

Service Date: October 22, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF WWC HOLDING CO.,)	UTILITY DIVISION
Application for Designation as an Eligible)	
Telecommunications Carrier in Montana)	DOCKET NO. D2003.1.14
Areas Served by Qwest Corporation)	ORDER NO. 6492a

FINAL ORDER

Introduction and Procedural Background

WWC Holding Co., Inc., d/b/a CellularOne (Western Wireless or WW) filed on January 29, 2003 its application for designation as an eligible telecommunications carrier (ETC). WW's filing was noticed on March 3, 2003 for intervention. Intervention was granted on April 2, 2003 to the Montana Consumer Counsel (MCC), Montana Telecommunications Association (MTA), Qwest and the Ronan Telephone Company (RTC). Intervention was granted on April 7, 2003 to Montana Independent Telecommunications Systems, Inc. (MITS). A Procedural Order (No. 6492) was issued on June 10, 2003. WW filed on July 24, 2003 a Motion to Dismiss MITS, MTA and RTC. WW also filed on July 24, 2003 an objection to a staff data request.¹ The PSC denied WW's Motion to Dismiss. The Procedural Schedule was amended on both November 25, 2003 and December 18, 2003. Qwest submitted on February 11, 2004 its Notice of Withdrawal from this proceeding. Pursuant to the February 27, 2004 Notice of Public Hearing, a hearing in this docket commenced on March 17, 2004.

WW and MCC were the only parties to file testimony in this docket. WW filed the initial testimony of Mr. Blundell after which the MCC filed Mr. Buckalew's testimony. WW's rebuttal includes the testimony of Mr. Blundell and Mr. Wood.

¹ WW objected to PSC -029(c) requesting a copy of WW's most recent FCC 499 report. This report contains the percentage interstate total revenue that is subject to a 28 percent safe harbor. (DR PSC -014(a))

Initial Western Wireless TestimonyMr. James Blundell

Mr. Blundell's June 26, 2003 testimony first provides information about WW. WW is authorized by the FCC to provide commercial mobile radio services (CMRS) throughout areas of Montana and under the brand name of "CellularOne."² The CMRS services that WW provides include: data/FAX, 911, voice mail, and several other features and services. (p. 3) Prior to the current filing, WW withdrew its August 18, 1998 filing for ETC designation. WW's current petition seeks ETC designation in Qwest's service areas.³ (p. 5)

WW contributes about 9 percent of its revenues to the funding of federal universal service but does not draw from the fund for the services it provides in Montana.⁴ Absent access to Federal universal service funds (FUSFs) competitive carriers like WW are severely limited in their ability to provide competitive telecommunications service to consumers in high-cost areas served by Qwest. Unlike in urban areas, where carriers are able to compete "based upon the cost of providing service," carriers must be designated as ETCs and allowed "entry to the universal service market" in order for "rural high-cost areas" to experience the full benefits of competition.⁵ (p. 4)

² WW Corporation has several subsidiaries of which one, WWC Holding Co., Inc., conducts business in Montana. CellularOne is the brand name for WW's service. (DR PSC -011(a))

³ WW asserts that like the "rural ILECs in Montana," it operates as a "rural operator," its customer base is entirely "rural consumers" and it requires access to universal service support in order to provide service in "rural areas." (DR PSC- 022(c), (d))

⁴ WW will receive the same amount of explicit federal support per line that Qwest receives for each customer in each Qwest exchange. (PSC -012(a))

⁵ WW asserts that the benefits and costs associated with designating WW an ETC are addressed in Blundell's testimony and that the impact on Qwest of WW's designation is irrelevant. WW adds that its designation is "critical" to its ability to serve the rural areas of Montana. (DR PSC -021) It is critical to the preservation and advancement of universal service that consumers have access to service offerings that best meet their needs in terms of pricing, service quality and technology. (DR PSC 030(b)) By "rural areas," WW means that the areas and customers are with respect to Qwest. (DR PSC - 030(c))

The balance of Blundell's testimony describes the federal standards for ETC designations, the services that WW will provide to meet those standards, and the service areas in which WW seeks ETC designation. His testimony explains why there is no public interest (PI) standard that WW must meet in order to be designated an ETC.

As for federal ETC standards, Blundell testifies that wireless carriers are eligible to be designated ETCs. There are eligible because the 1996 Act (Section 214(e)) provides for the designation of "all" carriers. The FCC also agrees with the Joint Board's analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive support under 214(e). He notes that PSCs in 13 other states have determined that WW meets the requirements of Section 214(e)(1). (pp. 6, 7)

Under Section 214(e)(2), a carrier meets the prerequisites to receive ETC designation if it: 1) is a common carrier, 2) offers the supported services throughout the designated service areas and 3) advertises the availability of the supported services throughout the designated service areas.⁶ (pp. 7, 8) Blundell testifies that WW is a common carrier for purposes of ETC designation in Montana and that there are nine core services and functionalities that WW must offer. Those nine services include: voice-grade access, local usage, dual tone multi-frequency (DTMF) signaling or an equivalent, single-party service, toll limitation for qualifying low-income consumers and access to emergency, operator, interexchange and directory services.

⁶ Once designated an ETC, WW will advertise its Lifeline and Link-Up services, including discounts. (DR PSC -001(b)) While WW has not finalized the calling plans that it will offer in Montana it describes the four tiers of discounts allowed under the FCC Lifeline program. (DR PSC -001(c), (d), (e)) Tier 1 entitles ETCs to reimbursement for the federal SLC that is on a customer's bill. Tier 2 entitles ETCs to further reduce a qualifying customer's bill by \$1.75. Under Tier 3 a state may "match," as does Montana, the federal reductions by another \$3.50. Therefore, if WW's service is initially \$35 the rate to a Lifeline customer could be \$21.50. Since "tribal residents" are entitled to an additional \$25, a \$1.00 floor rate applies. WW does not know how much of Qwest's wire centers overlap with tribal lands. (DR PSC -033(c)) The Lifeline rules support residential customers. (DR PSC -010)

WW will offer as follows each of the nine supported services. (pp. 9-13) It will offer “voice-grade access” within the 300 to 3000 hertz frequency range.⁷ Until the FCC establishes a minimum local usage requirement, WW intends to offer “unlimited local usage as part of a universal service offering.”⁸ WW asserts that its use of “out-of-band” and “in-band multi-frequency” signaling meets the DTMF requirement. By offering a “dedicated message path” for the length of all customer calls WW states to satisfy the single-party service requirement. WW already provides access to 911 and it commits to work with public safety answering points (PSAPs) to make E911 available.⁹ WW provides access to operator services either directly or through other entities. WW holds that although the FCC does not include “equal access” to interexchange carriers (IXC) among the services supported a carrier must still offer access to IXCs.¹⁰ As for IXC access, WW asserts to provide all customers the ability to make and receive toll calls

⁷ WW uses both analog and digital technology to transmit and receive mobile calls. With digital, it uses two different TDMA and CDMA platforms (time and code division multiplexing). (DR PSC -026(c))

⁸ WW intends to comply with FCC requirements by offering unlimited local usage as part of at least one service offering. WW does not anticipate that it will offer Lifeline and residence/business customers “varying ‘free-of-charge amounts’.” (DR PSC -005(c), (d)) WW clarified that it intends to make service offerings available with different amounts of local usage.(DR PSC -026(b)) A customer’s rate plan includes a predetermined amount of “free” minutes of use, whether that usage is for local or toll calls. (DR PSC -027(c)) The rate for calls in excess of the prescribed bucket of minutes is \$.39/minute. (DR PSC -055(b)) WW expects that add-on features for vertical services will not be part of the basic service package. (PSC -022(a))

⁹ E911 includes automatic number and location information (ANI and ALI). When WW receives a compliant request from a PSAP for E911 it will implement E911 pursuant to FCC requirements. A compliant PSAP must be able to receive and use automatic number and location identification -- ANI and ALI respectively. WW also distinguishes between Phase I and Phase II compliance, with the latter requiring GPS capability. (DR PSC -007, and TR 155-158, 195) Whereas WW’s service is GPS capable, the PSAPs are not all prepared to accommodate GPS services. (TR 216)

¹⁰ WW will permit dial around toll calling. The minutes of use will be considered local calling minutes and will be deducted from the measured rate plan minutes. (DR PSC -007(e)) WW would not respond to questions about requirements, such as equal access, that are not imposed per Section 332(c)(8). (TR 44, 149)

either by direct interconnection arrangements or by dialing an access code.¹¹ WW provides “directory assistance” (DA) access by way of “411” and “555-1212” dialing. WW is not required to offer “white pages directories and listings.”¹² WW commits to provide, once designated an ETC, “toll blocking” and will, as required, participate in Lifeline, Link Up and “Tel-Assistance.”¹³

Finally, WW will combine and offer the above supported services by means of a number of “universal service offerings.”¹⁴ (pp. 13-15) The offerings will include unlimited local usage and usage sensitive offerings by means of conventional mobile handsets and wireless local loop service. Blundell explains that wireless local loop service (WLLS) combines a wireless unit located at the customer’s site with the nearest cell site.¹⁵ WLLS is, however, marketed more as a residential service in competition

¹¹ Qwest had assessed WW a rate of \$.09/MOU. Reverse billing was a subsidy offered to Qwest customers who dialed WW subscribers that was designed to eliminate barriers with land-to-mobile calling. (DR PSC -029(d)) Certain Qwest customers that call WW customers will now pay toll rates as such traffic is considered to be toll traffic. It is toll traffic because Qwest does not recognize its legal obligation to route land-to-mobile IntraMTA calls as local calls instead of toll calls. Qwest is the only LEC in Montana with whom WW has a wide area calling (WAC) “reverse billing arrangement.” If, for example, Project Telephone has an EAS arrangement with Qwest, and if WW has local numbers in the Qwest rate center, then these numbers must be recognized as local numbers by both Project and Qwest under dialing parity requirements. Qwest previously indicated to WW its intent to eliminate WAC with implementation of wireless number portability. (DR PSC -015(a), (b), (e) and DR PSC -016(a), (b))

¹² WW states that unless white page directory listings are an imposed requirement a customer needs to contact WW and request to be listed. Upon request, WW will coordinate with the area’s white page directory listing service. (DR PSC -048(d)) Blundell committed to provide white page listings if requested but did not explain how it chooses between alternative white page providers. (TR 32, 145)

¹³ WW adds that whereas an ETC must provide toll blocking, the FCC no longer requires an ETC to provide “toll control.” (DR PSC -009(a))

¹⁴ WW intends to provide services using its own facilities. (DR PSC -002(b)) WW will resell service if, after making all necessary network changes, it is unable to respond to a reasonable request for service. (DR PSC -002(c)) However, WW has no apparent intent to resell Qwest services. (DR PSC -063(e))

¹⁵ WW has 16 Montana customers that use a “wireless access unit” (WAU). WW provides this service at the same recurring and nonrecurring rates assessed mobile

with landline service offerings. The advantage of WLLS is that it allows WW to serve customers that may not otherwise be able to receive cellular service.¹⁶ If a customer is outside WW's existing cellular signal coverage area, WW can meet "reasonable requests for service" by other means of a high-gain antenna, changing a cell site's power and by building new cell sites.

Blundell asserts that the FCC is not currently considering the appropriateness of designating wireless carriers as ETCs. Nor is there doubt that such designations are appropriate. (pp. 15, 16) WW agrees with the Joint Board that any wholesale exclusion of a class of carriers would be inconsistent with the goals of the 1996 Act.¹⁷ WW holds that Section 332(c)(3)(A) does not allow states to deny a wireless carrier ETC status.

Blundell testifies that in order to meet the FCC's advertising requirement WW will advertise in full compliance with the FCC's ruling the availability of and the related charges for supported services (Section 69-3-840 M.C.A.).¹⁸ (pp. 16, 17) WW will advertise through newspapers, television, radio, billboards and retail stores, and it will comply with all "form and content requirements" required by either the FCC or the PSC for all designated ETCs.

Blundell testifies that WW seeks ETC designation in certain of Qwest's Montana "wirecenters" within the Rural Service and Metropolitan Service Areas (RSA and MSA respectively) for which WW holds CMRS licenses (Blundell's Exh. A lists those service

service. (DR PSC-049(a)(d)) A house phone is plugged into the WAU that also requires batteries. (TR 146) WW explains that the Tellular unit (a WAU) is activated the same as a mobile hand set...it plugs in just like a toaster ... and that the service can be provided within hours anywhere in Montana. (TR 252-253)

¹⁶ The only difference between cellular wireless service and WLLS is the customer premise equipment (CPE). WW offers WLLS using CPE that simulates many wireline network features; customers, however, want cellular service and not a "telco-like service offering." (DR PSC -031) If, a customer cannot receive WW's service (signal) despite the fact that it is located within a wire center, the customer can always get WLLS. (TR 288)

¹⁷ WW did not comment on whether other wireless carrier providers may be disadvantaged by designating WW as an ETC and it has no opinion on whether the PSC ought to also designate other wireless carriers. (DR PSC -047 (a), (b))

¹⁸ WW asserts that the FCC's rules impose no requirement on the frequency or duration of advertisements. (DR PSC -001(a)) Also, the M.C.A. cite is a correction. (TR 21)

areas). (pp. 7, 17-20) He adds that the PSC has Section 214(e)(2) authority to establish universal service areas:

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier...

Under section 214(e), service area is a geographic area established by a PSC. In the case of Qwest, the service area is the wire center. WW, however, does not seek ETC designation in Qwest wire centers unless it can meet its obligation to respond over time to reasonable requests for service. Using mapping software, WW's own radio frequency signal, and based on existing signal coverage and authorized cellular license areas, WW determined the extent to which each Qwest wire center is covered by WW and if coverage could be extended. WW analyzed whether its network could reach at least 85 percent of the population in each wire center. Although the FCC finds such designation appropriate WW will not seek designation as an ETC in "partial wirecenters."¹⁹ WW adds that the FCC determined in a South Dakota case involving WW that to be designated an ETC ubiquitous coverage throughout a wire center is not required. (DR PSC -032(b),(c),(d)) WW commits, upon reasonable request, to extend its network to serve new customers.

