

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

In the Matter of: )  
 )  
Wireline Competition Bureau ) CC Docket No. 96-45  
 )  
Petition of RCC Minnesota, Inc. and Wireless Alliance, )  
LLC, pursuant to 47 C.F.R. Section 54.207(c) for )  
Redefinition of Rural Telephone Company Service Areas. )  
 )

**COMMENTS OF MINNESOTA INDEPENDENT COALITION**

The Minnesota Independent Coalition and its seventy-four member rural telephone companies (collectively the “MIC”) submit these Comments in response to the Commission’s September 9, 2004 Public Notice regarding the Petition of RCC Minnesota, Inc. (“RCC”) and Wireless Alliance, LLC (“Wireless”) (collectively, “Petitioners”) requesting Federal Communications Commission Agreement with the Minnesota Public Utilities Commission’s (“MPUC”) proposed redefinition for the service areas of Benton Cooperative Telephone Company and the Sherburne County Rural Telephone Company. The Petition arises from a decision by the MPUC to designate RCC and Wireless, cellular mobile radio service (“CMRS”) providers, as an Eligible Telecommunications Carrier (“ETC”) throughout their licensed territory in Minnesota.<sup>1</sup> As more fully set forth below:

1. Redefinition is not needed to enable Petitioners to provide service throughout the service areas of all rural LECs wholly or partially within their licensed CMRS areas;
2. Disaggregation of high cost support under Rule 54.315 does not support redefinition of service areas under Rule 54.207, and certainly not below the exchange level.

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<sup>1</sup> *Order Granting Conditional Approval and Requiring Additional Filings*, MPUC Docket No. 6182, 6181/M-02-1503 (July 31, 2003) (“MPUC Designation Order”).

3. Redefining exchanges on the edge of Petitioners' CMRS licensed areas into separate service areas will have no current effect because of limitations in their signal coverage; and
4. The Commission should stay further consideration of the Petition until it resolves the pending very substantial issues relating to certification of competitive ETCs.

For areas served by a “rural telephone company,”<sup>2</sup> Section 214(e)(5) of the Act<sup>3</sup> provides that a rural carrier’s “service area” for federal support purposes<sup>4</sup> “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.”<sup>5</sup> 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 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 Petition should be denied.

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

It is not necessary to redefine service areas of incumbent LECs that are wholly or partially within Petitioners licensed CMRS area because there are several alternatives available to them to provide service both inside and outside of their CMRS licensed area. At the same

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<sup>2</sup> 47 U.S.C. § 151 *et seq.*

<sup>3</sup> 47 U.S.C. § 214(e)(5).

<sup>4</sup> 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).

<sup>5</sup> 47 U.S.C. § 214(e)(5) (emphasis added).

time, 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.

Petitioners certainly have the ability to offer service beyond their 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.<sup>6</sup> In fact, the MPUC noted the ability of RCC and Wireless to use a combination of their own facilities and "reselling the services of other carriers."<sup>7</sup> The same ability to use resale of existing service shows that the Petitioners can provide service outside of their licensed CMRS area and can certainly do so for exchanges that are contiguous to other licensed CMRS service area and for exchanges that are partially within and partially outside of their licensed CMRS service area. Having already availed themselves of their rights to use facilities and services of other carriers, Petitioners should not now be allowed to ignore those available service alternatives when the question of service area is addressed.

Nothing in the Petition or in the MPUC Designation Order indicates RCC cannot serve an entire study area if it chooses to do so by using any of the above-mentioned methods or that they have even attempted to even explore this option with the MPUC or other providers. These

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<sup>6</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>7</sup> *MPUC Designation Order* at p. 5.

facts confirm that the request for redefinition of service areas reflects preferences and convenience for Petitioners rather than the best interests of Minnesota customers.

The Petition relies on a portion of the *Universal Service Order* that cautions against defining service areas that are too large.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> Accordingly, Petitioners' reliance on the *Universal Service Order* is misplaced.

## **II. The disaggregation of high-cost support under Rule 54.315 does not support the Petition, and certainly not below the exchange level.**

The Petition requests that the service areas of Benton and Sherburne be redefined to areas smaller than the exchange level. This request apparently relies 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 Petition, citing the Opinion of the ALJ, which was adopted by the MPUC, asserts that "Most Minnesota telephone companies...have elected to disaggregate their own service areas down to the exchange level for universal service purposes, and even to subdivide their

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<sup>8</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶189 (1997) ("*Universal Service Order*").

<sup>9</sup> *Universal Service Order* at ¶184.

<sup>10</sup> 47 U.S.C. § 214(e)(2) and (5).

exchanges into cost zones.<sup>11</sup> 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.<sup>12</sup>

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

Both the 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 discount or ignore the risks of cream-skimming.<sup>13</sup>

There are three factual defects in the MPUC's reliance. First, what Minnesota LECs *outside* of the Petitioner's license areas may have done is irrelevant to the request for redefinition of service areas *inside* the Petitioner's license areas. 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 Petitioners.

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<sup>11</sup> *RCC Petition* at p. 10. (August 27, 2004).

<sup>12</sup> *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Petitions for Reconsideration filed by: Coalition of Rural Telephone Companies, Competitive Universal Service Coalition, Illinois Commerce Commission, National Telephone Cooperative Association, Order on Reconsideration*, 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).

<sup>13</sup> *RCC Petition* at p. 10; *MPUC Designation Order* at p. 12 (adopting ALJ Report in its entirety).

Second, contrary to the MPUC's assertion, only twenty-one of eighty-six LECs in Minnesota disaggregated their high cost support.<sup>14</sup> This is far less than a majority of LECs in Minnesota.

Third, even fewer of the LECs in the RCC CMRS licensed area have disaggregated their high-cost support. The two MIC members within the scope of the RCC Petition are multiple exchange LECs. These companies have disaggregated their high-cost support to the exchange level, *but not below the exchange level*. Clearly, the disaggregation of high cost support by these Companies does not support the Petition's suggestion that they be redefined below the exchange level.

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

These factors call into question the basis for both the 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 Petitioners' licensed areas into separate service areas will have no current impact because of limitations in RCC's signal coverage.**

The Petition requests that the Commission concur in the MPUC's decision to redefine those exchanges on the edge of Petitioners' license area into separate service areas that include only portions of those exchanges. Since there is no indication that Petitioners will actually provide service in these areas, there will be no current impact from such a redefinition. The

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<sup>14</sup> <http://www.universalservice.org/hc/disaggregation/checklist/minnesota.xls>.

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 “there was no evidence to suggest that RCC is targeting low cost exchanges or low cost portions of an exchange.”<sup>15</sup> This passage could be read to suggest that RCC is providing cellular service throughout its licensed area. Such an inference would be entirely incorrect.

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 multiple 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.

**IV. The Commission should stay consideration of the 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.<sup>16</sup> 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.”<sup>17</sup> 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.”<sup>18</sup> Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. At present no decision has been announced. 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.

An additional concern is raised by the fact that the FCC has yet to act on the appropriateness of a virtually identical Petition by the Minnesota Public Utilities Commission in the Midwest Wireless matter.<sup>19</sup> It may be that this delay is to permit the Commission to finalize its decision in the Universal Service matter. If that is the case a decision in this matter should be similarly delayed since the two matters raise virtually identical issues.

In addition, entry of the Petitioners into rural Minnesota study areas should not be viewed as an isolated, static issue. The Commission must consider the implications of the Petition if

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<sup>15</sup> *MPUC Designation Order* at p. 12.

<sup>16</sup> *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).

<sup>17</sup> Joint Board Public Notice at ¶ 35.

<sup>18</sup> *Id.* ¶ 16.

<sup>19</sup> *Petition of the Minnesota Public Utilities Commission for Agreement with Changes in Definition of Service Areas Served by CenturyTel et al*, CC Docket 96-45 (filed July 8, 2003) (“MPUC Midwest Petition”) The MIC Companies filed comments in that matter on August 26, 2003.

additional wireless providers follow Petitioners' 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. This concern is only highlighted by the Commission's inaction on the Midwest Wireless matter, which raises identical issues.

Finally, a number of petitions for redefinition of service areas are currently pending before the Commission<sup>20</sup> 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.<sup>21</sup>

The same considerations apply here to the request for disaggregation set forth in the Petition. While the threshold issue of ETC designation of Petitioners 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.<sup>22</sup>

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<sup>20</sup> E.g. *Matter of Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, CC Docket 96-45.

<sup>21</sup> 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).

<sup>22</sup> 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.

**V. Conclusion.**

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

September 23, 2004

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*See, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 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).*

## CERTIFICATE OF SERVICE

I, Barbara Cady, a secretary in the law office of Maslon Edelman Borman & Brand, LLP hereby certify that I have, on this 23rd day of September, 2004, electronically filed the attached **Petition Of RCC Minnesota, Inc. And Wireless Alliance, LLC For Redefinition of Rural Telephone Company Service Areas** with the Federal Communications Commission and placed in the United States mail, first-class postage pre-paid, a copy of the same addressed to the following:

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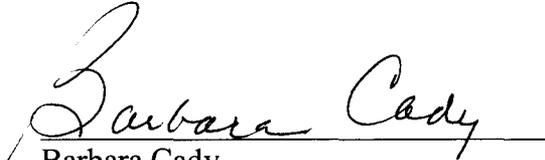
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