

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION FOR WIRELESS CARRIERS [199 IAC 39.2]	DOCKET NO. RMU-03-13
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**ORDER ADOPTING RULE**

(Issued May 24, 2004)

Pursuant to the authority of Iowa Code §§ 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) is adopting the amendments attached hereto and incorporated herein by reference. On August 25, 2003, the Board issued an order in Docket No. RMU-03-13, In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, "Order Commencing Rule Making." In the rule making, the Board proposed to adopt new paragraph 39.2(5)"c" regarding the granting of eligible telecommunications carrier (ETC) status to wireless telecommunications carriers based on their certification from the Federal Communications Commission (FCC). The Board also proposed to provide additional filing and compliance requirements for those wireless carriers that have received an ETC designation.

"Notice of Intended Action" was published in IAB Vol. XXVI, No. 6 (9/17/03) p. 500, as ARC 2773B. Written comments were filed on or before November 10, 2003, by the following nine companies: WWC License, LLC (Western Wireless), U.S. Cellular Corporation (US Cellular), Midwest Wireless Iowa (Midwest Wireless), Iowa

Wireless Services (Iowa Wireless), NPCR, Inc., d/b/a Nextel Partners (Nextel), Qwest Corporation (Qwest), Iowa Telecommunications Association (ITA), Rural Iowa Independent Telephone Association, and the Consumer Advocate Division of the Department of Justice. A public hearing to receive oral comments on the proposed amendments was held on Wednesday, December 10, 2003.

Initially, this rule making was divided into two distinct issues. The first issue addressed how the term "service area" should be defined for wireless carriers seeking ETC designation because the existing definition does not always align with the existing exchange boundaries for wireline carriers. The second issue addressed the Board's ability to impose the Board's established service quality rules on wireless carriers having ETC designation as well as the application of those rules to the wireless industry.

With respect to the proposed service area definition, neither Western Wireless, Iowa Wireless, Nextel, U.S. Cellular nor Midwest Wireless objected to the Board's attempts to simplify the ETC designation for process for wireless carriers. However, these parties indicated they did not agree with the proposed definition of "service area" as it relates to wireless carriers, i.e., that area where the wireless company has been licensed by the Federal Communications Commission to provide telecommunications service.

The focus of these parties' objection to the proposed "service area" definition centered on the Board's pre-existing rule, 199 IAC 39.2(1), which requires that each

ETC must offer services supported by the Universal Service Fund (USF) throughout the approved service area. The parties indicated that in many cases, a wireless carrier does not provide service throughout the FCC-licensed area and, therefore, if the proposed definition for "service area" were adopted, they likely would not be able to meet the requirement of subrule 39.2(1).

Nextel suggested that the Board amend the proposed definition of "service area" to reflect the area where the wireless carrier is seeking ETC designation. ITA and Qwest voiced their concerns over Nextel's proposal, stating that there should be a standard imposed that is to be met by all carriers and that Nextel's proposal would allow the wireless carrier to set its own individual standards.

The Board understands the wireless carriers' position on this issue. However, the Board disagrees with the suggestions raised by some of the carriers to amend the definition to reflect the service area as being only that area where the wireless carriers are seeking designation. The Board finds that the amendment suggested by Nextel would give too much latitude to the wireless carriers seeking ETC status by allowing them to define their own service area, apparently without restriction. As such, the proposed amendment would not provide a meaningful definition to the term "service area" as it relates to wireless carriers.

The Board will adopt its proposed definition for "service area" as it relates to wireless carriers. However, to address some of the wireless carriers' concerns over their ability to satisfy subrule 39.2, the Board will add a waiver provision to the

proposed rule that will allow a wireless carrier that does not have the facilities to serve its entire licensed area to seek a waiver of subrule 39.2.

Granting a waiver of subrule 39.2 in appropriate circumstances appears to be in accord with a recent FCC decision in which a wireless carrier offering services in Virginia received ETC designation in parts of its licensed service area in Virginia. Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, "Memorandum Opinion and Order," FCC 04-37 (rel. April 12, 2004). In reaching that decision, the FCC considered factors including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Id., ¶4. In following the example established by the FCC, the Board will consider all of these factors, and any other relevant factors, when determining whether to grant a waiver of subrule 39.2(1).

To ensure that a waiver of subrule 39.2(1) is consistent with the public interest, the Board will require that a wireless carrier seeking a waiver of 39.2(1) also provide a statement to the Board that it will take the necessary steps to provide service to a requesting customer within its licensed service area but outside its existing network coverage. The FCC identified several of the possible steps a wireless carrier might

take to provide service as: 1) the modification or replacement of the requesting customer's equipment, 2) the deployment of a roof-mounted antenna or other equipment, 3) adjustments to the nearest cell tower, 4) adjustments to the network or the requesting customer's facilities, 5) an offering of resold services from another carrier's facilities, and 6) employment or construction of an additional cell site, cell extender or repeater. Id., ¶16.

