

SERVICE DATE
JUL 23 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter of the Petition of)	DOCKET NO.
)	
U S WEST)	UT-980332
COMMUNICATIONS, INC)	
)	ORDER DESIGNATING
for designation as an Eligible Telecommunications)	U S WEST
Carrier.)	COMMUNICATIONS
)	AS AN ELIGIBLE
)	TELECOMMUNICATIONS
.)	CARRIER

I. INTRODUCTION

The Federal Telecommunications Act of 1996 (1996 Act), substantially revised the national telecommunications policy and contemplated that the states, acting through their state public utility commissions, implement that policy by conducting various proceedings. The federal policy embodied in the Act coincides, to a great extent, with the preexisting policy of the State of Washington as expressed by the Legislature and implemented by this Commission.

The 1996 Act (as well as Washington law) embraces the policy that certain telecommunications services should be available universally. Congress articulated the basics of what should be included as part of "universal service," 47 U.S.C. §254(b), and established a Federal-State Joint Board on Universal Service to recommend to the FCC the details of what should be included within the concept of such service. These services are to be supported in high cost areas by money from a fund which is supported by carrier contributions. 47 U.S.C. §254(d); Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996), and First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997) (Universal Service Order).

Congress stated that certain carriers, designated "Eligible Telecommunications Carriers" (ETCs), may draw from the fund for their provision of the described services in high cost areas. The following services must be provided by a carrier in order to be eligible for federal universal service support: single-party service; voice grade access to the public switched network; dual tone multi-frequency signaling or its functional equivalent; access to emergency services, including, in some circumstances, access to 911 and E911; access to

operator services; access to interexchange services; access to directory assistance; and lifeline and link-up programs, including free toll limitation services for qualifying low-income consumers.

Congress left the task of designating such carriers to the state commissions. 47 U.S.C. § 214(e)(2). On December 23, 199 the Commission made 23 initial ETC designations in Docket Nos. UT-970333 - UT-970354 and UT-97-0356. In this proceeding the Commission is asked to make a similar designation.

II. PETITION

On June 26, 1998, U S WEST Communications, Inc. (USWC) filed a Petition¹ seeking designation for the Auburn, Bellingham, Bremerton, Issaquah, Kent, Puyallup, Orchards, Lacey, Longview, Walla Walla, Enumclaw and Maple Valley exchanges.² USWC included in its petition a request for a waiver for compliance with toll control as defined in 47 C.F.R. §54.400(a)(3) and requested additional time to complete network upgrades pursuant to 47 C.F.R. §54.101(c).³

III. STATUTORY BACKGROUND AND JURISDICTION

Section 214(e) of the 1996 Act sets forth the standards and processes for a state commission designation of an ETC.

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service

¹ In its filing, USWC denominated its petition as an "Application." The Commission considers their filing a petition and it is so referred to in this order.

² The original petition included a request for designation of the "Lacy" exchange. This has been corrected to Lacey.

³ In the USWC petition, the company seeks unqualified designation for all twelve exchanges on page 1, ¶ 1. On page 3, line 22, however, the petition seeks designation "on an interim basis" only. As set forth in full in this order, 47 U.S.C. § 214(e) does not include provision for interim designations. It does, however, prescribe a method for a carrier to relinquish its designation. The Commission is not granting the designation on an interim basis; if USWC wishes to relinquish the designation in the future there is authority for the Commission to consider their request.

support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS.--If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254© to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE.--A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible

telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

This section in effect states two general criteria for approval of an ETC: (1) the carrier must offer the "services" that are supported by the federal fund and (2) the carrier must advertise the availability of those services. The carrier must do these "throughout the service area for which the designation is received." 47 U.S.C. §214(e)(1).

The Commission has jurisdiction over this petition both because of the 1996 Act and because of those provisions of state law which give the Commission authority over the rates and practices of telecommunications companies and its power to define the scope and nature of a carrier's service obligation. See RCW 80.01.040(3); 80.36.080; 80.36.090; 80.36.140; 80.36.230.⁴

The Commission in this proceeding must determine whether the Petitioner meets the prerequisites for designation as an ETC and also whether the Commission may and should define as a "service area" some geographic area other than what is currently in the carrier's "study area."⁵

⁴ See also Chapter 337, §1(2)(c), Laws of 1998. Section 1(2)(c) relates to designations for a program of state support. Here, we deal with designations for the purpose of entitling the carrier to draw federal support.

⁵ 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. Universal Service Order ¶ 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).

IV. DISCUSSION

A. Designation for Areas Other than a Petitioner’s Study Area

Section 214(e)(5) of the Act governs the determination of the geographic area in which the ETC will serve:

The term “service area” means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

As stated, “a service area means a geographic area established by the Commission.” For non-rural companies, the authority to determine the geographic area of service areas is without limitation. Because USWC is a non-rural company, it may seek designation of a part of its study area for ETC purposes and the Commission may grant ETC status at other than the study-area geographic level.

B. Waiver for Requirement of Providing Toll Control

Petitioner has requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. The Petitioner has demonstrated in its Petition that exceptional circumstances exist which warrant the granting of a waiver for providing toll limitation as authorized by 47 C.F.R. §54.101(c).

C. Service Quality Issues

In the original round of ETC designations in 1997, Staff urged the Commission to include as part of the condition of granting ETC status a requirement that the carriers, including wireless carriers, abide by Commission service quality standards set forth in WAC 480-120. A number of carriers contested the Commission’s authority to so condition the designation. We need not reach that issue of legal authority as we conclude that the carriers’ obligation to “offer the services that are supported by Federal universal service support mechanisms,” as required by 47

U.S.C. §214(e)(A), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

Requiring adequate service also is consistent with the pro-competitive policies of the 1996 Act. No company should be able to obtain a competitive advantage by avoiding its service quality responsibilities. The Commission expects that all companies receiving ETC status will comply with relevant Commission rules.

D. Modification, Revocation, or Suspension

Given the changing dynamics of the market in the local exchange, the Commission may from time to time reopen these proceedings in order to modify the geographic area for which the companies are designated. Such a proceeding may be commenced by the designated company, a petitioner for ETC status, by the Commission on its own motion, or by another appropriate person or entity.

In addition to such geographic area modifications, the Commission has the authority to modify, revoke, or suspend the designations should the prerequisites to the original designation cease to exist.⁶ For example, should the company no longer advertise its services throughout the designated area as required by 47 U.S.C. §214(e)(B), the Commission may revoke the designation or suspend it until the deficiency is corrected. Likewise, should the company cease to “offer the services that are supported by Federal universal service support mechanisms” as required by 47 U.S.C. §214(e)(A), the Commission may revoke or suspend the original designation. In making the determination of whether a designated company continues to offer such services, the Commission will look not just to the advertised availability of the services, but to the actual and timely delivery of those services. In determining whether a designated carrier is providing such service the Commission will be guided by currently accepted industry standards, including, but limited to, the quality of service rules contained in chapter 480-120 WAC.

The Commission may modify this order for other reasons permitted by

⁶ Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. RCW 80.04.210. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. 47 U.S.C. §214(e)(1)(2). There is nothing in that provision which limits a state commission on its own motion from redesignating a company already designated and in effect modifying the prior designation.

the Act.

V. FINDINGS OF FACT

From the above, the Commission enters the following summary findings of fact:

1. The Petitioner is a telecommunications company doing business in the state of Washington.

2. The petitioner currently serves the exchanges set forth on their exchange area maps on file with the Commission as of July 22, 1998.

3. The Commission finds that the appropriate service areas for the Petitioner, a non-rural company, are the individual exchanges for which they petitioned, designated on an individual basis;

4. The Petitioner offers 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).

5. The Petitioner provides advertisement of the availability of the services that are to be provided by the federal universal service support services, except as otherwise waived by this Order, and the charges therefor, using media of general distribution as required by 47 U.S.C. §214(e)(1)(B).

6. The Petitioner does not currently have the technical capability of providing toll control as defined in 47 C.F.R. §54.400. Exceptional circumstances exist which justify the granted waiver.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this proceeding and the party to it.

2. Granting the relief requested in the petition, except as otherwise modified by this Order, is consistent with the public interest, convenience, and necessity and is consistent with applicable state and federal law.

3. The Commission has authority to modify, suspend, or revoke these

designations, including the service areas accompanying those designations, at a future date.

ORDER

Based on the foregoing, the Commission orders as follows:

1. The Petition for designation as Eligible Telecommunications Carriers is granted as described in this Order.

2. The geographic service areas for which the designations are made are the individual exchanges for which USWC petitioned, designated on an individual basis, effective August 1, 1998;

3. The Petitioner's request for a waiver of the requirement of providing toll control is granted.

DATED at Olympia, Washington, this ^{23rd} day of July, 1998, and effective August 1, 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chairwoman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner