

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

In the Matter of the Request of	)	DOCKET NO. UT-053009
	)	
WESTGATE	)	ORDER NO. 01
COMMUNICATIONS LLC	)	
d/b/a WeavTel	)	
	)	ORDER GRANTING REQUEST FOR
	)	DESIGNATION AS AN ELIGIBLE
For Designation as an Eligible	)	TELECOMMUNICATIONS
Telecommunications Carrier	)	CARRIER
.....	)	

1     **Synopsis:** *The Commission finds the request of Westgate Communications is in the public interest and directs the Secretary to enter this order and grant the request for designation as an eligible telecommunications carrier.*

**I. BACKGROUND**

2     The federal Telecommunications Act of 1996 (Act)<sup>1</sup> requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs). In order to be eligible for federal universal service support, a common carrier must be designated by the state commission as an ETC. 47 U.S.C. § 214(e)(1). Once designated as an ETC, a carrier must advertise the availability of service and offer service in the geographic service area in which it is designated. *Id.*

3     On February 4, 2005, Westgate Communications LLC, d/b/a WeavTel (hereafter Westgate) requested ETC designation for a new exchange, White River, to serve an area that is neither contained in any other carrier’s study area<sup>2</sup> or served by

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<sup>1</sup> Public Law 104-104, 110 Stat. 154 (1996), codified in scattered sections of Title 47 U.S.C.

<sup>2</sup> A “study area” is generally an incumbent LEC's pre-existing service area in a given state. The study area boundaries are fixed as of November 15, 1984. *First Report and Order, In the*

any other wireline local exchange carrier. There is no other carrier designated as an ETC for this area. The Commission considered Westgate's request for ETC designation at its regularly scheduled open public meeting of February 23, 2005.

## II. WESTGATE'S REQUEST FOR ETC DESIGNATION

### A. Westgate

4 Westgate is authorized to provide telecommunications service in Washington, is a competitive local exchange company in Chelan, and has been designated as an ETC for Stehekin.<sup>3</sup> *Request at 1.* Westgate is a common carrier under 47 U.S.C. § 153(10).

### B. Statutory Requirements

5 ETCs are required to offer the services supported by the federal High Cost Fund (HCF) and advertise the availability of those services. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 101(a), (b). In addition, ETCs must offer discounts to low-income consumers through the Lifeline and Link Up programs. 47 C.F.R. §§ 54.405, 411.

6 Under the Act, state commissions shall designate as ETCs common carriers that request such designation provided the carriers meet the requirements for ETC designation. 47 U.S.C. § 214(e)(2).

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*Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997), ¶ 172, n.434 citing. MTS and WATS Market Structure: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 50 Fed. Reg. 939 (1985).*

<sup>3</sup> See *In the Matter of Westage Communications LLC d/b/a WeavTel for Designation as an Eligible Telecommunications Carrier, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-013105 (2002).*

### **C. Positions of Interested Persons**

#### *1. Westgate*

7 Westgate states in its request that it will meet the requirements for ETC  
designation. *Request at 1.* Westgate states it will offer services required by 47  
U.S.C. 214(e) and advertise those services, and that it will also comply with 47  
C.F.R. § 54.101 and §§ 54.405 through 411. *Id.*

8 Westgate states it will provide toll blocking to customers that request the service  
and that Westgate will not require a deposit for this service. *Id.*

9 Westgate states that it believes the request is in the public interest because it has  
determined that federal support is necessary to make it economically feasible for  
Westgate to offer service to the people who live in the unserved area. *Request at*  
*2.*

### **III. COMMISSION DISCUSSION AND DECISION**

10 The Commission has issued a substantial number of thorough and reasoned  
decisions concerning ETC designations. This order is based on those decisions  
and on the material in Westgate's written request for designation. As a result,  
this decision will not discuss in detail every issue that has come before the  
Commission and has been discussed and decided in prior ETC designation  
proceedings.

#### **A. Legal and Policy Issues**

11 Congress has authorized state commissions to designate common carriers as  
ETCs. 47 U.S.C. § 214(e)(2). The FCC may designate common carriers as ETCs  
where the state commission has no jurisdiction over the common carrier. *Id.* §  
214(e)(6). The FCC does not have jurisdiction to designate common carriers as  
ETCs in areas where a state commission has jurisdiction to do so.

12 Congress left to the state commissions to determine whether the designation of a common carrier as an ETC is in the public interest. *47 U.S.C. § 214(e)(2)*. The Commission may look to the decisions of the FCC and other states to assist it in making that determination, but the Commission is not bound by those decisions.<sup>4</sup>

13 Access to telecommunications service for rural consumers is one of the goals of the federal Act. *47 U.S.C. § 254(b)(3)*. This is also state policy. *RCW 80.36.300*.

**B. Designation of Westgate Meets the Requirements of Section 214(e) and Is in the Public Interest**

1. *Westgate Will Provide the Required Services*

14 Westgate will provide with its facilities the nine services ETCs must provide pursuant to *47 C.F.R. § 54.101(a) and (b)*. *Request at 1*. Westgate will advertise the availability of these services throughout its service area in media of general distribution. *Id.* Westgate states it will comply with Lifeline and Link Up requirements. *Id.*

2. *Granting Westgate's Request Is In the Public Interest*

15 "Public interest" is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. Designation of Westgate as an ETC furthers the public interest because access to federal support is

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<sup>4</sup> 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" unless the state and the FCC agree to establish a different service area for a rural company. *47 U.S.C. § 214(e)(5)*; *see also n.2, supra*. That restriction is predicated on the existence of a study area. In this instance, if Westgate is a rural telephone company, it is a rural telephone company without a study area and therefore the restriction cannot apply. Additionally, because Westgate does not seek to alter the study area, including its own (non-existent) study area, or service areas of any rural telephone company, neither *47 U.S.C. § 214(e)(5)* nor *47 C.F.R. § 54.207* apply.

necessary for Westgate to serve currently unserved persons in the White River exchange area.

- 16 Rural ILECS have raised concerns about the effect of additional ETC designations on the federal fund. The companies are concerned about the size of the fund from which they draw support. When the Commission addressed this same concern in a recent proceeding, the Commission stated that this concern should be addressed at a national level. The Commission noted that not even the FCC was able to draw a conclusion regarding the effect of a single ETC designation on the HCF.<sup>5</sup>
- 17 The designation is in the public interest because it is necessary to provide service to an unserved area. *Request at 2*. If the FCC determines otherwise, it may take action to limit or disallow support for Westgate.
- 18 Granting Westgate's request is consistent with federal and state statutes and policies. ETC designation of Westgate will preserve and advance universal service. *47 U.S.C. § 254(b)(1)*. Designation of Westgate will also advance the efficiency and availability of telecommunications services. *RCW 80.36.300*.
- 19 Finally, Westgate should not be directed to file electronic maps (.shp) prior to the availability of federal high cost fund support. This is consistent with the designations of Qwest Corporation and Hood Canal Telephone Company<sup>6</sup> for areas where federal support is not available and the Commission's conclusion in

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<sup>5</sup> See *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for Designation as an Eligible Telecommunications Carrier*, Order Designating Eligible Telecommunications Carriers, Docket No. UT-043011, Order No. 1, ¶ 36 and n.7 (April 13, 2004).

<sup>6</sup> See *In the Matter of Petition of Hood Canal Telephone Company for Designation as an Eligible Telecommunication Carrier*, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-043121, Order No. 1, ¶ 29 (Dec. 29, 2004).

those designations that electronic maps are not immediately necessary for the proper administration of support.

## V. FINDINGS AND CONCLUSIONS

- 20 (1) Westgate Communications LLC d/b/a WeavTel (Westgate) is a  
telecommunications company doing business in the state of Washington.
- 21 (2) Westgate will satisfy the requirements of 47 U.S.C. § 214(e).
- 22 (3) Westgate will offer all of the services that are to be supported by the  
federal universal service support mechanisms set forth in 47 C.F.R. § 54.101(a).
- 23 (4) The Commission has jurisdiction over the subject matter of this request  
and over Westgate. *47 U.S.C. § 214(e), RCW 80.36.610.*
- 24 (5) The Commission is not required by the Act or by any provision of state  
law to hold an adjudicative proceeding or other hearing prior to  
designating a telecommunication carrier an ETC.
- 25 (6) Granting Westgate's request for designation as an ETC for the White River  
exchange is consistent with applicable federal and state law.
- 26 (7) Westgate does not have a study area and therefore designation is not  
required to be granted for its entire study area.
- 27 (8) Granting Westgate's request does not alter the study area or the service  
areas of any rural telephone company and Westgate need not take any  
action under 47 U.S.C. § 214(e)(5) or 47 C.F.R. § 54.207.

**ORDER**

THE COMMISSION ORDERS:

- 28 (1) Westgate's request for designation as an ETC is granted as modified by  
this order.
- 29 (2) Westgate must participate in the Washington Telephone Assistance  
Program.
- 30 (3) The requirement to provide toll control is waived until it is economically  
and technically feasible to provide it.
- 31 (4) The Commission has authority to modify, suspend, or revoke the  
designation granted in 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 this 23rd day of February, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary