

SERVICE DATE

DEC 23 1997

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Petitions of	)	DOCKET NOS.
)	
YELM TELEPHONE COMPANY; THE TOLEDO	)	UT-970333; UT-970334
TELEPHONE COMPANY; McDANIEL TELEPHONE	)	UT-970335; UT-970336
COMPANY; MASHELL TELECOM, INC.; LEWIS	)	UT-970337; UT-970338
RIVER TELEPHONE COMPANY; HOOD CANAL	)	UT-970339; UT-970340
TELEPHONE COMPANY; ELLENSBURG	)	UT-970341; UT-970342
COMPANY; ASOTIN TELEPHONE	)	UT-970343; UT-970344
COMPANY; TELEPHONE UTILITIES OF	)	UT-970345; UT-970346
WASHINGTON, INC.; PEND OREILLE TELEPHONE	)	UT-970347; UT-970348
COMPANY; TENINO TELEPHONE COMPANY;	)	UT-970349; UT-970350
KALAMA TELEPHONE COMPANY; UNITED	)	UT-970351; UT-970352
STATES CELLULAR CORPORATION; PIONEER	)	UT-970353; UT-970354
TELEPHONE COMPANY; HAT ISLAND	)	UT-970356
TELEPHONE COMPANY; GTE NORTHWEST,)	
INCORPORATED; UNITED TELEPHONE COMPANY	)	ORDER DESIGNATING
OF THE NORTHWEST; WESTERN WAHAKIACUM	)	ELIGIBLE
COUNTY TELEPHONE COMPANY; INLAND	)	TELECOMMUNICATIONS
TELEPHONE COMPANY; ST. JOHN CO-OPERATIVE	)	CARRIERS
TELEPHONE AND TELEGRAPH COMPANY;)	
WHIDBEY TELEPHONE COMPANY; U S WEST)	
COMMUNICATIONS, INC.; and COWICHE)	
TELEPHONE COMPANY, INC.)	
)	
for designation as an Eligible Telecommunications)	
Carrier.)	
.....)	

I. INTRODUCTION

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

The 1996 Act (as well as Washington law) embraces the policy that certain telecommunications services should be available universally. Congress articulated the basics of what should be included as part of "universal service," 47 U.S.C. §254(b), and established a

Federal-State Joint Board on Universal Service to recommend to the FCC the details of what should be included within the concept of such 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).

Congress stated that certain carriers, 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 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.

Congress left the task of designating such carriers to the state commissions. 47 U.S.C. § 214(e)(2). In these proceedings, we undertake that task.

II. PETITIONS

Twenty-three companies filed petitions for eligible telecommunications carrier designation with the Commission.¹ The docket numbers assigned, the petitioners, and a brief description of the petitions are as follows:

Docket No. UT-970333 On October 1, 1997, Yelm Telephone Company (Yelm) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Yelm included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(c) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970334 On October 1, 1997, The Toledo Telephone Company (Toledo) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Toledo included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

¹ A twenty-fourth petition was filed by Nextlink, UT-970355; it was withdrawn prior to commencement of the initial open meeting on November 26, 1997.

Docket No. UT-970335 On October 1, 1997, McDaniel Telephone Company (McDaniel) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. McDaniel included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970336 On October 1, 1997, Mashell Telecom, Inc. (Mashell) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Mashell included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970337 On October 1, 1997, Lewis River Telephone Company (Lewis River) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Lewis River included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970338 On October 1, 1997, Hood Canal Telephone Company (Hood Canal) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Hood Canal included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970339 On October 1, 1997, Ellensburg Telephone Company (Ellensburg) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Ellensburg included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970340 On October 1, 1997, Asotin Telephone Company (Asotin) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Asotin included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970341 On October 6, 1997, Telephone Utilities of Washington, Inc. (Telephone Utilities) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Telephone Utilities included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970342 On October 9, 1997, Pend Oreille Telephone Company (Pend Oreille) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Pend Oreille included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970343 On October 15, 1997, Tenino Telephone Company (Tenino) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Tenino included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970344 On October 15, 1997, Kalama Telephone Company (Kalama) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Kalama included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970345 On October 15, 1997, United States Cellular Corporation (U.S. Cellular) filed a Petition seeking designation for the following exchanges: Centralia; Chehalis; Winlock; Castlerock; Longview-Kelso; Woodland; Yakima; George; and Quincy. U.S. Cellular included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c). The petition also requested additional time to complete the network upgrades pursuant to 47 C.F.R. §54.101(c) in order to comply with the E911 requirements of 47 C.F.R. §54.101(a)(5).

Docket No. UT-970346 On October 17, 1997, Pioneer Telephone Company (Pioneer) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Pioneer included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970347 On October 17, 1997, Hat Island Telephone Company (Hat Island) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Hat Island included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970348 On October 17, 1997, GTE Northwest, Incorporated (GTE) filed a Petition seeking designation for its study area consisting of the exchanges served on December

10, 1997, as indicated by its tariffs. GTE included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970349 On October 30, 1997, United Telephone Company of the Northwest (SPRINT/United) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. United included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970350 On October 22, 1997, Western Wahkiakum County Telephone Company (Wahkiakum) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Wahkiakum included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970351 On October 23, 1997, Inland Telephone Company (Inland) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Inland included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970352 On October 24, 1997, St. John Co-operative Telephone and Telegraph Company (St. John) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. St. John included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970353 On October 24, 1997, Whidbey Telephone Company (Whidbey) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Whidbey included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970354 On October 24, 1997, U S WEST Communications, Inc. (USWC) filed a Petition seeking designation for the Seattle, Tacoma, Bellevue, Des Moines, Federal Way, Renton, Olympia, Spokane, Yakima and Vancouver exchanges. USWC included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Docket No. UT-970356 On October 24, 1997, Cowiche Telephone Company Inc. (Cowiche) filed a Petition seeking designation for its study area consisting of the exchanges served on December 10, 1997, as indicated by its tariffs. Cowiche included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).

Because of the common issues included in these petitions, we have consolidated them for purposes of this order.

III. STATUTORY BACKGROUND AND JURISDICTION

Section 214(e) of the 1996 Act sets forth the standards and processes for a state commission designation of an ETC.

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS.--If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254© to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting

unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE.--A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--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.

This section in effect states two general criteria for approval of 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 do these "throughout the service area for which the designation is received." 47 U.S.C. §214(e)(1). The definition and scope of the "service area" are the main points of contention in these proceedings.

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. See RCW 80.01.040(3); 80.36.080; 80.36.090; 80.36.140; 80.36.230.

The Commission in these proceedings must determine whether each Petitioner meets the prerequisites for designation as an ETC and also whether the Commission may and

should define as a “service area” some geographic area other than what is currently in the carrier’s “study area.”²

IV. PROCEEDINGS BEFORE THE COMMISSION

The Commission Staff (Staff) coordinated the process of the Petitions and undertook an evaluation of the law and the facts applicable to each. These were presented to the Commission at its open public meeting on November 26, 1997. At that meeting, the Commission also heard testimony from the following: Richard Finnigan (representing Yelm, Toledo, McDaniel, Mashell, Lewis River, Hood Canal, Ellensburg, Pend Orielle and Asotin telephone companies and the Washington Independent Telephone Association); Rob Snyder (representing Tenino, Kalama, Pioneer, Hat Island, Western Wahkiakum, Inland, St. John, and Whidbey telephone companies); Simon ffitch (representing Public Counsel); Joan Gage (representing GTE Northwest); Theresa Jensen (representing USWC); and Judy Endejan (representing U.S. Cellular).

At the November 26, 1997 meeting, the Commission continued its consideration of the Petitions until the regulatory scheduled December 10, 1997, meeting. At that time, the Commission heard testimony again from Staff as well as from the following: Richard Finnigan (representing Yelm, Toledo, McDaniel, Mashell, Lewis River, Hood Canal, Ellensburg, Pend Orielle and Asotin telephone companies and the Washington Independent Telephone Association (WITA)); Rob Snyder (representing Tenino, Kalama, Pioneer, Hat Island, Western Wahkiakum, Inland, St. John, and Whidbey telephone companies); Mr. Glen Harris (representing SPRINT/United); and Joan Gage (representing GTE Northwest).

In addition, the Commission received written material submitted by Commission staff and the Washington Independent Telephone Association.

V. POSITIONS OF THE PARTIES

A. Commission Staff

Staff recommended that the petitions be granted as modified by the staff’s written recommendation with supporting material. Staff recommended the Commission make all service area designations at the exchange level. The designations for GTE, USWC, and U.S. Cellular were to be effective January 1, 1998, and the same effective date for all single exchange rural telephone companies. Staff recommended that Telephone Utilities and SPRINT/United be

² A “study area” is generally an incumbent LEC's pre-existing service area in a given state. The study area boundaries are fixed as of November 15, 1984. Universal Service Order ¶ 172, n.434 citing. MTS and WATS Market Structure: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 Fed. Reg. 939 (1985).

designated at the study area level from January 1, 1998, through March 31, 1998, and thereafter designated at the exchange level. Staff's recommendation for small multi-exchange rural telephone companies was study area designation from January 1, 1998, through June 30, 1998, and thereafter at the exchange level.

The purpose for the proposed delayed effective dates for exchange level designation was to permit the Federal Communications Commission (FCC) sufficient time to consider this Commission's petition to the FCC for agreement with the deviation from study area designations. See 47 U.S.C. § 214(e)(5); Universal Service Order ¶¶ 186-88.

Staff also recommended a section in the order requiring each ETC to meet service quality standards as a condition of becoming an ETC.

Whidbey presented a unique case. In 1995, the Commission permitted Whidbey to serve a number of customers in an area they termed a Supplemental Service Area (SSA). This area is in the Coupeville exchange which is served by GTE. Whidbey has never received high-cost support for the approximately 600 customers in this area. Staff recommended that the SSA not be included in the service area designation for Whidbey.

The staff recommendation was modified for the December 10 open meeting. The recommendations on service area designations remained the same for all companies except Telephone Utilities and SPRINT/United. Their various groups of contiguous exchanges were to be designated service areas January 1, 1998, and then the exchange-level designation effective date was to be pushed back to July 1, 1998, with the other multi-exchange rural companies. The proposal for a separate section on service quality standards for qualification as an ETC was dropped as the Staff suggested because service of adequate quality is inherent in the Act's requirement that an ETC provide "service."

B. Rural Local Exchange Companies

Rural local exchange companies of all sizes, with and without non-contiguous exchanges, were opposed to any designation other than at the study area level. This opposition was based on the FCC plan to permit competitors to receive universal service funds based on study area average costs. In the November 26 meeting they suggested study area level designations followed by a series of workshops to see how effectively staff and the companies could devise a method of disaggregating study area cost data to the exchange level. Upon successful completion of this task, they proposed a joint petition to the FCC which, if successful, would result in their support for exchange level designations. They maintained this position at the December 10 meeting.

Counsel for WITA argued that initial designation at the study area was legally mandated unless the Commission conducted a formal adjudicatory proceeding under the state Administrative procedure Act (APA), chapter 34.05 RCW. WITA contended that designation

was "licensing" under the APA, and, before any license could be modified, a formal hearing must be held.

C. USWC

USWC did not present any testimony. Its petition was for ten exchanges only, all of which are in urban or small city locations.³

D. GTE

GTE supported designation of all their exchanges individually at the exchange level beginning January 1, 1998.

E. U.S. Cellular

U.S. Cellular asked for designation in ten non-rural exchanges. Seven are presently served by USWC, and three are served by GTE. Although non-rural under the 1996 Act, much of the area covered by these ten exchanges is quite rural in fact. U.S. Cellular also asked that the Commission not attempt to assert jurisdiction over the company beyond the designation of it as an ETC. U.S. Cellular represented in its petition that it would participate in Lifeline and Link-up if designated.

F. Public Counsel

Public counsel recommended that, in addition to retaining the authority to suspend or revoke designation, the Commission state it has authority to modify the designations.

G. Whidbey Telephone Company

Whidbey Telephone Company opposed the staff recommendation that the Supplemental Service Area created in 1995 be excluded from its service area designation as an ETC.

³ USWC stated it would continue to participate in the Washington Telephone Assistance, Lifeline, Link-up Programs and offer the discounts in 1998 to customers USWC serves in all exchanges regardless of ETC status. USWC understands it will not receive reimbursement from federal sources for discounts given to customers in areas for which USWC is not an ETC.

VI. DISCUSSION

A. Need for a Hearing

The Commission concludes that there is no need for an “adjudicative proceeding” under the state Administrative Procedure Act as a prerequisite to designation of a carrier for a geographic area other than the carrier’s study area. Indeed, given the time line within which Congress and the carriers have asked state commissions to act, protracted adjudicative proceedings seem counter to the interests of those suggesting the need for a hearing.

We do not accept that this is a “licensing” proceeding under the APA. However, we need not decide that because even if this is a licensing proceeding, this is not a proceeding to modify a license as counsel for a number of the small rural companies contends. While a hearing may be required to modify a license, it is not required for an initial license. Even if ETC designation constitutes the granting of a license, it is an initial license and therefore not covered by our APA.

B. Designation for Areas Other than a Petitioner’s Study Area

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.

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 FCC⁴ establish a different definition of service area. In establishing a service area different than

⁴ The FCC has established a procedure for reviewing state orders which make designations of areas other than the study area as the service area. Its procedure anticipates that initial action will be taken by the states; designations are deemed approved if the FCC does not act within 90 days of noticing the receipt of the state order. See 47 C.F.R. §54.207.

the study area, the Commission must “take into account” the recommendations of the Federal-State Joint Board.⁵

The language “take into account” connotes not that we are bound to accept the study area, but only that we consider the Joint Board recommendations. We have done so.⁶ We also have considered the FCC discussion of this issue in its Universal Service Order.⁷

The FCC also noted 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 ¶184.⁸ 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.

However, we understand the concerns of the rural carriers about immediate designation at the exchange level. Therefore, we concur with the proposal that the Commission initiate on an expeditious basis a series of workshops in order to fully develop the issues and, if possible, a consensus proposal for disaggregation of study area costs to exchange-level costs. Based on representations by counsel for a number of the rural companies, we are optimistic that these workshops will produce a consensus approach consistent with the competitive goals of the Act. We will order that the service areas for the rural carriers be the carriers’ study areas through December 31, 1998. On January 1, 1999, the service areas shall be at the exchange level. Should the FCC fail to accept a proposal coming out of the workshops, we may reconsider this portion of the order.

⁵ Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996).

⁶ We concur with the analysis of staff in its memorandum presented at the November 26, 1997, open meeting. This Commission may deviate from study area designations and ask the FCC to concur.

⁷ First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

⁸ We recognize that the cited paragraph of the Universal Service Order is in the context of non-rural service areas. However, the principle that this ETC and service area designation process should promote the pro-competitive policies of the Act should apply also to the designation of rural service areas, recognizing of course that such designation is subject to FCC process and review.

C. Designation of Whidbey

Whidbey poses some unique issues. In Docket No. UT 95-0030, Whidbey was authorized to provide service in the so-called Supplemental Service Area (SSA) outside of its historical South Whidbey Exchange and within the Coupeville Exchange served by GTE. While that did in one sense expand the area which Whidbey serves, it had no impact in redrawing exchange lines, nor did it change Whidbey's "study area." See Universal Service Order ¶182, n.467; ¶172, n.434 ("study area boundaries are fixed as of November 15, 1984").

While the Commission has authority to designate an area other than a study area and other than an exchange area, we see no compelling reason to grant Whidbey's request to be designated as an ETC for the SSA. The present policy is to designate all ETCs at the exchange level so that the obligation to serve is equal where there is, or may be, competition. At the same time, the amount of universal service support would also be the same per customer for each ETC in a given exchange. Whidbey may request ETC designation in the Coupeville exchange, where it already has customers, and be a full competitor of GTE. Another option open to Whidbey is to request the Commission to create a new exchange or service area equal to the SSA and designate it (and, presumably, GTE) as an ETC in that area.

D. Jurisdiction Over Cellular Companies

The FCC has concluded wireless carriers are eligible to be designated as ETCs provided they have the ability to serve all potential customers in a service area, which they may accomplish through combining their services with land line services of another carrier.⁹ Though state law limits the Commission's power to regulate wireless carriers, RCW 80.36.370(6), U.S. Cellular nevertheless filed a petition with the Commission seeking designation, conceding the Commission's jurisdiction for that purpose, citing section 214(e)(2) of the Act and RCW 80.01.040(3) as the basis for its Petition. No other party has contested the Commission's jurisdiction, and we conclude that we have such jurisdiction for the purpose of ETC designation and related issues. The Commission does not assert jurisdiction over U.S. Cellular beyond that necessary to designate it as an ETC under 47 U.S.C. § 214(e) and to enforce, modify, suspend, or revoke this order with respect to U.S. Cellular.

E. Waiver for Requirement of Providing Toll Control

All Petitioners have requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. The Petitioners have demonstrated in their Petitions and at the hearings 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).

⁹ Universal Service Order ¶¶ 141, 145.

F. Waiver of E911 Service for U.S. Cellular

U.S. Cellular's request for waiver of E911 as authorized by 47 C.F.R. §54.101(c) also is justified by exceptional circumstances as outlined in U.S. Cellular's Petition.

G. Service Quality Issues

Staff originally urged the Commission to include as part of the condition of granting ETC status a requirement that the carriers, including U.S. Cellular, 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 as 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), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes 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.

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.

H. Modification, Revocation, or Suspension

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 the 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.

In addition to such 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.¹⁰ For example, should the company no longer advertise its services

¹⁰ 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 redesignating a company already designated and in effect modifying the prior designation.

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.¹¹

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

VII. FINDINGS OF FACT

From the above, the Commission enters the following summary findings of fact:

1. The Petitioners are telecommunications companies doing business in the state of Washington.
2. The wireline petitioners other than Whidbey currently serve the exchanges set forth on their exchange area maps on file with the Commission as of December 10, 1997. The sum of those exchanges constitute the study areas for the respective companies.
3. Petitioner U.S. Cellular currently serves in various exchanges, including the Centralia; Chehalis; Winlock; Castlerock; Longview-Kelso; Woodland; Yakima; George; and Quincy exchanges for which it filed as an ETC.
4. Whidbey currently serves the South Whidbey and the Point Roberts Exchanges. Whidbey also serves the “Supplemental Service Area” (SSA) which is located in the Coupeville Exchange, served by GTE. The study area for South Whidbey does not include its SSA.¹²

¹¹ Obviously, there are some differences between wireless companies and wireline companies that make strict application of set standards to all companies difficult. However, the Commission will insist that all companies provide quality service to all customers within the designated service area for that company.

¹² We recognize that study areas are fixed by the FCC and that Whidbey may petition the FCC to add the SSA to its study area. The finding we make in this order is done without such a petition on file and does not constitute our support or opposition to such a petition; we

5. All Petitioners except US West, GTE, and U.S. Cellular have certified that they qualify as rural telephone companies as defined in 47 U.S.C. §153(47) and 47 C.F.R. §51.5. The Commission finds that such certifications are appropriate.

6. After taking into account and considering fully the recommendations of the Federal-State Joint Board, the Commission finds that the appropriate service areas for the Petitioners are as follows:

(a). For non-rural companies, the appropriate service areas are the individual exchanges for which they petitioned, designated on an individual basis, effective January 1, 1998;

(b). For single-exchange rural companies, the appropriate service areas are their respective single exchanges, effective January 1, 1998;

(c). For multi-exchange rural telephone companies, the appropriate service areas are their study areas through December 31, 1998, and thereafter the appropriate service areas are their exchanges, designated individually as separate service areas. In the event of a waiver from the FCC on disaggregation of costs prior to December 31, 1998, the Commission may modify this determination and move the effective date forward.

7. The Petitioners 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).

8. The Petitioners are providing or will provide soon after January 1, 1998, advertisement of the availability of the services that are to be provided by the federal universal service support services, except as otherwise waived by this Order, and the charges therefor, using media of general distribution as required by 47 U.S.C. §214(e)(1)(B).

9. The Petitioners do not currently have the technical capability of providing toll control as defined in 47 C.F.R. §54.400. Exceptional circumstances exist which justify the granted waiver.

10. U.S. Cellular does not currently have the technical capability of providing E911 services. Exceptional circumstances exist which justify the granted waiver.

11. The petitioners have committed to file tariff revisions to provide toll blocking without charge to low income consumers, if necessary, at an early date.

will comment at the appropriate time and in the appropriate manner in the event Whidbey files such a petition.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of these proceedings and all parties to them.
2. Granting the relief requested in the petitions, 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.
3. All the Petitioners except US West, GTE, and U.S. Cellular are rural telephone companies as defined by 47 U.S.C. §153(47).
4. The Commission need not designate all rural company Petitioners for their study areas in these proceedings. The Commission, after taking into account the recommendations of the Federal-State Joint Board, may designate such companies for geographic areas other than their study areas without conducting an adjudicatory proceeding prior to such designation.
5. The Commission has authority to modify, suspend, or revoke these designations, including the service areas accompanying those designations, at a future date.

ORDER

Based on the foregoing, the Commission orders as follows:

1. The Petitions in Docket Nos. UT-970333 through UT-970354 and Docket No. UT-97056 are consolidated for purposes of this order.
2. The Petitions for designation as Eligible Telecommunications Carriers are granted as described in this Order.
3. The geographic areas for which the designations are made are as follows:
 - (a) For non-rural companies, GTE, U.S. Cellular and USWC, the service areas are the individual exchanges for which they petitioned, designated on an individual basis, effective January 1, 1998;
 - (b) For each single-exchange rural company, (Hat Island, Hood Canal, Kalama, Toledo and St. John), the service area is its single exchange, effective January 1, 1998;
 - (c) For each multi-exchange rural telephone company, (Asotin, Cowiche, Ellensburg, Inland, Lewis River, Mashel, McDaniel, Pend Oreille, Pioneer, SPRINT/United, Telephone Utilities, Tenino, Western Wahkiakum, Whidbey, and Yelm), the service area is each company's study area through December 31, 1998. Thereafter the appropriate service area is each exchange designated individually as a separate service area. In the event of a waiver from

the FCC on disaggregation of costs prior to December 31, 1998, then the Commission may modify this determination and move the effective date forward;

(d) For Whidbey Telephone Company, the service area is as described in (c) above, and it does not include the Supplemental Service Area.

4. The Petitioners requests for waivers of the requirement of providing toll control are granted.

5. U.S. Cellular's request for waiver of the requirements to provide E911 service is granted.

6. The companies, with the exception of GTE, USWC, and U.S. Cellular, have appropriately certified that they are rural telephone companies pursuant to 47 U.S.C. §153(47) and 47 C.F.R. §51.5.

7. The rural telecommunications parties to the proceeding shall participate in workshops on the disaggregation of costs from the study area level to the exchange level. The parties will prepare a methodology for disaggregation which can be presented in a joint petition to the FCC from the Commission and the rural companies, the purpose of which will be to receive a waiver from the FCC on payment of universal service support based on study area average loop costs. The parties and the staff shall make their best effort to complete this process expeditiously. An interim report is due to the Commission not later than March 1, 1998. A final report and material for the petition are due not later than April 30, 1998. These workshops are premised on the representations made by parties that exchange level designations would be acceptable if the FCC were to permit disaggregation of costs. The Secretary, or a staff designee, shall notify the parties through their representatives of time, date, and place of workshops and prepare such reports as this order requires.

DATED at Olympia, Washington, and effective this 23rd day of December, 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chairwoman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner