

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of the Minnesota Public Utilities Commission for)	
Agreement With Changes in Definition of Service Areas)	
for Exchanges Served by CenturyTel, Citizens)	
Telecommunications of Minnesota, Inc., Mid-State)	
Telephone Company, Scott-Rice Telephone, United Tel Co)	
of Minnesota (UTC of Minnesota), Federated Telephone)	
Company, Melrose Telephone Company, Winsted)	
Telephone Company (TDS Telecom), Eckles Telephone)	
Company (Blue Earth Valley Telephone Company),)	
Lakedale Telephone Company, and Farmers Mutual)	
Telephone Company.)	

COMMENTS OF MINNESOTA INDEPENDENT COALITION

The Minnesota Independent Coalition and seventy-four rural telephone companies that are members of the MIC (collectively the “MIC”) submit these Comments in response to the Commission’s August 12, 2003 Public Notice regarding the Petition of the Minnesota Public Utilities Commission (“MPUC”) to redefine the service areas of twelve rural telephone companies in Minnesota (the “MPUC Petition”). Nine of these rural telephone companies are members of the MIC.¹ The MPUC Petition arises from a decision by the MPUC to designate Midwest Wireless Communications, LLC (“Midwest Wireless”), a cellular mobile radio service

¹ Members of the MIC include Mid-State Telephone Company (TDS Telecom), Scott-Rice Telephone Company, Federated Telephone Company, Melrose Telephone Company, Winsted Telephone Company (TDS Telecom), Eckles Telephone Company, Lakedale Telephone Company, Farmers Mutual Tel Co, and CenturyTel of Minnesota, Inc. (CenturyTel).

("CMRS") provider, as an Eligible Telecommunications Carrier ("ETC") throughout its licensed territory in Minnesota (the "MPUC Designation Order").² As more fully set forth below:

1. Redefinition is not needed to enable Midwest to provide service throughout the service areas of all rural LECs wholly or partially within Midwest's licensed CMRS area;
2. Disaggregation of high cost support under Rule 54.315 does not support redefinition of service areas under Rule 54.207, and no MIC member has disaggregated its high cost support below the exchange level;
3. Redefining exchanges on the edge of Midwest's CMRS licensed area into separate service areas will have no current effect because of limitations in Midwest's signal coverage; and
4. The Commission should stay further consideration of the MPUC Petition until it resolves the pending, very substantial issues relating to certification of competitive ETCs.

For areas served by a "rural telephone company,"³ Section 214(e)(5) of the Act⁴ provides that a rural carrier's "service area" for federal support purposes⁵ "means such company's 'study area' *unless and until* the Commission and the States, *after taking into account* the recommendations of the Federal-State Joint Board . . . , *establish a different definition* of service area for such company."⁶ Both state regulators and the Commission are required to agree that there is a sufficient basis to overcome the presumption that a competitive ETC's service area should be the same as the incumbent LEC's study area. The Commission has a statutory duty to weigh the public interest consequences of the MPUC Petition, and to consider the recommendations of the Federal-State Joint Board ("Joint Board") before approving a redefinition of such a service area. Consideration of relevant factors shows that the MPUC Petition should be denied.

² ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING FURTHER FILINGS, Petition of Midwest Wireless Communications, LLC, MPUC Docket PT-6153/AM-02-686 (March 19, 2003) ("MPUC Designation Order").

³ 47 U.S.C. § 151 *et seq.*

⁴ 47 U.S.C. § 214(e)(5)

⁵ Section 54.207(a) of the FCC's rules defines "service area" as the geographic area "for which the carrier shall receive support from federal universal service support mechanisms." 47 C.F.R. § 54.207(a).

I. Redefinition is not needed to enable Midwest to provide service throughout the service areas of all rural LECs wholly or partially within Midwest’s licensed CMRS area.

It is not necessary to redefine service areas of incumbent LECs that are wholly or partially within Midwest’s licensed CMRS area, because there are several alternatives available to Midwest to provide service both inside and outside of its CMRS licensed area. Conversely, the practice of redefining service areas removes any significant incentive that competitive ETCs might otherwise have to serve *all* the highest cost customers in a study area. Redefinition merely enables a competitive ETC to avoid providing service in areas it would rather not serve, and a *preference not to serve* customers is far different from an *inability to serve*. Redefinition of service areas should not be based on mere preferences of competitive ETCs, but rather should be based on a demonstrated inability to provide service.

Midwest Wireless certainly has the ability to offer service beyond its licensed CMRS service area. Cellular providers can serve the entirety of a rural LEC’s study area, including exchanges outside of their licensed areas, through a combination of their own facilities, roaming agreements, and resale.⁷ In fact, the MPUC noted the ability of Midwest to use a combination of its own facilities and “resale of existing service” in rejecting arguments that the MPUC should impose timetables for providing service through its own facilities in response to customer service requests.⁸ The same ability to use resale of existing service shows that Midwest can provide service outside of its licensed CMRS area and can certainly do so for exchanges that are contiguous to its licensed CMRS service area⁹ and for exchanges that are partially within and

⁶ 47 U.S.C. § 214(e)(5) (emphasis added).

⁷ 47 U.S.C. § 214(e)(1)(A).

⁸ *MPUC Designation Order* at p. 6.

⁹ The proposed redefinition of service areas would exclude a number of exchanges that are contiguous to exchanges that are at least partially inside of the proposed Midwest service area, including two exchanges of Federated (Holloway, and Danvers) one exchange of Mid-State (Terrace), one exchange of Melrose (Richmond), and one exchange of Scott-Rice (New Market).

partially outside of its licensed CMRS service area. Having availed itself of its rights to use facilities and services of other carriers, Midwest should not be allowed to ignore those service alternatives when the question of service area is addressed.

Nothing in the MPUC Petition indicates Midwest Wireless cannot serve an entire study area if it chooses to do so by using any of the above-mentioned methods or that it has even attempted to even explore this option with the MPUC or other providers. These facts confirm that the request for redefinition of service areas reflects preferences and convenience for Midwest rather than a benefit to Minnesota customers.

The MPUC Petition relies on a portion of the *Universal Service Order* that caution against defining service areas that are too large.¹⁰ That reliance is misplaced, however, because that portion of the *Universal Service Order* addressed the proper considerations for redefining the service areas on non-rural LECs.¹¹ The Act sets forth very different criteria for determining the service areas of rural and non-rural LECs and for the underlying issue of whether multiple ETCs should be designated.¹² Accordingly, the MPUC's reliance on the *Universal Service Order* is misplaced.

II. The disaggregation of high-cost support under Rule 54.315 does not support the MPUC Petition, and no MIC member has disaggregated its high cost support below the exchange level.

The MPUC Petition requests that the service areas of fourteen exchanges served by eight separate MIC Members be redefined to areas smaller than the exchange level. However, the MPUC Petition requests that only the CenturyTel service area be redefined to the exchange level, even though Midwest serves some, but not all, exchanges of other rural telephone companies as

¹⁰ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶189 (1997) (“*Universal Service Order*”).

¹¹ *Universal Service Order* at ¶184

¹² 47 U.S.C. § 214(e)(2) and (5).

well.¹³ This indicates that the MPUC Petition, and perhaps the *MPUC Designation Order*, may rest on the incorrect assumption that the *disaggregation* of high cost support under Rule 54.315 resolves the issue of *redefinition* of service areas under Section 214(e)(5) and Rule 54.207.

A. Disaggregation of high-cost support under Rule 54.315 does not support redefining service areas under Rule 54.207.

The MPUC Petition asserts that: “numerous companies in Minnesota and other states have redefined their own service areas to disaggregate them to the exchange or sub-exchange level pursuant to the Commission rules.”¹⁴ The MPUC Petition further asserts that:

Although most Minnesota telephone companies have disaggregated their own service areas to the exchange level, and even into cost zones within the exchanges, one company of concern in this petition has not elected to do this. *It is necessary, therefore, to redefine CenturyTel’s service area to the exchange level so that Midwest Wireless is required to serve only the CenturyTel exchanges that fall within its Minnesota wireless service territory.*¹⁵

The MPUC Petition is clearly referring to the disaggregation of high cost support under Rule 54.315, and assuming that “disaggregation” made “redefinition” unnecessary. However, disaggregation of high cost support under Rule 54.315 is entirely separate from the redefinition of a service area under Rule 54.207 and provides no substitute for the careful consideration by both the MPUC and the Commission before redefinition of a service area under Section 214(e)(5) of the Act and Rule 54.207. Rather, any such assumption contradicts the Commission’s previous conclusion that a service area should not automatically be redefined when high cost support is disaggregated, because such automatic redefinition of a service area would be contrary to Section 214(e) of the Act.¹⁶

¹³ Midwest’s service area covers the entire area of *some* exchanges, but *not all* exchanges of Mid-State, Citizen’s, and United Telephone Company of Minnesota. None of these rural telephone companies have had their service areas redefined to the exchange level.

¹⁴ MPUC Petition at p. 6 (Emphasis added.)

¹⁵ Id at 8.

¹⁶ *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*

B. No incumbent LECs have disaggregated high-cost support to the extent of the proposed redefinition of service areas.

Both the MPUC Petition and the *MPUC Designation Order* appear to rest on the disaggregation of high cost support by “most Minnesota telephone companies” as a significant part of the rationale to ignore the risks of cream-skimming.¹⁷

There are three factual defects in the MPUC’s reliance. First, what Minnesota LECs *outside* of the Midwest license area may have done is irrelevant to the request for redefinition of service areas *inside* the Midwest license area. Disaggregation of high cost support in another area has no impact on the risk of mismatch of cost and support levels in the area served by Midwest.

Second, contrary to the MPUC’s assertion, only twenty-one of eighty-six LECs in Minnesota disaggregated their high cost support.¹⁸ This is far less than a majority of LECs in Minnesota.

Third, even fewer of the LECs in the Midwest CMRS licensed area have disaggregated their high-cost support, and none have disaggregated high-cost support below the exchange level. Of the nine MIC members within the scope of the MPUC Petition, eight are multiple exchange LECs. Of these eight multiple exchange LECs, four have disaggregated their high-cost support to the exchange level, but none have disaggregated high cost support below the exchange level.¹⁹ Clearly, no disaggregation of high cost support by MIC members conforms to the MPUC

Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association, Order on Reconsideration, 17 FCC Rcd 11472, ¶ 17 (2002). (“MAG Order”); see also Comments of National Telecommunications Cooperative Association at 4 (citing to Commission rejection of automatic disaggregation for purposes of ETC designation when a rural incumbent carrier disaggregates for purposes of targeting support).

¹⁷ The *MPUC Designation Order* reads in part:

Most Minnesota telephone companies, including Citizens and Frontier, have elected to disaggregate their own service areas down to the exchange level for universal service purposes, and even to subdivide their exchanges into cost zones. At p 9.

¹⁸ <http://www.universalservice.org/hc/disaggregation/checklist/minnesota.xls>

Petition that fourteen exchanges served by eight MIC members be redefined below the exchange level.

For example, Mid-State Telephone Company (“Mid-State”) has eleven exchanges in Minnesota. Mid-State has disaggregated high cost support to the exchange level. Mid-State’s service area in Minnesota includes all eleven exchanges. As shown in the Attachment 3 to the MPUC Petition, three of those eleven exchanges (Pennock, New London, and Spicer), are entirely within the proposed Midwest service area. Four Mid-State exchanges (Irving, Sunburg, Murdock and Kerkhoven) are partially within the proposed Midwest service area, and four Mid-State exchanges (Brooten, Danube, Sedan and Terrace) are completely outside of the proposed Midwest Service area.

Melrose Telephone Company (“Melrose”) has eight exchanges. Melrose has also disaggregated high cost support to the exchange level. Five of those exchanges (Greenwald, Melrose, Richmond, St. Martin and Grey Eagle) are completely outside of the proposed Midwest service area. Three exchanges (Eden Valley, Watkins and Kimball) are partially within the proposed Midwest service area, and no exchanges are entirely within the proposed Midwest service area.

Scott-Rice Telephone Company (“Scott-Rice”) has not disaggregated high cost support. It has three exchanges, two of which (Prior Lake and New Market) are completely outside of the proposed Midwest service area, and one of which (Webster) is partially within the proposed Midwest service area.

Under such circumstances, any resemblance between support levels that Midwest may receive (for serving some exchanges or portions of some exchanges of these LECs) and the LECs’ underlying costs is purely coincidental.

¹⁹ Federated Telephone Cooperative has disaggregated its high cost support to the exchange level.

These factors call into question the basis for both the MPUC Petition and the *MPUC Designation Order*. Certainly, the Commission cannot rely on such assertions in making its determination under Section 214(e)(5) of the Act and Rule 54.207.

III. Redefinition of exchanges on the edge of Midwest's licensed area into separate service areas will have no current impact because of limitations in Midwest's signal coverage.

The MPUC Petition requests that the Commission concur in the MPUC's decision to redefine fourteen individual exchanges, which are on the edge of the Midwest license area, into separate service areas that include only portions of those exchanges. Since there is no indication that Midwest will actually provide service in these areas, there will be no current impact from such a redefinition. The absence of any current impact underscores the advantage of refraining from further decisions regarding competitive ETCs while the Joint Board is actively considering all of these issues. Further, the Commission should not, under any circumstances, alter the *study areas* of incumbent LECs as a result of this proceeding.

As part of the rationale for approval of redefinition of service areas, the *MPUC Designation Order* asserts that Midwest is not targeting areas based on cost, saying in part:

[T]he record does not support the suggestion that the company is targeting areas based on their cost characteristics. *Rather, the Company is targeting all areas within its licensed service territory.* Any correlation between the Company's disaggregation proposal and the cost characteristics of the areas the Company seeks to serve appears to be coincidental.²⁰ (Emphasis added.)

This passage could be read to suggest that Midwest is providing cellular service throughout its licensed area. Such an inference would be entirely incorrect.

Midwest is clearly focusing its service on more densely settled areas and heavily traveled highway corridors within its licensed area, as the locations of its tower sites make clear. The record before the MPUC also makes it clear that Midwest was willing only to study alternatives

²⁰ MPUC Petition at p. 12 quoting page 9 of the *MPUC Designation Order*.

for making service available and was unwilling to make any commitments in regards to when customers outside of its coverage areas would actually receive cellular service. Accordingly, it is clear that Midwest is “targeting all areas” only to the extent of its request for ETC designation, which conforms to its entire licensed area irrespective of where it is actually providing cellular signal and service.

The Commission has not required CMRS providers to provide full signal coverage for an area to obtain basic ETC designation. However, the Commission should not take the additional step of redefining separate exchanges into separate service areas, much less redefining individual exchanges into separate service areas, without a showing that the competitive ETC is either providing service in such areas or has clear plans to do so. In the absence of such a showing, there can be no significant public benefit, and any redefinition of service areas is premature. Any argument for redefinition rests on the fiction of coverage and service where there is none. Here there is no such showing, and the Commission should not redefine service areas without such a showing.

The MPUC Petition blurs the distinction between redefining study areas and redefining service areas, saying in part:

Thus it is necessary to redefine *the study and/or service areas*[s] of Farmers’ Mutual Tel. Co. to exclude the portions of the Bellingham and Cerro Gordo wire centers that Midwest is unable to serve. The exchanges of the remaining 10 rural companies involve similar circumstances.²¹ (Emphasis added.)

