

ORDER NO.

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1083

In the Matter of)
)
RCC MINNESOTA, INC.)
)
Application for Designation as an Eligible)
Telecommunications Carrier, Pursuant to)
the Telecommunications Act of 1996.)

ORDER

**DISPOSITION: APPLICATION FOR CERTIFICATION GRANTED;
STUDY AREA REDEFINED**

On May 12, 2003, RCC Minnesota Inc. (RCC) filed this application for designation as an eligible telecommunications carrier (ETC) authorized to receive money from the federal Universal Service Fund. Staff participated in the docket and ultimately recommended granting the application, with the requirement that RCC file specific reports on its collection and expenditure of federal universal service funds in its annual recertification process. The Oregon Telecommunications Association (OTA) and others intervened and actively opposed the application for designation in the rural areas because it felt that the application was not in the public interest. We find that the application is in the public interest, and grant the application with the conditions suggested by Staff.

PROCEDURAL BACKGROUND

On May 12, 2003, RCC filed its application. Verizon Northwest, Inc. (Verizon), OTA, Midvale Telephone Exchange (Midvale), and Malheur Home Telephone Company (Malheur Home) filed petitions to intervene, which were granted on September 4, 2003. A standard protective order went into effect on the same date. *See* Order No. 03-538. Verizon did not actively participate in the docket and filed one brief, which is addressed in this order. Midvale and Malheur Home submitted testimony and participated in the hearing but did not submit legal briefs.

The parties stipulated to Commission jurisdiction over the matter and filed opening testimony on October 23, 2003. A second round of testimony was filed on

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December 1, 2003. A three-day hearing was held from December 15 through 17, 2003. The parties filed briefs in February and March.

The Federal Communications Commission (FCC) released its decision in *Highland Cellular* on April 12, 2004, which prompted the parties to recommend further briefing and analysis. *In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37, 19 FCC Rcd 6422 (released April 12, 2004). Subsequent briefs were filed by Staff on April 28, 2004; OTA on May 5, 2004; and RCC on May 10, 2004. All parties filed their last round of briefs on May 28, 2004, including RCC's amendment to its application, and RCC filed a revised map on June 4, 2004.

The Commission held oral arguments on June 10, 2004. RCC moved that the transcript from the oral argument in *In the Matter of United States Cellular Corporation, Application for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, UM 1084, be admitted into the record of this proceeding. That motion was granted.

VERIZON'S MOTION

At the outset, we acknowledge Verizon's brief in this docket. Verizon participated in neither testimony nor the hearing, and it filed one brief. In its brief, Verizon suggested that the Commission defer any action on the ETC applications until the FCC has acted on recommendations of the Federal-State Joint Board on Universal Service. The recommendations of the Joint Board were issued on February 27, 2004. *See In the Matter of Federal-State Joint Board on Universal Service*, FCC 04J-1, 19 FCC Rcd 4257 (released Feb 27, 2004). RCC argued that ETC designations should not be delayed while the FCC goes through what could be a long process in making a final determination on the recommendations of the Joint Board. In addition, we note that the FCC itself, standing in the shoes of another state commission has proceeded with ETC designations. *See Highland Cellular* (released April 28, 2004). For these reasons, we decline Verizon's suggestion to defer action on an ETC application until the FCC has taken final action on the recommendations of the Federal-State Joint Board.

APPLICABLE LAW

The federal Telecommunications Act of 1996 (Act) sets out the parameters for designation of ETCs but grants wide latitude to the state public utility commission to develop its own standard of public interest. To evaluate this application, we first examine the framework under federal law, and then we address each requirement in turn.

Federal Framework

Section 254 of the Act governs the Universal Service Fund (USF). The statute states that universal service policies should promote quality services at just, reasonable, and affordable rates; access to advanced telecommunications and information services; access to services in rural areas comparable to services in urban areas; and other policies as are developed over time. 47 USC § 254(b). The statute also states, "Universal service is an evolving level of telecommunications services." 47 USC § 254(c)(1). Telecommunications carriers that have been designated ETCs under section 214(e) "shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 USC § 254(e).

An ETC only receives USF support for customers that it serves in areas where USF support is distributed. 47 CFR § 54.307(a). The ETC can offer services, either using its own facilities or through a combination of its own facilities and resale of another carrier's services. 47 USC § 214(e)(1). An ETC does not receive support if it serves a customer through resale of another carrier's facilities, but only if it serves the customer using its own facilities. 47 CFR § 54.307(a)(3). The amount of support provided to the ETC for a customer line mirrors the amount provided to the incumbent local exchange carrier (ILEC) for that customer line. 47 CFR § 54.307(a)(4).

The basic test for whether an applicant should be designated as an ETC is (1) whether it offers the services supported by federal universal service support mechanisms, and (2) whether it advertises those services. 47 USC § 214(e)(1). The Act then requires two different standards for granting ETC designation depending on what type of ILEC serves the area in which ETC status is sought. Where a non-rural ILEC serves the area, the state commission shall designate more than one ETC "[u]pon request and consistent with the public interest, convenience, and necessity." 47 USC § 214(e)(2). Where a rural ILEC serves the area, the state commission may choose to designate more than one ETC only after a specific finding "that the designation is in the public interest." *Id.*

The map at Appendix A indicates the entire service area for which RCC is seeking ETC designation. The chart at Appendix B indicates which wire centers it seeks to serve, according to ILEC. RCC proposes to serve at least part of the service areas served by the following ILECs: Qwest Corporation (Qwest), Verizon, CenturyTel of Oregon, Inc., and CenturyTel of Eastern Oregon, Inc. (collectively "CenturyTel"), Eagle Telephone System, Inc. (Eagle), Helix Telephone Co. (Helix Tel), Midvale, Malheur Home, Oregon Telephone Corp. (Oregon Tel), Pine Telephone System, Inc. (Pine Tel), and Sprint/United Telephone Co. of the Northwest (Sprint).

To evaluate RCC's application, we will address each requirement – provision of the services supported by the universal service fund, advertisement of those services, and, in areas served by local exchange carriers, the finding of public interest – in turn.

I. USF Supported Services

The services supported by federal universal service support mechanisms are listed in federal regulations:

1. voice grade access to the public switched network;
2. local usage;
3. dual tone multi-frequency signaling, or its functional equivalent;
4. single-party service, or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange service;
8. access to directory assistance; and
9. toll limitation for qualifying low-income customers.

47 CFR § 54.101(a). The rule provides further definitions of each service. RCC asserted in its application, and no party has disputed, its ability to provide the nine supported services. *See* Application of RCC Minnesota, Inc., for Designation as an Eligible Telecommunications Carrier, RCC/1 at ¶¶ 12-20 (Application).

The only matter of contention regards the quantity of local usage minutes provided by RCC's rate plans. The rule defines local usage as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 CFR § 54.101(a)(2). The FCC has declined to require a certain number of minimum minutes, and we are not aware of state commissions that have elected to impose a minimum number of minutes. *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 03-338, 19 FCC Rcd 1563, ¶ 22 (released Jan 22, 2004) (*Virginia Cellular*); *Smith Bagley*, Dec No 66566, ¶ 38 (AZ Corp Commn, Nov 18, 2003) (*Smith Bagley III*). OTA argues that this Commission should require that RCC offer an unlimited number of local minutes, if not as part of the local usage requirement, then under the public interest finding.¹

¹ OTA asserts that the Minnesota Commission has imposed this requirement. A reading of the Minnesota Commission's order reveals that the ETC applicants offered plans with unlimited usage, and the Minnesota Commission endorsed those plans. *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285 at 22 (Oct 27, 1999) ("The Commission accepts Minnesota Cellular at its word -- and intends to hold it to its word -- that it will offer at least one universal service package with unlimited local usage priced within 10% of the incumbents' standard rates.") RCC makes no such offer in this case, so we evaluate the local usage requirement according to the law.

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RCC has submitted its current local usage plans. The plans begin with \$10 per month for a package including no local minutes; \$20 per month for a plan including 100 "anytime minutes;" \$40 per month for a plan with 500 "anytime minutes;" or \$50 per month for a plan with 1000 "anytime minutes." Each plan offers additional minutes to be paid for on a per minute basis. RCC plans comport with the federal local usage requirement. Moreover, as the Arizona Commission noted, if none of the plans suit the needs of the customers, RCC will not be able to acquire customers or the USF support funds that go with those customers. *Smith Bagley III* at ¶ 37.

In addition, RCC has committed to complying with any local usage requirements as may be established by the FCC in the future. *See Application, RCC/1* at ¶ 13. This commitment has satisfied other jurisdictions, *Highland Cellular* at ¶ 15; *Virginia Cellular* at ¶ 14; and we also find it satisfactory.

As to provision of access to emergency services, RCC's testimony stated that it provides standard 911 service throughout its service area, better known as E911 Phase 0. RCC has also deployed E911 Phase I, which adds a callback number and identifies the cell site or call sector, in all of its service area except Lake and Harney counties. In its testimony, RCC committed to adding E911 Phase 2 as it upgrades its facilities throughout its network in Oregon. *See Testimony of Kyle Gruis, RCC/19, Gruis/3* at l. 8-22. OTA stated that it believes that RCC is making sufficient progress in upgrading its network and does not argue that additional requirements should be added to this part of the application.

II. Advertisement of Services

RCC committed to advertise the availability of each of the supported services throughout its licensed service area. Possible methods of advertisement include newspaper, magazine, direct mailings, public exhibit and displays, bill inserts, and telephone directory advertising. In addition, RCC stated it would advertise the availability of Lifeline and Linkup assistance through the methods of advertising above, as well as reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Linkup benefits. OTA recommends that this Commission require RCC to file an advertisement plan. We find that RCC's commitment to advertise the supported services meets the statutory requirement under federal law for certification and will require an advertising plan to be submitted at the annual recertification process.

III. Type of Incumbent ILEC

A. Areas served by non-rural ILECs

As discussed above, the Commission shall designate a second ETC where it offers and advertises the nine supported services listed in 47 CFR § 54.101(a) in an area served by a non-rural ILEC, if it is "consistent with the public interest, convenience, and necessity." 47 USC § 214(e)(2). The FCC has stated, "[F]or those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest." *In the Matter of Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, DA 02-1252, 17 FCC Rcd 9589 ¶ 13 (released May 24, 2002) (*Pine Belt Order*).

The Act defines a "rural telephone company" as a

local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either--

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 USC § 153(37). Qwest and Verizon are considered non-rural ILECs under the Act. *See In the Matter of the Investigation Into Expansion of the Oregon Universal Service Fund to Include the Service Areas of Rural Telecommunications Carriers*, UM 1017, Order No. 03-595, 3 (Oct 2, 2003) (referring to Qwest and Verizon as Oregon's two non-rural ILECs). Despite being defined as non-rural ILECs, Qwest and Verizon serve many rural areas in Oregon. Neither Qwest nor Verizon opposed this application.

RCC has shown that it provides the nine supported services and has pledged to advertise them throughout the area. Because compliance with those requirements is "consistent *per se* with the public interest," *Pine Belt Order* at ¶ 13, RCC's application as to the wire centers served by Qwest and Verizon should be granted.

B. Areas served by rural ILECs

For areas served by rural ILECs, federal law requires that the Commission must also find that "the designation is in the public interest." 47 USC § 214(e)(2). Federal law neither defines "public interest" nor provides additional guidance, except through FCC decisions on individual ETC designations.² We may also impose additional requirements, either now, or in subsequent annual recertification proceedings. *See Tex. Off. of Pub. Util. Counsel v. FCC*, 183 F3d 393, 418 (5th Cir 1999), *cert granted sub nom, GTE Serv. Corp. v. FCC*, 530 US 1213 (2000), *cert dismissed*, 531 US 975 (2001) (*TOPUC v. FCC*).

The parties in this proceeding propose numerous criteria for consideration in making a public interest finding. Before addressing the party's respective proposals, however, we begin by noting the purpose of the federal Universal Service Fund. Federal statute states that universal service policies should promote:

- 1) quality service at just, reasonable, and affordable rates;
- 2) access to advanced telecommunications and information services;
- 3) access to services in rural areas comparable to services in urban areas;
- and
- 4) other policies as are developed over time.

47 USC § 254(b). We consider these policies in gauging whether RCC's application is in the public interest. As to the first factor, RCC has incentives to provide high quality service at reasonable rates, in order to win customers and receive USF support to serve those customers. As to the third factor, wireless service is ubiquitous in urban areas, and providing wireless service in the ETC designation area brings service in rural areas closer to service provided in urban areas.

As to the second factor, access to advanced services, we particularly appreciate RCC's commitment to upgrade its facilities to provide a GSM system that will allow RCC customers to purchase high-speed digital packet data services such as Internet access. RCC/19, Gruis/15 at l. 3-13. We understand that Internet access is not a supported service. But because the designation area is quite rural and still developing access to the Internet, we count this commitment by RCC as one reason why granting its application is in the public interest. Accordingly, we ask RCC to report on its progress

² The FCC has not weighed in on many aspects of ETC designation, except for where it has stood in the shoes of another state commission. Those FCC decisions are not binding on this Commission, as has been strenuously argued by RCC, but the decisions are instructive to our analysis.

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and plans for the future in providing such service in its designated area during the annual recertification process.

The parties suggest additional factors to be considered in the public interest analysis, some of which overlap. We will address each factor in turn.

Do competitive ETC designations lead to increased competitive choice? RCC recommends that we consider this factor, drawn from *Virginia Cellular* at ¶ 28. RCC contends that designating an additional ETC provides an obvious increase in competitive choice. OTA rejects competition as a benefit and states that the positive elements associated with competition will not necessarily be present if this application is granted.

Other jurisdictions facing this question have found competitive benefits in designating a wireless ETC in a rural area:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.

In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming, DA 00-2896, 16 FCC Rcd 48, 57, ¶ 22 (released Dec 26, 2000) (*Wyoming Order*). We are not convinced that rural ILEC investments in infrastructure will diminish if a competitive ETC (CETC) is designated. There is only speculation that if a CETC is designated, and if customers drop their wireline service, then the rural ILEC will lose USF support. That reasoning is too hypothetical to be persuasive at this point, especially given the difference between RCC's wireless offerings and the rural ILECs' wireline offerings. This issue may be raised later, however, if substantial evidence shows that there is an impact.

What are the unique advantages and disadvantages of the competitor's service offering? RCC offers wireless services, which has more applications than wireline service offered by rural ILECs. As the FCC stated, wireless service also offers a distinct benefit in rural areas:

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[T]he mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.

Highland Cellular at ¶ 23. OTA argues that poor service quality in wireless communications is a strong disadvantage. Staff approaches the issue from the perspective of whether CETCs will provide benefits to rural consumers that are not available from the ILECs. Staff concluded that RCC's commitment to add cell sites and expand capacity and quality of service at existing cell sites would provide real benefits to consumers. In addition, the nature of RCC's local calling area means that calls that would be toll calls over a wireline service are merely local calls over wireless. We agree that the "unique advantages" of wireless telephones, which allow mobile communications beneficial to safety, health, and commerce, weighs in favor of the application.

Have any commitments been made regarding quality of telephone service?

Rural ILECs are required to provide a certain basic level of service quality and quantity to customers, and OTA raises the concern that RCC will be eligible for USF support without providing a similar level of service. We are constrained by state statute from regulating the service quality of wireless carriers,³ which also hamstring this Commission's ability to resolve disputes without any yardstick to measure quality standards against. However, we share OTA's concern that adequate service is provided to customers. On one level, we agree that if service quality is inadequate, customers will drop the service, and RCC will lose support for those customers, giving RCC an incentive to provide quality service. However, we also believe that the annual reporting requirements should be supplemented with details as to how many complaints were received as to service quality, by wire center, and how they were resolved.

