

SERVICE DATE

JAN 27 2000

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
)	
)	DOCKET NO. UT-970345
United States Cellular Corporation;)	
USOC of Washington RSA-4, Inc.;)	
Western Sub-RSA Ltd. Partnership;)	THIRD SUPPLEMENTAL
McDaniel Cellular Telephone Company;)	ORDER GRANTING PETITION
Oregon RSA No. 2 Limited partnership;)	FOR DESIGNATION AS ELIGIBLE
United States Cellular Operating Co. of)	TELECOMMUNICATIONS CARRIER
Richland; Yakima, Washington MSA)	
Limited Partnership.)	
)	
for designation as Eligible)	
Telecommunications Carriers.)	
.....)	

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). The Commission believes that it will continue to designate carriers as ETCs as new and existing carriers move into new areas of the state to provide service.

2. The Commission considered petitions for initial designation of ETCs at its regularly scheduled open meetings of November 26 and December 10, 1997, and made initial designations by order dated December 23, 1997.² The companies

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

²See *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*).

designated as ETCs are obligated to advertise the availability of service and to provide service to any customer who requests service in the geographic area in which they are designated.

3. The designation process and geographic service areas are different for rural companies and non-rural companies.³ With respect to areas served by non-rural carriers, designation may be at any geographic level and all ETC requests must be granted if the requesting common carrier meets the minimum requirements. 47 U.S.C. §§ 214(e)(2), (5). For areas served by rural companies, designation of ETCs must be at the study-area 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). A state commission may designate additional ETCs for areas served by a rural telephone company only if the state commission finds that the additional designation is in the public interest. 47 U.S.C. § 214(e)(2).
4. In our initial designations, we designated GTE Northwest Incorporated (GTE) as an ETC for each of its exchanges in Washington. We also designated U S WEST Communications, Inc. (U S WEST) as an ETC only for ten exchanges because that company did not seek designation for every exchange. The Commission designated United States Cellular Corporation (USC) as an ETC for nine geographic service areas, all nine of which were defined by wireline exchanges served by non-rural telephone companies.
5. 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

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

⁴Generally, a "study area" is an incumbent LEC's pre-existing service area in a given state. For example, U S WEST's study area includes more than 70 exchanges throughout the state, while Yelm Telephone Company has a study area with only one exchange. The study-area boundaries are fixed as of November 15, 1984. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, ¶ 172 n.434 (May 8, 1999) (citations omitted).

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*

6. In making its initial designations, the Commission made only one designation for each geographic service area served by a rural telephone company. The issue of whether the designation of additional ETCs in rural areas would be in the public interest was not before the Commission. However, the Commission did find that the designations of ETCs for areas served by both rural and non-rural companies were in the public interest.⁷

II. U S CELLULAR'S ORAL AMENDMENT TO ITS PETITION AND STATEMENT OF SUPPORTED SERVICES AT THE DECEMBER 29, 1999, OPEN MEETING

A. USC's Petition to Amend Its ETC Designation

7. On December 6, 1999, USC petitioned to amend its designation as an ETC. Specifically, USC requested designation as an ETC in 104 additional exchanges. By letter dated December 20, 1999, USC subsequently revised the number of exchanges to 72, of which 60 are currently served by rural companies. The Commission placed this petition on its agenda for consideration at its regularly scheduled open public meeting on December 29, 1999.

B. USC's Oral Amendment to Its December 6, 1999, Petition

8. On December 28, 1999, several rural telephone companies filed motions with the Commission objecting to USC's petition. In response to these motions, the Commission permitted USC to amend its petition orally at the December 29, 1999, open meeting.
9. In their motions, the rural telephone companies raised the issue of whether USC is a common carrier, or if the various license-holders of FCC-granted wireless licenses are the true common carriers, and therefore are the entities that must seek ETC designation. In response, USC confirmed that USC is the company that holds itself out to the public as a telecommunications provider, owns the facilities and equipment necessary to provide service, and pays the employees who provide telephone service. Further, USC stated that it is the owner of 100 percent of three of

Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, DA 99-1844 (Sept. 9, 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.

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

the licensees and owns a substantial majority of the other three licensees. Nonetheless, USC requested permission to amend its petition to revise the name of the petitioning party to add the names of the six license-holders operating in Washington as United States Cellular.

10. The rural companies opposed this amendment. They argued that if enforcement action were ever necessary, the Commission would not know what entity would be the responsible party. The companies stated this was a reason why the Commission must conduct an adjudicative hearing under the Administrative Procedure Act (APA), chapter 34.05 RCW.
11. No rules of procedure require advance filing of changes to documents considered at an open meeting. The Commission considers in each case whether the nature and magnitude of the changes require additional time to study, or other action. Here, the circumstances were adequately explored and neither time nor study was needed. We reaffirm our statement at the open meeting that an adjudicative hearing would not be necessary because the material presented at the open meeting set forth the various arguments and all of the required information on this issue, and a hearing would not further assist us in making our decision. Permitting the amendment to include subsidiaries as designees appropriately placed substance over form, and permitted us to consider the merits of USC's petition.⁸

C. USC's Oral Declaration That It Provides the Services Necessary for ETC Designation

12. In their December 28, 1999, motions, the rural companies also raised the issue of whether USC's petition sets forth sufficient facts to demonstrate that USC provides the services required of an ETC in the areas for which it seeks designation. At the open meeting, the Commission permitted USC's chief engineer, Mr. Robert Keeger, to respond to these allegations. Under oath, Mr. Keeger stated that USC provides service in each exchange for which it seeks designation and that the company has at least one customer in each exchange. Mr. Keeger further stated that USC provides each of the services required of an ETC pursuant to 47 C.F.R. § 54.101(a)(1)-(9), (c).
13. The rural companies objected to Mr. Keeger's statement, again arguing that the Commission must hold an evidentiary hearing. However, in other instances of ETC designation, the Commission has largely accepted the averments made in the petitions because the Commission may modify or revoke ETC designations if a carrier does not fulfill its obligations as an ETC. The oral statement under oath was the equivalent of a sworn statement.

⁸Throughout this decision we refer to "USC" to mean all seven petitioners listed in the caption.

D. Discussion

14. The Commission believes its decision permitting USC to amend its petition and provide information as to the services it provides at the open meeting was proper. This decision allowed us to move to the merits of what is an important decision in the process of implementing the Telecommunications Act of 1996.
15. The Commission's practice at open meetings is to provide a fair forum in which non-adjudicative issues may be resolved. We encourage compromise when there are differing positions and often take recesses or adjust the open-meeting schedule to provide time for participants to resolve issues. The Commission routinely allows oral amendments to tariffs and petitions, as well as in other matters. The Commission finds that this approach facilitates both the prompt resolution of issues and the achievement of economies in government. In addition, it reduces the need for litigation at the Commission and reduces the subsequent legal challenges, thus conserving judicial resources here and in the courts. Acceptance of the oral amendments is appropriate in a forum where competing interests meet, and where expenditure of resources and loss of time are costly.

III. THE MERITS OF U S CELLULAR'S PETITION FOR ETC DESIGNATION

A. Statutory Requirements

16. The designation of common carriers as ETCs is governed by 47 U.S.C. § 214(e). In our first order in this docket, we set forth the statutory requirements for ETC designation. *First Order Designating ETCs*, at 6-7. USC's December 6, 1999, petition involves additional designations in areas served by rural telephone companies. In order to designate more than one ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).
17. The Act does not set forth the criteria state commissions must consider in deciding whether the public interest is met by the designation of an additional ETC for an area served by a rural telephone company. In the absence of such criteria, the Commission, in this instance, believes its determination should depend on the relative benefits and burdens that may fall on customers and the public as a whole. The Commission should consider the effects of designation, to the extent that they are not overly speculative. In considering the public interest, the Commission will bear in mind the purposes of the Act, one of 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."⁹ We also will consider our state policies set forth at RCW 80.36.300.

B. Positions of Interested Persons

1. U S Cellular

18. As stated in its December 6, 1999, petition, USC is predominately a rural cellular carrier and provides service in the areas listed in its petition. USC stated that its petition for designation as an ETC in the exchanges listed in Exhibit A is in the public interest because it supports the efforts of wireless carriers to serve rural areas and provide competitive alternatives to rural customers. USC stated that its designation would support federal universal service policies as set forth in the FCC's recent universal service orders.¹⁰ The FCC has recognized that wireless carriers are both contributors and potential recipients of federal universal service funds.¹¹ The FCC also said that wireless carriers should receive federal universal service support if they meet criteria for ETC status under the Act.¹²

19. At the open meeting, USC opined that the overarching national policy is to provide competition in the local exchange market, and that this alone is sufficient to find that its petition is in the public interest. It is USC's position that the public interest standard is the same for designation of carriers to serve in areas where rural telephone companies serve as for non-rural company service areas, and that the Commission determined in 1997 that its designation is in the public interest. USC argued that Congress established the national policy, and the Commission must carry it out.

2. Rural Local Exchange Companies

20. The rural telephone companies opposed the petition and argued that USC's designation as an ETC in the 60 exchanges served by rural companies is not in the public interest. They argued that the information before the Commission is insufficient to find that designation is in the public interest, and that there must be an

⁹S. 652, 104th Cong. (1996).

¹⁰*In the Matter of the Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (Nov. 2, 1999).

¹¹*Id.* ¶ 4.

¹²*Id.* ¶ 18.

adjudicative proceeding and the establishment of a factual record with greater detail, for the designation to be lawful.

(a) The Petition Is a Matter of First Impression

21. The rural companies said that this petition is a matter of first impression and distinguished it from designation of non-rural ETCs and the initial designation of rural carriers for the areas they serve. They cited federal legislative history stating that a "one size fits all approach to competition" could have destructive implications, and that if left to market forces alone, many small markets would be left without service. Protest of Rural Companies, at 2-3.

(b) USC's Petition Does Not Meet the Requirements of Section 214(e)(2)

22. The rural companies argued that USC's December 6, 1999, petition is not in the public interest because it does not meet the requirements of 47 U.S.C. § 214(e)(2). They interpret 47 U.S.C. § 214(c) to mean that USC must currently offer all nine services set forth in 47 C.F.R. § 54.101(a). The rural companies argued that USC has not met this requirement.

23. In particular, the rural companies argued that there is a lack of evidence in the record to show that USC provides support for local usage. The rural companies stated that USC has failed to provide radio contour maps showing that it has coverage throughout the 72 exchanges. In reply to USC's statement that it will meet its obligations through service obtained from other carriers, the rural companies stated that USC has not demonstrated the existence of interconnection or resale agreements.

(c) No Factual Basis to Support a Public Interest Finding

24. The rural companies argued that USC's reliance on the FCC's recent universal service decision is misplaced because that order addresses a universal service fund for non-rural carriers. Protest of Rural Companies, at 8-9.
25. The rural companies further argued that USC has failed to make any showing of how a customer would benefit if USC were able to draw from the federal universal service fund. They stated that USC also failed to show how ETC designation would provide competitive, lower-cost telecommunications alternatives to rural customers, as USC stated in its petition. *Id.* at 9. The rural companies claimed that USC has not provided any information about its services and rate packages. *Id.*

(d) Advancement of Competition Is Not a Sufficient Public Interest Showing

26. The rural companies argued that the Commission may not rely on a policy preference for competition to determine the public interest, but must look to the purposes of 47 U.S.C. § 214(e) and 47 U.S.C. § 254. *Protest of Rural Companies*, at 10-14. The rural companies stated that neither of these sections mentions competition as a guiding principle, but rather are concerned with preservation and advancement of universal service. *Id.* at 10. Therefore, USC must demonstrate that its designation would aid in the preservation and advancement of universal service. The rural companies argued that USC has not provided any facts to support this showing. *Id.* at 11. The rural companies also stated that competition does not always benefit consumers; therefore, the Commission cannot rely solely on competitive effects to support a finding of public interest. *Id.* at 12. The rural companies also argued 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 14.

(e) Other Factors

27. The rural companies argued that the Commission should consider other factors, which could result in a finding that the requested designation is not in the public interest. *Id.* at 15-18. They believe the Commission must consider the dilemma of how to allocate scarce resources (federal universal service support) to provide universal service to customers. This is important because federal provisions relating to portability of support likely will result in a reduction in the amount of universal service support to be received by the incumbent, and the Commission should examine this likelihood. *Id.* at 16.
28. The rural companies asked the Commission to regard mobile cellular service as a premium service that most customers take to supplement, rather than replace, their current wireline service. Further, they argued that cellular service is less reliable than traditional wireline service because it is susceptible to topographic disruption, disruption by weather, and commercial power failures.
29. The rural companies also asserted that wireline service is far more capable of being expanded to provide advanced services. Radio spectrum is limited, whereas wireline carriers can deploy fiber and cable in unlimited quantities to provide increased bandwidth. Access to advanced telecommunications and information services is a goal of universal service.

(3) Commission Staff

30. The Commission staff recommended approval of USC's petition for designation as an ETC. Staff stated that the Commission should consider the purposes of the Act as well as our state policy goals set forth in RCW 80.36.300. In addition, Staff provided us with five other specific considerations:

- (a) Designation will result in all competing carriers having the same level of universal service support, which furthers the Act's goal of policies that are competitively and technologically neutral;
- (b) Allowing USC to receive universal service support will result in lower prices for consumers;
- (c) Granting USC's petition will increase the availability of new technology (cellular telephones) to rural customers who will benefit by the increased mobility of service;
- (d) Granting USC's petition will allow rural customers to take advantage of new technology that allows Internet and e-mail access over cellular telephones; and
- (e) Customers will have access to two supported services with different attributes.

31. Staff concluded its recommendation by stating that increased competition may be sufficient to meet the public interest standard, but in addition to competition alone, the *benefits* of competition meet the standard. Those benefits generally are acknowledged as lower prices, more and better service, and innovation in service.

IV. COMMISSION DISCUSSION

A. Need for Hearing

32. During the open meeting, the rural companies repeatedly asserted that they had a right to a hearing on the issue of whether USC should be designated as an ETC. However, 47 U.S.C. § 214(e) does not require state commissions to hold a hearing prior to designating a carrier as an ETC. In contrast, where Congress believes a hearing is necessary, it requires a hearing. See, e.g., 47 U.S.C. § 214(d) (hearing required before FCC may require a company to extend its facilities).

33. The Commission is required by state law to hold a hearing before making certain decisions, but the designation of a carrier as an ETC is not one of them. In the first order in this docket, the Commission determined that ETC designation is not a determination that requires a hearing under state law. *First Order Designating ETCs*, at 11. The Commission reiterates that decision in this Order.
34. In our first order, we stated that the designation of an ETC is not a licensing procedure under the APA.¹³ Even if ETC designation constitutes a license, a hearing is not required when the Commission issues an initial license. *First Order Designating ETCs*, at 11. USC's December 6, 1999, petition for designation as an ETC is not a modification of its original designation. Instead, its petition is for the initial designation as an ETC in 72 new exchanges. Neither the rural companies' objections to the petition nor their request for a hearing requires that a hearing be held. The rural companies have cited no provision of law that entitles them to a hearing, and we are aware of none.

B. Designation of USC Meets the Requirements of Section 214(e)

35. In our first order in this docket, we determined that USC meets the requirements for ETC designation, and designated it an ETC in nine exchanges.¹⁴ Although those nine exchanges are non-rural under the Act, much of the area covered by them is very rural in character. *Id.* At the December 29, 1999, open meeting, USC made the same showing, through Mr. Keeger, that the Commission has required of other carriers that are designated ETCs.
36. We disagree with the rural carriers that USC must provide service prior to being designated an ETC, so long as the company provides service at the time it actually receives federal funds. In comments to the FCC, we stated that designation should be conferable prior to the provision of service in order to avoid a bar to entry in high-cost locations.¹⁵ We commented that no company can be expected to serve every customer immediately at the time of entry. Wireline incumbents, for example, must construct new lines every year to keep up with growth.

¹³ETC designation is not a "license" as that word is defined by the APA. RCW 34.05.010(9)(a). Rather, ETC designation confers on a carrier the opportunity to obtain universal service support. The amount of federal support an ETC will draw depends on FCC rules.

¹⁴*First Order Designating ETCs*, at 10.

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service*, Reply Comments of the Washington Utilities and Transportation Commission, CC Docket No. 96-45, DA 99-1535, at 3-5 (Sept. 17, 1999).

37. In the open meeting, we noted that we retain ongoing, pervasive authority over the industry, including over wireless carriers to the extent they are designated ETCs. We are convinced that USC continues to meet the requirements of an ETC. We note the absence of any complaint about its behavior as an ETC.

C. Granting USC's Petition Is In the Public Interest

1. "Public Interest" is a Broad Test

38. "Public interest" is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The "public interest" is broader than the goal of competition alone, although we believe that narrow goal will indeed be advanced by designating US Cellular as an ETC in the new rural areas at issue.

39. The "public interest" is also broader than the goal of advancing universal service, although we believe *that* narrow goal will likewise be furthered by our decision.

2. Factual and Policy Considerations

40. The rural companies argued that we must find specific facts on which to base our finding, and that the petition is devoid of these facts. We can infer from comments of USC that it believes policy reasons alone are sufficient and, in any event, the fact that it competes against subsidized companies is sufficient to find its petition is in the public interest. Commission Staff offered several reasons to determine that the petition is in the public interest. In making our decision, we considered USC's petition; the rural companies' arguments in opposition to the petition; the Act; the FCC's regulations regarding ETC designation; RCW 80.36.300; our *First Order Designating ETCs*; our petition to the FCC for agreement to designate rural ETCs at the exchange level and the FCC's order granting that petition; and the FCC's universal service orders, and our comments in those dockets. We are also informed by our expertise in telecommunications matters.

41. The Commission believes it is in the public interest to grant USC's petition because rural customers will benefit from the increased availability of wireless service. These benefits include increased mobility and increased level of service. Federal and state universal service mechanisms support multiple telephone lines to homes and businesses in high-cost locations. These locations are in rural areas served by non-rural companies, and in rural areas served by rural companies. Just as we find today that consumers in high-cost areas served by non-rural companies will benefit

from increased availability of wireless services, so, too, do we find that consumers in high-cost areas served by rural companies will similarly benefit.

42. Cellular providers are offering access to the Internet over wireless hand-held telephones. Consumers now have access to electronic mail over wireless telephones. These two innovations reflect the rapid deployment of new technology Congress intended to promote with the Act. It is in the public interest that all consumers in Washington should have access to this technology.
43. In considering whether USC should be designated as an ETC, the Commission is mindful that USC now competes with wireline carriers that receive universal service support. The fact that its competitors receive universal service support puts USC at a disadvantage in its ability to make cellular technology more widely available at competitive prices. Allowing USC to receive universal service support increases the likelihood that cellular technology will become available to more rural consumers at an affordable price.
44. Supported cellular service will also benefit rural customers by providing them increased access to two additional services (Internet and e-mail) that either are not available today, or are priced too high in comparison to the currently supported wireline service.
45. The rural companies urged us to consider a number of factors in making our decision. They asked that we consider the allocation of scarce resources for support of universal service in areas served by rural telephone companies. We note that the FCC has taken steps to increase the available pool of money to support universal service in areas served by rural telephone companies.¹⁶ The FCC took this action at the same time it reiterated that support for universal service in these areas will be portable -- that is it can be collected by any designated ETC that serves customers in high-cost locations served by rural telephone companies.¹⁷ Also, as mentioned earlier, the FCC granted to this Commission and 20 rural telephone companies a joint petition for exchange-level ETC designations for rural companies in Washington and for deaveraging of portable federal universal service support in Washington.¹⁸ The more finely graded designations will allow support dollars to be targeted more effectively to areas that are truly high-cost.

¹⁶ *In the Matter of the Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306, ¶¶ 114-18 (Nov. 2, 1999).

¹⁷ *Id.* ¶¶ 89-92.

¹⁸ *See supra* n.6.

46. While the Commission also is concerned about erosion of universal service support, we view as overly speculative the rural companies' fear that designating USC as an ETC will result in such erosion. They could not cite any rule or case which will give their fears effect. We do not believe that granting USC's petition will weaken universal service. Indeed, we believe it advances universal service by increasing affordable access to more types of service.
47. The rural companies point out that wireless universal service is not as reliable as traditional wireline service. We are troubled by the word "traditional." The Act is intended to promote change, as our decision does, in accord with national and state policies. Our decision promotes choice for rural customers who, if they desire the exceptional reliability of wireline service, will continue with their present service. Others, however, may prefer mobility over reliability. Customers should be empowered to make this determination for themselves.¹⁹ The ability to call 911 from a remote location unserved by a wired telephone, for example, may be distinctively appealing to those who live and work in rural territory.
48. The rural companies also ask us to consider that wireline service offers the greater capacity to provide advanced telecommunications, including greater bandwidth (i.e. speed) of data transmission. However, in just one year, we have seen an increase in the capacity of wireless to transmit data. At a workshop in January of 1999, wireless carriers told the Commission that we should not impose a high bandwidth capacity requirement for ETC designation, because data transmission is difficult and slow over wireless. In the intervening twelve months, both the trade press and the popular press have been replete with stories of advancement in data transmission through wireless technology. We do not have to choose between one technology and another to promote increased bandwidth.

D. Conclusion

49. This is an important order for rural customers, for the growth of new technology and new services, for the preservation and advancement of universal service, and for the promotion of competition and the benefits it brings. We are satisfied that the steps we have taken before granting USC's petition are sufficient.
50. 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. USC has brought

¹⁹ See *In the Matter of Federal-State Joint Board on Universal Service*, Reply Comments of the Washington Utilities and Transportation Commission, CC Docket No. 96-45, DA 99-1535, at 7 (Sept. 17, 1999).

before us a welcome way of promoting universal service and competition in parts of rural Washington. USC meets the qualifications of ETC designation. USC's petition for ETC designation was procedurally sufficient and was made shortly after the FCC's much-awaited universal service decision. Because USC meets the requirements for ETC designation, and its designation is in the public interest, we grant USC's petition.

V. FINDINGS OF FACT

51. From the above, the Commission issues the following summary findings of fact:
52. USC is a telecommunications company doing business in the state of Washington.
53. USC currently provides service in all of the exchanges listed in Appendix A.
54. For purposes of ETC designation, the "service area" for areas served by rural telecommunications companies is the exchange.
55. With the exception of toll control and enhanced 911 (E911), USC 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).
56. USC currently does not have the technical capability of providing toll control as defined in 47 C.F.R. § 54.400. Exceptional circumstance exist to justify the waiver of this requirement.
57. USC currently does not have the technical capability of providing E911 services. Exceptional circumstances exist to justify the waiver of this requirement.

VI. CONCLUSIONS OF LAW

58. The Commission has jurisdiction over the subject matter of this petition and over USC with respect to its designation as an ETC.
59. 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.
60. Granting USC's petition for designation as an ETC in the exchanges listed in Appendix A is consistent with the public interest, convenience, and necessity, and is consistent with applicable state and federal law.

61. Granting USC's petition for designation as an ETC in areas served by rural telephone companies is in the public interest.
62. The Commission has authority to modify, suspend, or revoke the designations granted in this order at a future date.

VII. ORDER

63. This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:
64. The petition of United States Cellular is granted, as modified by this Order. Each of the 72 requested designations set forth in Appendix A is granted.²⁰ For each designation, USC's obligation to provide toll control is waived pursuant to 47 C.F.R. §54.101. For each designation, USC's obligation to provide enhanced 911 is waived pursuant to 47 C.F.R. §54.101.
65. USC is ordered to begin discussions with the Department of Social and Health Services for participation in the Washington Telephone Assistance Program and to participate in that program as soon as it is administratively possible.
66. 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 26th day of January, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


MARILYN SHOWALTER, Chairwoman


RICHARD HEMSTAD, Commissioner

²⁰ Because of administrative error, the appendix to our December 29, 1999, order was incomplete. A complete appendix is attached to this Order.

67. WILLIAM R. GILLIS, Commissioner, dissenting -- I dissent from the decision of my colleagues to award additional Eligible Telecommunications Carrier (ETC) status to United States Cellular in certain Rural Telephone Company exchanges without further evidentiary hearings.
68. The goal of extending choice of service and competitive options to all residents of the state is supported by both federal and state law. I have consistently supported the aggressive pursuit of that goal in the Commission decisions in which I have participated. Competition offers the prospect of diverse customer choices, lower prices, innovation, and pressures to improve service quality. An outcome where the benefits of competition accrue only to businesses and residents in our state's largest population centers is unacceptable because I believe that the benefits of competition and Universal Service are meant to be enjoyed by all ratepayers so that there is a reasonable comparability in prices and service availability in both urban and rural areas. Congress gave to states the responsibility for determining public interest considerations in deciding whether to designate additional ETCs in areas served by Rural Telephone Companies for exactly this reason. I applaud United States Cellular for its willingness to provide a competitive basic service offering in locations where no other competitive carrier has yet been willing to offer service.
69. However, in our diligent desire to achieve the broader vision, we must be vigilant to ensure we are not being asked to make a choice between universal service and competition. While reasonable people may disagree in their interpretations of the Telecommunications Act of 1996 (the 1996 Act), it is my view that it treats Universal Service and Competition as co-equal goals. That is, we are not to make a trade-off between universal service and competition. We are to achieve both goals.
70. My belief that this is what Congress intended is buttressed specifically by Section 214(e) of the 1996 Act. It unambiguously states that "before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find the designation is in the public interest." Section 214(e)(2) is therefore permissive. It does not mandate that state commissions designate additional ETCs in areas served by incumbent Rural Telephone Companies, and it requires state Commissions to make a public interest finding before designating multiple ETCs in areas served by Rural Telephone Companies. Because we have a choice, and because the stakes for rural and urban customers are high, I believe that we should make a studied choice, look carefully at the options and the consequences of each option, and look carefully at each situation to assure that we do not produce an unintended consequence that is actually contrary to the public interest.
71. I do not provide here a complete opinion on what the appropriate public interest standard should be. I would prefer that the Commission define, in an evidentiary proceeding, the appropriate public interest standard for multiple ETC designations for areas served by Rural Telephone Companies. Because that

opportunity is now foreclosed, I simply suggest that the standard must, at least in part, include an assessment of how the award of multiple ETC status in a given Rural Telephone Company Exchange would impact the preservation and advancement of universal service.

72. Section 214(e)(2) clearly allows different treatment of Rural Telephone Companies compared to non-rural carriers. In my view, this reflects Congress' understanding and intent to recognize that the universal service policies and mechanisms appropriate for urban-oriented non-rural carriers are not necessarily appropriate for Rural Telephone Companies. This policy direction has clearly been carried forward by the FCC, which has put non-rural and Rural Telephone Company universal service decisions on a separate decision track. The FCC formed a Rural Task Force to advise the Federal-State Joint Board on Universal Service specifically on "unique rural differences" and the implications that those differences have for developing the appropriate universal service mechanisms and policies for Rural Telephone Companies.
73. Not only is it my view that the 1996 Act and federal policy support separate consideration and implementation of appropriate universal service mechanisms and policies for Rural Carriers, I believe it is good policy. Rural Telephone Companies are fundamentally different in both their operations and market opportunities from large, urban-oriented telecommunications companies. In general terms, Rural Telephone Companies lack the economies of scope and scale available to non-rural companies, putting the financial viability of these companies at greater risk when competitors enter. In fact, the potential for effective and sustainable competition that delivers service universally under these circumstances may be limited.
74. Nationwide, the average access line density is only 19 lines per square mile for areas served by Rural Telephone Companies compared with 128 lines per square mile in areas served by non-rural carriers. Rural Telephone Companies have 1,254 customers per switch compared to over 7,000 customers per switch for non-rural carriers. The average total gross plant investment per line for non-rural carriers is \$2,900 as compared to \$5,100 for Rural Telephone Companies. The range of values for Rural Telephone Companies (\$1,400 to \$40,500) is far greater than for non-rural carriers (\$1,570 to \$4,350).
75. Competitive entry in areas served by non-rural companies has been tested. We have learned that it can generally be accomplished without major erosion of universal service, provided appropriate supporting policies are in place. For Rural Carriers, the real-world impact of competitive entry remains to be tested and the potential impact on "captive customers" without competitive options and investment by the underlying incumbent carrier is indeed speculative. That being said, it is my view that this Commission has a responsibility to identify with as much confidence we can the implications of the policy decisions we choose to implement. By taking

the time and resources necessary to conduct such an inquiry we provide the opportunity to put in place mitigating policies such as transitional periods to phase in changes that may avoid unintended consequences and in particular those that could undermine universal service. The public deserves to have confidence that we are not engaged in an experiment, but that we are thoughtfully implementing competitive reforms in a manner that preserves and advances universal service. It is virtually impossible to do the rigorous level of inquiry necessary when this issue is brought before the commission for the first time at a regularly scheduled open meeting on only a few days' notice.

76. Congress gave State Commissions the specific responsibility to evaluate the public interest in awarding multiple ETC designations in areas served by Rural Telephone Companies because we are in the best position to identify and evaluate unique local circumstances that may have implications for universal service. I believe that it would have been appropriate to designate additional ETC status to U. S. Cellular in exchanges held by non-rural companies on the Open Meeting record. However, decisions regarding a diverse group of Rural Telephone Company service areas requires a deeper investigation producing more detailed information, unique to each company and service area. With further inquiry it could be found that multiple ETC designation meets the public interest test in all exchanges, in a subset of exchanges, or in none of the exchanges identified in the petition. Simply awarding ETC designation for all the exchanges requested by the petition, without considering that the existing carriers face very different market and operational situations, ignores the very reason why states were given this responsibility by Congress. Again, it is virtually impossible to consider the necessary detailed company-by-company scenarios within an Open Meeting format.
77. I have the greatest respect for the commitment and intellectual integrity of my colleagues. However, I respectfully disagree with their decision to act without further evidentiary proceedings for several reasons:
78. 1) I do not believe the petitioners have provided adequate information to demonstrate that multiple ETC designation in areas served by referenced Rural Telephone Companies is in the public interest.
79. 2) I do believe the public interest test should be considered on a company-by-company basis.
80. 3) Of particular note in this case, I do not believe the open meeting format provides an adequate opportunity for informative debate and consideration of the necessary issues. Of note, substantive written filings were presented to the Commissioners only 5 minutes prior to argument and discussion.

81. 4) Finally, while I do not suggest that a lengthy, resource-intensive adjudicative proceeding is needed, I do believe that, at a minimum, the parties should have been provided a process to allow written briefs and time for consideration by all parties and by the Commission.
82. In areas served by Rural Telephone Companies, we have yet to see a great deal of interest by competitors. In general, the competition is going after large business customers and urban centers. In general, there may have been some aggregate consumer benefits for the state as a whole, but for a small user, particularly in rural areas, the benefits have been elusive.
83. Nevertheless, I remain hopeful. I reiterate that I appreciate the willingness of United States Cellular to be one of the first competitors to venture into rural areas. However, now is the time to get our policy framework right. We need to be intellectually rigorous and thoughtful in our approach.
84. Competition does not need to be the demise of independent small phone companies. In fact it can be, with proper attention to policy and an understanding of unique rural circumstances, the opening of local markets where appropriate and it can bring new beneficial opportunities for rural carriers and their customers.
85. If we get the policies wrong, it will be at a great cost to rural Washington (and perhaps to urban ratepayers as well). However, if we get them right, providing a fair and even-handed foundation for investment by both incumbents and competitors, the state as a whole and our rural communities will come out ahead.
86. We must recognize that Washington is a diverse state and that one-size-fits-all telecommunications policies are destined to failure. To succeed, our policies for both competition and universal service must respect and build upon the diversity that makes our state the great place that it is.


WILLIAM R. GILLIS, Commissioner

APPENDIX A

CASTLEROCK^	US WEST PNW BELL
CATHLAMET*	CENTURYTEL OF WA
CHINOOK*	CENTURYTEL OF WA
DALLESPORT*	UNITED TEL CO OF NW
GOLDENDALE*	UNITED TEL CO OF NW
GRAYS RIVER*	W WAHKIAKUM CNTY TEL
KALAMA*	KALAMA TEL CO
LONG BEACH*	CENTURYTEL OF WA
LONGVIEW-KELSO^	US WEST PNW BELL
LYLE*	UNITED TEL CO OF NW
NASELLE*	W WAHKIAKUM CNTY TEL
OCEAN PARK*	CENTURYTEL OF WA
ROOSEVELT*	UNITED TEL CO OF NW
STEVENSON*	UNITED TEL CO OF NW
TOLEDO*	TOLEDO TEL CO INC
VADER*	CENTURYTEL OF WA
WHITE SALMON*	UNITED TEL CO OF NW
WILLARD*	UNITED TEL CO OF NW
WISHRAM*	UNITED TEL CO OF NW
WOODLAND^	GTE NORTHWEST - WA
YALE*	LEWIS RIVER TEL CO
ABERDEEN^	US WEST PNW BELL
CENTRALIA^	US WEST PNW BELL
CHEHALIS^	US WEST PNW BELL

^ Indicates designations for U.S. Cellular in 1997

* Indicates exchanges served by rural telephone company

COPALIS	US WEST PNW BELL
CURTIS*	CENTURYTEL OF WA
ELMA*	CENTURYTEL OF WA
GLENOMA*	CENTURYTEL OF WA
HUMPTULIPS*	CENTURYTEL OF WA
LAKE QUINAULT*	CENTURYTEL OF WA
MONTESANO*	CENTURYTEL OF WA
MORTON*	CENTURYTEL OF WA
MOSSYROCK*	MCDANIEL TEL CO INC
OCOSTA*	CENTURYTEL OF WA
PACKWOOD*	CENTURYTEL OF WA
PE ELL*	CENTURYTEL OF WA
RANDLE*	CENTURYTEL OF WA
RAYMOND*	CENTURYTEL OF WA
SALKUM*	MCDANIEL TEL CO INC
SHELTON	US WEST PNW BELL
SOUTH BEND*	CENTURYTEL OF WA
WESTPORT	CONTEL NW DBA GTE NW
WINLOCK^	US WEST PNW BELL
BASIN CITY*	CENTURYTEL OF WA
BENTON CITY	GTE NORTHWEST - WA
CLE ELUM	US WEST PNW BELL
CONNELL*	CENTURYTEL OF WA
COWICHE*	CENTURYTEL OF WA

^ Indicates designations for U.S. Cellular in 1997

* Indicates exchanges served by rural telephone company

EASTON	US WEST PNW BELL
ELLENSBURG*	ELLENSBURG TEL CO
ELTOPIA*	CENTURYTEL OF WA
EPHRATA	US WEST PNW BELL
GEORGE^	GTE NORTHWEST - WA
GRANDVIEW*	UNITED TEL CO OF NW
GRANGER*	UNITED TEL CO OF NW
HARRAH*	UNITED TEL CO OF NW
KAHLOTUS*	CENTURYTEL OF WA
KENNEWICK	GTE NORTHWEST - WA
KITTITAS*	ELLENSBURG TEL CO
LAUDERDALE*	ELLENSBURG TEL CO
MABTON*	UNITED TEL CO OF NW
MESA*	CENTURYTEL OF WA
NACHES	CONTEL NW DBA GTE NW
PASCO	US WEST PNW BELL
PATERSON*	UNITED TEL CO OF NW
PROSSER*	UNITED TEL CO OF NW
QUINCY^	GTE NORTHWEST - WA
RICHLAND	GTE NORTHWEST - WA
RIMROCK*	CENTURYTEL COWICHE
ROSLYN*	INLAND TEL CO
SELAH*	ELLENSBURG TEL CO
SUNNYSIDE*	UNITED TEL CO OF NW
THORP*	ELLENSBURG TEL CO

^ Indicates designations for U.S. Cellular in 1997

* Indicates exchanges served by rural telephone company

TIETON*	CENTURYTEL COWICHE
TOPPENISH*	UNITED TEL CO OF NW
VANTAGE*	ELLENSBURG TEL CO
WAPATO*	UNITED TEL CO OF NW
WHITE SWAN*	UNITED TEL CO OF NW
WHITSTRAN*	UNITED TEL CO OF NW
YAKIMA^	US WEST PNW BELL
ZILLAH*	UNITED TEL CO OF NW

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* Indicates exchanges served by rural telephone company