

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of)	
)	DOCKET NO. UT-013022
M&L ENTERPRISES, INC.)	
d/b/a SKYLINE TELEPHONE)	ORDER GRANTING DESIGNATION
COMPANY)	AS AN ELIGIBLE
)	TELECOMMUNICATIONS CARRIER
For designation as an Eligible)	
Telecommunication Carrier)	
.....)	

BACKGROUND

- 1 The Federal Telecommunications Act of 1996 (Act) substantially altered national telecommunications policy and contemplated that the states, acting through their state public utility commissions, would implement that policy by conducting various proceedings as outlined in the Act. The federal policy embodied in the Act coincides, to a great extent, with the preexisting telecommunications policies of Washington State as expressed by the Legislature and implemented by this Commission.

- 2 The Act, as well as Washington law, embraces the policy that certain telecommunications services should be universally available. Congress articulated the basics of what should be included as part of “universal service,” in 47 U.S.C. §254(b), and established a Federal-State Joint Board on Universal Service to recommend to the Federal Communications Commission the details of what should be included within the concept of universally available telecommunications service. These services are to be supported in high-cost areas by money from a fund which is supported by carrier contributions. 47 U.S.C. §254(d); Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996), and First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997) (Universal Service Order).

- 3 Congress provided that certain carriers, when designated “eligible telecommunications carriers” (ETCs), may draw from the fund for their provision of the described services in high-cost areas. The following services must be provided by a telecommunications carrier in order to be eligible for federal universal-service support: single-party service; voice-grade access to the public switched network; dual-tone multi-frequency signaling or its functional equivalent; access to emergency

services, including, in some circumstances, access to 911 and E911; access to operator services; access to interexchange services; access to directory assistance; and lifeline and link-up programs, including free toll-limitation services for qualifying low-income consumers.

4 Congress left to the state public utility commissions the task of designating “eligible telecommunications carriers.” 47 U.S.C. § 214(e)(2). In 1998, the Washington State Legislature authorized the Commission to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Federal Telecommunications Act of 1996. RCW 80.36.610.

MEMORANDUM

I. PETITION

5 On March 28, 2001, M&L Enterprises, Inc. d/b/a Skyline Telephone Company (M&L Enterprises), filed with the Commission a petition seeking designation as an eligible telecommunications carrier for the service area described in its tariff as the Mount Hull exchange.

6 M&L Enterprises has completed most of the construction necessary to provide local and interexchange service to the residents of the Mount Hull exchange. The requirements of section 214(e) and 47 C.F.R. Part 54 will apply to M&L Enterprises at the time it commences local exchange service in the Mount Hull exchange. M&L Enterprises has requested a waiver of the requirement to provide toll limitation.

II. STATUTORY BACKGROUND AND JURISDICTION

7 Section 214(e) of the Act sets forth the standards and processes for a state public utility commission designation of an eligible telecommunications carrier.

8 This section in effect states two general criteria for designating a carrier as an ETC: (1) the carrier must offer the “services” that are supported by the federal fund, and (2) the carrier must advertise the availability of those services. The carrier must fulfill these criteria “throughout the service area for which the designation is received.” 47 U.S.C. §214(e)(1).

9 The Commission has jurisdiction over this petition both because of the 1996 Act and because of those provisions of state law which give the Commission authority over the rates and practices of telecommunications companies and its power to define the scope and nature of a carrier’s service obligation. RCW 80.01.040(3), 80.36.080, 80.36.090, 80.36.140, 80.36.230, 80.36.610.

A. Designation for Areas Other than a Petitioner's Study Area

10 Section 214(e)(5) of the Act governs the determination of the geographic area in which the ETC will serve:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

11 As stated, "a service area means a geographic area established by the Commission." For non-rural companies, the authority to determine the geographic area of service areas is without limitation. In the case of an area served by a rural carrier, however, 214(e)(5) defines the service area as the carrier's "study area" unless the Commission and the FCC establish a different definition of service area. In establishing a service area different than the study area, the Commission must "take into account" the recommendations of the Federal-State Joint Board.

12 The language "take into account" does not require that we are bound to accept the study area, but only that we consider the Joint Board recommendations. We have done so. We also have considered the FCC discussion of this issue in its Universal Service Order.¹

13 The FCC also noted that the "states should exercise this authority [to designate service areas] in a manner that promotes the pro-competitive goals of the 1996 Act" Universal Service Order ¶184. As recommended by Staff, the pro-competitive goals of the Act favor designation of smaller, rather than larger, service areas. The caution by the FCC and the Joint Board that areas not be "unreasonably large," Universal Service Order ¶184, supports this conclusion.

14 In this instance, as a company registered with the Commission as a local exchange carrier in June 2000, M&L Enterprises does not have a study area. In the registration filing and materials accepted by the Commission, M&L Enterprises represented that it intends to serve a newly created exchange located where no other carrier has an exchange map on file. There is, therefore, no need for the Commission to make any

¹ First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

determinations with respect to incumbent rural local exchange companies for FCC concurrence.

B. Waiver for Requirement of Providing Toll Control

15 All petitioners who requested designation as an ETC prior to M&L Enterprises' petition requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. Those petitioners demonstrated in their petitions that exceptional circumstances exist which warrant the granting of a waiver for providing toll limitation as authorized by 47 C.F.R. §54.101(c). Those same exceptional circumstances, rooted in a lack of technological ability to provide toll control, will likely apply to M&L Enterprises at the time it begins service.

C. Service Quality Issues

16 In the deliberations on the Commission's first ETC designations in December 1997, Staff originally urged the Commission to include as a condition of granting ETC status a requirement that the carriers, abide by Commission service- quality standards set forth in WAC 480-120. A number of carriers contested the Commission's authority to so condition the designation. We need not reach that issue of legal authority because we conclude that the carriers' obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. §214(e)(A), requires not just willingness to offer the services, but actual performance of the services. Such performance in turn implies performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

17 Requiring adequate service also is consistent with the pro-competitive policies of the 1996 Act. No company should be able to obtain a competitive advantage by avoiding its service-quality responsibilities. The Commission expects that all companies receiving ETC status will comply with relevant Commission rules.

D. Modification, Revocation, or Suspension

18 Given the changing dynamics of the market in the local exchange, the Commission may from time to time reopen these proceedings in order to modify the geographic area for which companies are designated. Such a proceeding may be commenced by the designated company, a petitioner for ETC status, by the Commission on its own motion, or by another appropriate person or entity.

19 In addition to geographic area modifications, the Commission has the authority to modify, revoke, or suspend the designations, should the prerequisites to the original

designation cease to exist.² For example, should the company no longer advertise its services throughout the designated area as required by 47 U.S.C. §214(e)(B), the Commission may revoke the designation or suspend it until the deficiency is corrected. Likewise, should the company cease to “offer the services that are supported by Federal universal service support mechanisms” as required by 47 U.S.C. §214(e)(A), the Commission may revoke or suspend the original designation. In making the determination of whether a designated company continues to offer such services, the Commission will look not just to the advertised availability of the services, but to the actual and timely delivery of those services. In determining whether a designated carrier is providing such service the Commission will be guided by currently accepted industry standards, including, but limited to, the quality of service rules contained in chapter 480-120 WAC.

20 The Commission may modify this order for other reasons permitted by the Act.

FINDINGS OF FACT

- 21 1. M&L Enterprises is a telecommunications company authorized to conduct
business in the state of Washington.
- 22 2. After taking into account and considering fully the recommendations of the
Federal-State Joint Board, the Commission finds that the appropriate service
area for the petitioner is at the exchange level.
- 23 3. The petitioner will offer 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), with the exception of toll limitation.
- 24 4. The petitioner will provide advertisement of the availability of the services
that are to be provided by the federal universal-service support services at the
time it first provides service, except as otherwise waived by this Order, and
the charges therefore, using media of general distribution as required by 47
U.S.C. §214(e)(1)(B).

² Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. RCW 80.04.210. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. 47 U.S.C. §214(e)(1)(2). There is nothing in that provision which limits a state commission on its own motion from re-designating a company already designated and in effect modifying the prior designation.

CONCLUSIONS OF LAW

- 25 1. The Commission has jurisdiction over the subject matter of this proceeding and the petitioner.
- 26 2. Granting the relief requested in the petition, except as otherwise modified by this Order, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state and federal law.
- 27 3. The Commission need not designate a petitioner for a study area, and in the case of M&L Enterprises, the petitioner has no study area at this time. The Commission, after taking into account the recommendations of the Federal-State Joint Board, may designate companies for geographic areas other than their study areas without conducting an adjudicatory proceeding prior to such designation.
- 28 4. The Commission has authority to modify, suspend, or revoke this designation, including the service areas accompanying this designation, at a future date.

ORDER

- 29 1. The petition of M&L Enterprises, Inc., d/b/a Skyline Telephone Company for designation as an eligible telecommunications carrier is granted.
- 30 2. The geographic area for which the designation as an eligible telecommunications carrier is granted is the Mount Hull exchange.
- 31 3. The requirement to provide toll control is waived until it is economically and technically feasible to provide it.
- 32 4. M&L Enterprises, Inc., d/b/a Skyline Telephone Company must provide the required services at the time it first provides service to the Mount Hull exchange.
- 33 5. M&L Enterprises, Inc., d/b/a Skyline Telephone Company is granted this designation, in part, so that it may qualify for federal universal service support.

DATED at Olympia, Washington, and effective this day of April, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner