

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

RCC MINNESOTA, INC., d/b/a
CELLULAR ONE

For Designation as an Eligible
Telecommunications Carrier

Docket No. UT-023033

PETITION FOR MODIFICATION

RCC Minnesota, Inc., d/b/a Cellular One (“RCC”), by its counsel, hereby petitions the Commission for modification of its Order designating RCC as an eligible telecommunications carrier (“ETC”) for purposes of receiving high-cost support from the federal universal service fund (“USF”).

I. INTRODUCTION

On June 3, 2002, RCC submitted a petition to the Commission requesting designation as an eligible telecommunications carrier (“ETC”) pursuant to 47 U.S.C. § 214(e)(1), for the purpose of receiving high-cost support from the federal universal service fund (“USF”). RCC requested ETC status throughout its FCC-licensed service area in Washington, and the Petition set forth the exchanges in which RCC provided service. Because RCC’s cellular geographic service area (“CGSA”) differed in many cases from incumbent local exchange carrier (“ILEC”) wire centers, several wire centers were only partially within RCC’s requested ETC service area. Those wire centers were accordingly marked as “partial.” The service areas for RCC that were marked “partial” included areas where RCC’s CGSA overlapped portions of non-rural company exchanges

(service areas) and rural telephone company service areas (exchanges).¹ The Commission granted RCC's petition in an order released August 12, 2002. *In the Matter of the Petition of RCC MINNESOTA, INC., d/b/a CELLULAR ONE For Designation as an Eligible Telecommunications Carrier*, Docket No. UT-023033 ("RCC Order").²

In the designation order, the Commission directed RCC to petition the FCC for concurrence with its designation for parts of exchange areas. *RCC Order* at ¶ 71. This directive was repeated in the ordering clause. *Id.* at ¶ 90. RCC's request is that the Commission modify its order by eliminating the paragraphs that direct RCC to make a filing with the FCC. RCC makes this request because the Universal Service Administrative Company ("USAC") has not provided federal support to RCC for service in the partial exchanges listed in the *RCC Order* and has pointed to the two cited paragraphs as support for its position that something more is required of RCC before USAC may disburse support. Because RCC believes that the directive to file with the FCC is unnecessary and not supported by law or rule, we request the Commission modify its order.

RCC Efforts to Correct the Error

RCC attempted to clarify matters with USAC before resorting to this request for modification of the original order. RCC sent a letter to the Commission stating its belief that no additional redefinition or FCC concurrence was needed.³ The Commission

¹ The WUTC has explained that it uses wireline incumbent telephone company exchange names and boundaries to describe wireless and other ETC service areas, but that the two designations are independent and the use of exchange names and boundaries is a convenience only. *See In the Matter of the Petition of Sprint Corporation, d/b/a/ Sprint PCS, Sprintcom, Inc., Sprint Spectrum, L.P., and WirelessCo., L.P. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043120, Order No. 01, ¶ 7, n.3; ¶ 47, n.19 (Jan. 13, 2005) ("*Sprint PCS Rural Order*").

² As an ETC, RCC became eligible to receive federal high-cost support beginning in 2003.

³ Letter dated December 4, 2003, from David A. LaFuria, Esq., to Mr. Robert Shirley.

agreed, responding in a letter that “[t]he Commission does not require companies to take unnecessary actions.”⁴ Unfortunately, this was not sufficient to correct matters and it appears an order from the Commission is necessary.

II. DISCUSSION

1. *No requirement for concurrence for overlapping ETC designations*

In the *RCC Order*, the Commission did not cite a statute or rule on which it based its directive to RCC to petition the FCC for concurrence with our designation for parts of exchange areas. RCC infers that the Commission was under the misapprehension that either 47 U.S.C. § 214(e)(5) or 47 C.F.R. § 54.207 required concurrence by the FCC with every new competitive ETC designation. The statute and rule just cited, however, only apply to alterations of rural telephone company service areas from the study area size to smaller service areas.

What the Commission did when it designated RCC was not to alter any rural telephone company service areas – indeed, this had already been accomplished through the Commission’s previous actions culminating in a 1999 FCC order disaggregating and redefining rural ILEC service areas⁵ – but to designate an additional ETC for locations that coincided or overlapped with service areas of many rural telephone companies. It is apparent from a recent order of the commission that it now understands the difference between designating additional ETCs for service areas that overlap in part the service areas of rural telephone companies, as opposed to the actions that would trigger the concurrence requirement.

⁴ Letter dated December 10, 2003, from Carole J. Washburn, Executive Secretary, to David A. LaFuria, Esq., at p. 2.

⁵ *See Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, 15 FCC Rcd 9924 (1999).

In the *Sprint PCS Rural Order*, the Commission designated Sprint Corporation d/b/a Sprint PCS and its affiliates as an ETC in rural ILEC exchange areas. In that order, the Commission stated that:

The Act contemplates that service areas may have multiple ETCs. Where there are multiple ETCs, their service areas may coincide or overlap, in whole or in part. There is no requirement that coincident or overlapping service areas have identical boundaries.

Sprint PCS Rural Order, supra, at ¶ 11. The Commission went on to note that because Sprint PCS did not seek to alter the service areas of any rural telephone company, neither 47 U.S.C. § 214(e)(5) nor 47 C.F.R. § 54.207 apply. *Id.* at ¶ 31 n.9.

In other words, the Commission determined that when it designates an additional ETC for a geographic service area that overlaps in part the service area of a rural telephone company, the designation of the additional ETC does not change or alter the rural telephone company's service area that is overlapped.

Because it is only a change in the service area of a rural telephone company that triggers the FCC concurrence requirement, and because the designation of an additional ETC for a service area that overlaps a rural telephone company service area does not alter the rural telephone company's service area, there is no requirement for agreement or concurrence between the FCC and state commissions. Thus, there is no need for the FCC concurrence directed, but not explained (because it cannot be) in paragraphs 71 and 90.

2. *Cream skimming concerns eliminated; do not support concurrence requirement*

The only statutory mention of concurrence is in 47 U.S.C. § 214(e)(5), and that concerns designating an ETC for a service area that is different in size from the underlying rural telephone company's study area. The FCC has associated the concurrence requirements in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207 with cream

skimming in two recent orders,⁶ but the FCC is incorrect in its analysis and, in any event, its decisions do not bind state commissions.⁷

The FCC has made 47 U.S.C. § 214(e)(5) important to non-ILECs and wireless companies by choosing to provide federal support to additional ETCs, such as RCC, in the same amount as is provided to incumbents for serving the same customers. Without designations at other than the study-area level, additional ETCs would receive per-line support amounts averaged across the entire study area, with the result that in some locations support would be excessive, and in other locations, insufficient.

Circumstances in which support is too great give rise to a concern that cream skimming could result. In order to eliminate concerns about cream skimming, the FCC provided for disaggregation of federal universal service support.⁸ Any rural telephone company concerned that an additional ETC would serve only part of the rural telephone company's study area and thereby cream skim, can eliminate that possibility by disaggregating its support.⁹

The FCC adopted a rule that makes it easy for all rural telephone companies to prevent cream skimming. *See* 47 C.F.R. § 54.315. In combination with designations of rural telephone company service areas for geographic areas smaller than study areas, disaggregation results in targeted support. Notwithstanding the ease of self-certifying disaggregation, and despite the FCC's clarification that the no-disaggregation option was

⁶ *See Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1582 (2004) (“*Virginia Cellular*”); *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6437 (2004) (“*Highland Cellular*”).

⁷ *See In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011, at ¶ 34 (April 13, 2004); *Sprint PCS Rural Order, supra*, at ¶ 32.

⁸ *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302-09 (2001) (“*Fourteenth Report and Order*”).

⁹ *See id.* at 11302.

to be the exception, not the rule, the vast majority of ILECs nationwide opted to retain study-area averaged support.

When support is targeted, cream skimming does not result. The Commission recognized this in its first Sprint PCS designation that concerned non-rural ILECs. In its order designating Sprint PCS as an ETC in non-rural areas, the Commission confirmed this view:

Sprint requests designation for areas smaller in size than entire exchanges, consistent with its license as a broadband PCS carrier. Sprint's request for ETC designation for areas that cover only portions of incumbent exchanges presents the identical issue encountered with RCC Minnesota when the Commission considered, and granted, its petition for designation at less than the exchange level. The Commission determined that the federal support mechanism *eliminates* the concern for cream-skimming because support is available equally to all ETCs. Separately, because Sprint's license boundaries were set by the FCC and the recommended designation is for its entire licensed areas that coincide with Qwest and Verizon exchanges, Sprint cannot choose to avoid serving sparsely populated areas contained within the limits of its license.

In the Matter of the Petition of Sprint Corporation, d/b/a Sprint PCS, et al., for Designation as an Eligible Telecommunications Carrier, WUTC Docket No. UT-031558 (Oct. 29, 2003) at pp. 3-4 (footnote omitted, emphasis added).

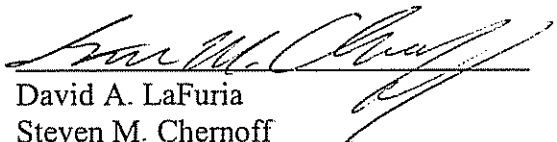
Because cream skimming is eliminated by the combination of disaggregation of federal support and designation of rural telephone companies (and non-rural companies too) in small geographic service areas rather than study areas, the Commission should adhere to the principles of competitive and technological neutrality that guided the Commission when it designated RCC for service areas that overlapped only parts rural telephone company exchanges. RCC requested, and the Commission granted, service areas that overlap portions of several rural telephone company exchanges because RCC uses a wireless technology that is regulated by licenses, that is, regulated in a manner different from wireline rural telephone companies. The modifications requested by RCC will confirm to USAC that the Commission intended RCC to receive support for

customers served in areas where RCC's service area overlaps only a part of a rural telephone company exchange, consistent with principles of competitive and technological neutrality.

III. CONCLUSION

The Commission has determined that the public interest is served by designating RCC and throughout RCC's licensed service areas, which overlaps many rural telephone company service areas throughout the state. The Commission has not required RCC to serve only those locations where it can completely overlap a rural telephone company service area, and the Act does not require the Commission to limit its designations to locations where additional ETC boundaries are identical to rural telephone company service area boundaries. Accordingly, RCC respectfully requests that the Commission issue the requested modifications set forth above.

Respectfully submitted this 14th day of February, 2005.



David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

Attorneys for RCC Minnesota, Inc. d/b/a Cellular One

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CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that I have, on this 14th day of February, 2005, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing PETITION FOR MODIFICATION filed today to the following:

Asotin Telephone Company
TDS Telecom
Gail Long, Regulatory Contract
P.O. Box 1566
Oregon City, Oregon 97045

Verizon Northwest, Inc.
Allan Thomas, Vice President of Public
Policy and External Affairs
1800 41st Street
Everett, Washington 98201

CenturyTel of Washington, Inc.
Don Dennis, Manager State Gov. Relations
8102 Skansie Avenue
Gig Harbor, Washington 98332

Inland Telephone Company
John Coonan, Treasurer/Controller
P. O. Box 171
Roslyn, Washington 98941

Pend Oreille Telephone Company, Inc.
Chris Dennison, Controller
704 West Madison Avenue
Glenns Ferry, Idaho 83623

Pioneer Telephone Company
Dennis Mackleit, General Manager
P.O. Box 207
Lacrosse, Washington 99143

Qwest Corporation
Theresa Jensen, Director-Regulatory
1600 – 7th Avenue
Room 3206
Seattle, Washington 98191

St. John, Co-operative Telephone and
Telegraph Company
Larry Dickerson, Manager
P.O. Box 268
St. John, Washington 99171



Donna L. Brown