

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In Re

The Preliminary Determination of Rate-of-
Return Study Areas 100 Percent Overlapped
by Unsubsidized Competitors

WC Docket No. 10-90

**COMMENTS
of**

**Gervais Telephone Company, Monitor Cooperative Telephone Company, Mt.
Angel Telephone Company and St. Paul Cooperative Telephone Association**

August 28, 2015

These comments are filed on behalf of Gervais Telephone Company, an Oregon cooperative company (“Gervais”), Monitor Cooperative Telephone Company, an Oregon cooperative company (“Monitor”), Mt. Angel Telephone Company, an Oregon corporation (“Mt. Angel”) and St. Paul Cooperative Telephone Association, an Oregon cooperative company (“St. Paul”). Gervais, Mt. Angel and St. Paul have been listed in DA 15-868, released July 29, 2015,¹ as companies preliminarily determined to be one hundred percent overlapped by unsubsidized competitors. The study area codes involved for each company are as follows: 1) Gervais - SAC 532373; 2) Mt. Angel - SAC 532386; and, 3) St. Paul - SAC 532396. Monitor (SAC 532384) is identified in DA 15-868 as ninety-nine percent overlapped.

For none of the study areas of these four companies is the percentage of overlap set out in DA 15-868 an accurate assessment. In fact, there are actually much lower percentages of overlap. As a result these companies are not subject to the loss of universal high-cost support under Section 54.319 of the Commission’s rules.

The primary driver behind the preliminary determination of one hundred percent or ninety-nine percent overlap by unsubsidized competitors is the reporting by McMinnville Access Company (or “McMinnville Access”) that it provides voice and broadband service in each of the census blocks associated with the particular company (Gervais, Monitor, Mt. Angel and St. Paul).² McMinnville Access provides broadband services via DSL and fixed wireless technologies. The initial question is whether the services offered over those technologies by

¹ Public Notice, *Wireline Competition Bureau Publication Preliminary Determination of Rate-of-Return Study Area 100 Percent Overlapped by Unsubsidized Competitors*, DA 15-868 (WC Docket No. 10-90) (rel. July 29, 2015).

² In some census blocks a second competitor is shown. However, it is clear from the FCC’s map that the second competitor does not serve in all census blocks in any of the study areas and, therefore, on its own cannot account for a 100 percent overlap. Nor is it clear that the second competitor serves all locations with those specific census blocks where it is listed as present. Finally, even combining McMinnville Access and the second competitor, there are numerous census blocks in each study area with eligible locations that are not served by either of the two voice and broadband competitors.

McMinnville Access meet the broadband speed metrics required for McMinnville Access to be considered to be offering service as an unsubsidized competitor in those areas.³

The DSL service shown on its website as being offered by McMinnville Access does not meet the Commission's minimum download speed standard of 10 Mbps.⁴ Therefore McMinnville Access cannot be considered an unsubsidized voice and broadband provider in census blocks where it offers DSL, based on the offering of that service.⁵ None of the census blocks in which McMinnville Access offers DSL service should be considered overlapped by virtue of that service offering.

It is also questionable as to whether the residential fixed wireless service offered by McMinnville Access meets the speed standard of § 54.319 of the Commission's rules for it to be considered an unsubsidized competitor by virtue of that service offering. The download speed for its fastest "Extreme" residential service offering is shown on its website at a range of 5-11 Mbps and the upload speed is shown as "up to" 3 Mbps.⁶ The fact that both uploads and downloads show speed ranges that include speeds which are lower than the 10/1 actual speed standard cast great doubt on whether service meets the 10/1 actual speed standard with respect to either uploads or downloads.

The next question to be addressed is geographic coverage. With respect to geographic coverage, McMinnville Access readily admits that its voice and broadband service offerings do

³ See, 47 C.F.R. § 54.319(a) which reads "Universal service support shall be eliminated in an incumbent rate-of-return local exchange carrier study area where an unsubsidized competitor, or combination of unsubsidized competitors, as defined in § 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas."

⁴ See, <http://www.onlinenw.com/internet-service/#Spoiler-1> (last visited Aug. 23) which shows the download speed for its fastest "Residential Superfast" service at 7 Mbps and does not list an upload speed.

⁵ It is also the case that there is no physical evidence that McMinnville Access has facilities over which DSL can be provided in the Gervais, Monitor, Mt. Angel and St. Paul study areas.

⁶ *Id.*

not overlap Gervais, Monitor, Mt. Angel and St. Paul by one hundred percent. An Affidavit of Ms. Kathy Tate, the CEO of McMinnville Access is attached as Exhibit 1. In that Affidavit, Ms. Tate, on behalf of McMinnville Access, explains that it is a fixed wireless provider that serves a niche of providing Internet in areas that lack high speed options. This indicates that it does not intend to offer broadband service to customers that have such service available from other providers. McMinnville Access goes on to admit that it does not overlap any of the identified companies on a one hundred percent basis and, further, it has no intention to do so.

McMinnville Access does not offer its fixed wireless service to all locations within the census blocks identified on its Form 477.⁷ Nor does McMinnville Access have any intent to provide ubiquitous service. In Paragraph 3 of Exhibit 1, McMinnville Access admits that it has few, if any, customers in the study areas of Gervais Telephone Company, Mt. Angel Telephone Company and St. Paul Cooperative Telephone Company and makes a similar statement in Paragraph 6 of Exhibit 1 with respect to Monitor Telephone Company. It also admits that “it would need to install fixed wireless antenna and transmission equipment” at each location, demonstrating that such equipment is not presently installed and thus service cannot be currently offered.⁸ In Paragraph 5 of Exhibit 1, McMinnville Access states that “it is not the intent of McMinnville Access company to service one hundred percent of the locations in one hundred percent of the census blocks in each company’s service territory,” clearly indicating that it does not offer such service currently in addition to explaining that it does not intend to do so in the future.⁹

The third consideration is the price of the service. Even if McMinnville Access could

⁷ See, Exhibit 1 at ¶¶ 3, 5 and 6.

⁸ *Id.*

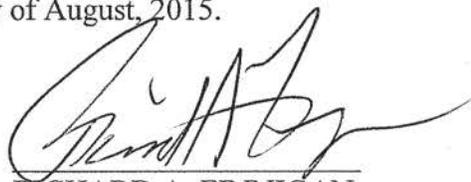
⁹ *Id.*

provide service to 100 percent of the locations in each census block, which it can not, the price for the service is not “reasonably comparable” to urban rates as required by Section 54.519 of the Commission’s rules. As set out in Exhibit 1, the price that McMinnville Access offers for its fastest residential broadband service at a 10/1 (ten megabits down and one megabit up) basis is \$99.95 per month.¹⁰ That price is clearly outside the pricing guidelines established by the FCC for determining an unsubsidized competitor that would count in a determination of one hundred percent overlap.¹¹

In addition to all of the foregoing, each company (Gervais, Monitor, Mt. Angel and St. Paul) did a physical review of the service locations in each of the census blocks in their respective study area and could find no evidence of either cable facilities or fixed wireless antenna that would substantiate a complete, 100 percent overlap of all locations in all census blocks within the company’s service area by a facilities-based competitor.

Based on this information, Gervais, Monitor, Mt. Angel and St. Paul respectfully request that they be removed from the lists set out in DA 15-868 as either one hundred percent or ninety-nine percent overlapped. Thank you for your attention to this request.

Respectfully submitted this 28th day of August, 2015.



RICHARD A. FINNIGAN

Attorney for Gervais Telephone Company, Mt. Angel Telephone Company, Monitor Cooperative Telephone Company and St. Paul Cooperative Telephone Association

¹⁰ See, Exhibit 1 at ¶ 4.

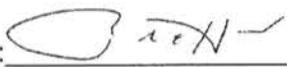
¹¹ See, Public Notice, *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes* (WC Docket No. 10-90), (rel. Apr. 16, 2015) at p. 2 which shows 10/1 service, even with unlimited usage, at a reasonably comparable broadband benchmark monthly rate of \$77.80

Each officer set out below certifies that the foregoing is true and correct as it applies to their company.

GERVIAS TELEPHONE COMPANY,
an Oregon cooperative company

By: /s/John Hoffman
John Hoffmann, President/CEO

MT. ANGEL TELEPHONE COMPANY,
an Oregon corporation

By: 
Paul Hauer, President/General Manager

MONITOR COOPERATIVE TELEPHONE COMPANY,
an Oregon cooperative company

By: /s/Geri Fraijo
Geri Fraijo, General Manger/President

ST. PAUL COOPERATIVE TELEPHONE ASSOCIATION,
an Oregon cooperative company

By: /s/Nick Schneider
Nick Schneider, Manager/Operations Mgr./ Central Office Mgr.

AFFIDAVIT

WC Docket No. 10-90

I, Kathy Tate, being sworn on oath, hereby deposes, testifies and avers as follows.

1. I am the Chief Executive Officer (CEO) of McMinnville Access Company d/b/a OnlineNW and make this Affidavit in that capacity.
2. McMinnville Access Company offers a niche service making fixed wireless Internet and telecommunications available in areas that lack high-speed options. Occasionally, McMinnville Access Company will obtain a customer who has a rocky relationship with the incumbent local exchange carrier, but generally that rarely occurs.
3. McMinnville Access Company has very few, if any, customers in the services areas of Gervais Telephone Company (Study Area Code 532373), Mt. Angel Telephone Company (Study Area Code 532386) and St. Paul Cooperative Telephone Association (Study Area Code 532396). In order to provide broadband service and telecommunications service to every location in every census block in the service areas of Gervais Telephone Company, Mt. Angel Telephone Company and St. Paul Cooperative Telephone Association, McMinnville Access Company would need to install fixed wireless antenna and transmission equipment at each location. That is neither practical nor is it the intent of McMinnville Access Company to accomplish that as a goal.
4. The rate for McMinnville Access Company's broadband service at a ten megabit download and one megabit upload speed (10/1) is \$99.95 per month. That price does not include telephone service.
5. It is not the intention of McMinnville Access Company to overbuild Gervais Telephone Company, Mt. Angel Telephone Company and or St. Paul Cooperative Telephone Association. Nor is it the intent of McMinnville Access Company to serve one hundred percent of the locations in one hundred percent of the census blocks in each company's service territory.
6. The foregoing statements are equally true for the Monitor Cooperative Telephone Company (Study Area Code 532384) which is listed by the Federal Communications Commission as having a ninety-nine percent overbuild. McMinnville Access Company would only provide service in the Monitor Cooperative Telephone Company service area on a one-by-one basis and McMinnville Access Company has no intent to serve one

hundred percent of the customer base or have facilities covering one hundred percent of locations in one hundred percent of the census blocks of Monitor Cooperative Telephone Company's service area.

Executed this 11 day of August, 2015.

Kathy Tate
Kathy Tate
Chief Executive Officer

STATE OF OREGON)
 : ss.
County of Yamhill)

On this 11th day of August, 2015, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Kathy Tate, to me known to be the individual that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said individual, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Serina Susan Clason
Serina Susan Clason
[Printed Name]

Notary Public in and for the State of Oregon, residing at 346 NE Ford St / 1305 NE Lafayette Ave
My commission expires Jan 28 2018 McMinnville OR