

**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  
RESPONSE TO LETTER FROM WITA

1           RCC Minnesota, Inc., d/b/a Cellular One (“RCC”), by its counsel, hereby responds to the letter to Carole Washburn, Executive Secretary, dated March 2, 2004 from the Washington Independent Telephone Association (“WITA”), opposing RCC’s above-captioned Petition for clarification (“Petition”).

2           WITA erroneously contends that when a state commission designates a competitive ETC (“CETC”) for an ETC service area that is less than a rural ILEC study area, the service area of the rural ILEC must be redefined. This anti-competitive view has been rejected by the FCC and many other states. Moreover, RCC’s petition merely seeks to implement what the WUTC always intended in its 2002 order. In contrast, WITA seeks to relitigate the issues it already lost--years after the WUTC settled them.

**A.    Introduction.**

3           The Commission’s order granting ETC status to RCC could not have been more clear in one important respect: RCC was granted ETC status throughout the area where it is

licensed by the FCC to provide wireless service.<sup>1</sup> One need look no further than the face of the RCC Designation Order to understand that RCC was granted an ETC service area throughout its FCC-licensed area, including several rural ILEC exchanges which are designated as partially covered in Appendix A.

4           The only point of confusion was the Commission’s inclusion of an ordering clause directing RCC to “petition the FCC for concurrence in designation as an ETC for areas that are parts of ILEC exchanges.”<sup>2</sup> RCC understands that the FCC has not authorized support to commence to RCC in areas where RCC serves partial ILEC study areas because it presumes from the RCC Designation Order that a petition for redefinition under 47 C.F.R. Section 54.207 is forthcoming.

5           RCC has advised the FCC that no redefinition petition is necessary because the WUTC has previously redefined all rural ILEC service areas so that each exchange is a separate service area. The FCC has not acted, notwithstanding this Commission’s previous letter stating that the purpose of its order was to direct RCC to make any necessary filing, as “RCC is in the better position than the WUTC to determine if funds are available without recourse to any filing at the FCC.”<sup>3</sup>

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<sup>1</sup> See, *Order Granting Petition For Designation As An Eligible Telecommunications Carrier* in this docket, dated August 21, 2002) at p. 21 (“RCC Designation Order”) (“The petition of RCC Minnesota (d/b/a Cellular One) is granted, as modified by this Order. Each of the requested designations set forth in Appendix A is granted. For each exchange and partial exchange, there is a separate designation.”).

<sup>2</sup> Id.

<sup>3</sup> See Letter from Carole J. Washburn to undersigned counsel dated December 10, 2003.

**B. There Is No Need for Either RCC or the Commission to File Yet Another Petition for Concurrence With the FCC.**

6 In order to facilitate competitive entry and advance universal service, rural ILEC  
service areas may be redefined *en masse*, as the WUTC and twenty rural ILECs in  
Washington did many years ago. Together, the WUTC and twenty rural ILECs filed a  
petition with the FCC for concurrence, which the FCC granted.<sup>4</sup> Under the redefinition, each  
rural ILEC exchange in Washington is a separate service area. Put simply, the FCC has  
already concurred with the WUTC's redefinition and no further action is required.

7 WITA's claim that a new concurrence petition must be filed with the FCC following  
the designation of RCC is founded on the erroneous notion that the ETC service area for a  
competitor must be redefined *to match the CETC's proposed ETC service area*.<sup>5</sup> There is  
no support for this view, either in the statute or the FCC's rules, and WITA does not cite any  
state cases that have adopted its position.

8 In fact, a number of states have designated CETCs to be an ETC throughout their  
FCC-licensed service area, even where it results in some ILEC wire centers (or exchanges)  
being only partially covered, while also redefining the rural ILEC service area so that each  
wire center (or exchange) is a separate service area.<sup>6</sup> This Commission just recently  
expressed its proper understanding of this concept when it ruled:

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<sup>4</sup> *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 9921 (1999).

<sup>5</sup> WITA letter at p. 3.

<sup>6</sup> See, e.g., *United States Cellular Corporation*, 8225-TI-102 at 9 (Wisc. PSC Dec. 20, 2002) ("US Cellular Wisconsin Order") ("[W]here US Cellular is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which US Cellular has requested such designation . . . If the FCC approves use of the smaller area, then US Cellular's ETC status for the smaller area(s) becomes effective."); *Petition of the Minnesota Public Utilities Commission for Agreement With Changes in Definition of Service Areas for Exchanges Served by CenturyTel et al.*, CC Docket (FOOTNOTE CONT'D)

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.<sup>7</sup>

9 As we understand the FCC's recent News Release on its Report & Order (FCC 05-46) adopting new rules for ETC designations, the FCC has concurred with several requests for redefinition where states have designated CETCs for ETC service areas that do not match rural ILECs' service areas – precisely what RCC has been asking the FCC for since 2002.<sup>8</sup> To the extent that the FCC adopts new rules for redefining rural ILEC service areas, they will not be retroactive. Thus, they are irrelevant to RCC. For three years now, RCC has been legally entitled to be treated under the rules in existence when the WUTC designated RCC an ETC. Thus, even if WITA's position is adopted in new rules, it is wholly inconsistent with the federal scheme for redefining rural ILEC service areas that was in effect when RCC's petition was granted.

10 In sum, the Commission need only clarify its understanding that neither the Commission nor RCC needs to file a petition for concurrence because the Commission has previously redefined rural ILEC service areas.

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No. 96-45 (filed July 8, 2003); *RCC Minnesota, Inc. et al.*, Docket No. 2002-344 (Maine PUC May 13, 2003); *United States Cellular Corporation*, 8225-TI-102 (Wisc. PSC Dec. 20, 2002); *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000).

<sup>7</sup> *Petition of Sprint Corp. d/b/a Sprint PCS et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043120 at p. 11 (2005) (“Sprint Order”).

<sup>8</sup> News Release, FCC Adopts Additional Requirements for Eligible Telecommunications Carrier Proceedings, CC Docket No. 96-45 (released February 28, 2005) (“The Commission also... grants certain pending petitions for redefinition of rural incumbent LEC study areas....”).

**C. WITA's Attempt to Relitigate This Issue Must be Rejected.**

11 WITA has had numerous opportunities to litigate the precise issue it raises in its letter  
in virtually every ETC petition that has been granted to date.<sup>9</sup> For it to now attempt to take  
yet another bite at the apple borders on absurd. All RCC seeks is a clarification that its ETC  
designation is legally consistent with that afforded every other competitive ETC in  
Washington. WITA's attempt to relitigate the RCC case, or other ETC designation cases  
decided by this Commission, should be summarily rejected.

**D. Conclusion.**

12 RCC requests the Commission modify its order by eliminating the paragraphs that  
direct RCC to make a filing with the FCC. This action will enable RCC to confirm to the  
FCC that support for these rural areas must be provided from the date that RCC was  
designated.

13 Washington citizens have been losing substantial support over the past two and a half  
years that would have been invested in new wireless infrastructure in the state's rural areas.  
RCC believes that the requested modification to its designation order will enable the WUTC  
and RCC to insist that the FCC provide support for these rural areas from the August 15,  
2002 designation date, as required by law.

Respectfully submitted this 8<sup>th</sup> day of March, 2005.

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<sup>9</sup> See, e.g. *Sprint Order, supra*, at pp. 5-7.

