

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Program Management & Implementation
Branch**

**RESOLUTION T-17129
July 10 , 2008**

R E S O L U T I O N

RESOLUTION T-17129. SureWest Televideo (U-6324-C). In accordance with Resolution T-17002, this Resolution evaluates SureWest Televideo's, d/b/a SureWest Broadband's, request for ETC designation.

By Advice Letter No. 53, filed on July 07, 2007

I. Summary

This Resolution rejects SureWest Televideo's d/b/a SureWest Broadband (SWB's) request for Eligible Telecommunications Carrier (ETC) designation in areas of Elk Grove California. SWB has not satisfied the requirements for ETC designation as set forth in Resolution T-17002, and the ETC eligibility and service requirements under Federal Communications Commission (FCC) rules. These rules state that carriers cannot be designated as an ETC in an area smaller than an incumbent wirecenter. SWB's proposed service area does not conform to incumbent wirecenter boundaries therefore their request for ETC status is denied.

II. Background

On July 7, 2007 SWB filed Advice Letter (AL) #53 with the California Public Utilities Commission (CPUC) in order to obtain ETC status in Elk Grove areas. SWB is an FCC licensed, CPUC certificated competitive local exchange carrier. SWB has been serving customers as a Competitive Local Exchange Carrier (CLEC) in areas of Elk Grove for a number of years and currently serves an area with a population of approximately 57,000. Citizens Telecommunications Company of California (Frontier) is the incumbent Local Exchange Carrier (ILEC) for this region, and is a designated ETC. SWB is a facility-based service provider focusing on residential services, and its network features a fiber to the premises (FTTP) architecture that provides customers with useful and speedy new telecommunication products and services that they can depend on now and in the future.

SBW states that designating it as an ETC is in the public interest because it will promote competition, advance universal service, and further deployment of advanced telecommunication services to residences in Elk Grove. SWB further points out that it is being placed at a competitive disadvantage because Frontier is receiving a large federal subsidy for the areas in

which both companies serve.

The Commission adopted comprehensive ETC guidelines and reporting requirements in Resolution T-17002. ETC rules and guidelines were originally contained in Federal Communications Commission (FCC) 97-157 and 03-249. The CPUC adopted Resolutions T-16086 and T-16830 respectively to implement these FCC rules. In FCC 05-46 dated February 25, 2005, the FCC adopted additional mandatory requirements for ETC designation and ETC reporting requirements for federal universal high-cost support.¹ In the same order, the FCC encouraged states that exercise jurisdiction over ETC designations pursuant to section (214 (e) (2) of the Communications Act, to adopt these requirements.² FCC requires that only state authorized ETCs will be eligible to receive federal high cost, low income support.³ Subsequent to FCC 05-46 order, the CPUC adopted Resolution T-17002 that establishes the current ETC designation rules, which integrates the rules adopted in FCC 97-157, 03-249, 05-46, and other criteria the CPUC deemed necessary.⁴ These rules and guidelines intend to ensure that a designated ETC has demonstrated that it is committed to provide adequate quality service at affordable rates to all customers requesting the services in the designated service territory.

III. Protests and Replies

On August 07, 2007 Frontier filed a protest of SWB AL #53 outside of the 20 day protest period recommending the Commission reject SWB's AL. Frontier filed its protest on grounds that SWB had not met the requirements of Resolution T-17002.⁵ Frontier asserted that SWB's AL does not satisfy the Public Interest standards required an ETC in Frontier's Rural Telephone Company Service Area, and that SWB cannot be designated as an ETC in only portions of a wirecenter.

On August 28, 2007 SWB filed a late reply to Frontier's protest. SWB defended its ETC application and argued that it met the Public Interest standard.

Subsequently, both Frontier and SWB filed another round of comments. On September 25, 2007 Frontier filed a response to SWB's August 28 reply to Frontier's protest. And, on December 5, 2007 SWB filed another response to Frontier's protest. The issues raised in these filings are centered around whether or not SWB's proposals comply with FCC and CPUC's ETC designation requirements, and whether SWB's choice of the service areas may result in potential creamskimming or not.