Rule 54.207 makes it clear that requests to redefine service areas for purposes of designation of competitive ETCs do not require LECs to redefine their own “study areas.” In

²¹ MPUC Petition at p. 11.

contrast, “study areas” have been frozen since 1984,²² and any alteration of study areas requires a specific waiver from the Commission.

Amendment of study areas would impose severe administrative burdens on LECs, and there is no indication that the MPUC intended to impose such administrative burdens on LECs. To the contrary, the MPUC asserts that its actions with respect to service area redefinition will not increase the administrative burdens of incumbent LECs.²³ Accordingly, the Commission should not alter incumbent LEC study areas in any way as a result of the MPUC Petition.

IV. The Commission should stay consideration of the MPUC Petition until it resolves the pending issues relating to certification of competitive ETCs.

On February 7, 2003, the Joint Board issued a Public Notice, which sought comment on many universal service issues, including the process for designating ETCs and the methodology for calculating support in competitive study areas.²⁴ For example, the Joint Board has asked for comment on “what weight should states place on the presence of [disaggregation] zones when determining whether the designation of a competitive ETC below the study area level is in the public interest.”²⁵ Perhaps even more fundamentally, the Joint Board seeks comment on whether “providing universal service support for multiple ETCs in high-cost areas result[s] in inefficient competition and impose greater costs on the universal service fund.”²⁶ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

²² 47 C.F.R. Part 36-Appendix-Glossary

²³ MPUC Petition at p. 12 quoting *MPUC Disaggregation Order*.

²⁴ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Public Notice).

²⁵ Joint Board Public Notice at ¶ 35.

In addition, entry of Midwest Wireless into rural Minnesota study areas should not be viewed as an isolated, static issue. The Commission must consider the implications of the MPUC Petition if additional wireless providers follow Midwest Wireless' example and seek additional disaggregation and redefinition of these exchanges to fit their individual wireless footprints. If the rationale for redefinition of a service area is to fit a CMRS provider's licensed area, it is highly probable that multiple different service areas will overlap the same underlying geographical areas.

Further, a number of petitions for redefinition of service areas are currently pending before that Commission²⁷ and it is highly probable that the number of applications will continue to increase. As a result, a number of parties have recommended that the Commission stay the approval of additional ETC applications until the issues being considered in the Joint Board Public Notice are resolved.²⁸

The same considerations apply here to the request for disaggregation set forth in the MPUC Petition. While the threshold issue of ETC designation of Midwest is not before the Commission, the same considerations apply to the related issue of disaggregation. The public interest would best be served by staying further individual decisions during the period when key policies related to universal service support levels and ETC designations are currently under review, and the Commission has taken a similar approach in prior decisions.²⁹

²⁶ *Id.* ¶ 16.

²⁷ E.g. *Matter of Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, CC Docket 96-45 .

²⁸ *See*, Verizon Comments in CC Docket No. 96-45 (filed July 7 and July 14, 2003), pp. 1, 8. This proposal is similar to one made by the National Telecommunications Cooperative Association (NTCA) in their reply comments to the Joint Board Portability Public Notice. *See*, NTCA Reply Comments in CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23; ; OPASTCO Comments in CC Docket No. 96-45 (filed August 18, 2003); Comments of Delta County Telecom, Inc. in CC Docket No. 96-45 (filed February 6, 2003); Reply Comments CenturyTel of Eagle, Inc in CC Docket No. 96-45 (filed February 21, 2003).

²⁹ The Commission imposed an interim cap on USF support for local exchange carriers from January 1, 1994 until January 1, 1996 to moderate the fund's growth during its pending Part 36 USF rulemaking proceeding. *See*, *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286,

V. Conclusion.

For the reasons set forth above, the Commission should reject the MPUC Petition for redefinition of service areas or stay consideration of the MPUC Petition pending completion of the Joint Board proceeding.

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Respectfully submitted,

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Report and Order, 9 FCC Rcd 303 (1993), Erratum (1993). The interim cap was further extended until May 8, 1997, to facilitate the transition to the new universal service rules that were adopted at that time. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 11 FCC Rcd 7920 (1996).