

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

RCC MINNESOTA, INC., d/b/a
CELLULAR ONE

For Designation as an Eligible
Telecommunications Carrier

DOCKET NO. UT-023033

ORDER GRANTING PETITION FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

I. INTRODUCTION

- 1 The 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 area in which it is designated. *Id.*
- 2 The Commission considered the requests of numerous carriers for initial designation as ETCs at its regularly scheduled open meetings of November 26 and December 10, 1997. The Commission made its initial designations of ETCs by order dated December 23, 1997 (First Order Designating ETCs).²
- 3 The Act provides for the designation of multiple ETCs in any given service area. In areas that are served by rural telephone companies,³ state commissions may designate additional ETCs if such designation is in the public interest. 47 U.S.C. § 214(e)(2). Designation of ETCs in areas served by rural companies must be at the study-area

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

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) (*First Order Designating ETCs*).

³ A “rural telephone company” is defined at 47 U.S.C. § 147(37).

level,⁴ unless the state commission and the Federal Communications Commission (FCC) agree to a different geographic service area. 47 U.S.C. § 214(e)(5). In all other areas, state commissions must designate additional ETCs upon request and such designation may be made for any geographic area established by the state commission. *Id.*

- 4 In our initial designations, we designated Verizon Northwest, Inc., as an ETC for each of its exchanges in Washington. We designated Qwest Corporation as an ETC for only ten exchanges because it did not request designation for every exchange it serves. The Commission designated United States Cellular Corporation as an ETC for nine geographic service areas, none of which were served by rural telephone companies.
- 5 In our First Order Designating ETCs, the Commission designated areas served by rural companies at the study-area level for one year, and by the more finely graded exchange-area level thereafter.⁵ On August 17, 1998, the Commission, in conjunction with 20 rural companies, petitioned the FCC to agree with the exchange-level designations, rather than study-area designations, for rural companies. The FCC granted the petition on September 9, 1999.⁶
- 6 In making its initial designations, the Commission made only one designation for each geographic service area served by a rural telephone company. At that time, the issue of whether the designation of additional ETCs in rural areas would be in the public interest was not before the Commission. The Commission did find that ETC designations of both rural and non-rural companies were in the public interest.⁷

⁴ A “study area” is commonly known as an ILEC’s existing service area and generally includes all of the exchanges in which the company provides service within the state. The study-area boundaries are fixed as of November 15, 1984. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 8872 n.434 (1997).

⁵ First Order Designating ETCs, at 12.

⁶ *In the Matter of Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, CC Docket 96-45, Memorandum Opinion and Order, 15 FCC Rcd 9921 (1999). The petition also included a request for FCC approval of a method for deaveraging federal universal service support at the sub-wire center level.

⁷ *See First Order Designating ETCs*, at 17.

7 On December 6, 1999, United States Cellular Corporation requested ETC designation in 70 exchanges served by rural incumbent local exchange companies (rural ILECs). Many of the rural ILECs opposed that request. The Commission found United States Cellular's request to be in the public interest and otherwise consistent with 47 U.S.C. § 214(e) and designated it as an ETC in those exchanges.⁸ The rural companies appealed that decision.⁹

8 On June 3, 2002, RCC requested ETC designation in the exchanges listed in Appendix A. These exchanges, and parts of exchanges, are served by rural carriers. The Commission considered RCC's petition for ETC designation at its regularly scheduled open public meeting on June 14, 2002.

II. THE MERITS OF RCC'S PETITION FOR ETC DESIGNATION

A. Statutory Requirements

9 Pursuant to 47 U.S.C. § 214(e)(1), ETCs must offer the services supported by universal service dollars and advertise the availability of those services. In addition, where a carrier requests ETC designation in areas served by rural telephone companies, the designation must be in the public interest. 47 U.S.C. § 214(e)(2). RCC's request is governed by these provisions.

10 The Act does not define what state commissions must consider in determining whether an ETC designation in an area served by rural carriers is in the public interest. In weighing the public interest, the Commission is mindful of the stated purpose of the Act, which is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new technologies."¹⁰ In addition, the Commission also will consider our state policies set forth at RCW 80.36.300. Consistent with the national and state policies, the Commission will consider the relative benefits and burdens that additional ETC designation may bring to consumers as a whole.

⁸ See *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 359-60 (Jan 27, 2000).

⁹ See *Washington Ind. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 110 Wn. App. 489, 41 P.3d 1212 (2002), *petition for rev. filed*, No. 72428-8 (April 4, 2002).

B. Positions of Interested Persons1. RCC

11 RCC is a predominately rural carrier and provides service in the areas set forth in its petition for ETC designation. RCC stated that its request for ETC designation is in the public interest because the designation will support its efforts as a wireless carrier to serve rural areas and provide competitive alternatives to rural customers, and will facilitate the provision of advanced services in rural areas. In its petition, RCC quoted our order designating United States Cellular as an ETC in rural areas in support of its claim that designation of a wireless carrier as an ETC will provide the benefits of increased mobility and an increased level of service. *RCC's Petition, at 11.*

12 RCC cited to a decision of the Arizona Commerce Commission holding that designating wireless carriers as ETCs will provide additional consumer choice and provide a potential solution to “health and safety risks associated with geographic isolation.” *Id. (citations omitted).*

13 RCC stated it will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. *Id. at 12.*

14 RCC also states that in most rural areas wireless service is only a convenience at this time because universal service support is not available to fund infrastructure investment. However, with universal service support wireless companies can invest in the infrastructure necessary to become potential alternative to wireline service. *Id.* “Provision of high-cost support to RCC will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of Washington.” *Id. at 12-13.*

2. Rural Local Exchange Companies

15 The rural ILECs¹¹ opposed RCC's petition. They claim that RCC's designation as an ETC in the exchanges served by rural ILECs is not in the public interest. They

¹⁰ S. 652, 104th Cong. (1996).

¹¹ As used in this Order, “rural ILECs” means members of the Washington Independent Telephone Association (WITA) and Asotin Telephone Company, CenturyTel of Washington, Inland

argued that the information before the Commission is insufficient to find that designation is in the public interest, and that there must be an adjudicative proceeding to establish additional facts before the Commission can lawfully designate RCC as an ETC in the rural areas. Rural ILECs conceded that the recent decision in *WITA v. WUTC*¹² controlled the issue of a hearing with respect to the procedural issues raised at the time the Commission designated United States Cellular, but stated that it was the lack of factual information concerning RCC's services and capabilities that warranted a hearing before a decision by the Commission.

16 On the morning of our Open Meeting at which the matter was heard, the Washington Independent Telephone Association (WITA), on behalf of itself and its members, and several rural companies, filed a response to RCC's petition. Their arguments are summarized below.

(a) *The Rural ILECs argue that RCC's Petition Does Not Meet the Requirements of Section 214(e)(2)*

17 The rural ILECs argued that RCC's petition does not meet the requirements of 47 U.S.C. § 214(e)(2) because it contains only a "vague assertion" that it is capable of serving the geographic area for which the designation is sought. Rural ILECs also contend that the affidavit of RCC's Legal Services Director concerning its ability and willingness to serve as an ETC is the very definition of a vague assertion. *See Petition, Exhibit D*. In support of this argument, the rural ILECs cite to the following FCC Declaratory Ruling concerning designation of wireless carriers as ETCs:

We [FCC]caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.¹³

Telephone Company, Pend Oreille Telephone company, Pioneer Telephone company, and St. John Co-operative Telephone and Telegraph Company.

¹² *See supra* n.9.

¹³ *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15,168, 15,178, ¶ 24 (2000) (Declaratory Ruling).

- (b) *The Rural ILECs argue that the public interest requirement of the Act requires a factually specific showing of RCC's actual ability to provide service.*

18 The rural ILECs contend that the Petition must be accompanied by factual information such as cell sites, capacities, transmitter power, or tower locations. In support of this contention they cited *WWC Holding Co. v. Public Service Commission of Utah*,¹⁴ in which the Utah Supreme Court had decided that the map provided to the public service commission was insufficient to demonstrate the technical and objective data required to meet the public interest requirement of 47 U.S.C. § 214(e)(2). The rural ILECs argue that the map RCC provided with its petition is insufficient to provide the objective evidence to support RCC's claim that it will use the funds for the purpose for which the support is intended because there is no evidence of cell sites, capacities, transmitter power, or tower locations. *See Petition, Exhibit A.*

19 The rural ILECs provided several color-coded maps, which purported to show RCC's signal strength in many areas of their exchanges. They also presented similar maps purporting to show locations where efforts to make cellular calls were successful or unsuccessful. The rural ILECs contend the maps show that RCC's coverage is spotty, at best, in several rural exchanges.

20 At the Open Meeting, a representative of the rural ILECs described at some length the tests of RCC's signal strength in various rural ILEC exchanges undertaken by an employee of Inland Cellular Telephone Company, an affiliate of rural ILEC Inland Telephone Company. The rural ILECs contended that the tests demonstrate that RCC does not have sufficient signal strength in many locations to provide service throughout the area where it requests designation.

21 In general, the rural ILECs characterized RCC's signal strength as sufficient or better along most highways and significant roads, such as roads that pass through small towns. Also, the rural ILECs generally characterized RCC's signal as marginal or insufficient as testing moved away from highways and main roads. The rural ILECs contend that their tests conducted at homes with wireline service located away from towns, highways, and main roads show that RCC's signal was insufficient or non-existent in many instances.

¹⁴ *WWC Holding Co. v. Public Serv. Comm' of Utah*, 44 P.3d 714 (Utah 2002).

22 The rural ILECs compared their findings regarding RCC's signal strength to Pioneer Telephone Company's 100 percent penetration to occupied buildings.¹⁵ The rural ILECs argued that wireless service is not basic service used to connect customers to the public switched telephone network, but characterized it as "an adjunct service, used primarily while traveling." Declaration of Mike Richmond at 3.

(c) *The Rural ILECs argue that RCC's Petition does not provide specific, objective evidence of its ability to provide the nine required services.*

23 The rural ILECs argue that the information provided by RCC about its ability to provide the nine required services was so scant that it is impossible to determine that it provides these services.¹⁶ They argue that RCC's service is not in the public interest because it does not satisfy the local usage requirement of 47 C.F.R. § 54.101(a). They also argue that ETC designation is not in the public interest because RCC provides "dial around" access to interexchange services, rather than "traditional" direct access, and thereby does not provide equal access to interexchange services.

24 The rural ILECs challenge RCC's claim that it has satisfied the local usage requirement of 47 C.F.R. § 54.101(a) by stating that it will "comply with any and all minimum local usage requirements adopted by the FCC." The rural ILECs argue this is an insufficient showing and that RCC must provide information about its local usage plans. *Rural ILEC Response to Petition, at 8-9.*

25 Rural ILECs compare RCC's statement to what the FCC had before it when Western Wireless applied to the FCC for ETC status in Wyoming. According to the rural ILECs, Western Wireless had provided evidence that it would offer service with a rate plan that included unlimited usage at a price of \$14.99 per month. Similarly, the rural ILECs cited a Minnesota Commission decision requiring a wireless ETC seeking designation in areas served by rural incumbents to offer a flat-rate plan that did not exceed 110% of the rural ILEC rate for the area to be served.

¹⁵ Penetration rate is a telecommunications term that originally indicated the percentage of customers that have wire connections to the public switched telephone network. The term is sometimes applied to wireless and other communications technology.

¹⁶ The nine services required under 47 C.F.R. § 54.101 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 service; and (9) Toll limitation for qualifying low-income consumers.

26 The rural ILECs argue the Commission is “duty bound” to consider whether RCC’s local usage plans are in the public interest. *Id. at 10*. They state it is impossible for the Commission to do so in the absence of information from RCC. This absence of information demonstrates “RCC’s Petition is objectively inadequate to demonstrate that it has satisfied the requirements of Section 214(e)(1).” *Id.*

(d) *The Rural ILECs argue that RCC’s claim that ETC designation will serve the public interest through the introduction of advanced services is unsupported and irrelevant.*

27 The rural ILECs dispute RCC’s statement that its designation as an ETC will lead to introduction of advanced services. They argue that this contention is unsupported and irrelevant to a decision concerning ETC designation. *See Rural ILEC Response to Petition, at 11-12*. The rural ILECs state RCC does not define what the advanced services are or will be, and that it is nothing more than an unsubstantiated claim that may be intended to bolster the weakness of RCC’s petition with respect to the nine requirements.

(e) *The Rural ILECs Argue that promotion of competition alone is not sufficient to warrant a finding that RCC’s request for ETC designation is in the public interest.*

28 The rural ILECs argue that the Commission may not rely on a policy preference for competition to determine the public interest, and that the Commission must consider other factors. *See Rural ILEC Response to Petition, at 16-17*. They also argue that if competition alone were sufficient to support a finding in the public interest, then there would be no finding to make because every additional ETC would be in the public interest and a separate finding would be meaningless. *Id. at 17*. They argue that the Commission must examine the facts beyond the mere assertion that designating RCC will further competition. *Id.*

29 The rural ILECs contend the Commission must evaluate whether RCC has the actual ability to serve rural areas and that individual, existing ETCs in rural areas also will be able to compete. *Id. at 18*. They argue that the substitution of one competitor for another does nothing to increase competition. *Id.* An increase in the number of competitors might not increase competition; it might have the effect of simply replacing one well-established, productive competitor with one less prepared to serve the rural public. *Id. at 19*.

30 Rural ILECs noted that the United States Circuit Court for the District of Columbia, rejected the notion of “competition for competition’s sake.” *Id.* In *United States Telecom Ass’n v. Federal Communications Comm’n*,¹⁷ the Court reviewed the FCC’s efforts to promote competition through unbundling of non-rural ILECs’ network elements for use by competitive local exchange companies. Rural ILEC’s argue that the Court found that the FCC’s policy would actually harm competition in the long run by undermining the ability of non-rural ILECs to compete with competitors in certain instances. *Rural ILECs’ Response to Petition, at 20.*

31 Rural ILECs state that they do not argue that competition is an illegitimate aim of the Act, but rather that adding competitors to the market does not always equate to greater competition. They argue this is particularly true of RCC, which they say has failed to provide any objective evidence worthy of allowing it to tap into the federal universal service fund. *Id.*

32 The rural ILECs fault RCC for noting that competitive carriers in other states have earmarked funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital, while not committing itself to these or other similar activities. *Id.*

(f) *The Commission should make a factual determination concerning how designation of RCC will affect each, individual existing ETC.*

33 The rural ILECs argue that the Commission must consider the facts and circumstances surrounding the six existing ETCs in the areas served by RCC before granting ETC designation to an additional carrier. *Id. at 23.* What may further the ends of competition in one area, they contend, may eliminate the existing ETC in another area. They argue that the public interest cannot be determined without considering how ETC designation would affect the existing ETCs. Finally, they state RCC made no effort to demonstrate how its designation as an ETC will affect the existing, individual rural ILECs. *Id. at 24.*

(g) *RCC has not shown that service provided by existing ETCs is deficient.*

34 The rural ILECs contend RCC has not shown that service by existing ETCs is deficient. They cite to several declarations for the proposition that existing rural ILEC

¹⁷ *United States Telecom Ass’n v. Federal Communications Comm’n*, 290 F.3d 415 (D.C. Cir. 2002).

ETCs serve a very high percentage of the population, perhaps even 100% in some instances. They further contend that mobile wireless service is not used to provide basic service, but rather it is used in addition to wireline service to homes. *Id. at 22.*

35 The rural ILECs state that the federal universal service fund is not a bottomless reservoir of money. While “current rules do not decrease support for one ETC if an additional ETC is added, at some point the effect will be to force a cap on or restructuring of the USF.” *Id.* The rural ILECs contend that the Commission must make a full determination of RCC’s capabilities to actually add value through “legitimate” competition. *Id. at 23.*

3. Commission Staff

36 Commission Staff recommended approval of RCC’s request for designation as an ETC. Staff’s recommendation was based in part on consistency with our designation of United States Cellular Corporation as an ETC in 1999. *See Third Supplemental Order in Docket No. UT-970345.* In that order, we stated that wireless service will provide: increased mobility for those that choose it; increased service; access to electronic mail over wireless telephones; an increase in the likelihood that cellular technology will become available to more rural customers at an affordable price; access to the Internet over wireless telephones; and a choice between the reliability of wireline service and the mobility of wireless service. Staff indicated that approving RCC’s request for ETC designation is consistent with the purposes of the Act, promotion of competition, and preservation and advancement of universal service. *Staff Open Meeting Memo at 5.*

37 In addition, Staff stated that ETC designation would not only bring competition to areas served by rural ILECs and RCC, but would bring the *benefits* of competition. The benefits of competition, according to Staff, are downward pressure on prices, introduction of new products, and emphasis on customer service.

38 Staff explained that RCC already competes with rural ILECs, but it does not do so on an equal basis. Rural ILECs have access to both federal and state universal service funds. ETC designation will result in access to federal universal service funds for RCC, but not state universal service funds.¹⁸

¹⁸ State universal service support is provided to rural ILECs through rates permitted on a service known as terminating access. FCC rules prohibit wireless carriers from filing tariffs to collect terminating access. 47 C.F.R. § 20.15(c).

39 Staff also explained why access to federal universal service support funds is important to RCC. RCC faces the same low-revenue circumstances that rural ILECs face.¹⁹ If RCC is to provide service in rural areas, then it must have sufficient support to do so. Customers will see the benefits of competition only if competitors have sufficient support.

40 Staff also noted that the FCC has changed its rules for distribution of federal universal service support since the Commission designated United States Cellular Corporation as an ETC in 1999. At that time, FCC rules treated federal universal service support as a “zero sum game,” whereby a competitor’s successful gain of a customer reduced the amount of support available to the incumbent. However, in 2000, the FCC altered its rules to permit all ETCs to collect support for every line served, with the amount per line based on the incumbent’s support per line. *Id. at 3.*

41 Staff also recommend that the Commission grant RCC designation as an ETC for parts of exchanges where it is licensed to serve. In the past, there were concerns about cream-skimming, but the FCC’s new support mechanism as well as rural incumbent filings in the federal universal service disaggregation docket indicate that cream-skimming is no longer a concern. *Id.*

42 Finally, in response to a question concerning the territory served by RCC, Staff responded that the area served by RCC -- its three cellular geographic service areas (CGSAs) -- are available on the FCC website and that anyone can determine where it is licensed to serve.

IV. COMMISSION DISCUSSION

A. RCC’s Petition Meets the Requirements of Section 214(e)(2).

43 We believe that RCC’s petition satisfies the requirements of 47 U.S.C. § 214(e)(2). We disagree with the rural ILECs that RCC’s petition contained only a “vague

¹⁹ Federal and state universal service support at issue here is generally referred to as “high-cost” support. In some locations, particularly mountainous areas, the cost of construction may be higher than average. However, not all “high-cost” service is provided in locations where construction costs are above average. More accurate descriptions would be “high-cost per customer” support or “low-revenue” support because companies that receive this support are expected to serve locations where there are very few customers to bear the cost of the necessary facilities. For example, the Commission has provided state support to the company that serves the Palouse exchange because it has determined that it costs an average of \$71.67 per-line, per-month to provide service when the price is \$18.00 per month. The Palouse exchange is not difficult terrain in which to construct facilities, it is merely characterized by a small number of customers.

assertion” of its willingness and ability to serve the geographic area for which it requests ETC designation. We disagree with the rural ILECs that the FCC’s Declaratory Order supports rejecting RCC’s request.

44 In support of their argument, the rural ILECs quote only a portion of the relevant paragraph of the FCC’s order. When read in its entirety, the paragraph supports RCC’s request for ETC designation:

A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services. We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

Declaratory Ruling, ¶ 24 (footnotes omitted).

45 RCC Minnesota does business as Cellular One in Washington and described its proposed service and technology in its petition. The director of legal services for the company appeared before the Commission and described RCC as provider of cellular service in 14 states, holding 36 licenses from the FCC, 33 of which are for rural service areas. *Open Meeting Transcript, at 25.* It acquired the three Washington licenses in 2000 and continued service under the name Cellular One. Since that time it has examined the markets and determined that it can improve service with federal universal service support. *Id.*

46 RCC is licensed by the FCC to provide service. As Staff informed us at the Open Meeting, there is substantial information on the FCC website concerning the licenses and service areas of RCC. *Id. at 42.*

47 In 1997, the rural ILECs submitted their requests for ETC designation, which were no more specific than the petition submitted by RCC. *See Docket Nos. UT-970333,-54 and UT-970356.* Just as we are familiar with the companies we designated in 1997, we are familiar with Cellular One as a service provider in Washington. We have sufficient information from RCC's petition and its appearance at our Open Meeting to conclude, and we do conclude, that RCC has the capability and the lawful authority to provide telecommunications services as an ETC just as it has provided service for many years without such designation.

B. RCC Has Demonstrated Its Ability to Serve

48 In response to the rural ILECs' allegations that RCC does not have sufficient signal strength to provide basic service in all areas of the rural exchanges, RCC states that this varied signal strength is precisely why it needs federal universal service support. It stated that rural ILECs have had decades of support that have enabled them to build plant and equipment to provide extensive service within their exchanges. RCC stated that the issue before the Commission is whether it wants cellular coverage in these areas sooner rather than later, in the next few years or in 2020.

49 We are persuaded by RCC's argument. We are further persuaded by the FCC's policy statement that a carrier requesting ETC designation need not provide service throughout an area to qualify as an ETC.

We find that an interpretation of 47 U.S.C. § 214(e) that would require carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service. A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent carrier. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

50 We conclude that a decision denying ETC designation to RCC based on its lack of signal strength in some locations would have the effect of prohibiting it from providing telecommunications service in those areas, which would deprive consumers in high-cost areas the benefits of competition by insulating rural ILECs from competition.²⁰

C. RCC Has Provided Evidence of its Ability to Provide the Nine Required Services.

51 The FCC requires a carrier to offer nine services upon designation as an ETC.²¹ The rural ILECs focus on two of them. They argue that RCC has not provided evidence that it provides sufficient local usage²² to meet the federal standard or that it provides the required access to interexchange service.²³ (“Local usage” is an FCC requirement that a customer must receive some amount of local use of the public switched telephone network, not just access to it, for the monthly amount paid for service.) RCC states in its petition that it will comply with any applicable FCC requirement concerning local usage should that agency establish one. RCC states that it has interconnection agreements with interexchange carriers and that customers may “dial around” to reach interexchange services.²⁴

52 The FCC has left to the states the decision of how much local service a carrier must provide in exchange for a monthly payment in order to meet the local usage requirement set forth in 47 C.F.R. § 54.101(a)(2). Wireline companies in Washington are required to offer flat-rate service. RCW 80.04.130(3). Wireless companies generally provide a quantity of minutes each month that varies with price, and charge additional amounts per-minute if a customer exceeds the allotment.

53 Price is an essential element of competition. Customers will choose to take service from RCC if the price is right, and will not do so if it is too high. If no customers choose its services, then RCC will not receive federal universal service support. We have declined to make a determination of a particular amount of local usage that is

²⁰ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 8, 1997) (“First Report and Order”) ¶ 136, n.329 and ¶ 141.

²¹ See *supra* n.16.

²² See First Report and Order, ¶ 65.

²³ Interexchange service is commonly referred to as long-distance service.

²⁴ Dial around services are, for example, 1-800-CALLATT and 10-10-321.

acceptable. Customers can choose for themselves if the amount of local usage is worth the price.

54 We are aware that some states have required wireless carriers to offer service at commission-determined prices. We decline to adopt this approach at this time. Since our designation of United States Cellular as an ETC in 1999, we have not had a complaint from customers or companies that it is not providing sufficient local usage.

55 Rural ILECs state that RCC does not identify the interexchange carriers that customers may choose, nor does it provide “equal access” to interexchange service. However, RCC is required to provide access to interexchange services and it does so. That is sufficient to meet the requirement in 47 C.F.R. § 54.101(a). It is not required to provide access to the interexchange company of the customer’s choice. 47 U.S.C. § 332(c)(8).²⁵ Quite recently the Federal-State Joint Board on Universal Service declined to recommend that equal access be added as a tenth requirement for ETC designation.²⁶ We note that wireless companies often offer long distance service as a part of their service packages. This provides a choice to customers in comparison to wireline carriers, and we trust that customers are able to make their own choices.

56 We conclude that RCC provides local usage and access to interexchange service sufficient to meet FCC requirements. It is not in the public interest to require more of RCC than Congress or the FCC require of wireless ETCs.

D. Availability of Advanced Services.

57 In 1999, rural ILECs argued that advanced services, including greater bandwidth for data transmission, are more likely to be provided over wireline service. *Third Supp. Order*, ¶ 48. RCC states in its Petition that its designation will lead to introduction of advanced services, a claim that rural ILECS consider unsubstantiated.

58 The FCC does not require carriers to provided advanced services in order to be designated as an ETC. Rural ILECs are correct that RCC’s ability, substantiated or not, is irrelevant to this decision. We note only that the ETC offering advanced services may be the one most likely chosen by customers who desire those services.

²⁵ See also, First Report and Order, ¶ 78.

²⁶ *In the matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (July 10, 2002).

E. Advancement of Competition Is a Factor In Determining the Public Interest.

59 Competition alone may not be sufficient to meet the public interest test, but the
benefits of competition are more than sufficient. Staff articulated these benefits well:
downward pressure on prices, increased innovation, and more attention to customer
service.

60 Urban customers can choose among many companies and technologies because
companies serving in urban areas can earn sufficient revenue to pay for necessary
investment. Rural ILECs receive support because they serve few customers and, in
some cases, those customer are located in mountainous or otherwise difficult terrain.
State and federal policies support all lines provided by rural ILECs to customers.
Even multi-line businesses receive supported service. Because of the limited
opportunities for revenue in areas served by rural ILECs, there will be no
competition—and no customer choice—without multiple ETCs.

61 As explained in Paragraph 30, the rural ILECs argue that *United States Telecom Ass’n
v. Federal Communications Comm’n* supports their argument that competition alone
is insufficient to satisfy the public interest. The holding in that case does not support
the rural ILECs’ argument. That case was concerned, in part, with the FCC’s national
list of unbundled network elements incumbents must make available to customers.
The court found that the FCC’s rationale for the rule did not adequately consider
whether the ability of competitors to provide service without such access would be
impaired, and that the FCC rested too heavily on the notion that access to more
elements would benefit competition. *See 47 U.S.C. § 251(d)(2)*. However, ETC
designation is not a question of a competitor’s access to an incumbent’s network.
Rather, it is a question of what carriers are eligible to receive federal universal service
support. Unlike access to unbundled network elements, Congress did not impose a
“necessary and impair” standard upon access to support.

F. A factual determination of how designation of RCC will affect each rural ILEC is unnecessary.

62 Universal service is intended to benefit customers, not companies.²⁷ The public
interest is not determined by what is best for a single company, be it a rural ILEC or

²⁷ *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)).

RCC. We have determined, as has the FCC, that support should be provided for all lines in low-revenue locations, in order to ensure that basic telecommunications is available to all customers. There is no reason to distinguish among technologies when customers can do that for themselves. Rural ILECs receive support based on costs; if costs remain steady, rural ILECs will receive support even if customers choose RCC over rural ILEC services. Our considerable experience with these matters is more than sufficient for us to understand the implications of our decision and to understand that the effect generally will be the same throughout the area served by RCC.²⁸ Customers may choose to take service from RCC, retain the services of the rural incumbent, or take service from both.

G. RCC Need Not Show that Existing ETC is deficient.

63 Rural ILECs contend RCC has not shown that service by existing ETCs is deficient. Rural ILECs contend that mobile wireless service is not used to provide basic service. Rather, it is used in addition to landline service to homes and businesses. They express concern that while current FCC rules do not decrease support for one ETC if an additional ETC is added, at some point the effect will be to force a cap on or restructuring of the federal universal service fund. Rural ILECs insist that we must determine through a full evidentiary process, a process that might typically take up to twelve months, that RCC's capabilities add value through "legitimate" competition.

64 Neither the Act nor FCC rules require us to determine that the service of one ETC is deficient before a state commission may designate an additional ETC. The standard is whether the designation of additional ETCs in rural areas is in the public interest, which is not synonymous with the best interest of the current ETCs, or with a need to find the existing ETC deficient.

65 The FCC has determined that mobile wireless service qualifies as basic service.²⁹ We do not believe we should constrain rural citizens to communication only from their

²⁸ See Docket No. UT-970380, Staff Investigation into Deaveraged Universal Service Cost Support; UT-970345, Petition of united States Cellular Corp. for Designation as an Eligible Telecommunications Carrier; UT-980311 Universal Service Fund Issues; UT-013047, State Certification Under 47 U.S.C. 254(e) for Federal Universal Service Funds; UT-013058, Disaggregation & Targeting of Federal Universal Service Support Pursuant to 47 CFR 54.315 and FCC Order 01-157; UT-023020, Joint Petition of CenturyTel of Washington, Inc., and CenturyTel of Inter Island, Inc., for Approval of USF Disaggregation Plan; UT-023031, Non-Rural and Price Cap Disaggregation & Targeting of Federal Universal Service Support.

²⁹ First Report and Order, ¶¶ 47-49.

homes.³⁰ Indeed, wireless phones can be critically important for citizens who live and work in rural areas, where a road-side accident or a mishap on a farm can occur far from the nearest landline phone.

66 Rural ILECs are correct that current FCC rules do not decrease support for one ETC if an additional ETC is added. We take the FCC rules as we find them, and that includes its determination (with which we agree) that support should be provided for all lines, regardless of which carrier provides them or the technology used to provide the service. Concern about a cap or restructuring of the federal universal service fund is speculative at best.³¹

67 By referring to “legitimate” competition, the rural ILECs suggest that there is “illegitimate” competition that could result from our designation of RCC as an ETC. Even if we agreed with the rural ILECs’ notion of illegitimate competition, we do not agree that RCC’s service would result in illegitimate competition. RCC competes with the rural ILECs now, and we find nothing unlawful or inappropriate about its service. While ETC designation may improve RCC’s ability to compete with the rural ILECs, it will not change the nature of that competition.

H. Conclusion

68 Granting ETC designation to RCC is in the public interest. It will facilitate the telecommunications choices available to rural citizens, support the growth of new technologies and services, preserve and advance universal service, and promote competition and the benefits it brings.

69 We bring to this decision the knowledge and experience that we bring to every decision, whether it be in an open meeting or in an adjudication. RCC’s petition is procedurally sufficient and RCC meets the qualifications for ETC designation. Because RCC meets the requirements for ETC designation, and because designation is in the public interest, we grant RCC’s petition as modified by this Order.

³⁰ The FCC has very recently affirmed that mobile service can be basic service. *See In the Matter of Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering provided by Western Wireless in Kansas is Subject to Regulation as a Local Exchange Service*, WT-Docket No. 00-239, Memorandum Opinion and Order, (August 2, 2002).

³¹ The FCC has addressed the false choice between universal service and competition. First Report and Order, ¶ 50.

OTHER ISSUES

70 We now address two remaining issues: petitioning the FCC for concurrence with our decision to grant ETC designation to RCC for parts of several exchanges, and production of electronic maps by RCC of its CGSAs. These are related because designation for parts of exchanges requires defining what geographic area is included, and production of electronic maps will assist in that task. In addition, production of electronic maps will assist RCC in claiming federal universal service funds to which it will become entitled, and those maps will also assist rural ILECs, the FCC (through the Universal Service Administration Company), and, if need be, this Commission, to determine the accuracy of requests for federal support that are based on customer location.

71 We understand FCC rules permit the Commission, a carrier, or both to petition for concurrence with ETC designations that are not based on study areas.³² We believe RCC is in the better position to petition the FCC for concurrence with our designation for parts of exchange areas. We will order RCC to prepare and submit a petition consistent with this Order.

72 To petition for concurrence, RCC will have to prepare maps of its CGSAs. We have recently ordered rural ILECs to disaggregate federal universal service support and to prepare electronic maps as part of that activity.³³ Those maps will be filed with the Commission and will be available to RCC for use in preparation of its petition. We will order RCC to prepare maps with the same standards and attributes required of rural ILECs, and its maps must be filed with the Commission, where they will be available to rural ILECs.

73 The availability of electronic maps from rural ILECs and RCC will permit all interested persons to have an accurate representation of exchanges and service areas for the purpose of ensuring accurate requests for, and payment of, federal universal service support.

³² First Report and order, ¶ 188. *See also* 47 U.S.C. § 214(e)(5).

³³ *See* Final Order, Docket Nos. UT-013058 and UT-023020 (August 2, 2002).

VI. FINDINGS OF FACTS

74 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.

- 75 (1) RCC Minnesota (d/b/a Cellular One) is a telecommunications company doing
business in the state of Washington.
- 76 (2) RCC currently provides service in all of the exchanges listed in Appendix A.
- 77 (3) RCC's petition satisfies the requirements of 47 U.S.C. § 214(e)(2).
- 78 (4) RCC offers all of the services that are to be supported by the federal universal
service support mechanisms set forth in 47 C.F.R. § 54.101(a).
- 79 (5) RCC competes with rural ILECs and other telecommunications carriers in the
exchanges where it serves.

VII. CONCLUSIONS OF LAW

- 80 (1) The Commission has jurisdiction over the subject matter of this petition and
over RCC with respect to its designation as an ETC.
- 81 (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.
- 82 (3) Granting RCC's petition for designation as an ETC in the exchanges listed in
Appendix A is consistent with the public interest, and is consistent with
applicable state and federal law.
- 83 (4) Granting RCC's petition for designation as an ETC in areas served by rural
telephone companies is in the public interest.
- 84 (5) Requiring RCC to create electronic maps of its cellular geographic service
areas is in the public interest.
- 85 (6) The Commission has authority to modify, suspend, or revoke the
designations granted in this order at a future date.

VII. ORDER

86 This Order decides issues raised in a non-adjudicative proceeding. Based on the
foregoing, the Commission orders:

- 87 (1) The petition of RCC Minnesota (d/b/a Cellular One) is granted, as modified
by this Order. Each of the requested designations set forth in Appendix A is
granted. For each exchange and partial exchange, there is a separate
designation.
- 88 (2) RCC must provide Lifeline service consistent with 47 C.F.R. § 54.405.
- 89 (3) RCC must prepare electronic maps of its service cellular geographic service
areas with standards and attributes as described in the Commission's Order in
Docket No. UT-013058 and UT-023020, entered August 2, 2002.
- 90 (4) RCC must petition the FCC for concurrence in designation as an ETC for
areas that are parts of ILEC exchanges.
- 91 (5) 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 14th day of August, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

APPENDIX A**NON-RURAL LEC EXCHANGES**LEC: Verizon Northwest, Inc. – WA (Includes Contel Exchanges)

Exchanges:	Loomis	Lake Wenatchee
	Molson	Stevens
	Tonasket	Leavenworth
	Curlew	Entiat
	Republic	East Wenatchee (partial)
	Newport	Rosalia (partial)
	Brewster	Tekoah
	Bridgeport	Thornton
	Manson	Oakesdale
	Chelan	Farmington
	Mansfield	Garfield
	Waterville	Palouse
	Cashmere	Pullman
	Wenatchee	

LEC: QWEST Corp. – WA

Exchanges:	Oroville	Deer Park (partial)
	Northpoint (parital)	Colfax
	Colville	Pomeroy
	Omak	Clarkston (partial)
	Coulee Dam (partial)	Dayton
	Pateros	Waitsburg
	Loon Lake	Walla Walla
	Elk (partial)	Pasco (partial)
	Springdale (partial)	

1.1 RURAL LEC EXCHANGES

LEC: CentruyTel of Washington, Inc.

Exchanges:	Kettle Falls	Inchelium
	Valley	Coulee City (partial)
	Winthrop	Starbuck (partial)
	Nespelem	Davenport (partial)
	Chewelah	Eureka (partial)
	Twisp	

LEC: Pend Oreille Tel. Co.

Exchanges:	Cusick	Ione (partial)
	Metaline Falls	

LEC: ST. John Tel. Co.

Exchange:	Saint John (partial)
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LEC: Pioneer Tel. Co.

Exchanges:	Lacrosse	Endicott
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LEC: Inland Tel. Co.

Exchanges:	Uniontown	Prescott (partial)
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LEC: Asotin Tel. Co.

Exchanges:	Asotin	Anatone
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LEC: M & L Enterprises d/b/a Skyline Tel. Co.

Exchange:	Mt. Hull
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