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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF WWC HOLDING CO., INC. D/B/A
CELLULAR-ONE SEEKING
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
THAT MAY RECEIVE FEDERAL
UNIVERSAL SERVICE SUPPORT.

Case No. WST- T-05-01

COMMENTS OF CENTURYTEL

In Order No. 29749, the Commission issued its Notice of Application and Notice of Modified Procedure and established a comment period for this case. On April 14, 2005, the Idaho Telecommunications Association (ITA) filed a Motion to Dismiss the Application of Western Wireless stating that the Company failed to meet the commitments and requirements issued by the Federal Communications Commission (FCC) since the time Western Wireless filed its Application. CenturyTel of the Gem State, Inc., and CenturyTel of Idaho, Inc. (CenturyTel) supports the ITA's Motion and hereby submits its comments regarding the Application of Western Wireless seeking designation as an Eligible Telecommunications Carrier (ETC) in Idaho.

I. INTRODUCTION

The Federal Communications Commission ("Commission" or "FCC") recently adopted additional mandatory requirements for a telecommunications carrier to be designated as an Eligible Telecommunications Carrier ("ETC") by the Commission and, thus, eligible for

universal service support.¹ By statute, state commissions have the primary responsibility for designating most ETCs.² The FCC has jurisdiction to designate carriers that are not subject to the jurisdiction of a state commission.³ In this Order, the Commission encourages states exercising jurisdiction over ETC designations, to adopt the Commission's requirements for state ETC designation proceedings.

According to the Communications Act of 1934, as amended (the "Act"), only a designated ETC is eligible to receive Federal universal service support.⁴ The Act requires that "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 designated service area, so long as the requesting carrier meets the Act's other requirements.⁵ The Act also provides that the service area of a competitive ETC ("CETC") shall be that of the ILEC except in the case of a rural ILEC, where the service area of the CETC may be redefined if both the state and the FCC find it would serve in the public interest.⁶

The purpose of the universal service fund is to ensure that rural customers have access to affordable, reliable, high-quality, safe, and ubiquitous telecommunications service.⁷ The Act requires regulators to evaluate in a deliberate and thoughtful manner whether a

¹ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (Rel. Mar. 17, 2005) ("Order").

² 47 U.S.C. § 214(e)(2).

³ 47 U.S.C. § 214(e)(6).

⁴ 47 U.S.C §§ 214(e), 254(e).

⁵ 47 U.S.C. § 214(e)(2).

⁶ 47 U.S.C. § 214(e)(5).

⁷ 47 U.S.C. § 254.

competitor in a rural market will provide a beneficial alternative to the incumbent, or destabilize the fragile market, thereby hindering the delivery of universal service by *any* provider.⁸

In June 2002, the Federal-State Joint Board on Universal Service (“Joint Board”) released recommendations regarding the ETC designation process and high-cost support rules.⁹ The Board recommended that the Commission adopt permissive federal guidelines for states to consider in state ETC proceedings, including guidelines for minimum ETC qualifications to assist states in conducting “rigorous proceedings” and guidance for interpreting the public interest test found in section 214(d) of the Act.¹⁰ In the Order, the Commission refers to and adopts a majority of the Recommended Decision, and adds some additional guidelines and federal requirements, to ensure the support will be used only as contemplated by the Act. The FCC also clarified the criteria it applies to rural ETC service area redefinition proceedings.

Pending the Joint Board’s Recommended Decision, the Commission acknowledged the need for a more thorough ETC designation framework.¹¹ Specifically, the Commission employed more rigorous standards, establishing reporting and other CETC requirements, in its decisions granting ETC status to Virginia Cellular, LLC (“Virginia Cellular”)

⁸ FCC Commissioner Michael Copps recently summarized the plight of rural communities and the Commission’s grave responsibility to take special care when devising policies that will affect this nation’s high-cost areas:

Rural carriers face unique and very serious challenges to bring the communications revolution to their communities. As we move forward on all of our proceedings, including, among others, universal service decisions . . . we just must do everything we can to make certain that we understand the full impact of our decisions on rural America. If we get it wrong on these rural issues, we will consign a lot of Americans to second-class citizenship.

Statement of Michael J. Copps, Commissioner, Federal Communications Commission, before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, Feb. 26, 2003, at 4.

⁹ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4258 ¶ 2 (rel. Feb. 27, 2004) (“Recommended Decision”).

¹⁰ *Id.* ¶ 3.

¹¹ Order ¶ 14.

and Highland Cellular, Inc. (“Highland Cellular”).¹² In order to obtain CETC status, both Virginia Cellular and Highland Cellular agreed to abide by certain conditions: comply with any and all minimum local usage requirements adopted by the FCC, offer a number of local calling plans as part of their universal service offerings, and report annually their progress in achieving their build-out plans for cellular sites in sparsely populated areas within their licensed service area but outside their existing network coverage, as well as provide service to requesting customers in the service areas where they are designated as an ETC.¹³ In *Highland Cellular*, the FCC also established the wire center as the minimum geographic service area for a CETC, and adopted criteria for determining if an applicant would be engaged in creamskimming contrary to the public interest. Consistent with these decisions, the Order expands upon and adopts in several areas the strengthened designation process and service area redefinition criteria developed in *Virginia Cellular* and *Highland Cellular*.

II. THE FCC REPORT AND ORDER

A. The Order Adopts Additional Requirements for the ETC Designation Process.

1. Existing Minimum Eligibility Requirements Prior to the Current Order Are Retained.

In the Order, the Commission adopts additional requirements for ETC designations and annual re-certification. The original requirements, which remain in effect, require state commissions and the Commission, when applicable, to review ETC designation

¹² *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”); *Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. Apr. 12, 2004) (“*Highland Cellular*”).

¹³ *Virginia Cellular* at ¶ 14-15; *Highland Cellular* at ¶¶ 15-16

applications for compliance with section 214(e)(1) of the Act.¹⁴ The Act requires a designated ETC to offer the services supported by the federal universal service fund throughout the designated service area,¹⁵ and to use its own facilities or a combination of its own facilities and resale of another carrier's service.¹⁶ The competitive carrier need not offer these services before receiving its ETC designation.¹⁷ The Act also requires the ETC to advertise the supported services, the associated charges and the availability of Lifeline and Link Up services throughout the service area for which designation is received.¹⁸

The Commission clarifies that the ETC designation framework applies to any type of common carrier seeking an ETC designation, including wireless and wireline ETC applicants.¹⁹ The Commission also encourages state commissions to require ETC applicants to meet these same requirements and to conduct the same public interest analysis outlined in the Order to all ETC applicants in a manner "consistent with the principle that universal service support mechanisms and rules be competitively neutral."²⁰

2. The Order Establishes Additional Eligibility Requirements.

¹⁴ 47 U.S.C. § 214(e)(1).

¹⁵ "The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers." Order FN 39 (citing 47 C.F.R. § 54.101).

¹⁶ § 214(e)(1)(A).

¹⁷ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-75, ¶¶ 10-18 (2000), recon. pending (*Section 214(e) Declaratory Ruling*).

¹⁸ See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. §§ 54.405(b) and 54.411(d).

¹⁹ Order ¶ 17.

²⁰ Order ¶ 19.

In addition to the statutory requirements, the Order establishes minimum requirements for an ETC designation. Minimum requirements “should encourage state commissions to conduct rigorous reviews of ETC applications, including fact-intensive analyses.”²¹ Pursuant to the new Commission rules, an applicant must show: (1) commitment and ability to provide the supported services; (2) the ability to remain functional in emergency situations; (3) satisfaction of state consumer protection standards and service quality standards; (4) offering of a local usage plan comparable to the ILEC plan; and (5) ability to provide equal access if all of other ETCs in the designated area relinquish their designations.²² The specifics of each minimum guideline are described below.

a. Commitment and Ability to Provide the Supported Services

It is important for applicants to show the commitment and ability to provide the supported service because this helps ensure that an ETC applicant is willing and capable to provide services throughout the service area and able to be the sole ETC if the Commission so requires.²³ For an ETC applicant to demonstrate its commitment and ability, it must meet two requirements. The Commission encourages states to adopt these two requirements in a manner consistent with state laws and policies.²⁴

(1) Provision of Service Upon Request

First the ETC must provide services to all customers who make a reasonable request for service within its designated service area. Consistent with *Virginia Cellular* and *Highland Cellular*, the applicant must make specific commitments to provide service to requesting customers. For those instances where the ETC’s network covers the potential

²¹ Recommended Decision ¶ 11.

