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

In the Matter of)
Federal-State Joint Board on Universal)
Service)
Petition for FCC Agreement in Redefining the)
Service Areas of Rural Telephone Companies)
in the State of Oregon Pursuant to 47 C.F.R.)
Section 54.207(c))

CC Docket No. 96-45

PETITION FOR FCC AGREEMENT IN REDEFINING
RURAL TELEPHONE COMPANY SERVICE AREAS

June 28, 2004

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Summary

The Public Utility Commission of the State of Oregon (“OPUC”) files this Petition pursuant to the provisions of 47 C.F.R. § 54.207(c). Under that rule, a state commission may petition the FCC for its concurrence to redefine the service areas of rural Incumbent Local Exchange Carriers (“ILECs”) as something other than the ILECs’ entire study areas. Redefinition is necessary in connection with the OPUC’s recent designation of United States Cellular Corporation (“USCC”) and RCC Minnesota, Inc. (“RCC”) as eligible telecommunications carriers (“ETCs”) for purposes of receiving high-cost support from the federal universal service program. Because USCC’s and RCC’s licensed service territories do not correlate with rural ILEC service areas, the Act provides that rural ILEC service areas must be redefined before designation in those areas can take effect. Consistent with OPUC’s designation orders and with previous actions taken by the FCC and several other states, redefinition is requested such that each wire center of the affected ILECs constitutes a separate service area.

The proposed redefinition is warranted under the Commission’s competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant ILEC service areas are redefined, USCC and RCC will be unable to use high-cost support to improve and expand their service to consumers in many areas of their licensed service territories, and consumers will be denied the benefits. As the Commission and several states have consistently held, competitive and technological neutrality demand the removal of these artificial barriers to competitive entry. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service (“Joint Board”) in that it reduces opportunities for payment of uneconomic support to USCC and RCC, duly recognizes the special status of rural carriers under

the 1996 Act, and does not impose undue administrative burdens on ILECs. Finally, the FCC's *Highland Cellular* order does not prohibit the redefinition, either because *Highland Cellular* does not apply in this case or because the proposed redefinition meets *Highland Cellular*'s requirements.

The redefinition proposed herein is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board's recommendations were taken into account. Accordingly, OPUC requests that the FCC grant its concurrence expeditiously and allow the proposed redefinition to become effective without further action.

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**PETITION FOR FCC AGREEMENT IN REDEFINING
RURAL TELEPHONE COMPANY SERVICE AREAS**

The Public Utility Commission of the State of Oregon (OPUC) submits this Petition seeking the FCC's agreement with the redefinition of the service areas of CenturyTel of Oregon, Inc., and CenturyTel of Eastern Oregon, Inc. (collectively, "CenturyTel"), Cascade Telephone Company (Cascade), Oregon Telephone Corp. (Oregon Tel), and United Telephone Company of the Northwest dba Sprint (Sprint), four rural incumbent local exchange carriers (ILECs), whereby each individual wire center of the affected ILECs will be redefined as a separate service area. The redefinition will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Oregon's consumers.

I. BACKGROUND

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the Act), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.¹ The service area of a rural ILEC is defined as its study area. However, the Act explicitly sets forth a process

¹ 47 U.S.C. § 214(e).

whereby a competitive ETC may be designated for a service area that differs from that of the ILEC, provided the rural ILEC's service area is redefined. Specifically, Section 214(e) of the Act provides:

“Service area” means such company’s “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.²

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural ILEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.³ The FCC has established a streamlined procedure for the FCC and states to act together to redefine rural ILEC service areas.⁴ Using this procedure, the FCC and state commissions have applied the Joint Board’s recommendations and concluded that it is necessary and appropriate to redefine the ILEC service areas to permit the designation of competitive ETCs in those areas.⁵

² *Id.*

³ See *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 Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 99-1844, 15 FCC Rcd 9921, 9927 at ¶ 8 n. 40 (rel. Sept 9, 1999) (“*Washington Redefinition Order*”), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

⁴ See 47 C.F.R. § 54.207(c). See also *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8881 (1997) (“*First Report and Order*”).

⁵ See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, CC Docket No. 96-45, DA 01-409, 16 FCC Rcd 3558 (rel. Feb 15, 2001); *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28.

USCC applied for federal ETC status on May 9, 2003.⁶ It subsequently amended its application to narrow its request to eliminate any partially covered rural ILEC wire centers.⁷

RCC applied for federal ETC status on May 12, 2003.⁸ RCC also amended its application to eliminate any partially covered rural ILEC wire centers.⁹

Because, as wireless carriers, USCC and RCC are licensed to serve areas that do not match the service areas of the affected ILECs, USCC and RCC requested the redefinition of certain rural ILEC service areas, pursuant to the process established under Section 54.207(c) of the Act, to permit its designation in rural areas not completely covered by its authorized service areas.¹⁰

USCC and RCC were both designated ETCs on June 24, 2004.¹¹ In the designation orders, OPUC concluded that a grant of ETC status would serve the public interest, and that USCC and RCC should be designated in those rural ILEC wire centers that USCC and RCC committed to serve completely.

USCC and RCC were not designated as ETCs in any partially served rural ILEC wire centers.¹² OPUC also found that USCC's and RCC's requests to redefine affected rural ILEC service areas satisfied the Joint Board's three concerns.¹³ Specifically, USCC's and RCC's designations were to become effective immediately in non-rural areas and in rural areas

⁶ *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, Order No. 04-356, p.1 (June 24, 2004) ("*USCC Order*").

⁷ *USCC Order* at 11.

⁸ *In the Matter of RCC Minnesota, Inc., Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, UM 1083, Order No. 04-355, p.1 (June 24, 2004) ("*RCC Order*").

⁹ *RCC Order* at 11.

¹⁰ *See USCC Order* at 14; *RCC Order* at 14; *see also* 47 C.F.R. § 54.207(c).

¹¹ *See USCC Order; RCC Order*.

¹² *See RCC Order* at 11-12, 15-16; *USCC Order* at 11, 15-16.

¹³ *See RCC Order* at 15; *USCC Order* at 14-15.

where USCC's and RCC's proposed ETC service area covered the rural ILEC service area completely. OPUC further concluded that a petition should be filed to obtain the FCC's concurrence with the proposed redefinition.¹⁴

OPUC submits this Petition for concurrence, in accordance with the USCC and RCC designation orders, the Act and the FCC's rules. Specifically, the OPUC seeks concurrence for redefinition that would involve redefining each wire center of CenturyTel, Cascade, Oregon Tel and Sprint as a separate service area.

II. DISCUSSION

The FCC should grant this Petition because (1) redefinition is consistent with federal Universal Service policy, (2) redefinition satisfies the three Joint Board factors under Section 54.207(c)(1) of the Commission's Rules, and (3) the FCC's recent *Highland Cellular* order¹⁵ does not prohibit redefinition. Ultimately, redefinition along wire center boundaries will advance the universal service goals of promoting quality service at just, reasonable, and affordable rates; access to advanced information services; and access for rural consumers to telecommunications services and rates that are comparable to those available to urban consumers.¹⁶ The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and OPUC fully considered and addressed the parties' arguments on this subject.¹⁷ The OPUC record well supports the proposed redefinition, and the orders designating USCC and RCC provide the FCC with ample justification to concur.

¹⁴ See *RCC Order* at 15; *USCC Order* at 15.

¹⁵ *In the Matter of Highland Cellular, Inc., Petition for Designation of an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37, 19 FCC Rcd 6422 (rel. April 12, 2004) ("*Highland Cellular*").

¹⁶ See 47 U.S.C. § 254(b).

¹⁷ Four intervenors were involved in each docket. *RCC Order* at 1; *USCC Order* at 1. In particular, the Oregon Telecommunications Association, representing rural ILECs, actively participated in all aspects of the proceedings, and its arguments were thoroughly considered.

A. Redefinition Is Consistent With Federal Universal Service Policy.

Congress, in passing the 1996 amendments to the Act, declared its intent to “promote competition and reduce regulation” and to “encourage the rapid deployment of new telecommunications technologies.”¹⁸ As part of its effort to further these goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.¹⁹ In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.²⁰

Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.²¹ Last year, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“CPUC”) for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.²² In support of redefining CenturyTel’s service area along wire-center boundaries, the COPUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53

¹⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

¹⁹ See 47 U.S.C. § 214(e)(2).

