

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of the	)	DOCKET UT-073032
	)	
	)	ORDER 01
WASHINGTON INDEPENDENT	)	
TELEPHONE ASSOCIATION	)	ORDER DENYING PETITION
	)	
For Establishment of a Moratorium on	)	
Designation of Competitive Eligible	)	
Telecommunications Carriers	)	
.....	)	

**BACKGROUND**

1 On June 15, 2007, the Washington Independent Telephone Association (WITA) filed a petition with the Washington Utilities and Transportation Commission (Commission) for a moratorium on the designation of additional competitive eligible telecommunications carriers (CETCs) and the expansion of existing CETC designations. WITA asks us to impose a moratorium until such time as the Federal Communications Commission (FCC) completes action on a recent recommendation of the Federal-State Joint Board on Universal Service (“Joint Board”) to place an interim cap on universal service support for non-incumbent ETCs. In the alternative, WITA requests a moratorium until the FCC concludes action on potential long-term reforms that may be addressed in WC Docket No. 05-337 and CC Docket No. 96-45.<sup>1</sup>

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007) (*Notice*); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (Fed.-State Jt. Bd., rel. May 1, 2007) (*Recommended Decision*). The Joint Board recommended that the FCC immediately impose an interim, emergency cap on the amount of high-cost support that CETCs may receive for each state based on the average level of competitive ETC support distributed in each state in 2006. The Joint Board further recommended that the interim cap apply one year from the date that the Joint Board makes its recommendation regarding comprehensive and fundamental high-cost universal service reform. The Joint Board released a notice on September 6, 2007, regarding longer term reforms tentatively agreeing that, future universal service support mechanisms will focus on voice, broadband, and mobility services objectives with long term objectives of: (1) cost control, (2) accountability, (3) state participation, and (4) infrastructure build out in unserved areas.

- 2 This matter was heard at the Commission’s regularly scheduled open public meetings on July 11, 2007 and September 12, 2007.
- 3 Representatives of WITA, Commission Staff (Staff), Sprint Nextel Corporation (Sprint) and Eltopia Communications, LLC (Eltopia) filed written comments and addressed the Commission at the open meetings.<sup>2</sup> Representatives of Rural Cellular Corporation (RCC) and U.S. Cellular Corporation (USCC) submitted copies of its comments to the Joint Board, while Embarq recommended we initiate an adjudicative proceeding to resolve WITA’s petition. Finally, a representative of NTCH-WA, Inc., d/b/a Cleartalk (Cleartalk) filed comments opposing WITA’s petition.<sup>3</sup>
- 4 WITA asserts that the federal universal service fund has experienced “explosive growth” primarily as a result of designation of wireless carriers as CETCs. WITA states the FCC is currently considering the Joint Board’s recommended cap on universal service support for non-incumbent ETCs and urges us to refrain from designating new ETCs until the FCC renders a decision on the Joint Board recommendation.
- 5 WITA argues that the interests of ETCs previously designated by the Commission could be harmed by new designations because under a capped fund the amount of support available for each non-incumbent ETC may be reduced as more or larger non-incumbent ETCs are designated.
- 6 WITA contends we have authority to refrain from considering new ETC petitions because there is no rule that requires prompt consideration of petitions filed pursuant to WAC 480-123-040.
- 7 Eltopia filed comments stating that its interests will be adversely affected if WITA’s petition is granted because a moratorium would limit its ability to meet the demands of customers in eastern Washington for basic and advanced telecommunications services.

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<sup>2</sup>On May 7, 2007, Sprint filed a petition to amend its existing designation as an ETC and a request for waiver of WAC 480-123-030(1)(g) in Docket UT-073023. On May 22, 2007, Eltopia filed a petition for designation as a new ETC in Docket UT-073024.

<sup>3</sup>We do not discuss in detail below the comments of RCC, USCC, Embarq or Cleartalk, as we resolve this matter without addressing the merits of the petition.

- 8 Eltopia asserts that it relied on WAC 480-123-040 when it petitioned for ETC designation and that it deserves to be treated in the same manner as all previous ETC petitioners that filed in accordance with the existing regulation. Eltopia argues that it is entitled to receive a prompt decision based on legal standards that have been applied consistently to previous ETC applications. Eltopia states that suspending action on pending CETC petitions through adoption of a moratorium would be an extraordinary action by the Commission and that WITA cites no factual basis in its petition to explain why such action is necessary. Eltopia further asserts that imposition of a moratorium could only be accomplished through an emergency rulemaking.
- 9 Eltopia refers to the same FCC proceedings WITA discussed in its petition and argues that the appropriate forum for addressing criticisms or concerns about the size or other alleged problems regarding the federal high-cost fund is before the FCC, not the Commission. Eltopia notes that the Joint Board could have recommended to the FCC a moratorium on new CETC designations but did not. Eltopia also observes that the FCC is not pursuing a moratorium on designations.
- 10 Sprint filed a response in opposition to WITA's petition on June 27, 2007, arguing that a moratorium would have no effect on WITA's members. Accordingly, Sprint contends that WITA lacks standing to request a moratorium. Sprint also asserts that it is well settled that no single ETC has a property interest in the designation of another ETC.
- 11 Sprint argues that the Joint Board's recommendation for a cap on CETC support is of little importance unless or until the FCC acts. Sprint contends we should not modify our approach in considering ETC petitions based on speculation about what the FCC might do on an interim or permanent basis with respect to universal service reform.
- 12 Staff recommends denial of WITA's petition because a moratorium is contrary to the public interest. Granting the petition would effectively eliminate review of ETC petitions on their merits for as long as 18 months and leave ETC petitioners at a competitive disadvantage contrary to the principle of competitive neutrality. Staff states that WITA's concern about the size of the federal universal service fund is an issue for the FCC, not the Commission.

13 Accordingly, Staff recommends we continue our practice of evaluating the merits of each ETC petition in accordance with existing rules.

### FINDINGS AND CONCLUSIONS

- 14 (1) The Commission has jurisdiction over the subject matter of this proceeding. *47 U.S.C. § 214(e); RCW 80.36.610.*
- 15 (2) This matter was brought before the Commission at its regularly scheduled open meetings on July 11, 2007, and September 12, 2007.
- 16 (3) WITA's petition for a moratorium on consideration of new ETC designations is premised on factors beyond the scope or control of the Commission. Although it is true that the FCC is actively considering short-term and long-term structural reforms of the federal universal service fund, it is not clear when the FCC will act. Moreover, it is not clear what, if any, structural reforms the FCC will adopt. Until the FCC acts, the Commission has a continuing obligation pursuant to 47 U.S.C. § 214(e) to act on petitions for ETC designation based on the specific criteria set forth in the federal statute and WAC 480-123-040.
- 17 (4) Accordingly, after reviewing the petition WITA filed in Docket UT-073032 on June 15, 2007, and giving due consideration to the comments of all other parties, the Commission finds that WITA's request is not consistent with the public interest and should be denied.

### ORDER

#### THE COMMISSION ORDERS:

- 18 (1) The petition of the Washington Independent Telephone Association in Docket UT-073032 for a moratorium on hearing ETC designation petitions under WAC 480-123-040 is denied.

- 19 (2) The Commission retains jurisdiction over the subject matter to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective September 18, 2007.

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner