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March 2, 2005

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

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STATE OF WASH
UTIL. AND TRANSP
COMMISSION

Re: 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

Dear Ms. Washburn:

This letter is filed on behalf of the Washington Independent Telephone Association (WITA). WITA respectfully disagrees with the position taken by RCC Minnesota, Inc., d/b/a Cellular One (Cellular One) in its Petition for Modification. Eleven copies of this letter are attached.

It is WITA's position that under the FCC's rules, what is accomplished with the designation of an applicant for eligible telecommunications carrier (ETC) status in an area smaller than a rural telephone company's service area is a redefinition of that service area that requires FCC concurrence.

Under 47 U.S.C. §214(e)(2), a state commission has the discretion to designate a common carrier as an ETC for a "service area" if it finds doing so is in the public interest. The term "service area" is defined in 47 U.S.C. §214(e)(5). That statute reads as follows:

(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

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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.

The operative provision is the direction that the process for redefining a rural telephone company service area applies to the area served by that rural telephone company. It does not, as argued by Cellular One, mean that the Commission creates a new service area for the competitive ETC. WITA believes that the correct reading of these two provisions (47 U.S.C. §214(e)(2) and (5)) is that if the Commission is designating an ETC for a service area that is smaller than the existing rural telephone company's service area, it accomplishes a redefinition of that service area and this, in turn, requires the process set forth in 47 C.F.R. §54.207 to be followed.

This reading of 47 U.S.C. §214(e)(2) is one that is consistent with the reading of the statute by the Joint Board and the FCC. When the Joint Board issued its Recommended Decision, it commented on the procedures dealing with the redefinition of rural service areas.¹ The Joint Board stated as follows:

We continue to endorse the procedures established by the Commission in 1997 for redefinition of rural service areas. These procedures establish a presumption that a rural carrier study area should be the service area for a new ETC, unless and until the state and the Commission working in concert decide that a different service area definition would better serve the public interest *** If a service area redefinition is proposed, the existing rules also require the states and the Commission to analyze the Joint Board's previously expressed concerns about cream-skimming in the particular area covered by the ETC application.² (Emphasis added.)

While the quoted passage uses the term "study areas," the analysis is the same once the initial change from study area to the exchange level for the service area has been made. This Commission has disaggregated study areas to the exchange

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (Rel. February 27, 2004) (Recommended Decision).

² Recommended Decision at ¶55.

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level for basis of universal service obligations. To then go to a sub-exchange basis constitutes a redefinition of the service area under the analysis set forth by the Joint Board and requires the petition contemplated by 47 C.F.R. §54.207. The service area that is modified is the service area of the rural telephone company. It is not the creation of a new service area for the ETC applicant as argued by Cellular One.

A similar analysis was undertaken by the FCC. A similar conclusion was reached by the FCC. In the Highland Cellular case,³ the FCC addressed the issue of redefining a rural company service area in light of an application for designation as an ETC. In that case, the FCC considered the application of Highland Cellular for designation in an area that was other than the original service area of the incumbent carrier. At that point in time, the initial service area happened to be the study area. The FCC stated "In order to designate Highland Cellular as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service areas of the rural telephone company in accordance with Section 214(e)(5) of the Act."⁴ In other words, the FCC has found that it is a precondition to designating an ETC in other than the existing incumbent carrier's service area to treat the request for a smaller area (in Cellular One's case a portion of an exchange) as a redefinition of a rural telephone company service area. The FCC found that this redefinition required the concurrence of the state commission. Where the state makes a redefinition in granting an ETC application, that redefinition requires the FCC's concurrence.⁵

The FCC performed the same analysis in reviewing the application submitted by Virginia Cellular and came to the same conclusion.⁶

³ In the Matter of Federal-State Joint Board on Universal Service – Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (Rel. April 12, 2004).

⁴ Highland Cellular at ¶38.

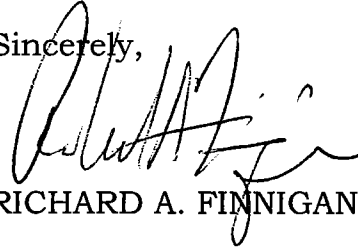
⁵ 47 U.S.C. §214(e)(5).

⁶ In the Matter of Federal-State Joint Board on Universal Service – Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (Rel. January 22, 2004) at ¶¶40 and 41.

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Based on the foregoing, WITA respectfully requests that the Commission deny the Petition for Modification submitted by Cellular One.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Finnigan", written in a cursive style.

RICHARD A. FINNIGAN

RAF/km

cc: Chairwoman Showalter
Commissioner Jones
Commissioner Oshie
Bob Shirley
David LaFuria
Clients