²² Order ¶ 20.

²³ Recommended Decision ¶ 23.

²⁴ *Id.*

customer, the ETC should provide service immediately.²⁵ Where a potential customer request comes within the applicant's licensed service area but outside its existing network coverage, if service can be provided at a reasonable cost, the ETC applicant should provide service within a reasonable period of time by:

(1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.²⁶

(2) Use of Funds for Universal Coverage

Second, the Commission requires an ETC applicant to submit a formal five-year network improvement plan that demonstrates how universal service funds will be used on a wire center-by-center basis to "improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support."²⁷ Any such build-out commitments adopted by states should be consistent with state line extension policies and carrier of last resort obligations.²⁸ This showing must also include: (1) "the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support"; (2) "the specific geographic areas where the improvements will be made; and" (3) "the estimated population that will be served as a result of the improvements."²⁹ This

²⁵ *Id.*

²⁶ *Id.* (citing *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1571, ¶ 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6430, ¶ 17).

²⁷ Order ¶ 21. ETCs designated by the Commission before the Order will be required to make this showing when they make their annual certification filing on October 1, 2006. Order ¶ 20.

²⁸ Order ¶ 21.

²⁹ Order ¶ 23.

approach allows a fact-specific analysis of the carrier and service area and ensures high-cost support will be used for the intended purpose, to improve service.³⁰

b. Ability to Remain Functional in Emergency Situations

The ability to remain functional in emergency situations is an important factor for the public interest.³¹ Therefore, an ETC applicant must demonstrate and certify on an annual basis its ability to remain functional in emergency situations.³² To meet this requirement, an applicant “must demonstrate that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.”³³ The Commission anticipates that state commissions adopting an emergency functionality requirement will also identify other geographically-specific factors that are relevant for consideration. The Commission stated, “[i]f states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.”³⁴

c. Satisfaction of Consumer Protection and Service Quality Standards

As one of the minimum eligibility requirements, the Commission requires an ETC applicant to show its commitment to meeting consumer protection and service quality standards.³⁵ This requirement is consistent with the public interest and “ensure[s] that consumers are able to receive an evolving level of universal service that ‘tak[es] into account advances in

³⁰ Order ¶¶ 24.

³¹ Order ¶¶ 26.

³² Order ¶¶ 25.

³³ *Id.*

³⁴ *Id.*

³⁵ Order ¶¶ 29.

telecommunications, and information technologies and services.”³⁶ A wireless ETC applicant meets this requirement by committing to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service.³⁷ For other carriers, the Commission will review the commitment on a case-by-case basis.³⁸ The Commission encourages states imposing consumer protection and service quality requirements to do so to the extent necessary to further universal service goals.³⁹ According to the Commission, “state commissions that exercise jurisdiction over ETC designations may either follow the Commission’s framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers.”⁴⁰

Significantly, the Commission determines that states also may impose these consumer protections requirements and other generally applicable, competitively neutral requirements on wireless carriers.⁴¹ While Section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services.”⁴²

d. Comparable Local Usage Plan

To be eligible for an ETC designation, an applicant must also “demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for

³⁶ Order ¶ 28 (citing 47 U.S.C. § 254(c)).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Order ¶ 30.

⁴⁰ Order ¶ 30.

⁴¹ Order ¶ 31.

⁴² Order ¶ 31; 47 U.S.C. § 332(c)(3).

which the applicant seeks designation.”⁴³ The Act requires an ETC to provide some local usage in order to receive universal service high-cost support.⁴⁴ The Commission declines to adopt a specific local usage threshold; it will review each applicant’s plan on a case-by-case basis to determine if the service plans are comparable.⁴⁵

While the Commission did not adopt a minimum requirement, it notes that there is nothing in the rules or orders that would prohibit states from adopting some amount of local usage.⁴⁶ The Commission encourages state commissions to compare the ETC’s and the ILEC’s local usage plan in examining whether the ETC applicant provides adequate local usage pursuant to the Act.⁴⁷

e. Acknowledgment of Potential Equal Access Obligation

To be eligible for an ETC designation, an applicant must acknowledge that the Commission may require it to provide equal access if all other ETCs in that service area relinquish their designations.⁴⁸ The Act requires the Commission to “permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier” and gives the Commission the authority to require the remaining ETC to provide equal access. The FCC will make that determination on a case-by-case basis.⁴⁹

⁴³ Order ¶ 32.

⁴⁴ 47 C.F.R. § 54.101(a)(2).

⁴⁵ Order ¶ 33.

⁴⁶ Order ¶ 34.

⁴⁷ Order ¶ 34.

⁴⁸ Order ¶ 35; 47 U.S.C. 214(e)(4).

⁴⁹ Order ¶ 35.

B. The Commission Clarifies and Interprets the Mandatory Public Interest Determination.

For an ETC applicant to be designated as an ETC it must meet the eligibility requirements explained above and the designation must serve the public interest. The additional minimum eligibility requirements will assist states in determining that ETC applicants are capable and willing to service all customers in the designated service area.⁵⁰ Before the application is granted, however, the Act requires the state commission or FCC determine that the designation is in the public interest, convenience and necessity. In addition to the statutory requirements, explained below, the Commission's Order establishes factors to help states interpret the statutory-mandated public interest test.

1. Existing Statutory Requirements Are Still in Effect.

Pursuant to section 214(e)(2) of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity. While the Act did not establish specific criteria, the public interest analysis must be consistent with the "purposes of the Act itself, including preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas."⁵¹

⁵⁰ Recommended Decision ¶ 37.

⁵¹ Order ¶ 40; 47 U.S.C. § 254(b).

The Act treats the public interest determination for an additional ETC in an area served by a rural carrier differently than an area served by a non-rural carrier. Section 214(e)(2) requires states to designate more than one ETC in areas served by non-rural carriers, when doing so is consistent with the public interest; but provides that states “may” designate more than one carrier in areas served by rural carriers and that the state “shall” find the designation to be in the public interest.⁵²

2. The Commission Adopts Additional Factors for the Public Interest Analysis.

In the Order, the FCC adopts the fact-specific analysis of its prior decisions in *Virginia Cellular* and *Highland Cellular*. In these cases, the Commission explicitly rejected competition as a sole reason for finding a CETC designation to be in the public interest, holding that “the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”⁵³ The FCC now will conduct a public interest analysis which will include two additional tests: a cost-benefit analysis and a creamskimming analysis. The FCC strongly encourages states to include these two additional tests, at a minimum, to the statutory-mandated public interest review.⁵⁴

First, the commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice and unique advantages and disadvantages of the competitor’s service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant

⁵² Recommended Decision ¶ 38.

⁵³ *Virginia Cellular* at ¶ 4; *Highland Cellular* at ¶ 4.

⁵⁴ Order ¶ 41.

seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.⁵⁵

Significantly, the Commission finds that it must make an affirmative determination that the ETC designation is the public interest for both rural and non-rural carriers.⁵⁶ The Commission finds the same public interest concerns for ETC applicants in areas served by rural carriers as those in areas served by non-rural carriers. Therefore, the Commission determines that many of the same public interest factors should be considered for both rural and non-rural designations, except that the creamskimming analysis will be performed only in rural study areas because there is not the same potential for creamskimming in areas served by non-rural ILECs.⁵⁷ Notwithstanding the FCC's adoption of one set of criteria for both types of carriers, the Commission or state commissions may conduct the public interest analysis differently, giving varying weight to factors or reaching different outcomes, because of the different statutory treatment, explained above.⁵⁸

a. The Commission will Perform a Cost-Benefit Analysis.

As part of the public interest analysis for areas served by both rural and non-rural carriers, the Commission will consider and balance (1) the benefits of increased consumer choice and (2) advantages and disadvantages of particular service offerings in its public interest determination.⁵⁹

⁵⁵ Order ¶ 41.

⁵⁶ Order ¶ 42.

⁵⁷ Order ¶ 42.

⁵⁸ Order ¶ 43.

⁵⁹ Order ¶ 44.

Regarding consumer choice, an ETC designation may be beneficial by providing choice of service offerings in rural and high cost areas.⁶⁰ However, increased competition by itself will not satisfy the public interest test.⁶¹ In weighing the advantages and disadvantages of particular service offerings,

the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines disadvantages such as dropped call rates and poor coverage.⁶²

Additionally, per-line support received by the ILEC should be one of the factors considered. “High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages.”⁶³ Therefore the level of per-line support is a relevant public interest factor. While the Commission declines to adopt a specific benchmark of support, it determined where there was a high enough high-cost per-line support, “the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.”⁶⁴

b. The Commission will Perform a Creamskimming Analysis for Areas Served by Rural Carriers.

As part of the public interest analysis for areas served by only rural carriers, the Commission will apply a creamskimming analysis for ETC applicants seeking designation below

⁶⁰ Order ¶ 44.

⁶¹ Order ¶ 44.

⁶² Order ¶ 44 (citing *See Advantage Cellular ETC Designation Order* at ¶ 19; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, p¶ 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, ¶¶ 12, 13).

⁶³ Order ¶ 55.

⁶⁴ Order ¶ 55.

the service area level of a rural ILEC.⁶⁵ The creamskimming analysis will include examining (1) the population density disparities between the wire centers that the ETC proposes to serve and the wire centers within the service area that the ETC proposes not to serve, (2) whether the ETC would be serving the highest density areas, and (3) whether the ILEC has disaggregated its support.⁶⁶ This analysis will show when an ETC would serve only lower cost wire centers to the exclusion of higher-cost areas, because a low population density usually indicates a high-cost area.⁶⁷

Where the ETC will serve the entire rural area, there is no need to perform a creamskimming analysis because the ETC is required to serve all wire centers in the service area.⁶⁸ Where an ETC applicant proposes to serve a disproportionate share of the higher-density wire centers in an ILEC's service area, the potential for creamskimming arises.⁶⁹ Support to the ETC for each line is based on the ILEC's average costs for serving the entire service area, unless the ILEC has disaggregated its support.⁷⁰ Therefore by serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than its actual costs of serving that wire center.⁷¹ "[L]ine density is a significant cost driver, [thus] it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis."⁷² The ILEC would be obligated to provide service to the remaining high-cost wire

⁶⁵ Order ¶ 48. This analysis will be similar to the analysis employed in *Virginia Cellular* and *Highland Cellular*.

⁶⁶ Order ¶ 49.

⁶⁷ Order ¶ 50.

⁶⁸ Order ¶ 49.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

centers, “while ETCs could target the rural incumbent LEC’s customers in the lowest cost areas and also receive support for serving the customers in these areas.”⁷³ Thus, the effects of creamskimming unfairly harm the ILEC and overburden the universal service fund.

The Commission determines that the review addresses the proposed service area’s potential effects of creamskimming and not an ETC’s “intent” to creamskim. For example, where an ETC is not licensed to serve the entire area, the effects on the universal service fund and on the ILEC of only serving a portion of the service area may be the same as creamskimming.⁷⁴ In addition, even where a carrier proposes to serve both high and low density areas, there is still potential for creamskimming effects if the majority of the proposed customers are in the low-cost, high-density wire centers.⁷⁵ Creamskimming concerns may be lessened, but not diminished, where the ILEC has disaggregated support.⁷⁶

In order to not disproportionately burden the universal service fund and to keep ILECs from being harmed by creamskimming effects, the Commission strongly urges state commissions to apply the creamskimming analysis outlined in the Order.⁷⁷ Additionally, a state commission’s application of such a creamskimming analysis will assist the Commission’s review of ETC petitions seeking redefinition of ILEC service areas.⁷⁸

C. The Commission Maintains and Augments Annual Certification and Reporting Requirements.

⁷³ Order ¶ 49

⁷⁴ Order FN 136.

⁷⁵ Order ¶ 50.

⁷⁶ Order ¶ 51.

⁷⁷ Order ¶ 52.

⁷⁸ Order ¶ 48. ETCs may petition the Commission for redefinition of the ILECs service area pursuant to § 214(e)(5).

Annual certification and reporting requirements regarding an ETCs network and use of universal service funds ensure that an ETC continues to comply with the ETC designation requirements and that universal service funds are being used for their intended purpose of providing rural and high-cost customers with access to affordable telecommunication services.⁷⁹ Current rules require ETCs to certify annually that they are using the received universal service funds for its intended purposes. In the Order, this requirement is maintained and strengthened.

Specifically, an ETC now must submit annually: (1) progress updates on the five-year service quality improvement plan and an explanation of why any network improvement targets were not made, on a wire center level; (2) how much universal service support was received, how the support was used to improve service quality in each wire center; (3) detailed information on outages in the ETC's network caused by emergencies; (4) the number of requests from potential customers in the service area that went unfilled; (5) certification of compliance with service quality standards and consumer protection rules; (6) certification that the ETC is offering a comparable local usage plan to the ILEC; (7) certification acknowledging that the ETC may be required to provide equal access to long distance carriers; and (8) the number of complaints per 1,000 handsets or lines.⁸⁰

Further, the Commission encourages states to go beyond its guidelines.⁸¹ According to the Commission, states are most qualified to determine necessary information to ensure ETCs are complying with all applicable regulations, "including state-specific ETC eligibility requirements."⁸² "[S]tate commissions may require the submission of any other

⁷⁹ Order ¶¶ 68, 70.

⁸⁰ Order ¶¶ 4, 69.

⁸¹ See Section III(B), *infra*.

⁸² Order ¶ 71.

information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.”⁸³

III. STATES SHOULD IMPLEMENT THE FCC’S RULES

A. The Order Establishes Permissive Guidelines for State ETC Designation Proceedings and Encourages States to Adopt These Guidelines.

While the Commission declines to mandate state commissions to adopt its ETC designation requirements, it encourages state commissions to require all ETCs “to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order” and to impose the reporting and certification requirements on all ETCs.⁸⁴ Throughout the Order, the Commission repeatedly addresses state commissions and encourages them to adopt each specific requirement, consistent with the applicable state and federal laws. The Commission determines that states should evaluate local factual situations and reach a conclusion in the public interest and consistent with section 214(e)(2).⁸⁵ Additionally, states have the authority to regulate CMRS with generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with the Act.⁸⁶

According to the Commission, states should adopt at a minimum the Commission’s rigorous designation process. It is essential that only fully qualified ETC

⁸³ Order ¶ 71.

⁸⁴ Order ¶¶ 58, 61.

⁸⁵ Order ¶ 61.

⁸⁶ Order ¶ 31. While section 332(c)(3) of the Act prohibits states from regulating rates or entry of CMRS providers, it specifically allows states to regulate other terms and conditions for CMRS.

designations are granted so that the ETC is able to serve all customers in a service area.⁸⁷ The guidelines will assist states in conducting their public interest analysis consistent with the Act.⁸⁸ When only qualified carriers, capable and committed to providing universal service, receive funds, the long-term sustainability of the fund is improved and the ETC will be able and willing to serve all customers in a designated service area.⁸⁹ Further, the guidelines “allow[] for a more predictable application process among the states.”⁹⁰

The Commission stresses the importance of consistent and uniform standards, because a state commission’s ETC designation “can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier, an area served by one or more rural carriers, or both.”⁹¹ State decisions have national implications, such as affecting competition, national strategies of new entrants and the size of the federal fund.⁹² Clear national eligibility and certification standards are the most effective way to limit the growth of and sustain the federal high-cost fund. Only through such national standards can rural consumers be assured that they will have access to high-quality, affordable local telephone service and only through such standards can all ETCs properly plan their long-term business and investment strategies. Rigorous standards also protect against inferior services to those offered by ILECS.

In addition, these guidelines are designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission’s review of petitions

⁸⁷ Order ¶ 58.

⁸⁸ Order ¶ 58. *See also* Recommended Decision ¶ 9.

⁸⁹ Order ¶ 58. *See also* Recommended Decision ¶ 9.

⁹⁰ Order ¶ 58. *See also* Recommended Decision ¶ 9.

⁹¹ Order ¶ 59 (internal citations omitted).

⁹² Recommended Decision ¶ 16; Order ¶ 60.

seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.⁹³

The Commission emphasizes that consistent guidelines should be applied to all carriers, regardless of the type of ILEC.⁹⁴ Noting, however, that “the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.”⁹⁵

B. States Have Discretion to Impose Their Own Requirements Beyond the Commission’s Minimum Eligibility Requirements.

To promote the purposes of universal service in a competitively neutral manner, grants of ETC status to competitive carriers must be thoroughly scrutinized and conditioned on their strong customer commitment and on their provision of services comparable to those offered by the ILEC. This can be met by adopting the guidelines in the Commission’s Order, in combination with requirements that go above and beyond the guidelines.

State commissions may impose additional requirements consistent with the Act and the purposes of the universal service fund.⁹⁶ The Commission’s guidelines are consistent with a holding in the Fifth Circuit that state commissions may impose their own eligibility requirements in addition to those described in section 214(e)(1).⁹⁷ According to the Commission

⁹³ Order ¶ 60 (citing 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207).

⁹⁴ Order ¶ 59.

⁹⁵ Order ¶ 59.

⁹⁶ Order ¶ 61.

⁹⁷ Order ¶ 61. (citing *TOPUC v. FCC*, 183 F. 3d at 418. The Fifth Circuit Court determined that states may subject carriers designated as ETCs to eligibility requirements in addition to the eligibility requirements detailed in section 214(e)(1) of the Act.).

“state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.”⁹⁸

In addition to the general prescription to states authorizing imposition of additional requirements, throughout the Order the Commission addresses state commissions, encouraging them to adopt the Commission’s guidelines and clarifying that states may impose requirements above and beyond the minimum eligibility requirements for ETC designation proceedings. For example, even though the Commission did not set a minimum local usage requirement, it stated that “there is nothing in the Act, Commission’s rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.”⁹⁹ In the section delineating its consumer protection and quality requirements, the Commission stated, “[a]s with the other requirements adopted in this Report and Order, state commissions that exercise jurisdiction over ETC designations may either follow the Commission’s framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers.”¹⁰⁰ Additionally, in the section describing the requirement to remain functional in emergency situations, the Commission anticipates that state commissions will also identify other geographically-specific factors that are relevant for consideration.¹⁰¹

1. Adoption of Rigorous Requirements Above and Beyond the Current Requirements Is in the Public Interest.

⁹⁸ Order ¶ 61.

⁹⁹ Order ¶ 34.

¹⁰⁰ Order ¶ 30.

¹⁰¹ *Id.*

The Current ETC designation process is filled with problems. Some state commissions have granted CETC designations and redefined rural ILECs' service areas based on highly inconsistent criteria. Too often, the justifications for such actions fail to meet the public interest standard established in the Act. As a result, CETCs are presently obtaining state and federal universal service support based on the lowest possible standard of local exchange service with no clear benefit to consumers. While they do not undertake the same service commitments as ILECs, they receive the same support as the ILEC. By contrast, fully-regulated incumbents are uniquely required to provide high-quality local exchange service and to serve as the carrier of last resort. In most rural areas, the ILECs' ability to offer this level of service is dependent upon federal and state high-cost funds. This results in Federal funds that are not being used as intended by the Act and the universal service fund is overburdened, without increased benefits for rural customers. The public is harmed and CETCs receive an unfair advantage. Additionally, in recent years, designations of wireless ETCs in rural areas that cannot support multiple carriers have caused exponential growth of the high-cost fund and with little or no added benefit to rural consumers. Wireless ETC designations in rural areas do not attract competition to these markets. Rural wireline providers are not necessarily losing lines to wireless carriers, and rural customers are not gaining access to new service offerings once the wireless carrier becomes an ETC.

While the Commission's guidelines begin to address these problems, state commissions can and should go beyond these minimum requirements to impose even more demanding requirements. Adoption of the Commission's new guidelines are only a first step in ensuring that the present funding system is sustainable in the long term and that the public is protected.

2. State Commissions Should Impose These Specific Additional Requirements.

- a. State commissions should require CETCs to serve the ILECs entire study area or receive support based on the ILECs cost only for the area that CETC seeks to serve.**

Under the Commission's Order, even though CETCs may serve a redefined, smaller area than the ILEC's study area, they receive support based on the ILEC's costs, which are averaged across the entire study area (or zone). This gives a significant competitive advantage to CETCs by encouraging them to "pick and choose" their service areas within an ILEC's larger territory, while receiving support based on the ILEC's average costs of serving both high-cost and low-cost areas within the study area.

Allowing a CETC to target the lines and customers they wish to serve in this manner results in a windfall for the CETC and provides no incentive for the CETC to attempt to provide services to all customers. The potential for cherry-picking in rural markets is further intensified because state regulators and the Commission will redefine the rural service areas for CETCs down to the wire center level.

Because CETCs do not have the same costs as the ILECs, or provide comparable services, state commissions should base support on a CETC's own costs. However, if a state commission concludes that a CETC is entitled to support based on the ILEC's costs, the state also should conclude that those carriers should serve the same service area as the ILEC. This will ensure competitive neutrality as required by the Commission's reading of Section 254 of the Communications Act of 1934, as amended (the "Act").¹⁰² In the alternative, if a state commission does not require the CETC to serve the ILEC's entire study area, the support

¹⁰² 12 FCC Rcd 8776, 8801 ¶47.

payment should be based on a measurement of the ILEC's costs only for the area that the CETC serves.

b. State commissions should require CETCs to assume carrier of last resort responsibilities.

Unlike CETCs, ILECs have significant carrier-of-last-resort obligations.

Historically, as the carrier-of-last-resort, the ILEC has been expected to provide service to all customers in the service area even if it is not economically beneficial to do so. In addition, some states place a ceiling on the rate the carrier-of-last-resort can charge for services provided and limit the carrier's ability to exit a particular market. It is this carrier-of-last resort responsibility, in part, that raises the ILEC's costs above those of competitive carriers. Thus, where a CETC receives support based on the ILEC's costs, the CETC should be prepared to step in as the carrier-of-last resort if required to do so. Only in this way can the Commission and states be assured that the support is being used to preserve and enhance universal service in rural areas.

c. State commissions should require ETCs to demonstrate adequate financial resources.

Consistent with the Recommended Decision, state commissions should evaluate whether ETC applicants have sufficient financial resources to provide quality service throughout the service area.¹⁰³ This will ensure that a carrier that receives financial support, is able to sustain its operations and serve all customers in the designated service area.¹⁰⁴

IV. CONCLUSION

¹⁰³ Recommended Decision ¶ 22.

¹⁰⁴ *Id.*

In the Order, the FCC strengthens current and establishes new rigorous requirements for ETC designation proceedings under its jurisdiction. The FCC encourages states exercising jurisdiction over ETC designations to adopt the guidelines outlined in the Order. By adopting these requirements, the Idaho Public Utilities Commission will begin to address the problem of a growing universal service fund by ensuring that carriers obtaining ETC designations are fully qualified, committed and able to serve the designated service area. It will also assist this commission in complying with the Federal Act. Additionally, this Commission should utilize its discretion to impose even more demanding requirements for its ETC designation proceedings.

Respectfully submitted this 29th day of April, 2005

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CERTIFICATE OF SERVICE

I hereby certify that an original and 7 copies of the foregoing *Comments of CenturyTel in the Matter of WWC Holding Co., Inc. D/B/A Cellular-One Seeking Designation as an Eligible Telecommunications Carrier that may receive Federal Universal Service Support*, relating to Case No. WST-T-05-01 was filed this 28th day of April, 2005, via overnight mail and a true and correct copy thereof has been served on each of the parties listed below, postage prepaid.


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