²⁰ See First Report and Order, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is a “fundamental principle” of the FCC’s universal service policies. *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169, 18 FCC Rcd 7138, 7141 at ¶ 7 (rel. April 17, 2003). Moreover, the FCC has requested that the Joint Board “should address how its recommendations . . . further the universal service goals outlined in section 254 of the Act, including the principle of competitive neutrality.” See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307, 17 FCC Rcd 22642, 22645 at ¶ 6 (rel. Nov. 7, 2002) (“*Referral Order*”).

²¹ See, e.g., *First Report and Order, supra*, 12 FCC Rcd at 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) (“COPUC Petition”).

²² See COPUC Petition at p. 5 (“Petitioner requests agreement to redefine CenturyTel’s service area to the wire center level”).

separate, non-contiguous wire centers located across the entirety of Colorado. . . . [T]his constitutes a significant barrier to entry.”²³ The FCC agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.²⁴ The FCC similarly approved a petition by the Washington Utilities and Transportation Commission (“WUTC”) and about 20 rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.²⁵

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, in a decision that was later adopted by the Minnesota Public Utilities Commission, an administrative law judge (“ALJ”) recommended approval of Midwest Wireless Communications L.L.C.’s proposal to redefine certain rural ILEC service areas to the wire center level.²⁶ Specifically, the ALJ concluded “[t]he service area redefinition proposed by Midwest will benefit Minnesota consumers by promoting competitive entry and should be adopted.”²⁷

²³ CPUC Petition at p. 4.

²⁴ CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

²⁵ *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

²⁶ *Midwest Wireless Communications, L.L.C.*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at ¶¶ 53-59 (Minn. ALJ Dec. 31, 2002), *aff’d* by Minn. PUC March 19, 2003 (petition for concurrence pending before FCC).

²⁷ *Id.* at ¶ 59.

Similar conclusions were reached in decisions granting ETC status to wireless carriers in Arizona, New Mexico, Maine, and West Virginia.²⁸

As in those cases, OPUC believes that the redefinition requested in the instant proceeding will enable USCC and RCC to make the network investments necessary to bring competitive service to people throughout their ETC service areas. Redefinition will bring about variety in pricing packages and service options on par with those available in urban and suburban areas.²⁹ The use of high-cost support for infrastructure investment will bring improved wireless service and important health and safety benefits associated with increased levels of radio frequency coverage.³⁰ Redefinition will also remove a critical obstacle to competition, consistent with federal telecommunications policy.³¹

B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."³² In the *Recommended Decision* that laid the foundation for the FCC's *First Report*

²⁸ See *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001); *Smith Bagley, Inc.*, Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001), adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002); *RCC Minnesota, Inc. et al.*, Docket No. 2002-344 (Me. PUC May 13, 2003); *Highland Cellular, Inc.*, Case No. 02-1453-T-PC, Recommended Decision (W.Va. PSC Sept. 15, 2003).

²⁹ See 47 U.S.C. § 254(b)(3).

³⁰ See *USCC Order* at 8; see also *RCC Order* at 9.

³¹ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening all telecommunications markets to competition.").

³² 47 C.F.R. § 54.207(c)(1). See *RCC Order* at 7; *USCC Order* at 7.

and Order, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.³³ Those factors are addressed below.

1. USCC and RCC are not cream skimming.

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.³⁴ After an extensive analysis, the OPUC found that designation of RCC and USCC as ETCs in their respective proposed areas did not result in cream-skimming.³⁵ USCC and RCC proposed ETC service areas that are approximately coterminous with their licensed service territories, and have committed to offer service to customers throughout their designated ETC service areas upon reasonable request.³⁶ USCC and RCC deleted from their applications those wire centers that they did not, or could not, commit to serve in their entirety. OPUC's designation orders do not grant ETC status to either USCC or RCC for any partial wire centers. In sum, USCC's and RCC's applications to serve as ETCs, as approved by the OPUC, do not permit them to serve only low-cost areas.

Opportunities for receiving uneconomic levels of support are further diminished by the FCC's decision to allow rural ILECs to disaggregate support below the study-area level.³⁷ By moving support away from low-cost areas and into high-cost areas, ILECs have the ability to minimize or eliminate cream skimming and the payment of uneconomic support to

³³ *Joint Board Recommended Decision, supra.*

³⁴ *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

³⁵ *See RCC Order* at 11-12; *USCC Order* at 10-12.

³⁶ *See RCC Order* at 10-11; *USCC Order* at 10.

³⁷ *See RCC Order* at 14-15; *USCC Order* at 14-15. *See also 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, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 01-157; 16 FCC Rcd 11244 (rel. May 23, 2001) ("*Fourteenth Report and Order*").

competitors.³⁸ The OPUC has not yet taken a position on disaggregation among rural ILECs, but invited affected ILECs to modify their disaggregation filings subject to state approval.³⁹

A review of the disaggregation filings submitted by the affected Oregon ILECs reveals that cream skimming is not a concern in this case. Of the affected ILECs, CenturyTel elected to disaggregate support under Path 3 by self-certifying disaggregation plans that went into effect immediately upon being filed.⁴⁰ This plan has effectively moved higher levels of support away from lower-cost, higher-density areas and to areas where costs are higher and service is needed most – thus reducing or eliminating the possibility of USCC or RCC, or any other competitive ETCs that may yet be designated, receiving uneconomic support. The remaining affected ILECs elected not to disaggregate support, presumably because they believed that the apportionment of support corresponded with costs and there were no significant cost disparities that needed to be addressed. In its *Fourteenth Report and Order*, the FCC placed upon rural ILECs the burden of disaggregating support if they believe disaggregation is in their best interest.⁴¹ If these ILECs have concerns about cream skimming or uneconomic support as a result of USCC's and RCC's entry, they may petition OPUC for approval of a new disaggregation plan that removes such opportunities.⁴²

³⁸ See *Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18141(2001).

³⁹ See *USCC Order* at 12. See also 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5).

⁴⁰ A checklist of disaggregation filings made by Oregon ILECs is available on USAC's web site at <http://www.universalservice.org/hc/disaggregation/checklist/oregon.xls>.

⁴¹ See *Fourteenth Report and Order*, 16 FCC Rcd 11244.

⁴² See 47 C.F.R. § 54.315(b)(4).

2. The OPUC considered the rural ILECs' special status.

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.⁴³ The OPUC did so when granting USCC's and RCC's application for ETC designation. The OPUC weighed numerous factors in ultimately determining that such designations were in the public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.⁴⁴ No action in this proceeding will affect or prejudice any future action the OPUC or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish a rural ILEC's status as such.

3. The ILECs will face no undue administrative burden.

Third, the Joint Board recommended that the FCC and the States consider whether rural ILECs would face an undue administrative burden as a result of the proposed redefinition.⁴⁵ There is no undue burden in this case. The proposal to redefine rural ILEC service areas along wire center boundaries is made solely for ETC designation purposes. Defining service areas in this manner will in no way impact the way the affected rural ILECs calculate their costs but is solely to enable newly designated competitive ETCs to begin receiving high-cost support in those areas in the same manner as the ILECs. Rural ILECs may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.

⁴³ See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

⁴⁴ See *id.*

⁴⁵ See *id.*

C. The FCC's Recent *Highland Cellular* Order Does Not Prohibit Redefinition, Either Because *Highland Cellular* Does Not Apply or Because the Proposed Redefinition Meets *Highland Cellular*'s Requirements Anyway.

1. *Highland Cellular* does not apply.

The parties argue that *Highland Cellular* does not apply to ETCs other than Highland Cellular, because *Highland Cellular*'s standards were not established pursuant to notice and comment requirements of the Administrative Procedure Act ("APA"). Designation of ETCs is governed by 47 U.S.C. § 214(e). The FCC's construction and implementation of § 214(e) was codified in § 54.201 of the Rules. See 47 C.F.R. § 54.201(a)-(d). Because it is a binding rule that affects a carrier's right to obtain universal service support, the § 54.201 ETC eligibility rule is legislative (or substantive) under the Federal APA.⁴⁶ See, e.g., *Chrysler Corp. v. Brown*, 441 U.S. 281, 301-03 (1979). Thus, if the FCC were to make substantive changes to the designation process that it intended to be binding in all subsequent FCC and state cases under Section 214(e), it would trigger the notice-and-comment requirements of the Act and the APA. Because the FCC did not conduct a notice-and-comment rulemaking required by § 254(a) of the Act and § 553 of the APA, in *Highland Cellular*, the FCC could not have changed its rules and regulations in that case. In *Highland Cellular* the FCC could do no more than apply existing law to the unique facts and circumstances it faced based on the record in that case.

However, the OPUC notes that the FCC has invited parties with ETC related dockets pending before the FCC to supplement the record in light of the evolving public interest standard articulated in *Virginia Cellular* and *Highland Cellular*.⁴⁷ The FCC applied this

⁴⁶ 5 U.S.C. § 553(b)-(c).

⁴⁷ See *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket 96-45, DA 04-999, 19 FCC Rcd 6409 (rel. April 12, 2004).

invitation to parties seeking ETC designation, as well as redefinition of service areas. The OPUC notes that the population density considerations discussed in *Highland Cellular* apply to ETC designation, not service area redefinition. The OPUC has already found USCC's and RCC's designation throughout their requested ETC service areas to be in the public interest under the exclusive authority granted to the OPUC under 47 U.S.C. § 214(e)(2), as discussed below. The service area redefinition process, by contrast, takes place under the federal-state concurrence process set forth in 47 U.S.C. § 214(e)(5), and this petition for FCC agreement with the redefinition proposal as approved by the OPUC should be granted.

2. USCC and RCC meet *Highland Cellular*'s standards.

The record in these proceedings clearly shows that USCC and RCC meet the standards of *Highland Cellular*. *Highland Cellular* contained a more detailed analysis of cream skimming than that required by the Joint Board factors listed above that involved review of population densities and projected costs of service. In that case, the FCC granted Highland Cellular's ETC designation for most of the requested study areas but denied ETC designation for the study area of certain rural carriers where Highland Cellular's licensed service area did not fully cover the study areas.⁴⁸ The FCC did so because it found that Highland Cellular would be cream skimming by largely serving the lowest-cost customers in the study areas. In the study area of Verizon South, the FCC concluded that four of the wire centers served by Highland Cellular were the four highest-density "and thus presumably lowest-cost wire centers in Verizon South's study area."⁴⁹ The FCC determined that "94 percent of Highland Cellular's potential customers in Verizon South's study area would be located in [four of the six wire centers served

⁴⁸ *Highland Cellular* at ¶ 1.

⁴⁹ *Highland Cellular* at ¶ 31.

by Highland Cellular].”⁵⁰ The FCC then denied the application as to all six wire centers in the Verizon South study area.⁵¹ The FCC engaged in a similar analysis regarding the Saltville wire center of United Telephone Company and reached the same conclusions.⁵²

Unlike *Highland Cellular*, USCC’s and RCC’s customers tend to be in the lowest density rural ILEC wire centers. The evidence in the record of USCC’s and RCC’s designation dockets showed that USCC and RCC clearly satisfy the *Highland Cellular* test with respect to the CenturyTel, Cascade, Oregon Tel and Sprint study areas.⁵³

⁵⁰ *Highland Cellular* at ¶ 31.

⁵¹ *Highland Cellular* at ¶ 32.

⁵² *Highland Cellular* at ¶ 1.

⁵³ See *USCC Order* at 10-12; see also *RCC Order* at 11-12.

III. CONCLUSION

OPUC has found that USCC's and RCC's use of high-cost support to increase the availability of competitive services and to invest in rural infrastructure development will serve the public interest.⁴⁹ Yet, without the FCC's concurrence with the rural ILEC service area redefinition proposed herein, consumers will not be able to experience those benefits in many areas in which USCC and RCC are authorized by the FCC to provide service. The redefinition requested in this Petition will enable USCC's and RCC's ETC designations to take effect throughout their designated ETC service areas in Oregon. Accordingly, OPUC requests that the Commission grant its concurrence with the proposal to redefine the service areas of CenturyTel, Cascade, Oregon Tel and Sprint.

Respectfully submitted,



Phil Nyegaard
Administrator, Telecommunications Division
Oregon Public Utility Commission

June 28, 2004

⁴⁹ See *USCC Order* at 13; *RCC Order* at 14.