

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for designation as eligible telecommunications carrier (ETC) by Ganoco, Inc. d/b/a American Dial Tone. || DOCKET NO. 050542-TX
ORDER NO. PSC-06-0298-PAA-TX
ISSUED: April 14, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

PROPOSED AGENCY ACTION ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS CARRIER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

On August 11, 2005, Ganoco, Inc. d/b/a American Dial Tone petitioned the Florida Public Service Commission for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida. Specifically, American Dial Tone requested that it be granted ETC status in certain exchanges of BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Inc. (Sprint) and Verizon Florida (Verizon) for purposes of receiving federal universal service support. This is the third Competitive Local Exchange Carrier (CLEC) ETC petition to be brought before this Commission for consideration.

American Dial Tone is a FPSC-certificated CLEC which provides prepaid local exchange services in the BellSouth, Sprint, and Verizon service areas. In the Verizon and BellSouth areas, these services are provided using a combination of facilities obtained through a commercial agreement and resale services, whereas in Sprint areas, services are provided via resale. Upon designation as an ETC, American Dial Tone indicates that it will participate in and offer Lifeline and Link-Up programs to qualified low income consumers. Additionally, American Dial Tone has committed to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. The company has stated

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that it is not planning to seek universal service high-cost funding if it is designated as an ETC in Florida.

American Dial Tone is headquartered in Dunedin, Florida and was formed in 1999 to provide prepaid home phone service. American Dial Tone has approximately 102 agents who market and sell various types of services in 37 cities in Florida. The company has not previously filed for ETC designation nor is it seeking ETC status in any other state. American Dial Tone indicates that its accounts with the Federal Communications Commission (FCC) and Universal Service Administrative Company (USAC) are current, and it is not aware of any outstanding complaints or violations from the FCC.

American Dial Tone is requesting that it be granted ETC status in 117 Sprint, 95 Verizon and 182 BellSouth wire centers. We are granting the company ETC status in the requested BellSouth and Verizon non-rural wire centers. However, because American Dial Tone has not consummated a commercial facilities agreement with Sprint, and because Sprint's service is considered rural for universal service support purposes, and no public interest showing has been made for Sprint's territory as required by law, American Dial Tone will not be granted ETC status in Sprint's service area at this time.

We have authority under Section 364.10(2), Florida Statutes (2005), to decide a petition by a CLEC seeking designation as an eligible telecommunications carrier pursuant to 47 C.F.R. s. 54.201.

Analysis:

Federal Communications Commission (FCC) rules provide that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services and, (2) advertise the availability of such services and the related charges therefore using media of general distribution.

ETC Certification Requirements

CFR Rule 54.201(c), addresses a state commission's responsibilities related to ETC designation, stating:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. 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.

To qualify as an ETC, telecommunications carriers must provide nine services identified in CFR Rule 54.201(d)(1).

- 1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;
- 2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;
- 3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;
- 4) Single-party service or its functional equivalent Single party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- 5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;
- 6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion, of a telephone call;
- 7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- 8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- 9) Toll limitation for qualifying low-income consumers Toll limitation or Blocking restricts all direct dial toll access.

In addition to providing the above services, ETC's must advertise the availability of such services and the associated charges using media of general distribution.

New Certification and Reporting Requirements

The FCC's rules currently require all ETCs to make an annual certification, on or before October 1, that high-cost universal service support will be used for its intended purposes. By

Order No. FCC 05-46, the FCC maintained and augmented this requirement. The FCC now requires every ETC designated by the FCC who desires high cost support to submit the following information on an annual basis starting October 1, 2006:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the ETC is able to function in emergency situations;
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

This newly required information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act. However, if the ETC does not seek high cost funding, this additional information filing is not required.

By Order No. PSC-05-0824-FOF-TL, issued August 15, 2005, Docket No. 010977-TL, In Re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314, we adopted these new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support. In the Order, we noted that to the extent a Florida ETC believes that it has already submitted a report or information to us that would comply with the list above, it may certify in its annual letter which proceeding and on what date such report or information was provided to us, in lieu of resubmitting the required information. However, if a company is not seeking high cost reimbursement, this additional information filing is not required.

Definition of "Rural" for Universal Service Purposes

Based on a Joint Board recommendation, in 1997, the FCC adopted for universal service purposes, a definition of rural carrier that mirrored the definition of "rural telephone company" found in section 3(37) of the Telecommunications Act (Act). Pursuant to this definition, a rural telephone company is a local exchange carrier operating entity to the extent that the entity:

(A) provides common carrier service to any local exchange carrier study area that does not include either--

- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
- (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

The FCC required carriers serving study areas with more than 100,000 access lines to file rural self-certifications in 2000 explaining how they met the criteria in subsections 3(37)(A) or (D). Thereafter, such carriers were required to file only in the event of a change in their status. On July 26, 2000, Sprint-Florida self-certified to the FCC as a rural carrier for purposes of universal service under subsection 3(37)(D) of the Act (See Attachment B). Sprint explained that it serves three communities in Florida with populations greater than 50,000, Cape Coral, Deltona, and Tallahassee. Sprint indicated that the total number of access lines served by Sprint in Florida was 2,160,161, and only 12.01% of Sprint's Florida access lines were located in communities of more than 50,000.

The FCC is examining whether it should continue to use the statutory definition of “rural telephone company” to determine which carriers are rural carriers for high cost universal service purposes. As noted in a October 7, 2004 Briefing Memorandum to Commissioners, the Joint Board sought comment on whether the statutory definition of “rural telephone company” should still be used. To date, the FCC has received comments and reply comments, but no Order has been issued.

Since Sprint is presently classified as a rural carrier for purposes of universal service, any carrier requesting ETC status within Sprint’s territory must make a showing that it is in the public interest to do so. CFR Rule 54.201(c) states that “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.”

Congress did not establish specific criteria to be applied under the public interest tests. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.

When initiating a public interest test for an ETC designation in a rural area, the FCC considers a variety of factors in the overall ETC determination, including a cost-benefit analysis of the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor’s service offering. They also perform an examination to detect the potential for “creamskimming” effects if the applicant requests ETC status below the service area level. The potential for “creamskimming” arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC’s service area. By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC’s costs of serving that wire center because support for each line is based on the rural telephone company’s average costs for serving the entire service area unless the incumbent LEC has disaggregated its support. The FCC also considers if the designation of an ETC will affect the size and sustainability of the fund. The FCC strongly encourages state commissions to consider the same factors in their public interest reviews.

Annual ETC Certifications

By Order No. PSC-05-0824-FOF-TL, issued August 15, 2005, Docket No. 010977-TL, In Re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314, we certified to the FCC that ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, TDS Telecom, and Smart City Telecom will be using interstate high-cost universal service support in 2006 in a manner that complies with Section 254(e) of the federal Telecommunications Act of 1996.

Facilities Requirement

As of March 11, 2006, UNEs are no longer available to meet the statutory requirement of Section 54.201(d), Code of Federal Regulations (C.F.R.). Our prior granting of ETC status to Budget Phone, Inc. was based on UNEs meeting the statutory requirement of "own facilities," which it did since it was granted prior to March 10, 2006. In November, 2005, our staff spoke with FCC staff to request a clarification of what would occur with the ETC facilities requirement after March 10, 2006 for carriers which were using UNEs to meet the facilities requirement for universal service purposes. On March 13, 2006, our staff received a call from FCC staff stating that the FCC has no official position on the issue, has no plans to act on the issue, and that states should do what they believe is appropriate.

In order to decide what course of action would be most practical and effective, we rely heavily on the FCC's Commissioners comments pertaining to the FCC's Order 97-157 - *Report & Order In the Matter of Federal-State Joint Board on Universal Service*. It is evident from the comments in the FCC order that the Commissioners were attempting to create a policy that would foster true competition in the telecommunications industry. They wanted to devise a system that would not undermine the Federal-State Joint Board recommendations in terms of distinguishing carriers who were ineligible to receive universal service support because they provided service strictly through resale, and those who attempted to provide services through facility oriented mechanisms. Accordingly, the Commissioners interpreted the term "facilities" to mean, "any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254 (c)(1)." Additionally, the Commissioners agreed that carriers who offered federally supported services through the use of UNEs, in whole or in part would satisfy the facilities requirements as prescribed in 214(e).

Specifically, the Commissioners stated that it's unlikely that Congress intended to deny designation as eligible telecommunications carriers to carriers who relied on UNEs in whole or in part, since UNEs were one of three primary paths of entrance into local markets. The Commissioners commented that when a requesting carrier obtains UNEs in accordance with Section 214(e)(1)(A), assuming it adheres to the "facility" definition, the Commission deemed the carrier to have "exclusive use of that facility for a period of time."

We also researched the FCC Rule as to what would meet the "facilities" requirement after March 10, 2006, for universal service purposes. Section 54.201(d), Code of Federal Regulations (C.F.R.) provides that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services and, (2) advertise the availability of such services and the related charges therefore using media of general distribution.

Section 54.201(f), C.F.R., states that "For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart.

Section 54.201(e), C.F.R., states that “For the purposes of this section, the term *facilities* means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.”

Although carriers, as of March 11, 2006, no longer are using UNEs to meet the facilities requirement under Section 54.201(d) C.F.R., they are using the same physical components of the network for the transmission and routing of services. We note that although Section 54.201(f), C.F.R. states that facilities obtained as UNEs meet the facilities requirement, that Section also provides that the term “own facilities” is not limited to UNEs.

We believe that the leasing of the physical components of the telecommunications network for the transmission or routing of services, whether as UNEs or through commercial agreements, meet the statutory definition of “own facilities” for universal service purposes. Carriers are using the same physical components of the telecommunications network for the transmission or routing of services on March 11, 2006 as they used on March 10, 2006, only the terms between the two carriers have changed.

Decision

We have authority under Section 364.10(2), Florida Statutes (2005), to decide a petition by a CLEC seeking designation as an eligible telecommunications carrier pursuant to 47 C.F.R. s. 54.201.

American Dial Tone is a pre-paid telephone company and does not own any facilities in the State of Florida. However, as discussed above, American Dial Tone meets the statutory facilities requirement by leasing the physical components of the telecommunications network necessary to provide the nine services identified in CFR Rule 54.201(d)(1) through its Commercial Agreements. American Dial Tone has the ability to meet the nine-point list of services that are supported by federal universal support mechanisms using its own facilities or a combination of its own facilities and the resale of another carrier’s services. American Dial Tone provided data indicating that approximately 823 (or 20.02%) of its customers are being provided service through Commercial Facilities Agreements (CFAs), and also provided affidavits showing commercial agreements had been signed with BellSouth and Verizon. American Dial Tone has not executed an agreement with Sprint to serve customers in the Sprint service area. Therefore, American Dial Tone cannot meet the FCC’s requirement of using its own facilities in Sprint’s territory, making it ineligible to receive ETC status in Sprint’s area. However, should American Dial Tone consummate a commercial facilities agreement with Sprint, and make a showing to the Commission that granting American Dial Tone ETC status in Sprint’s service area is in the public interest, it would be granted ETC status in Sprint’s wire centers.

American Dial Tone has acknowledged the requirements of the Florida Lifeline program and has agreed to adhere to the program which provides qualified customers a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state lifeline program requiring a \$3.50 credit under the Florida eligibility

criteria. American Dial Tone indicates that it will provide the \$3.50 credit to qualified clients, advertise the availability of Lifeline, and begin offering these services within 90 days of receiving ETC status.

American Dial Tone commits to use federal universal support only for the provision and maintenance of facilities used for telecommunications services. American Dial Tone will be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida. Additionally, American Dial Tone has indicated that it will abide by all Florida Statutes, Rules, and Commission Orders regarding ETCs.

Based on the above, American Dial Tone will be granted ETC status in the Verizon and BellSouth wire centers identified in Attachment A. However, American Dial Tone will not be granted ETC status in Sprint's service area unless it consummates a commercial facilities agreement between American Dial Tone and Sprint and American Dial Tone makes a showing to us that granting it ETC status in Sprint's rural wire centers is in the public interest. Should American Dial Tone decide to seek universal service high cost funds, it will be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida, and be required to adhere to the new certification and reporting requirements as detailed in our analysis in this Order.

We emphasize that we are not finding that commercial facilities agreements are tantamount to §252 interconnection agreements. We are finding only that in this particular matter the substantive provisions of the instant commercial agreement will satisfy the "own facilities" requirement. Further, our decision is based on the specific facts in this docket. Accordingly, we caution that our decision should not be considered as precedent in the consideration of future requests for the granting of ETC status to carriers in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Ganoco, Inc. d/b/a American Dial Tone's Petition for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida for purposes of receiving federal universal service support is granted in part. Specifically, American Dial Tone's request is granted as to the specified exchanges of BellSouth Telecommunications, Inc., and the specified exchanges of Sprint-Florida, Inc.. It is further

ORDERED that Ganoco, Inc. d/b/a American Dial Tone's Petition for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida is denied as it relates to the request for specified exchanges of Verizon Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of April, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: 
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 5, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.