

Fifth, CW testified that since wireless service is a complement to wireline service, its application should be granted. The MTA said CW maintains that when such a claim is made by intervenors, it is factually incorrect.⁴¹ No requirement exists for FUSFs to fund multiple providers especially of complementary, and not competitive, services. CW also said it provides a complementary service that is redundant. CW's attempt to characterize its service as competitive under the '96 Act is inconsistent with its admission that the service is a complement and misconstrues the purpose of the '96 Act. In contrast to Sections §§251, 252 and 271, Sections §§254 or 214 do not state that FUSFs are intended to subsidize intermodal service in rural areas. Whereas the '96 Act requires PSCs to apply a higher public interest standard in considering designations in rural areas there is no public interest demand to grant CW's application. The MTA interprets Section §214 to mean artificial competition is not always in the public interest for areas served by rural telephone companies. CW's application is not in the public interest because it does not promote competition as it only is complementary service.

Sixth, the MTA holds that since CW has already built its network and sells service it does not need FUSFs. FUSFs are not to ensure the financial profits for private equity partnerships. There is no evidence that designating multiple ETCs enhances phone service or penetration. The MTA cites a Criterion study that the MTA alleged to show that most CETCs already service the large majority of their rural customers before being designated as CETCs. The MTA said this would be the case in this instance given 3RTC, BTC, Verizon Wireless, Alltel and Chinook already serve most all of the areas for which CW proposes to receive FUSFs. Absent a concrete showing that penetration will increase CW's application should be denied.

Seventh, as for CW's argument that its application must be granted because all prior ETC applications have been granted, the MTA responded that if true, the PSC

⁴¹ CW's brief said: "The MCC's and the MTA's claims that wireless service is redundant have already been rejected by this Commission. Both the MCC and the MTA claim that Chinook's Application should be rejected on the grounds that wireless service is unnecessary because the service areas in question are already completely 'covered' by the landline ETCs that serve them. They further claim that wireless is simply a complement to the wireline service. These claims are factually incorrect and have already been rejected by the Commission and should be rejected again." (emphasis added)

should then do away with its rules and the application process. Nor is there need for federal and state laws. Section §214 and §69-3-840 MCA. The PSC's rules require that each application be a fact specific determination. ARM §38.5.3203. Applying the facts presented by CW to the law, not its assertions, the PSC must deny CW's application.

In conclusion, the MTA does not dispute that wireless service offers public benefits, however social and economic benefits are not the issue. The issue is one of need. CW has not shown need for FUSFs. CW has failed to offer credible evidence and it has not carried its burden of proof. CW's application should be denied.

Chinook Reply Brief

In its reply brief filed on January 17, 2008 CW asserts to have met its burden of proof adding that its application is in the public interest. CW also opposes BTC's filing requirement proposal. The following summarizes CW's reply brief comments.

CW said its application, testimony and data responses, as summarized in its opening brief, satisfied the PSC's ETC rules. CW has demonstrated its capability to provide the supported services available to all customers making a reasonable request for service. Contrary to the MCC's claim, CW will meet such requests using its own facilities, resale when necessary or other carriers' facilities. When doing so it will follow the FCC's 6-step process.

CW did satisfy the PSC's public interest considerations. CW commits to use FUSFs to expand its coverage to serve unserved and underserved areas to achieve 98% coverage. CW is not looking for free money and has affirmed its commitment to use FUSFs to serve rural Montana consumers with services and rates that are reasonably comparable to those available in urban areas. CW also demonstrated that approval of its application will enhance public safety. It also increases: economic growth, jobs, business opportunities and competitive choice. Health and safety benefits include emergency response in areas where CW has the only wireless network. CW's designation will not significantly burden the FUSF and it will advance the principles set forth by Congress, the FCC and the PSC.

As for the MCC's claim that CW did not quantify benefits, in its opening brief CW demonstrated a faulty legal standard in the MCC's argument, a standard the FCC and the

FSJB have refused to adopt. CW has demonstrated the numerous and substantial benefits of its designation. CW has made the same showing the PSC has required of prior applicants. As for the MCC's interest in quantified benefits, CW did not mathematically quantify the benefits associated with its designation as no such evidence is required or possible. CW asks, for example, what the value is of a life saved by a roadside 911 cellular phone call?

CW is not asking the PSC, as the MTA claims, to grant its application just because it has granted other applications. CW is asking for the PSC's approval. CW hears from customers of how services to more rural areas would benefit them. After having reviewed PSC orders for prior ETC applications, CW said its application is not unusual. CW said it is anticompetitive for wireline companies to seek to deny one participant (CW) such benefits. As for the burden of proof, CW asserts that when it introduces statements and facts the PSC must accept them as true absent countervailing evidence another party presents. Thus, the MTA's unsupported statements in its brief cannot overcome sworn testimony that is in the record.

CW asserts the MCC has not properly defined or applied its novel cream skimming concept. See p. 4. The PSC has also said that an ETC applicant cannot be forced to provide service beyond that in an application. Nor could any competitive carrier build a terrestrial network that serves 98% of the population of Montana within five years. Absent the 98% within five years standard, CW would likely have made a more expansive designation request. If the MCC wants a statewide designation, it should seek to eliminate the 98% requirement.

CW makes six points in asserting to have demonstrated approval of its application is in the public interest. First, by approving its application CW can extend its network to cover 98% of the consumers located in each service area. See p. 5. CW finds the MTA brief to be riddled with inconsistencies. The MTA's claim that CW's investment plans are the same with or without FUSFs is not supported by any record evidence. CW testified that it could serve 75% of the population without any FUSFs but that because it is uneconomic it would not build out further without FUSFs. CW needs FUSFs to complete its build out. To reach 98% will require CW it to expand to smaller, more rural and higher cost areas of the Qwest, BTC and 3RTC territories. See p. 6.

Contrary to the MTA's representation, CW's build out plans in its application demonstrate how it will use FUSFs to benefit rural Montana consumers in each of the three service areas and not for the aggregated areas as the MTA suggests. If designated, CW intends in 2008 to use FUSFs to serve: 1) areas along Highway 200 between Great Falls and Missoula, 2) areas along Highway 89 south of Livingston, 3) areas between Billings and Great Falls, 4) the West Glacier exchange that ties into the Browning exchange, 5) Seeley Lake and, 6) north along Highway 83 into BTC's Condon exchange. If granted ETC status, CW will also build out to serve BTC's Alberton and Avon exchanges, Qwest's Helena and Anaconda exchanges and 3RTC's Lima, Power and Highwood exchanges. CW's build out plans did not show its entire expansion plans, as the MTA suggests, but rather the first year plan. Whereas CW will deploy 13 more cell sites in 2008 without FUSFs, it will deploy an additional 25 to 40 cell sites with FUSFs. See p. 7. CW's 5-year build out plan exceeds the "fill in the gap" investment in the MTA's claim. CW will address many unserved areas within and "white areas" mentioned in hearing.

CW commits to file with the PSC reports of its year 2 through 5 build out plans. The PSC is fully empowered to ensure CW uses its support properly, and it may always refuse to recertify CW. The MTA's proposal to deny CETCs funding to compete against subsidized ILECs would erect an unlawful entry barrier. To require CW to build a network in advance of receiving FUSFs would expose CW to unreasonable risk. See p. 8.

The MTA cites no legal support for its claim that the PSC should consider if CW owns or leases towers -- implying that the common industry practice to lease tower space should not count towards CW's build out. In its opening brief CW said it will construct build-to-suit towers. CW will also lease pre-existing towers. The MTA ignored the substantial cost to lease towers and that CW owns transmitting equipment on each tower. CW incurs added costs to place antennas, for architectural and engineering work, etc., at each tower. See p. 9. CW adds that leasing, rather than constructing, a new tower assists CW in expanding its network in a cost effective manner. As tower sharing saves funds it should be encouraged, just as competitive landline carriers share facilities. CW adds that it is hard to understand the issue the MTA raised as it is not a criterion to be an ETC.

Second, contrary to the MTA's claim, CW's designation will not render the FUSF

unsustainable. The MTA completely failed to explain how designating CW could threaten the sustainability of the FUSF. CW adds the FCC is addressing FUSF size issues. See p. 10. CW said the very conditions the policymakers claim, that the FUSF would become unsustainable, have not come to pass as alleged by the MTA to support its claim. The percentage contribution has declined from 11.7% in 2007 to 10.2%. The \$6 million that CW could in theory draw is far less than 1% of the FUSF. Nor will Montana's wireline carriers lose money when CW draws FUSFs. Even if the FCC adopts changes to the FUSF mechanism, CW is entitled to have its application processed under the rules in effect when it filed. CW adds that the designation of multiple CETCs, which is only in Qwest's area, will not increase the total amount of support for a given number of customers in a given geographic area. CETCs only receive support if they get a customer. Thus, if an area has 100 customers, there are 100 units of support available, which cannot increase no matter how many CETCs are designated. See p. 11. With the FCC's policy, ILECs will receive the same level of support even if they no longer serve the customer that contributes to the increase in total support; support that ILEC's attempt to protect by keeping competitors at bay.

CW cites a Nebraska PSC order involving the impact of designating multiple ETCs. The cited order suggests that wireline service has the quality of being a substitute in this instance. When companies having different technology and capabilities branch out from different areas, the Nebraska PSC expected even greater public benefits. See pp. 11-12. CW adds, however, that in the case of BTC and 3RTC there are no CETCs. Thus, the MTA's true motive is anti-competitive: entry by a competitive carrier that will benefit the citizens living and working in those areas.

Third, CW asserts its services are neither redundant nor complementary. See pp. 12-14. CW adds that the MTA mischaracterized CW's claim wherein it agreed that wireless service may be complementary to wireline service. In citing the PSC's Triangle case order (No. 6723b, ¶15), CW said wireless service is not completely redundant and complementary of wireline service as the service areas in question are not, as the MTA claimed, completely covered by the landline ETCs.

Fourth, while claiming competition is not a stated purpose of Section §§254 or 214, the MTA failed to take into account for the '96 Act and the implementing FCC

orders. See pp. 14-15. CW said promoting competition is, as set forth in the preamble, the central purpose of the '96 Act. Congress directed the FCC to adapt universal service mechanisms to work with competition. As the 5th Circuit Court has found, the primary purpose of the '96 Act is to herald and realize a new era of competition while continuing to pursue the goal of universal service.⁴² As for the MTA's claim that the competition the FUSF promotes is artificial, CW responded that monopoly service is artificial in that legacy support mechanisms have created entry barriers. Thus, the MTA's fourth claim is contrary to the '96 Act.

Fifth, MTA's claim that CW is owned by out-of-state interests mischaracterizes CW's financial motives. In addition, ownership is beyond the scope of the inquiry. See pp. 15-16. The MTA also makes incorrect factual assertions. The MTA's statement that CW acquired assets from Dobson in Oklahoma and Texas introduced extra-record evidence which should be stricken.⁴³ CW asserts that no federal statute, no FCC rule nor a PSC rule makes ownership status relevant to the issue of ETC designation. Nor did the MTA cite any case law in support of its argument. If the MTA's argument had relevance, CW questions whether Alltel or Qwest would still have ETC status in Montana. CW's counsel has not seen any state or FCC case that permitted the consideration of such an issue in an ETC case. The MTA's attempt to create a new public interest standard should be rejected.

