

[Service Date July 10, 2002]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of)	
	)	DOCKET NO. UT-011439
)	
VERIZON NORTHWEST, INC.,	)	FIFTH SUPPLEMENTAL ORDER
)	
	)	ORDER GRANTING MOTION TO
	)	JOIN RCC MINNESOTA, INC. AS
For Waiver of WAC 480-120-071(2)(a)	)	A PARTY; VACATING
	)	SCHEDULE OF PROCEEDINGS
)	
	)	NOTICE OF PREHEARING
	)	CONFERENCE
.....	)	(JULY 17, 2002)

1 **Synopsis.** *The Commission grants Qwest’s motion to join RCC Minnesota, Inc. as a party to the proceeding.*

2 **Proceedings.** Docket No. UT-011439 is a petition by Verizon Northwest, Inc. (Verizon), seeking a waiver or an exemption from WAC 480-120-071 regarding extending service to two separate locations, in Okanogan and Douglas counties respectively, both of which are located in Verizon’s Bridgeport exchange. On May 31, 2002, the Commission granted Staff’s motion to join Qwest Corporation (Qwest) as a party to the proceeding. On June 20, 2002, Qwest filed a Motion to Join RCC Minnesota, Inc. (RCC) as a party. On June 21, 2002, Verizon filed its support of Qwest’s motion. On July 3, 2002, RCC Minnesota, Inc. filed its response.

3 **Appearances.** Judith Endejan, Graham & Dunn, Seattle, Washington, represents Verizon. Gregory Trautman, Assistant Attorney General, Olympia, Washington, represents staff of the Washington Utilities and Transportation Commission (Commission Staff or Staff). Douglas N. Owens represents Qwest. Elizabeth Kohler, attorney, Vermont; David LaFuria, attorney, Seattle; and Richard Busch, attorney, Seattle, represent RCC.

MEMORANDUM

4 **Background.** RCC has been licensed by the FCC since 2000 to provide Commercial Mobile Radio Service (CMRS) in several areas throughout rural Washington. RCC, or its parent company, Rural Cellular Corporation, is also licensed to provide CMRS in other areas in the United States. The company has been engaged in upgrading its system and integrating its business with others in the state of Washington.

5 At an Open Meeting on June 14, 2002, the Commission granted RCC's application for Eligible Telecommunications Carrier (ETC) status in Docket No. UT-023033. The Commission has not yet entered a final order granting RCC this status. In Exhibit A to its petition for ETC status, RCC indicated it would be providing service to several of Verizon's non-rural LEC wire centers, including Brewster and Bridgeport, two exchanges that figure prominently in this proceeding. RCC also requested ETC status to serve Qwest's Omak exchange, adjacent to the Verizon Bridgeport exchange.

6 Section 214(e)(1) of the Telecom Act and Section 54.201(d) of the FCC's rules provide that carriers designated as ETCs must offer throughout their service areas certain services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services. These services include: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low income customers. ETCs must also advertise the availability of such services and charges using media of general distribution.

7 Verizon's waiver application requests that the company be relieved from providing service extensions to the Taylor location in Douglas County in Verizon's Bridgeport Exchange, approximately 14 miles outside of the town of Bridgeport, and to residences on the Timm Ranch, in the portion of the Bridgeport exchange located in Okanogan County.

8 Qwest's Omak exchange and facilities are adjacent to Verizon's, and may be closer to the Timm Ranch than Verizon's. However, Qwest declined to provide the Timm

Ranch service request when Verizon asked it to do so. The Commission ordered Qwest to be joined as a party to this case to protect Qwest's interests in the event that the Commission exercised its authority to alter the exchange boundaries between Qwest and Verizon to include the Timm Ranch in Qwest's Omak Exchange, as well as make a full record upon which to determine whether to grant a waiver of the rule requiring a service provider to extend service to a residential customer in its exchange territory.

9 **Qwest's Motion.** Qwest argues that under section 214(e)(1) of the Telecommunications Act of 1996, a carrier designated as an ETC must offer the supported services in its service area. Thus RCC must hold itself out to provide these supported services to the Timm Ranch, among others. As a result of the Commission's order granting RCC status as an ETC, RCC becomes the second ETC, aside from Verizon, in the area capable of serving the Timm Ranch. Qwest does not have ETC status. Qwest contends that the Commission cannot adjudicate whether or not there is a need to redraw Qwest's exchange boundary in this case in order to require Qwest to provide wireline service to the Timm Ranch without first determining that RCC's service is inadequate. Joining RCC as a party would therefore protect RCC's interests, since the Commission cannot determine whether RCC's service is adequate or inadequate without RCC being a party to the proceeding.

10 Qwest also argues that, similar to the reasoning used to support making Qwest a party to the proceeding, the Commission should join RCC because it will assist the Commission to build a complete record on whether or not and how the Commission should exercise its power to redraw Qwest's exchange boundary. There is much of a factual nature necessary to that determination and only RCC has access to some of that information.

11 Qwest contends that altering its exchange boundaries and forcing it to serve the Timm Ranch may have the effect of depriving RCC of potential customers at the Timm Ranch and discouraging diversity of telecommunications providers. Conversely, if the Commission alters the exchange boundaries and requires Qwest to construct a line extension and then the Timm Ranch applicants decide they would prefer service from RCC due to reasons of cost or convenience, Qwest will face significant stranded investment.

- 12 Finally, Qwest contends the Commission should consider whether RCC should be required to serve the Timm Ranch, even if it does not wish to do so, in light of its ETC status – a decision that can only be made if RCC is a party to the proceeding.
- 13 **RCC’s Response.** RCC responds that it is premature to join RCC as a party to this proceeding. The Commission has not yet entered an order approving RCC’s application for ETC status. Furthermore, given that there is an appeal pending at the Court of Appeals regarding a similar grant of authority in the United States Cellular case (Docket No. UT-970345), an appeal of RCC’s ETC status is equally likely. Also, RCC does not expect to receive federal high-cost support funds until early 2003, making it impossible for RCC to receive funding to provide the services at issue in this case.
- 14 RCC contends that state law requires that RCC must furnish facilities “to all persons and corporations who may apply therefor and be reasonably entitled thereto.” RCW 80-36-090. The applicants at the Timm Ranch location did not apply for service from RCC. Instead, those applicants have requested wireline service. RCC takes the position that if these customers wish to have service provided by a particular company, or via a particular technology, then other companies should not be required to provide service
- 15 RCC points out that WAC 480-120-071 applies to “each company required to file tariffs under RCW 80.36.100”. Because RCC is a CMRS provider, it is not required to file tariffs and thus the rule does not apply to it. Also, RCC does not receive the same level of support for its services that carriers such as Verizon might receive. RCC did not apply for state high cost funding and, as a CMRS carrier, is not eligible to obtain terminating access revenues to fund line extensions.
- 16 RCC observes that under WAC 480-120-071(2)(c) a carrier required to provide service may do so by entering into an arrangement with a radio communications service company. Although neither Qwest nor Verizon have contacted RCC to explore such an arrangement, assuming that the applicants in this case would accept wireless service, RCC suggests that extension of service in this case would be more appropriate through such an arrangement, whereby the wireline carriers would contract with and pay RCC to provide phone service to the Timm Ranch applicants and then seek reimbursement as provided in the rule.

- 17 **Staff's Response.** Staff recommends that the Commission deny Qwest's motion. Staff argues that the motion is not timely and will only serve to delay the possible provision of service to the Taylor location or the Timm Ranch. Staff contends that among the factors the Commission must consider in determining whether to grant or deny a waiver of the line extension rule is the comparative price and capabilities of radio communication service or other alternative providers of service. WAC 480-120-071(7)(b)(ii)(C). Staff suggests that Qwest was aware of this provision of the rule as early as January, 2002, when the prehearing conference took place. It certainly should have been aware by the time Staff filed its February motion to join Qwest as a party. Qwest knew at that time of the several wireless companies available to provide service in the area in question but did not attempt to join a wireless carrier until June 20, 2002. Qwest knew that wireless carriers had been joined as parties in similar proceedings before the Commission but took no timely action to join RCC at an earlier stage of this proceeding.
- 18 Staff further argues that the provisions of the line extension rule do not distinguish between CMRS companies who are ETC providers and those who are not. Qwest could have joined any of the wireless companies earlier in this case but chose not to do so. Even if Qwest had not sought to join a wireless provider in January, it should have done so immediately after being named a party on May 31, 2002, rather than waiting so much time, granting its request would require a delay in the schedule of proceedings.
- 19 Staff also states that RCC's ETC status does not obligate it to serve the applicants in this case, but rather only to offer that service, which RCC has done for several years. RCC's offer of service has not been accepted by any of the applicants. Instead, the applicants have requested wireline service, something that RCC does not offer.
- 20 Finally, Staff suggests the Commission's rejection of Qwest's motion due to lack of timeliness would not eliminate the Commission's opportunity to consider the impact of ETC status on a wireless carrier's obligation to provide service, since Staff is working on several cases where this is an issue. These cases may soon be brought to the Commission's attention.
- 21 **Discussion and Decision.** The Commission rejects the argument that Qwest's motion is untimely. The Commission did not join Qwest as a party to this proceeding until May 31, 2002. Nor did the Commission grant RCC status as an ETC until June

14, 2002. At the time of the hearing on Qwest's Petition for Reconsideration on June 17, the parties discussed the issue of RCC's newly granted ETC status and its impact on these proceedings. Soon thereafter Qwest filed its motion to join RCC as a party. It is not clear that Qwest should have acted sooner than it did to make this request.

22 Furthermore, the Commission finds unpersuasive the argument that it is premature to require RCC to become a party to this case. RCC already operates as a wireless telecommunications carrier in the state of Washington. RCC has indicated that as an ETC it will be receiving universal service funds in 2003 and that it will be building out its facilities in Washington so as to be able to provide federally supported services in the state. While the Commission recognizes the line extension rule at issue here refers to obligations of wireline companies to provide services in their exchange territories, the waiver provisions of the rule clearly allow the Commission to consider alternative forms of service available to applicants in determining whether to require wireline carriers to build facilities. RCC, as a party to the case, can best provide evidence of its plans and schedules for building out facilities in the areas where the Taylor and Timm Ranch applicants live.

23 For these reasons, the Commission grants Qwest's motion to join RCC as a party to this proceeding, recognizing that this will cause some delay while RCC prepares and files its case and the other parties are given an opportunity to respond. RCC should be prepared to file testimony in this case regarding the level of universal support it expects to receive, the timing of its receipt of that support, the nature and scope of its current ability to serve the applicants in this case; the cost of providing that service; or, if service is currently unavailable, RCC's plans and schedule for building plant that would enable it to serve the applicants.

ORDER

24 The Commission orders RCC to be joined as a party to this proceeding. The current schedule of proceedings is vacated and the Administrative Law Judge will convene a prehearing conference to take place on July 17, 2002 at 9:30 a.m. at the Commission's offices in Olympia to consider further scheduling in accordance with the terms of this order.

DATED at Olympia, Washington, and effective this ____ day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner