

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)

ISSUE DATE: July 31, 2003

DOCKET NO. PT-6182,6181/M-02-1503

ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING ADDITIONAL FILINGS

PROCEDURAL HISTORY

On September 10, 2002, RCC Minnesota, Inc. and Wireless Alliance, LLC, together as the affiliates of Rural Cellular Corporation providing service in Minnesota (collectively RCC) submitted a Petition for Designation as an Eligible Telecommunications Carrier (ETC).¹ RCC requested that the Commission designate it as eligible to receive all available support from the federal Universal Service Fund (USF), including support for rural, insular and high-cost areas and low income customers.

RCC made a corrected filing on September 16, 2002, upon receipt of a Commission Notice of Deficient Filing of Protected Data.

On November 4, 2002, the Commission issued its ORDER REQUIRING ADDITIONAL FILING, VARYING TIME PERIOD AND NOTICE AND ORDER FOR HEARING. The matter was referred to an Administrative Law Judge (ALJ) for a contested case proceeding.

On November 18 and 19, 2002, RCC made supplemental filings to its petition, pursuant to the Commission's November 4, 2002 Order.

On April 21, 2003, the ALJ filed her Findings of Fact, Conclusions of Law and Recommendation. The ALJ recommended granting RCC preliminary designation as an ETC in the proposed service area in Minnesota, with final approval contingent upon a satisfactory compliance filing. The record closed on April 8, 2003.

¹ Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214 (e)(2) and Section 54.201 of Federal Communications Commission's (FCC) rules, 47 C.F.R. § 54.201.

Exceptions to the ALJ's report were filed by RCC, Citizens Telecommunications Company of Minnesota, Inc. (Citizens), and Minnesota Independent Coalition (MIC) on May 2, 2003.

Replies were filed by the Department of Commerce (DOC) on May 8, 2003 and by RCC on May 12, 2003.

On June 5, 2003, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Historical Background

The federal Telecommunications Act of 1996 (the Act)² is designed to open the nation's telecommunications markets to competition. Its universal service provisions are designed to keep competition from driving rates to unaffordable levels for "low-income consumers and those in rural, insular, and high cost areas"³ by subsidizing those rates. Only carriers that have been designated ETCs are eligible to receive these subsidies.⁴

Traditionally rural rates, which otherwise would have reflected the higher costs of serving sparsely-populated areas, were subsidized explicitly by payments from federal universal service funds and implicitly by requiring carriers to average rural and urban costs when setting rates.⁵

Competition calls into question the continued viability of subsidizing rural rates through averaged pricing. While no one was sure how competition would develop, many credible scenarios suggested that it would first appear in urban areas, for two reasons: First, urban areas cost less to serve. Second, urban rates are often inflated to finance rural subsidies, a cost that new entrants without rural customers would not incur. Together, these factors made urban markets the logical starting point for new entrants seeking to underprice the incumbents. This urban-first scenario could threaten the affordability of telecommunications services in rural, insular and high-cost areas.

In addition, to promote access to telecommunications by people with low income, Congress provided programs to subsidize both the cost of initiating residential telephone service (Link Up⁶) and ongoing residential telephone bills (Lifeline⁷).

² Pub. L. No 104-104, 110 Stat.56, codified throughout title 47, United States Code.

³ 47 U.S.C. § 254(b)(3).

⁴ 47 C.F.R. § 54.201(a)(1).

⁵ *In the Matter of Federal-State Joint board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256 Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11251, ¶ 13 (2001).

⁶ 47 C.F.R. § 54.411.

⁷ 47 C.F.R. § 54.401.

Congress directed the Federal Communications Commission (FCC) to work with the states through a Federal-State Joint Board to overhaul existing universal service support systems.⁸ The Act required the FCC to determine which services qualified for subsidies. It authorized the states to determine which carriers qualified for universal service funding. The Act's term for these carriers was "eligible telecommunications carriers" (ETCs).⁹

II. The Legal Standard

Applications for ETC status are governed by federal and state law.¹⁰ The Act's § 214 requires an ETC to offer certain designated services throughout its ETC-designated service area, use its own facilities or a combination of its own facilities and resale of another carrier's service in providing these services, and advertise the availability and price of these services.¹¹ While the list of designated services may change over time,¹² FCC rule § 54.101(a) currently designates the following services:

- voice grade access to the public switched network
- local usage
- touch-tone service or its functional equivalent
- single-party service
- access to emergency services, including 911 and enhanced 911
- access to operator services
- access to interexchange services
- access to directory assistance
- toll limitation for qualifying low-income customers

This Commission has the responsibility for designating ETCs in Minnesota except where it lacks jurisdiction over an applicant.¹³ The Commission evaluates an application based on the criteria of the Act, the FCC, and the state itself.¹⁴ State-imposed criteria must be "competitively neutral" so as not to favor incumbents, competitors, or any particular technology.¹⁵

⁸ 47 U.S.C. § 254.

⁹ 47 U.S.C. § 214(e).

¹⁰ 47 U.S.C. §§ 254, 214; 47 C.F.R. § 54.101; Minn. Rules parts 7811.1400 and 7812.1400.

¹¹ 47 U.S.C. § 214(e)(1).

¹² 47 U.S.C. § 254(c)(1).

¹³ 47 U.S.C. § 214(e)(6).

¹⁴ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (state may impose own criteria, in addition to federal criteria, when evaluating requests for ETC status).

¹⁵ 47 U.S.C. § 254(b)(7); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Report and Order, 12 FCC Rcd 8776, 8801-03 ¶¶ 46-51 (1997).

The Commission must grant ETC status to any qualified applicant, provided that the applicant is not seeking to serve exchanges in which the incumbent telephone company is a rural telephone company. For these areas the state commission must first make a finding that designating more than one carrier is in the public interest.¹⁶ This requirement reflects Congressional concern that some thinly-populated areas might not be able to support more than one carrier.

III. RCC's Application

RCC is a Commercial Mobile Radio Service (CMRS) carrier licensed to provide cellular service in over 30 counties in Minnesota, north of the twin cities. RCC has a controlling interest in Wireless Alliance, a limited liability company that is authorized to provide personal communications services (PCS) in the Minneapolis and St. Cloud basic trading areas.

RCC stated that it is a full-service wireless carrier which offers all of the services supported by the federal universal service fund (USF) throughout its licensed service area utilizing its own facilities, including its own wireless antennas, towers, and mobile switching offices.

RCC intends to provide universal service through both its conventional cellular offerings, which use a .6-watt handheld phone, and its basic unbundled universal service offering (BUUSO). The BUUSO uses a 3-watt wireless local loop unit that simulates a dial tone and provides the ability to connect to an external antenna. It will operate on RCC's wireless network in the same way as any other wireless telephone.

The BUUSO will include unlimited local usage for calls made from the customer's local calling area to numbers located within the local calling area. The local calling area for customers using BUUSO would be approximately equivalent to the geographic area of the school district serving the customer's billing address. The BUUSO service will be offered at \$14.99 per month and requires the use of a home wireless terminal. RCC has not yet determined what it intends to charge customers for the wireless local loop equipment or for installation of the wireless local loop.

Also, RCC has committed to use all universal service funds it receives to improve its coverage and increase the availability of services to unserved or under-served areas. RCC has proposed building 15 cell sites in high cost areas that would otherwise not be high on the list for capital expenditures. In addition RCC anticipates that the facilities it will use to deliver the nine supported services will be able to deliver wireless Internet access, wireless high-speed Internet access, and other new services using advanced technologies.

RCC is requesting ETC designation for the non-rural local exchange carrier (LEC) exchanges within RCC's service area as well as rural study areas that RCC serves both in part and in their entirety. RCC is not seeking designation as an ETC in several areas in Northern Minnesota that are currently considered unserved territory and for which no incumbent local exchange carrier (ILEC) has been designated an ETC.

¹⁶ 47 U.S.C. § 214(e)(2). Each grant of ETC status must be consistent with the public interest, convenience and necessity. Minn. Rules part 7811.1400, subp. 2; 7812.1400, subp.2. "Rural telephone company" is defined at 47 U.S.C. § 153(47).

IV. Commission Action

Having reviewed the record and provided the parties with an opportunity to be heard, the Commission finds the analysis of the ALJ persuasive. Therefore, the Commission will accept, adopt, and incorporate herein the ALJ's Findings of Fact, Conclusions of Law and Recommendation, including the recommendation to grant preliminary ETC designation to the Company. The Commission will grant final approval upon a satisfactory compliance filing designed to address concerns identified by the ALJ and the parties.

The Commission's analysis and the requirements of the compliance filing will be summarized below.

V. Basic Requirements to Become an ETC under 47 U.S.C. § 214

A. Services Designated for Support

The ALJ found that no party contended that RCC failed to provide the nine supported services set forth in 47C.F.R § 54.101(a) and that RCC established that it is capable of offering the supported services throughout the proposed ETC service area. It will do so by installing new cell sites, using repeater technology, high gain or mini antennas, adjusting technical parameters at existing cell sites and reselling the service of other carriers.

B. Advertising the Supported Services

RCC indicated that upon designation it intends to advertise in newspapers within its designated service areas and in bill inserts to existing customers.

The DOC argued that RCC has not provided sufficient detail regarding its specific advertising plans and should be required to fully disclose its advertising plans.

The ALJ agreed that the DOC's position was reasonable and noted that RCC did not object to providing the requested information in a compliance filing. The ALJ found that contingent upon the adequacy of its compliance filing, RCC demonstrated that it will advertise the supported services.

C. Commission Action

The Commission agrees with the ALJ and will adopt the ALJ's conclusion that RCC satisfies the requirements that it provide the designated supported services and that it will be using some of its own facilities. The Commission will require RCC to make a compliance filing disclosing its advertising plans before the Commission makes a final determination on qualification.

VI. The Public Interest

A. The Legal Standard

While the Act generally requires a state commission to designate all qualifying applicants as ETCs, that is not true for areas served by rural telephone companies. For those areas, a state commission must first make a finding that designating more than one ETC would be in the public

interest.¹⁷ Since RCC seeks ETC designation for areas served by rural telephone companies, the Commission must determine whether granting the Company's petition would be in the public interest.

When making the public interest determination the Federal Communications Commission (FCC) has considered 1) whether customers are likely to benefit from increased competition, 2) whether designation of an ETC would provide benefits not available from incumbent carriers, and 3) whether customers would be harmed if the incumbent carrier exercised its option to relinquish its ETC designation.¹⁸ But states may add their own criteria, so long as they do not regulate the entry or rates of a CMRS provider.¹⁹

MIC and Citizens argued that the public interest standard requires consideration of additional factors, including the affordability of RCC's services and the effect of RCC's ETC status on the federal universal service fund. These will be addressed below.

B. The FCC Standard

1. The ALJ's Findings

The ALJ analyzed the public interest issue using the standards set by the Federal Communications Commission (FCC) and concluded that granting ETC status to RCC would promote the public interest.

The ALJ concluded that subject to RCC making a satisfactory compliance filing as described below, the record demonstrates that consumers would receive the usual benefits of competition. RCC would offer consumers a choice of providers, features, local calling areas, usage amounts and prices. Further, increased investment in rural infrastructure, as committed to by RCC, will improve access to emergency services and provide access to new and innovative services. Finally, the ALJ found that no ILEC will lose high-cost universal service support as a result of a competitor's designation as an ETC. There was no evidence to support the claim that an ILEC would likely relinquish its carrier of last resort obligations.

The ALJ also concluded that there was no evidence that the designation of RCC would harm consumers or that the local service market in any exchange was insufficient to support competitive entry and that there was no reason, in this record, to deprive consumers in northern Minnesota of the potential benefits of competition.

¹⁷ 47 U.S.C. § 214(e)(2).

¹⁸ *In the Matter of Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96 45, DA 02-3181, Memorandum Opinion and Order, 17 FCC Rcd 23532, 23540-42, ¶¶ 22-25 (2002).

¹⁹ See *Texas Office of Public Utility Counsel*, supra.

The ALJ, however, recognized the concern expressed by the DOC and MIC that RCC has not disclosed all the terms and conditions of its BUUSO offering, but has only disclosed the recurring rate of \$14.99. The ALJ found that the BUUSO and the 3-watt equipment that goes with it are critical to RCC's ability to provide service throughout its designated service area. Without it, the ALJ found the RCC cannot compete effectively for local exchange service because the coverage for conventional .6-watt phones is insufficient to provide reliable service. The ALJ found that the availability of this equipment to all consumers goes directly to the public interest issue of whether consumers are likely to receive the benefits of increased competition.

The ALJ accepted the DOC's recommendation that final approval of RCC as an ETC should be contingent on an adequate compliance filing that discloses all rates, terms, and conditions applicable to the BUUSO, including customer premise equipment options and charges, and installation charges.

2. RCC's Position

RCC stated its commitment to make a compliance filing that details the rates, terms and conditions applicable to the BUUSO rate plan, including the options and charges for the wireless local loop equipment (WLL).

However, RCC took exception to the conclusion that the price charged by RCC for the wireless local loop (WLL) should be considered in determining whether RCC qualifies for ETC designation. RCC indicated that it would offer a purchase option for the WLL equipment for customers choosing the BUUSO plan on a month to month basis, a discounted purchase option for those customers choosing BUUSO for an extended contract period and a lease option of \$5.00 per month for the lease of WLL equipment. Customers can also purchase WLL equipment on their own.

C. Commission Action

The Commission finds the ALJ's reasoning persuasive and concurs in and adopts her conclusion that subject to a satisfactory compliance filing on rates, terms and conditions applicable to BUUSO, including equipment and installation charges, RCC meets the public interest standard. Full disclosure of BUUSO terms will enable the Commission to determine whether RCC will be in a position to compete effectively for local exchange service and whether its ETC designation would likely result in consumers benefitting from increased competition.

Further, the Commission will also direct the Company to file a tariff with terms and rates for the BUUSO, with Lifeline and Link-Up and other services which may be added to a universal service offering.

D. Additional Factors

1. Affordability

The ALJ considered MIC's argument that the majority of RCC's mobile plans do not advance the universal service goal of providing local service at affordable rates. The ALJ determined that the Federal Act requires that a carrier offer the supported services, not that every service plan provide for unlimited local service or be priced comparably to the Incumbent Local Exchange Carrier's (ILEC's) rate for local service.

2. Effect on Universal Service Fund

The ALJ also considered MIC's argument that the costs of designating RCC as an ETC are excessive when compared to the likely benefits. The ALJ noted the FCC's position that arguments on the financial impact on the universal service fund are not relevant in a proceeding to designate a particular carrier. The ALJ determined that even if such arguments were relevant, designation of RCC as an ETC would have minimal impact on the federal fund and would not constitute a public cost that would outweigh the benefits of competition.

3. Effect on Competition

MIC argued that, based on line counts, RCC is successfully competing and does not need universal service subsidies to compete. The ALJ, however, found that this was not evidence of competition for local service.

Citizens argued that RCC's customers have both conventional cell phones and land lines and designating RCC as an ETC will not enhance competition, but it will just increase the number of households that have both cellular and land lines. The ALJ, however, found that the evidence demonstrated that RCC should be able to compete for basic service and this will enable customers to choose between land lines and wireless phones for local service.

MIC recommended that RCC's designation, if granted, should be limited to BUUSO because other cellular plans fail to provide local service. The ALJ found that there was no legal basis for limiting designation to one service plan.

4. Service Quality Issues

The DOC recommended that RCC be required to make a compliance filing disclosing its customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions, requests for service and any customer remedies offered as well as billing and payment and deposit policies. RCC did not oppose the compliance filing requested by the DOC.

Citizens raised concerns that RCC has not committed to any time frames to provide service to requesting customers and argued that the Commission should impose a specific standard on RCC related to customer requests for service.

E. Commission Action

The Commission concurs in and adopts the ALJ's conclusions on the above issues and agrees that a compliance filing will provide the additional information required to make a final determination on whether RCC meets the public interest standard. The compliance filing should include RCC's customer service agreement with customer service and dispute resolution policies; network maintenance policies with procedures for resolving service interruptions and any customer remedies; billing and payment policies; and deposit policies. This information will enable the Commission to evaluate service quality issues when considering the public interest standard.

Further, the Commission will also require RCC to make a compliance filing providing the information generally required from ETCs in order for the State to certify the use of high cost funds (the annual certification). Finally, the Company shall include a statement of its understanding of its federal obligations regarding its service area.

Finally, the Commission, in the Midwest Wireless Order,²⁰ required the same disclosures from Midwest Wireless as required herein. The Commission continues to see the necessity for including these items in the compliance filing and will do so. All of the information required in the compliance filing will enable the Commission to better determine whether granting this petition is in the public interest.

VII. Service Area Disaggregation

A. The Legal Standard

A carrier must offer and advertise the required basic services throughout any “service area” for which the carrier is designated an ETC. While state commissions establish service area boundaries, those boundaries typically coincide with the service territory boundaries or exchange area boundaries of incumbent landline carriers. The Act defines “service area” as:

a geographic area established by a State commission ... for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.²¹

For rural telephone companies, the Act established a default definition of “study area” that comprised the company’s entire service territory within a state. This default definition assigns all of a rural telephone company’s exchanges to one large service area.

Large service areas pose an obstacle to carriers seeking ETC status. The FCC concluded that:

service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.... [L]arge service areas increase start-up costs for new entrants, which might discourage competitors from providing service throughout an area because start-up costs increase with the size of a service area and potential competitors may be discouraged from entering an area with high start-up costs. As such, an unreasonably large service area effectively could prevent a potential competitor from offering the supported services, and thus would not be competitively neutral, would be inconsistent with section 254, and would not be necessary to preserve and advance universal service....

²⁰ *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket No. PT-6153/AM-02-686, ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING FURTHER FILINGS, March 19, 2003.

²¹ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

[I]f a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage....²²

To address these problems, the Act authorized the states and the FCC to agree to re-define an incumbent's service area, dividing the territory into multiple areas for universal service purposes. In considering whether to disaggregate a rural telephone company's service territory, the state and the FCC must consider three factors identified by the Joint Board:²³ 1) the risk of "cream skimming," 2) the regulatory status accorded rural telephone companies under the 1996 Act, and 3) any additional administrative burdens that might result from the disaggregation.²⁴

A state may disaggregate a non-rural telephone company's service area at its own discretion. But a rural telephone company's service area may not be disaggregated without the mutual consent of the state and the FCC.²⁵

B. RCC's Proposal

The FCC has authorized RCC to provide CMRS throughout a portion of northern Minnesota. The Company is seeking ETC designation for its entire service area except in unassigned areas for which no ETC has yet been assigned.

Specifically, RCC requested ETC designation for the following:

- the non-rural local exchange carrier (LEC) exchanges within RCC's service area.
- the rural study areas that RCC serves in their entirety.
- the rural study areas RCC does not serve in their entirety.

RCC requested that the Commission redefine the service areas of the rural ILECs in the territory in which it operates to conform to its licensed service area. It proposed that these areas be redefined so that each wire center is a separate service area and RCC's service area be defined consistent with those wire centers. Where RCC serves only a portion of a wire center, RCC's service area would be the portion of the wire center which it serves.

²² USF First Report and Order at ¶¶ 184-85, footnotes omitted [discussing non-rural service areas].

²³ 47 C.F.R. § 54.207(c)(1)(ii).

²⁴ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (Joint Board Recommendation).

²⁵ 47 C.F.R. § 54.207(c).

RCC is seeking disaggregation below the exchange level in the following exchanges: Benton Cooperative Telephone Company's Foreston and Ramey exchanges, Citizens Telephone Company's Wyoming exchange, MidState Telephone Company's Murdock exchange, and Sherburne County Rural Telephone Company's Glendorado exchange.

C. The ALJ's Findings

The ALJ applied the three factors set forth by the Joint Board for a state to consider when evaluating disaggregating a rural telephone company's service territory: 1) the risk of cream skimming, 2) the regulatory status accorded the rural telephone companies, and 3) any additional administrative burdens that might result from disaggregation. The ALJ concluded that there was no evidence that RCC was attempting to cream-skim the low cost areas of these exchanges, nor was there any evidence that disaggregation would impose any significant additional administrative burden or affect the special regulatory status of any rural telephone company. The ALJ concluded that the service area redefinition proposed by RCC was reasonable and should be adopted.

The ALJ also found that there was no basis for requiring RCC to provide universal service in the unserved areas of Koochiching, Lake, St. Louis and Itasca counties, where no incumbent has been assigned as an ETC.

D. Other Parties' Positions

1. Citizens

Citizens argued that RCC should be designated an ETC in the unserved territories in northern Minnesota within the scope of its FCC license. It argued that RCC is licensed to provide CMRS service throughout several areas of northern Minnesota where no local ILEC has been certified to provide service and there is no reason why this designation should not be made. Such a designation would create a public interest benefit in that any resident seeking service in those areas would obtain service in a simplified and timely manner.

Citizens also argued that RCC's request for ETC designation for only the portion of one of Citizen's exchanges (the Wyoming exchange) that is in RCC's CMRS license coverage shows a disregard for the ILEC exchange boundaries as a dividing line for purposes of universal support and ETC designation.

Further, the sub wire-center disaggregation requested by RCC in the rural telephone company exchanges that it will only partially serve raises several issues that, Citizen's argued, requires further review by the Commission. One such issue would be that this would allow the opportunity for a carrier to choose to serve only the least expensive section of an exchange but receive federal support based on exchange-wide costs.

2. RCC

RCC argued that there was no basis or support for Citizens' argument that RCC should be designated as an ETC in unserved area of rural Minnesota. There is no evidence that there has been a request for service in these areas, that no existing common carrier is willing to provide the service, or that RCC would be the best carrier to provide such service. These are the appropriate factors to consider when service is requested in an unserved area and a carrier determines that it does not wish to provide it.

E. Commission Action

The Commission has the discretion to redefine the service areas of non-rural telephone companies. It finds RCC's request regarding the non-rural telephone companies reasonable and consistent with the Commission's prior decisions and will approve RCC's request as it applies to the non-rural telephone companies.

The Commission agrees with the ALJ that there was no evidence to suggest that RCC is targeting low cost exchanges, or low cost portions of an exchange. If an ETC was targeting low-cost areas within a study area, the ETC could receive the same subsidies per line as the incumbent while incurring a fraction of the cost per line. This would leave the incumbent to serve the higher cost areas. There is no evidence to support that this is the situation here. Rather, RCC is targeting the areas within its licensed service territory, not targeting areas based on costs of service.

The disaggregation of a rural telephone company's service area does not reduce the consideration, including a determination of public interest, that the Commission must give any application by a CLEC for ETC status in a rural telephone company's service area. Any action herein will not affect any future action the Commission may take with respect to the LEC's status as a rural telephone company.

The Commission agrees that the record does not demonstrate support that there would be any additional administrative burden on any rural telephone company if RCC is granted ETC status in the service territory it requested. RCC is proposing to redefine rural LEC service areas solely for ETC designation. This proposal will not impact the way an affected rural LEC calculates its costs; it would be only to determine the LEC area in which RCC is to be designated an ETC.

Finally, the Commission agrees with the ALJ and finds that no legal basis has been shown for Citizens' request that RCC be designated an ETC in unserved territories. There has been no request for service in these areas and no basis for a determination that RCC would be the best carrier to provide such service, if there was such a request.

For all of the above reasons, the Commission finds RCC's request for disaggregation reasonable and will grant it. The Commission will petition the FCC to disaggregate, for ETC purposes, the incumbents' service areas as requested by RCC.

ORDER

1. The Commission hereby accepts, adopts and incorporates the ALJ's Findings of Fact, Conclusions of Law and Recommendation, including the following exchanges where RCC seeks disaggregation below the exchange level: Benton Cooperative Telephone Company's Foreston and Ramey exchanges, Citizens Telephone Company's Wyoming exchange, MidState Telephone Company's Murdock exchange, and Sherburne County Rural Telephone Company's Glendorado exchange.
2. The Commission grants conditional approval to the Company's application for designation as an eligible telecommunications carrier. Final approval is contingent upon Commission review and approval of the compliance filing set forth in paragraph 3.

3. The Company shall make a compliance filing including the following items:
 - (a) information typically gathered from ETCs in the annual certifications,
 - (b) information on rates, terms and conditions applicable to the BUUSO, including customer premise equipment options and charges,
 - (c) an advertising plan,
 - (d) a tariff with terms and rates for the BUUSO, with Lifeline and Link-Up and other services which may be added to a universal service offering,
 - (e) a customer service agreement with customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions and any customer remedies, billing and payment and deposit policies, and
 - (f) a list of the Company's federal obligations regarding its service area.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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