Service Date: December 7, 2005

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

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IN THE MATTER OF SAGEBRUSH CELLULAR, INC., Application for Designation as an Eligible Telecommunications Carrier	))))	UTILITY DIVISION DOCKET NO. D2004.1.7 ORDER NO. 6687a

FINAL ORDER

Introduction, Procedural Background, and Organization

On January 16, 2004, Sagebrush Cellular, Inc. (SCI), filed before the Public Service Commission (PSC, MPSC, or Commission) a petition for designation as an eligible telecommunications carrier (ETC). The area for which designation is requested includes the telephone exchanges served by Nemont Telephone Cooperative, Inc., (Nemont), Project Telephone Company, Inc. (Project), and Valley Telecommunications, Inc. (VTI).[1] In its petition for designation SCI lists all of the statutory requirements for designation as an ETC. SCI states that it meets these requirements. The requirements generally include that SCI offer all nine of the supported services, advertise and promote its service offerings, and its designation be in the public interest. Designation as an ETC would allow SCI to receive federal universal service fund (USF) support for qualifying services provided to customers in the areas that SCI serves.

On April 26, 2004, the PSC noticed SCI's application and established an intervention deadline. The PSC granted intervention to Cable & Communications Corporation, dba Mid-Rivers Cellular (CCC), Mid-Rivers Telephone Cooperative (MRC), the Montana Consumer Counsel (MCC), the Montana Telecommunications Association (MTA), and 3 Rivers PCS, Inc.(3 Rivers). [2]

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[1] On April 27, 2004 NTCI filed with the MPSC notice of its intent to combine with VTI.

[2] In a June 27, 2005 Notice of Staff Action, the reference to Mid-Rivers Cellular was corrected to refer to Mid-Rivers Telephone Cooperative, Inc.

On June 29, 2005, SCI filed testimony of Shawn Hanson, the general manager of SCI. On July 12, 2005, SCI filed a stipulation between SCI, CCC, and MRC, noting that CCC and MRC withdraw any objections that they may have had to SCI's application. On July 12, 2005, 3 Rivers filed a notice withdrawing as an intervenor in the proceeding. On July 19, 2005, SCI filed an agreement between SCI and MTA, noting MTA's agreement not to object to SCI's designation as an ETC.[3] On August 31, 2005, the PSC issued a procedural order setting forth discovery dates and a tentative January 19, 2006 hearing date. On September 9, 2005, the PSC served the first of two rounds of discovery upon SCI.[4] SCI filed on September 16, 2005, an objection to one of the PSC's data requests.[5]

Numerous entities have filed comments regarding SCI's petition. Attached to Hanson's pre-filed testimony are affidavits or letters in support of SCI's petition. On July 14, 2005, Belfry Public Schools filed with the PSC a letter in support of SCI's ETC petition.

Discussion, Findings of Fact, and Conclusions of Law

SCI Testimony

On June 29, 2005, SCI filed its initial direct testimony. The testimony serves to demonstrate that SCI will meet the requirements necessary to be designated as an ETC in the Montana service areas of Nemont and Project. SCI asserts it will ubiquitously offer high quality wireless telecommunications services in these areas. In order to do so, SCI states it needs to build on its current network.

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[3] In a September 30, 2005 letter to the MPSC, MITS explained that all intervenors with the exception of the MCC signed petitions indicating no objection to the approval of SCI's ETC application.

[4] The only discovery in this docket was issued by the MPSC. Relevant responses to data requests are identified in this order (e.g., See DR PSC -001).

[5] SCI objects to DR PSC -004(c) in how it asked for information about entities that are not a party to the proceeding. Notwithstanding its objection, SCI responded by identifying the download and upload speeds for broadband services that each of Nemont and Project offer. SCI also provided the percentages of Nemont's and Project's customers, 77.6 percent and 93 percent respectively, that have access to broadband services. In a supplemental data response, SCI explained that 82.8 percent of Project's and 82.4 percent of Nemont's wireline customers are capable of receiving ADSL. See DR PSC -004(c).

SCI understands that ARM 38.5.3201 provides the purpose and scope of the PSC's authority under federal and state statutes, including an evaluation of whether an ETC application satisfies the public interest. SCI witness Hanson concludes that SCI qualifies as an ETC and adds that SCI will offer the nine supported services, predominately by means of using its own facilities.[6] SCI states it will also advertise the supported services by means of media of general distribution. SCI understands that ARM 38.5.3203 places on SCI the responsibility to demonstrate that it has met the requirements to be designated an ETC. SCI understands that ARM 38.5.3206 allows the PSC to revoke an ETC designation if the ETC fails to demonstrate that it has met the PSC's requirements.

Hanson testifies that SCI will be and remain in compliance with ARM 32.5.3209. With reference to this rule, Hanson lists the six criteria that an ETC must satisfy in order to meet the minimum and the ongoing requirements for ETC designation and maintenance. He explains how SCI will offer each of the required nine services and functionalities that are supported.[7] Voice-grade access will be achieved by means of interconnecting (transport, etc.,) both SCI's and Nemont's networks and SCI's and Project's networks -- once SCI serves in Project's service area. Local usage will be comparable to the plans of each of these incumbent local exchange carriers (ILECs) and the usage blocks will match or exceed the geographic area that each ILEC covers.[8] DTMF (touch tone) is achieved by use of a Nortel switch. Single-party or equivalent service is achieved by means of a dedicated message path. SCI will provide emergency service by means of Phase I E911 access. SCI notes, however, to have received from the FCC an extension to provide specific caller location data.[9] As a designated ETC, SCI states that it will be able to

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[6] SCI does not intend to rely on roaming agreements to meet its 98 percent coverage requirement. See DR PSC -005.

[7] These nine services include: voice-grade access to the public switched telecommunications network (PSTN), local usage, dual tone multi-frequency (DTMF) signaling or a functional equivalent, single-party service (or an equivalent), access to each of emergency, operator interexchange (IXC) and directory services and, finally, toll limitation for qualifying low-income consumers.

[8] SCI has price plans that start at $20 per month. DR PSC -007.

[9] SCI explained the relationship between wireless carrier size (its "Tier") and its E911 obligations. See DR PSC -001. SCI asserted to be E911 capable although it only provides Phase I information to local public safety answering points (PSAPs). The apparent goal is to have all PSAPs in Montana Phase II E911 capable within the next two years. The

rapidly convert its network to digital, which will enable its customers, in turn, to convert their phones to digital with GPS capability. Operator service access is achieved by way of trunks that connect SCI's switch office to Nemont's network and that will connect to Project's network; each ILEC has or will have operator service trunks to Qwest. SCI will provide interexchange carrier (IXC) service by way of Associated Network Partners, Inc., a long distance company. SCI's Nortel switch can also provide for equal access, if SCI is required to do that. Hanson identified Qwest as the provider of directory services. SCI will make available toll-limitation service to qualifying low-income consumers by means of prohibiting toll calls.

SCI commits to advertise SCI's services in newspapers in the counties of Stillwater, Yellowstone, Carbon, Big Horn, Phillips, Valley, Daniels, Sheridan and Roosevelt. SCI will also provide its customers service information and it will advertise its services on its website.

SCI commits to provide the supported services in all designated service areas and to all customers that make reasonable service requests. These customers will include low-income, low-density, rural, insular and high-cost customers. SCI's services will be reasonably comparable, and will be offered at rates that are reasonably comparable, to similar services offered in urban areas. SCI will also offer Lifeline service to qualifying subscribers and it will extend Enhanced Lifeline wireless service to qualifying subscribers that reside on one of the reservations located within either of the Nemont or the Project service areas.[10] To this end, both USAC and the FCC have reviewed SCI's outreach plans.

As for coverage, SCI states that within 3 years of its designation SCI will extend coverage to 98 percent of "potential subscribers" within the designated service areas of Nemont. In the case of Project's service area, SCI commits to achieve 98 percent coverage within 5 years of its

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FCC has required SCI to provide by June 20, 2006 GPS capable phones to 95 percent of its customers. See DR PSC -006. SCI also explained the difference between Type I and Type II interconnections. A Type I interconnection connects ILECs to wireless carriers so that directory, operator 911 and special access (e.g., 800) can be achieved. Type II is for a trunk-side connection that allows for the exchange of various types of switched traffic (mobile to land, land to mobile, emergency operator and 800 etc.) Type 2a and Type 2B connections also exist. SCI has used Type I interconnection with Nemont. See DR PSC -019.

[10] The tribal lands within Nemont's and Project's study areas include the Fort Peck Indian Reservation and a portion of the Crow Indian Reservation.

designation. Although SCI has not initiated wireless service in Project's area, it intends to achieve 28.3 percent coverage of potential subscribers within four months of its designation, a goal Hanson asserts that SCI can achieve given that it has access to eight existing tower facilities in Project's area. SCI explained that it will lease physical space at these tower site locations from NCI, an affiliate.

SCI also commits to satisfy applicable consumer protection and service quality standards. It will do so by ensuring adherence to PSC rules ARM 38.5.3301 through 38.5.3371, as required. In this regard, Hanson also assured the PSC that SCI will support signal strength of at least -104 dBm (decibels per milliWatt).

Hanson testified that SCI will offer a local usage plan that is comparable to the one that each ILEC offers. He added that SCI also intends to comply by defining local usage in the same manner as specified for the same local calling areas of Nemont and Project; Hanson's assertion that this definition will be "at the minimum" appears to mean that the calling scope could be greater. SCI may define a broader geographic area for usage blocks which do not increase the monthly flat rate for the service packages that customers select.

In reference eleven "factors," Hanson explains why SCI's designation is in the public interest (ARM 38.5.3210). SCI has demonstrated its ability to provide the nine services supported by the federal universal service mechanism and will, as does SCI's affiliates, comply with all laws that govern ETCs. SCI adds that the service areas of Nemont and Project can "sustain an additional ETC." This is apparently because SCI views cellular service as a complementary and, increasingly, essential service. In this regard, Hanson observed that although 94 percent of households retain landline service, two thirds of the United States households in 2004 have at least one cellular phone. Hanson reasoned, therefore, that the effect on the ILEC ETCs of designating SCI as an ETC will be minimal because wireless service is a complement to wireline service.

