

Agenda Date: July 11, 2007  
Item Number: A4

**Docket: UT-073024**

Company Name: Eltopia Communications, LLC

Staff: Bob Shirley, Telecommunications Policy Analyst

### **Recommendation**

Designate Eltopia Communications, LLC (Eltopia) as an eligible telecommunications carrier (ETC) for the exchanges in the 509 Local Access and Transport Area (LATA) listed in Appendices A and B.<sup>1</sup>

### **Background**

*Eltopia's petition.* Eltopia filed for ETC designation on May 11. It seeks designation as an ETC throughout central and eastern Washington, with the exception of Stehekin.

*Eltopia's services.* Eltopia provides local telecommunications and enhanced services, including Internet access service, to customers throughout eastern Washington. For example, Eltopia uses its own local service to terminate calls to its Internet service provider customer service line. It provides some of its Internet access service over fixed-wireless connections. Eltopia is also capable of originating local calls and connecting them to the public switched network over its fixed-wireless loop network.

Eltopia's petition contains detailed representations for the purpose of demonstrating it meets the requirements of WAC 480-123. Eltopia states it provides some of the federally required supported services throughout the areas for which it seeks designation; if designated, it must provide all required services prior to requesting payments from the Universal Service Administrative Company.

Eltopia's petition states that designation would be in the public interest. Eltopia represents that its service will advance the purposes of universal service because designation will result in increased availability of basic and advanced services. In particular, Eltopia states its wireless loop network will allow it to reach customers in remote areas of central and eastern Washington.

Eltopia asserts that its fixed wireless service is a closer substitute for wireline service than is mobile wireless service. It expects to compete with incumbents by providing unlimited local calling for a flat rate and offer broadband service to customers that in many instances do not have broadband services available to them from the incumbent.

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<sup>1</sup> There are 141 exchanges in the 509 LATA; 86 exchanges are served by incumbent, non-rural telephone companies, and 55 exchanges are served by incumbent, rural telephone companies. Eltopia has not petitioned for designation in the Stehekin exchange.

Eltopia requests the commission consider the competitive harm that will result if Eltopia is not designated an ETC. Eltopia believes it will compete directly with incumbent ETCs that are receiving universal service support, and that it will compete with wireless ETCs for data and voice customers. Eltopia asserts that in a subsidy-free market it could compete with other carriers, but that it will be at a disadvantage if it is not designated an ETC like its competitors. Under current Federal Communications Commission (FCC) rules, support for Eltopia will not reduce the support available to other ETCs.<sup>2</sup>

*Opposition to designation.* The Washington Independent Telephone Association (WITA) has filed a petition seeking a moratorium on all ETC designations, including the designation sought by Eltopia. WITA's position from its moratorium petition in opposition to Eltopia is that designation will increase the size of the federal universal service fund. Rather than repeat the analysis of the moratorium, commission staff directs commissioners to the memo in that docket for WITA's position.<sup>3</sup>

### **Discussion**

*The USF program.* Telecommunications carriers petition for ETC designation to become eligible to receive federal universal service support. The FCC determines the amount of support each ETC will receive. Federal support provides funds for the provision, maintenance, and upgrading of facilities and services. Support may be used to serve single and multi-line business and residential customers. Support may also be used to purchase equipment that is used to provide advanced services if the equipment is also used to provide basic service.<sup>4</sup>

Incumbent rural telephone companies receive support based primarily on investment throughout their network. Incumbent non-rural telephone companies draw from a capped fund and the amount received depends on the number of lines served in areas known as unbundled network element rate zones (or UNE zones). All other ETCs in Washington receive disaggregated support based on the location of customers. For these other ETCs, the amount of support is relatively lower for service in densely populated exchanges and relatively higher for service provided in sparsely populated exchanges. While support amounts are a function of the number of customers served in a given exchange and the population density of the exchange, Washington rules do not require support to be spent proportionally in locations that account for the level of support payments.<sup>5</sup>

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<sup>2</sup> There is a recent proposal from the Joint Board which, if followed by the FCC, would limit the size of the high-cost fund and thus Eltopia's participation in the federal universal service program would not increase the size of the fund but would reduce the support available to non-incumbent ETCs. *See In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision (Released May 1, 2007).

<sup>3</sup> Docket UT-073032.

<sup>4</sup> Access to advanced services is one of the principles the Federal-State Joint Board on Universal Service (Joint Board) and the FCC are to use as a basis for developing policies for universal service. 47 U.S.C. § 254(b)(2) and (3).

<sup>5</sup> In the ETC rulemaking docket, no company or organization advocated a rule requiring investment be targeted to the exchange with characteristics that generated a particular amount of support. That was likely due to recognition by all that a network is necessary to provide service. See Docket No. UT-053021.

While support is paid from the federal fund to designated companies, “[u]niversal service is intended to benefit customers, not companies.”<sup>6</sup> The commission designates companies to benefit customers.

The standard for determining whether to approve a petition for ETC designation is in WAC 480-123-040: “The commission will approve a petition for designation as an ETC if the petition meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.” This standard incorporates the requirement that petitioners offer, or will offer, the federally required services and meet the standards in WAC 480-123.

*Eltopia provides local service; will meet federal ETC requirements.* Commission staff has visited Eltopia’s facilities in Eltopia and Pasco, including one of its towers and its switching facilities. Commission staff observed Eltopia’s switching equipment in Pasco that terminated 800,000 calls in April to serve its dial-up Internet customers. Eltopia demonstrated its fixed-wireless service that eliminates the need for “last mile” facilities to serve farms, ranches and other locations when commission staff was permitted to originate a call using Eltopia’s fixed-wireless network. Eltopia has demonstrated its ability to originate and terminate local and interexchange calls.

After visiting Eltopia’s facilities and reviewing its petition, commission staff concludes Eltopia can and will provide the federally required services and can operate consistent with WAC 480-123. There are, however, actions Eltopia must take before it can offer and provide originating local service and seek support payments. For example, it will have to establish dedicated trunks for carrying 9-1-1 calls and also contract for automatic location and automatic number identification (ALI and ANI); other ETCs lease 9-1-1 transport and contract for ALI and ANI services.<sup>7</sup>

*WITA’s opposition and competitive neutrality.* While commission staff concludes Eltopia can meet the requirements placed on ETCs, WITA nevertheless opposes designation for Eltopia. WITA opposes designation of Eltopia because designation would result in an increase in total federal universal service support. WITA’s opposition to designation of Eltopia is intended to prevent what the FCC has authorized: increased support for telecommunications services as a result of designation of ETCs by the FCC and states. As commission staff states in its memo on WITA’s petition for moratorium in Docket

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<sup>6</sup> *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, ¶ 62 (citing *Washington Ind. Tel. Ass’n*, 110 Wn.App. at 510 (citing *Alenco Communications Inc. v. Federal Communications Comm’n*, 201 F.3d 608, 621 (5th Cir. 2000))).

<sup>7</sup> Eltopia informed commission staff that subsequent to filing its ETC petition, Eltopia entered into a contract with Intrado for 9-1-1 data base services. Intrado provides Qwest and others with similar services.

UT-073032, commission staff considers the fund size issue to be an FCC issue, consistent with this commission's prior statements.<sup>8</sup>

WITA's opposition raises issues at the heart of competitive neutrality. The FCC stated the principle of competitive and technological neutrality is properly applied when "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."<sup>9</sup> As a principle of competitive neutrality, the commission expects all ETCs to operate under FCC rules, including rules governing the calculation and distribution of support. Eltopia plans to enter the regulated, subsidized, local service market. It has stated to commission staff that it is only reasonable for Eltopia to take the steps necessary to enter the subsidized market if it can do so on terms similar to those of subsidized competitors. Eltopia's view reflects that of the FCC, which stated "it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support."<sup>10</sup>

Facts bear out the competitive disadvantage Eltopia will face if it is not designated as an ETC. In the 509 LATA, every carrier that has sought ETC designation has been designated. This includes 13 of 14 wireline carriers that offer residential service in the LATA,<sup>11</sup> and four of the five larger wireless carriers. The one smaller wireless carrier that

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<sup>8</sup> See, e.g., *In the Matter of the Petition of Sprint Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043120, Order No. 01 (Corrected) (Jan. 27, 2005), ¶ 42 ("...the decision before us is whether to limit altogether Sprint PCS's access to federal [High Cost Fund] HCF support by denying it ETC designation or to designate Sprint PCS as an ETC and let the FCC adjust support amounts if the revenue replacement provided by the HCF is providing more than sufficient support to ETCs. The FCC is in the better position to adjust either HCF support or PCS licenses if the FCC decides that it is necessary to do so.")

<sup>9</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

<sup>10</sup> See *Twelfth Report And Order, Memorandum Opinion And Order, And Further Notice Of Proposed Rulemaking*, CC Docket 96-45 (Adopted June 8, 2000) (Released June 30, 2000) ¶ 114 ("...excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We believe it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support. If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas....competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services...indefinite delays in the designation process will thwart the intent of Congress, in section 254, to promote competition and universal service to high-cost areas...we commit to resolve, within six months of the date filed at the Commission, all designation requests...strongly encourage state commissions to resolve designation requests filed under section 214(e)(2) in the same time frame."(footnotes omitted)).

<sup>11</sup> Computers 5\* d/b/a LocalTel (LocalTel) is the fourteenth residential carrier and it has not requested ETC designation. However, the commission has approved for LocalTel a revenue objective of approximately \$600,000 per year which results in LocalTel collecting \$600,000 from the Washington Exchange Carrier Association access pools that supply in excess of \$20 million per year in state universal service support to carriers in the 509, 206, 360, and 425 LATAs. Integra Telecom and others that offer business service were

sought designation has been designated as well.<sup>12</sup> If Eltopia is not designated, it will face 12 federally-subsidized, wireline competitors that can charge lower-than-cost prices without suffering financial harm.<sup>13</sup> Eltopia will not be in a position to charge lower-than-cost prices that reflect the value of subsidies received by those 12 competitors unless Eltopia is willing to forego revenue equal to the subsidies received by its competitors.<sup>14</sup> In dollar terms, Eltopia will be at an approximate \$15 million a year disadvantage.<sup>15</sup>

Competitive neutrality also promotes consumer choice. Consumers are better off when the government does not favor one competitor or one technology over another, but instead lets consumers choose the company and technology that best serves their needs. Only if Eltopia enters the marketplace for fixed, local service on terms similar to its 17<sup>16</sup> competitors will consumers obtain the choice Eltopia can provide. Consumer choice, a byproduct of competition, is not inconsistent with universal service because universal service can be provided in a competitive environment.<sup>17</sup>

Denial of Eltopia's request for ETC designation, as WITA proposes, would appear to reverse the commission's policy contained in WAC 480-123-040, and appear to reverse the policy in favor of competitive neutrality that is evinced by actions taken by the commission toward carriers in the 509 LATA during the last 10 years.

*State policy favors promotion of diversity in telecommunications.* In addition to commission staff's view that Eltopia's petition should not be denied based on the effect on the total of national federal support that is under the control of the FCC, there are positive reasons in favor of designation. Eltopia's local exchange and broadband services to be provided over fixed-wireless facilities are consistent with the legislative declaration in RCW 80.36.300 for promotion of diversity in the supply of telecommunications services and diversity of products in telecommunications markets throughout the state.

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not considered in arriving at the total of 14 carriers offering residential service in central and eastern Washington.

<sup>12</sup> Inland Cellular Telephone Company was designated in 2002. Verizon wireless is the one major wireless company that has not sought ETC designation in Washington or elsewhere in the country.

<sup>13</sup> The number of wireline competitors is 12 federally-subsidized wireline carriers rather than 13 because Eltopia has not sought designation in the Stehekin exchange of WeavTel. Eltopia can reasonably argue it also competes with wireless carriers, in which case the number is 17.

<sup>14</sup> For example, CenturyTel charges \$12.40 per month for local service in the Basin City exchange where it receives a \$19.25 subsidy per month, and to obtain the same revenue Eltopia would have to charge \$31.65 per month.

<sup>15</sup> The current projection for federal support in 2007 is \$120 million for the entire state, distributed between wireless and wireline ETCs; \$15 million is a conservative estimate of federal support received by wireline ETCs in central and eastern Washington. If wireless carriers are considered competitors, then \$30 million is a conservative estimate of the disparity Eltopia will face without designation.

<sup>16</sup> The number of subsidized competitors is 12 when wireline ETCs are the only ones taken into account.

<sup>17</sup> See *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 28 (2003) ("In considering the public interest, the Commission recognized the 1996 Act's interrelated goals of fostering competition and advancing universal service.") See also *Alenco Communications, Inc. v. Fed. Communications Comm'n*, 201 F.3d 608, 615 (5th Cir. 2000) (observing that "FCC must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other").

Promoting diversity in the supply of telecommunications services and products is in the public interest, and the commission has relied on this policy in support of previous designations.<sup>18</sup>

In particular, Eltopia's local service and broadband service over fixed-wireless facilities can reach far-flung ranches and farms where broadband service is unavailable and competition in the fixed, local service market is largely nonexistent.<sup>19</sup> The policy of promotion will be advanced if Eltopia is permitted access to the same federal support as its competitors, whose own service has been advanced as a result of subsidies.

Commission staff also concludes designation would be in the public interest because it would provide the benefits of competition to customers who do not now have access to competition for fixed, local service.

### **Summary**

Commission staff recommends it is in the public interest for the commission to designate Eltopia Communications, LLC (Eltopia) as an eligible telecommunications carrier (ETC) for the exchanges in the 509 Local Access and Transport Area (LATA) listed in Appendices A and B.

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<sup>18</sup> See *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, Order No. 1 (August 30, 2002) ¶ 15. See also WUTC docket No. UT-023040, Order Granting Modification, Order No. 2 (October 12, 2005) ¶ 11.

<sup>19</sup> LocalTel (not an ETC) uses fixed facilities to compete with Verizon and Qwest in north-central Washington. The only competitive ETC that uses fixed facilities to compete with an incumbent wireline ETC is Hood Canal Telephone Company which competes in three exchanges where Qwest is the incumbent ETC.

### Appendix A

<u>Company</u>	<u>Exchange</u>
Qwest Corporation	Clarkston
	Cle Elum
	Colfax
	Colville
	Coulee Dam
	Dayton
	Deer Park
	Easton
	Elk
	Ephrata
	Green Bluff
	Liberty Lake
	Loon Lake
	Moses Lake
	Newman Lake
	Northport
	Omak
	Orient- Laurier
	Oroville
	Othello
	Pasco
	Pateros
	Pomeroy
	Spokane
	Springdale
	Touchet
	Waitsburg
	Walla Walla
	Warden
	Yakima
United Telephone Company of The Northwest	Columbia
	Dallesport
	Glenwood
	Goldendale
	Grandview
	Granger
	Harrah
	Klickitat
	Lyle
	Mabton
Mattawa	
Paterson	

<u>Company</u>	<u>Exchange</u>
	Prosser
	Roosevelt
	Stevenson
	Sunnyside
	Toppenish
	Trout Lake
	Wapato
	White Salmon
	White Swan
	Whitstran
	Willard
Verizon Northwest	Benton City
	Brewster
	Bridgeport
	Cashmere
	Chelan
	Curlew
	Entiat
	Fairfield
	Farmington
	Garfield
	George
	Kennewick
	Latah
	Leavenworth
	Loomis
	Mansfield
	Molson
	Naches
	Newport
	Nile
	Oakesdale
	Palouse
	Pullman
	Quincy
	Republic
	Richland
	Rockford
	Rosalia
	Soap Lake
	Tekoa
	Tonasket
	Waterville
	Wenatchee



### Appendix B

<u>Company</u>	<u>Exchange</u>
Asotin Telephone Company	Anatone
	Asotin
CenturyTel of Cowiche	Cowiche
	Rimrock
	Tieton
CenturyTel of Washington	Almira
	Basin City
	Benge
	Cheney
	Chewelah
	Connell
	Coulee City
	Creston
	Davenport
	Edwall-Tyler
	Eltopia
	Eureka
	Harrington
	Hunters
	Kahlotus
	Kettle Falls
	Lind
	Mathews Corner
	Medical Lake
	Mesa
	Nespelem
	Odessa
	Reardan
	Ritzville
	Royal City
	Spangle
Sprague	
Starbuck	
Twisp	
Washtucna	
Wilbur	
Wilson Creek	
Winthrop	
Ellensburg Telephone Company	Ellensburg
	Kittitas

<u>Company</u>	<u>Exchange</u>
	Lauderdale
	Selah
	Thorp
	Vantage
Inland Telephone Company	Prescott
	Roslyn
	Uniontown
M&L Enterprises, Inc	Mt Hull
Pend Oreille Telephone Company	Cusick
	Ione
	Metaline Falls
Pioneer Telephone Company	Endicott
	La Crosse
St John Co-Op Telephone & Telegraph Company	St John