

DOCKET FILE COPY ORIGINAL

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August 4, 2000

Ms. Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20024-2101

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Re: CC Docket # 96-45
In the Matter of Federal-State Joint Board on Universal Service:
Promoting Deployment and Subscribership in Unserved and
Underserved Areas, Including Tribal and Insular Areas

Dear Ms. Roman-Salas:

Enclosed please find one original and four copies of the Comments of the South Dakota Independent Telephone Coalition, Inc. in reference to CC Docket No. 96-45, in response to the Further Notice of Proposed Rulemaking made part of FCC 00-208. In accordance with the instructions in the FNPR, three copies and an electronic disk copy have also been sent to Sheryl Todd and an electronic disk copy has been sent to the Commission's copy contractor, International Transcription Service.

Thank you for your assistance.

Sincerely,



Richard D. Coit
Executive Director and
General Counsel

Attachments

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of

Federal-State Joint Board on Universal
Service: Promoting Deployment and
Subscribership in Unserved and Underserved
Areas, Including Tribal and Insular Areas

CC Docket No. 96-45

**COMMENTS OF
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION, INC.**

The Commission, in issuing its Twelfth Report and Order and Memorandum Opinion and Order in the above referenced proceeding, also issued a Further Notice of Proposed Rulemaking (“FNPR”) seeking, in part, comments as to whether it should impose by administrative rule a deadline for resolving Section 214(e) designation requests.¹ The South Dakota Independent Telephone Coalition (“SDITC”) submits these comments as its response to that FNPR. SDITC, which has previously filed comments in this proceeding, is an organization representing the interests of numerous independent, cooperative and municipal local exchange carriers in the State of South Dakota. All of the SDITC member LECs are “rural telephone companies” as defined in 47 U.S.C. § 3(37) and all have been designated as eligible telecommunications carriers by the South Dakota Public Utilities Commission within their established rural service areas or “study areas”.

The Commission within its Further Notice of Proposed Rulemaking has asked whether it should adopt a rule that would require a resolution of the merits of any request for

¹ See *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 00-208, released June 30, 2000.

designation under 47 U.S.C. § 214(e), within a six-month period, or some shorter period.² In the context of this proposal, the Commission further requests comment as to whether it has authority to enforce any such requirement imposed on state utility commissions.

In response to these issues, SDITC believes the Commission is without authority under the federal law to either adopt or enforce any specific deadline under which states would have to make all ETC designations pursuant to 47 U.S.C. § 214(e)(2). Furthermore, SDITC believes that any such deadline would be inconsistent with the federal law inasmuch as it would, in some cases, have a diminishing effect on the public interest criteria established in Section 214(e).

The provisions of Section 214(e) are clearly intended to confer upon state government entities the primary authority for making ETC designations and this authority should be interpreted to include the discretion to determine based on state and/or case specific considerations the timeline for final ETC designation rulings.

In its FNPR the Commission suggests that it may have authority to adopt a specific deadline for all ETC designation proceedings pursuant to Sections 201(b), 253, or 254 of the Federal Communications Act. SDITC does not believe that any of these cited sections permit the Commission to either curtail or infringe upon the state ETC designation process expressly provided for under the language of Section 214(e)(2). Pursuant to 47 U.S.C. § 214(e)(6), the Commission is given authority to conduct ETC designation proceedings and make ETC designations in those cases involving a common carrier that “is providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” It may be within the Commission’s authority to consider a specific deadline for any of these cases that are expressly assigned to the FCC for action under Section 214(e)(6) of the Federal

² FCC 00-208, par. 152.

Act. The same deadline could not, however, be applied to ETC designation proceedings conducted by state commissions under Section 214(e)(2).

As SDITC has earlier noted in this proceeding, it opposes any use of this proceeding as a vehicle to expand the Commission's ETC designation powers beyond what is plainly intended by the federal ETC provisions. Any actions taken should be consistent with the provisions of Section 214(e)(2) and the provisions of Section 214(e)(6), which grants the Commission ETC designation authority only where a State commission lacks jurisdiction over the carrier requesting designation.

SDITC also has concerns with the proposal for a specific ETC designation timeline because it has the potential to diminish the effect of the additional public interest criteria established in the federal law for application to rural service areas. The public interest criteria contained in Section 214(e) is obviously intended to serve as a tool for protecting universal service in higher cost rural areas. It reflects an understanding on the part of Congress that the ETC designation process in rural service areas should be approached cautiously and that multiple ETC designations in such areas should only occur after careful evaluation. It gives recognition to the fact that designating more than one ETC in rural service areas, with the resulting sharing of any available universal service funding, could actually be counterproductive to preserving and advancing universal service.

SDITC believes the proposal for a blanket deadline applying to all ETC designation proceedings, regardless of the actual case circumstances, fails to adequately recognize the intended purpose and importance of the additional public interest criteria. In order to make a fair decision on the public interest issue, the State commission or FCC may in some cases have to make a very intensive factual review. The State commission or FCC may have to closely examine cost, revenue, and universal service support information pertaining to the

affected rural telephone company or companies and their customers. To the extent that a mandatory deadline applicable to all ETC designation proceedings would likely in some cases confine the State commission's or FCC's ability to undertake an adequate factual review pertaining to the public interest, it is contrary to the provisions and intent of Section 214(e)(2). By the provisions of Section 214(e)(2), the public interest standard is established as an additional prerequisite to designation in rural service areas. This additional public interest test is intended to serve an important purpose relating to universal service that should in no way be ignored or discounted. A mandatory deadline on ETC designations would be contrary to this intent and would also conflict with other universal service provisions contained in Sections 253 and 254 of the Federal Act that are intended to address the special universal service concerns presented in rural markets.³

In order to conduct ETC designation proceedings involving rural service areas consistent with the intent of the established public interest criteria, the State commission conducting the review must have the ability to complete a reasonably thorough factual review. A period of six months may not in all cases be adequate depending on the scope of the ETC designation request, the need for prehearing discovery, prefiled testimony requirements, and other work demands, etc. SDITC would agree with the Commission that ETC designation proceedings should be completed as quickly as possible by the state agency, but to establish a strict deadline that is not subject to any waiver or change fails to recognize the importance of the additional public interest criteria and how critical its application is to preserving universal service in rural areas.⁴

³ See, e.g. 253(f) and 254(b)(3).

⁴ As a final note it should be pointed out that the Commission's existing complaint procedures should already offer an avenue of relief to any carrier requesting ETC status that feels the state ETC designation process is moving too slowly. Encouraging use of the complaint process should be sufficient to address any concerns relating to delay in state ETC designation proceedings.

Based on the foregoing, SDITC asks the Commission to reject the proposal for a specific deadline or timeline applicable to all ETC designation proceedings.

Dated this 4th day of August, 2000.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Richard D. Coit", written in a cursive style.

Richard D. Coit,
Executive Director and General Counsel
South Dakota Independent
Telephone Coalition

CERTIFICATE OF SERVICE

I hereby certify that an original and four (4) copies of the foregoing document were sent by Federal Express on the 4th day of August, 2000 to:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20024-2101

Three (3) copies and an electronic disk copy were sent by First Class Mail via the U.S. Postal Service to:

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 Twelfth Street SW Room 5A523
Washington, DC 20024-2101

An electronic disk copy was sent by First Class Mail via the U.S. Postal Service to:

FCC Copy Contractor
International Transcription Service
1231 20th Street NW
Washington, DC 20036-2307



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