OTA also notes that RCC has not provided any contracts for resale for service in areas in which RCC seeks ETC designation but are outside of its CGSA.⁴ RCC stated in its briefs that at its annual recertification, it would supply an affidavit as to the existence of those contracts, and if pressed, provide for *in camera* review of those contracts. However, RCC asserts that those contracts should be protected from disclosure because of their commercial sensitivity. RCC raises a good point: Contracts that reveal trade secrets have historically been protected from disclosure to competitors in the past. See *In re PacifiCorp*, UE 116, Order No. 01-219 at 2-3 (providing heightened protection

³ While certain conditions may be imposed as part of our public interest finding, see *TOPUC v. FCC*, Oregon law does not permit service quality conditions to be imposed on wireless carriers at this time. ORS 759.450(8).

⁴ CGSA stands for Cellular Geographic Service Area. 47 CFR § 22.911.

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for commercially sensitive contracts). In this instance, RCC has not yet been designated an ETC, and we do not yet know if it has received requests for service outside its CGSA. Therefore, demand for resale contracts are premature at this point. Staff recommended a reporting requirement to address this issue, which will take effect once RCC is designated as an ETC. RCC's proposal to submit an affidavit regarding resale contracts is acceptable. If we later encounter difficulties with customers unable to receive service outside RCC's CGSA boundaries, tougher requirements may be imposed at that time.

What is the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame? As RCC noted at oral argument, the order in *Virginia Cellular* was not issued until after the evidentiary record in this docket had closed. However, RCC has supplied informal plans to expand its service by building new cell sites in Prairie City, Bonanza, La Grande, and Ontario, *See* RCC/19, Gruis/15 at l. 3, and has agreed to Staff's proposed conditions to provide reports at the annual recertification process. The reports will detail how much federal USF support was received in the last year and how it was spent, and how much federal USF support is projected to be received in the next year and how it will be spent.

OTA argues that RCC has not provided enough in the way of specific plans to show how it will serve the area within a reasonable time frame. RCC replies that it does not have to serve the entire area – even rural ILECs do not have to serve every customer. RCC only has to serve customers who request service.

Staff is also concerned that a CETC demonstrate the commitment and ability to provide service to customers, should an incumbent local exchange carrier seek to relinquish its ETC designation. Staff notes that RCC is capable of serving as the carrier of last resort in the area in which it seeks ETC designation. Federal statute outlines the process by which an ETC can withdraw from an area. 47 USC § 214(e)(4). If an ETC were to withdraw, the other ETC would be given time to make arrangements to serve the customers in the designated area. Staff asserts that RCC would be able to fulfill these obligations should it become necessary.

RCC has set out a six-point checklist as to how it will answer every customer request: (1) determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) determine whether adjustments at the nearest cell site can be made to provide service; (4) determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (5) explore the possibility of offering resold service; and (6) determine whether an additional cell site, a cell-extender, or repeater can be employed, or can be constructed to provide service. RCC/19, Gruis/12-13. If none of those methods works, RCC will notify the customer and provide the Commission with an annual report of how many requests for service it could not fill. RCC's witness also testified, "To the extent that state law permits, the Commission will retain authority to

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resolve any customer complaints that RCC has refused to respond to a reasonable request for service." RCC/19, Gruis/13 at l. 11-13.

Other jurisdictions have counted this commitment by RCC as part of the public interest test; *see In the Matter of the Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, at 8-9, 2003 Alas PUC Lexis 377 (Reg Commn of AK, Aug 28, 2003); and we also add it to the weight of evidence that RCC's designation as an ETC is in the public interest.

What is the impact of the designation on the Universal Service Fund? We acknowledge OTA's concern that designation of additional ETCs creates a burden on the federal Universal Service Fund, but decline to take that factor into consideration. Even the FCC, standing in the shoes of the Virginia State Corporation Commission, did not give much weight to that factor. Instead, it noted that it had a pending rulemaking proceeding on the matter and declined to give any interim guidance. *Virginia Cellular* at ¶ 31. Accordingly, we will address this factor after the FCC has made a final decision, likely at the annual recertification process.

Does the designation of a competitive ETC raise "rural cream-skimming" issues? The FCC has addressed cream-skimming in its ETC designation orders:

Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area. * * * Creamskimming refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area.

In the Matter of Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama, DA 02-3181, 17 FCC Rcd 23532, 23543 ¶ 27 & 27 n 96 (released Nov 27, 2002) (*RCC Holdings*). We note that rural cream-skimming is an issue only when the CETC will cover part of the rural ILEC's study area, *see Highland Cellular* at ¶ 26, in this case, CenturyTel and Sprint. *See Appendix B.*

Initially, OTA expressed concern about wire centers partially covered by RCC's application, a practice discouraged by the FCC in *Highland Cellular*. After preliminary briefing on that issue, RCC amended its application to withdraw from some wire centers only partially covered by its CGSA, and committed to cover the remainder of the others through resale agreements. *See RCC Brief* at 11 (May 10, 2004). In light of these circumstances, OTA again alerts us that RCC could be cream-skimming by only serving some wire centers within a study area, which was also discussed by the FCC in *Virginia Cellular* and *Highland Cellular*. RCC argues that an examination of the cost of serving each wire center, or, if that information is not available, an examination of the

density of each wire center,⁵ will show that it is not serving only the least cost wire centers. This analysis only applies to CenturyTel and Sprint for purposes of this docket. Because Sprint has not opposed RCC's application, and Crater Lake is one of the highest cost exchanges in Sprint's territory, we apply the cream-skimming analysis only to CenturyTel's study area. *See* Appendix C.

CenturyTel serves exchanges from the Portland area, to the coast, to rural Eastern Oregon. The average cost per line in the area *not* to be served by RCC is \$46.70; the average cost per line in the area to be served by RCC is \$72.88. The average cost per line for CenturyTel is \$54.37. RCC committed to serve every CenturyTel wire center in the Eastern Oregon portion of its CGSA, and in fact declined to apply for ETC status in the lower cost CenturyTel wire centers in Western Oregon and the coast, including Lebanon, Gleneden Beach, Depoe Bay, Brownsville, Shedd, and Sweet Home. We recognize that it is possible that a CGSA boundary could naturally cream-skim the lowest cost wire centers. Again, this does not prove true in this instance. While RCC's CGSA does not include some of the highest cost wire centers, such as the cluster in Eastern Oregon that includes Mitchell, Spray, Heppner, Fossil, Ione, Lexington, and Boardman, the CGSA boundaries also do not cover the lowest cost wire centers, such as Aurora/ Charbonneau, Scappoose, Creswell, and Lebanon, among others. Viewed altogether, RCC's CGSA does not cream-skim wire centers within CenturyTel's study area.

Must USF support be spent in the area for which it was allocated? OTA recommends that we examine whether RCC will spend rural USF dollars in rural areas. There is no requirement that funds given for a particular customer must be reinvested in that particular customer's service area. We agree with OTA that RCC should not be permitted to build up its urban network under the guise of aiding rural customers, but we disagree with OTA's characterization of RCC's plan. OTA seeks to characterize any wire center covered by Qwest or Verizon as "non-rural," because those carriers are considered non-rural carriers under the Act. However, RCC's CGSA covers an area that is largely rural, and its plans for bolstering its facilities also cover areas that are quite rural, even if those areas are served by Qwest or Verizon. In the near term, RCC has committed to building cell sites in Bonanza, La Grande, Prairie City, and Ontario. *See* RCC/19, Gruis/15 at l. 3.

Further, we note that RCC will only receive support funds for each customer it serves with its own facilities; RCC receives no funds for customers it serves through resale. If RCC wants to receive high cost support for customers served by rural ILECs, it will have to build up its network to serve those customers. In addition, RCC has a six-step plan in place to serve every customer that requests service or to report to this Commission why service to that customer is not reasonable. RCC/19, Gruis/12-13. We believe that the structure of the federal USF program provides incentives for RCC to

⁵ "Although there are other factors that define high-cost areas, a lower population density indicates a higher cost area." *Highland Cellular* at ¶ 28.

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build its facilities to serve customers in rural Oregon, regardless of which ILEC currently serves that area.

Will CETC designation harm the rural ILEC and, in turn, its customers?

OTA argues that some areas are so rural that it is improper to designate multiple ETCs for that area. Two arguments are built into that assertion: (1) designation of multiple ETCs will impose an unreasonable burden on the federal Universal Service Fund, and (2) designation of a CETC will harm the rural ILEC and, ultimately, customers. The first argument has already been addressed above. We turn to the second argument.

OTA asserts that competition for its own sake is not always good. We agree with that assessment, but there are many benefits that will come with competition in rural areas, such as "incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers." *Wyoming Order*, 16 FCC Rcd at 57 ¶ 22. We also disagree that this designation necessarily will harm rural ILECs and customers. That argument has been considered and rejected by multiple jurisdictions, including the FCC standing in for the South Dakota Public Utilities Commission:

[T]he federal universal service support mechanisms support all lines served by ETCs in high-cost areas. Therefore, to the extent that [the CETC] provides new lines to currently unserved consumers or second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone company for those lines that it continues to serve.

In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, FCC 01-283, 16 FCC Rcd 18133, 18139 ¶ 15 (released Oct 5, 2001). RCC will provide wireless communications in these areas, a different service than traditional wireline local exchange service. No CETCs have yet been designated in Oregon. Again, we note that RCC will not receive any funds for serving a rural area unless it serves customers that live in that rural area. Accordingly, we reject OTA's arguments that CETCs should not be designated for rural Oregon.

Do the benefits outweigh the costs of ETC designation? Ultimately, each of the factors discussed above are calculated in a cost-benefit analysis. OTA cites the cost-benefit analysis used in *Virginia Cellular* at ¶ 4, which weighs competitive choice, impact of designation on the USF, the advantages and disadvantages of the service offering, quality of service commitments, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable amount of time. As we have discussed, RCC's application would bring competition, spurring innovation; provide advantages through increased mobile wireless offerings; and offer the supported services to customers who request service in the designated area. We

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acknowledge the costs of the application – a growing burden on the USF and no service quality guarantees – but believe that to the extent that those factors are an issue, they are more than outweighed by the benefits of granting the application. Therefore, we find that RCC's application for designation as an ETC in its designated area is in the public interest.

In addition to the above public interest test, Staff also recommends that RCC be required to file extensive reports as part of the annual recertification process. Specifically, Staff recommends that on or before July 15 of each year beginning in 2005, RCC report on the following items:

1. Line counts for federal USF supported services, itemized by rural ILEC wire center, as of December 31 of the preceding year.
2. The amount of federal USF support RCC received for operations in Oregon during the period January 1 through December 31 of the preceding year.
3. A description of how the federal USF support was used in the previous year. For expenses such as maintenance and provisioning, the information should be segregated by major expense category. For investments, this information should be segregated by asset type and the rural ILEC wire center where the investment was made.
4. An estimate of the federal USF support to be received during the current year and a detailed budget of how such support is expected to be used, as described in (3).
5. Documentation establishing RCC advertised the supported services throughout the entire designated area.
6. As to requests for service coming from areas within RCC's designated area, but outside its CGSA, a report listing the number of requests and, for requests where service was not provided, the reason(s) service was not provided.

We concur with Staff's recommendation to ensure that RCC follows through on the commitments that we relied on in finding that the application is in the public interest.

Redefinition of Study Areas

An ETC must serve entire service areas, not partial service areas. *See* 47 USC § 214(e)(1). For a "rural telephone company, service area means such company's 'study area' unless and until the Commission and the states * * * establish a different definition of service area for such company." 47 CFR § 54.207(b). RCC argues that retaining current rural ILEC service areas imposes a barrier to competition in violation of the Act.

To resolve this situation, RCC recommends that we redefine the CenturyTel and Sprint service areas down to the wire center levels. As precedent, RCC cites the actions of the Washington Utilities and Transportation Commission. *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the*

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Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order, 15 FCC Rcd 9921, 9927-28 (released Sept 9, 1999) (*Washington Redefinition Order*).⁶ First, this Commission would redefine the service area, then the FCC would need to approve the new arrangement. RCC proposes that we grant their application for ETC status conditionally upon FCC approval of the new service area.

The Joint Board initially recommended retaining service area boundaries that coincide with study area boundaries, for three reasons: (1) to prevent cream-skimming; (2) because rural LECs are on a different footing than other carriers; and (3) rural LECs would bear an extra administrative burden to recalculate costs at something other than a study area level. *In the Matter of Federal-State Joint Board on Universal Service*, FCC 96J-3, 12 FCC Rcd 87, 180 ¶ 172-74 (released Nov 8, 1996). Those concerns are not present here. RCC's proposal does not cream-skin the low-cost customers in high-cost areas, as discussed above. Rural LECs are treated differently than other carriers, but in the interest of improving competition and service in rural areas, we believe that RCC's application for designation as an ETC should be granted. And CenturyTel has already calculated its costs at the wire center level, so that consideration is not present here.⁷

Even OTA agreed that if we found that the application is in the public interest and if there is no danger of cream-skimming, then OTA did not object to redefining the service areas along wire center boundaries.⁸ Accordingly, we agree with RCC that CenturyTel and Sprint's service areas should be redefined at the wire center level, and we will submit a petition to the FCC for final action in redefining the service areas.

CONCLUSIONS

After reviewing RCC's application, we conclude that RCC meets each of the statutory requirements to be designated an ETC: (1) it provides the nine supported

⁶ In the *Washington Redefinition Order*, the FCC approved a petition by the Washington Commission and twenty rural ILECs to redefine service areas down to the wire center level and to alter the way that USF support is calculated for those companies. The FCC found "it significant that the rural LEC petitioners support the proposed service area designation, conditioned on approval of the proposal to disaggregate support." *Washington Redefinition Order* at ¶ 9. No such agreement has yet been reached here, so we decline to redefine service areas for rural LECs not involved in this docket.

⁷ RCC also suggests that USF support should be disaggregated to the wire center level so that USF support can be more accurately targeted. CenturyTel chose Path 3 disaggregation and has established its support levels into two zones. See 47 CFR § 54.315; *In the Matter of Applications to be Designated Eligible Telecommunications Carriers in the State of Oregon*, UM 873, Order No. 02-335 (May 13, 2002). RCC argues that CenturyTel disaggregated its service area into 55 exchanges, and then improperly reagggregated into the two zones to discourage entry by competitive ETCs. We agree with RCC that this is not the place to address disaggregation proceedings, but we reserve the right to tackle this issue another time.

⁸ OTA's third requirement dealt with whether cream-skimming arose if RCC only covered part of a wire center. As RCC has amended its application to only cover whole wire centers, we do not address this issue.

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services; (2) it advertises them; and (3) designation is in the public interest. Therefore, we grant RCC's application to serve as a CETC in the area designated in Appendix A. This designation is conditional on FCC approval of redefinition of the CenturyTel and Sprint service areas. To finalize the application, we will submit a petition for FCC agreement in redefinition of the service areas.

To determine the public interest, we consider the universal service goals of the Act, and particular issues raised by the parties and by jurisdictions that have considered federal ETC designations. We recognize that the Joint Board currently has a notice of proposed rulemaking in effect, and that public interest qualifications may change again as a result. Consequently, we may consider additional factors at the annual recertification for ETCs.