IV. Discussion and Analysis

We will first address whether or not SWB's filing satisfies T-17002's procedures and

¹ Section 214 (e) (6) directs the FCC to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

² 47 USC Section 214 (e) (2) provides state commissions with the primary responsibility for designating ETCs.

³ 47 C. F. R Section 54.201 (a) (1)

⁴ 47 USC Section 254 (f) The CPUC is not required to adopt the FCC's Standards without change.

⁵ General Order (GO) 96 B, 7.4.1 Filing of Protest [adopted in Third Interim Decision, D.05-01-032 (Jan. 13, 2005)]

guidelines for an ETC designation. Then, we will discuss the issues raised by Frontier and SWB's responses.

A. SWB's ETC Application

The Commission has directed that carriers seeking ETC designation must comply with the comprehensive procedures and guidelines for ETC designation as described in Resolution T-17002 (see Attachment A). SWB has not complied with all of the requirements of the Resolution, as discussed in detail below and as identified in the ETC compliance checklist in Attachment A to this Resolution.

B. Issues Associated with SWB's Filings and Raised by Frontier's Protests

Comparable Rates

Frontier points out in their protest that SWB does not offer a measured rate service in the proposed territory, and argues that measured rate service falls under the category of "local usage" which is required in Resolution T-17002. SWB argues that they offer a Flat Rate Service for \$18 per month, which is comparable to Frontier's Flat Rate Service which costs \$17.75 per month. Frontier alleges that SWB's flat-rate rate comparison is misleading because it compares its rate only to Frontier's flat rate, and did not acknowledge Frontier's measured rate of \$9.60 per month. SWB responds that they are not required to offer the same rate plans as those offered by the ILEC. They also point out that they provide additional lines for \$10 per month, while Frontier does not offer a discounted additional line rate.

We agree with SWB that service plans do not need to be exact equals. SWB provides basic services at reasonably comparable rates. SWB offers consumers in Elk Grove competitive and technological options, which is in the public interest.

Regarding the issue of using federal USF subsidies for non-supported services, SWB included a plan highlighting where, when, at what expense, and for what purpose network improvements will be made. SWB states that investments in 2007 and 2008 will improve telephone and broadband services that are subject to the reporting requirements in FCC Form 477, and that the FCC considers advanced services to be a part of the public interest consideration.

Although we concur with SWB that their network and service is in the public interest, we agree with Frontier's view that broadband is not a supported service according to Federal Universal Service guidelines, and that SWB should not receive USF support to upgrade or expand its broadband infrastructure.⁶ SWB has stated that it will use funds received through subsidies made

⁶ FCC 97-157 ¶ 56

eligible by ETC designation to improve telephone service and we shall rely on their representation. The Universal Service Administrative Company (USAC) and the FCC are responsible for determining the amount of USF funds it distributes and monitoring how they are spent.

Creamskimming

Frontier states that the areas in which SWB requests ETC designation have the highest density in the entire Elk Grove area, and considers SWB's choice of service area and future rollout to be creamskimming.

We believe that creamskimming is not an issue in this case. Creamskimming is defined at the wirecenter level, not below.⁷ SWB's proposal includes territory in three of Frontier's four wirecenters. If SWB were serving those wirecenters in their entirety as they should be, they would be serving the majority of the wirecenters in Elk Grove, and given the distribution of support to Frontier by wire center would probably not be considered creamskimming.

Minimum Geographic Area

With respect to the issue of serving entire wirecenters, Resolution T-17002 states that "a carrier should commit to serve the entire service area". Frontier points out in their protest that SWB's proposed service area spans three ILEC wire centers, but does not completely cover any of them.

We agree with Frontier that SWB has not committed to the entire service area, or the entirety of any of the wire centers that that Frontier has disaggregated its support, as required by the CPUC. Resolution T-17002, Appendix A § II.A., which requires that ETCs should not be designated below incumbent wirecenter level. We reject SWB's claim that they should be exempt due to the lack of publicly available Frontier wirecenter boundaries. SWB provided no indication in its AL or in its reply to Frontier's protest that it made any attempt to contact Frontier to discover this information. However, we noted that the map on the USAC website that shows Frontier's disaggregated boundaries is not as clear as information that has been provided to the Commission. Within 30 days of the effective date of this Resolution, Frontier shall provide USAC with an updated map to show its disaggregated boundaries in California and provide evidence of this update to the Commission's Communications Division.

In an attempt to address the coverage issue, SWB committed to share 50% of any high cost subsidies with their telephone customers. Even though we are pleased when carriers provide benefits to customers through lower prices and more choices for service, our standards to evaluate

⁷ FCC 05-46 ¶ 49 and ¶ 77.

compliance with ETC rules do not consider refunds of federal high cost subsidies.

We believe that SWB should not be designated as an ETC in an area smaller than the disaggregated service area pursuant to Commission Resolution T-17002. Therefore we reject SWB's AL. However, SWB has shown a commitment to continue its build-out across the Elk Grove area, and the Commission encourages them to reapply once their service territory encompasses entire incumbent wirecenters.

VI. Comments and Replies

No comments were received.

VII. Findings

1. Resolution T-17002 established a procedure for California telecommunications carriers to request designation as eligible telecommunications carriers.
2. SureWest Televideo (SWB) is an FCC licensed, CPUC certificated competitive local exchange carrier (CLEC).
3. SWB submitted an Advice Letter request for Eligible Telecommunications Carrier (ETC) designation on July 7, 2007 in exchange areas served by Citizens Telecommunications Company of California (Frontier).
4. The notice of filing of the request was published in the Commission Daily Calendar of xxx.
5. On August 07, 2007 Frontier filed a late protest of SWB AL #53.
6. On August 28 SWB filed an untimely response to Frontier's protest.
7. On September 25, 2007 Frontier filed a response to SWB's August 28 comments.
8. On December 5 SWB filed another response to Frontier's protest.
9. Based on the application letter submitted by SWB, SWB has not complied with the guidelines set forth in Resolution T-16086.
10. In compliance with PU Code § 311(g), a notice letter was mailed/emailed on xxx informing all Local Exchange Carriers, all facilities-based Competitive Local Carriers, and all facilities-based broadband Commercial Mobile Radio Service carriers, and parties to the universal service proceeding (OII/R 95-01-020/021) of the availability of the draft of this Resolution for public comments at the Commission's web site <http://www.cpuc.ca.gov/static/industry/telco/index.htm>. This letter also informed parties that the final Resolution adopted by the Commission will be

Attachment A

Resolution T-17002 ETC Requirements

Requirement	Compliance
<i>Appendix A Section I - Compliance with FCC 97-157</i>	
A) a list of geographic service areas and a map in .shp format showing the proposed service area	Yes
(B) an itemized list of the designated services to be provided	Yes
(C) a list of services which the carrier proposes not to provide or is seeking an extension of time	Yes
(D) an indication of whether the carrier plans to apply for a waiver of requirements that an ETC not disconnect lifeline for non-payment of toll	Yes
(E) a description of the carrier's advertising plan	Yes
(F) if necessary, implement tariff changes via the advice letter filing process	Yes
(G) if applicable, request additional time to provide additional services to low income customers	Yes
	Yes
<i>Appendix A Section II - Compliance with FCC 05-46</i>	
(A) Commitment to Provide Service	No
(B) Submission of Two-Year Service Quality Improvement Plan •	Yes
(C) Ability to Remain Functional	Yes
(D) Consumer Protection	Yes
(E) Local Usage	Yes
(F) Equal Access	Yes
(G) Public Interest Determination	Yes

Resolution T-17129
 CD/ALK

<i>Appendix B Section I - Compliance with FCC 03-249</i>	
(A) Carrier Information	Yes
(B) Basic Residential Service Rate	Yes
(C) Filing Dates	Yes
<i>Appendix B Section II – Compliance with FCC 05-46</i>	
(A) A two-year service quality improvement plan	Yes
(B) Detailed information on outages in the ETC’s network caused by emergencies	Yes
(C) Information on the number of unfulfilled requests for service	Yes