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

8 In the Matter of the Petition of  
9 ELTOPIA COMMUNICATIONS, LLC  
10 For Designation as an Eligible  
11 Telecommunications Carrier Under 47 U.S.C.  
§ 214(e)(2)

DOCKET NO. UT-073024

COMMENTS OF THE WASHINGTON  
INDEPENDENT TELEPHONE  
ASSOCIATION

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13 1. The Washington Independent Telephone Association (“WITA”) hereby submits its  
14 comments concerning the Petition of Eltopia Communications, LLC (“Eltopia”) to be designated as  
15 an eligible telecommunications carrier (“ETC”). WITA requests that the Petition be denied. In the  
16 alternative, WITA requests that the Commission set the Petition over for a hearing.

17 A. Eltopia’s Petition for ETC Designation as an ETC for the 509 Area Code is Deficient  
18 on its Face.

19 2. Eltopia has requested designation as an ETC for all areas covered by the 509 area code. A  
20 basic predicate for the designation of a common carrier to be an ETC is that it “must offer the  
21 services supported by the universal service mechanisms throughout the designated service area.”<sup>1</sup>  
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24 <sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (Released  
25 March 17, 2005) at ¶17 (“Report and Order”).

26 COMMENTS OF THE WASHINGTON  
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1 Eltopia's ETC Petition, in essence, describes Eltopia as a start-up operation. It defies credulity that  
2 Eltopia can hold itself out to offer the designated services throughout the entire scope of the  
3 geographic area contained in the 509 area code. The responsibilities of an ETC constitute a serious  
4 undertaking. The representation by Eltopia of the ability to serve throughout the 509 area code  
5 should at least have some factual basis behind it to be given any credence. There appears to be no  
6 factual basis for the proposition that Eltopia can hold itself out to provide the services supported by  
7 the universal service fund throughout the entire 509 area code.

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9 3. While it is recognized that an ETC does not have to immediately provide service throughout  
10 the entire area for which it is designated as an ETC, there must be some substance to the  
11 requirement that an ETC hold itself out to be able to serve the entire area for which it is designated.  
12 Eltopia offers no substance behind its apparently empty statement.

13 B. Eltopia lacks the financial resources to support designation as an ETC.

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15 4. When Eltopia filed its registration for telecommunications carrier status in the State of  
16 Washington in the fall of 2005, it filed a balance sheet that showed that as of that date, it had  
17 \$1,000.00 in the bank and owned communication assets valued at \$9,459.94. Its total assets were  
18 \$10,459.94. Since then, Eltopia's financial condition has deteriorated from even this woefully weak  
19 condition. On the balance sheet that Eltopia includes in the 2006 Annual Report to the  
20 Commission, Eltopia reports negative net income of \$22,811.25 and total liabilities and equity of  
21 \$373.40. The fixed assets that Eltopia reported to the Commission have decreased from \$9,459.94  
22 in 2005 to \$324.51 in 2006. There apparently is no equity investment in this firm. This is not a  
23 company that can provide service throughout the 509 area code.  
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1 5. Financial competence is a consideration in this process. Although the Federal  
2 Communications Commission ("FCC") declined to adopt a particular financial test, it did so  
3 because it felt that the other processes it had in place would suffice, including, specifically, the  
4 FCC's requirement for entities seeking designation through it to provide a comprehensive five-year  
5 plan showing how the universal service monies received by the ETC would be invested in the area  
6 for which the applicant sought ETC status.<sup>2</sup> Since Washington has not adopted the five-year build  
7 out plan requirement, the Commission should inquire into the basic financial capability of a  
8 company to fulfill its representation that it will offer the supported services throughout the 509 area  
9 code. It does not appear that Eltopia has those resources.

