

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UT-023040
)	
INLAND CELLULAR TELEPHONE)	ORDER 03
COMPANY (Eastern Sub-RSA Limited)	
Partnership and Washington RSA No. 8)	
Limited Partnership),)	ORDER MODIFYING
)	EXCHANGE DESIGNATIONS
For Designation as an Eligible)	
Telecommunications Carrier)	
)	
.....)	

BACKGROUND

- 1 On September 7, 2011, Inland Cellular Telephone Company (Inland Cellular or Company) filed a petition (Original Petition) with the Washington Utilities and Transportation Commission (UTC or Commission) to modify its order designating Inland Cellular as an Eligible Telecommunications Carrier (ETC).¹ The 2002 Designation Order marked several exchanges as “partial” because the Company’s cellular geographic service area only partially overlapped with the Incumbent Local Exchange Carrier’s (ILECs) exchanges. In the Original Petition, the Company requested that the Commission issue an erratum to the 2002 Designation Order to change the designation in those exchanges from “partial” to “full.”
- 2 On October 3, 2012, the Company filed a revised petition with the UTC (Revised Petition) in which the Company modified its request to change the ETC designation only for Asotin Telephone Company’s Anatone exchange to “full” from “partial.” The basis for this request is Inland Cellular’s contention that the Anatone exchange was erroneously marked as “partial” in the Company’s 2002 ETC petition as a result of Inland Cellular’s mistaken belief that federal law did not entitle a company to full ETC funding in an exchange if the company did not provide service throughout that exchange.
- 3 The Federal Communications Commission (FCC), however, historically allowed wireless carriers to be designated ETCs in exchanges where they have only partial network coverage as long as the wireless companies follow the six-step service expansion efforts prescribed in former 47 C.F.R. § 54.202(a)(1)(B).² Inland Cellular contends that it

¹ *In re Petition of Inland Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier*, Docket UT-023040, Order Granting Designation as an Eligible Telecommunications Carrier (Aug. 30, 2002) (2002 Designation Order).

² 47 C.F.R. § 54.202(a)(1)(B) (prior to March 2, 2012). The FCC eliminated the six-step service expansion provision when it revised this rule as part of its 2011-2012 Universal Service Fund Reform proceeding to phase down the High Cost Fund for wireless ETCs starting July 1, 2012.

complied with those requirements by initially covering a portion of the Anatone exchange from a cellular site at the Lewiston Orchards exchange in Idaho and subsequently building cellular sites in the adjacent Asotin exchange in 2007 and in the Anatone exchange in 2009. The Company claims that it now covers most of the Anatone exchange.

4 Inland Cellular reported that it had 27 customers in the Anatone exchange in 2002, and it has 77 customers as of December 31, 2012. Inland Cellular has not received any federal universal service funding for this or any of the other exchanges where its ETC designation was “partial.” The Company believes that it would be entitled to at least \$291,000 from the federal High Cost Fund for serving these lines if full ETC designation for the Anatone exchange applied retroactively for the period from 2002 to 2012. The federal Universal Service Fund administrator, Universal Service Administrative Company (USAC), however, has stated that before it “recognizes eligibility in the Anatone wire center, the WUTC must confirm that the partial wire center designation was made in error and issue an erratum to the original August 2002 Order stating that [Inland Cellular] is an ETC for the entirety of the Anatone exchange. Upon the WUTC’s eligibility clarification, USAC will grant [Inland Cellular] eligibility in the Anatone exchange.”³

5 Staff concurs with Inland Cellular’s interpretation of federal law that the Company qualified as an ETC in the Anatone exchange when Inland Cellular filed its original petition in 2002 even though it could not provide service throughout the entire exchange. Staff believes the Commission clearly intended to designate Inland Cellular as an ETC in the Anatone exchange and to make the Company eligible for federal High Cost Fund support in that exchange. Staff recommends the Commission issue an order to clarify Inland Cellular’s ETC status in the Anatone exchange.⁴

DISCUSSION

6 We agree with Staff and the Company that Inland Cellular would have been entitled to federal universal service support for the entire Anatone exchange if the Company had requested such a designation in 2002. We also agree that in granting Inland Cellular’s request for partial designation of that wire center in the 2002 Designation Order, the Commission’s intent was to authorize the Company to draw on the federal Universal Service Fund to the full extent that such funding was available. We will modify the “partial” designations in the 2002 Designation Order as Staff has proposed on a prospective basis, but we cannot retroactively amend that order.

³ Original Petition, Exh. H at 1-2 (Letter from USAC to Inland Cellular dated August 26, 2011).

⁴ The Company also states that it is no longer interested in pursuing ETC designation in the other exchanges identified as “partial” in the 2002 Designation Order. To avoid confusion in the future, Staff accordingly recommends that the Commission delete all other exchanges that were marked as “partial” in the 2002 Designation Order from the list of designated ETC service areas.

7 The Commission may issue an erratum to an order to correct a patent error of law or fact upon Commission discovery or party notification of that error promptly after the order is entered. Not only did Inland Cellular wait nine years to request an erratum to the 2002 Designation Order, but the error the Company seeks to correct is of its own making. Inland Cellular specifically requested partial ETC designation for the Anatone exchange, and the Commission granted that request. It was incumbent on the Company to seek the appropriate designation, and Inland Cellular should not expect the Commission to take responsibility for the Company's failure to protect its own interests.

8 Events following entry of the 2002 Designation Order bolster our decision. The 2002 Designation Order required the Company to petition the FCC for concurrence in the Commission's partial designation of Inland Cellular as an ETC in areas that were only parts of ILEC exchanges.⁵ Upon receiving such a filing, the FCC no doubt would have informed the Company of the correct interpretation of the FCC's rules. Inland Cellular never made that filing.

9 Instead, on September 22, 2005, Inland Cellular petitioned the Commission to modify the 2002 Designation Order to remove the requirement to petition for FCC concurrence in the partial designations – not on grounds that the Company was entitled to full ETC designation for those exchanges but “[b]ecause Inland Cellular believes that the directive to file with the FCC is unnecessary and not supported by law or rule.”⁶ More specifically, the Company asserted, “The Commission has not required Inland Cellular to serve only those locations where it can completely overlap a rural telephone company service area, and the [federal Communications] 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.”⁷

10 Again, the Commission granted the relief that Inland Cellular requested and modified the 2002 Designation Order only to remove the requirement that the Company petition the FCC to concur in the partial designations.⁸ Inland Cellular did not request at that time that the Commission modify the order to grant full ETC designation for the entire Anatone exchange, even though the Company represented in its petition that USAC “will not provide federal support to Inland Cellular for service in the partial exchanges listed in the [2002 Designation Order] and has pointed to the two cited paragraphs as support for its position that something more is required of Inland Cellular before USAC may

⁵ 2002 Designation Order ¶ 90.

⁶ Inland Cellular Petition for Modification at 3 (filed Sept. 22, 2005).

⁷ *Id.* at 4.

⁸ *In re Petition of Inland Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier*, Docket UT-023040, Order Granting Petition for Modification (October 12, 2005).

disburse support.”⁹ The Company waited another six years – during which time it continued to be denied federal universal service support for the Anatone exchange – to ask the Commission to modify the ETC designation for that exchange.

11 Under these circumstances, we do not believe it is appropriate to issue an erratum to the 2002 Designation Order to change the ETC designation for the Anatone exchange. We will modify that designation now, and clarify the Commission’s intent when it made the partial designation in response to Inland Cellular’s 2002 petition, but the Company is responsible for working with USAC to determine whether Inland Cellular is entitled to federal universal service support retroactively in the Anatone exchange.

FINDINGS AND CONCLUSIONS

- 12 (1) The Commission has jurisdiction over ETCs in Washington and the subject matter of this Order pursuant to 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b)-(c) and WAC 480-123-040.
- 13 (2) Inland Cellular is a telecommunications company doing business in the state of Washington. The Commission has jurisdiction over the subject matter of this petition and over Inland Cellular with respect to its designation as an ETC.
- 14 (3) The Commission finds that Inland Cellular mistakenly marked the Anatone exchange as “partial” in its 2002 petition initiating this docket, and the Commission in Order 01 accordingly designated this exchange as “partial.” The Commission’s intent in granting that designation was to entitle Inland Cellular to receive federal universal service support for the Anatone exchange to the full extent available under federal law.
- 15 (4) Designating Inland Cellular’s request to modify the prior designation of the Anatone exchange to “full” from “partial” on a prospective basis is in the public interest and is consistent with federal law and the intent of the Commission’s original designation.
- 16 (5) Because Inland Cellular no longer intends to seek federal universal service support in the other exchanges marked “partial” in Order 01 in this docket, the Commission should remove those exchanges from the list of exchanges in which Inland Cellular is designated as an ETC.

⁹ Inland Cellular Petition for Modification at 3 (filed Sept. 22, 2005).

O R D E R

THE COMMISSION ORDERS:

- 17 (1) The Commission modifies the partial designation of Inland Cellular as an ETC in the Anatone exchange in Order 01 to a full designation.
- 18 (2) The Commission further modifies the list of exchanges in which Inland Cellular is designated as an ETC as reflected in Appendix A to this Order.

The Commissioners, having determined this Order to be consistent with the public interest, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective June 13, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING, Executive Director and Secretary

Appendix A

**Inland Cellular Telephone Company
Areas for Eligible Telecommunications Carrier Designation**

NON-RURAL LEC EXCHANGES

LEC: Frontier Communications Northwest, Inc. – WA

Exchanges:	Farmingdale
	Garfield
	Garrison
	Latah
	Palouse
	Pullman
	Oakesdale
	Tekoa
	Thornton

LEC: Qwest Corporation – WA

Exchanges:	Colfax
	Clarkston
	Dayton
	Moses Lake
	Othello
	Pomeroy
	Walla Walla
	Warden
	Waitsburg

RURAL LEC EXCHANGES

LEC: CenturyTel of Washington, Inc.

Exchanges:	Almira
	Creston
	Davenport
	Edwall
	Eureka
	Harrington
	Lind
	Odessa
	Ritzville
	Sprague
	Starbuck
	Washtucna
	Wilbur
	Wilson Creek

LEC: St. John Co-operative Telephone and Telegraph Company

Exchange:	Saint John
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LEC: Pioneer Telephone Company

Exchanges:	Lacrosse
	Endicott

LEC: Inland Telephone Company

Exchanges:	Uniontown
	Prescott

LEC: Asotin Telephone Company

Exchanges:	Asotin
	Anatone