Blundell testifies that before WW is designated an ETC the PSC is not required to find that the designation is in the PI.²⁰ (p. 20) Whereas the FCC has stated that nothing

¹⁹ WW's signal coverage in Montana extends to "all" Qwest wire centers identified in its application. WW adds that it includes Qwest wire centers within its designated service areas if 85 percent (the threshold) of the population in an area is able to be served by a signal level of at least -104 dBm (decibels per minute). (PSC -023(a) and TR 144) The FCC uses the -104 dBm standard in its licensing. (TR 278) With a 95 percent threshold WW would have inadequate coverage in 8 more exchanges. (DR PSC -051(e)) WW commits to serve all consumers who reside in a wire centers within its ETC service area, including those served off of remote switches. As interconnection agreements (IAs) permit the exchange of traffic, WW objects to questions on how its ETC petition relates to extended area service (EAS). (DR PSC -004) WW has traffic exchange arrangements with all carriers in Montana and it offered to negotiate with any Montana LEC under the terms of Section 252 and the FCC's rules. (DR PSC -008(c),(e)) Even if there was no interconnection agreement with 3 Rivers to exchange local traffic in Shelby, WW holds that such calls are still IntraMTA calls that should not be subject to access charges. (DR PSC -052(b))

²⁰ WW holds that the "plain language" of the 1996 Act does not apply a PI standard

in 214(e)(1) requires that a carrier be subject to PSC oversight, in order to be designated an ETC WW recognizes that the PSC will have continuing oversight to ensure it continues to meet the requirements of section 214(e) and 4 CCR 723-41-8 et seq.

Initial Montana Consumer Counsel Testimony

Mr. Allen Buckalew

The purpose of Mr. Buckalew's January 15, 2004 testimony is to analyze WW's request to be designated an ETC. He testifies that his analysis and recommendations apply to any wireline or wireless carrier that seeks ETC designation. He adds that the purpose of ETCs is to increase subscribership and not to make service better. (TR 301) That is, ETCs have a public service obligation to provide telephone service to those people that are without service: to increase penetration. (TR 297-299)

Buckalew testifies that ETCs are needed in order to provide to customers the nine services that they would not otherwise receive. (pp. 4-6) He testifies that the PSC has examined the possible "public benefits" derived from designating multiple ETCs and adds that multiple carriers will improve the competitiveness of local exchange markets.²¹

when designating an ETC in an area served by a non-rural company. (PSC -003(a)) Even if the 1996 Act is assumed to impose such a requirement WW objects to the request of whether it is in the PI to designate it an ETC. (DR PSC -003(b)) WW does not hold that petitions for ETC designation must be addressed serially, adding that each application should be considered based upon its own merits. (DR PSC -003(d)) WW asserts that with the FCC's interpretation of the law there is no PI finding requirement for "non-rural" study areas. (DR PSC -025(a)) The PSC need only consider the "specific requirements of Section 214(e)(1)." (DR PSC 025(e)) WW further notes that PSCs are prevented from basing ETC designations upon PI considerations. (DR PSC-033) WW asserts that PSCs are expressly prohibited by Section 332(c)(3)(A) from imposing service quality rules upon CMRS carriers. (DR PSC -033(b)) WW notes, however, that the states of Oklahoma, Nebraska and Texas have imposed additional requirements on WW for federal USF support in areas served by non-rural carriers. (DR PSC -028(b))

²¹ Although it has not undertaken a cost/benefit analysis to determine whether WW should be designated an ETC, the MCC holds that the PSC must determine if there are net benefits. The PSC must also determine whether designating more than one ETC in "rural areas" is in the PI. MCC adds that our elected representatives have decided that competition is in the PI. (DR PSC -034(c), (d)) The MCC acknowledges that with increased competition a LEC could lose revenue. (DR PSC -035(e)) Still, the MCC held that multiple carriers will significantly improve competition. (TR 312) The MCC also

(p. 5, lines 9-12) However, there may be neither competition nor market forces to drive down costs with only one carrier.²² If WW shows that its application is in the PI and if it agrees to the conditions that he suggests would apply to all ETCs, he would designate WW as an ETC. He recites the nine supported services that ETCs must provide and the requirements in section 214(e) to designate ETCs in rural and in non-rural areas.

As there are no Montana rules for ETCs, Buckalew recites the MCC's prior recommendation to include in rules an annual "check-up" to ensure that ETCs undertake the Commission's universal service policy goals.²³ Existing ETCs should be assured continued ETC status if the check-up demonstrates that they are undertaking these policy goals. He lists five criteria that ETCs should initially, and on an annual basis, demonstrate to have met:²⁴

1. An ETC must be willing and able, and must certify its commitment, to provide to any requesting customer's location within the designated service area the defined services supported by universal service;
2. Each ETC must show that it advertises the availability of such services and the charges;
3. An ETC must provide the services at not more than the Commission authorized maximum stand-alone rates for the defined basic local exchange telecommunications service, and must meet all service quality and provision rules established by the Commission for universal services;²⁵

held that in some cases it may be necessary to not promote competition. (TR 326)

²² Buckalew does not, however, attribute much credibility to the contestable market theory; that theory holds that upon entry of a second firm, in addition to the incumbent, the market becomes competitive. (TR 403)

²³ With an annual check-up, the PSC would ensure that all rules are followed by each ETC every year. Any rule imposed on a wireline carrier must also apply to a wireless carrier; carriers must agree to the same standards before the PSC grants ETC status. Rules should be applied equally to rural and non-rural carriers. (DR PSC -036) WW holds that since 47 CFR Section 54.201 requires ETCs to meet the PI standards, an ETC failing to meet the standards established by the PSC can have its status revoked. (DR PSC -037(b)) MCC adds that if every requirement placed on other ETCs should be placed on WW, that the converse also holds. (DR PSC -041(c))

²⁴ Whereas PSCs are prohibited from regulating the rates of wireless carriers, PSCs are not prohibited from making requirements under the public interest standard. (TR 349)

²⁵ (As for rate caps, see the footnote associated with "5. e." below.) The MCC is unaware of differing but relevant service quality standards for wireless and wireline

4. Each ETC may satisfy its obligation to provide the defined services over a combination of its own facilities and resale (just not resale), and an ETC may provide the defined services, in part, by leasing of unbundled network elements (UNEs). The Commission may want to also define the qualifying minimum percentage of owned facilities and, or, leased UNEs.²⁶
5. Each ETC must also show that its provision of service satisfies the PI by meeting the following six requirements (pp. 8-10):²⁷
 - a. Every requirement, including the above five criteria, placed on ILEC ETCs should be placed on new ETCs.
 - b. Each ETC must designate the specific service areas it wishes to serve.²⁸
 - c. ETCs must document that each line for which it seeks compensation the customer is a “new” (not served by the existing ETC) or a “former” ETC customer (not using ETC services). Customers that add wireless services to existing wireline services should not be compensated.²⁹
 - d. Each ETC must file with the PSC and advertise after approval the exact ETC rates it offers for the service included in universal service in the ETC areas.³⁰ This requirement continues so long as the market is less than “workably competitive.”³¹ Advertisement plans should also be submitted.

carriers that conform to 47 CFR 54.101. (DR PSC -041(d)) By “provision rules” Buckalew means the time allowed to provide service, line extensions etc. (TR 401) Buckalew did not recommend that his service quality requirements be imposed on all carriers as universal service involves a substitutability argument; in other words, land line service is being substituted for wireless service for universal service purposes. (TR 404)

²⁶ The MCC holds that if a carrier does not use at least 50% of its own facilities, its ETC designation should not be considered in the PI. (DR PSC -037(e))

²⁷ The MCC does not believe that the PI benefits of a third ETC depend upon whether that ETC is a wireless or wireline ETC. (DR PSC -042(a))

²⁸ Buckalew is troubled by the fact that WW’s petition did not include all of Qwest’s wire centers. He questions what will be achieved by designating a second ETC if the incumbent serves nearly all of the customers (e.g., a 98% penetration rate). (TR 367-370)

²⁹ MCC held that deployment of second lines is not a goal of universal service and should not be funded with universal service funds. (TR 336)

³⁰ MCC believes that it is essential for the Commission to see WW’s actual universal service offering prior to approving WW’s application. (TR 314) MCC adds that without offering a low-cost universal service option WW does not meet the goals for universal service funding. (TR 315)

³¹ Market share data should be used. When no local exchange company’s market share exceeds 30%, then the market is considered workably competitive. (DR PSC -038(e))

- e. Until the PSC determines the ETC area “competitive” all ETCs must submit rates to the PSC for approval. All rates must be less than or equal to the PSC established rate for unlimited local exchange service and Lifeline service.³² The PSC may investigate and determine the appropriate single-party residential and single-line business rates for Montana in a cost proceeding that uses the ILEC’s existing rate.³³ The PSC may establish statewide rates for the purpose of determining universal service support levels or area-specific rates – maximum rates that an ETC may charge an end user customer for basic service or the supported basic local exchange telecommunications service.³⁴
- f. ETCs must have “Lifeline” and “Link Up” programs for low-income subscribers and rates on file in advance of its designation.³⁵ Regarding low income consumers, ETCs should adhere to the following (pp. 9-10):
 - i. offer Lifeline and Link Up programs that are consistent with federal guidelines;
 - ii. the PSC should determine a consumer’s qualification for support³⁶;

³² As such, Buckalew holds that the Commission is not regulating WW’s rates but is setting a rate cap. (TR 361) There should be no limit on free local calling available from a wireless ETC. (DR -042(b)) As for reconciling his rate limit (cap) proposal, Buckalew does not believe the Kansas “BUS” (WW Basic Universal Service program) was related but added that it should be briefed. (TR 397, 398) As for implementation and using the Qwest 1FR as an example, Buckalew testified that the appropriate cap could be \$17, \$25 or anything in between. (TR 400)

³³ The MCC suggests establishing a statewide average rate to use for USF purposes, especially if a state fund is ever implemented. (DR PSC -039(d))

³⁴ The MCC suggests setting a rate for local service that can be used for USF purposes if a state-specific fund is developed. (DR PSC -039(e)) This suggestion does not apply to the federal fund.(DR PSC -040(a)) The South Carolina PSC may have implemented such a proposal. (DR PSC -040(c))

³⁵ Lifeline service includes universal services and functionalities available to qualifying low-income consumers. The Link Up program reduces the installation and initiation service charges for low-income consumers. Buckalew agreed that the FCC’s rules do not dictate any rate for Lifeline or Link Up assistance but rather provide for reimbursement of discounts or credits and that the Lifeline support credits apply against the lowest tariff rate of a local exchange carrier or the lowest generally available rates of carriers who are not required to file tariffs. (TR 354) If a PSC establishes eligibility criteria for Lifeline and Link Up, then the state has to provide a level of state support, Tier 3 matching support, as part of the Lifeline credits. (TR 355) Buckalew contends that Lifeline and Link Up is part of a public interest analysis. (TR 357)

³⁶ By “consumer’s qualification for support,” Buckalew means that everyone will not qualify for Link Up services. (TR 405)

- iii. qualifying consumers should be able to select any ETC; and,
- iv. Lifeline subscribers must not be allowed service from more than one ETC.³⁷

As a continuing PI requirement, Buckalew would require all ETCs to submit to the PSC information on fund use that shows the amount of funds received and to explain how those funds were used to support specific universal services.³⁸ (p. 10) Fund use information would include: 1) total funds received, 2) revenue received from benefited (basic and Lifeline) customers, 3) costs and expenses for specific universal services and 4) how the funds were applied. He also asserts that WW must provide the exact wire center geographic boundaries for which it provides service. (DR PSC -038(c))

Consistent with federal rules, Buckalew's summary recommendations include: (1) that every requirement placed on other ETCs should be placed on WW. (pp. 11-13) However, the same "general waivers," such as the toll limitation waiver, if needed, should apply to WW. The same quality of service standards and reports need to be filed by any designated ETC; (2) an ETC must designate the specific local service areas it wishes to serve with any necessary details on why complete coverage is not offered; (3) the ETC must provide the number of lines it captured from the ILEC and, upon request, must demonstrate whether each customer is a "former" ILEC customer or a "new" customer;³⁹ (4) until competition exists in an area each ETC must submit its rates to the PSC as well as its plans to advertise service and (5) Lifeline and Link Up programs must

³⁷ As universal service is not defined as multiple access to the PSTN, there is no reason for telephone customers to support several lines or companies. (DR PSC -041(a)) Per FCC rules, there would be only one Link Up program for one location. (TR 405)

³⁸ Buckalew held that, even though it is a post-designation requirement, the annual certification process is part and parcel of the public interest and is a requirement. (TR 358)

³⁹ The FCC rules (47 CFR Section 54.307) limit a CETC's compensation to when it captures an ILEC's line or serves a new customer. (DR PSC -036(a)) Buckalew does not believe that each cell phone ought to be considered "new" and adds that whether it is depends on whether it is the "primary" service. (TR 376) Consistent with the rules, if a new customer initially selects wireless service but then decides to add (not substitute) wireline service, then the MCC holds that the wireline service should qualify for support. (TR 377)

be established for low-income subscribers and the rates must be filed with the PSC prior to an ETC designation.

Buckalew concludes that since WW has not demonstrated that its application is in the PI, WW should not be designated an ETC. If WW agreed to follow all of the rules that the Commission establishes, and if its designation were in the PI, then WW should be designated an ETC.⁴⁰ (TR 312) Until WW indicates its commitment to comply with rules that the Commission establishes WW does not deserve ETC funding. (TR 324, 342) Ideally, however, there should be no designation of competitive ETCs before the rules are in place and the rules would be part and parcel of the public interest inquiry; that is, this docket would be suspended. (TR 343, 345, 366) As a matter of policy, Buckalew agreed that the universal service subsidy is close to having outlived its usefulness and he questions whether subscribership would decrease in its absence. He also questions what ought to be the target saturation point for telephone service. (TR 372-374) Buckalew does not object to an interim ETC designation pending the resolution of rules. During the interim, the PSC should not stay or revoke ETC designations. Once the rules are completed, a designated ETC's compliance with the rules would become part of the annual certification process. (TR 405, 406)

Rebuttal Testimony of Western Wireless

Mr. James Blundell

Blundell's rebuttal testimony of February 19, 2004 makes three points. First, the MCC does not dispute that WW meets all federal standards to be designated an ETC. Second, he finds legally improper the MCC's testimony that the PSC must make an affirmative PI finding. He adds that the PI standard "applies only" to rural telephone companies. He finds that designating WW as an ETC would serve the PI. He also finds legally improper the MCC's testimony that holds that the PI requires WW to comply with requirements imposed upon ILECs and that WW must offer rates approved by the PSC. Third, he finds the MCC's recommendations concerning PSC oversight to be inconsistent

⁴⁰ Buckalew testified that the essence of the PI is simply that the goal of universal service is to extend the network to those that do not have service. (TR 371)

with Montana statutory authority and prior PSC conclusions. As the MCC does not dispute that WW satisfies the requirements for WW to be designated an ETC, as outlined in WW's initial testimony, and it does not challenge the service areas in which WW seeks to be designated, the PSC should find that WW meets these requirements. (p. 3)

Blundell addresses the relevance of the PI to WW's petition. First, he disagrees with the MCC's assertion that the PSC must make an affirmative finding that WW's designation serves the PI.⁴¹ He disagrees as the PI requirement applies only in rural company areas.⁴² In acknowledging the FCC's recent PI determination, involving Virginia Cellular, he testifies that the FCC did not necessarily hold or mandate that a PI finding must be made by a state PSC.⁴³ He acknowledged that the FCC provided PSCs additional guidance to determine if designations are in the PI.

Blundell is confident that WW's designation would serve the PI as it would bring competition to "rural, high-cost areas." This, he adds, is consistent with one underlying purpose of the 1996 Act which is to promote competition. He asserts that the PI standard in 214(e)(2) emphasizes competition and consumer benefits and not protection of the incumbent. Failure to designate WW as an ETC would deprive consumers of competitive benefits, including "new and exciting" services for Montana's rural consumers. In addition to the benefits of efficiency, better service quality, immediate service and innovation, by offering "universal services" rural consumers will benefit from having mobile service in expanded local calling areas and may experience lower rates due to competitive forces.⁴⁴ WW is a key provider of service to low-income and high cost

⁴¹ WW holds that application of the PI standard, while not mandated, is not allowed. Thus, it is inconsistent with the 1996 Act for a PSC to consider the PI in the context of a non-rural carrier. (DR PSC -054(c))

⁴² Blundell holds that it is unlawful for the Commission to deny an application in a non-rural telephone company area based on a PI test. (TR 26)

⁴³ In light of the Virginia Cellular decision and the Federal-State Joint Board's recent Recommended Decision, WW holds that FCC policy has for years remained consistent and has found that designation of wireless carriers is in the PI. (DR PSC -058(d))

⁴⁴ WW asserts that there is no relationship between the MTA and WW's calling plans. (DR PSC -013(b)) WW adds that the FCC is responsible for overseeing consumer

consumers in the 13 states in which it is designated an ETC and its calling plans are comparable to those available from national carriers operating in urban areas. Just as the Wyoming and North Dakota PSCs have also found WW's designation to be in the PI, the Montana PSC should enter similar findings.

Blundell disagrees with the MCC that the PI requires all ETCs to be subject to "all of the same rules." He disagrees as the requirement is contrary to the FCC's principle of competitive neutrality.⁴⁵ Neutrality means that rules must be neutral with respect to the technology and regulatory status of a carrier. So long as a common carrier commits to offer and advertise the nine supported services it meets the criteria to be designated an ETC. MCC's testimony on regulatory parity, that all ETCs must follow the same rules, is directly contrary to the FCC's notion of competitive neutrality. The FCC allows a carrier that is not subject to full state regulation to be designated an ETC. Regulatory parity does not advance the goals of universal service. Blundell adds that because the MCC did not testify that Qwest should be subject to the federal rules that govern the provision of CMRS, WW would be subject to greater regulatory burdens than is Qwest. (pp. 10-11). As the FCC does not require an ETC applicant to describe in detail its plans, the PSC need not approve, as MCC proposes, all of WW's rate plans. Since rate regulation of WW's offerings is preempted by federal law, it is unnecessary to impose ILEC regulations on wireless carriers in order to advance federal universal service goals in Montana (47 U.S.C. §332(c)(3)).

In regard to service quality, Blundell testifies that because of the high level of competition the wireless industry is different from traditional telecommunications

complaints with respect to CMRS and WW does not maintain historical information related to customer complaints. (DR PSC -019(a)) WW explains elsewhere that there is "no relationship" between its calling plans and Qwest's exchange boundaries. (DR PSC 028(d)) See response to DR PSC -053 for an expansion on the benefits of efficiency, innovation and pricing. See PSC -054(d), (e) on benefits and costs and DR PSC -057(d) on the dimensions of WW's "service quality" metrics.

⁴⁵ When asked where in Section 214(e) "competitive neutrality" is a consideration when designating ETCs, WW referred to the FCC's rules identifying competitive neutrality as a guiding principle. (DR PSC -047(e)) WW does not find that "competitive neutrality" is essential to the designation of ETCs. (DR PSC -056(d)) Blundell adds that all ETC's should not be regulated alike as "ETC" is not a class of carrier. (TR 31)

services. (p. 12) He adds that WW is committed to provide high quality service. He also adds the WW is a voluntary signatory to the CTIA (Competitive Telecommunications and Internet Association) “Consumer Code” for wireless carriers.⁴⁶

Blundell holds that if WW satisfies both 214(e)(1) and the FCC’s regulations, that the PSC may not impose other inapplicable regulations §69-3-840 M.C.A.. (pp. 13-14) He testifies that the PSC does not have legal authority to impose any requirements beyond those in federal laws. He also cites a prior order wherein the PSC recognized the limits of its authority.⁴⁷ He adds that although Co-ops are otherwise exempt from PSC regulation, the PSC will have continuing 214(e) oversight over ETCs. (p. 14) He appears to agree that the PSC may, after designating an ETC, later reverse that designation. (DR PSC -053(c)) He is less clear on whether the PSC can apply changed criteria to both previously and to prospectively designated ETCs. (DR PSC -053(d))

As for the reporting and funding of universal service lines, Blundell testifies that the MCC has a fundamentally misunderstanding.(p. 15) The FCC is clear that both ILECs and CETCs will receive funding for all lines that they serve in a given area. He adds that the FCC’s rules and orders do not state that a CETC is only entitled to funding of lines no longer served by an ILEC.

As for how ETCs use federal universal service funds, Blundell notes that the FCC’s rules provide for a certification mechanism. To address the MCC concern that WW designate the specific local service areas (wire center boundaries) it wishes to serve, that WW detail the existing ETC area it is covering and that it explain why complete coverage is not offered, he provides a map (Exh. C). (p. 17)

Mr. Don Wood

⁴⁶ WW commits to respond within 30 days to PSC consumer complaints that are forwarded to WW. WW asserts that Virginia Wireless satisfied the FCC’s service quality decision when Virginia Wireless agreed to committing to comply with the CTIA consumer code (TR 255-256, 291)

⁴⁷ This December 16, 1997 Order: 1) recites eight requirements in order to be designated an ETC, 2) describes a self-certification process and 3) notes where the FCC prohibited state PSCs from imposing additional prerequisites to be designated an ETC. (Order 6005(a), Pacific Telecom Inc., D96.2.18, finding of fact No. 6)

Mr. Wood's February 19, 2004 testimony rebuts the MCC's initial testimony. He testifies that the only relevant question is whether WW commits to offer and advertise the nine supported services in the proposed service area. Therefore, the purpose is not to address whether the introduction of competition for basic telecommunications services in "rural" areas is in the PI.⁴⁸ (p. 4) Because WW seeks only to serve non-rural areas, the law requires no PI analysis. With respect to the Virginia Cellular petition, he adds that the FCC's PI analysis of non-rural areas differs from the analysis it performed for rural areas. For non-rural areas the "public interest, convenience and necessity" standard is met because of the high quality service that Virginia Cellular provides.⁴⁹ (p. 5)

Wood testifies that designating WW an ETC will in both the short term and in the long term benefit end users. The short-term benefits of competitive entry include lower prices, new services, different technology and supplier diversity. Wood agrees with the MCC that: "...alternatives to the LEC, that is, viable CLECs and wireless carriers, need to exist in each exchange area for competition to work for all Montanans." (p. 6) He recites the FCC's conclusion that entry by an ETC into a rural area can create more specific benefits such as providing "...incentives to the incumbent to implement new operating efficiencies, lower prices and offer better service..." He asserts that the FCC finds "no merit" in arguments that designating an additional ETC in a rural area will reduce an ILEC's investment incentives, increase its prices or reduce service quality. (p. 6)⁵⁰

⁴⁸ Wood clarifies that each reference to "rural" area is a reference to the rural areas that Qwest serves. (DR PSC -059(b); however, see TR 66-68) As for where Section 214(e) requires consideration of competitive benefits, Wood responds that implicit in the analysis of whether the PI is satisfied is a determination of whether competition benefits consumers.(DR PSC -059(c)) He adds that PSCs recognize the benefits of competition as one component of satisfying the PI test.

⁴⁹ Wood finds the FCC's finding, in the context of non-rural carriers, contrary to Section 214(e) even though the FCC designated the carrier as an ETC. (DR PSC 059(a)) Nor has the FCC explained what incremental analysis associates with the "convenience and necessity" requirements that are in addition to the "public interest" requirement in the Section 214(e) requirement that designations be consistent with the "public interest, convenience and necessity." (DR PSC -065(e))

⁵⁰ See, however, the FCC's Virginia Cellular Order (paragraphs 34 and 35) that WW

According to Wood, the long-term economic benefits of competition are a potential gain for rural consumers and for rural economic development.⁵¹ The long-term economic benefits of competition in a rural area that the FCC identified include: customer choice, innovative services and new technologies, added incentives for the incumbent rural telephone companies to improve their existing network to remain competitive, new operating efficiencies, lower prices and improved service quality. (p. 7, lines 1-12)

Wood testified to have direct experience with the impact of competitive entry in rural areas. He adds that because of both rural economic development and the availability of affordable and high quality service, it is extremely important for health and safety reasons that competitive entry occurs in rural areas. (pp. 7-8)

Wood also testified that WW commits to offer and advertise the nine supported services and that WW's services will provide benefits to consumers. There is no fact or issue specific to WW or the service area within which it seeks ETC status in Montana that would outweigh those benefits. (p. 9, lines 4-9) He finds irrelevant the requests that LECs made, to weigh the benefits and costs of competitive entry for low line density rural areas, of regulators in other state proceedings.

According to Wood, the PI regards the interests of consumers. (p. 9, lines 18-19) He adds that consistent with the FCC's principle of "competitive neutrality," the interests of individual carriers or categories of carriers are not significant to a PI determination. In this regard, he cites the 5th Circuit Court of Appeal's Alenco decision and holds that the FCC and the court both make clear that the purpose of the federal USF is to protect rural consumers of telecommunications services and not to protect ILECs (pp. 9-10).⁵²

doubts can be imposed. (TR 172)

⁵¹ WW made no estimate of the economic development benefits that would arise from WW's designation (DR PSC -059(e))

⁵² The Alenco Communications v. FCC decision cited in the Fourteenth Report in part states: *The Act does not guarantee all local telephone service providers a sufficient return on investment; quite the contrary, it is intended to introduce competition into the market...The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers...* As for competitive neutrality, WW does not support providing USF to all wireless carriers operating in the areas in which WW

Wood advises the PSC to be watchful for efforts by LECs in rural areas to re-litigate FCC decisions regarding the federal universal service mechanism. (p.10, lines 11-17) He concludes that even if the PSC applied a more rigorous standard than the FCC applied in the non-rural areas of Virginia, the designation of WW as an ETC is in the PI.⁵³ (p. 10)

Despite the absence of any PSC rules for ETCs in Montana Wood testifies that the PSC should not create rules as the MCC suggests. This recommendation is based on the USAC's authority to conduct audits to ensure that ETCs appropriately use federal funds. In addition, the PSC already has certification authority over how USF support that makes additional requirements unnecessary.⁵⁴ (p. 11)

Wood disagrees with how the MCC would subject both WW and ILECs to the same requirements. He disagrees as the requirements would duplicate federal standards and competitive marketplace constraints would favor incumbents over new entrants. Thus, the requirements are not competitively neutral. (pp.12-13) As WW commits to meet all legal requirements, further requirements are not needed. Whether WW should offer services not required by the FCC or the PSC is not relevant. (p. 12, lines 13-15) Whereas the MCC's position appears based upon the notion of "regulatory parity" (correction, TR 162), in reference to the MCC's recommended annual checkup and the six additional requirements, Wood holds that the effect is to require of CETCs the same quality and scope of service required of the ILEC.⁵⁵ Due to entry barriers, Wood holds

seeks ETC designation; only carriers that seek ETC designation and meet the requirements should have access to such funding. (DR PSC -060(d),(e)) The FCC reference is to CC Docket No. 96-45, FCC 97-157, In the Matter of the Federal-State Joint Board on Universal Service, May 8, 1997 (paragraphs 43-55). (DR PSC -061(a))

⁵³ WW holds that given the ability of ILECs to disaggregate USF, the Virginia Cellular Order may be inconsistent with the findings of both the FCC and the Fifth Circuit Court. (DR PSC-062(e)) WW adds that the FCC's Virginia Cellular order may be inconsistent with both prior FCC findings and the 5th Circuit's findings. (TR 222-225)

⁵⁴ Certification may be audited by USAC. (TR 170)

⁵⁵ Even if service quality standards were established for ETCs, WW holds that for competitive neutrality reasons they should only apply to common carriers that are designated ETCs. (DR PSC -064(b))

that the MCC's requirements would create no public benefit. (p. 13, line 5) He reminds the PSC of the history of carrier regulation in making PI determinations. The constraints imposed on ILECs exist because of their former "monopoly" position and not because they are ETCs. The ILECs unique position of having built out networks, with no competition, inspired the FCC to enact standards that require maximum quality services from ILECs.⁵⁶ (p. 13, lines 10-15)

Wood notes that the FCC's principle of competitive neutrality does not mean that ETCs must be treated identically. Rather, the process of qualifying for and receiving universal service support must be competitively neutral. (p.13, lines 15-18) The prior amount of support received and the existing level of market power justifies some disparity. In this regard, he testifies that some disparity in regulatory treatment would uphold the intent of competitive neutrality by creating equal footing for the ILECs and competitors.

Wood testifies that the MCC's additional requirements would pose entry barriers for WW. (p.14) He also disagrees with the MCC's proposal to withhold designating WW an ETC until WW demonstrates that it will achieve its service quality objectives. (p. 16, lines 10-25) Entry would be impossible if before ETC designation a carrier must meet the service area and quality standards and efforts to "buildout" services would be thwarted. Wood adds that customers will dictate WW's service quality standards by choosing whether or not to subscribe to WW's services. (p. 14) The competitive market creates constraints that render service quality a moot issue for the same reason that "affordability" is moot -- because they are important to customers. (p. 16, lines 21-24)

Wood testifies that a CETC must offer service, as the MCC suggests, at or below an ILEC's rates. (p. 15) He disagrees as a "cap" on rates limits a carrier's ability to provide important consumer benefits, if it could provide service at all.⁵⁷ He adds that

⁵⁶ By "maximum quality services," Wood means the FCC acknowledged that service quality requirements are directly impacted by the length of time that an ETC receives USF. (DR PSC -062(d))

⁵⁷ The losses are not limited to the welfare loss that results from capping the price below the customer's willingness to pay. (DR PSC -63(c)) The primary loss is that WW's offering represents a different market basket of features and capabilities.

“the ILECs, in these cases, argue that all ETCs must offer ‘stripped-down’ services identical in structure to the ILEC’s basic local services...” In addition, in Blundell’s testimony WW agreed to offer Lifeline services. He also asserts that a straight across-the-board comparison of rates is not meaningful. It is not meaningful because of different functionality, such as mobility, and different rate structures, such as flat-rated long distance. Wireless is a different service requiring different pricing.⁵⁸ (p. 16) Wood testifies that two of the main benefits of wireless service are its “mobility” and its flat-rated long distance service.⁵⁹ Wood asserts, again, that rate issues should be market driven as contemplated by the FCC, and not PSC decided. (p. 16, lines 2-9) He holds that the FCC’s both basing and making support available on a “per-line basis” to CETCs creates a dynamic by which the marketplace sorts out issues. (p. 17, lines 3-10)

Finally, Wood disagrees with the MCC’s proposal to require ETCs to provide documentation that demonstrates for each line for which the ETC seeks compensation that the line is either a new line or a former ILEC line. He finds such a requirement both unnecessary and contrary to the PI. (pp. 17-18) In addition, portability eliminates the barrier making substitution of wireless for wire line more likely.⁶⁰ (pp. 17-18)

⁵⁸ WW did not analyze the benefits of mobility and instead relies on customers to make such estimates. (DR PSC -064(a))

⁵⁹ Wood adds that although wireless service is near comparable to wireline service in terms of voice clarity, data transmission capability and other quality measures, wireline service cannot offer mobility. (Footnote # 6, page 15) Wood adds that if the PSC looks at the public interest, then “mobility” and scope of coverage are additional considerations; however, Wood raised a health and safety concern that involves driving while communicating by means of a wireless phone. (TR 196)

⁶⁰ WW did not provide information on whether wireless service substitutes for wireline service. (TR 155) Whether wireless substitutes for wire line service is entirely a customer’s decision. (DR PSC -018(a)) WW has no data on the impact that its entry has on pricing, including service quality of Qwest’s service offerings. (DR PSC -018(c), (d)) WW agrees that the major barrier to substitutability is that wireless cannot provide equivalent high capacity service. (TR 210-211) WW also notes that number portability is the largest barrier to people substituting wireless for wireline service. (TR 207-208) A secondary reason for the lack of substitution is demographics – younger people use wireless and do not take wireline service. (TR 209) The MCC held that it is hard to say whether wireless service supplants or complement wireline service. (TR 402)

Findings of Fact and Commission Decision

The parties have polarized views on whether the Commission should grant, and under what conditions it should grant, WW's ETC petition. WW would limit the Commission's public interest review to whether WW satisfies the Section 214(e) requirements. MCC, MITS and MTA all opposed WW's ETC designation petition. Prior to designation they would impose upon WW additional requirements.

The Commission has previously granted the petitions of other carriers for designation as an ETC in Qwest's non-rural service areas. Those prior decisions do not impose constraints and are not a precedent for this WW decision; and, no party opposed any of those prior ETC designations. The Commission's decision in this docket shall not necessarily set a precedent for how the Commission may decide any future ETC petition. Each ETC petition for designation will be determined on its own merits. As explained in detail later once the Commission's rulemaking on ETC standards is complete those rules will largely guide the decision making process involving both past and prospective ETC designations and annual certifications. In the following the Commission will explain both why it grants WW's ETC designation petition and the conditions by which the petition is granted

The Commission finds merit in granting WW's petition for a combination of reasons. First, WW appears to have satisfied the minimal Federal requirements that are set forth in Section 214 of the 1996 Act. Whether WW satisfies all relevant requirements will depend, in part, on WW's ongoing compliance with the additional conditions set forth in this order. Second, the rulemaking proceeding will establish additional public interest standards and requirements with which all ETCs must comply. WW will have an opportunity, once those rules are established, to demonstrate its compliance. In this regard, consideration of whether WW complies with those rules will not differ from how the Commission evaluates the ongoing compliance of other previously designated and prospectively designated ETCs. The ETC rulemaking is underway and the Commission is hopeful that it will be completed later this year. Third, the public interest standard appears, by construction of Section 214 of the 1996 Act, less stringent for non-rural

carriers than it is for rural carriers. The Commission also finds that a more rigorous evaluation is called for in the case of ETC petitions in the areas served by rural carriers. The Commission's rules will establish appropriate additional requirements for rural and non-rural carriers. Last, the Commission finds that Qwest's apparent lack of concern in this docket, manifested by its intervention and subsequent withdrawal, suggests that WW's designation will not jeopardize Qwest's financial well-being. For these reasons the Commission finds that WW may be designated an ETC for those wire centers contained in its petition. WW must, however, satisfy certain other requirements as discussed in the following findings.

Public Interest The public interest requires of the Commission a thorough review of whether WW complies with both the requirements set forth in Section 214 of the 1996 Act and with any additional requirements that the Commission establishes either in this order and later in its rules. The Commission has authority to establish such requirements, and it chooses to exercise that authority beginning with this docket.⁶¹ While these additional requirements were not applied previously to ETC designation petitions they are obligations with which ETC's must comply on a going forward basis. The ETC issues have been fully fleshed out in this highly contested case. The Commission sets forth those requirements with which WW must comply as a condition of receiving ETC status and will defer until the completion of the on-going ETC rulemaking any other obligations that will apply to all ETCs.

Coverage Obligation In its petition, WW seeks to be designated an ETC for a majority of Qwest's wire centers. WW lists those Qwest wire centers for which it seeks and does not seek ETC designation (Late Filed Exhibits No. 6 and 7). WW's apparent

⁶¹ See generally the MCC's Initial April 30, 2004 Brief (at page 7) citing TOPUC v. FCC. In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserts: "We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance... We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and on-rural carrier study areas under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas." (para 27, emphasis added)

threshold for seeking ETC designation in Qwest wire centers stems from its ability to offer service to at least 85 percent of a wire center's population.⁶² In granting WW's petition, WW must improve upon its minimal 85 percent coverage.⁶³

Qwest's wire centers include the base rate area and the abutting three zonal areas, including suburban and locality rate areas, that surround the base rate area of each wire center. For each Qwest wire center for which WW is designated an ETC, WW must achieve the capability to serve 98 percent of Qwest's customers in each wire center.⁶⁴ Whereas the Commission's rules will also address the time allowed for designated ETC's to achieve the capability to serve 98 percent of Qwest's customers in each wire center, WW shall have one year from the time it begins receiving Federal universal service funds pursuant to this order to complete its network upgrades. At the end of the year WW must document its ability to offer services to 98 percent of each wire center's customer base.

Although the Commission will not at this time require WW to provide coverage to 98 percent of Qwest's Montana study area WW's unwillingness to do so reflects upon its apparent self interest in cream skimming lucrative wire centers (WW's minimal coverage of 85 percent of wire centers also appears a case of cream skimming). It also reflects upon WW's inability, as wireless technology carrier, to assume the obligations that Qwest assumes and fulfills as the ILEC. This is a concern to the Commission given

⁶² WW asserts to need universal service funds (USF) to build out its network. WW adds that it will extend its network to serve "new customers upon reasonable request." (Initial Brief, p. 16; TR 48, 50) WW would not commit to expanding service to communities for which it has not petitioned for ETC designation. (TR 96-96) WW will use universal service fund receipts to expand its network to serve the remaining yet to be served 15 percent. (TR 283)

⁶³ Because WW chose the wire centers for which it seeks ETC designation based upon its ability to serve 85 percent or more of a wire center's population, it was asked to provide wire center maps that used to determine whether it met the 85 percent threshold. WW responded that no wire center level maps exist. (TR 141) WW adds that it superimposes data of its coverage on wire center boundaries and the population in its analysis, what it labels geocoding. (TR 142, 143, 151) The wire centers for which WW is designated an ETC include all "zone" areas outside the base rate area. (TR 280) If, a customer cannot receive WW's service (signal) despite the fact that it is located within a wire center (e.g., the other 15 percent), the customer can always get wireless local loop service. (TR 288)

⁶⁴ The MCC's first criteria requires an ETC to certify its commitment to provide to any

the dynamics of telecommunications markets and the yet-to-be scrutinized financial resources and commitment and ability of carriers that have or that seek ETC status. Therefore, the Commission requires that WW file status reports at six month intervals that review WW's progress in serving the entire population of each wire center for which it is an ETC. These reports must provide the capital budget for prospective buildout plans and describe the buildout that WW actually achieved (deployed) in the prior six months. Failure to provide these reports or to achieve the goal of serving 98 percent of each wire center's population, for which WW is designated an ETC, will result in measures taken to decertify WW as an ETC.

WW explained how it may expand its coverage and enhance service quality. These options include use of the Tellular, wireless access, unit. (TR 252-253) Alternative means by which WW may expand its coverage and enhance its quality include adding towers and by enhancements to the transmission capability of its existing towers.

The Commission finds that WW must by means of its own resources serve all reasonable requests for wireless service at residences and businesses in each wire center. WW may choose the means by which it fulfills this obligation but it shall be, in the first instance, WW's responsibility, not that of its customers, to provide coverage of each wire center at the minimal -104dBm (decibels per milliWatt) service standard.

WW 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 100 percent coverage. On each wire center map WW must overlay maps of its coverage capability based upon the -dBm standard.

Service Quality Monitoring The Commission will monitor WW's ability to provide service. WW must report to the Commission requests for wireless service that it was unable to satisfy. WW must report the number of unsatisfied requests regardless of how those requests were communicated to WW (e.g., voice, email, or letter). The Commission requires these reports to detail by location in each wire center for which WW is designated an ETC its inability to serve customers. The reports must provide a detailed description of why customer requests for service could not be satisfied. WW

requesting "customer's location within the designated service area the defined services."

must file such reports on a quarterly basis for as long as WW is designated an ETC.

WW must also document and report to the Commission on the customer complaints that it receives.⁶⁵ For each wire center for which WW is designated an ETC WW 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 within each wire center. 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 Commission on a quarterly basis. The customer complaints reporting requirement pertains to WW's provision of service only at the addresses of both residential and business subscribers in exchanges for which WW is designated an ETC. This requirement is limited to addresses as the quality of WW's mobile service is irrelevant to its petition for ETC designation.

Federal Universal Service Fund The Commission finds that in conjunction with being designated an ETC, WW must report to the Commission the Federal universal service funds including Lifeline and Link Up credits that it receives. The reports must be filed quarterly for each wire center in which WW is designated an ETC. As WW's petition is strictly for Cellular service, prior to WW's seeking Federal universal service support for customers served by means of other than Cellular technology (e.g., PCS) WW must file with the Commission a statement of such intent.

Service Package As long as WW is designated an ETC it must have on file with the Commission a copy of each rate plan that it offers and for which it may receive Federal universal service support. Each plan must include the rates, terms and conditions of service. The Commission shall establish in rules any necessary rate caps and terms for unlimited service (minutes of use). WW will have to comply with those and other rules once codified.

Lifeline Upon compliance with the requirements in this order WW must file with the USAC (Universal Service Administration Company) its demonstration that its

⁶⁵ Although WW did not previously keep records of complaints Virginia Cellular agreed to provide the FCC on an annual basis the number of consumer complaints (FCC 03-338, CC Docket 96-45, Released January 22, 2004.

Lifeline plan complies with the FCC's rules. Once the USAC certifies that WW's plan is compliant with the FCC's rules Lifeline assistance will be available to qualifying low-income consumers served by WW.

Fund Size and Funded Lines The Commission is concerned about the size of the Federal universal service fund. The FCC expressed heightened concern about the size of the Federal fund.⁶⁶ The heightened concern of the FCC's is shared by this Commission. There is a real risk that if the Federal fund's size continues along its recent growth path, legislation could be enacted to limit the fund's size. Any such legislation could damage the ability of carriers to operate, maintain and expand networks that serve to achieve the universal service principles set forth in §254(b). These concerns are, however, being addressed at the Federal level by both the FCC and the Federal-State Joint Board. 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)⁶⁷ 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.

A related issue regards the merit of basing support on primary lines. The Commission opposes policies that limit support to primary lines, which is essentially a "voucher" system. The Commission filed comments with the FCC in opposition to the primary line policy.⁶⁸ In its comments, the Commission expressed concern with how a

⁶⁶ 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)

⁶⁷ The NPRM responds to the February 29, 2004 Recommended Decision of the Federal-State Joint Board (CC No. 96. 45, Released February 27, 2004).

⁶⁸ See Reply Comments, CC Docket No. 96-45, filed electronically on September 22,

primary-line funding mechanism will likely harm ILECs. A primary-line funding mechanism will be harmful because dilutes the network support received by ILECs.

Network Requirements and Service Quality Standards Several interveners raised issues involving service quality standards. MITS held that in the event the Commission designates WW as an ETC it should only do so if the designation is conditioned upon WW's meeting "pricing, service quality and technical standards." (TR 16) MTA also opposed designating WW as an ETC, in part, until WW meets the service quality requirements imposed on Qwest. The MCC also proposed service quality requirements upon which any designation should be conditioned. The Commission's rules will address in addition to those requirements and standards established in this order other standards that will apply to ETCs.

The Commission finds that all ETCs must comply with the Commission's ETC rules. The Commission has statutory authority to require WW as a condition of receiving ETC designation to comply with the requirements that the Commission imposes in this order and that it imposes in rules. The Federal-State Joint Board's Recommended Decision (FCC 04J-1, CC Docket No. 96.45, Released February 27, 2004) also provides guidelines for additional ETC eligibility requirements. These guidelines include the following five items (Recommended Decision, pp. 10-16): 1) adequate financial resources; 2) commitment and ability to provide the supported services; 3) ability to remain functional in emergencies; 4) consumer protection and 5) minimum local usage. The Commission intends to fully consider these guidelines in its ongoing ETC rulemaking proceeding.

Other Matters Other proposals raised by interveners that were not addressed here appear ones that the Commission can defer to its ETC rulemaking proceeding.

Conclusions of Law

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

Consideration of the public interest applies in all applications for designation as an eligible telecommunications carrier. *47 U.S.C. § 214(e)(2), ("[u]pon request and*

consistent with the public interest, convenience, and necessity" a state commission may designate additional eligible telecommunications carriers). The Commission has considered the public interest in this proceeding.

The Commission has proposed, and is considering the adoption of, rules governing the designation of eligible telecommunications carriers and the maintenance of status as an eligible telecommunications carrier. *See PSC Docket No. L-04.07.5-RUL (formal publication of notice of hearing on the proposed rules is expected in the Montana Administrative Register on or about November 4, 2004).* The rules, as adopted, will apply to all eligible telecommunications carriers in Montana, including WWC Holding Co. The rules may modify or replace one or more of the terms and conditions in this order.

All pending motions, objections, and arguments not specifically acted upon in this Final Order are denied; to the extent denial is consistent with this Final Order.

ORDER

It is hereby ordered that the application of WWC Holding Co. for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order.

Done and dated this 14th day of October, 2004, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, 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.