

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION
OF NEW CINGULAR WIRELESS PCS, LLC,
A SUBSIDIARY OF AT&T MOBILITY LLC,
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN
NON-RURAL AREAS

TC11-072

**JAMES VALLEY WIRELESS, LLC'S
RESPONSE TO NEW CINGULAR
WIRELESS PCS, LLC'S OPPOSITION TO
JAMES VALLEY WIRELESS, LLC'S
PETITION TO INTERVENE**

I. PRELIMINARY STATEMENT

New Cingular Wireless PCS, LLC ("AT&T") filed its application for ETC status in non-rural areas on June 13, 2011. James Valley Wireless, LLC ("JVW") timely filed its petition to intervene on July 1, 2011. AT&T now opposes JVW's petition to intervene claiming it is contrary to state law. AT&T misconstrues the legal standard for petitions to intervene.

II. PETITION TO INTERVENE COMPLIES WITH STATE LAW AND SHOULD BE GRANTED

The legal standard for determining whether a petition to intervene shall be granted is contained in ARSD § 20:10:01:15.05, which provides as follows:

A petition to intervene shall be granted by the commission if the petitioner shows that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, *or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner* as distinguished from an interest common to the public or to the taxpayers in general. (emphasis added)

Federal high-cost support for CETCs in South Dakota was capped in 2008 at approximately \$3 million per month.¹ If AT&T's application is granted, it is likely the statewide

¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*). See attached letter, dated August 24, 2010, from Sharon Gillett, Chief-Wireline Competition Bureau of the Federal Communications Commission, to Karen Majcher of the Universal Service Administrative Company, which sets out the history of the Interim Cap Order.

cap would be exceeded, which would result in a reduction of high-cost support for all existing South Dakota CETCs, including JVW. Therefore, under the legal standard contained in ARSD § 20:10:01:15.05, JVW's petition to intervene should be granted since it would be adversely affected by the proceeding.

III. PUBLIC INTEREST TEST

AT&T's argument that a public interest analysis is not required for non-rural applications is not relevant with respect to whether JVW's petition should be granted. AT&T's argument concerning the public interest analysis, is more properly directed to the standard by which its application is to be adjudicated and whether it otherwise qualifies as an ETC, not the threshold question as to whether the JVW petition to intervene should be granted.

IV. CONCLUSION

For the foregoing reasons, JVW requests the Commission grant its petition to intervene.

Dated this 25th day of July 2011.

BANTZ, GOSCH & CREMER, L.L.C.

James M. Cremer

James M. Cremer
Attorneys for James Valley Wireless, LLC
305 Sixth Avenue SE
P.O. Box 970
Aberdeen, SD 57402-0970
605-225-2232
605-225-2497 (fax)
jcremer@bantzlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 25th day of July 2011 upon the following:

Ms. Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
patty.vangerpen@state.sd.us

Ms. Kara Semmler
Staff Attorney
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
kara.semmler@state.sd.us

Mr. Chris Daugaard
Staff Attorney
SD Public Utilities Commission
500 East Capitol Avenue, 1st Floor
Pierre, SD 57501-5070
605-773-3201; 866-757-6031 (fax)
chris.daugaard@state.sd.us

Ms. Wauneta Browne
Regional Vice President-External Affairs
AT&T Comm. of the Midwest-PC/EC
11425 W. 146th Street
Olathe, KS 66062-8431
913-685-7581
wauneta.browne@att.com

Ms. Betsy Granger
General Attorney
AT&T Services, Inc.
2600 Camino Ramon
San Ramon, CA 94583-5000
925-543-1551;
betsy.granger@att.com

Ms. Cynthia J. Manheim
General Attorney
AT&T Services, Inc.
P.O. Box 97061
Redmond, WA 98073-9761
425-580-8112
cindy.manheim@att.com

Mr. William M. Van Camp, Jr.
Olinger, Lovald, McCahren &
Reimers, P.C.
117 East Capital; P.O. Box 66
Pierre, SD 57501-0066
605-224-8854; 224-8269
bvancamp@olingerlaw.net

Mr. Gene DeJordy
Native Yes We Can Foundation
P.O. Box 901
Southport, CT 06890-0901
501-804-7797
gene@nativeeyeswecan.com

James M. Cremer

James M. Cremer
BANTZ, GOSCH & CREMER, L.L.C.
Attorneys for James Valley Wireless, LLC
305 Sixth Avenue SE; P.O. Box 970
Aberdeen, SD 57402-0970
605-225-2232; 605-225-2497 (fax)
jcremer@bantzlaw.com