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

Wireline Competition Bureau Seeks Comment on the Colorado Public Utilities Commission's Petition to Redefine the Service Area of Wiggins Telephone Association in the State of Colorado	)	CC Docket No.96-45 DA 03-1957

COMMENTS OF THE
WIGGINS TELEPHONE ASSOCIATION, INC.
SUPPORTED BY THE
COLORADO TELECOMMUNICATIONS ASSOCIATION, INC.

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SUMMARY

The comments of the Wiggins Telephone Association, Inc. ("WTA") are joined in and supported by the Colorado Telecommunications Association, Inc. ("CTA"). WTA's comments urge the Wireline Competition Bureau to act to initiate a proceeding to review the COPUC Petition. It urges forbearance in action in that proceeding pending resolution by the Federal-State Joint Board and the FCC of the significant policy issues addressed in this Docket.

WTA next argues that after initiation of proceedings, the Wireline Competition Bureau should take no immediate action to approve the COPUC Petition seeking redefinition of its service area(s) because to do so would be untimely, hasty and ill-advised in light of the significant policy issues that will have a direct impact upon this decision now pending before the Federal-State Joint Board.

WTA next asserts that COPUC cannot represent with certainty that approval of its proposed "service area redefinition" for WTA would not result in prohibited "cream-skimming."

WTA argues that in order for its service areas to be redefined to permit competitors to secure federal USF, any such competitor should provide service quality, features, functionality, access to emergency services and equal

access that is the equivalent of the quality of service WTA provides to its customers for which it receives federal USF support.

Finally, WTA strongly objects to the provision of USF support to wireless competitors for their traditional "wireless handset" customer base – a group of customers being served without BUS support and also served by pre-existing wireless network facilities.

OVERVIEW

The comments of the Wiggins Telephone Association, Inc. ("WTA") address the issues raised by the Petition of the Colorado Public Utilities Commission seeking FCC approval to redefine its service areas. These Comments are joined in and supported by the Colorado Telecommunications Association, Inc. ("CTA").

This is the third in a series of Petitions by COPUC seeking FCC approval of its service area redefinitions for Colorado rural telephone companies under Section 214(e) of the Federal Telecommunications Act and 47 C.F.R. Section 54.207(b). The first was captioned: "Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. Section 207(c); for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company." The second was captioned: "Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. Section 207(c); for Commission Agreement in Redefining the Service Area of Delta County Tele-Com, Inc., a Rural Telephone Company." The instant matter is the third Petition.

CenturyTel of Eagle, Inc. and Delta County Tele-com, Inc. filed so-called "Path Three" disaggregation plans with the COPUC and this Commission, disaggregating support into

two cost zones. WTA filed a "Path Two" disaggregation plan seeking to disaggregate support into four cost zones per exchange/wire center. Under the terms of the COPUC-approved Stipulation, WTA's support was disaggregated into three cost zones per exchange/wire center.

As a preliminary matter, WTA's comments urge the Wireline Competition Bureau to act to initiate a proceeding to review the COPUC Petition. It urges forbearance in action in that proceeding pending resolution by the Federal-State Joint Board and the FCC of the significant policy issues addressed in this Docket pursuant to the Public Notice of the Federal-State Joint Board on Universal Service issued on February 7, 2003 (FCC 03J-1).

WTA next argues that after initiation of proceedings, the Wireline Competition Bureau should take no immediate action to approve the COPUC Petition seeking redefinition of its service area(s) because to do so would be untimely, hasty and ill-advised in light of the significant policy issues that will have a direct impact upon this decision now pending before the Federal-State Joint Board. WTA respectfully requests that this COPUC Petition be treated as the prior Petition affecting TDS Telecom's Delta County Tele-Com, Inc. was treated – by the initiation of proceedings – rather than as the prior COPUC Petition for

redefinition of CenturyTel's service areas in Colorado. The latter COPUC Petition was approved by "default" under the provisions of 47 C.F.R. Section 54.207(c) (3) (ii).

WTA next asserts that COPUC cannot represent with certainty that approval of its proposed "service area redefinition" for WTA would not result in prohibited "cream-skimming." This is so because COPUC has heard no evidence in the NECC ETC Docket or any other that examines the potential "cream skimming" impact of service delivery to wireless customers of BUS service via traditional cellular handsets. In the absence of such evidence, facilitation of the competitive entry of a competitive provider by service area redefinition of WTA's study area could well be contrary to applicable Federal-State Joint Board recommendations that disapprove of "cream skimming" by a competitive provider.

WTA argues that in order for its service areas to be redefined to permit competitors to secure federal USF, any such competitor should provide service quality, features, functionality, access to emergency services and equal access that is the equivalent of the quality of service WTA provides to its customers for which it receives federal USF support. Additionally, just as WTA receives support based upon its own analyzed costs - any such support to a

competitor should only be provided based upon the analyzed costs of the competitor.

Finally, WTA strongly objects to the provision of USF support to wireless competitors for their traditional "wireless handset" customer base – a group of customers being served without BUS support and also served by pre-existing wireless network facilities. The facilitation of such an outcome is plainly contrary to the requirements of 47 C.F.R. Section 307(a) and is not in the public interest. The COPUC has never heard evidence concerning this issue nor has it made any determination about the validity of the qualification of such customers for ETC support in any ETC Docket it has considered to date. The focus of the Colorado ETC application proceedings has been upon the provision of Basic Universal Service offerings by the CETC employing fixed wireless technology powered by three watt transmitters and augmented by external premise antennae – not upon the provision of BUS service via traditional cellular handsets. Yet NECC currently receives support for its traditional wireless customer base in other rural company "single exchange" service areas in Colorado. If Congress had intended such support be authorized – or if it intended that scarce national resources be utilized to

support two primary connections to the customer premises, it would have so provided in the Federal Act. It did not.

INTRODUCTION

WTA appreciates this opportunity to respond to the call for comment by the Wireline Competition Bureau on the Petition of COPUC to redefine its service areas. WTA is a cooperative rural telephone company providing quality wireline service to over 1,700 cooperative member subscribers in northeastern Colorado. It meets the definition of a rural telephone company contained in 47 U.S.C. §153(37). WTA has been designated as an eligible telecommunications carrier (ETC) by the COPUC for its study area/service areas.

As noted in the COPUC Petition, WTA's current study area (which the COPUC Petition seeks to redefine into five separate service areas) is comprised of four exchanges that include five "service areas": the Wiggins, Grover, New Raymer, and Briggsdale wire centers and the Hoyt disaggregation service area. WTA elected to file a "Path Two" disaggregation plan under applicable FCC and COPUC rules. That plan was litigated before COPUC. As noted in the COPUC Petition, WTA entered into a Stipulation and Settlement Agreement with COPUC's Trial Staff and the Office of Consumer Counsel. NE Colorado Cellular ("NECC"),

an Intervenor in the Docket, did not join the Stipulation. The Stipulated Settlement Agreement was ultimately approved by the presiding Administrative Law Judge and by the COPUC after the filing of Exceptions by NECC that were rejected by COPUC. The COPUC Petition initiating this proceeding followed.

PROCEEDING TO REVIEW COPUC PETITION

WTA respectfully requests that the Wireline Competition Bureau take action to initiate a proceeding to review the COPUC Petition. In WTA's view, a reasoned approach involving actual review is important for several reasons.

First, as all are aware, the Federal-State Joint Board issued a Public Notice in this Docket on February 7, 2003 (FCC 03J-1) seeking comment on a number of policy issues relating to state commission certification of ETCs, the application of the "public interest" test as the same is applied in proceedings in which ETC certification is sought in rural company service areas and the portability of federal support. Numerous comments and reply comments have been filed in the Docket and the Federal-State Joint Board is slated to meet in Denver on July 28 to consider the filings.

