

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET NO. UT-043121
)	
HOOD CANAL TELEPHONE COMPANY)	ORDER NO. 01
)	
)	ORDER GRANTING PETITION
)	FOR DESIGNATION AS AN
)	ELIGIBLE
For Designation as an Eligible Telecommunications Carrier)	TELECOMMUNICATIONS
)	CARRIER
.....)	

1 **Synopsis:** *The Commission grants the petition of Hood Canal for designation as an eligible telecommunications carrier. Hood Canal meets the requirements for designation, and granting the petition is in the public interest.*

I. BACKGROUND

2 The federal Telecommunications Act of 1996 (Act)¹ requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs). In order to be eligible for federal universal service support, a common carrier must be designated by the state commission as an ETC. *47 U.S.C. § 214(e)(1)*. Once designated as an ETC, a carrier must advertise the availability of service and offer service in the geographic service area in which it is designated. *Id.*

3 On December 1, 2004, Hood Canal Telephone Company (“Hood Canal”) requested ETC designation for three service areas that correspond to the area

¹ Public Law 104-104, 110 Stat. 154 (1996), codified in scattered sections of Title 47 U.S.C.

within the boundaries of the Belfair, Hoodsport, and Shelton exchanges of Qwest Corporation. On December 7, 2004, Hood Canal supplemented its initial filing. The Commission considered Hood Canal's petition for ETC designation at its regularly scheduled open public meeting of December 29, 2004.

II. THE MERITS OF HOOD CANAL'S PETITION FOR ETC DESIGNATION

A. The Petitioner

- 4 Hood Canal is a rural telephone company. 47 U.S.C. § 153(37). In 1997, Hood Canal was designated an ETC for the service area that correspond to the area within the boundaries of the Union exchange.²
- 5 Hood Canal states in its petition³ that it serves the Hoodsport and Shelton exchanges as a competitive local exchange carrier (CLEC), and will soon serve the Belfair exchange in the capacity. *Initial Petition at 1.*
- 6 Hood Canal states that it provides the services required by federal rules. *Supplemental Petition, ¶ 4.* It states that it advertises its services in the Union exchange (where it is currently an ETC) and will do so in Belfair, Hoodsport and Shelton if designated. *Id., ¶ 5.* Similarly, Hood Canal states that it participates in the federal Lifeline and Link Up programs in Union and will participate in those programs in the new service areas. *Id., ¶ 6.* Hood Canal participates in the state

² See *In the Matter of the Petitions for Designation as Eligible Telecommunications Carriers*, Docket Nos. UT-970333-970354; 970356, Order Designating Eligible Telecommunications Carriers (Dec. 23, 1997).

³ Hood Canal made its initial request on December 1, 2004, and supplemented that filing on December 7, 2004. While not in the form common to petitions, Commission Staff recommends that the Commission treat Hood Canal's filings as petition for ETC designation. See *In the Matter of the Petition of RCC Minnesota, Inc., d/b/a Cellular One For Designation as an Eligible Telecommunications Carrier*, WUTC Docket No. UT-023033, Order Granting Petition for Designation as an Eligible Telecommunications Carrier, ¶¶ 17-26, 43-47 (August 14, 2002) ("RCC Order").

WTAP program. *Id.* Hood Canal also states in its petition that it serves the Hoodspout and Shelton exchanges as a competitive local exchange carrier (CLEC) for purposes of 47 C.F.R. § 54.706(a)⁴ and 47 U.S.C. 254(d), and will soon serve the Belfair exchange in that capacity. *Id.*, ¶ 3.

B. Statutory Requirements

7 ETCs are required to offer the services supported by the federal High Cost Fund (HCF) and advertise the availability of those services. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 101(a), (b). In addition, ETCs must offer discounts to low-income consumers through the Lifeline and Link Up programs. 47 C.F.R. §§ 54.405, 411.

8 Under the Act, state commissions “shall” designate as ETCs common carriers that request such designation, provided the carriers meet the requirements for ETC designation. 47 U.S.C. § 214(e)(2). Notwithstanding the apparent command that state commissions “shall” designate a carrier that meets the requirements of 47 U.S.C. § 214(e)(1), the statute also states that additional designations are permissive in some circumstances and mandatory in others. A state commission “may, in the case of an *area*⁵ 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 [s]tate commission so long as each additional requesting carrier meets the requirements of [214(e)(1)]”. *Id.* (*Italics added*). When the request is for designation of an additional ETC for “an area served by a rural telephone company,” the state commission must determine that the additional designation is *in* the public interest, not merely consistent with the public interest. *Id.*

⁴ This citation represents a correction from the petition. See *Staff Memorandum*, p. 2.

