

GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

PUBLIC SERVICES COMMISSION

In re:) Docket No. 589
)
Application of)
Choice Communications, LLC for) Order No.: 53/2010
Eligible Telecommunications Carrier)
Designation in the U.S. Virgin Islands)
_____)

ORDER

WHEREAS, on January 29, 2010, Choice Communications, LLC (hereinafter “Choice”) filed an application with the Virgin Islands Public Services Commission (“PSC” or the “Commission”) for designation as an Eligible Telecommunications Carrier (“ETC”) in the U.S. Virgin Islands; and

WHEREAS, on February 2, 2010 and on February 5, 2010, Choice received Interrogatories from the PSC’s consultant, relating to the application of Choice Communications, LLC for designation as an Eligible Telecommunications Carrier in the U.S. Virgin Islands; and

WHEREAS, on February 5, 2010 and on February 10, 2010, Choice responded to Interrogatories; and

WHEREAS, on February 19, 2010, the PSC’s telecommunications consultants submitted a preliminary analysis of Choice’s ETC application and recommended that Choice’s ETC application be conditionally granted; and

WHEREAS, on March 2, 2010, the Commission met in regular session at its offices located at Barbel Plaza, St. Thomas, U. S. Virgin Islands to consider Choice’s ETC application; and

WHEREAS, on March 2, 2010, the Commission voted to appoint The Honorable M. Thomas Jackson (“Hearing Examiner”) as the Hearing Examiner to preside over the review of Choice’s ETC application; and

WHEREAS, on March 29, 2010, Choice and the Staff of the Commission (“Staff”), by their respective attorneys, entered into a Stipulation to resolve issues related to Choice’s ETC application, in which Staff recommends conditional approval of Choice’s ETC application; and

WHEREAS, on April 13, 2010, the Hearing Examiner conducted hearings on Choice's ETC application on St. Thomas and St. John, and on April 14, 2010, a third hearing was conducted on St. Croix; and

WHEREAS, on May 19, 2010, the Hearing Examiner submitted his report and recommendations to the Commission; and

WHEREAS, on June 17, 2010, the Commission met in regular session at the Port Authority Conference Room at the Henry Rohlsen Airport on St. Croix, U.S. Virgin Islands to vote on Choice's ETC application; and

WHEREAS, at the aforementioned meeting, the Hearing Examiner submitted his Report to the Commission (see attached); and

WHEREAS, *inter alia*, the Hearing Officer recommended that Choice's ETC application be granted; and

WHEREAS, upon deliberation and consideration, the Commission voted to adopt the recommendations of its Hearing Examiner regarding Choice's ETC application retroactive to March 30, 2010; and


NOW THEREFORE, it is hereby **ORDERED** that the Hearing Examiner's recommendations be **ADOPTED** retroactive to March 30, 2010; and

Finally, it is hereby **ORDERED** that Choice's ETC application is **GRANTED** retroactive to March 30, 2010.

Dated: ^{July} ~~June~~ 07, 2010

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FOR THE COMMISSION



Joseph B. Boschulte
Chair

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HEARING EXAMINER'S REPORT

This proceeding involves a request by Choice Communications, LLC. ("Choice") to be designated as an "Eligible Telecommunications Carrier," or "ETC," in the United States Virgin Islands ("U.S.V.I.") under the federal government's "Universal Service" program. Choice provides "commercial mobile radio service," or "CMRS" more commonly known as cell phone service, in the U.S.V.I. Choice operates its wireless network in the U.S.V.I. under the authority of spectrum licenses granted by the federal government.

As discussed below, the record in this matter clearly establishes that Choice is qualified to be an ETC in the U.S.V.I., and that the public's interest of the U.S.V.I. would be served by granting Choice's application. I therefore recommend that the Public Services Commission ("PSC" or "Commission") designate Choice as an ETC.

I. Choice's Application for ETC Status.

a. PROCEDURAL HISTORY

On January 29, 2010, Choice filed its "Application for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands" ("Application") with the Commission. On February 2, 2010, the Commission's Consultants Georgetown Consulting Group ("GCG") sent its first set of interrogatories to Choice. Choice responded on February 5, 2010. GCG submitted a second set of questions on February 5, 2010 via e-mail to clarify specific points in Choice's Application and Set 1 responses. Choice provided a timely response to Set 2 on February 10, 2010. On February 19, 2010, GCG submitted a preliminary report to the Commission outlining its findings based upon the threshold review of Choice's application. On March 2, 2010, the Commission held a Special Meeting on St. Thomas and upon deliberation and review created Docket 589 to determine Choice's ETC status. The Commission also appointed Commissioner M. Thomas Jackson as