While predicting future outcomes is uncertain at best, several strong indicators point to potential changes in policies concerning the certification of competitors in rural service areas, the standards of the "public interest" test, and the impact on the fund of state commission ETC certifications. In May of 2001, the FCC released its MAG Order that eliminated the Carrier Common Line charge for rate-of-return carriers and replaced it with an explicit and portable Interstate Common Line Support (ICLS) mechanism. In his separate statement issued with this Order, FCC Commissioner Kevin Martin said:

> "I also note that I have some concerns with the Commission's policy – adopted long before this Order – of using universal service support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund."[1]

In a recent speech before the National Telecommunications Cooperative Association, FCC Commissioner Jonathan Adelstein stated:

> I'm encouraging state commissioners to carefully consider the public interest when making their eligibility determinations, as is required by the Act.

[1] 2nd R&O and FNPRM in CC Docket No. 00-256, 15th R&O in CC Docket No. 96-45, and R&O in CC Docket Nos. 98-77 and 98-166, Released November 8, 2001, *Separate Statement of Commissioner Kevin J. Martin.*

> Specifically, states must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service. Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution. We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers.[2]

In a speech in October of 2002 commenting on the lessons learned from early experience with competition in telecommunications markets, FCC Chairman Michael Powell stated"

> [I]n introducing competition, we should no more trust the promised benefits and representations of competitive entrants as we do the promises to do no harm from incumbents. We must insist on market fundamentals that provide proper incentives for long term, sustainable competition. Just as we are aggressive in policing anticompetitive behavior, we should be equally aggressive in developing incentives that push entrants to enter in a manner that offers long-term, sustainable choice and meaningful welfare for consumers.

Second, review of the COPUC Petition here is important because of the unique nature of the proceeding. WTA is a small, rural cooperative company provider of local exchange service. It is not a CenturyTel or a TDS with multiple

[2] Remarks of Commissioner Jonathan Adelstein before the National Telephone Cooperative Association February 3, 2003.

operations in diverse locations. It is heavily reliant upon federal support to maintain its high quality customer service and affordable rates. It provides service in a "fragile market." Because it is small with limited resources, it is particularly vulnerable to competitive entry. It filed a Path Two disaggregation plan. NECC – the competitive provider seeking WTA's service area redefinition -- can only serve one of WTA's five "service area" locations (Wiggins) in its entirety because of its wireless licensure restrictions. NECC can only serve portions of the Hoyt disaggregation center because its cellular license does not authorize service in Weld and Adams counties. See, COPUC Petition, Attachment 8. However, because of the density of the Wiggins wire center/service area, NECC can serve about 1,019 of WTA's total customer base of 1,754. The Wiggins wire center and the Hoyt disaggregation center are the lowest cost proposed WTA "service areas." It appears that NECC cannot serve 18 customers in the Wiggins "service area" and 27 in the Hoyt dissagregation area because these customers are located outside the cellular RSA in Weld and Adams counties. Because of its cellular licensure restrictions, the putative competitor cannot serve WTA's three highest cost

service area locations and can only serve in a portion of the Hoyt disaggregation center.

Third, WTA suggests that getting it right from a consumer-oriented policy perspective is more important than getting it quickly. A reasoned consideration of the COPUC Petition taking into account any rule modifications arising from the Federal-State Joint Board review currently underway seems an imminently more sensible approach to dealing with the issues raised here than efforts after the fact to "grandfather" or "cure" any outcome that may prove to be an anomaly in hindsight. It is additionally important that approval come in the form of affirmative action and not by "default" to satisfy the requirements of 47 C.F.R. Section 54.207(b).

FOREBEARANCE IN ACTION

WTA further suggests that after initiation of proceedings, the Wireline Competition Bureau forebear action on the COPUC Petition pending the final outcome of the Federal-State Joint Board review now underway and any subsequent action by the full Commission. Again, hasty action to approve the COPUC Petition in light of potential impending changes in federal policy advances no immediate

consumer or competitive interest and has the prospect of long term harm for WTA.

As noted above, this is the third in a series of COPUC Petitions. WTA respectfully asks that the Wireline Competition Bureau treat this Petition as it did that of the COPUC seeking redefinition of the service areas of TDS Telecom's Delta County Tele-Comm, Inc. – by opening proceedings for further comment and review. Because of the circumstances here, WTA suggests that it would be inappropriate for the COPUC's WTA Petition to be approved by "default" or inaction as occurred in the case of CenturyTel of Eagle, Inc. under the provisions of 47 C.F.R. Section 207((c)(3)(ii).

"CREAMSKIMMING"

As the COPUC Petition properly notes, Section 214(e)(5) of the Act, and 47 C.F.R. Section 54.207(c)(1)both require that the state commission and the FCC, when seeking to redefine a rural company service area, take into account the recommendations of the Federal-State Joint Board concerning areas served by rural telephone companies. The service area standard is the "study area" until redefined by both state commission and FCC action. The COPUC Petition states: "Perhaps the Board's greatest concern with defining a rural company's service area to be

something other than its study area is the possibility of cream skimming or arbitrage by competitive ETCs." COPUC Petition, p. 11. The Petition then notes that disaggregation and targeting of support "...largely eliminates this possibility." This theme is emphasized throughout the COPUC Petition – that "cream skimming" possibilities have been eliminated by COPUC action in approving disaggregation to the WTA wire center level. WTA strongly disagrees.

COPUC has never considered the potential "cream skimming" impact of the provision of wireless service to qualifying Basic Universal Service (BUS) customers via wireless handsets. It did not do so in the CenturyTel/Western Wireless ETC proceeding or in the NECC ETC proceeding. It did not do so in the rulemaking proceeding that resulted in the adoption of its Rule 4 CCR 723-42-11 that directs the use of rural ILEC disaggregation plan filings as the basis for the disaggregation of rural company study areas into "...smaller discrete service areas." The rule in question served as the basis for the filing of the instant COPUC Petition.

NECC currently receives federal support in Colorado for the provision of BUS service in rural company service areas other than that of WTA for the provision of two

different services to its customers. The first is a fixed local loop service that involves a high-power receiver on the customer's premises and, if necessary, an external high-gain antenna. (This is the service delivery prototype for BUS service that was the proffered evidentiary basis advanced by Applicants in both the Western Wireless and NECC state commission ETC proceedings.) This service can cover a wide area, and was touted in the state commission proceedings to demonstrate NECC's coverage of each of the wire center areas that it can serve. NECC also offers traditional cellular service that uses lower-power handsets, and has a much smaller coverage area for each tower. After the receipt of its ETC designation by COPUC, NECC sought and has received federal support in rural company service areas other than that of WTA for its existing traditional wireless service plans. COPUC was treated to an evidentiary presentation on the telecommunications ETC version of fixed wireless (wireless local loop) but NECC subsequently claimed entitlement to support based on traditional wireless customer service plans employing half-watt handsets, most of which customers were undoubtedly in service before NECC's receipt of the ETC designation. The conventional NECC cellular product

features lower power and less "reach" than the fixed wireless loop product.

While COPUC has not examined evidence concerning this issue in any Docket to date, it is clear that "cream skimming" potential arises in this context that would not be alleviated by the filing of rural company disaggregation plans. If, in receiving support for its cellular handset customers, NECC is securing high-cost support for serving predominantly low-cost customers, that outcome would plainly result in prohibited cream skimming, and would not be in the public interest. NECC would be the beneficiary of "windfall" support. This result, if sustained by evidence in a contested proceeding, would be contrary to the language, spirit and intent of the recommendations set out in *Federal-State Joint Board on Universal Service in CC Docket No. 96-45,* 12 FCC Rcd. 87, para. 172(November 8, 1996), and in the Commission's Fourteenth Report and Order, paras. 136-164. But COPUC does not know whether such is the case, because it has heard no ETC proceeding in which such evidence has been presented.

Because COPUC has not reviewed this issue, it cannot represent with any degree of confidence as it does in its Petition that no prohibited "cream skimming" would take place if it's recommended "service area redefinition" for

WTA is approved. This "wireless local loop vs. cellular handset" coverage question presents a significant issue and should be examined before a final decision is made concerning the proposed service area redefinition for WTA's service areas.

COMPETITIVE EQUALITY AND CUSTOMER SERVICE EQUALITY

WTA provides high-quality telecommunications service to its customers and its customers expect such service. It believes that customers deserve the best no matter the technological means by which that service is delivered. WTA qualifies for federal support and uses that support to improve its network infrastructure and enhance the choices and services it provides its customers. It believes that any competitor that receives federal support should deliver the same high quality, customer oriented service.

Customers are entitled to be provided the safety and security of E911 services, particularly in the extremely rural terrain served by WTA. They should also be provided with equal access to permit "choice" in the selection of long distance service providers. (Customer "choice" in the selection of a long distance service provider should be a consideration of no less importance than "choice" in the selection of a basic local exchange service provider.)

WTA also believes that competitors in the BUS market should stand on an equal competitive footing. If it is to compete and thrive in the marketplace, WTA should not be hobbled with regulatory shackles that competitors do not wear. Such current WTA requirements, which will not be imposed on its CETC competitors, include being tabbed as the provider of last resort, having to maintain and utilize "line extension" tariffs, having stringent service quality requirements, and being subject to close regulatory scrutiny and process when seeking to change product prices or expand local calling areas. Neither should WTA be disadvantaged by the receipt of support based on its own costs, while competitors receive support that is not cost-based and that in some cases may constitute a "windfall." Before its study area is "redefined" in this proceeding, these important issues should be resolved.

The principles supported by WTA concerning appropriate customer treatment and regulatory fairness are very well articulated by comments and reply comments recently filed in this Docket by the National Association of State Consumer Advocates (NASUCA).

> If the goal underlying support for CETCs is to provide incentives to invest in facilities that provide telecommunications in high-cost areas, the rules

> should require that tangible benefits result from that support.[3]
>
> NASUCA agrees with CenturyTel that "…the Act…requires regulators to evaluate in a deliberate and thoughtful manner whether a competitor in a rural market will provide a beneficial alternative to the incumbent, or destabilize the fragile market, thereby hindering the delivery of universal service by *any* provider.[4]

In its Initial Comments at page 3, NASUCA said:

> NASUCA also urges more stringent requirements for ETC designation. Such designation should be granted only to entities providing communications service that is reliable, affordable and comparable to that of current incumbent providers of last resort. NASUCA presumes that providers using wireless and other technologies would continue to be eligible for ETC status. However, NASUCA recommends that eligible services by such providers must constitute basic, reliable and affordable connectivity. In addition, any ETC must be subject to certain aspects of state regulation even if it provides service using a technology that is not otherwise regulated by the state.

And at page 8, NASUCA says:

> ILECs typically provide high quality, highly reliable service ubiquitously throughout their service territory and are providers of last resort for that territory. Moreover, customers of ILECs have the substantial benefit of state regulation , which enforces service quality rules, billing and collection rules, and ensures just and reasonable rates. By contrast, wireless carriers are generally unregulated entitles that provide highly variable service quality, varying levels of customer service, unilaterally determined billing and collection policies,

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[3] Initial Comments of NASUCA, CC Docket No. 9645, FCC 03J-1, filed May 5, 2003, at page 9.

[4] Reply comments of NASUCA, CC Docket No. 9645, FCC 03J-1, filed June 3, 2003, at page 27.

> unilaterally determined rates and have no requirement to provide facilities in specific areas.

Finally, at page 9:

> It appears that, in finding that CETCs should be designated in rural ILECs' territories, the Commission and some states have found the mere encouragement of competition sufficient under the law to meet the public interest test. If that were sufficient, Congress would not have needed to establish the public interest test; the Commission and states would simply have been directed to authorize multiple ETCs in all ILECs' territories, rural or not.

CETC SUPPORT ENTITLEMENT

As noted above, NECC has qualified that part of its existing "handset" cellular customer base in several rural company "single exchange" service areas in Colorado for the receipt of support with USAC. This took place without an evidentiary showing by NECC before the COPUC in its ETC Application proceeding that such was its intention. In addition to the reasons set out in the "cream skimming" argument above, WTA asserts that such an outcome was neither intended by the Federal Congress nor contemplated by the FCC in the implementing rules adopted pursuant to the Federal Act.

It is plainly provided in 47 C.F.R. Section 54.307(a) that:

> A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.

WTA submits that no consumer benefit or competitive interest is served by the provision of federal support to a wireless provider with a network infrastructure in place for its existing cellular customer base. These are not "new lines" under any rational definition. Neither was such an outcome contemplated by the above rule, by the Federal Act or by the COPUC in its ETC certification of NECC.

Finally, it is WTA's position that universal service principles would not be advanced by approval of the COPUC Petition nor – for all the reasons outlined above - would the public interest be served. WTA strongly supports the principles outlined in the oft-referenced OPASTCO "White Paper" issued in January of 2003. That analysis, titled *Universal Service in Rural America: A Congressional Mandate at Risk* provides a comprehensive history and background on the federal high-cost support mechanisms, and provides principles and guidelines for policy makers as they carry out their important responsibilities related to universal

service funding and ETC status as required by the 1996 Act. The paper outlines six major policy principles:

1. Rural consumers should have affordable telecommunications services, comparable in quality and price to urban areas.

2. Funding should be sufficient to provide for critical infrastructure in rural areas.

3. The Universal Service Fund is a scarce national resource. Therefore, supporting multiple carriers is in the public interest only when benefits exceed costs.

4. The Universal Service Fund should not be used to create uneconomic competition.

5. All carriers receiving support should be held to the same service obligations and regulatory standards.

6. Funding should come from the broadest base of providers and services.

The OPASTCO recommendations are buttressed and strengthened by the previously cited initial Comments of NASUCA in this Docket. With respect to the issue of whether Congress intended that multiple connections to a customer premises be supported by the Universal Service Fund, NASUCA has this to say at page 6 of its Comments:

> The primary principle of universal service is to provide affordable access to telecommunications service in every household in the United States. Although other goals are permissible under the 1996 Act, none of the permissible goals suggest any intent of Congress that universal service funds be used primarily to support competition or to support multiple connections for a single household. Given the recent and projected growth in the needs of the fund, it is apparent that under the current rules the

> essential purposes of universal service may be harmed in favor of either secondary or impermissible goals.

WTA agrees. After opening a proceeding to examine the COPUC Petition in further detail and securing guidance from the decisions of the Federal-State Joint Board on the issues discussed in these Comments, the Wireline Competition Bureau should, at the appropriate time, exercise its discretion to accept or reject the COPUC recommendations concerning "service area redefinition" for WTA's study area.

CONCLUSION

WTA urges the Wireline Competition Bureau to:

(1) Initiate a proceeding to review the COPUC Petition;

(2) Forbear action until current pending policy issues are resolved;

(3) Consider rejecting the COPUC Petition because of the "cream skimming" implications of its proposed service area redefinition;

(4) Consider rejecting the COPUC Petition because of its failure to provide evidence that its suggested service area redefinition for WTA provides benefits that outweigh the adverse impacts on universal service; and

(5) Consider rejecting the COPUC Petition because COPUC has not examined the impact on universal service of providing support to CETC "handset" customers.

Thank you for the opportunity to comment.

Respectfully submitted this 27th day of June, 2003.

/s/

Barry L. Hjort
Attorney for Wiggins Telephone Association and also for the Colorado Telecommunications Association, Inc.

Service List (By Hand):

FCC Commissioners
Chief, Wireline Competition Bureau