Sixth, whereas the MTA asserts that the public is not served by CW's GSMT as their phones are not usable, CW said its platform complies with the PSC's rules and is no basis to reject CW's application. See pp. 16-17. The PSC's ETC rules require, and CW has demonstrated, that its technology platform is compatible with broadband and other advanced services. CW's network serves tens of thousands of Montana subscribers. Tens of millions of GSM subscribers of AT&T's network will be able to use their phones in Montana. To provide Montana's subscribers with technologic choice is a critical component of the public interest that the MTA failed to acknowledge. The MTA

⁴² CW said the *Alenco v. FCC* case involved an unsuccessful lawsuit against the FCC seeking to interpret the '96 Act to insulate carriers from competition.

⁴³ See Footnote 40, *supra*.

mischaracterized the record when stating that CW operates the only GSM network in Montana as Alltel also operates a GSM network in Montana but does not sell commercial service on that network.

CW opposed BTC's proposed filing requirements. See pp. 17-19. BTC's brief suggests requiring CW to file subscriber line counts with the PSC and make the same available to competitors. CW's objections follow. First, no other ETC is required to file such information. Second, BTC made no case as to why this information must be filed with the PSC or why competitors should have access. This is simply an effort to get CW to provide competitively sensitive information that will provide an anti-competitive advantage. Line count data is highly proprietary as it is competitively sensitive. The data will be provided to USAC who may audit the submissions. If required, CW will provide the PSC data but will not provide it to competitors even with a protective order. Given the USAC's expertise and oversight there is no need to submit this data to the PSC. If the PSC requires this information, CW requests that it be cordoned off for PSC staff use and not provided to carriers or their representatives, even under a protective order.

Public Comments

As part of the administrative record, public comments were filed in support of CW's petition, some of which are contained in hearing Exhibit G. TR 163. These comments generally assert that improved and expanded wireless service will provide public safety and public convenience benefits. First, Yellowstone County's Mr. James L. Kraft, Director of Emergency and General Services, commented that CW is a viable telecommunications carrier in the Billings area and throughout Montana. His office supports any effort CW makes to deploy equipment that makes cellular voice and data calls, including 911 calls, available to rural areas. He believes CW should have access to funds to expand its cellular service and that doing so is in the public interest. Second, Chouteau County's Ms. Linda Williams Disaster and Emergency Services Coordinator filed in support of designating CW as an ETC. She would like CW to use funds to expand the availability of affordable cellular services including 911 services as it is in the public interest to do so. Third, the Great Falls Public Library's director Mr. Jim Heckel notes that CW provides as a public service the library's bookmobile with free wireless service.

He supports designating CW as an ETC so that it can expand on the availability of cellular services, including 911 services. Fourth, Mr. Dick King of the Missoula Area Economic Development Corporation commented in support of CW's application as CW commits to meet the need for additional cell towers in rural areas of Montana for public safety, convenience and economic development. Fifth, the Board of Commissioners for Cascade County filed in support of CW's application as it will serve to satisfy the need for additional cell towers in rural areas of the county and will enhance public safety and provide for economic development. Sixth, the Hill County Commission supports CW's petition as it will address the need for additional cell towers, public safety and convenience and economic development. Seventh, the Pondera County Commission voted to give unanimous support for CW's designation as an ETC as the county needs additional cell towers. CW's designation will also enhance public safety and provide for economic development. Eighth, the Teton County Board of County Commissioners lends its support for CW's designation as an ETC. Ninth, the Madison County Telecommunications Committee Chairman Mr. Scott Payne supports CW's designation as it provides better cellular service in Madison County and will address public safety and economic development needs. Tenth, the Butte Local Development Corporation's Executive Director Mr. Jim Smitham filed in support of CW's petition as there is need for additional cell towers for public safety and economic development. Eleventh, Mr. Ken Homes a school bus driver that resides on the Fairfield Bench filed in support of CW's petition as it serves to provide improved safety for school kids. He adds that there are areas of poor or no coverage that need to be improved. Finally, Mr. Evan Barrett of the Governor's Office asked the PSC to look positively on CW's request to be designated an ETC. He notes that rural portions of Montana need additional cell towers for public safety and convenience and business and economic development reasons.

Findings of Fact

The PSC's decision will, in part, follow the structure of prior ETC decisions. There are, however, aspects of CW's petition that distinguish it from any prior ETC petitions. CW's application is the first to seek designation as a competitive ETC in areas served by both a non-rural and rural carriers. CW's application also raises issues

involving: wireless technology, service substitution and disaggregation. As a result, the PSC's decision necessarily differs from those in prior decisions.

The parties have polarized views on whether the PSC should grant, and under what conditions it should grant, CW's ETC petition. The MCC, BTC and the MTA all oppose CW's designation as an ETC. Most of their concerns involve whether CW's petition is in the public interest.

The PSC has previously granted the petitions of other carriers for designation as ETCs in the three underlying ILEC service areas. Both a wireless and a wireline CETC are designated in certain of Qwest's exchanges. The PSC has not designated a CETC in either of BTC's or 3RTC's study areas. Those prior decisions and circumstances do not necessarily constrain the PSC's decisions on CW's petition. The PSC's decisions in this docket will not necessarily set a precedent for how the PSC may decide any future ETC petition. Each ETC petition is judged on its own merits.

The following decisions will address, in turn, several issues: whether CW offers the supported services; whether CW will advertise the availability of such services using media of general distribution; and whether CW has satisfied the public interest requirements. Another issue will involve the reporting of data for disaggregated areas. The PSC will explain below why it grants CW's ETC designation petition. CW has satisfied to the PSC's satisfaction the requirements necessary to be designated an ETC, including those in the PSC's rules ARM 38.5.3206 et seq.

Offers Supported Services Section §214 of the '96 Act and the FCC's rules require an ETC to offer the supported services by means of its own facilities or a combination of its own facilities and the resale of another carrier's facilities. CW has asserted that it provides the services supported by FUSFs. CW will do so by use of its own facilities or by a combination of using its facilities and the resale of another carrier's services. Although not required, if it ever is asked to provide equal access, CW commits to do so.

The MCC raised concerns that appear to associate with this requirement. In its January 8, 2008 answer brief, the MCC said that whereas CW stated it will not use resale or the facilities of another carrier to serve the entire study area its application said it would. The MCC also asserts that because CW has no plans to use another carrier's

facilities to satisfy a customer request, its application is not in the public interest as an ETC must fulfill all reasonable service requests in the study area.

First, the PSC finds that CW did make similar commitments in both its application and the direct testimony of its witness Mr. Monroe. See p. 9 & 27. CW does not intend to use resale, but will if necessary. The PSC also finds that CW need not use resale to be designated an ETC. Nor must CW have a plan to use another carrier's facilities. The PSC would add that CW is not the only candidate ETC to have expressed unwillingness to use resale. See Order 6723a.

Second, some of the facilities that CW asserts to own include: the switch, base stations, repeaters, antennas, lines, tower top amplifiers, voice mail servers, network monitoring system and other cell site equipment such as generators. DR PSC -009(a) Therefore, the PSC finds that CW has sufficient ownership interest to satisfy the requirements in Section §214 of the '96 Act given that by "*facilities*" the FCC means any physical components of the telecommunications network used to transmit and route supported services, irrespective of the technology the carrier used.

Third, and related, there emerged some concern and discussion on the ownership of towers. See TR 38-51 and 120-125. CW said that in order to achieve 98% coverage it will likely need 60 more towers, in addition to the existing roughly 192 towers. CW asserts to own less than 10 towers and often times will collocate transmitters on towers that others own. CW, however, incurs, lease costs that it regards as capital expenses. As Mr. Foxman explained, cell companies do not typically build towers but instead rely on an independent company from which facilities are leased. CW testified to have build-to-suit towers constructed in partnership with Global Tower Partners. By means of leases CW can also achieve greater coverage than it would otherwise achieve had it built and owned towers.

The PSC finds that CW has satisfied this initial requirement to offer supported services by means of its own facilities or by use of its own and other carriers' facilities. CW satisfied this requirement for the areas served by each of Qwest, BTC and 3RTC.

Advertising In both its application and in the direct testimony of Mr. Monroe, CW committed to advertise the supported services and charges using media of general

distribution. CW's method of advertising may use newspapers, magazines, direct mailing, public exhibits and displays, bill inserts and telephone directories. CW said it will advertise the availability of Lifeline and LinkUp benefits, reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and LinkUp. The PSC finds CW's commitment to satisfy this requirement for the areas served by Qwest, BTC and 3RTC.

Public Interest The public interest standard requires the PSC to consider whether CW complies with Section §214 of the '96 Act, the factors set out in ARM 38.5.3210, and any additional requirements the PSC establishes in this order. Foremost among the public interest considerations is Section §214(e)(1) of the '96 Act.⁴⁴ This section requires the PSC to designate at least one additional common carrier as an ETC in areas served by other than rural telephone companies so long as that carrier satisfies the above two noted requirements. In the case of rural telephone companies, the PSC may designate an additional common carrier as an ETC if the same requirements are met. In either case, an ETC designation must be in the public interest. The PSC's rules set forth other public interest factors that must be considered.

The MCC concludes that CW's designation is not in the public interest because CW could not quantify a single rural or non-rural benefit. The MTA said that Congress established a higher standard for ETC designations in rural areas. The MTA does not believe that it is in the public interest to designate CW as an ETC. In the following, the PSC will address why designating CW as an ETC is in the public interest.

Wireless Technology The wireless technology that CW intends to use is GSMT. In its January 8, 2008 answer brief, the MCC argued that the PSC should consider that CW's GSMT is incompatible with the technology that other wireless carriers use in Montana. A wireless customer cannot use a CW wireless telephone unless it is in range of a CW tower.

⁴⁴ The FCC's March 17, 2005, Report and Order (FCC 05-46, CC 96-45) adopted mandatory minimum requirements for ETC designations that are subject to § 214(e)(6) proceedings. These requirements are, however, optional recommendations that the FCC urged states to adopt.

Likewise, another carrier's telephone cannot connect to CW's facilities. The MCC further adds that CW's build out will only benefit companies that deploy GSM T i.e., its customers and customers of AT&T, T-Mobile etc., of which CW alone serves Montana. The MCC said that this strongly diminishes CW's claim that its expansion enhances health and safety etc., benefits. In its January 8, 2008 response brief the MTA asserts that CW's coverage only benefits CW's customers and no customer of another carrier can roam on CW's network.

The PSC disagrees with arguments that because CW's GSM T is not the same technology that other wireless carriers use that CW's designation as an ETC is not in the public interest. First, just because other wireless carriers use CDMA (See Footnote No. 11), it does not follow that GSM T is incompatible. The logical converse of the MCC's argument is the technology that other carriers use is incompatible with CW's GSM T. Second, by means of GSM T, CW is willing to build out into areas of BTC's, 3RTC's and Qwest's exchanges to provide service to rural consumers. As evident from a dozen public comments filed in support of CW's petition there is need for increased wireless coverage. For those customers who reside in areas served by Qwest, BTC and 3RTC CW's presence will have benefits as evidenced by these public comments. That these benefits are not quantified is immaterial. To require CW to quantify such benefits would impose a different standard on CW than has been imposed on the other ETC's in Montana. Third, while the MCC appears to have overlooked the fact it is also evident from Alltel's (f/k/a Western Wireless) ETC designation that it accommodates GSM T. See D2003.1.14, Order No. 6492a, Footnote Number 7. In his rebuttal, CW's Mr. Foxman stated that another carrier makes GSM T available in Montana for roaming purposes. CW's reply brief asserts that MTA mischaracterized the record in this regard. The wireless customers of other carriers, including tourists that use GSM T, will also be able to roam on CW's network. Therefore, the PSC finds CW's application of GSM T to have benefits that make its designation in the public interest for each of Qwest's, 3RTC's and BTC's service areas.

Carrier of Last Resort The MCC held that CW has no plan to handle its COLR obligation. The MCC adds that CW provided no network detail on whether it has sufficient capacity or how it would serve the market if other carriers left. In its December

7, 2007 opening brief CW commits to meet its COLR obligations if ever required.

The PSC finds that CW's commitment to meet COLR obligations will suffice. No other ETC has had to file a specific plan to meet its COLR obligations. If and when such an obligation emerges, the PSC will have advance notice to prepare for the eventuality.

Service Areas and Cream Skimming. There are issues involving the service areas that CW will serve. The issue of cream skimming is addressed here and others will be addressed later. The MCC has held that CW is engaging in cream skimming because it will not serve the entire state. Instead, CW will only serve the higher density more profitable areas. The MCC held this must be considered as the FCC mandates the major trading area for local calling and compensation and wireless is not in most cases a substitute. The MTA, in citing studies that Criterion performed, asserts that most CETCs already serve the large majority of their rural customers prior to being designated as ETCs. The MTA also cites an AT&T study asserting that penetration has not increased much while the FUSF has. The MTA said in its January 8, 2008 response brief that with the \$6 million subsidy CW will do what it has already done by simply filling in some gaps along traffic routes. Thus, the "white areas will remain white," once CW completes its build out.

The PSC disagrees with the MCC's allegation that because CW fails to commit to serve the entire state that CW is cream skimming. If the MCC's criticism had merit, it would appear to apply with equal force to Alltel who is a CETC. However the allegation is not valid. The PSC did not condition Alltel's receipt of FUSFs upon coverage of the entire state of Montana. The PSC finds, as explained later, that CW must serve all of Qwest's wire centers, in addition to serving the entire study areas of 3RTC and BTC. This obligation exceeds the requirement that the PSC imposed on Alltel as a condition of its designation. To condition CW's designation upon its serving the entire state would certainly cause CW to abandon this ETC petition. Such a condition is not sound and would not advance the universal service goals set forth in Section §254 of the '96 Act.

The PSC finds the economic study that MTA cites to not bear on the commitment CW has made. CW does not now cover all of the customer populations of Qwest, BTC and 3RTC, but it commits to achieve 98% coverage with FUSFs. The MTA suggests

there are multiple wireless carriers already serving the areas of 3RTC and BTC, but provided no evidence in support. In contrast, CW's reply brief listed unserved or underserved areas that it will serve if it is designated an ETC. The PSC finds that the public interest is served by using FUSFs to achieve greater wireless penetration into these rural areas of Montana.

The MTA cites another (AT&T) study that appears to find no significant increase in penetration while the FUSF has increased. The PSC finds that the metric for penetration upon which that study is apparently based must be flawed. In the past 30 years or so the wireless industry has grown from essentially a greenfield to a market sector whose line counts now exceed that of the wireline carriers. Yet, according to the AT&T study that the MTA cites, penetration has not significantly increased. According to the MCC penetration is actually decreasing. TR 181. Something is amiss with the metric that AT&T appears to have used. The PSC finds that for public health and safety reasons the designation of wireless carriers that actually cover larger geographic areas than a wireline carrier can cover is in the public interest.

There is another possible flaw apparent in the results of the (AT&T) study that the MTA appears to endorse. The MTA would appear to expect an inverse relationship between density and cost to serve, an expectation the PSC finds illogical. Wireless carriers should be expected to first seek to serve higher density areas, followed by low density areas. As carriers make inroads into less and less densely populated areas the cost to do so should, other things being equal, increase. It would be a gross interpretation of the '96 Act to conclude that because the FUSF increased overtime and one measure of penetration has not, that the goals of s§254 of the '96 Act are not being achieved. The metric for penetration should not be a static concept given technologic advances that enable the offering of advanced services.

Therefore, the PSC does not agree that CW's application is an example of cream skimming. No ETC has the obligation to serve the entire state of Montana. It is neither economic nor in the public interest to require CW to achieve such unprecedented coverage.

Complementary and Substitute Services The MCC asserts that CW provided no support for the statement that all service areas for which it seeks designation can support additional ETCs. The MTA said FUSFs are not intended to subsidize multiple, complementary service providers in the same area adding that most people, the PSC's Chairman and CW have viewed wireless services as complementary service. The MTA adds that the purpose of FUSFs is not to designate additional CETCs in rural areas. According to the MTA, no evidence exists that the designation of multiple ETCs will enhance phone service or penetration. The MTA said that given Verizon and Alltel provide service to most, if not all, of the customer areas in CW's petition if subsidies are intended to increase service in high-cost areas, the vast majority of funds will be wasted. In its January 8, 2008 response brief, the MTA said CW's opinion differs depending on whether it or an intervenor claimed that wireless service is a complement to wireline service. MTA further adds that CW's effort to characterize its service as competitive under the '96 Act is inconsistent with its admission that its service is a complement. In turn, the MTA holds that because CW's services will not promote competition, its ETC application is not in the public interest. As these assertions appear somewhat related the PSC will address them all as follows.

Given the apparent confusion about complementary and substitute services, the PSC finds necessary a clarifying comment. TR 99-101. The PSC has in prior dockets provided analysis and findings to explain why wireless service is a complement to wireline service.⁴⁵ The MCC also agreed. TR 170-171. The PSC has no reason to believe that the basis for its previous finding has changed. The FCC has recently held that, except in a small portion of households, wireless CETCs do not capture lines from the ILEC to become a customer's sole service provider.⁴⁶ That a wireless service is a complementary service does not preclude it from simultaneously being a competitive substitute for other wireless carriers' services. There is no inconsistency in logic, economics or otherwise that

⁴⁵ See PSC's August 7, 2007, Order No. 6723b, p. 5; TR 99.

⁴⁶ See FCC's January 9, 2008, Notice of Proposed Rulemaking, WC No. 05-337, CC 96-45, FCC 08-4.

a wireless service can be both a complement and a substitute service.

As for the MCC's position that CW provided no support for the statement that all service areas for which it seeks designation can support additional ETCs, the PSC disagrees. First, not one of the three impacted ILECs directly testified to any negative consequence upon their own operations of CW's designation as an ETC. This is consistent with the finding that wireless service is, for the most part, complementary to wireline service. Second, neither Alltel nor Verizon, or for that matter any other Montana wireless carrier, intervened and testified that CW's designation would impair their operations and ability to provide competitive wireless services in any of the three underlying ILEC service areas. Third, as for indirect impacts that may arise vis-à-vis an increased FUSF size, the PSC utterly disagrees with testimony to the contrary that there are no offsetting benefits. Thus, CW's statement is in the PSC's opinion supported and reasonable.

As the MTA did not explain the source for its testimony that FUSFs are not intended to subsidize multiple, complementary service providers in the same area, the PSC's limited findings are as follows. First, there is no Montana rule or policy that imposes such a constraint. Second, the FCC does not limit the number of wireless carriers that could be designated as ETCs. See ¶ 57, *Report and Order, FCC 05-46, CC 96-45, Released March 17, 2005*. Third, Section §214 of the '96 Act imposes no such constraint. The PSC finds that, although it is far from the ideal of a competitive market, there are potential competitive benefits where two or more wireless carriers compete, whether or not they are ETCs. Such an outcome should accrue to consumers in the form of reduced service prices and increased quality, both of which are laudable universal service goals.

Coverage Obligation CW seeks to be designated an ETC for all of Qwest's wire centers and the entire study areas of each of BTC and 3RTC. In its D2003.1.14 order (No. 6492a) the PSC required Alltel (f/k/a Western Wireless) to document its achievement of 98% coverage of Qwest's customers for each wire center for which it received ETC status.

The MCC's Mr. Buckalew testified that an ETC must serve all customers in the study area and not just where it has facilities, adding that all reasonable requests for service must be met. The MTA's Mr. Feiss said that the current rules provide no

incentive for CW to build network facilities. In its January 8, 2008 response brief the MTA asserted, for the first time, that CW will seek to achieve 98% coverage in the aggregate by measuring all of Qwest's, BTC's and 3RTC's territories.

The PSC finds merit in the MCC's concern that CW must serve all customers in the study, not just where it has facilities. The MCC's concern relates to the MTA's concern, although invalid, that CW seeks to satisfy the 98% coverage requirement by means of aggregating coverage across all three ILEC service areas. First, just as the PSC required Alltel to achieve 98% for each Qwest wire center for which Alltel was designated an ETC, the PSC finds that CW must, in the case of Qwest wire centers, achieve 98% coverage on a wire center basis. CW must achieve 98% separately for the study areas of each of BTC and 3RTC. Thus, CW may not use subscribership in one ILEC's service area to satisfy the 98% requirement in another ILEC's study area. As with Alltel's designation, CW's coverage must be of the customer population in each wire center for Qwest. The PSC finds that due to the sparsely populated nature of BTC's and 3RTC's study areas that the 98% coverage requirement may be achieved on a study area basis.

Second, the PSC finds that CW will have five years to achieve 98% coverage in each of Qwest's, 3RTCs and BTC's areas. The PSC requires that CW file status reports at six month intervals that review its progress in serving the entire population of each Qwest wire center and the entire population of each of BTC's and 3RTC's study areas. These reports must provide the capital budget for prospective build out plans and describe the build out that CW actually achieved (deployed) in the prior six months.

CW must provide maps of its actual signal coverage capability. It must begin providing such information within 30 days of the issuance of a final order in this docket and at 90-day intervals thereafter until it achieves 98% coverage. Thereafter, CW must annually file, for as long as it is designated an ETC in Montana, evidence that supports the 98% level of coverage. As for evidence of coverage, the PSC would find acceptable a digitized overlay of CW's tower coverage for the population of each wire center in the case of Qwest and for each study area in the case of BTC and 3RTC. The -104dBm service standard must be used. Failure to provide these reports or to achieve and then maintain the goal of serving 98% may result in the PSC taking measures to revoke CW's ETC designation.

Third, the PSC finds that CW must serve all reasonable requests for wireless service at residences and businesses in each wire center in the case of Qwest and in the study areas of BTC and 3RTC. CW may choose the means by which it fulfills this obligation to provide service but it shall be, in the first instance, CW's responsibility and not that of its customers.

With these clarifications and modifications to CW's petition, the PSC finds that the resulting coverage obligations associated with CW's designation will serve the public interest.

Disaggregation of Support In hearing, and for the first time, BTC appears to have raised a new issue that results from its unique disaggregation choice. See TR 18, 19. As BTC explained, this is the first ETC designation petition that involves an ILEC that has disaggregated. As a result, BTC has two zones for each wire center. While BTC is concerned that the mapping of customers may not be rigorously enforced, BTC adds that the record will indicate that CW has done a fairly adequate job of trying to map customers. Still, BTC has concerns. In its January 9, 2003 brief, BTC said it is imperative that the PSC direct CW to report to the PSC its studies ensuring that support is targeted to customers in the appropriate disaggregated zone including (1) the number of subscribers in each zone and (2) certification of the accuracy of the targeted support.

As BTC failed to present its concerns until the filing of a response brief, CW's first opportunity to reply was its January 17, 2008 reply brief, wherein it opposed BTC's proposed filing requirements. See pp. 17-19. In its objection to BTC's proposal, CW notes that no other ETC is required to file such information. Nor did BTC make a case as to why this information must be filed with the PSC or why competitors should have access. CW views BTC's effort to require it to reveal competitively sensitive information would be a competitive disadvantage for CW.

First, the PSC finds that the issue which BTC raised is one that could and should have been introduced through testimony. Because it was not presented until briefing may have resulted in an imperfect record but one which will not now serve as a means to obstruct CW's designation as an ETC.

Second, the PSC agrees with BTC that CW must provide to USAC accurate data

on the lines that it serves. CW must do so whether it be for Qwest's wire centers, or zones and wire centers in the case of BTC and 3RTC. The PSC understands that CW will use a third party's mapping services to verify the zones in which customers are located. The PSC will not require CW to also file with the PSC copies of the filings it must make with USAC documenting the location of customers in wire centers and zones. In the case of Qwest, CW must document by wire center its achievement of the 98% coverage requirement. CW must also document its achievement of 98% coverage in the study areas of each of BTC and 3RTC. The PSC need not retain, on an ongoing basis, the customer counts that CW must provide to USAC to receive FUSFs. Such information is not needed by the PSC. The PSC finds that CW must file within 90 days of this final order a complete description of its mapping methods that it will use to pinpoint customer locations. If there are aspects of the mapping method that are confidential, then CW may file to protect this material. If the mapping method at all changes, then CW must first file a description of the changes with the PSC.

Service Quality Monitoring The PSC will monitor CW's ability to provide service. CW must report to the PSC all requests for wireless service that it was unable to satisfy. CW must report the number of unsatisfied requests for service regardless of how those requests were communicated to CW (e.g., voice, email, or letter). The PSC requires these reports to detail by location in each wire center in the case of Qwest and the location in each study area and zone in the case of BTC and 3RTC. The reports must provide a detailed description of why customer requests for service could not be satisfied. CW must file such reports on a quarterly basis for as long as CW is designated an ETC.

CW must also document and report to the PSC on the customer complaints that it receives. For each wire center and disaggregated zone for which CW is designated an ETC, CW must record the complaints that it receives from customers, identify the nature of the complaint (e.g., poor transmission, dropped calls, busy signals) and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses. If repeat complaints are received, then a record of such repeat complaints must be maintained. The results of the complaint records must be supplied to the PSC on a quarterly basis. The customer complaints reporting

requirement pertains to CW's provision of service at the addresses of both residential and business subscribers in exchanges for which CW is designated an ETC.

CW's Ownership and Motives The MCC testified that CW's motive for ETC status is financial self interest, adding that CW plans to build up the company for sale to a larger wireless provider. The MTA speculates that CW intends to prop up the asset's value for the shareholders' financial gain. The MCC also asserts that CW's ownership structure is relevant as CW is an asset of the Alta portfolio and the purpose of the '96 Act is not to enhance shareholder value. The MTA stated that CETCs have no incentive to invest FUSFs since they are rewarded for the handsets they "turn up."

The PSC finds that financial self interest and universal service are not necessarily mutually exclusive goals. There is precedent in changing ownership, evident from Western Wireless. With Alltel's emergence there was no change in the obligations that must be satisfied.

CETCs, including CW, seek to serve unserved and underserved areas for which they will receive FUSFs. The expanded coverage is a benefit to subscribers that use CW's network. This benefit does not evaporate because of a change in ownership. Nor do the obligations evaporate if there is a change in ownership. Any diminution in an ETC's compliance with the PSC's requirements may result in revocation of the ETC's designation. Depending on the ownership concerns that the MCC has they may need to be raised in a different venue. There is a marketplace for companies and not just their products.

Service Package As long as CW is designated an ETC it must have on file with the PSC a copy of each rate plan that it offers and for which it seeks to receive FUSFs. Each plan must include the rates, the terms and the conditions of service. If CW offers new and revised rate plans, then it must have the same on file with the PSC. Although broadband is not a supported service the rate plans that CW files must contain a description of the speed for broadband service that is offered in conjunction with the supported services. If and when CW upgrades its system and the upgrade impacts the broadband speeds it offers, the rates on file must be similarly revised. See DR PSC -009, -019, -046.

Lifeline Upon compliance with the requirements in this order CW must file with the Universal Service Administration Company (USAC) demonstration that its Lifeline plan complies with the FCC's rules.

Federal Universal Service Fund Receipts The PSC finds that in conjunction with being designated an ETC, CW must report to the PSC on a quarterly basis the FUSFs including for Lifeline and Link Up credits that it receives. The reports must be for each wire center in the case of Qwest and for each study area and disaggregated area in the case of BTC and 3RTC. As necessary, this may be protected. Prior to CW's seeking FUSFs and serving customers by other than GSMT CW must file with the PSC 90 days in advance a statement of intent to do so.

Funded Lines: New and Former Customers The MCC's Mr. Buckalew testified that CW must document that each line for which it seeks compensation is new and not currently being served by the existing ETC, or that the customer is a former ETC customer and not using ETC services. The MCC's January 9, 2008 response brief asserts that CW should demonstrate that compensation is for "new and captured" lines. Customers that merely add wireless services to existing wireline services should not be considered for compensation.

This issue that the MCC raises is not new and is one the PSC has previously addressed. In its final order involving Western Wireless, the PSC addressed the same issue the MCC raised here. In that docket the PSC's Final Order (No. 6492a) states:

For that reason, the Commission also finds the MCC's testimony on how to interpret what "new" and "former" subscribers are (FCC Rules, Section 54.307) is an issue that is more appropriately resolved by the FCC. The FCC's recent NPRM (CC 96-45, Released June 8, 2004) has as one issue the concern raised here by the MCC. Therefore, it appears to the Commission unnecessary to address how to interpret the FCC's rules on new and captured customers in this docket. (italics added, footnote excluded)

In its Final Order in the Cable & Communications Corporation (Order 6518a, April 7, 2005) ETC petition, the PSC made a similar finding to that in the above Western Wireless petition. As the MCC did not raise the issue in Sagebrush Cellular's ETC

petition docket (D2004.1.7), the PSC's final order (No. 6687a) was silent on the issue. The MCC raised the issue again in the Triangle Communications Systems Inc., ETC petition docket (D2004.1.6). The PSC's May 31 2007 Final Order (No. 6723a) includes similar findings as those in the Cable & Communications Corporation and Western Wireless Final Orders. Therefore, the PSC's response to the MCC's issue is as before: this is an issue best addressed by the FCC.

FUSF Size

The PSC is concerned about the size of the FUSF but does not agree that its demise is imminent. The FCC has also expressed heightened concern about the size of the Federal fund and it has designated multiple CETCs.⁴⁷ The PSC's concern is offset by the belief that the people of rural Montana deserve access to advanced services as required by Section §254 of the '96 Act. This filing by CW will increase the FUSF's size but it has offsetting benefits. On net, the PSC believes it is in the public interest for FUSFs to support the services CW is obligated to provide. The people of Montana should not be denied similar such services. If FUSFs have merit in other states, as is evident, then FUSFs should aid in the provision of comparable services to the people of rural Montana. Nothing less would be in the public interest in satisfaction of the goals of Section §254 of the '96 Act.

Conclusions of Law

The PSC has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. 47 U.S.C. § 214(e)(2); § 69-8-840, MCA.

⁴⁷ In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future." (para. 31, emphasis added)

Consideration of the public interest applies in all applications for designation as an ETC. 47 U.S.C. § 214(e)(2); ARM 38.5.3210. The PSC has considered the public interest in this proceeding and determines designation of Chinook Wireless as an ETC is in the public interest.

The PSC has adopted rules governing the designation of ETCs and the maintenance of status as an ETC. See ARM 38.5.3201 through 38.5.3230; PSC Docket No. L-04.07.5-RUL. The rules as adopted, will apply to all ETCs in Montana, including Chinook Wireless. The rules as existing and as may be amended, may qualify, modify, or replace one or more of the terms and conditions in this Order.

All introductory materials, summaries of testimony and arguments, findings of fact, and discussion above that can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this order are incorporated herein as conclusions of law.

The PSC has considered all laws, federal and state, applicable to state designation of ETCs for receipt of federal USFs. The PSC determines that Chinook Wireless has met the legal requirements for designation.

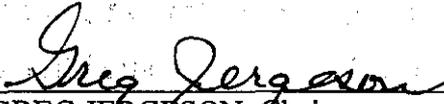
ORDER

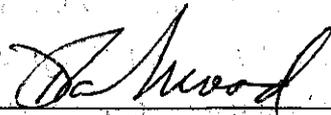
All introductory materials, summaries of testimony and arguments, findings of fact, conclusions of law, and discussion above that can properly be considered an order and which should be considered as such to preserve the integrity of this order are incorporated herein as an order. All pending objections, motions, and arguments not specifically ruled on in this order are denied, to the extent that such denial is consistent with this order.

IT IS HEREBY ORDERED that Chinook Wireless Inc.'s application for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order. Designation does not include certification for receipt of federal universal service funds, which is a separate process.

DONE AND DATED this 15th day of April 2008 by a vote of 5-0.

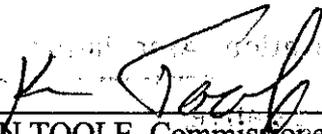
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


GREG JERGESON, Chairman


DOUG MOOD, Vice-Chairman


BRAD MOLNAR, Commissioner


ROBERT H. RANEY, Commissioner


KEN TOOLE, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a copy of **FINAL ORDER DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIER** issued in D2007.2.18 in the matter of MTPCS, LLC dba Chinook Wireless - Application for Designation as an Eligible Telecommunications Carrier has today been served on all parties listed on the Commission's most recent service list, updated 4/12/07, by mailing a copy thereof to each party by first class mail, postage prepaid.

Date: April 18, 2008

Donna Turkowski
For The Commission

INTERVENORS:

Blackfoot Telephone Cooperative, Inc.

Montana Consumer Counsel

Montana Independent Telecommunications Systems

Montana Telecommunications Association

3 Rivers Telephone Cooperative, Inc.

4/16/2008

Utility - Docket Service List

Docket no: D2007.2.18

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