⁵ This “area” is not a “service area” as that term is used in 47 U.S.C. § 214(e). A “service area” is the geographic location established by a state commission, while an area is just a location. 47 U.S.C. 214(e)(5).

9 The Act contemplates areas may have multiple ETCs. Where there are multiple
ETCs, their service areas may coincide or overlap, in whole or in part. There is
no requirement that coincident or overlapping service areas have an identical set
of boundaries with the other service area. *Id.*⁶

10 The Act does not set forth the criteria state commissions must consider in
determining whether the designation of an additional ETC in an area served by a
rural telephone company is in the public interest.

C. Positions of Interested Persons

1. Hood Canal

11 Hood Canal contends that granting its request is consistent with the public
interest under 47 U.S.C. 214(e). *Supplemental Petition*, ¶ 7. In its initial filing,
Hood Canal states that it provides the services required by C.F.R. § 101(a) and (b)
and that ETC designation will permit it to receive Lifeline and Link Up support
for services to low-income customers. *Initial Petition at 1.*

2. Commission Staff

12 Commission Staff recommends granting the petition. According to Commission
Staff it would be in the public interest to grant Hood Canal's petition for ETC
designation because it will bring the benefits of competition to low-income
customers in the three requested service areas. *Staff Memorandum*, pp. 3-4.

13 Commission Staff contends that granting the petition is consistent with the dual
purposes of the federal Act—to promote local competition and to preserve and
advance universal service. Staff cites prior decisions of this Commission in
which we have held that customers benefit from competition because additional

⁶ See also *In the Matter of the Petition of Sprint Corporation, d/b/a/ Sprint PCS, Sprintcom, Inc., Sprint Spectrum, L.P., and WirelessCo., L.P. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-031558, Order No. 01 (Oct. 29, 2003) (“*Sprint PCS Non-Rural Order*”), ¶ 7-9.

customer choice will bring downward pressure on prices, greater availability of innovative products, and more attention to customer service. *Id.*

- 14 Commission Staff states that granting Hood Canal's petition is consistent with our previous decision designating additional ETCs in an area. *Id. at 4.* Commission Staff cites previous decisions in which we have found there are no facts suggesting that coincident or overlapping ETC service areas harm consumers or create any unfair competitive advantage for carriers. *Id.*
- 15 Commission staff states that in past proceedings rural telephone companies have contended that failure by a carrier to request designation for the entire extent of an area the carrier could serve may result in cream-skimming or an unfair competitive advantage. *Id.* Commission Staff also states that there is no evidence that Hood Canal seeks to cream-skim or gain an unfair competitive advantage by limiting its request for designation to areas immediately adjacent to its Union exchange. *Id.*
- 16 Commission Staff recommends that Hood Canal not be required to create electronic maps for the requested designations until such time as HCF support is available. *Id.* Commission staff states that because there is no HCF support, there is no need for an electronic map, consistent with our decision when we designated Qwest for areas without HCF support and did not require Qwest to file electronic maps.⁷

III. COMMISSION DISCUSSION AND DECISION

- 17 We base our decision on the written materials provided in this matter, information presented at the Open Meeting, and on our knowledge and

⁷ *In the Matter of the Petition of Qwest Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043030, Order Designating Eligible Telecommunications Carrier, ¶ 12 (May 26, 2004) ("*Qwest Third ETC Order*").

experience regarding ETC designation.⁸ Based on Hood Canal's representations in its petition, we conclude it offers the required services. Now we must determine if designation is in the public interest.

- 18 Congress has authorized state commissions to designate common carriers as ETCs. 47 U.S.C. § 214(e)(2). The FCC may designate common carriers as ETCs where the state commission has no jurisdiction over the common carrier. *Id.* § 214(e)(6). The FCC does not have jurisdiction to designate common carriers as ETCs in areas where a state commission has jurisdiction to do so.⁹
- 19 The Act states that before "designating an additional eligible telecommunications carrier in an *area* served by a rural telephone company, the State commission shall find that the designation is in the public interest." 47 U.S.C. § 214(e)(2) (*Italics added*). Hood Canal seeks designation in areas already served by a rural telephone company (itself), a non-rural company (Qwest), two wireline resellers (Tel-West and Vilaire)¹⁰, and two wireless carriers (AT&T Wireless and USCC). The five other companies, wireline and wireless, are ETCs. Because Hood Canal is a rural telephone company that is *already serving* in the areas of the Hoodsport

⁸ See, e.g., *In the Matter of the Petition of United States Cellular Corp., et al. for designation as Eligible Telecommunications Carriers*, Docket No. UT-970345, Third Supplemental Order, at 59-60 (Jan 27, 2000) ("*United States Cellular Order*"); *In The Matter of The Petition of Inland Cellular Telephone Company et al. for Designation As An Eligible Telecommunications Carrier*, WUTC Docket No. UT-023040, Order Granting Petition for Designation as an Eligible Telecommunications Carrier (August 30, 2002) ("*Inland Order*"); *RCC Order*; *Qwest Third ET Order*; and *Sprint PCS Non-Rural Order*.

⁹ Because Hood Canal does not seek to change its study area or seek to alter service area designations made by this Commission after consultation with the FCC, neither 47 U.S.C. § 214(e)(5) nor 47 C.F.R. § 54.207 have any application to this proceeding.

¹⁰ Tel West and Vilaire are each designated as ETCs for three service areas that correspond to the areas within the boundaries of the Qwest Belfair, Hoodsport, and Shelton exchanges. Commission Staff does not know if either reseller has customers in any of the areas. We note that in the Order No. 1 in Docket UT-033014, designating Vilaire as an ETC, Belfair is mislabeled as Belfry.

and Shelton exchanges of Qwest, we must determine if designation of an additional ETC for those areas is in the public interest.

20 Congress left to the state commissions to determine whether the designation of a common carrier as an ETC is in the public interest. *47 U.S.C. § 214(e)(2)*. The Commission may look to the decisions of the FCC and other states to assist it in making that determination, but the Commission is not bound by those decisions.

21 The Act has interrelated goals of fostering competition and advancing universal service.¹¹ Access to telecommunications service for low-income customers is one of the goals of the federal Act. *47 U.S.C. § 254(b)(3)*. Designation of Hood Canal will promote competition. The benefits of competition will be available to low-income consumers who will be able to obtain discounts on local service charges from Hood Canal should low-income consumers perceive Hood Canal to offer better service or superior quality than current ETCs.

22 In addition, low-income residents of the Skokomish and Squaxin Island Indian Reservations will also benefit from an additional ETC that must offer the Enhanced Tribal Lifeline Program.¹² This is in the public interest.

23 Hood Canal seeks designation in locations where we have designated other carriers. In a previous proceeding, rural telephone companies contended that there can be too many ETCs in one location may not be in the public interest. We

¹¹ *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 28, (2003). (citing *Alenco Communications, Inc. v. Fed. Communications Comm'n*, 201 F.3d 608, 615 (5th Cir. 2000) ("FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other.")).

¹² Under the program, low-income residents of Indian Reservations may obtain local service for as little as \$1.00 per month, a substantial savings in comparison to the \$8.00 discounted rate for low-income consumers of wireline telephone service that do not live on an Indian Reservation.

rejected the contention because no facts were cited that demonstrated a problem, let alone that the problem was the result of multiple ETC designations.¹³

- 24 As was the case in that previous proceeding, here we have no facts before us suggesting that multiple ETC designations harm consumers or create any unfair competitive advantage for carriers.¹⁴ Designation of multiple ETCs in coincident or overlapping service areas is consistent with our previous decisions.
- 25 In other proceedings, rural telephone companies have also opposed designations for limited areas when a company could serve a greater area. This issue arose when AT&T Wireless sought designation for 242 areas described by exchange boundaries of over twenty-three companies, but did not seek designation for every area in which AT&T Wireless could serve under its license. Here, Hood Canal has requested designation for three areas, but not for more areas even though it is not constrained in the extent of its service by a license. That is, Hood Canal may expand service anywhere and seek ETC designation. Our choice is either to permit Hood Canal to expand at its chosen pace, or deny designation to Hood Canal because it is not seeking to serve immediately more locations served by other carriers.
- 26 The fact that Hood Canal seeks designation for only three areas does not lead us to conclude that granting Hood Canal's petition would give it an unfair competitive advantage over carriers that serve a larger area. Rather, granting Hood Canal's petition in these areas will permit it to expand operations to an extent consistent with the relatively small size of the company. Designation also will increase competition and the consumer benefits associated with competition.

¹³ See *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011, Order Designating Eligible Telecommunications Carrier, ¶¶ 42-43 (April 13, 2004).

¹⁴ See *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011, Order Designating Eligible Telecommunications Carrier (April 13, 2004) ¶¶ 42-49; RCC Order, ¶¶ 8, 41, 62, 65-67, and 87.

- 27 We determine, therefore, we have no factual basis on which to conclude that the limited expansion of service by Hood Canal will result in cream-skimming or an unfair competitive advantage. Similarly, we also determine we have no factual basis to conclude that multiple ETC designations will harm consumers, or other ETCs or carriers that are not ETCs.
- 28 We consider several factors in reaching our conclusion. The factors are the nature of wireline and wireless services, our knowledge that wireline companies already compete with other wireline companies and compete with wireless companies, that we have no evidence after five years that designation of carriers for coincident and overlapping service areas creates unfair competition, that service is already provided by several other ETCs in the areas, the location of Hood Canal's Union exchange in relation to the locations in which it has requested designation, our knowledge of competition and its benefits for consumers, and, finally, our knowledge that designation of multiple ETCs has not harmed consumers or other carriers. Accordingly, we conclude that designation in the three areas requested by Hood Canal is in the public interest.
- 29 Finally, we agree with Commission Staff that Hood Canal should not be directed to file electronic maps (.shp) prior to the availability of federal high cost fund support. This is consistent with or designation of Qwest for areas where HCF support is not available and our conclusion in that designation that electronic maps are not immediately necessary for the proper administration of support.¹⁵

V. FINDINGS OF FACT

- 30 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact.

¹⁵ See *Qwest Third ETC Order*, ¶ 12.

- 31 (1) Hood Canal Telephone Company (Hood Canal) is a telecommunications
company doing business in the state of Washington.
- 32 (2) Hood Canal currently provides service in the areas described by the
exchange boundaries of the Hoodsport and Shelton exchanges operated
by Qwest Corporation, and will soon provide service in the area described
by the exchange boundaries of the Belfair exchange of Qwest Corporation.
- 33 (3) Hood Canal's petition satisfies the requirements of 47 U.S.C. § 214(e).
- 34 (4) Hood Canal offers the services that are to be supported by the federal
universal service support mechanisms set forth in 47 C.F.R. § 54.101(a).
- 35 (5) Hood Canal competes with other telecommunications carriers in the areas
where it seeks designation.

VI. CONCLUSIONS OF LAW

- 36 (1) The Commission has jurisdiction over the subject matter of this petition
and over Hood Canal.
- 37 (2) The Commission is not required by the Act or by any provision of state
law to hold an adjudicative proceeding or other hearing prior to
designating a telecommunication carrier an ETC.
- 38 (3) Granting Hood Canal's petition for designation as an ETC in the
requested areas is in the public interest, and is consistent with applicable
federal and state law.

- 39 (4) Granting Hood Canal's petition for designation as an ETC in areas also served by a rural telephone company is in the public interest.
- 40 (5) Granting Hood Canal's petition for designation as an ETC does not alter the study area or the previously designated service areas of Hood Canal, and neither Hood Canal nor any other previously designated carrier must take any action under 47 U.S.C. § 214(e)(5) or 47 C.F.R. § 54.207.
- 41 (6) The Commission has authority to modify, suspend, or revoke the designations granted in this order at a future date.

VII. ORDER

- 42 This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:
- 43 (1) The Commission grants the petition of Hood Canal Telephone Company. Each of the requested designations is granted and each designation is for a separate service area.
- 44 (2) Hood Canal Telephone Company must provide Lifeline and Link Up discounts consistent with 47 C.F.R. § 54.405 and 411.
- 45 (3) Hood Canal must, within six months of a congressional or FCC decision that will result in receipt by Hood Canal of any form of federal high-cost support, prepare electronic maps of the three geographic service areas with standards and attributes as described in the Commission's Order in Docket Nos. UT-013058 and UT-023020, entered August 2, 2002.

- 46 (4) The Commission has authority to modify, suspend, or revoke these designations, including the service areas accompanying those designations, at a future date.

DATED at Olympia, Washington, and effective this 29th day of December, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner