

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	Docket No. UT-073024
ELTOPIA COMMUNICATIONS, LLC	)	
	)	Response Comments of
For Designation as an Eligible	)	Eltopia Communications,
	)	LLC
Telecommunications Carrier Under 47 U.S.C. §	)	
	)	
214(e)(2)	)	

1. Eltopia Communications, LLC (“Eltopia” or “Petitioner”) on May 11, 2007 petitioned the Washington Utilities and Transportation Commission (“Commission”) to be designated as an eligible telecommunications carrier (“ETC”) for federal universal service purposes. On July 5, 2007 the Washington Independent Telephone Association (“WITA”) filed written comments opposing the petition. As will be demonstrated below, none of the arguments raised by WITA has merit. It is understandable that the WITA members – who all already receive the federal high-cost support that they would deny Eltopia – would not welcome a direct competitor who would offer basic and advanced telecommunications services to their customers. However, there are compelling

public interest and competitive neutrality principles that should lead the Commission to grant the Petition.

## I. RESPONSE TO WITA CONCERNS

### A. Scope of Eltopia's Requested Service Area

2. WITA asserts that because Eltopia seeks designation for every exchange in the 509 area code the petition is deficient on its face, claiming that Eltopia is a start-up that cannot possibly serve the entire area.

3. It is accurate to describe Eltopia as a start-up, with respect to its telephony operation. As noted in the Petition, Eltopia and its affiliate Eltopia.com already operates a switch and interoffice facilities that handle 800,000 calls per month from its dial-up Internet access customers. It is not currently offering dial tone on a commercial basis. It intends to enter the telecommunications markets served by incumbent local exchange companies in eastern Washington.

4. However, Eltopia can and will offer service throughout the entire 509 area if it is designated as an ETC. Eltopia does not claim that it will immediately have a network in place capable of serving every household and business in eastern Washington, but this is neither required by law nor suggested as good business strategy or good public policy. Eltopia does not expect every

person in eastern Washington to find its service offerings superior to those of the incumbents. It will offer service throughout the area and it will provide its service where it finds customer demand. To suggest, as WITA does, that Eltopia must limit the geographic scope of its competitive entry is simply to impose an arbitrary entry barrier.

5. The Commission's line extension rules (WAC 480-120-071) permit local exchange companies to build their networks as demand becomes apparent. Indeed, the mere existence of a rule on line extensions shows that companies are not required to start with a ubiquitous network. ILECs who have been in operation for over a century do not build everywhere, and Eltopia is not required to do so either.

6. WITA acknowledges that ETCs are not required to have ubiquitous networks in place but nonetheless asserts that Eltopia has not met some undefined standard for how much network a company must have. It is clear from the description in the Petition that Eltopia's network design using fixed wireless loops allows it to build its network as and where customers request service. This approach of serving the demand rather than the territory may be foreign to the WITA members, but it is commonplace in a rural economy. A firm can offer its services to *any* customer in eastern Washington even if it could not immediately serve *every* customer in eastern Washington.

7. Eltopia suggests that the Commission not rely on WITA members' speculation about their competitor's capabilities but instead judge Eltopia's actual performance as an ETC. If Eltopia ultimately fails to meet its obligations, the Commission's rules permit it to revoke the designation.

**B. Financial Resources of Eltopia Communications**

8. WITA claims that Eltopia lacks the financial resources to operate a telecommunications company, citing Eltopia's financial statements from 2006 and 2005. WITA acknowledges that the Commission's ETC rules do not require an applicant to demonstrate its financial capability.

9. There is considerable irony in the fact that WITA members would deny Eltopia access to financial support based on Eltopia's lack of financial support. The reality is that Eltopia, similar to most other companies in start-up mode, does rely heavily on outside resources, including the financial and equipment resources of its affiliate, Eltopia.com. Network-related assets have been assigned to this ISP affiliate in the past, since those assets have primarily been used to provide ISP service. Those assets will be transferred to the telecom affiliate (Eltopia Communications, LLC, the Petitioner in this proceeding) as its use of the network increases. Moreover, it is unrealistic to expect a financial

report from six or 18 months ago to reflect the current status of a company in start-up mode.

### **C. Current Versus Future Offering of Supported Services**

10. WITA correctly notes that Eltopia Communications was not offering supported telecommunications services at the time it registered as a telecommunications company in 2005 and that it today does not list telecommunications offerings on its web site. Both registration and ETC designation are preliminary steps to the commercial offering of its telephony service. With ETC designation, Eltopia will be in a better position to compete against incumbent local exchange companies that already receive a substantial portion of their operating revenues in the form of federal high-cost support.

11. Eltopia's commercial offering of dial tone services will undoubtedly be affected by the Commission's decision on its ETC Petition. Both the pricing of services and the geographic scope of its offer will depend on whether it receives access to federal support. The fact that Eltopia does not have a commercial offering of supported service today – without ETC designation – says nothing about its ability to provide service once it is designated as an ETC. Moreover, to suggest that Eltopia must set its prices and service area before it knows the status of its Petition is unreasonable.

#### **D. Eltopia's Use of its Own Facilities**

12. WITA relies again on prior financial statements to dispute Eltopia's claim that has a network that it will use to provide supported services. It tacitly acknowledges that, if Eltopia did own the facilities described in the Petition, it would meet the requirements that carriers offer service using their own facilities in whole or in part. WITA is unable to reconcile the existence of a network of switches, gateways, towers, and radios with prior financial statements.

13. This is a derivative version of WITA's earlier argument about financial capability and is equally invalid. Prior financial statements reflect assignment of assets between affiliates that pre-date the telephony operation, and Eltopia has placed equipment in service since the most recent financial statement. Eltopia and its affiliate own and operate the towers, radios, switches, routers, and media gateways illustrated in Exhibit D to the Petition. Eltopia.com is using the switching, routing, and interoffice transport portions of this network today to serve tens of thousands of dial-up Internet customers; Eltopia Communications, LLC intends to use that network along with fixed wireless loops and other technology to offer dial tone service as an ETC. WITA's speculation that Eltopia does not have telecommunications facilities is simply wrong.

**E. Claims that Eltopia Plans to Engage in Access Bypass**

14. An even more speculative claim offered by WITA is that Eltopia plans to engage in access bypass. WITA hypothesizes that Eltopia could deliver an interexchange call over a local trunk and avoid payment of access charges.

15. This is a baseless accusation that should be ignored by the Commission. The claim is directly refuted by the interconnection agreement between Eltopia and CenturyTel (a WITA member), in which the companies agree to “route traffic only over the proper jurisdictional trunk group” (§4.3.3.1) and even more specifically not to “route Switched Access Service traffic over local connection trunks, or Local Traffic over Switched Access Service trunks” (§4.3.3.3). The agreement also provides for CenturyTel and Eltopia to establish a point of interconnection in each CenturyTel rate center where Eltopia obtains numbering resources (§5.2). This agreement was executed by CenturyTel and Eltopia in 2006 and filed with the Commission in Docket UT-063015 on March 3, 2006.

16. To be clear: Eltopia is not committing to limit the scope of its customers’ calling area to what WITA acknowledges is the “very limited local calling area(s)” offered by St. John and other WITA members. Competition based on the scope of the local calling area has been specifically encouraged by the Commission for at least a decade and is reflect in the local calling area rule, WAC

480-120-265. Eltopia is also not conceding that switched access charges apply to any specific service, since there is considerable uncertainty today about the appropriate classification of calls that originate or terminate on a network that uses Internet protocol. However, to the extent access charges properly apply, Eltopia intends and has already committed to pay those charges.

**F. Ability to Function in Emergencies**

17. WITA contends that Eltopia has not demonstrated that it has the capability to operate on backup battery power because the Petition did not address the availability of backup power for its tower-mounted radios. Eltopia can assure the Commission that it has the capability to operate both its central offices and its towers in an emergency situation. Eltopia, like the WITA members and other local exchange companies, is not required by WAC 480-120-411 to maintain battery backup power in its transmission and distribution plant. WITA is apparently referring to the requirement in WAC 480-123-030(1)(g) to maintain backup power at tower sites, but this applies only to wireless carriers. While it uses fixed wireless technology in its network, Eltopia is not a “wireless carrier.” While it is not required by rule to do so, Eltopia as a matter of sound business practice provides battery backup at each tower, and off-site emergency generators that can be moved to a tower during an extended electrical outage.



Moreover, Eltopia's mesh network design, which is illustrated in Appendix D of the Petition, allows the company to maintain service in many circumstances even if one tower-mounted radio fails.

**G. Relationship of Eltopia and Franklin County Public Utility District**

18. WITA argues that the Commission should investigate the role of the Franklin County PUD in Eltopia's operations to ensure that the PUD is not operating Eltopia's switch. This concern appears to be based on a misunderstanding of the Petition and has no basis in fact. The Petition states at paragraph 42, "The Pasco facility is operated by the Franklin County Public Utility District and located in the same building and on the same power supply as the PUD's network operations center." WITA apparently interprets "facility" to mean Eltopia's switch, when in fact the "facility" is the PUD collocation facility. The PUD does not operate Eltopia's switch; Eltopia operates the switch and all other equipment it has collocated at the PUD facility.

## II. WITA'S REQUEST FOR A HEARING

19. WITA's alternative request for a hearing should be rejected. There is no legal requirement that the Commission conduct a hearing before deciding to approve or deny the Petition, and the Commission has never yet subjected an ETC petition to a hearing. The adoption order issued when the current ETC rules (Chapter 480-123 WAC) were adopted contemplates that the Commission will make its decision at an open meeting.<sup>1</sup> The Commission should recognize WITA's hearing request for what it is: the attempt of a group of incumbent carriers, working in concert, to erect a barrier to the entry of a competitor through regulatory expense and delay. While Eltopia rebuts the claim that it lacks financial resources to operate as an ETC, there is no question about whose pockets are deeper should this dispute be set for hearing. The WITA companies would use the hearing process to delay or even deprive Eltopia's entry as a competitor. In the meantime, they would continue to collect approximately \$4.8 million per month in federal high-cost support (and their wireless affiliates would collect an additional \$0.5 million per month).<sup>2</sup> The Commission should not let incumbents use regulatory delay in this anti-competitive fashion.

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<sup>1</sup> "The Commission determines the public interest when a petition is before the Commission at an open meeting." *General Order No. R-534 - Order Amending and Adopting Rules Permanently*, Docket UT-053021, Appendix A, p. 6.

<sup>2</sup> These figures are based on Universal Service Administrative Company disbursement reports for January through May 2007 < <http://www.usac.org/hc/tools/disbursements/default.aspx> >. Docket UT-073024 – Petition of Eltopia Communications, LLC For Designation as an Eligible Telecommunications Carrier  
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### III. CONCLUSION

20. The concerns raised by WITA do not justify either rejection of the Petition or the initiation of a formal hearing process. The Commission should recognize that WITA's claims are those of competitors who are asking it to erect a barrier to entry by denying federal financial support that they already receive. Eltopia Communications should be allowed to compete on equal terms with the WITA members and other local exchange and wireless companies already operating in eastern Washington. As demonstrated by the Petition and this response, Eltopia has satisfied all requirements for designation as an ETC. Designation of Eltopia is consistent with state policy to promote competition and access to advanced services and will, by making universal service funding available to Eltopia, directly advance the purposes of federal universal service policy by giving more customers in eastern Washington access to a greater variety of basic and advanced services.

21. Eltopia respectfully requests that the Commission grant this Petition to designate Eltopia as an ETC in each of the exchanges within the 509 area code, including exchanges served by both non-rural ILECs and rural ILECs.

Respectfully submitted, this 9<sup>th</sup> day of July 2007.

Glenn Blackmon  
on behalf of  
Eltopia Communications, LLC