive ETC support for each state at the level of support that competitive ETCs in the state were eligible to receive during March 2008 on an annualized basis. Thus, if any additional competitive ETCs (such as Gold Star) are granted ETC status by the Wyoming Commission and are thus eligible to receive some federal universal service high cost funds, the amount of funds to the other competitive ETC's in Wyoming will be reduced to make sure that the total remains at the designated capped level. The specific computation is described in paragraph 27 of the FCC's May 1, 2008 Order:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would

² This document is a letter to the FCC Chairman and Commissioners and is referenced as being *Comments in the matter of Intercarrier Compensations Reform, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, and WC Docket Nos. 03-109, 04-36,05-337, and 06-122.*

³ Order in WC Docket No. 05-337 and CC Docket 96-45 adopted April 29, 2008 and released May 1, 2008.

⁴ Neither exception appears to apply to Gold Star. One exception is if the competitive ETC files cost data demonstrating that its costs meet the support threshold in the same manner as that of the incumbent local exchange carrier. No such cost data was submitted by Gold Star with its application. The second exception is if the competitive ETC is serving tribal lands or Alaska Native regions. Gold Star indicates on page 13 of its application that it is not seeking to serve tribal areas.

have received under the existing (uncapped) per-line identical support rules, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.

The 2009 first quarter data of the Universal Service Administrative Company shows that there are more than 123,000 competitive ETC lines already being reported in Wyoming. The lines for the five competitive ETCs reporting lines and receiving federal support⁵ would be reduced under the recent decision of the FCC. There is no discussion in the application about this aspect of the public interest debate. Is it prudent and reasonable to grant Silver Star's wireless customers (via the grant of the Gold Star application) a piece of the federal universal service fund pie at the expense of Silver Star's Afton landline customers? Or, more realistically, is it prudent and reasonable to reduce Silver Star's Afton landline customers' federal support through the granting of the Gold Star ETC application with the result that the Wyoming Universal Service Fund will pick up the difference for the Silver Star Afton customers? Carrying this through to its logical conclusion, is it reasonable for all Wyoming customers to pay more in Wyoming USF surcharges to support the Silver Star customers who will receive less federal universal service funds and thus, need more Wyoming universal service funds?⁶

The public interest debate has changed with the issuance of the FCC's May 1, 2008, order capping the competitive ETC funding. The question that the Commission must now consider is the appropriate distribution of a limited amount of competitive ETC

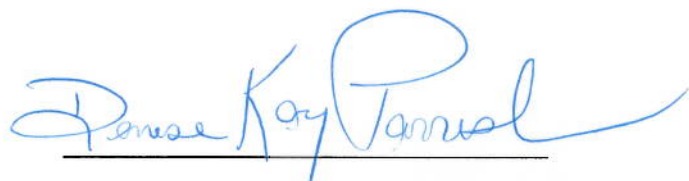
⁵ The competitive ETCs are listed in the USAC tables as Cellular One, Western Wireless, Union Cellular, Silver Star, and Advanced Communications Technology.

⁶ The OCA has not been able to obtain the data necessary to compute the immediate impact on the other carriers and Wyoming customers that would occur if Gold Star's application were to be granted. However, we caution the Commission to look further out from the immediate impact, as the number of lines of competitive carriers appear to be growing, and thus, the impact of the cap is likely to grow over time.

funding within Wyoming given that the competitive portion of the federal high cost support is no longer growing. Should existing ETCs receive less funding so that new competitive ETCs may also receive support? Is this consistent with the principle of a “sufficient and predictable” support mechanism? Does increasing the level of state support, and the state support assessment, square with the principle of “maintaining and advancing” universal service and affordable rates – particularly when the Commission has determined that the rates do not currently meet the required annual comparability test?

We offer these questions and matters for the Commission’s consideration as it deliberates and decides the matter of whether or not to grant Gold Star its requested ETC status. We have chosen not to become a formal intervener in this matter, and have chosen not to offer a formal opinion on whether Gold Star’s application should be granted or not. However, we do urge the Commission to fully consider the ramifications of its decision in this matter as it may impact existing Wyoming customers who already face some of the highest telecommunications rates in the nation.

Respectfully submitted this 30th day of December, 2008



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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2008, I served the foregoing comments upon the individual(s) below, by the method(s) indicated.

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