

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

In the Matter of the Petition of)	DOCKET NO. UT-023033
)	
RCC MINNESOTA, INC., d/b/a)	ORDER NO. 02
CELLULAR ONE,)	
)	
For Designation as an Eligible)	ORDER GRANTING
Telecommunications Carrier)	MODIFICATION
.....)	

1 **Synopsis:** *The Commission grants the request of RCC Minnesota, Inc., d/b/a Cellular One, modifies the RCC Designation Order, and RCC Minnesota is not required to petition the FCC for concurrence in designation as an ETC for service areas that overlap parts of rural telephone company service areas and non-rural incumbent service areas (exchanges).*

I. BACKGROUND

2 The Commission designated RCC Minnesota, Inc., d/b/a Cellular One (RCC) as an eligible telecommunications carrier (ETC) in 2002. *RCC Designation Order*.¹ In the Commission’s order designating RCC as an ETC, the Commission ordered RCC to “petition the FCC for concurrence in designation as an ETC for areas that are parts of ILEC exchanges.” *RCC Designation Order*, ¶ 90.

3 On February 14, 2005, RCC petitioned for modification of the *RCC Designation Order*. RCC requests the Commission remove the requirement that RCC must petition the Federal Communications Commission (FCC) for concurrence in designation as an ETC for areas that overlap ILEC exchanges. The Commission considered RCC’s petition for modification at its regularly scheduled open public meeting of March 16, 2005.

¹ *In the Matter of the Petition of RCC Minnesota, Inc., d/b/a Cellular One For Designation as an Eligible Telecommunications Carrier*, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-023033 (Aug. 14, 2002) (“*RCC Designation Order*”).

II. RCC's PETITION FOR MODIFICATION

A. RCC's Position

4 RCC petitions for modification of that portion of the Commission order granting ETC designation that required RCC to petition the FCC for concurrence in the Commission's designation of RCC for service areas that overlap, in part, the service areas of rural telephone companies. *Petition for Modification at 2, 7.* RCC makes this request because the Universal Service Administrative Company (USAC) has not provided federal support to RCC for the service it provides to customers in those portions of its cellular geographic service area (CGSA) that overlap, in part, a rural telephone company's service area. *Id. at 2.* USAC has relied on paragraphs 71 and 90 of the *RCC Designation Order* as support for its position that something more is required of RCC before USAC may disburse federal support. *Id.*

5 RCC contends that the Commission erroneously required RCC to petition the FCC for concurrence. By letter dated December 10, 2003, RCC requested the Commission clarify whether it had intended that RCC file for concurrence with the FCC. *Id. at 2-3.* In that letter RCC set forth its contention that it is not required to petition the FCC for concurrence. By letter from the Commission Secretary, the Commission replied that "[t]he Commission does not require companies to take unnecessary actions." *Id.* USAC did not change its position after reviewing the correspondence between RCC and the Commission, and RCC now asks for an order that modifies the *RCC Designation Order*. *Id. at 3.*

6 According to RCC, there are two reasons why a petition for concurrence is unnecessary. First, there is no basis in statute or rule for concurrence with an ETC designation that overlaps the service area of a rural telephone company, but does not change the service area of the rural telephone company. *Id. at 3-4.* Second, the opportunity for cream skimming is not present here because the disaggregation of federal support from study-area average per-line amounts to

exchange-area average per line amounts has eliminated the possibility that RCC will receive too much (or too little) support for serving an area. *Id. at 4-7.*

7 In support of its first argument, RCC contends that FCC concurrence is necessary only where a rural telephone company's service area will be changed from the study area size to smaller service areas. *Id. at 3* (citing 47 U.S.C. § 214(e)(5), 47 C.F.R. § 54.207). RCC notes that the Commission did not alter any rural telephone company service area when it designated RCC an ETC. *Id.* RCC cites the Commission's order designating Sprint PCS as an ETC where the Commission stated that the federal Act contemplates that service areas may have multiple ETCs and that there is no requirement that coincident or overlapping service areas must have identical boundaries. *Id. at 4.*² In other words, the Commission recognized that designation of an additional ETC does not change or alter the rural telephone company's service area that is overlapped. *Id.*

8 RCC also addresses the relationship between cream skimming and FCC concurrence with state designations of rural telephone company service areas at geographic levels smaller than study areas. RCC states that redefinition of study areas to smaller service areas is necessary to avoid cream skimming because the FCC has determined that additional ETCs in a given location will receive the same per-line customer support as the incumbent rural telephone company serving the same location. *Id. at 5.* Without designations of rural telephone companies for service areas smaller than study areas, combined with disaggregation (deaveraging) of federal support, RCC states that additional ETCs receiving study-area average support would sometimes receive excessive support, and sometimes receive support that is insufficient. *Id.* RCC contends

² 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, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-043120, Order No. 01(Corrected), ¶ 11 (Jan. 13, 2005) ("Sprint PCS Rural Order").*

that because rural telephone companies in Washington have disaggregated support, the concern for cream skimming is eliminated. *Id. at 3.*³

9 RCC further contends that because the concern for cream skimming is eliminated, the Commission should adhere to principles of competitive and technological neutrality. *Id. at 6.* RCC maintains that it sought, and the Commission granted, designation for service areas that overlap only parts of some rural telephone company service areas because RCC's licenses have boundaries different from wireline exchange boundaries due to the fact that RCC is regulated in a manner different from wireline rural telephone companies. *Id. at 6-7.*

B. Washington Independent Telephone Association's Position

10 On March 2, 2005, the Washington Independent Telephone Association (WITA) filed comments in opposition to RCC's request. WITA contends that under FCC rules, the designation of RCC for a service area smaller than a rural telephone company service area is a redefinition of the rural company's service area, and therefore requires FCC concurrence. *WITA Comments at 1.*

11 WITA relies on a recent Recommended Decision by the Federal-State Joint Board on Universal Service for its position that service areas for rural telephone companies should be the service area for additional ETCs. The *Recommended Decision* states that there is a "presumption that a rural carrier study area should be the service area for a new ETC, unless and until the state and the [FCC] working in concert decide a different service area definition would better serve

³ Citing *In the Matter of the Petition of Sprint Corporation, d/b/a Sprint PCS, et al., for Designation as an Eligible Telecommunications Carrier*, Order Granting Designation as an Eligible Telecommunications Carrier, WUTC Docket No. UT-031558, ¶¶ 3-4 (Oct. 29, 2003) ("*Sprint PCS Non-rural Order*").

the public interest.” *Id.*⁴ WITA contends that even though the Federal-State Joint Board 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. *WITA Comments at 2.*

- 12 WITA states that the FCC concluded in two recent orders that designation of an additional ETC for an area other than a rural telephone company’s *study area* requires redefinition of the rural telephone companies study area through concurrence between the state and the FCC. *WITA Comments at 3.*⁵

C. RCC’s Reply to WITA’s Opposition

- 13 RCC asks the Commission to reject WITA’s claim that a new concurrence petition is required. RCC states that WITA’s argument erroneously assumes that the ETC service area of a rural telephone company must be the redefined to match the service area requested by a non-rural ETC. *RCC Reply, ¶ 7.* RCC notes that other states have designated wireless ETCs throughout their FCC licensed service areas, even where it results in some ILEC wire centers (or exchanges) being only partially overlapped, while also redefining the rural ILEC service area so that each wire center (or exchange) is a separate service area. *Id., ¶ 8. (footnote omitted).*

D. Commission Staff’s Analysis

- 14 Commission Staff contends that FCC concurrence is necessary only in situations where there would be a change to service areas established for rural telephone

⁴ *In the Matter of Federal-State Joint board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1, ¶ 55, (Rel. February 27, 2004).

⁵ *See 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, 41; *see also 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) at ¶ 38 (“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.”)

companies. Staff does not believe concurrence is necessary when the Commission is establishing the service area for an ETC that is not a rural telephone company. Commission Staff's view is that the Commission followed the FCC concurrence rule when the Commission petitioned for concurrence in redefinition of rural telephone company service areas, and the FCC concurred in the redefinition. *Open Meeting Memo, at 4-5.*

15 Commission Staff's detailed analysis of 47 C.F.R. § 54.207 supports its conclusion. *Open Meeting Memo at 5.* Commission Staff also contends that 47 U.S.C. § 214(e)(5) does not require concurrence. *Id., at 4.*

16 Commission Staff contends that the Federal-State Joint Board on Universal Service presumption that a rural telephone company's study area will be a new ETC's service area is rooted in a desire to mitigate or eliminate cream skimming. Commission Staff believes the Federal-State Joint Board's concerns about cream skimming were eliminated when the Commission (with FCC concurrence) redefined each exchange as a separate service area, and that having established smaller service areas and deaveraged support for each such service area. Therefore, the presumption is unnecessary in this case. *Id., at 6.*