11 C. Ektopia is not holding itself out as offering telecommunications services.

12 6. It is interesting that when Eltopia sought Commission registration as a telecommunications  
13 carrier, it stated in its "price list" that its services were not telecommunications services, but were  
14 "dial-up" services.<sup>3</sup> Why an application to provide dial-up services was ever granted is a mystery.  
15 In any event, Eltopia said that it would not be offering regulated services, but if it decided to do so,  
16 it will adopt an appropriate price list.<sup>4</sup> Eltopia was registered by the Commission as a  
17 telecommunications company offering only dial-up Internet service.<sup>5</sup>

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23 <sup>2</sup> Report and Order at ¶37.

<sup>3</sup> See, Eltopia Price List filed under Docket No. UT-051537.

<sup>4</sup> Ibid.

<sup>5</sup> The lack of review of Eltopia's registration statement is demonstrated by the fact that the docket was opened on  
24 October 7, 2005 and closed a mere four days later on October 11, 2005, with the letter of registration issuing after that.

1 7. A visit to Eltopia's web site ([www.eltopia.com](http://www.eltopia.com))<sup>6</sup> demonstrates that the only services that  
2 Eltopia is offering today are Internet services. This is despite the statement that Eltopia makes in  
3 the Petition at Paragraph 22 that "Eltopia Communications provides the federally designated  
4 supported services...." (Emphasis added.) Eltopia made the representation that it is providing  
5 telecommunications services today. However, Eltopia has no telecommunications price list posted  
6 on its web site and, at least at the present time, is clearly not holding itself out as offering  
7 telecommunications services.<sup>7</sup>

9 D. Eltopia Has Failed to Demonstrate How It Will Provide Service With Its Own  
10 Facilities or Facilities of Another.

11 8. Under 47 C.F.R. §54.201(d), an eligible telecommunications carrier must be able to offer  
12 services that are supported by the federal universal service support mechanisms throughout the  
13 service area for which the designation is received using its own facilities or a combination of its  
14 own facilities and resale of another carrier's services. In its Petition, Eltopia states at numerous  
15 places that it has its own network. For example, at Page 4, Paragraph 4, Eltopia describes its  
16 network as consisting of "fixed wireless facilities to establish wireless loops to individual customer  
17 premises." At Paragraph 12, Eltopia states that "Eltopia's wireless loop network will allow it to  
18 reach customers in remote areas of eastern Washington...." At Paragraph 22, it is stated that  
19 "Eltopia Communications provides the federally designated supported services throughout the areas  
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23 <sup>6</sup> There is a related web site, [www.eltopia.net](http://www.eltopia.net), which appears aimed solely at providing wholesale services to "mom and  
pop" ISPs.

24 <sup>7</sup> Thus, Eltopia's statement in its Petition at Paragraph 23 that it "does not have facilities in place to serve every  
customer immediately," should really be that "Eltopia has no telecommunications facilities deployed" since it is not  
25 holding itself out to offer telecommunications services and has less than \$400 in hard assets.

1 for which it seeks designation” and Eltopia will do so “using its own facilities and, where its  
2 facilities are not yet in place, by reselling another carrier’s services.” At Paragraph 25, Eltopia  
3 describes its network as though it were already constructed and being “built largely on Motorola  
4 Canopy and Atheros-based radio systems.” At Paragraph 42, Eltopia describes two existing central  
5 offices as located in Pasco and Spokane “in collocated facilities.”

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7 9. On their face, all of these statements appear to be designed to meet the requirements for  
8 designation as an eligible telecommunications carrier. However, these statements do not comport  
9 with Eltopia’s financial statement. In Eltopia’s financial statement, Eltopia reports to the  
10 Commission that as of December 31, 2006, it has exactly \$324.51 in total communications assets.  
11 How can this paltry level of investment in communication assets possible provide two central  
12 offices? How can this amount of money be said to constitute any sort of network?

13 E. It appears that Eltopia is planning to engage in access bypass.

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15 10. In its application, Eltopia states that it will be its customers’ only choice for interexchange  
16 services unless that customer uses a 1-800 dial around access to another interexchange carrier.<sup>8</sup>  
17 Eltopia also states that the local calling area for Eltopia customers will equal or exceed the local  
18 calling area of the incumbent.<sup>9</sup> Assuming that Eltopia’s statement is correct that it has central  
19 offices in Spokane and Pasco,<sup>10</sup> Eltopia could take a call originating in Spokane for delivery to a  
20 customer in the Pasco area as a VoIP call, transmit the call between Spokane and Pasco as an IP  
21 based call and then, at Pasco, convert the call to TDM and run the call out to the public switched  
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24 <sup>8</sup> Eltopia Petition at ¶35.

<sup>9</sup> Eltopia Petition at ¶30.

<sup>10</sup> Eltopia Petition at ¶42 .

1 telecommunications network over Eltopia's Pasco switch to make it appear as though the call  
2 originated in the Pasco area, thus bypassing terminating access charges.

3 11. This appears to be Eltopia's intent -- to use access bypass to leverage a competitive  
4 advantage. Based upon Eltopia's application, it appears that Eltopia would compete with small,  
5 rural telecommunications companies like St. John Co-Operative Telephone and Telegraph  
6 Company ("St. John") under the following scenario:

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8 Eltopia signs up several prosperous farmers for service by promising them  
9 county-wide (or even 509-wide) local calling. The county in question is Whitman  
10 County. St. John does not provide extended area service calling. Thus, St. John's  
11 customers have a very limited local calling area that they can access. Eltopia is  
12 able to offer that county-wide calling by delivering the calls on the terminating  
13 end as though they look like local calls to the terminating carrier and thus  
14 avoiding terminating access.

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16 Avoiding access changes is not appropriate competition. It certainly does not warrant USF support.

17 F. Eltopia does not demonstrate that it can remain functional in emergency situations.

18 12. At Paragraph 42 of the Petition, Eltopia states that it has battery backup at its central offices  
19 located in Pasco and Spokane. WITA will assume that statement is correct for this portion of the  
20 analysis, even though with only \$350 in assets, Eltopia must have been able to find a very  
21 inexpensive set of batteries. The point is that Eltopia's service is a wireless technology. That  
22 wireless technology requires transmission between various service antennas (in the mobile world,  
23 known as cell sites). Batteries at the central office do not mean Eltopia has the ability to remain  
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1 functional during emergencies. Eltopia has made no representation that it has backup power  
2 available at any of its transmission facilities (towers or antennas). If the towers go down, customers  
3 are left without telecommunications if backup power is not available at the antennas or towers.

4 Based on what is stated in the Petition, Eltopia cannot remain functional in emergency situations.

5 G. The relationship between Eltopia and Franklin County Public Utility District needs  
6 further review.

7 13. In its application, Eltopia states at Paragraph 42 that its Pasco switch "is operated by the  
8 Franklin County Public Utility District and located in the same building and on the same power  
9 supply as the PUD's network operation center." (Emphasis added.) If Franklin County Public  
10 Utility District is the one that is operating the facility, is Franklin County PUD the one engaged in  
11 retail telecommunications service? Obviously, that would be a violation of statute. What is the  
12 PUD's role?  
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14 14. This statement also raises a question about Eltopia's technical competence. Eltopia is  
15 having Franklin County PUD operate Eltopia's central office. If Eltopia is not even operating its  
16 own facilities, that raises a question of whether Eltopia has the technical competence to provide  
17 service. We know Eltopia is an ISP. What basis is there to assume that Eltopia has personnel that  
18 are familiar and can operate telecommunications equipment? It does not appear on the face of the  
19 application.  
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1 **CONCLUSION**

2 15. WITA respectfully requests that Eltopia's Petition be denied for the reasons set forth above.  
3 As an alternative, WITA requests the Commission set the Petition over for investigation and  
4 hearing.

5 Respectfully submitted this 5th day of July, 2007.  
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10 Telephone Association  
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