

Agenda Date: January 12, 2005
Item Number: A1

Docket: UT-043120

Company Name: Sprint Corporation, d/b/a Sprint PCS, SprintCOM, INC.,
Sprint Spectrum, L.P., and Wirelessco, L.P. ("Sprint PCS")

Staff: Robert Shirley, Telecommunications Policy Analyst

Recommendation:

Designate Sprint PCS as an Eligible Telecommunications Carrier (ETC) for its licensed service areas that correspond to the area within the boundaries of the exchanges listed in Exhibit C of its petition, and direct Sprint PCS to provide a map of its licensed service areas in .shp format.

Discussion:

Background

ETCs are common carriers designated by state commissions as eligible to receive federal universal service support funds. 47 U.S.C. § 214(e). In exchange for support, ETCs must provide nine services and offer discounts to low-income consumers through Lifeline and Link Up. 47 C.F.R. §§ 54.101 and 54.400 et seq. An ETC must provide services supported by federal funds throughout the geographic area for which it is designated, and it must advertise the availability of those services in media of general distribution. 47 U.S.C. § 214(e)(1).

In summary, ETC designation consists of a determination that a carrier offers the required services; a determination that designation is in the public interest; and a determination of a geographic service area for which the designation is effective. Geographic service areas of one ETC may be coincident with or overlap, in whole or in part, one or more service areas of other ETCs. 47 U.S.C. § 214(e)(2).¹

Sprint PCS' Petition Demonstrates It Provides the Federally Required Services

Sprint PCS is a commercial mobile radio service (CMRS) provider authorized by the FCC to provide service in Washington. *Petition*, ¶ 5. Sprint PCS provides voice and data service. *Id.* ¶ 30.

Sprint PCS requests designation for its licensed service area that coincide with the local exchanges of rural ILECs United Telephone-Northwest d/b/a Sprint;² CenturyTel of

¹ See *In the Matter of the Petition of Sprint Corporation, d/b/a/ Sprint PCS, Sprintcom, Inc., Sprint Spectrum, L.P., and WirelessCo., L.P. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-031558, Order No. 01, ¶ 7-9 (Oct. 29, 2003) ("*Sprint PCS Non-Rural Order*").

² The Commission has treated this company as a non-rural carrier for purposes of state universal service support.

Washington, Inc.; CenturyTel of InterIsland, Inc.; Asotin Telephone Co.; Ellensburg Telephone Co.; Hat Island Telephone Co.; Hood Canal Telephone Co.; Inland Telephone Co.; Kalama Telephone Co.; McDaniel Telephone Co. (TDS Telecom, Inc.); Lewis River Telephone Co. (TDS Telecom, Inc.); Mashell Telephone, Inc. d/b/a Rainier Connect or The Rainier Group; St. John Telephone Co.; Tenino Telephone Co.; Toledo Telephone Co.; Whidbey Telephone Co.; and Ycom Networks, Inc.

In its petition, Sprint PCS states that it provides the nine federally required services. *Petition*, ¶¶ 11-24. Sprint PCS also states it will participate in both the Lifeline and Link Up programs. *Id.*, ¶ 26. Sprint PCS has not stated in its petition that it will participate in the state's Washington Telephone Assistance Program (WTAP).³

The Public Interest Standard

Congress did not elaborate on the meaning of "public interest." In making the public interest determination for ETC designations in areas served by rural carriers, this Commission has considered whether the additional ETC will benefit customers as contemplated by the federal Telecommunications Act of 1996.⁴ The Commission has held that customers will benefit from competition because additional customer choices will bring downward pressure on prices, greater availability of innovative products, and more attention to customer service.⁵ The Commission has also considered competitive and technological neutrality.⁶

³ The Commission has acknowledged there is some uncertainty about the appropriate role of wireless carriers in the state low-income program. See *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011, Order Designating Eligible Telecommunications Carriers, ¶ 51 (April 13, 2004) ("*AT&T Wireless Order*").

⁴ The Act has the "interrelated goals of fostering competition and advancing universal service." *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 28, 65 P.3d 319, 330 (2003) (citing *Alenco Communications, Inc. v. Federal Communications Comm'n*, 201 F.3d 608, 615 (5th Cir. 2000) (FCC must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other).

⁵ See *In The Matter of The Petition of Inland Cellular Telephone Company, d/b/a Inland Cellular, et al. For Designation As An Eligible Telecommunications Carrier*, WUTC Docket No. UT-023040, Order Granting Petition for Designation as an Eligible Telecommunications Carrier, ¶¶ 15 & 65 (August 30, 2002).

⁶ *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, ¶ 30 (Jan 27, 2000).

Granting Sprint PCS's Petition is Consistent with Previous Decisions Designating Additional ETCs in Areas Served By Rural Telephone Companies

The Commission has issued five decisions designating wireless carriers as ETCs in areas served by rural telephone companies.⁷ Rural telephone companies opposed all previous designations that resulted in multiple ETCs with coincident or overlapping service areas. The Commission has noted in each instance that wireless carriers already compete with wireline companies, but do so at a clear disadvantage, and the issue to be decided is whether the designation of an additional ETC is in the public interest. The Commission has found there are no facts suggesting, let alone demonstrating, that coincident or overlapping (in whole or in part) ETC service areas harm consumers or create any unfair competitive advantage for carriers.⁸

Rural telephone companies also have opposed ETC designations for limited areas when a company could serve a greater area. Rural telephone companies stated in written comments that Sprint PCS has requested designation for less than Sprint PCS's licensed service areas. *Washington Independent Telephone Association (WITA) Comments at 1-3*. Rural telephone companies contend this raises the issue of cream-skimming.

In response, Sprint PCS stated that it seeks designation for service areas that coincide with the service areas of rural telephone companies. Consistent with designations for United States Cellular and AT&T Wireless, Commission Staff recommends ETC designation of Sprint PCS for its licensed service area that coincide with the rural telephone company service areas listed in Exhibit C of its petition.⁹

Resale

Rural telephone companies State that Sprint PCS's petition fails to explain how Sprint PCS will use resale to fulfill its obligation to serve where Sprint PCS does not provide cell service on its own equipment in areas served by rural telephone companies. *WITA Comments at 2*. Rural telephone companies state that because there is no description of how Sprint PCS will use resale, it must be assumed that Sprint PCS does not use resale.

⁷ The designations for USCC; RCC Minnesota; Inland Cellular; Sprint PCS Non-Rural; and AT&T Wireless.

⁸ See *AT&T Wireless Order*, ¶¶ 42-49; *RCC Order*, ¶¶ 8, 41, 62, 65-67, and 87. See also *Staff Memorandum* in Docket No. UT-043121, *Petition of Hood Canal Telephone Company for ETC Designation*.

⁹ Because Sprint PCS does not seek changes to rural telephone company study areas or service areas, including service area designations made by this Commission after consultation with the FCC, neither 47 U.S.C. § 214(e)(5) nor 47 C.F.R. § 54.207 apply.

In response, Sprint PCS states that in areas served by rural telephone companies where Sprint PCS does not provide service from its own equipment, it will provide service through roaming agreements it has with other wireless providers. *Sprint PCS Response at 2*. Sprint PCS states further that it will not request or receive federal HCF support for customers that reside in the areas served by roaming. *Id. at n.1*.

Commission Staff notes that the federal Act permits a carrier to be designated as ETCs if the carrier provides service using its own facilities or through resale of another carrier's service. 47 U.S.C. § 214(e)(1)(A). Commission Staff believes that roaming is functionally equivalent to resale and therefore another name for the same method of service provision.

Effect on the Federal High-Cost Fund of Designation of Sprint PCS

Rural telephone companies raise their concern that the impact of multiple ETCs in rural service areas will have on the size and sustainability of the federal HCF. *WITA Comments at 7-8*. Rural telephone companies are concerned about the size of the fund from which they draw support. Rural telephone companies ask whether it is in the public interest for there to be multiple ETCs because additional designations will result in increased amounts of support.

Commission Staff believes designation of Sprint PCS is in the public interest because designation will bring the benefits of competition and universal service to rural consumers consistent with the federal Act. The decision before the Commission, then, is whether to limit altogether Sprint PCS's access to federal HCF support by denying it ETC designation, or whether to designate Sprint PCS as an ETC and let the FCC adjust support amounts if the revenue replacement provided by the HCF is providing more than sufficient support to ETCs.

Recommendation:

The petition of Sprint PCS promotes customer choice and brings to consumers the benefits that result from competition. This is consistent with efforts to insure that all customers, no matter where located, receive the benefits of competition. Designation of Sprint PCS as an ETC also will preserve and advance universal telecommunications service consistent with federal and state law. Granting the petition would be in the public interest.

Commission Staff recommends designation of Sprint PCS as an ETC for its licensed service areas that correspond to the area within the boundaries of the exchanges listed

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in Exhibit C of its petition, and direct Sprint PCS to provide a map of its licensed service areas in .shp format.