Hearing Examiner (“Hearing Examiner”).¹ The Hearing Examiner determined that it was in the public’s interest to hold hearings on all three islands. Hearings were held on St. Thomas and St. John on April 13, 2010 and on St. Croix April 14, 2010.²

b. BACKGROUND ON APPLICANT

Choice currently provides Internet access services to business and residential customers throughout most of the U.S. Virgin Islands using dial-up and a variety of wireless broadband technologies. It also provides fixed wireless broadband services to business customers and operates Wi-Fi hot spots in several locations. Choice holds twenty (20) wireless licenses from the Federal Communications Commission (“FCC”) but does not currently provide local mobile wireless voice services such as cellular or similar wireless services in the U.S.V.I. It asserts that it has sufficient CMRS and other licensed spectrum to meet projected demand for at least five (5) years.³ It does not currently offer its U.S.V.I. services on a common carrier basis.⁴

Choice is a wholly owned subsidiary of Atlantic Tele-Network, Inc. (“ATNI”). ATNI is also the parent of Guyana Telephone and Telegraph Company, Limited, the national telecommunications carrier of Guyana, Sovernet, a wire line telecommunications carrier in Vermont, Commnet Wireless, LLC, a wireless carrier in thirteen (13) western and southern states and Bermuda Digital Communications, Limited, the largest cellular carrier in Bermuda. ATNI is in the process of acquiring certain Verizon Wireless properties in the south and mid-west of the United States.

c. STATUTORY BACKGROUND AND REQUIREMENTS

The term “universal service” refers to the traditional federal policy, in the telecommunications industry, of taking steps to ensure that all parts of the United States (including possessions and territories such as the U.S.V.I.) have widely available, high-quality telephone service. In general, the federal government has pursued this policy by providing financial subsidies (either directly or indirectly) to telephone companies that operate in areas where it is expensive to provide telephone service.

This federal policy is embodied in two provisions in the Federal Communications Act: Section 254, and Section 214(e). 47 U.S.C. §§ 214(e), 254. Section 254 deals with

¹ See, *PSC Order No. 37/2010*.

² See, *Notice of Scope and Schedule*.

³ See, *Choice’s response to Set 1, Question 3*.

⁴ In telecommunications, a common carrier is a provider that offers service under a license or authorization by a regulator, without discrimination and for a fee, to any person in its service area that wants it.

the definition of “universal service” and what state and federal regulators are supposed to do to clarify and expand on that definition over time. Section 214(e) deals with the designation of telephone companies as ETCs.

The “incumbent” telephone company in the U.S.V.I.--, Innovative Telephone – will almost always be an ETC. The rules for designating additional, “competitive” ETCs are slightly different depending on whether the area where ETC designation is sought is “rural” or not. If the area is not rural, then a state commission such as the U.S.V.I. Public Services Commission must designate, as additional ETCs, any entity that is technically qualified.⁵ If the area is rural, then the state commission may designate additional ETCs, if it finds that doing so is in the public’s interest. *See* 47 U.S.C. § 214(e)(2). The U.S.V.I. is a rural area for these purposes. In summary:

- Section 47(a) specifically empowers the Commission to grant requests for ETC status, including requests by wireless carriers such as Choice, and specifically empowers the Commission to exercise continuing oversight over ETCs to ensure that they continue to meet applicable regulatory requirements.
- Section 47(b) establishes certain specific requirements that any ETC must meet. These are: (1) a commitment to provide service throughout the proposed area for which ETC status is granted, on a timely basis and within a reasonable period of time (including making adjustments to its network if appropriate); (2) submission of a Five (5)-year plan showing specific network improvements to be made using universal service funds; (3) a demonstrated ability to remain functional in emergencies, including back-up power and alternative routing capabilities; (4) a demonstrated commitment to applicable consumer protection and service quality standards; and (5) an acknowledgement that the Commission may require the ETC to provide “equal access” to long distance carriers, if no other ETC is doing so.
- Section 47(c) requires the Commission to find that granting an ETC petition is in the public’s interest, including (1) the benefits of increased consumer choice and (2) the unique advantages and disadvantages of the applicant’s service offerings.
- Section 47(d) requires ETCs to retain records required to demonstrate to an auditor that the support received has been used consistently with the rules governing high-cost universal support.
- Section 47(e) and 30 V.I.C. §45A calls on the Commission to act on an application within sixty (60) days of receipt of a completed application.

⁵ For purposes of the federal Communications Act, territories and possessions are treated the same as states. *See* 47 U.S.C. § 153(40), which says that, in the Communications Act, “the term ‘State’ includes the District of Columbia and the Territories and possessions.”

In addition to the statutory requirements under Section 214(e) of the Federal Act, both Title 30 and the FCC rules require any applicant for ETC designation to:

- (1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

- (A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

- (B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

- (1) Modifying or replacing the requesting customer's equipment;

- (2) Deploying a roof-mounted antenna or other equipment;

- (3) Adjusting the nearest cell tower;

- (4) Adjusting network or customer facilities;

- (5) Reselling services from another carrier's facilities to provide service; or

- (6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

- (ii) Submit a five (5)-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. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to

ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Certify that the carrier acknowledges that the FCC 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.⁶

d. SUMMARY OF THE EVIDENCE

i. Stipulation

On March 29, 2010, the Staff of the PSC and representatives from Choice met in Washington, D.C. to craft a settlement agreement in the interest of economic efficiency and expedience. The outcome of that meeting was a six (6) page document that recommended to the Hearing Examiner the areas of full agreement between the parties on Choice's ETC status and its ongoing regulatory relationship with the Commission. The Hearing Examiner accepted the parties' agreement, and entered it formally into the record during the April 13, 2010, hearing on St. Thomas.

ii. Public Comment

There were no comments submitted to the Commission regarding Choice's ETC Designation.

II. Findings of Fact

Based upon the foregoing, I recommend that the Commission adopt the following Findings of Fact and Conclusions of Law:

1. Under Section 254 (e) of the Telecommunications Act of 1996 (the "Act"), in order for a telecommunications carrier to receive support from the federal Universal Service Fund ("USF" or "Fund") it must be designated as an Eligible Telecommunications Carrier ("ETC"). Section 214(e) of the Act assigns primary responsibility for designating ETCs to the state. 30 V.I.C. § 45a specifically grants the Commission the authority to designate any telecommunications carrier as an ETC. As described in more detail below, the granting of Choice Communications', LLC ("Choice") ETC Application is in the public's interest.

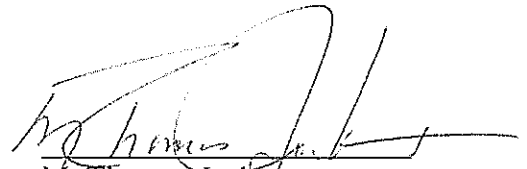
⁶ 47 C.F.R. § 54.202(a). *See also*, 30 V.I.C. §45a.

2. Under 47 U.S.C. § 214(e)(1)(A), the applicant for ETC designation must offer the services that are supported by USF either using its own facilities or a combination of its own facilities and resale of another carrier's services. However, the FCC has clarified that the applicant need not actually offer the services at the time of application. Instead, the applicant must demonstrate its commitment to provide the supported services upon designation.
3. Choice will offer dual tone multi-frequency signaling to facilitate transport through and between its network and the networks of other carriers and provide single party service, access to 911 ("911") services and emergency 911 ("E911") services when they are deployed, access to operator assistance, access to long distance services, access to directory assistance and access, without charge, to toll blocking services for qualifying Lifeline and Link-up customers. Choice also agrees to offer local usage plans comparable to those offered by the incumbent local exchange carrier, including an unlimited local usage plan.
4. Choice will immediately respond to reasonable requests for service from customers and will adhere to the six (6) step process specified in 30 V.I.C. § 45a in the event a customer's request for service cannot be filled immediately using Choice's existing facilities and will provide the supported services throughout the U.S. Virgin Islands on a common carrier basis.
5. Choice will use any USF support it receives to construct and maintain network facilities capable, at a minimum, of transporting and transmitting voice grade calls throughout the U.S. Virgin Islands and only for the purposes intended by the Act.
6. Choice will build expanded facilities primarily using its own funds and agrees that priority in using USF will be placed on construction of facilities in areas that are currently unserved or underserved. To the extent economically feasible, any facilities constructed by Choice using USF will be capable of providing broadband services in addition to voice grade services.
7. Choice will advertise the supported services using a variety of media including newspapers, radio and television. Choice will publicize the availability of Lifeline and Link-up services in unemployment, community health, social security and public assistance offices and other areas where eligible consumers are likely to find it.
8. Choice has met the commitments required for ETC designation under federal and U.S.V.I. statutes. Specifically, Choice will provide service within a reasonable time by expanding or modifying its network and has presented a reasonable five (5)-year plan for construction of new facilities or upgrade of existing facilities to improve service throughout the U.S.V.I.

9. Choice will be able to remain functional for a reasonable amount of time in an emergency and will meet applicable consumer protection and service quality standards.
10. Choice could be required to provide equal access to long distance carriers in the event no other carrier provides equal access.
11. Granting of Choice's ETC Application will have no significant impact on the overall size of federal USF support or on the funding provided to the incumbent local exchange carrier. Funding provided to competitive ETCs has been frozen by the FCC on an interim basis at the level received in each state in March 2008 annualized pending comprehensive USF reform and will not change if the Application is approved. In the event the interim cap was lifted, the amount of funds that would be provided to Choice would be insignificant relative to the overall size of the Fund.
12. Choice will submit to the Commission on an annual basis starting August 31, 2010, and every August 31 thereafter, the following records and documentation, in addition to any other information or reports that the Commission may reasonably request from time to time:
 - a. Choice's progress towards meeting its build-out plans;
 - b. Information on any outage lasting at least thirty (30) minutes and potentially affecting either at least ten (10) percent of the end users served or 911 facilities;
 - c. The number of requests for service from potential customers within Choice's service area that were unfulfilled for the past year;
 - d. The number of complaints per 1,000 handsets;
 - e. Choice's compliance with the CTIA Consumer Code;
 - f. Choice's ability to function in emergency situations;
 - g. Choice's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
 - h. Choice's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

13. Choice agrees to the document retention requirements required under 30 V.I.C. § 45a.
14. Choice will adhere to the terms agreed to in the Choice-PSC Stipulation Agreement dated April 2, 2010.

Date 19 May 2010


M. Thomas Jackson
Hearing Examiner