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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of  
VERIZON NORTHWEST, INC.,  
For Waiver of WAC 480-120-071(2)(a)

Docket No. UT-011439  
OPENING POST-HEARING BRIEF OF  
RCC MINNESOTA, INC.

**I. INTRODUCTION**

The Commission joined RCC Minnesota, Inc. (“RCC”) as a party to this case because it could “best provide evidence of its plans and schedules for building out facilities” in the areas of issue in this proceeding.<sup>1</sup> Although RCC disagreed with the Commission’s decision, RCC participated actively in the docket and went to great lengths to assist the Commission and other parties in determining RCC’s present capabilities to provide service to the Taylor and Timm Ranch residences. See generally, Exhibits 91T and 101T. Both the informal process and the formal adjudicative proceeding may prove helpful to the Commission in establishing substantive and procedural policies for this case and future line extension application cases. Once precedent is set, however, RCC urges the Commission not to include wireless carriers as parties in any future dockets under WAC 480-120-071 (the “Rule” or “Line Extension Rule”).

<sup>1</sup> Fifth Supplemental Order, ¶ 22.

1           Although RCC will reserve its position on Qwest’s motion to vacate the order that  
2   joined RCC, it should be clear based on the facts introduced at the hearing and the further legal  
3   development in the post-hearing briefs that there is no basis for including RCC as a party to  
4   future cases such as this. Accordingly, while RCC should be dismissed from this proceeding in  
5   the final order, RCC is concerned that the precedential value of the case could be lost if the  
6   dismissal is based solely on a technicality. Rather, the Commission should make it clear in its  
7   order that the Line Extension Rule applies only to wireline carriers, not to wireless carriers.

## 8                                   **II. SUMMARY OF ARGUMENT**

9           RCC should be dismissed from this case for four overriding reasons:

- 10           1.       The Line Extension Rule, does not apply to wireless carriers, such as  
11   RCC. The Rule applies only to companies required to file tariffs, i.e. wireline carriers, and  
12   contemplates that if wireless service is to meet the requirements of the Rule, it is to be arranged  
13   and paid for by a wireline carrier.
- 14           2.       Even assuming, for sake of argument, that the Rule applied to RCC, the  
15   facts in this case make it clear that it would not be in the public interest to order RCC to provide  
16   service.
- 17           3.       The Commission lacks the necessary jurisdiction to effectuate any order  
18   directing RCC to build additional facilities to serve the Timm and Taylor residences.
- 19           4.       RCC’s status as an ETC does not justify—as either a factual or legal  
20   matter—ordering RCC to construct additional facilities to serve the Timm and Taylor residences.

## 21                                   **III. DISCUSSION**

### 22           **A.       Background re RCC.**

23           RCC is in the wireless telecommunications business. Exhibit 101 at 2. RCC is  
24   defined as a “radio communications service company” under Washington State law.  
25   RCW 80.04.010. Under federal law, RCC is known as a commercial mobile radio service  
26   (“CMRS”) provider. See 47 U.S.C. §§ 153, 322. RCC operates wireless communications

1 systems in 14 states, with a focus on serving rural communities. Exhibit 101 at 2. RCC serves  
2 approximately 44,000 customers in rural Washington. Id.

3 On August 14, 2002, the Commission granted RCC's application to be an  
4 "eligible telecommunications carrier" ("ETC") pursuant to 47 U.S.C. § 214(e)(1). In the Matter  
5 of the Petition of RCC MINNESOTA, INC., d/b/a CELLULAR ONE For Designation as an  
6 Eligible Telecommunications Carrier, Docket No. UT-023033, Order Granting Petition For  
7 Designation As An Eligible Telecommunications Carrier (hereinafter, "RCC ETC Order"). As  
8 an ETC, RCC became eligible to receive certain subsidies from the federal Universal Service  
9 Fund ("federal USF") beginning in 2003. Exhibit 101T at 2. RCC expects to begin receiving a  
10 modest amount of high cost federal USF support in Washington beginning in 2003. Exhibits 53  
11 and 101T at 4. The goal of the high cost federal USF program is to encourage carriers to provide  
12 basic telecommunications services to rural communities. See Id. at 3. Although RCC began to  
13 receive federal USF high cost support in 2003, RCC is not eligible to receive and does not  
14 receive any other subsidies to serve high cost areas. Id.

15 As a condition of seeking ETC status, RCC has agreed to serve customers  
16 throughout the areas in which they seek ETC designation. Id. at 3 - 4. However, in RCC's  
17 experience, it has never been ordered by the FCC or any state commission to serve every single  
18 customer within their ETC designated areas. Id. For RCC to be able to serve every single  
19 location within its designated ETC areas it would be exceedingly difficult and costly because of  
20 the nature of wireless service. In particular, RCC's licenses are in a frequency band that is  
21 basically a line of sight ("LOS") service. Exhibit 91T at 3-4. It is not reasonable to expect the  
22 CMRS industry to serve 100% of locations within a service area. The industry standard is 90%.  
23 Id. at 2; see also Transcript ("Tr.") at 312-13. Service may be available 100% of the time in  
24 locations with good line of sight, but in fringe areas such as the Timm and Taylor locations,  
25 RCC's signal is marginal. Id.

1 After RCC was joined in this case, it voluntarily undertook efforts in conjunction  
2 with Verizon in an attempt to provide adequate service to the Timm and Taylor locations, even  
3 though it was under no Commission directive to do so. See generally Exhibit 91T. As a trial,  
4 RCC installed customer premise equipment (“CPE”), consisting of “Phonocell” units, at two  
5 residences in the Timm and Taylor areas. Id. The Commission will have to judge whether the  
6 service rendered to those two locations was adequate or not.<sup>2</sup> It is clear, however, that there are  
7 other residences in those two areas that do not receive an adequate signal for any kind of cellular  
8 service from RCC based on RCC’s current network deployment. Id. at 8-10.

9 RCC has committed to serve the areas that include the Timm and Taylor  
10 locations. Accordingly, RCC is most definitely willing to provide service to residents in those  
11 areas that find RCC’s service useful under RCC’s generally available terms and conditions and  
12 based on RCC’s current network infrastructure. Additionally, Verizon is apparently willing to  
13 subsidize the Phonocell CPE for residents in those areas. Exhibit 35T at 3. RCC is willing to  
14 provide the equipment at no charge to the residents based on Verizon’s commitment to reimburse  
15 RCC’s costs. However, RCC does not believe that it is a good use of its limited capital  
16 construction budget, including the very limited USF high cost support funds, to construct two or  
17 more additional cell towers to serve these two areas.

18 **B. The Commission’s Line Extension Rule only applies to wireline carriers**  
19 **which may, based on voluntary agreements, provide service in cooperation**  
20 **with a wireless carrier.**

21 The Commission adopted the current Line Extension Rule on December 4, 2000.  
22 General Order No. R-474, Order Amending And Adopting Rule Permanently, Docket  
23 UT-991737 (“Adoption Order”). In the Adoption Order, the Commission identified all of the  
24 parties “whose interests are at stake” limited to the following: customers, incumbent LECs,

25 <sup>2</sup> There was no evidence in the record whether or not those two residences would withdraw their  
26 applications with Verizon based on the availability of RCC’s service.

1 facilities-based CLECs, reseller CLECs, and IXC. Adoption Order, ¶¶ 30-37. The Adoption  
2 Order made no mention of wireless carriers as an industry segment whose interests were at stake  
3 in adopting the Rule. The Commission noted with regard to incumbent LECs that “as a practical  
4 matter, this rule affects only areas served by ILECs.” *Id.*, ¶ 31. The Adoption Order stated that  
5 CLECs are outside the rule, even though they have an “obligation to serve.” *Id.*, ¶ 34 and note 7.  
6 There was no discussion in the order that indicated any intent to apply the rule to wireless  
7 companies.

8           There is good reason for the lack of any discussion in the Adoption Order  
9 regarding wireless companies. That is, the Rule is clearly and unequivocally framed in a way  
10 that it cannot and does not apply to wireless companies. The Rule specifies to which companies  
11 it applies: to “each company required to file tariffs under RCW 80.36.100.” Wireless companies  
12 do not file tariffs with the Commission and cannot be required to do. *See, e.g.*, RCW 80.66.010;  
13 47 U.S.C. § 322(c).

14           The Line Extension Rule *does* contemplate a role for wireless carriers, but a  
15 voluntary, not mandatory, role. Subsection (2)(c) of the Rule provides:

16           Any company required to extend service under this section **may** do so by  
17 extending distribution plant or by making a service and financial **agreement** with  
18 a radio communications service company or other alternative provider to provide  
19 service. The services provided through a radio communications service company  
20 or other alternative provider must be reasonably comparable services at  
21 reasonably comparable prices compared to services provided through wireline  
22 distribution facilities in the area of the exchange where service has been  
23 requested. In addition, the services must include all elements of basic service  
24 defined in RCW [80.36.600](#). A company extending service through a service  
25 agreement with a radio communications service company or other alternative  
26 provider may file a tariff as permitted under subsection (4) of this section to  
recover the lesser of the actual direct cost to extend the service through the  
cooperative agreement or the direct cost of extending wireline distribution plant.

(Emphasis added). Thus, if the Commission decides to order Qwest or Verizon to extend service  
under the rule, those companies “may” seek an “agreement” with RCC or any other wireless  
company. The provisions regarding wireless companies are permissive and dependent on the  
wireline company’s ability to secure a consensual agreement from the wireless company.

1           The provisions of subsection (2)(c) of the Rule are further confirmation that the  
2 Rule does not apply to wireless companies, because wireless companies do not provide service  
3 by “extending distribution plant.” Likewise, there is only one reasonable interpretation of the  
4 provision that a company required to extend service may make an “agreement with a radio  
5 communications service company;” the rule is talking about companies **other** than radio  
6 communications service companies. Moreover, if RCC were subject to the Rule, it would have  
7 been required to file an extension of service tariff under subsection (2)(a). RCC has not done so.  
8 There is no evidence that the Commission has ever sought to force RCC to file such a tariff.

9           Subsection (2) of the Rule has clear directives regarding what types of companies  
10 are required to do what. Subsection (4), which discusses cost recovery for extensions of service,  
11 further reinforces the conclusion that the Rule applies only to wireline companies. Cost recovery  
12 is made available under subsection (4)(a) to companies “with a terminating-access tariff” by  
13 filing “a service extension element on terminating access.” Id. Wireless carriers do not have  
14 terminating access tariffs. Exhibit 101T at 5. Thus, RCC cannot obtain cost recovery under the  
15 provisions of the Rule.

16           Subsection (4)(b) provides for “the case of companies that serve fewer than 2% of  
17 the access lines in the state.” This is a further indication that the Rule covers only wireline  
18 companies, because wireless companies do not serve “access lines.” Further, subsection 4(b)(i)  
19 refers to “Class A companies.” Wireless companies such as RCC are not classified according to  
20 that terminology. The term applies to wireline companies only. See, e.g., WAC 480-120-031.

21           Finally, the waiver provisions of the Line Extension Rule, subsection (7), the very  
22 provisions that are the subject of this docket, clearly indicate that the Rule does not apply to  
23 wireless companies. For example, subsection (7) provides that the Commission may “determine  
24 whether . . . the local exchange company is not obligated to provide service to an applicant.” Id.  
25 WAC 480-120-071(7)(a) (emphasis added). Further, the Rule provides that the Commission will  
26 consider “the comparative price and capabilities of radio communications service or other

1 alternatives available to customers.” Id. subsection 7(b)(ii)(C) (emphasis added). In order to  
2 draw a comparison with wireless, the Rule must necessarily be referring to a company *other* than  
3 a wireless company. Otherwise, the provision of the Rule would not make sense.

4 In sum, there is nothing about the Line Extension Rule that even hints that it  
5 would apply to, or could be applied to, wireless companies. Indeed, there are numerous  
6 indications in the Rule that it is specifically intended to apply only to wireline companies. There  
7 are only two provisions in the Rule that refer to wireless companies. The first is a permissive  
8 provision that allows the wireline company that is subject to the Rule to make voluntary  
9 arrangements with a radio communications service company to provide the service, in lieu of a  
10 physical wireline extension. The other provision allows the Commission to consider, in  
11 weighing whether to order a line extension at all, the comparative price and capabilities of the  
12 wireless service that may be available. Nothing about either provision suggests that the  
13 Commission could, should, or would consider ordering construction of additional wireless  
14 network facilities, as opposed to wireline facilities.

15 C. **Even assuming, for sake of argument, that the Line Extension Rule somehow**  
16 **applied to RCC, the evidence in this case shows it is not in the public interest**  
17 **to order RCC to construct additional wireless facilities to provide service to**  
18 **Verizon’s applicants.**

19 As is discussed above, this is a proceeding commenced by Verizon for a waiver of  
20 the Line Extension Rule, which does not apply to wireless carriers such as RCC. Additionally,  
21 as discussed below, the Commission lacks jurisdiction to order RCC to do anything that might  
22 resolve this docket. But assuming, for the sake of argument, that the Commission did not face  
23 these two legal barriers to ordering RCC to take some action, the facts in this case simply would  
24 not justify an order against RCC.

25 First, there is no need to order RCC to provide service to Verizon’s Timm and  
26 Taylor applicants because RCC is already holding itself out to provide service to all persons in  
its licensed service area upon reasonable request. Exhibit 102T at 7. Indeed, RCC has been

1 providing free service to Mrs. Taylor and the Timm Ranch for many weeks. Exhibit 91T. It  
2 would not serve the public interest or any other purpose to order RCC to provide or offer service  
3 when it is already doing so.

4 Second, given RCC's demonstration that it is providing service in the areas  
5 consistent with industry standards for wireless service and its ETC obligations, the only  
6 remaining possibility would be for the Commission to order RCC to expand its infrastructure in  
7 some way. Such an order would be contrary to the public interest because: (1) there has been no  
8 showing that the Verizon applicants would be interested in even an improved wireless service as  
9 a substitute for a wireline service; (2) the cost of providing improved wireless service to the  
10 Timm and Taylor locations would be roughly comparable to the cost of providing wireline  
11 service to those areas, with no guaranty that the service would perform comparably to wireline  
12 service; (3) RCC has extremely meager cost recovery mechanisms available to it for the  
13 substantial cost of constructing additional facilities to serve a handful of individuals, while  
14 wireline carriers have substantial cost recovery mechanisms; and (4) forcing RCC to expend its  
15 limited construction budget in this area to serve fewer than a dozen residents would preclude  
16 RCC from constructing in other areas where many more customers could benefit from improved  
17 network infrastructure.

- 18 1. There has been no showing that the Verizon applicants would be  
19 interested in even an improved wireless service as a substitute for a  
20 wireline service.

21 There is no dispute regarding whether Verizon's applicants are seeking service  
22 from RCC. They are not. E.g., Exhibit 102T at 3 and 7; Tr. at 320-21. Rather, the applicants  
23 have sought service from Verizon. Exhibit 1T. Not only have applicants not sought service  
24 from RCC, there is no indication in the record that the applicants would subscribe to RCC's  
25 service if changes were made for their benefit. Accordingly, the entry of any order against RCC  
26 is simply not ripe.



1                   2.       The cost of providing improved wireless service to the Timm and Taylor  
2                               locations would be high, roughly comparable to the cost of providing  
3                               wireline service to those areas.

4                   Making changes to RCC's wireless network to provide a stronger signal to the  
5 Timm and Taylor locations would be extremely costly, regardless of how one defines the term  
6 "costly." The practical problem that RCC faces by the nature of wireless service, is the  
7 topography in the two locations. The radio frequency in which RCC's service operates is such  
8 that it operates only when the cell site antenna and the receiving device are nearly in line of  
9 sight. Exhibit 91T at 3-4. In hilly or mountainous areas, it can be very difficult to provide an  
10 adequate signal to every location even when the cell phone tower may be very close to the cell  
11 site. Id. Both the Timm and Taylor locations are in mountainous areas. Exhibit 91T at 4-5,  
12 Exhibits 92 through 94. The Taylor residences are actually located in a box canyon.<sup>3</sup>  
13 Exhibit 91T at 4.

14                   Thus, although both the Timm and Taylor locations are within range of two of  
15 RCC's existing cell towers, the ability to receive an adequate signal at both locations varies from  
16 residence to residence. Exhibit 91T at 8 to 9. In order to provide more reliable service at the  
17 Taylor location, RCC would have to construct at least one new cell site. Id. at 10. The precise  
18 cost to construct the cell site or sites depends on engineering, land and acquisition and power  
19 costs and cannot be determined until a project is well along. The range of costs, however, would  
20 be between \$150,000 and \$500,000. Id. Thus, assuming that all five residents at the Taylor  
21 location subscribed to RCC's service, the cost per resident would be between \$30,000 and  
22 \$100,000. The Timm Ranch location would also require the construction of yet another new cell  
23 site at a cost of between \$250,000 and \$500,000. Id. at 11. Assuming all five of Verizon's  
24 applicants for service at the Timm Ranch location subscribed to RCC's service, the cost to

25 \_\_\_\_\_  
26 <sup>3</sup> A canyon that has an opening at only one end.

1 provide improved voice grade service at the Timm location would be between \$50,000 and  
2 \$100,000 per resident.

3           Apart from the high costs, the time from conception to turn up of a new cell site is  
4 from one to three years. Id. at 12. By that time, the residents might have acquired service from  
5 another cellular carrier, satellite provider, or any other number of other alternatives, and would  
6 no longer be interested in RCC's service. The record does not reflect that there are any other  
7 residences to be served by these cell towers in the areas. Nor do there appear to be roads or  
8 highways in the areas that require additional cell towers to provide better service to RCC's  
9 mobile customers. Accordingly, the huge expenditure of funds would benefit 10 families, at  
10 most.

11           The cost to extend service by building new RCC cell towers is not much different  
12 from the cost that the wireline carriers presented in this proceeding. According to Qwest, the  
13 total cost, including reinforcement, to provide service to the Timm locations would be \$811,922.  
14 Exhibit 61T at 5. According to Verizon, its costs in extending service to the Taylor location  
15 would be \$329,839 and the Timm location would be \$881,497. These cost estimates compare to  
16 a total potential cost to RCC of up to \$1,000,000 to provide improved service to the both  
17 locations, assuming only two new cell sites were needed, rather than three or more.

18           3.       RCC has relatively meager cost recovery mechanisms available to it for  
19                   the substantial cost of constructing additional facilities to serve a handful  
20                   of individuals.

21           While the cost to provide somewhat wireless voice grade service is similar to the  
22 cost to extend wireline service, the cost recovery capabilities of RCC compared to wireline  
23 carriers are drastically different. This is true whether one focuses on the overall subsidies that  
24 the two types of carriers receive or the *incremental* subsidies that the two types of carriers would  
25 receive for serving these particular locations. The evidence in the record reflects that RCC  
26 expects to receive approximately \$1 million in subsidies in 2003 to cover the RCC's entire  
service area in the state of Washington. Exhibit 53; Tr. at 329-330, 612-13. The sole source of

1 the subsidy is the federal USF. Exhibit 101T at 4. In contrast, Verizon receives \$33 million in  
2 high cost subsidies. Tr. at 536-37. Qwest receives \$23 million in high cost subsidies for the  
3 state of Washington. Tr. at 612-13. Moreover, Qwest and Verizon are also able to charge  
4 originating and terminating access charges. RCC is not able to do so. E.g. Exhibit 102T at 5.  
5 Thus, on a statewide annual basis, Qwest and Verizon receive over 20 to 30 times the amount of  
6 high cost subsidies that RCC receives.

7 As great as the disparity on overall support dollars is, the disparity on incremental  
8 subsidies are even greater. Both Qwest and Verizon stand to recover up to 100% of their service  
9 extension costs within a year if they are ordered to serve the Timm and/or Taylor locations. Tr. at  
10 452-53, 587, 614-15. They are able to do this because of the Line Extension Rule, drafted as it is  
11 for wireline carriers, allows them to submit special access surcharges to recover the full cost of  
12 line extensions ordered under the rule. Since RCC does not have access charges, it is impossible  
13 for RCC to take advantage of any such cost recovery mechanism.

14 RCC's only incremental revenues to cover the costs of the construction would be  
15 subscriber charges, which are de minimus relative to the costs, and the incremental USF subsidy  
16 that RCC would receive if the residents subscribed to RCC's service after the new cell towers  
17 were constructed. The first year's subsidy will amount to less than \$1,050, in the aggregate,<sup>4</sup>  
18 assuming all of the Verizon applicants subscribe to RCC's service. In contrast to the potential of  
19 the wireline carriers to recover up to 100% of the extension costs in about a year, RCC would  
20 recover substantially less than 1% of its incremental costs to extend service to these two  
21 locations after ten years.<sup>5</sup> Even disregarding the cost of money it could take 1,000 years to fully  
22 recover this investment from the high-cost fund!

23 \_\_\_\_\_  
24 <sup>4</sup> 10 subscribers times \$8.72 or less (Tr. at 340) per month, times 12 months.

25 <sup>5</sup> The actual percentage is 0.7%, derived from dividing \$1050 by \$1.5 million and multiplying by  
26 10 years. This figure is an overstatement, since it has no provision for the cost of money over 10  
years.

1  
2 4. Forcing RCC to expend its limited construction budget in these areas to  
3 serve fewer than a dozen residents would preclude RCC from constructing  
4 in other areas where many more customers could benefit from improved  
5 network infrastructure.

6 Ordering RCC to construct additional infrastructure to serve fewer than a dozen  
7 residences will not add incremental investment or service to the state of Washington. Because  
8 RCC has no access to a meaningful source of additional revenues, in order to comply with the  
9 hypothetical Commission order RCC would have to simply move dollars around. Exhibit 102T  
10 at 4. The investment in Washington infrastructure will be the same, since RCC will simply have  
11 to devote its relatively small federal USF subsidies to serving a handful of residents when it  
12 could have applied those funds elsewhere to serve many more residents. Id. Put another way,  
13 the Commission would not be realizing much “bang for the buck” for rural Washington.

14 A competitive ETC must respond to all reasonable requests for service. Under  
15 any standard, it is unreasonable to require RCC to extend service there when RCC is in the  
16 unique position of being the only carrier participating in this docket that has no hope of ever  
17 recovering its costs of extending service under the de minimis “per line” recovery mechanism  
18 available to it. Moreover, it is not only unreasonable, but it would represent an unconscionable  
19 waste of scarce federal high cost support to require RCC to construct facilities to serve roughly a  
20 dozen people, when there may be thousands that need service who could be reached by RCC for  
21 the same investment. The result of such an order would not be to increase infrastructure  
22 investment in Washington. Rather, it would decrease investment, since it would discourage  
23 competitive companies like RCC from seeking ETC status, thereby reducing the flow of federal  
24 USF subsidies to the state. See, Exhibit 102T at 3. Accordingly, and for the other reasons  
25 discussed above, the evidence in the proceeding strongly reflects that it would not be in the  
26 public interest to order RCC to expand its infrastructure at either the Timm or Taylor locations.

1           **D. The Commission Lacks the Necessary Jurisdiction to Effectuate Any Order**  
2           **Directing RCC to Construct Additional Facilities to Serve the Timm and**  
3           **Taylor Locations.**

- 4           1.       State law precludes the Commission from entering an order against RCC  
5           in this docket.

6           The WUTC’s regulation of wireless companies such as RCC is extraordinarily  
7           limited by both state and federal law. RCC is defined under state law as a “radio  
8           communications service company.” RCW 80.04.010. State law does not merely urge the  
9           Commission to forebear from regulating wireless companies. Rather, the legislature has  
10          expressly prohibited the WUTC from regulating radio communications service companies,  
11          except in extremely limited circumstances and for limited purposes.<sup>6</sup>

12          The Commission shall not regulate radio communications service companies,  
13          except that:

14               (1)       The Commission may regulate the rates, services, facilities, and  
15               practices of radio communications service companies, within a geographic service  
16               area or a portion of a geographic service area in which it is authorized to operate  
17               by the Federal Communications Commission if it is the only provider of basic  
18               telecommunications service within such geographic service area or such portion  
19               of a geographic service area.

20          RCW 80.66.010 (emphasis added). To be regulated, RCC would have to be the “only provider”  
21          of service within the “geographic service area” or “portion” of such area. There are a number of  
22          different ways to interpret this section, but all rational interpretations of this section based on the  
23          record in this docket result in the same outcome. RCC is not the only provider in the Timm and  
24          Taylor areas and, therefore, the Commission lacks jurisdiction over the “rates, services, facilities,  
25          and practices” of RCC in those areas.  
26

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27          <sup>6</sup> For example, the Commission was authorized to grant RCC’s ETC petition pursuant to 47  
28          U.S.C. § 214, and therefore was permitted by the RCW 80.36.610(1), which authorized the  
29          Commission to carry out the provisions of the Telecommunications Act of 1996, to act on RCC’s  
30          petition. However, the limited grant of jurisdiction in Section RCW 80.36.610 did not repeal of  
31          the proscription of RCW 80.66.010 and therefore did not confer broad jurisdiction over the rates,  
32          facilities, services and practices of radio communications services companies.

1           The Commission could take a large view of the term “portion of a geographic  
2 service area,” for example looking at the exchange level. In that interpretation, Verizon is  
3 serving the area, since it is within its exchange. Even on a more granular level, there are at least  
4 six wireless carriers serving the Timm Ranch area and at least seven wireless carriers serving the  
5 Taylor canyon. Tr. at 181-82. Under either of these approaches, the Commission does not have  
6 jurisdiction over RCC, since it is not the “only provider” in the areas.

7           Alternatively, the Commission might take the narrowest possible interpretation of  
8 a “portion” of an area in RCW 80.66.010(1). The most narrow definition the Commission could  
9 apply would be residence-specific.<sup>7</sup> Even under such a narrow definition, the record does not  
10 support the Commission’s exercising jurisdiction to order RCC to construct additional facilities  
11 to serve the residences. The reason for this is that as to the residences where RCC’s signal does  
12 not provide service to a residence, RCC does not meet the criteria for Commission jurisdiction.  
13 RCC is not a “provider of basic telecommunications service” to that residence so as to trigger the  
14 exception of RCW 80.66.010(1) that would allow regulation of RCC. On the other side of the  
15 coin, as to those residences where RCC’s signal does provide adequate “basic  
16 telecommunications service,” then by definition RCC is already serving the residence.  
17 Accordingly, there is no reason for the Commission to order the construction of an additional cell  
18 tower to provide service.

19           2.       Federal law precludes the Commission from ordering RCC to construct  
20                   additional cell towers to serve these locations.

21           Apart from state law, federal law precludes the exercise of jurisdiction under the  
22 facts of this case. While there are limited exceptions, the presumption of federal law is that state  
23 regulation of mobile wireless is preempted. 47 U.S.C. § 332(c)(3)(A) provides:

24           [N]o state or local government shall have any authority to regulate the entry of or  
25           the rates charged by any commercial mobile service or any private mobile service,

26           <sup>7</sup> This discussion is hypothetical only. RCC does not believe this is the intent of the statute.

1 except that this paragraph shall not prohibit a state from regulating the other terms  
2 and conditions of commercial mobile services. Nothing in this subparagraph shall  
3 exempt providers of commercial mobile services (where such services are a  
4 substitute for land line telephone exchange service or a substantial portion of the  
5 communications within such state) from requirements imposed by a state  
6 commission on all providers of telecommunication services necessary to ensure  
7 the universal availability of telecommunication service at affordable rates.

8 Id. (emphasis added). Thus, the Commission cannot regulate entry or rates of RCC. Because the  
9 Commission cannot regulate RCC's rates, it effectively cannot require service to the Timm and  
10 Taylor locations by RCC. If ordered to spend hundreds of thousands of dollars to serve a  
11 handful of residents, RCC would be free to quote a combination of nonrecurring and recurring  
12 rates for those customers that would achieve recovery of those substantial costs in a reasonable  
13 time frame. Given the evidence in the record that the residents in the two locations were  
14 unwilling to pay the charges that would have applied to the extensions prior to the adoption of  
15 the current Line Extension Rule, it seems unlikely that the residents would be interested in  
16 subscribing to RCC's service at rates that would be compensatory of RCC's costs. See Exhibit  
17 30T at 13.

18 Section 322(c)(3)(A) does provide an exception from the bar on state regulation  
19 of rates if "a substantial portion of the communications within the state are substituted wireless  
20 services for land line services." This Commission has never initiated a proceeding to determine  
21 whether RCC's service offerings are a substitute for landline services in a substantial portion of  
22 the state, nor could it. The evidence in this record shows the opposite to be true. Substitution is  
23 only about 1%. Tr. at 224. There is no evidence that any party in this proceeding considers  
24 wireless substitution to be "substantial." Thus, even if the WUTC commenced such a  
25 proceeding, the evidence cannot support a finding that would permit the WUTC to order RCC to  
26 construct additional facilities at rates comparable to wireline services.

Given the restrictions in both state and federal law against Commission regulation  
of wireless carriers, it is not surprising that the Line Extension Rule, if properly followed, was  
crafted to take into account these limitations. The intent of the rule, as discussed above, is that if

1 the Commission finds it to be in the public interest to order an extension to a particular location,  
2 the order should be entered against a wireline carrier. See WAC 480-120-071. The wireline  
3 carrier then may be able to enter into a consensual contractual arrangement with a wireless  
4 carrier to actually provide the service.

5 **E. RCC's Status As An ETC Does Not, As Either A Factual Or Legal Matter,**  
6 **Justify Keeping RCC In This Docket For Any Purpose.**

7 Qwest, in particular, has made much of RCC's recently acquired status as an ETC  
8 as justification for bringing RCC into this case. The Commission appears to have agreed to  
9 involuntarily join RCC as a party to this case pursuant to the provisions of WAC-480-120-  
10 071(7)(b)(ii)(C) which provides for consideration of the "comparative price and capabilities of  
11 radio communication service. . .". As discussed more extensively above, nothing in the rule  
12 provides for the Commission to order a wireless company to extend service under the provisions  
13 of the rule. However, at times Qwest has seemed to be urging the Commission to enter an order  
14 directing RCC to provide service in lieu of an order against Qwest. Exhibit 51T at 11. Then, at  
15 the conclusion of the hearing, Qwest actually sought to vacate the order it obtained seeking  
16 RCC's joinder. Tr. at .683. Qwest's opening brief may provide additional clarification to  
17 Qwest's precise position regarding what relief, if any, it recommends against RCC.

18 RCC's position is not at all ambiguous: RCC's status as an ETC has no relevance  
19 to any issue in this proceeding. Moreover, although ETC status is not relevant to this docket, the  
20 evidence shows that RCC is providing service in compliance with the prerequisites of ETC  
21 designation, contrary to Qwest's implications. See, e.g., Exhibit 51T at 10. In so doing, Qwest  
22 attempted to confuse the distinction between the obligation of an ETC to serve an entire "area,"  
23 which RCC is doing, and the obligation to serve a specific location, which is much more limited.  
24 Qwest even submitted the testimony of witness Pamela Morton, whose sole topic was to review  
25 laws and FCC orders regarding the ETC obligation. Exhibit 81T.  
26



1 Read as a whole, Ms. Morton’s testimony might give the impression that because  
2 of RCC’s ETC designation, RCC somehow has a greater obligation to serve the Timm and  
3 Taylor locations than would the wireline carriers, Qwest and Verizon. Read more carefully,  
4 however, Ms. Morton acknowledges the limitations on an ETC’s obligation to serve.  
5 Ms. Morton correctly quoted the applicable law on the issue, the FCC’s declaratory ruling in  
6 FCC 00-248 (August 10, 2000):

7 A new entrant, once designated as an ETC, is required, as the incumbent is  
8 required, to extend its network to serve new customers upon reasonable request.”  
9 Exhibit 81 at 4. When it adopted rules governing the rights and obligations of competitive ETCs  
10 to extend service to requesting customers, the FCC did not impose carrier of last resort  
11 obligations on competitive ETCs precisely because they lack the cost recovery mechanisms  
12 available to incumbent wireline carriers.

13 Simply because a particular residence is in an area for which a carrier has been  
14 designated as an ETC, there is no automatic obligation to serve. Under the FCC’s order, a  
15 “request” to service a specific location must be “reasonable.” In the context of this case, there  
16 are two critical elements missing (apart from jurisdiction issues). First, RCC has received **no**  
17 request to provide service to any of the residents at the Timm and Taylor locations. Second,  
18 assuming for the sake of argument that requests had been received, it would not be reasonable  
19 for RCC to provide service to these locations based on the evidence in this record. The evidence  
20 clearly shows that RCC’s cost recovery for extending additional service to these two locations  
21 would be de minimus. In contrast, the other ETC, Verizon, as well as another carrier within the  
22 jurisdiction of the Commission, Qwest, would both be able to recover up to 100% of their costs  
23 to extend service to these locations.

24 ETC designation is nowhere referenced in the Commission’s Line Extension  
25 Rule. WAC 480-120-071. In the subsection dealing with waivers, in particular, there is no  
26 mention of ETC status being a determining factor. This proceeding has been brought under a

1 state rule, which was adopted pursuant to state law. Qwest's attempt to inject ETC status into  
2 the proceeding is a misguided attempt to mix apples and oranges. RCC is complying with its  
3 obligations under Section 214. But, in any event, this is not an appropriate proceeding to  
4 determine whether or not RCC meets the requirements of Section 214. Nor should ETC status  
5 have any bearing on the outcome in this proceeding.

6 **IV. CONCLUSION**

7 For the foregoing reasons, RCC should be dismissed from this proceeding. In so  
8 doing, the Commission should establish precedent that will preclude wireless carriers such as  
9 RCC from being brought into such proceedings in the future. The Commission's desire to  
10 determine wireless capabilities under the provisions of WAC 480-120-071 (b)(ii)(C) should be  
11 accommodated by the discovery process or by the affected wireline carriers negotiating in  
12 advance of the hearing with the wireless carriers as is contemplated by subsection (2)(c) of the  
13 Line Extension Rule.

14 Respectfully submitted this 6<sup>th</sup> day of March, 2003.

15 MILLER NASH LLP

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