

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In Re the Matter of	)	DOCKET NO. UT-003106
	)	
Staff Request for Designation of a	)	ORDER INITIATING
Telecommunications Common Carrier	)	ADJUDICATIVE PROCEEDING
to Serve the Unserved Area Between Grant	)	AND NOTICE OF PREHEARING
County and U. S. Highway 2	)	CONFERENCE
.....	)	( December 12, 2000)

**I. INTRODUCTION**

- 1 The Washington Utilities and Transportation Commission (Commission), on its own motion, enters this Order initiating an adjudicative proceeding to determine (1) whether the Commission should order a telecommunications common carrier to serve what Commission Staff (Staff) alleges is presently an unserved area of the state; if so, (2) which carrier or carriers should be so ordered; and (3) whether and to what extent such carrier or carriers should be allowed to recover the costs of providing service through an increase in terminating access charges.
  
- 2 Information presented at a Commission Open Meeting indicates the existence of the following underlying circumstances. Commission Staff describes the alleged unserved community as the Moses Coulee area of Douglas County north of the Douglas-Grant County border. The area is described more precisely, with reference to section, township, and range in Exhibit A, attached to this order. A map depicting the boundaries of the area is also attached as Exhibit B.
  
- 3 Moses Coulee is an area in northwest Grant County and southeast Douglas County that extends south from U.S. Highway 2 about 12 miles in the direction of Ephrata on both sides of Coulee Meadows Road (formerly Rim Rock Road). Coulee Meadows Road is a paved, striped, county road that begins in the North at an intersection with U.S. Highway 2, runs south through the Coulee, and subsequently becomes Sagebrush Flat Road at the Grant County line as it continues southeast into Ephrata.
  
- 4 Part of the north end of the area appears to be within Verizon Northwest Inc.'s (Verizon) Waterville exchange, though the remainder of the area designated by Staff appears to be outside the exchange area of any wireline carrier. There are two wireless carriers with licenses from the Federal Communications Commission (FCC) to serve the area. Two homes and one business have telephone service from transmitters on the back porch of a farmhouse located at the northern edge of the Qwest Corporation (Qwest) Ephrata exchange. A bed and breakfast toward the north end of the Coulee has radio service with

a Wenatchee exchange prefix (from Verizon). The users of the telephone service state that it is unreliable and affected by weather and other factors. Wireless service is either non-existent or extremely unreliable depending upon one's location on Coulee Meadows Road and surrounding areas.

## II. PARTIES

- 5 The Commission is an agency of the State of Washington, authorized by law to regulate the rates, practices, accounts, and services of public service companies, including telecommunications companies, under the provisions of Title 80 RCW. The Staff of the Commission will appear as a party in this proceeding.
- 6 AT&T Wireless Services of Washington, Inc. (AT&T), is a telecommunications common carrier licensed by the FCC to offer cellular telephone service in the Rural Service Area (RSA) Washington 5 – Kittitas (including Grant County).
- 7 Century Tel of Washington, Inc. (Century Tel) is a telecommunications company that operates the Coulee City exchange in Grant County.
- 8 Eastern SUB-RSA L.P. is a telecommunications common carrier licensed by the FCC to offer cellular telephone service in the Washington 5 – Kittitas RSA (including Grant County) area.
- 9 Qwest Corporation is a telecommunications company that operates the Ephrata exchange in Grant County.
- 10 RCC Holdings, Inc. is a telecommunications common carrier licensed by the FCC to offer cellular telephone service in the Washington 2 – Okanogan RSA (including Douglas County) area.
- 11 Verizon Northwest, Inc. is a telecommunications company that operates the Soap Lake exchange in Grant County and the Waterville and Wenatchee exchanges in Douglas County.
- 12 Verizon Wireless (VAW) L.L.C. is a telecommunications common carrier that is licensed by the FCC to offer cellular telephone service in the Washington 2 – Okanogan RSA (including Douglas County) area.
- 13 Western SUB-RSA L.P. is a telecommunications common carrier that is licensed by the FCC to offer cellular telephone service in the Washington 5 – Kittitas (including Grant County) area.

### III. JURISDICTION

- 14 The Commission has jurisdiction in this matter pursuant to RCW 80.01.040(3), RCW 80.36.080, RCW 80.36.090, RCW 80.36.140, RCW 80.36.230 -.240, and RCW 80.36.610.

### IV. DISCUSSION OF APPLICABLE LAW AND STATEMENT OF STAFF'S FACTUAL ALLEGATIONS

- 15 At the Commission's November 8, 2000 open meeting, Staff requested that the Commission initiate an adjudicative proceeding to address the circumstances and the issues set out in the introduction to this order.
- 16 Staff's request has two bases of statutory authority. First, RCW 80.36.610 authorizes the Commission "to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996." One such proceeding contemplated for a state commission under the federal act is set out in § 214(e)(3), which provides, in part:

DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS- If no common carrier will provide the services that are supported by Federal universal service support mechanisms . . . to an unserved community or any portion thereof that requests such service, the [Federal Communications] Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

47 U.S.C. § 214(e)(3). Second, RCW 80.36.230 authorizes the Commission "to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies." Staff argues that this includes the authority to expand, under certain circumstances or on certain conditions, a local exchange company's tariffed exchange boundaries.

- 17 The Commission finds that the information provided by Staff is sufficient to initiate an adjudicative proceeding. Commission Staff will bear the burden of proof.
- 18 Listed below are the issues that Staff puts forth for resolution by the Commission in this proceeding. These are the issues Staff submits must be resolved if the Commission is to order a carrier to serve the allegedly unserved area. The Commission will consider arguments that other or additional issues must or should be addressed before the Commission may order a carrier to serve.

- 19 **Is the community unserved?** Staff asserts that an unserved community or area is one in which facilities would need to be deployed in order for its residents to receive each of the services designated for support by the universal service support mechanisms. *See In The Matter Of Federal-State Joint Board On Universal Service: Promoting Deployment And Subscribership In Unserved And Underserved Areas, Including Tribal And Insular Areas, Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, 1999 WL 684121 (F.C.C.), 14 F.C.C.R. 21177 (August 5, 1999).
- 20 Staff alleges that, by this definition, the community described in Exhibit A is unserved by any common carrier that is able to provide the services that are supported by federal universal service support mechanisms.
- 21 **Is there no common carrier that will provide the services supported by federal universal service support mechanisms?** The services that are supported by federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 CFR § 54.101. Staff has made requests to all carriers that might feasibly be deemed best able to serve, including an offer to the wireline carriers to advocate to the Commission for the terminating access charge cost recovery mechanism provided by WAC 480-120-540(3) as a means of recovering extension costs, including the cost of reinforcing existing facilities which might be necessitated by such an extension. No carrier has volunteered to provide the service.
- 22 **What factors should be considered in deciding which carrier or carriers are “best able” to serve?** The Telecommunications Act of 1996, 47 U.S.C. § 214(e)(3), requires the Commission to designate the carrier or carriers that are “best able” to provide service. Staff asserts that the term “best able” indicates that Congress had in mind a “totality of the circumstances” approach to determining which carrier is best able. Staff suggests that those circumstances might include any or all of the following: (1) whether the area falls within the designated service area of an existing carrier; (2) the extent to which a carrier has deployed facilities capable of providing supported services in the surrounding area; (3) the cost for that carrier to build facilities capable of providing the supported services; (4) the quality of services that would be provided; (5) the financial strength of the carrier; (6) the proportionate impact serving the area would have on the number of lines and the geographic area served by the carrier; (7) the amount of time required for the carrier to deploy facilities<sup>1</sup>; and (8) whether the carrier serves the community of interest to which the residents of the unserved area would most likely place calls to government service providers (such as schools or emergency services) and private businesses.

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<sup>1</sup>Factors 1-8 are from *In The Matter Of Federal-State Joint Board On Universal Service*, *supra*, at ¶ 96.

- 23 **If a carrier is designated, what will be its resulting obligation to serve?** Assuming the Commission decides to order a wireline carrier to serve, Staff asserts that the Commission may utilize RCW 80.36.230 (authorizing the Commission to prescribe exchange area boundaries) to define the extent of a carrier's obligation to serve. Therefore, following a redrawing of a carrier's (or carriers') exchange boundaries, the carrier's line extension tariff provisions or the pending Commission line extension rule (Docket No.UT-991737) would apply to applications for service within the new exchange boundaries.
- 24 **Are additional measures necessary to ensure that the carrier ordered to provide service is able to earn an appropriate return on its investment?** Staff asserts that it may be necessary, where a carrier is ordered to serve beyond its historical profession of service, to provide that carrier a special means of cost recovery for its investment. Staff asserts that it may be appropriate to allow the carrier that is ordered to serve (assuming it is a wireline carrier) to recover the reasonable costs of its plant investment together with reinforcement costs necessitated by the extension through an increase in the company's terminating access charges pursuant to WAC 480-120-540(3).
- 25 **What is the legal standard for establishing exchange area boundaries?** RCW 80.36.230 does not set out any special standards for the Commission when it is called upon to prescribe the exchange area boundaries of telephone companies. Staff asserts that it may, therefore, be presumed that the "public interest" standard of RCW 80.01.040(3) provides the applicable standard.

## V. ORDER

- 26 THE COMMISSION ORDERS that an adjudicative proceeding be commenced pursuant to RCW 80.04.110, chapter 34.05 RCW and chapter 480-09 WAC for the following purposes:
- 27 (1) To determine whether the Commission should order a telecommunications common carrier to serve what Commission Staff (Staff) alleges is presently an unserved area of the state; if so,
- 28 (2) To determine which carrier or carriers should be so ordered; and
- 29 (3) To determine whether and to what extent such carrier or carriers should be allowed to recover the costs of providing service through an increase in terminating access charges.

## VI. NOTICE OF PREHEARING CONFERENCE

- 30 The prehearing conference in this matter is being held pursuant to Part IV of chapter

34.05 RCW, Adjudicative Proceedings, including but not limited to RCW 34.05.413, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission has jurisdiction over this matter pursuant to RCW 80.01.040(3), RCW 80.36.080, RCW 80.36.090, RCW 80.36.140, RCW 80.36.230, RCW 80.36.240, and RCW 80.36.610. Statutes involved, in addition to those previously cited, include those within chapters 80.04 and 80.36 RCW. The ultimate issue involved is whether the Commission should order a telecommunications carrier to serve an allegedly unserved area of the state; if so, which carrier should be so ordered; and whether and to what extent such carrier or carriers should be allowed cost recovery through increased terminating access charges.

31 **NOTICE IS HEREBY GIVEN That a prehearing conference in this matter will be held on December 12, 2000, at 1:30 p.m., in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** The time and place for the evidentiary hearing will be set at the prehearing conference or by later written notice. The purpose of the prehearing conference is to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. Petitions to intervene should be made in writing prior to that date or made orally at that time. Appearances will be taken.

32 Please see the form attached to this notice which should be filled out and returned if any party or witness needs an interpreter or other assistance.

33 NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET HEREIN, OR OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH THE TERMS OF RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.

34 Karen Caille, Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Department, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, (360)664-1140, has been designated to preside at the hearing.

The names and mailing addresses of all parties and their known representatives are as follows:

Commission: Washington Utilities and  
Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250  
(360)664-1160

Representative: Jonathan Thompson  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P. O. Box 40128  
Olympia, Washington 98504-0128  
(360)664-1225

Company: Qwest Corporation  
1600 Seventh Avenue, Suite 3206  
Seattle, WA 98191

Representative: Lisa Anderl  
Attorney at Law  
1600 Seventh Avenue, Suite 3206  
Seattle, WA 98191  
(206) 345-1574

Company: Verizon Northwest, Inc.  
1800 41<sup>st</sup> Street  
Everett, WA 98201

Representative: Lida Tong  
Verizon Northwest, Inc.  
1800 41<sup>st</sup> Street  
Everett, WA 98201  
(425) 261-5691

Company: CenturyTel of Washington, Inc.  
P. O. Box 9901  
Vancouver, WA 98660-8701

Representative: Calvin K. Simshaw  
CenturyTel of the Northwest, Inc.  
P. O. Box 9901  
Vancouver, WA 98660-9801  
(360)905-5958

Company: AT&T Wireless Services of Washington, Inc.  
Registered Agent: Margaret Johnson  
16331 NE 72<sup>nd</sup> Way  
Redmond, WA 98073-9761

Company: Western SUB-RSA L.P.  
Registered Agent: CT Corporation Systems  
520 Pike Street  
Seattle, WA 98101

Company: Eastern SUB-RS L.P.  
Registered Agent: John P. Coonan  
9 S. Second Street  
Roslyn, WA 98941

Company: RCC Holdings, Inc.  
Registered Agent: CT Corporation Systems  
520 Pike Street  
Seattle, WA 98101

Company: Verizon Wireless (VAW) L.L.C.  
Registered Agent: CT Corporation Systems  
520 Pike Street  
Seattle, WA 98101

Public Counsel: Simon ffitc  
Public Counsel Section  
Office of Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012  
(206)464-6253

35 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective this                      day of November 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

Inquiries should be addressed to:

Secretary  
Washington Utilities and  
Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250  
(360)664-1160

or

Public Counsel Section  
Office of Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012  
(206)464-6253

**NOTICE**

PLEASE BE ADVISED that the hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and that if limited English-speaking or hearing impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be designated below and returned to Washington Utilities and Transportation Commission, Attention: Carole Washburn, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (SUPPLY ALL REQUESTED INFORMATION)

Docket No.: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_