

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition by the Colorado Public Utilities) CC Docket No. 96-45
Commission, Pursuant to 47 C.F.R. §54.207(c),) DA 03-1957
For Commission Agreement in Redefining the)
Service Area of Wiggins Telephone Association,)
A Rural Telephone Company)

**COMMENTS
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding. NTCA is a not-for-profit association established in 1954. It represents more than 555 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.¹ Approximately half of NTCA member companies are organized as cooperatives, and half are small commercial companies.² All of NTCA’s members stand to be adversely affected by any decision that fails to take account of the multiple issues recently referred to the Joint Board. The Wireline Competition Bureau should avoid setting a precedent that could undermine the Commission’s effort to address ETC and service area changes comprehensively.

The Commission should not agree to the proposed redrawing of the areas for which additional ETCs must meet the universal service requirements of §214(e)(2). As

¹ 47 U.S.C. §153(37).

² Wiggins Telephone Association is a member of NTCA.

the record reflects, the Colorado Public Utilities Commission's (CPUC's) request virtually guarantees a new entrant ETC designation in the Wiggins Telephone Association's service area despite the fact that the state is obligated not to designate additional ETCs in any rural carrier's study area "[b]efore . . . findi[ng] that the designation is in the public interest."³ Further, many of the important policy considerations at issue in this proceeding have been referred to the Joint Board. There is much uncertainty surrounding the universal service portability rules and the potential for waste that exists because of vagueness in the rules. The Commission should therefore deny the CPUC's petition at least until it has had an opportunity to clarify its rules.

I. THE CPUC'S REQUEST FAILS TO ADEQUATELY CONSIDER THE PUBLIC INTEREST AND IS CONTRARY TO THE ACT

The CPUC asks this Commission to concur in its proposal to carve Wiggins Telephone Association's (WTA) service area into wire-center-based service areas. It does so because the rural ILEC allocated its study area support to reflect relative costs at the wire center level. However, the CPUC request is contrary to the Act, the Joint Board recommendations and this Commission's rules and decisions.

The law requires an eligible telecommunications carrier (ETC) to provide services supported by universal service throughout the entire service area for which ETC designation is received.⁴ Section 214(e)(5) provides that for an area served by a rural telephone company, the term "service area" means the company's study area. Therefore, if a competitor receives ETC designation for an area served by a rural telephone company, it must offer service throughout the company's entire study area. The "service

³ 47 U.S.C. §214(e)(2).

⁴ 47 U.S.C. §214(e)(1).

area” may be comprised of something other than the company’s study area only if the Commission and the State establish a different definition, after taking into account the recommendations of a Federal-State Joint Board.

A. Redefining Rural Service Areas May Irreparably Harm Rural Telephone Companies and the Customers They Serve

When the Joint Board evaluated this issue, it recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, and with good reason. The Joint Board stated that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize “cream skimming” by competitors.⁵ “Cream skimming” is minimized since competitors must provide service throughout the rural telephone company’s study areas and cannot serve only the lowest cost portions of a rural telephone company’s study area.

The argument that it is not “cream skimming” when a wireless carrier provides service in those areas where it is licensed to provide service is not necessarily true. The argument does not address the fact that “cream skimming” may occur whether or not the wireless licensee chooses which area it serves. It is entirely possible that the lowest cost portion, or the area with the highest concentration of business and/or residential customers within a rural study area, is the only area the wireless carrier is licensed to serve. This inadvertent or accidental “cream skimming” by a wireless carrier is no less harmful than intentional “cream skimming,” and can do substantial damage to the rural telephone company and its remaining customers.⁶ Ultimately, it sets a dangerous

⁵ *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Rcd 87, 179-180 (1996).

⁶ The Commission has not yet clarified the meaning of “capture” and therefore competing ETCs receive support for service to the same customer. When and if the Commission defines the term, “cream

precedent to allow a wireless carrier to serve just a portion of a rural ILEC's study area. At best, the customers outside of the wireless carrier's licensed territory may be forced to pay higher rates to make up lost revenue and suffer decreased service quality; at worst, it may destroy a rural telephone company. The Commission has a duty to consider the adverse effect on rural customers regardless of the competitive carrier's good or bad intentions.

B. The CPUC and this Commission Lack the Information Necessary to Determine Whether Redefining WTA's Service Area is in the Public Interest

The CPUC and this Commission, having no ETC designation requests to consider, lack the facts needed to evaluate the effects of the requested change on WTA, its customers, and the cost to the public of supporting multiple supported competitors.

This Commission recently recognized the need for a case-by-case public interest analysis before carving up study areas. In *RCC Holdings, Inc.*, the Commission examined the rural service areas RCC Holdings sought to serve and in that particular case found that rural cream skimming would not occur.⁷ It stated that cream skimming concerns were "minimized by facts in [the] case."⁸ As evidenced by that statement, this Commission recognizes that there exist fact patterns whereby cream skimming would occur, even if the competing carrier has no choice over which areas it may serve. In the present case there is no way to determine the public interest of carving WTA's study area into wire-center-based service areas.

skimming" by ETC's with no carrier of last resort (COLR) obligations will result in higher per unit costs for the customers of carriers with COLR obligations.

⁷ *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181 (rel. November 27, 2002).

⁸ *Id.*, p. 12.

C. Disaggregation, in and of itself, does Not Eliminate the Potential Harm of Redefining Service Areas

The CPUC incorrectly assumes that the harm to WTA and its customers is minimized because the carrier chose to disaggregate its study area. It also assumes that more competition automatically supports smaller service areas. Its rationale for making federal universal service support available to competing carriers desiring ETC status, without requiring them to provide universal service throughout the rural carrier's study area, is simply that the action will help and encourage competitors. The CPUC goes so far as to name specific competitors its actions will aid.⁹ However, disaggregation was not intended to address a situation in which a wireless carrier is exempt from its universal service obligations for much of a rural carrier's service area, nor was it intended to induce competition. Carriers were permitted to disaggregate and target support below the study area level "so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service."¹⁰ The Joint Board and Rural Task Force recommended only that the level of disaggregation of support be "considered" in determining whether to certify new ETCs for a service other than a rural carrier's entire study area.¹¹ The CPUC mistakenly reads this as stating that competing ETCs must be enabled to enter areas and receive support at below the study area level to promote competition in the local exchange market.

⁹ CPUC Petition, pp. 9, 14.

¹⁰ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, And Further Notice of Proposed Rulemaking, CC Docket No. 96-45, CC Docket No. 00-256, 15 FCC Rcd 11244, ¶145 (rel. May 23, 2001).

¹¹ *Id.*, ¶ 164.

Further, this Commission has expressly rejected automatically disaggregating a study area for purposes of ETC designation when a rural incumbent carrier study area is disaggregated for purposes of targeting funding.¹² The FCC held that the statute requires a joint state and federal determination that precludes the Commission from settling the issue in advance with a rule. The CPUC rule at issue here also prejudices the issue contrary to the requirements of §214. A state should not be permitted to avoid the designation and certification process established by law.

II. NO ACTION SHOULD BE TAKEN IN THIS PROCEEDING DUE TO THE UNCERTAINTY SURROUNDING THE RELEVANT ISSUES

The core purpose of universal service support has always been and continues to be to help telephone companies in high-cost areas to make necessary investments in the infrastructure and to ensure that rural consumers have reasonably-priced, quality telecommunications services. There is growing concern about the sustainability of the universal service high cost fund under current rules and policies. The industry has changed since the original rules were put in place and programs and policies that put competition before the public interest are straining the universal service support system.

On November 8, 2002 the Commission requested the Federal-State Joint Board on Universal Service to review many of the Commission's rules relating to the high-cost universal service support mechanisms.¹³ The Joint Board is examining high-cost support levels in study areas with competitive ETCs, support for second lines and the process for

¹² *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 Telephone Cooperative Association, Order on Reconsideration, CC Docket No. 96-45, CC Docket No. 00-256, FCC 02-171, ¶17 (rel. June 13, 2002).*

¹³ *In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 02-307 (rel. Nov. 8, 2002) (Portability Proceeding).*

designating competitive ETCs.¹⁴ The Joint Board is also reviewing the methodology for calculating support for ETCs in competitive study areas and considering whether the Act's goals would be served if support were limited to a single connection to the end-user, whether provided by the incumbent or the competitive ETC.¹⁵ Specific to competition in rural areas, the Commission asked the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications and to what extent the FCC should provide additional guidance on the impact of the disaggregation of support on the designation of a service area other than the ILEC's study area.¹⁶

In addition to the policies and rules surrounding the designation of competing ETCs, the Commission has requested comment on whether equal access should be added to the definition of universal service.¹⁷ This will impact which carriers are eligible to apply for ETC designation and receive universal service funding.

Clearly, a change of universal service funding policies is imminent. A decision in favor of the CPUC would fly in the face of recognized shortfalls in the current system. It is inappropriate for the Bureau, using its delegated authority, to make decisions based on standards that the Commission is in the process of reviewing and revising.

Knowing that the ETC designation process is likely to be altered and that universal service funding may become more difficult to come by, there is danger that there is an incentive for carriers to obtain ETC designations and support quickly, before changes to the system are adopted. Carriers will come to depend on the windfall support,

¹⁴ Portability Proceeding, ¶ 1.

¹⁵ *Id.*, ¶¶ 5-9.

¹⁶ *Id.*, ¶ 10.

¹⁷ *Federal-State Joint Board on Universal Services*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 03-13 (rel, Feb. 25, 2003).

making it difficult to stop payment at a future date. Even if the support is stopped at a later date, immediate harm to the universal service fund and the consumers of this country could not be avoided. The potential explosion in the universal service fund cannot be ignored. There is also immediate harm to the rural ILECs and the customers they serve. The Commission must protect the public by postponing decisions on requests such as the one presented by the CPUC until the majority of the outstanding issues are settled.

III. CONCLUSION

The petition of the CPUC is contrary to law, policy and current FCC rules. The disaggregation plan of the PUC promotes competition at the expense of the public interest and should not be condoned by this Commission.

Further, given the fact that existing policies and rules that may directly impact the outcome of this proceeding are being re-examined, the Commission should defer any action until the issues are finally decided.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 03-1957 was served on this 27th day of June 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

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