17 Because cream skimming is not at issue here, Commission Staff relies on the principles of competitive and technological neutrality when it concludes that "the approach of taking geographic boundaries as they are recognizes the technological differences that exist between carriers, and takes into account the variations in the statutory and regulatory requirements placed on wireline and wireless carriers (for example, a wireline carrier may serve anywhere in Washington but a wireless carrier may serve only within the boundaries of its license)." *Id., at 8.*

III. COMMISSION DISCUSSION AND DECISION

18 RCC petitions for modification of that portion of the RCC Designation Order that required RCC to petition the FCC for concurrence in the Commission's

designation of RCC for service areas that overlap in part service areas of rural telephone companies.

19 This is the first request received by the Commission for a modification of an initial ETC designation order that did not simply request an increase in the number of service areas for an already designated carrier. While the petition is unique in that regard, it does not raise any new policy issues. We have already determined that it is in the public interest to designate wireless companies as additional ETCs for locations served by rural telephone companies, and that it is also in the public interest to make those designations whether the boundaries of the respective rural and wireless carriers' service areas are coincident or overlap in whole or in part.

20 We agree with RCC's analysis of the requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207. As we noted in a very recent order:

The only restriction on state commission decisions regarding service areas is that a rural telephone company must be designated as an ETC for its entire "study area" (all the areas it serves in one state combined) unless the state and the FCC agree to establish a different service area for a rural company. 47 U.S.C. § 214(e)(5). This restriction on state commission determination of the service area does not prevent a state from designating another carrier as an ETC for an area that is coincident with, or overlaps in whole or in part, a portion of a rural telephone company's study area or service area. 47 U.S.C. § 214(e)(2).

Sprint PCS Rural Order, ¶ 32, n.10.

21 We agree generally with Commission Staff's analysis. In particular, we agree with Commission Staff's view that WITA relies on a quotation from the Federal-State Joint Board on Universal Service Recommended Decision that simply does

not apply to the circumstances in this docket. We also agree with Commission Staff's restatement of our prior decisions concerning cream skimming.⁶

22 We base our decision on the written materials provided in this docket, information presented at the Open Meeting, and on our knowledge and experience regarding ETC designation. We have a substantial number of thorough and reasoned decisions on which we rely to reach our conclusion. As a result, we will not discuss in detail every issue that has come before the Commission and has been discussed and decided in prior proceedings.

23 We conclude that it is in the public interest to grant the modification requested by RCC. Our action will preserve and advance universal service and promote competition. *RCW 80.36.300; 47 U.S.C. § 254.*

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24 Having reviewed the submissions of RCC, WITA, and Commission Staff's *Open Meeting Memo*, having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact and conclusions of law:

25 (1) RCC Minnesota d/b/a Cellular One is a telecommunications company doing business in the state of Washington.

26 (2) The Commission has jurisdiction over the subject matter of this petition and over RCC with respect to its designation as an ETC.

⁶ We note that if our views on cream skimming diverge from those of the FCC (and we are not convinced that is the case), and the FCC would reach a different conclusion concerning the public interest, we may nevertheless conclude designation of RCC for a service area that overlaps only in part the service area of a rural telephone company is in the public interest because we have jurisdiction to make this finding. *RCW 80.36.610; 47 U.S.C. § 214(e)(2), (6).*

- 27 (3) Designation of RCC as an ETC for service areas that overlap only in part the service areas of rural telephone companies and non-rural incumbents does not alter the service area designations of any rural telephone company or other designated ETC.
- 28 (4) The Commission is not required by the federal Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to designating a telecommunication carrier an ETC.
- 29 (5) ETC designation is not a license and modification of an ETC designation does not require an adjudicatory proceeding.
- 30 (6) No statute or rule requires FCC concurrence with our designations of RCC.
- 31 (7) Granting the requested modification is in the public interest.
- 32 (8) The Commission has authority to modify, suspend, or revoke this order at a future date.

V. ORDER

33 This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

- 34 (1) The petition of RCC Minnesota d/b/a Cellular One is granted, as modified by this Order.
- (2) RCC Minnesota is not required to petition the FCC for concurrence in designation as an ETC for service areas that overlap parts of rural telephone company service areas and non-rural incumbent service areas (exchanges).

- (3) The Commission may modify, suspend, or revoke this order at a future date.

DATED at Olympia, Washington, and effective this 16th day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner