

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition by the Colorado Public Utilities)	
Commission, Pursuant to 47 CFR § 54.207(c),)	
For Commission Agreement in Redefining the)	CC Docket No. 96-45
Service Area of Delta County Tele-Comm, Inc.,)	
A Rural Telephone Company)	
_____)	

REPLY COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA) hereby submits its reply comments in the above-captioned proceeding. NTCA urges the Federal Communications Commission (FCC or Commission) to decline to agree with the Colorado Public Utilities Commission (COPUC) in redefining the service area of Delta County Tele-Comm, a Rural Telephone Company (Delta). Specifically, NTCA opposes FCC agreement with the proposed service area definition because it is contrary to the FCC Order establishing disaggregation of universal service support and it does not serve the public interest and policy goals expressed by Congress and the FCC regarding Universal Service.

I. INTRODUCTION

NTCA is a national association made up of more than 500 small, independent telephone companies. All of NTCA's members are "rural telephone companies" as that term is defined in the Communications Act (the Act), 47 U.S.C. § 153(37).

Currently, Delta (an incumbent rural telephone company operating within Colorado), designated as an eligible telecommunications carrier (ETC), has a service area

that is the same as its study area pursuant to 47 U.S.C. § 214(e)(5).¹ Delta has elected to disaggregate and target universal service support to the wire center level.

Rule 11 adopted by COPUC requires that study areas of rural incumbent local exchange carriers be disaggregated according to the universal service disaggregation plans the ETCs choose. The rural carrier's study area is thus automatically disaggregated if it disaggregates the universal service support it receives. COPUC seeks Commission support for this automatic service area-matching rule so that it may redefine Delta's service area consistent with Delta's elected method of disaggregation.

NTCA respectfully submits that the Commission should not agree with the above-mentioned designation. COPUC is attempting to act in a manner inconsistent with FCC statutory directives and contrary to the public interest regarding universal service promoted by the FCC.

II. COPUC's Proposed Service Area Definition Does not Comply with the Statute, 47 U.S.C. §21447 and 47 CFR § 54.207.

COPUC's Rule 11 does not comply with the FCC's service area rules (47 C.F.R. §54.207) nor section 214(e)(5) of the Act. These sections state that a rural telephone Company's service area is its 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) of the Act, establish a different definition for such company."²

¹"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 difference in definition of service area for such company." 47 U.S.C. §214(e)(5)

²See, Petition at 9 (quoting *In the Matter of Federal State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking* in CC Docket No. 96-45, and *Report and Order* in CC Docket No. 00-256, 16 FCC Rcd 11244 (May 23, 2001) (Fourteenth Report and Order).

This requires the State and the FCC to consider the recommendations of the Joint Board and to apply them to the individual company.

COPUC considered only general recommendations of the Joint Board that were not specific to the proposed changes in Delta's study area. COPUC is attempting to create and apply a general rule for service area designations in a specific proceeding. In addition, at no point in its recommendation did the Joint Board address or adopt the policy of an automatic change to match a rural carriers' service areas to that carrier's relative-cost-based support disaggregation plan.

Although the Federal State Joint Board in the Fourteenth Report and Order did not address automatic disaggregation of study area whenever a rural study area is disaggregated for purposes of funding, the FCC did address such a request. In the Commission's Order on Reconsideration of the Fourteenth Order and Report, the Commission specifically addressed and denied a request that when a rural study area is disaggregated for funding, the study area be automatically disaggregated for ETC designation.³ Thus, the FCC has already resolved the issue at hand.

III. COPUC's Proposed Service Area Change Ignores Public Interest Concerns and the Policy of Universal Service

COPUC's proposed service area change harms the public interest and policies associated with universal service. The procedure of automatic service area disaggregation to match funding disaggregation under COPUC's Rule 11 harms rural

³ See, *Federal-State Joint Board on Universal Service: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telecommunications Cooperative Association, CC Docket Nos. 96-45 and 00-256, &17 (rel. June 13, 2002) (*Order On Reconsideration*).

interests because it is intended to create competition for competition's sake and does not consider the interest of consumers or the public.

COPUC claims that disaggregation of Delta's service areas to the wire level will promote competition because it decreases the expanse of the region that must be served.⁴ At this point in time, no competitors are attempting to enter the Delta's service area. To divide up the area to encourage competition creates competition for competition's sake, with no corresponding public benefit. The competitor is encouraged to serve the service areas where the revenue per customer is highest, while the rural ILEC must continue to serve the lower revenue areas as the carrier of last resort. This threatens the financial viability of rural ILECs and will ultimately harm consumers living in areas unattractive to competitors.

While the Colorado Commission might consider the impact of increasing competition for Delta, if it had a carrier seeking ETC designation before it, here it failed to consider the impact of Rule 11 on encouraging competition for Universal Service revenues in general.

Rule 11 opens the door to increase ETC carriers, but does not afford the State or the Commission the opportunity to determine if such a designation is in the public interest. Changing the service area designation automatically assumes that the area can support multiple ETC carriers without affording the Commission the opportunity to consider the impact on both the incumbent carrier and the consumer.

⁴ Petition at 11.

IV. CONCLUSION

For the aforementioned reasons, NTCA urges the FCC to decline its support of COPUC's Petition to redefine the service area of Delta County Tele-Comm, Inc. COPUC's proposal does not comply with FCC rules and ignores the public interest associated with providing Universal Service. Redefining, Delta's rural study area as COPUC suggests may have irreparable effects on all rural telephone companies and the customers they serve.

Respectfully submitted,

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October 25, 2002

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, FCC 02-2383 was served on this 25th day of October 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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