

Agenda Date: October 12, 2005  
Item Number: A1

**Docket:** UT-023040

Company Name: Inland Cellular Telephone Company (Eastern Sub-RSA Limited Partnership and Washington RSA No. 8 Limited Partnership)

Staff: Robert Shirley, Telecommunications Policy Analyst

**Recommendation:**

Grant the request of Inland Cellular Telephone Company to modify the order designating it as an eligible telecommunications carrier (ETC) by removing the requirement to petition the FCC for concurrence in designation as an ETC for service areas that overlap only in part the service areas (exchanges) of rural telephone companies.

**Background:**

The Commission designated Inland Cellular Telephone Company (ICTC) as an ETC in 2002.<sup>1</sup> An ETC is eligible to receive federal universal service support in exchange for serving customers in designated service areas where Congress has determined support is necessary to insure access to telecommunications services. 47 U.S.C. § 214(e); 47 U.S.C. § 254. In the Commission's order designating ICTC as an ETC, the Commission designated ICTC for its entire licensed service area, an area that consists of some entire exchanges and some portions of exchanges. The Commission ordered ICTC to "petition the Federal communications Commission (FCC) for concurrence in designation as an ETC for areas that are parts of ILEC exchanges." *ICTC Designation Order*, ¶ 90.

On September 22, 2005, ICTC petitioned the Commission to remove the requirement from the 2002 order for ICTC to petition the FCC for concurrence with the commission's designation. ICTC maintains in its petition for modification that concurrence by the FCC with the designations made by the Commission in 2002 is unnecessary and not supported by law. *Petition for Modification at 3*. ICTC contends the relevant statute and

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<sup>1</sup> See *In the Matter of the Petition of Inland Cellular Telephone Company et al for Designation as an Eligible Telecommunications Carrier*, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-023040 (Aug. 30, 2002) ("*ICTC Designation Order*").

FCC rule do not require concurrence, and ICTC cites the Commission's recent *RCC Order* in support of that contention.<sup>2</sup>

**Issue:**

ICTC's petition contains the identical question presented by RCC in March, 2005. The question is whether a carrier must petition the FCC for concurrence in a state designation of a geographic service area that overlaps parts of wireline exchange areas. The Commission concluded in the RCC matter that concurrence from the FCC is not required, and modified RCC's order in the same manner now sought by ICTC. Commission Staff's legal and policy analysis is identical to the analysis in its Open Meeting memo analyzing the request of RCC.<sup>3</sup>

When this issue arose in the RCC modification request and in other designation decisions, the concern raised was that designation of a wireless company for geographic service areas that overlap parts of wireline exchanges could result in cream skimming (service to more densely populated area but not to less densely populated areas). Commission Staff believes that many precedents of the Commission support the conclusion that cream skimming is not a concern when federal support is disaggregated (as it is in Washington) and a wireless carrier seeks to serve to the extent of its licensed service area, even though the result is an ETC designation for a service area that overlaps part of a service area of a rural telephone company. The approach of accepting geographic boundaries as they are recognizes the technological differences that exist between carriers, and takes into account the variations in the statutory and regulatory requirements placed on wireline and wireless carriers (e.g., a wireline carrier may serve anywhere in Washington but a wireless carrier may serve only within the boundaries of its license).

**Recommendation:**

Grant the request of Inland Cellular Telephone Company and modify the order designating it as an eligible telecommunications carrier by removing the requirement to petition the FCC for concurrence in designation as an ETC for service areas that overlap parts of service areas (exchanges) of rural telephone companies.

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<sup>2</sup> See *In the Matter of the Petition of RCC Minnesota d/b/a Cellular One for Designation as an Eligible Telecommunications Carrier*, Order No. 2, Order Granting Modification, Docket No. UT-023033, (March 16, 2005).

<sup>3</sup> Open Meeting memo in Docket UT-023033 (March 16, 2005).