Lost River and South Fork exchanges. Hardy appears to be overbuilding Frontier's facilities in Moorefield, which is the county seat of Hardy County. By overbuilding, Hardy is replicating the landline facilities of Frontier. It has its own switch and is installing its own loop and transport facilities to serve customers. Hardy apparently is not relying on Frontier's facilities to serve Moorefield. Frontier formally served approximately 3,200 access lines in Moorefield. However, based on Hardy's direct testimony, Hardy apparently is serving 300 of these access lines. The Moorefield exchange is part of Frontier's Bluefield study area, which is Frontier's largest study area in West Virginia, containing approximately 94,000 access lines. (CAD Exhibit 1, pp. 2-3).

Mr. Gregg also defined study area, which is generally an incumbent telephone company's preexisting service territory within a state. The boundaries of the study areas were established as of November 15, 1984, by FCC Order. Frontier's three study areas correspond to the service territories of the previous owners of those service territories. The Bluefield study area is made up of wire centers formerly owned by General Telephone. The St. Mary's study area is made up of wire centers formerly owned by Contel. The Mountain State study area is made up of wire centers formerly owned by AllTel. While a company such as Frontier may operate as a single company within a state, federal universal service support is determined on a study area basis. (CAD Exhibit 1, p. 3).

Mr. Gregg indicated that he partially agreed with the arguments made by the witnesses for both of the other parties. He noted that designation of an additional ETC would provide additional choices, competition and improvement of the ETC's network. He noted, however, that this will always be the case when an additional subsidized carrier is designated. He agreed with Frontier witness Swatts that, if the benefits of competition alone were enough to satisfy the public interest test, Congress would not have established a separate public interest test for ETC applicants in rural study areas. It simply would have mandated ETC designation upon a showing that the applicant can provide the supported services and advertise their availability, just as it did for the non-rural study areas. (CAD Exhibit 1, pp. 4-5).

However, Mr. Gregg disagreed with Mr. Swatts' testimony that no additional ETC should be allowed in Frontier's study areas because those study areas receive USF support. He noted that numerous non-rural carriers receive USF support and Congress made a policy decision that additional ETCs should be allowed in those areas, assuming they can provide and advertise the supported services. Mr. Gregg noted that the highest amount of USF high cost support received by a non-rural carrier is approximately $8.00 per line per month, received by Puerto Rico Telephone Company. (CAD Exhibit 1, pp. 5-6). Mr. Gregg agreed with Mr. Swatts, however, that there are areas that are so costly to serve that it would make no sense to support an additional subsidized carrier. It is Mr. Gregg's belief that this is one of the reasons why Congress made ETC designation in rural study areas discretionary with state commissions and only if those designations were found to be in the public interest. While he did not agree that all rural study areas that receive high cost support should be exempt from having additional ETCs, Mr. Gregg did believe that the higher the level of support received by a study area, the greater the scrutiny that an ETC application for that area should receive. He believes that the public interest test essentially is a cost benefit analysis, i.e., whether the cost and potential harm of supporting an additional subsidized carrier in a rural study area outweigh the benefits resulting from having an additional ETC. (CAD Exhibit 1, p. 6).

For the fourth quarter of 2003, the Bluefield study area received an average of $11.97 per line in monthly high cost support. Under Bluefield's disaggregation pan, the Moorefield exchange receives $37.01 per line in monthly high cost support. Mr. Gregg's Exhibit BJG-1 shows the total revenue of each ILEC in West Virginia for 2002, along with the amount of federal universal service support received by each carrier. USF high cost support constitutes almost 17% of the total revenue generated in the Bluefield study area, the lowest amount of any of the three Frontier study areas. (CAD Exhibit 1, pp. 3-4, 6 and Exhibit BJG-1).

According to Mr. Gregg, the national average residential rate for flat rate service in urban areas is $23.28 per month. The average residential rate in West Virginia is higher. The FCC reference book lists Verizon's average rate in West Virginia as $28.61 a month. Frontier's average residential rate would probably be slightly higher, approximately $30.00 per month. The amount of per line federal high cost support in the Bluefield study area is less than the national average residential rate and the average Frontier residential rate. (CAD Exhibit 1, p. 7).

It is Mr. Gregg's belief that the levels of high cost support received in the Bluefield's study area are low enough that more than one ETC can be supported, and that the cost and potential harm for such additional support are not excessive. Therefore, he believes that it is in the public interest to grant Hardy's ETC application in the Moorefield exchange, subject to certain conditions. (CAD Exhibit 1, p. 7).

Even though Mr. Gregg recognized that, under Frontier's disaggregation plan, the Moorefield exchange received $37.01 per line per month in high-cost support, he believes the relevant unit of inquiry in deciding whether to designate an additional ETC is the rural incumbent's study area, rather than individual exchanges. He stated that the impact on future support resulting from the designation of an additional ETC will flow through at the study area level, rather than at the exchange level. Further, the level of disaggregated support available to the Moorefield exchange is the result of a disaggregation plan of Frontier's own devising. Because the level of USF support received in the Bluefield study area overall is not excessive, Mr. Gregg believes that a balancing of the cost and benefits of the designation of Hardy as an additional ETC leads him to the conclusion that such a designation is in the public interest, subject to certain conditions. (CAD Exhibit 1, pp. 7-8).

Mr. Gregg testified that, in this case, the Commission should follow the procedures set forth in Section 214(e)(5) of the Act and Section 54.207 of the FCC's regulations which provide for redefinition of a service area and redefine Hardy's service area to be the Moorefield exchange. Following the issuance of an Order approving ETC status in this case, the Commission should direct Staff to file a petition with the

FCC seeking its concurrence in this service area redefinition. (CAD Exhibit 1, pp. 8-9).

Mr. Gregg disagrees that Hardy's proposed service area designation, i.e., the Moorefield exchange, will allow Hardy to cream skim. He noted that the potential for cream skimming has been greatly reduced by Frontier's implementation of a disaggregation plan. Under that plan, support is targeted at higher-cost areas within the study area and removed from lower-cost areas. Thus, ETCs that choose to serve the more urbanized areas of the Bluefield support area, such as Charles Town, Harpers Ferry or Shepherdstown, receive no support, while ETCs choosing to serve more rural areas such as Moorefield, are eligible for high levels of support. He also stated that concerns about cream skimming within the Moorefield exchange itself are addressed by the requirement that Hardy offer service throughout the entire Moorefield exchange. (CAD Exhibit 1, p. 9).

With respect to the conditions recommended by Frontier witness Swatts, to be placed on Hardy if it is granted ETC status, Mr. Gregg recommended that Hardy be held to the same conditions which have previously been placed on ETCs, in Easterbrooke's ETC designation case involving the Verizon wire centers, Case No. 02-1118-T-PC, and in the <u>Highland Cellular</u> case, Case No. 02-1453-T-PC, which is still pending. These conditions include obligations to provide service when customers are unable to receive an adequate signal; the filing of periodic reports to the Commission on unserved areas and network deployment; the filing of informational tariffs with the Commission, including the terms of Lifeline and Link-Up programs for low-income customers; and the filing of annual reports with the Commission demonstrating how the USF funds were used. Further, Hardy should be required to comply with the advertising requirements for ETCs established by the Commission in previous cases. Finally, any grant of ETC status should be conditioned on compliance with any standards for ETCs which are established as a result of the ongoing ETC task force in P.S.C. Case No. 03-1119-T-GI. (CAD Exhibit 1, p. 10).

With respect to Hardy restricting service to the portions of the Moorefield exchange where it has facilities, Mr. Gregg noted that Hardy should not be permitted to restrict its service area if it is granted ETC designation. As a competitor, Hardy is free to offer service where ever it wants. However, if it is designated as an ETC, under Section 214 of the Act, Hardy is obligated to offer service throughout its entire service area, which, in this case, would be the Moorefield exchange. If Hardy does not have physical facilities available to provide service to customers in certain areas, it can use resale or unbundled network elements to serve these customers. Any grant of ETC status in this case should be explicitly conditioned on the requirement that Hardy offer service throughout the Moorefield exchange. (CAD Exhibit 1, pp. 10-11).

In summary, Mr. Gregg recommended that the Commission find that it is in the public interest to designate Hardy as an eligible telecommunications carrier in the Moorefield exchange; that it be required to provide service to all customers within the Moorefield exchange who make reasonable requests for service; that the grant of ETC status to Hardy be subject to the same conditions imposed in the ETC cases of <u>Highland Cellular</u>, Case No. 02-1453-T-PC, <u>Easterbrooke</u>, Case No.

02-1118-T-PC, and StratusWaves Communications, Case No. 00-1656-T-PC; that Hardy's service area be redefined as the Moorefield exchange within Frontier's Bluefield study area; and that, upon entry of an order approving Hardy's ETC application for this area, the Commission directed to Staff to file a petition with the FCC for concurrence in the redefinition of Hardy's service area. (CAD Exhibit 1, p. 11).

DISCUSSION

Under the Telecommunications Act of 1996, designation as an ETC is essential in order for common carriers of telecommunications services to be eligible to receive federal universal service support pursuant to 47 U.S.C. §254. In order to be designated as an ETC, a carrier must: (1) be a common carrier; (2) offer the services supported by federal universal service support mechanisms under 47 U.S.C. §254(c), either using its own facilities or a combination of its own facilities and resale, throughout the designated service area; (3) advertise the availability of such services and the charges therefor, using media of general distribution. 47 U.S.C. §214(e)(1)(A)&(B); and (4) offer Link-Up and lifeline services as part of its service offerings to low-income subscribers. See 47 C.F.R. §§54.405 and 54.411.

47 U.S.C. §214(e)(2) establishes the process for the designation of eligible telecommunications carriers:

> A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (Emphasis added).

The nine (9) supported services which the ETC applicant must provide are: voice grade access to the public switched telephone network; local usage; dual-tone multi-frequency signal DTMF) or its functional equivalent; single party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation for qualifying low-income customers. See, 47 C.F.R. §54.101(a). The applicant must advertise the availability of these services throughout its service territory. If the incumbent local exchange carrier is a rural telephone company (RTC), the applicant seeking ETC status also must demonstrate that designating it as an ETC is in the public interest.

The Public Service Commission adopted general criteria for the advertising requirement in its Order of May 4, 2004, in Case No. 00-1656-T-PC, Gateway Telecom, LLC, dba StratusWave Communications, as follows:

1. The carrier must advertise in media targeted to the general residential market throughout its service area;

2. Such advertising should be placed in media substantially similar to the media in which the serving incumbent LEC advertises its services in the particular service area. This may mean newspaper or local magazine advertisements where the incumbent advertises its services in such publications, or use of broadcast media (radio or television) where the incumbent uses such media;

3. The carrier is required to maintain an Internet site where members of the public can obtain information regarding its services and rates; and

4. The carrier is required to advertise its services at least quarterly throughout the service areas for which it has been designated an ETC.

The FCC's regulations on the service area for an ETC are contained in 47 C.F.R. §54.207 as follows:

> (a) The term service area means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.
>
> (b) In the case of a service area served by a rural telephone company, service area means such company's "study area" unless and until the Commission [the FCC] and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.
>
> (c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

The analysis for Hardy's ETC petition is relatively straight forward. It is seeking ETC designation for the Moorefield wire center of Frontier's Bluefield study area. The Bluefield study area encompasses a large but non-continuous geographic territory in West Virginia, extending from the very southernmost portion of the state along the Virginia-West Virginia border in Mercer County to the Eastern Panhandle. For most of the elements which must be demonstrated in order to obtain ETC designation by an applicant, there is no dispute in this proceeding. Hardy is a common carrier. It is the incumbent local exchange carrier for its own service territory, which includes portions of Pendleton, Grant, Hardy and Hampshire Counties, and it is a competitive local exchange carrier in the portions of those same counties where it is not the incumbent, with the exception of the service territory of Spruce Knob Seneca Rocks Telephone Company. It is already offering to 270 customers the nine services supported by the universal service mechanism. Therefore, it is clearly offering or capable of offering the nine supported services. Hardy's witness Welch indicated that Hardy was not just seeking to provide service in the town of Moorefield, but would commit to providing service throughout the entire Moorefield exchange and would comply with any ETC requirements on serving the whole exchange area. (Hardy Exhibit 1, p. 7). Thus, it has met the third requirement of committing to offer those services through out the designated service area. Hardy is also extensively advertising the availability of its services and their charges as verified by the advertising and media information attached to its petition filed in this proceeding on March 3, 2003, and also as verified by the fact that Frontier acknowledges that Hardy is a competitor and that Frontier has lost a number of customers to Hardy. (Frontier, Exhibit 1, pp. 9-10). Finally, Hardy must offer Link-Up and Lifeline services as part of its service offerings to low-income subscribers.

The issue to be resolved in this proceeding is whether or not it is in the public interest to designate Hardy as an ETC in Frontier's Moorefield exchange. Rural telephone companies were given extra protection, under the Telecommunications Act of 1996, from competition which could arise from additional ETC designations and competing carriers having access to universal service funding. Therefore, in addition to finding that an ETC applicant meets all of the otherwise applicable requirements, a state commission must make an affirmative finding that it is in the public interest to grant an additional ETC designation in the service territory of a rural telephone company.

Hardy maintains a local presence in the Moorefield exchange with a business office located at 121 South Main Street in Moorefield, where it accepts payments and can set up and modify customer accounts. Customers have access to product information, tariffs and customer assistance. (Hardy Exhibit 1, p. 6). Mr. Welch also pointed out that, since Hardy entered the market in the Moorefield exchange, Frontier has worked to improve its own service in the Moorefield exchange. Subsequent to Hardy entering the market, Frontier opened up its own local business office, which it had not done before. Frontier also has been advertising more promotions offering rate reductions. Hardy's witness Welch does not believe that these things would have occurred without Hardy's presence in the Moorefield exchange, indicating that the introduction of competition in Moorefield was good for the community, even for those customers who did not elect to go with the new competitor. (Hardy Exhibit 1, pp. 6-7). Further, Mr. Welch noted that Hardy is investing significant capital in order to actually overbuild Frontier's network in Moorefield. (Hardy Exhibit 1, p. 8). Hardy's witness Welch promised that, if Hardy obtained USF support, it will flow any revenues it receives back into the community. (Hardy Exhibit 1, pp. 10-11). Hardy's witness Welch also pointed out that, no matter what amount of USF support Hardy ultimately receives, under current FCC rules, Frontier's USF support will not decrease. (Hardy Exhibit 1, p. 13).

In the FCC's most recent pronouncement on designating an additional ETC in an RTC service area, the FCC concluded that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Rather, one must weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the Universal Service Fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding quality of telephone service provided by competing providers and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. (See, Highland Cellular, Inc., CC Docket No. 96-45, FCC 04-37, Memorandum Opinion and Order, (rel. April 12, 2004), para. 4). With respect to designating a competitive ETC in an RTC's service area, the FCC also noted that the balancing of the benefits and costs from such designation is a fact-specific exercise. (See, Highland Cellular, Inc., para. 22).

The instant case provides a rather interesting situation, in that by Recommended Decision entered on December 2, 2003, which became final on December 22, 2003, the Deputy Chief Administrative Law Judge of the Public Service Commission resolved a complaint proceeding filed by Frontier against Hardy, alleging that Hardy was unlawfully, deceptively and misleadingly advertising that its CLEC operations were part of its ILEC cooperative, implying that one was subsidizing the other. In that proceeding, the unrebutted testimony, which was also repeated to some degree herein, indicated that Frontier had actively responded to Hardy's CLEC operation in Moorefield by lowering its rates in the Moorefield exchange and by conducting an advertising campaign of its own. Additionally, Frontier established an office in Moorefield, for the first time, staffing it with people who could respond to customer concerns. Prior to Hardy becoming a CLEC in Moorefield, Frontier's Moorefield customers could only contact Frontier by telephone, mail or internet. (See, Case No. 03-0135-T-C, Citizens Telecommunications Company of West Virginia, dba Frontier Communications the Hardy Telecommunications, Inc., Recommended Decision entered December 2, 2003, filed on December 22, 2003, pp. 8, 12, 20). Accordingly, it is clear that, unlike some proceedings where the asserted benefits of competition are more amorphous and are based more on approval of the economic philosophy of competition as opposed to any specifics, Hardy's entry into the telecommunications market in the Moorefield exchange has actively and affirmatively benefitted the customers in the Moorefield exchange, both those who chose to obtain service from Hardy and the ones who chose to remain with Frontier, because of Frontier's aggressive response to Hardy's entry into that marketplace. Therefore, the benefits of competition in the Moorefield wire center are specific and proven and go a long way toward meeting the public interest requirement that Hardy must establish in obtaining ETC designation in the Moorefield exchange. Hardy's willingness to enter into a high-cost market and to invest significant funds into the local community are also benefits which cannot be ignored by the Public Service Commission. Accordingly, the undersigned concludes that Hardy has met its burden with respect to the public interest requirement established in Section 214(e) of the Act.

With respect to the impact of Hardy's designation on the Universal Service Fund, the undersigned concludes that the rather general policy arguments raised by Frontier or the more specific study area analysis conducted by the CAD are inappropriate. Frontier's argument regarding harm to the Universal Service Fund relies heavily on the assumption that, at some point in the future, revenues going into the fund will be at such a low level and payouts from the fund will be so high that the Universal Service Fund will simply not have enough money to pay its obligations or the rules must be changed significantly which would result in a reduction of the funds paid to Frontier. All of this may be true. It also may be true that, at some point in the future, Congress will decide that, rather than obtaining the USF assessment only from interstate and international revenue, the USF factor will be assessed against intrastate telecommunications revenues as well. It is also possible that, over the course of the next few years, any number of different mechanisms may be proposed and ultimately adopted by the FCC and/or Congress or even the states, which would eliminate or mitigate the worst case scenario proposed by Frontier in its briefs in this matter.

The undersigned is more troubled by the CAD's study area analysis. The CAD's analysis looks at support per month per line within an RTC's entire study area and compares that monthly support per line to the national average and state average telephone bill to determine whether or not the monthly support per line in a specific study area is too high to allow another ETC to be designated in that study area. The CAD analysis concludes that, if the monthly support per line for a specific study area is lower than the national and state average telephone bills, the costs to serve that study area are generally low enough to support an additional ETC designation. However, if the monthly support per line in the study area exceeds the national and state average residential telephone bill, the costs to serve that study area are generally too high to support another ETC designation. The peculiarity of the CAD analysis, however, can be appreciated best by comparing the CAD's recommendation in the instant proceeding with its recommendation in the ETC petition of Easterbrooke Cellular Corporation, Case No. 03-0935-T-PC, which decision is being issued contemporaneously herewith. In the instant proceeding, even though the monthly support per line for the Moorefield exchange is $37.01 because of Frontier's USF disaggregation plan, which targets USF support to the higher-cost wire centers within a study area and diverts it away from the lower-cost wire centers in a study area, since the average USF support per line for the entire Bluefield study area is only $11.97 per line, the CAD found that the Bluefield study area can accommodate additional ETC designations and, therefore, the CAD is recommending that Hardy's petition for ETC designation be granted. In the <u>Easterbrooke</u> case, however, because the average monthly USF support per line in Frontier's Mountain State study area is $37.76 per line, the CAD recommended that Easterbrooke's ETC petition for the Mountain State study area by denied. There is little difference between $37.01 support per line for the Moorefield exchange and the $37.76 support per line for the Mountain State study area; yet, because of the artificial use of the study area as the basis for the analysis, disparate results are generated, even though the support per line is similar. It should be noted that, in the Easterbrooke proceeding, no specific support information on a wire center basis was provided.

The undersigned is further disturbed by the CAD analysis, given Frontier's disaggregation of its USF support. If Frontier had not filed a disaggregation plan and simply utilized average support throughout its study areas, the CAD analysis would make considerably more sense. However, Frontier did disaggregate its USF support and chose Path 3 which targets USF support to the higher-cost exchanges, like Moorefield, and diverts it away from the lower-cost exchanges, of which there are many in the Bluefield study area.

In any event, as noted previously, the undersigned is of the opinion that both analyses missed the mark. The FCC has spoken recently on an appropriate USF analysis to be made in ETC petitions for RTC study areas. The FCC did not engage in broad policy determinations regarding the future health of the fund on a general basis nor did it analyze the specific study area costs and support levels for the RTCs involved in the recent petitions. Rather, the FCC looked at the specific impact on the Universal Service Fund of granting the individual ETC petition at issue. (See, Highland Cellular, Inc., Memorandum Opinion and Order, (rel. April 12, 2004), para. 25 and footnote 73; and Virginia Cellular, LLC, CC Docket No. 96-45, FCC 03-338, Memorandum Opinion and Order, (rel. January 22, 2004), para. 31 and footnote 96). Given the 3200 potential access lines in the Moorefield exchange and the level of support received by Frontier for each of those lines on a monthly basis, Hardy potentially could receive $355,296.00 per quarter, if it served all of the exchange's customers, which, based on similar FCC analyses in the Highland Cellular and Virginia Cellular opinions, will not burden the Universal Service Fund.

Frontier argued briefly, that, because Hardy is not prepared to serve the remainder of the Bluefield study area, other than Hampshire, Grant and Hardy Counties, it should not be granted ETC designation. However, among other things, the Bluefield study area is an extensive noncontiguous study area. The FCC has concluded that requiring a carrier to serve a noncontiguous service area as a prerequisite of ETC eligibility might impose a serious barrier to entry, particularly to wireless carriers. (See, Universal Service Order, 12 FCC Rcd. 8882, para. 190 and Virginia Cellular, Memorandum Opinion and Order, Docket 96-45, FCC 03-338, (rel. January 22, 2004), para. 38). Obviously, Hardy is not a cellular carrier, however, any requirement that a small telephone company who services four counties in the eastern panhandle of West Virginia must also serve counties in the extreme southern part of West Virginia hundreds of miles away from its certificated service territory would be an unconscionable and unreasonable requirement. Further, Frontier has consistently misstated federal law on this point.

Frontier has also raised an argument regarding cream skimming, asserting that, by choosing to serve just the Moorefield exchange, Hardy is attempting to cream skim Frontier's territory, by serving only lower-cost territory, while Frontier must service the higher-cost territory. The undersigned is of the opinion that this argument is not well taken as long as Hardy is prepared and required to serve the entirety of the Moorefield exchange. The argument had more traction when it appeared that Hardy might simply be seeking to serve the Town of Moorefield. The Moorefield exchange under Frontier's disaggregation plan has been designated as a high-cost exchange. (See Exhibit 1, attached to Frontier Exhibit 1, the Prefiled Direct Testimony of its witness, J. Michael Swatts, listing the wire centers in the various study areas, along with their designation as high-cost, medium-cost or low-cost under Frontier's disaggregation plan). Therefore, the implication is that the Moorefield exchange in its entirety is a high-cost area. As long as Hardy is going to be serving the entire Moorefield exchange, there is really no cream skimming argument to be made.

Finally, the undersigned believes that there are certain policy issues relating specifically to the regulation provided by the Public Service Commission of West Virginia under the statutory scheme set forth in Chapter 24 of the West Virginia Code which no party to this proceeding has addressed. Under West Virginia Code §24-2-11(a), no public utility, person or corporation may begin the construction of any plant, equipment, property or facility for furnishing any of the services under the jurisdiction of the Public Service Commission nor apply for nor obtain any franchise, license or permit from any municipality or other governmental agency unless and until the Public Service Commission finds that the public convenience and necessity require the proposed service, construction, etc. The certificates granted to Frontier, Hardy and any other telecommunications provider in the State of West Virginia, whether they are wireless carriers or wireline carriers, interexchange carriers or CLECs, are exactly the same and the Commission had to make exactly the same finding of public convenience and necessity in order to grant them, whether or not those findings are explicitly stated in the orders. Given this similarity of certificates, the undersigned finds it discomfiting to be expected to pick and choose among carriers whose certificates have equal standing and whose services the Public Service Commission has already concluded are required by the public convenience and necessity. Denial of ETC designation to any ETC applicant in West Virginia means that the Public Service Commission is automatically placing that carrier at a financial and competitive disadvantage relative to the incumbent local exchange carrier and, possibly, previously granted ETC designees, by denying subsequent ETC applicants the same access to Universal Service Funding support as it granted to prior ETC designees or the incumbent providers. Once the Public Service Commission has concluded that the public convenience and necessity require a particular service, the undersigned is hard-pressed to understand under what legal basis under Chapter 24 of the West Virginia Code the Commission then makes an affirmative decision to discriminate between those providers by denying access to subsidy funds to some, while granting it to others.

Accordingly, Hardy Telecommunications, Inc., will be granted ETC status in the Moorefield exchange of Frontier's Bluefield study area, with the requirement that it provide service throughout the entirety of the Moorefield exchange, either through its own facilities or a combination of its own and Frontier's facilities; that it comply with the advertising requirements previously established by the Commission in Gateway; and that it comply with any other restrictions or requirements imposed upon ETC designees in the Highland Cellular proceeding, Case No. 02-1465-T-PC, currently pending before the Public Service Commission on exceptions.

FINDINGS OF FACT

1. Hardy Telecommunications, Inc., has requested that the Public Service Commission designate it as an eligible telecommunications carrier, pursuant to Section 214(e)(2) of the Communications Act of 1934,

as amended, in order for Hardy to receive support from the Federal Universal Service Fund in the Moorefield exchange served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia, a rural telephone company. (See, petition).

2. In order to be designated as eligible telecommunications carrier, an applicant must be a common carrier; offer the nine services supported by the Federal Universal Service Support mechanism under 47 U.S.C. §254(c), either using its own facilities or a combination of its own facilities and resale, throughout the designated service area; advertise the availability of such services and the charges therefor, using media of general distribution; and offer Link-Up and Lifeline services (known as Tel-Assistance services in West Virginia) as part of its service offers to low-income subscribers. (See, 47 U.S.C. §214(e)(1)(A)(B); 47 C.F.R. §§54.405 and 54.411).

3. Hardy is an incumbent local exchange carrier serving portions of Hardy, Grant, Pendleton and Hampshire Counties. It is also certificated as a competitive local exchange carrier in the portions of those same four counties in which it is not the ILEC, except for the area served by Spruce Knob Seneca Rocks Telephone, Inc. It is Hardy's CLEC operations that are issue in this proceeding. In its capacity as a CLEC, Hardy is providing service in Frontier's Moorefield exchange and has announced its intent to provide service in Frontier's Wardensville exchange. Hardy is overbuilding Frontier's network, which means that Hardy is building its own independent wireline network. Hardy and Frontier exchange traffic on a switch-to-switch basis pursuant to an interconnection agreement dated August 23, 2002. (See, Frontier Exhibit 1, pp. 4-5).

4. Frontier is a local exchange carrier providing service to customers in 34 of West Virginia's 55 counties. It has three designated study areas, Bluefield, St. Marys and Mountain State. Frontier also is a rural telephone company in each of those study areas and has filed a Universal Service Fund disaggregation plan for each study area, which simply means that high-cost support is targeted away from low-cost wire centers and directed to high-cost wire centers. Frontier is the incumbent local exchange carrier and carrier of last resort in its three study areas. It has been designated as an ETC and receives Universal Service Funds in all three of its study areas. (Frontier Exhibit 1, pp. 5-6).

5. Hardy is already providing all of the supported services in the Moorefield exchange and there is no dispute that it is a common carrier or that it advertises its services throughout the Moorefield exchange. (See, Hardy Exhibit 1, pp. 5-6).

6. As a result of Hardy's entry into the Moorefield exchange telecommunications market, Frontier has improved its own service in Moorefield. Frontier has now opened up a local business office in Moorefield, in response to Hardy's business office located in Moorefield. Additionally, since Hardy began offering competitive telecommunications service in Moorefield, Frontier has been running more promotions offering rate reductions. (See, Hardy Exhibit 1, pp. 6-7).

7. Frontier's Moorefield exchange is designated as a high-cost exchange under Frontier's USF disaggregation plan. (See, Frontier Exhibit 1, attached Exhibit 1.).

8. Hardy has committed to serving the entirety of the Moorefield exchange. (See, Hardy Exhibit 1, pp. 6-7).

9. In making its own determinations on whether or not to designate additional ETCs in RTC study areas, the Federal Communications Commission has determined that the public interest determination is a fact-specific exercise, in which it must weigh the benefits of increased competitive choice, the impact of the designation on the Universal Service Fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding the quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. (See, Highland Cellular, Memorandum Opinion and Order, Docket 96-45, FCC 04-37, (Rel., April 24, 2004)); Virginia Cellular, LLC, Memorandum Opinion and Order, Docket 96-45, FCC 03-338, (Rel., January 22, 2004)).

10. In addition to the requirements which all ETC applicants must meet under 47 U.S.C. §214(e), applicants for ETC designation in rural telephone company service areas must also demonstrate that their designation as an ETC in such an area is in the public interest. (See, 47 U.S.C. §214(e)(2)).

11. In making its own determinations on whether or not to designate additional ETCs in RTC study areas, the Federal Communications Commission has determined that the public interest determination is a fact-specific exercise, in which it must weigh the benefits of increased competitive choice, the impact of the designation on the Universal Service Fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding the quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. (See, Highland Cellular, Memorandum Opinion and Order, Docket 96-45, FCC 04-37, (Rel., April 24, 2004)); Virginia Cellular, LLC, Memorandum Opinion and Order, Docket 96-45, FCC 03-338, (Rel., January 22, 2004)).

12. Hardy is providing service offerings in the Moorefield exchange which include lower prices than Frontier's and a variety of service packages and choices. Hardy is also overbuilding Frontier's network, which means it is building its own duplicate network in the Moorefield exchange. Hardy has committed to flow through any USF funds it receives back into the Moorefield exchange community for further investment. (See, Hardy Exhibit 1, pp. 5-6, 10-11).

13. Without Hardy's presence in the Moorefield exchange, those consumers would not have the variety of services and rate offerings that are currently being offered to them by both companies and they would not have been provided with the additional benefits of an in-town customer service office for Frontier, which was not established until after Hardy commenced marketing its telecommunications services in that area. (See, Hardy Exhibit 1, pp. 5-7).

14. In its determination on whether or not to designate additional ETCs in RTC study areas, while the FCC has acknowledged that the impact of additional ETCs on the Universal Service Fund is a factor to be considered, when it considers that factor, the FCC looks at the impact of the specific ETC applicant on the overall Universal Service Fund, rather than a broader and more general policy analysis. (See, Highland Cellular, paragraph 25 and footnote 73; Virginia Cellular, paragraph 31 and footnote 96).

15. For the first quarter of 2004, the Universal Service Administrative Company is projecting total high-cost support on an annualized basis of $3.5 billion. Of that amount, West Virginia carriers are expected to receive approximately $82.2 million, or approximately 2.3% of the total projected high-cost support to be paid out in 2004. For 2004, it is projected that West Virginia will receive the nineteenth highest level of support from the fund, and is projected to receive approximately $2.5 million less than the amount paid out to Virginia, the state in which both Highland Cellular and Virginia Cellular were designated as ETCs by the FCC in 2004. (See, Appendix HC02, 1Q 2004, Universal Service Administrative Company).

16. Given the 3200 potential access lines in the Moorefield exchange and the level of support received by Frontier for each of those lines on a monthly basis, if Hardy was able to capture all of those customers from Frontier, it potentially could receive $355,296 per quarter from the Universal Service Fund for the Moorefield exchange. (See, CAD Exhibit 1, pp. 3-4, 6, and Exhibit BJG-1).

17. Generally speaking, the service area for a competitive ETC in RTC territory is the RTC's entire study area, unless and until the state commission and FCC approve a different service area pursuant to federal regulations. (See, 47 U.S.C. §214(e)(5); 47 C.F.R. §54.207).

18. The FCC has concluded that, when a rural telephone company has filed a disaggregation plan with the FCC, so that its high-cost support is targeted principally to its high-cost wire centers, as has been done by Frontier, concerns about cream skimming are significantly minimized and reduced. (See, Virginia Cellular, paragraph 32; Highland Cellular, paragraph 26; RCC Holdings, Inc., Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181, (Rel. November 27, 2002), paragraph 31)).

19. In making its determination on whether or not to grant additional ETC designations in an RTC service territory, the FCC has concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of ETC eligibility might impose a serious barrier to entry. (See, Universal Service Order, 12 FCC Rcd. 8882, paragraph 190; Virginia Cellular, paragraph 38).

CONCLUSIONS OF LAW

1. It is reasonable to conclude that Hardy is a common carrier; offers all nine of the supported services, i.e., voice-grade access to the public-switched telephone network; local usage; dual tone multi-

frequency signaling or its functional equivalency; single party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to director assistance; and toll limitation for qualifying low-income customers. Hardy has committed to make its supported services available throughout its designated service area and is advertising the availability of the supported service throughout its designated service territory.

2. Given the benefits that have been derived by consumers in the Moorefield Exchange as a result of Hardy's entry into that telecommunications market and Frontier's reaction to Hardy's entry into that market, indicating that the Moorefield Exchange functions well as a highly competitive market, with consumers of both Companies benefitting from that continued competition, it is reasonable to conclude that granting ETC status to Hardy is in the public interest of the customers of telecommunication services in Frontier's Moorefield Exchange.

3. Given the relatively insubstantial impact of granting ETC status to Hardy on the Universal Service Fund, it is reasonable to conclude that granting ETC status to Hardy will not harm the Federal Universal Service mechanism and, therefore, ETC designation for Hardy meets the public interest test required for additional ETC designations in rural telephone company study areas.

4. It is reasonable to designate Hardy's service area for ETC purposes as the entirety of Frontier's Moorefield Exchange.

5. An ETC designation for Hardy consisting of the entirety of the Frontier Moorefield Exchange does not constitute an attempt by Hardy to cream skim Frontier's service territory and will not permit cream skimming by Hardy, since it is obligated to serve all areas and all customers within the Moorefield Exchange, which is designated as a high-cost wire center under Frontier's disaggregation plan.

6. Given the decision on an appropriate ETC service area for Hardy, it is reasonable to direct Commission Staff to file the appropriate petition with the Federal Communications Commission pursuant to Section 214(e)(5) of the Communications Act of 1934, as amended, to obtain FCC concurrence in the redefinition of Hardy's ETC service area as encompassing the entirety of Frontier's Moorefield Exchange.

ORDER

IT IS, THEREFORE, ORDERED that the petition filed on March 3, 2003, by Hardy Telecommunications, Inc., seeking designation as an eligible telecommunications carriers pursuant to 47 U.S.C. §214(e) in the Moorefield Exchange served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Telecommunications of West Virginia, be, and hereby is, granted.

IT IS FURTHER ORDERED that Hardy's ETC designation be conditioned upon the following: 1) Hardy shall serve the entire Moorefield exchange, either through its own facilities or a combination of its own and Frontier's facilities; 2) Hardy shall comply with the advertising requirements established in this Commission's Gateway decision; and 3) Hardy shall comply with any other restrictions or requirements imposed upon ETC designees in the Highland Cellular proceeding, Case No. 02-1465-T-PC, currently pending before the Public Service Commission on exceptions.

IT IS FURTHER ORDERED that, within sixty (60) days of the date that this Order becomes final, Commission Staff file the appropriate petition with the Federal Communications Commission pursuant to Section 214(e) of the Communications Act of 1934, as amended, seeking FCC concurrence in the redefinition of Hardy's service area for ETC purposes as being the entirety of Frontier's Moorefield Exchange.

IT IS FURTHER ORDERED that, within that same sixty day period, Commission Staff shall provide to the Federal Communications Commission and the Universal Service Administrative Company a certified copy of this Order designating Hardy as an ETC for the Moorefield Exchange.

IT IS FURTHER ORDERED that this matter be, and it hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Melissa K. Marland
Chief Administrative Law Judge

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