In addition, we conclude that CETCs, particularly wireless carriers, should be subject to rigorous annual recertification reporting requirements. ILECs designated as ETCs currently file extensive reports with the Commission as part of their regulated incumbent status. While we do not require ETCs to file similar reports, we do require that they file the reports as recommended by Staff, and listed in the ordering clauses, by July 15 of each year that they seek recertification, beginning in 2005.

ORDER

IT IS ORDERED that:

1. RCC's amended application for designation as an ETC is granted in compliance with the terms of this order. The designation is effective in the area specified in Appendix A and the wire centers listed in Appendix B.
2. As part of the annual recertification process, RCC shall file the following reports by July 15 of each year, beginning in 2005:
 - a. Line counts for federal USF supported services, itemized by rural ILEC wire center, as of December 31 of the preceding year.
 - b. The amount of federal USF support RCC received for operations in Oregon during the period January 1 through December 31 of the preceding year.
 - c. A description of how the federal USF support was used in the previous year. For expenses such as maintenance and provisioning, the information should be segregated by major expense category. For investments, this information should be segregated by asset type and the rural ILEC wire center where the investment was made.

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- d. An estimate of the federal USF support to be received during the current year and a detailed budget of how such support is expected to be used, as described in (c).
- e. Documentation establishing RCC advertised the supported services throughout the entire designated area.
- f. As to requests for service coming from areas within RCC's designated ETC area, but outside its CGSA, a report listing the number of requests and, for requests where service was not provided, the reason(s) service was not provided.
- g. A description of actions taken to enhance wireless Internet service throughout the ETC area in the past year and plans to enhance such service in the current year;
- h. A description of how many service quality complaints were received, by wire center, and how those complaints were resolved;
- i. An affidavit from an RCC official stating that either:
 - i. RCC has resale agreements in place that cover the portions of wire centers that are within its ETC boundary but outside its CGSA; or
 - ii. RCC has not received any requests for service in portions of wire centers that are within its ETC boundary but outside its CGSA that are not covered by resale agreements.
- j. If RCC has received requests for service in portions of wire centers that are within its ETC boundary but outside its CGSA, RCC shall provide:
 - i. A description of the steps taken by RCC to obtain a resale agreement with other telecommunications service providers in order to provide service to the requesting parties;
 - ii. Whether each party requesting service eventually received such service via RCC acting in the capacity of a reseller; and
 - iii. RCC's estimated timeframe for negotiating resale agreements in each wire center where it was unable to accommodate a request for service because RCC had no existing resale agreement in place.
- k. If certification of a resale agreement is made and someone challenges the existence of an agreement, Staff will conduct an *in camera* review to confirm the accuracy of certification. RCC will be asked to provide this information with the understanding that such a review would be covered by a nondisclosure agreement or through the use of Commission subpoena and protective order to preserve the confidentiality of the resale agreement.

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3. The Commission shall submit a petition for FCC agreement with redefinition of CenturyTel and Sprint service areas and communicate RCC's designation as an ETC by June 30, 2004.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

Wire centers served by non-rural carriers

ILEC carrier	Wire Center
Qwest	Albany
Qwest	Ashland
Qwest	Athena
Qwest	Baker
Qwest	Bend
Qwest	Black Butte
Qwest	Blue River
Qwest	Corvallis
Qwest	Dallas
Qwest	Eugene
Qwest	Florence
Qwest	Grants Pass
Qwest	Harrisburg
Qwest	Hermiston
Qwest	Independence
Qwest	Junction City
Qwest	Klamath Falls
Qwest	La Pine
Qwest	Leaburg
Qwest	Lowell
Qwest	Madras
Qwest	Mapleton
Qwest	Marcola
Qwest	Milton Freewater
Qwest	Newport
Qwest	Oakridge
Qwest	Pendleton
Qwest	Prineville
Qwest	Redmond
Qwest	Salem
Qwest	Siletz
Qwest	Sisters
Qwest	Springfield
Qwest	Standfield
Qwest	Toledo
Qwest	Umatilla
Qwest	Veneta
Qwest	WarmSprings

Qwest	Woodburn
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Verizon	Aumsville/Turner
Verizon	Coquille
Verizon	Cove
Verizon	Dayton
Verizon	Detroit
Verizon	Elgin
Verizon	Enterprise
Verizon	Gand Island
Verizon	Imbler
Verizon	Joseph/Imnaha
Verizon	La Grande
Verizon	Lostine
Verizon	Mill City
Verizon	Silverton
Verizon	Union
Verizon	Wallowa
Verizon	Yamhill

Wire centers served by rural carriers – entire study area to be served by RCC⁹

ILEC carrier	Wire Center	Comments¹⁰
Asotin	Flora-Troy	Commits to serve entire wire center
Eagle	Richland	Already serves entire wire center
Helix	Helix	Already serves entire wire center
Helix	Meacham	Already serves entire wire center
Malheur	Nyssa	Already serves entire wire center
Malheur	Ontario	Already serves entire wire center
Malheur	Vale	Already serves entire wire center
Mid Vale	Harper	Already serves entire wire center
Mid Vale	Juntura	Already serves entire wire center
Oregon Tel.	Bates	Already serves entire wire center
Oregon Tel.	Dayville	Already serves entire wire center
Oregon Tel.	Hereford-Unity	Already serves entire wire center
Oregon Tel.	Mount Vernon	Already serves entire wire center
Oregon Tel.	Prairie City	Already serves entire wire center
Pine Tel.	Granite	Already serves entire wire center
Pine Tel.	Halfway	Already serves entire wire center

⁹ We differentiate between RCC's coverage of an entire study area as opposed to the partial study area of a rural ILEC, for multiple reasons. First, we apply a cream-skimming analysis to CETC coverage of a partial study area and not to coverage of an entire study area. Second, redefinition of the rural ILEC's service area, with FCC agreement, is required where a CETC has only partial study area coverage.

¹⁰ Where RCC already serves an entire wire center, it does so with its own facilities. Where RCC commits to serve an entire wire center, it will cover part with its own facilities and the rest with resale agreements or additional facilities to be added later.

Pine Tel.	Oxbow	Already serves entire wire center
Pine Tel.	Stices Gulch	Already serves entire wire center

Wire centers served by rural carriers – partial study area to be served by RCC

ILEC carrier	Wire Center	Comments
Century Tel	Bly	Already serves entire wire center
Century Tel	Bonanza	Commits to serve entire wire center
Century Tel	Burns	Already serves entire wire center
Century Tel	Chemult	Already serves entire wire center
Century Tel	Chiloquin	Already serves entire wire center
Century Tel	Durkee	Already serves entire wire center
Century Tel	Echo	Commits to serve entire wire center
Century Tel	Fort Klamath	Already serves entire wire center
Century Tel	Gilchrist	Commits to serve entire wire center
Century Tel	Harney	Commits to serve entire wire center
Century Tel	Huntington	Already serves entire wire center
Century Tel	John Day	Already serves entire wire center
Century Tel	Lakeview	Already serves entire wire center
Century Tel	Long Creek	Already serves entire wire center
Century Tel	Malin	Commits to serve entire wire center
Century Tel	Merrill	Already serves entire wire center
Century Tel	Monument	Commits to serve entire wire center
Century Tel	North Powder	Already serves entire wire center
Century Tel	Paisley	Already serves entire wire center
Century Tel	Paulina	Already serves entire wire center
Century Tel	Pilot Rock/Starkey	Already serves entire wire center
Century Tel	Rocky Point	Already serves entire wire center
Century Tel	Seneca	Already serves entire wire center
Century Tel	Silver Lake	Already serves entire wire center
Century Tel	Sprague River	Already serves entire wire center
Century Tel	Ukiah	Already serves entire wire center
Sprint/United	Crater Lake	Commits to serve entire wire center

Century Tel wire centers not covered by RCC's application

Wire Center	Density (access lines/ sq mi)	Cost (cost per mo by WC)
Aurora	142.69	\$121,593.29
Charbonneau	N/A	\$53,680.56
Boardman	5.74	\$83,543.77
Brownsville	11.78	\$76,607.71
Camas Valley	5.58	\$36,237.68
Creswell	61.35	\$121,223.76
Depoe Bay	49.24	\$61,771.23
Drain	11.45	\$87,998.46
Fossil	1.47	\$43,615.75
Gleneden Beach	167.07	\$99,293.31
Glide	6.93	\$104,936.60
Government Camp	12.35	\$96,275.20
Heppner	1.50	\$83,588.33
Ione	0.89	\$32,484.24
Jewell	2.03	\$107,008.61
Knappa	17.34	\$83,791.33
Lebanon	53.41	\$482,450.01
Lexington	1.89	\$27,533.38
Maupin	1.65	\$24,300.38
Mitchell	0.34	\$45,172.11
North Umpqua	0.99	\$26,966.18
Pine Grove	1.33	\$17,657.84
Scappoose	72.17	\$213,151.71
Shedd	7.43	\$28,136.87
Spray	0.99	\$38,176.99
Sweet Home	7.62	\$259,755.26
Tygh Valley	2.78	\$23,069.94
Wamic	4.71	\$63,333.45
Yoncalla	6.41	\$81,895.19
TOTAL	7.93	\$46.70/ access line

Century Tel wire centers covered by RCC's application

Wire Center	Density (access lines/ sq mi)	Cost (cost per mo by WC)
Bly	0.93	\$29,681.45
Bonanza	3.24	\$129,155.52
Burns	14.51	\$140,553.48
Chemult	1.33	\$26,706.87
Chiloquin	1.19	\$139,417.44
Durkee	0.52	\$21,418.90
Echo	1.60	\$39,738.95
Fort Klamath	1.28	\$24,407.98
Gilchrist	2.50	\$104,562.45
Harney	0.17	\$131,514.08
Huntington	3.14	\$23,901.74
John Day	14.54	\$90,535.72
Lakeview	3.80	\$140,808.12
Long Creek	0.33	\$41,017.55
Malin	6.98	\$40,837.34
Merrill	8.78	\$43,974.95
Monument	0.82	\$36,106.56
North Powder	1.90	\$48,340.41
Paisley	0.76	\$33,598.51
Paulina	0.20	\$43,640.62
Pilot Rock	1.70	\$92,013.82
Rocky Point	4.00	\$25,158.20
Seneca	0.84	\$17,567.52
Silver Lake	0.31	\$133,002.59
Sprague River	1.80	\$86,834.19
Starkey	0.92	N/A
Ukiah	0.35	\$13,250.78
TOTAL	1.22	\$72.88/access line