With respect to the proposed service quality rules, widely noted in the written comments were problems relating to the applicability of the Board's established service quality rules to the wireless industry. The Board acknowledges that the existing service quality rules that were initially proposed in this rule making were designed for wireline service and do not always apply to the wireless industry in a sensible manner. Therefore, the Board will not adopt the requirement that wireless carriers receiving ETC designation shall comply with the Board's established service quality rules. In addition, the Board will also withdraw the proposed requirement that wireless carriers that obtain ETC designation shall file documentation of their customer service agreements with the Board. The Board may initiate a subsequent rule making to address these concerns.

**IT IS THEREFORE ORDERED:**

1. A rule making proceeding, identified as Docket No. RMU-03-13, is adopted.

2. The Executive Secretary is directed to submit for publication in the Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 24<sup>th</sup> day of May, 2004.

## **UTILITIES DIVISION [199]**

### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4 and 476.2 and 47 U.S.C. § 214(e), the Utilities Board (Board) gives notice that on May 24, 2004, the Board issued an order in Docket No. RMU-03-13, In re: Eligible Telecommunications Carrier Designation for Wireless Carriers, "Order Adopting Rules," by which the Board adopted new paragraph 39.2(5)"c" regarding the granting of eligible telecommunications carrier (ETC) status to wireless telecommunications carriers based on their certification from the Federal Communications Commission (FCC). This rule is intended to redefine the term "service area" as it pertains to wireless telecommunications carriers and to increase the availability of wireless ETC status.

Notice of Intended Action was published in the IAB Vol. XXVI, No. 10 (9/17/03) p. 500, as ARC 2773B. Written comments were filed on or before November 10, 2002. A public hearing to receive oral comments on the proposed amendments was held on Wednesday, December 10, 2003.

Written comments were filed by the following nine parties: WWC License, LLC, U.S. Cellular Corporation, Midwest Wireless Iowa, Iowa Wireless Services, NPCR, Inc., d/b/a Nextel Partners, Qwest Corporation, Iowa Telecommunications Association, Rural Iowa Independent Telephone Association and the Consumer Advocate Division of the Department of Justice. A summary of the comments filed and the amendments adopted can be found in the Board's order located on the

Board's Web site, [www.state.ia.us/iub](http://www.state.ia.us/iub), or hard copy in the Board's Record Center, 350 Maple Street, Des Moines, IA 50319. The Board determined based upon the comments that the proposed rule 39.5(476) should not be adopted. The Board adopted the other proposed amendments.

These proposed rules are intended to implement Iowa Code § 476.2 and 47 U.S.C. § 214(3), and amends Chapter 39 – Universal Service.

The following amendments are adopted and will become effective July 28, 2004.

Item 1. Amend subrule **39.2(5)** by adding the following **new** paragraph "c":

c. In the case of a wireless telecommunications carrier, "service area" means that area where the wireless company has been licensed by the FCC to provide service.

1. If the application of this rule and the service requirement of 199—39.2(1), pose an undue hardship on a wireless telecommunications carrier seeking designation as an eligible telecommunication carrier, a wireless carrier may request a waiver of 199—39.2(1)(476), pursuant to 199—1.3(476).

2. Requests by a wireless telecommunications carrier for a waiver of 199—39.2(1)(476) must state, in addition to the requirements established in 199—1.3(476), the extent of the area in which the carrier is licensed to provide service by the FCC, the extent of the area in which the carrier is seeking designation, and the carrier's ability to expand universal service fund supported services throughout its licensed service area within a reasonable time frame. A request for a waiver under this paragraph must also include a statement that should a wireless carrier receive a request from a potential customer within its service area

but outside its existing network coverage, the wireless carrier will take a number of steps to provide service to that customer which may include modification or replacement of the requesting customer's equipment, deployment or installation of a roof-mounted antenna or other equipment necessary to provide service, cell tower adjustments, network or customer facility adjustments, an offer of resold services from another carrier's facilities to provide service, or the employment or construction of an additional cell site, cell extender or repeater

Item 2. Adopt the following new rule:

~~199—39.5(476) Standards for service quality for wireless carriers attaining designation as an eligible telecommunications carrier.~~

~~39.5(1) — A wireless carrier that has received designation as an eligible telecommunications carrier shall comply with the service quality rules set forth in 199—22.6(476) with respect to all services provided as an eligible telecommunications carrier.~~

~~39.5(2) — A wireless carrier that has received designation as an eligible telecommunications carrier shall file with the board documentation of the wireless carrier's customer service agreements that sets out all the rates, terms, and conditions applicable to its ETC eligible local calling plans.~~

May 24, 2004

/s/ Diane Munns

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Diane Munns  
Chairman