Hanson asserts that SCI's CDMA digital platform is compatible with broadband and other advanced services.[11] To offer broadband services SCI may deploy "fixed wireless" using the

licensed 700 MHz spectrum. SCI can also provide "equal access" in the unlikely event that an ILEC ETC ceases to provide such service. SCI intends to offer service almost exclusively by means of using its own facilities. As an aside, Hanson testified that in the Nemont area the existing provider's use of just three towers provides only a negligible enhancement to SCI's coverage.

While he cannot estimate the impact on the availability of universal service funds, Hanson testifies that the increased amount of funding from SCI's designation as an ETC will be de minimis. He adds that the PSC's new rules will "weed out" those providers who may be motivated primarily to cream-skim.

Continuing with his explanation as to why it is in the public interest to designate SCI, Hanson explains why SCI's designation also supports the seven universal service principles. First, quality service will be provided by SCI at rates comparable to those offered by each ILEC. Lifeline, Link up, and Enhanced Lifeline services will also be available. Second, designating SCI as an ETC will advance universal service by ensuring that "all" regions of the nation have access to advanced services. SCI's designation and the resulting build out to achieve 98 percent coverage will ensure that the most rural and isolated customers in the Nemont and Project service areas have access to services comparable to those offered in urban areas. SCI commits to continue to contribute to the USF regardless of whether it is designated an ETC. The PSC's designation of SCI will help to ensure that predictable, appropriate, and sufficient mechanisms exist to preserve universal service. Approval of SCI's petition will aid in supporting the public convenience, safety, and mobility requirements in rural service areas.[12] Given the state of flux that characterizes the industry, the uncertainty of consumer preferences for wireless and wireline

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[11] CDMA refers to code division multiple access which is a digital packet-based access technique generally used in radio frequency systems (Newton's Telecom Dictionary, 21st Edition). SCI explained that the CDMA platform is capable of delivering advanced services adding that a SCI affiliate is evaluating the technical ability to provide broadband data using the 700 MHz spectrum. See DR PSC -0010. Based on initial trials conducted by an SCI affiliate, the 700 MHz equipment may provide broadband that is comparable to a DSL product, with symmetrical speeds of 900 Kbps at distances of up to 8.2 miles. SCI does not however currently provide broadband, high speed data services.

[12] In this regard, SCI made reference to the numerous letters in support of its designation as an ETC (p. 22). SCI identifies as two improvements to the public convenience, that mobility and safety are the greatest public interest considerations. Significantly improved convenience and safety will result from SCI's designation.

services, SCI's application is competitively neutral in that both wireless and wireline services will both receive support and the two technologies must then compete with each other. Hanson testifies that with redundant power supply sources SCI's network will remain functional in emergencies.[13]

Hanson addresses how ARM 38.5.3213 requires SCI to provide plans that demonstrate how customers of Nemont and Project will have access to service and how SCI will achieve 98 percent coverage. SCI provides exhibits that illustrate its build-out plans for each ILEC. These exhibits (Mylar overlays) plot the location of existing and proposed SCI towers and illustrate the signal strength coverage area for various towers and topographical circumstances.[14] SCI provides maps that plot a 12 mile tower coverage radii for Nemont (10 mile for Nemont's repeater towers).[15] SCI plots 8 mile tower coverage radii for Project's service area (a 4 mile radius was used in the case of Absarokee). Field tests that assume hand held outdoor signal strength (not in-building or in-vehicle strengths) were the basis of SCI's coverage estimates. Based on a comparison of subscriber locations and tower coverage in the Nemont service area, SCI estimates that it is currently capable of 87.58 percent coverage. SCI's coverage capability in Project's service area is about 28.3 percent (SCI will, however, only serve the Project area once it is designated an ETC). Hanson notes that due to geographic topography SCI will have difficulties, particularly in the Absarokee exchange, to provide coverage. Other challenges will arise with SCI's ability to extend transport and power to tower sites and to obtain permits for towers.

SCI understands that ARM 38.5.3216 permits the PSC to conduct audits that ensure

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[13] SCI identified the means by which it will provide emergency backup capacity. See DR PSC -002(e) but also see DR PSC -015(c).

[14] As for coverage, SCI assumed and illustrates a12 mile radii for SCI's towers (10 miles for repeater towers) in the case of Nemont. With Project, SCI generally assumed and used 8 mile radii. The exception was the Absarokee exchange where a 4 mile radius was used. These distances represent a conservative view of the need to support signal strength at a -104 dBm level (p. 25). Hanson adds that it would be inaccurate for SCI to use the Cellular Geographic Serving Area (CGSA) designation from the FCC licenses to demonstrate coverage because it cannot be reconciled to the -104 dBm signal strength. SCI explained how digital handsets do not support the return path signal strength at the same level as the old 3-watt analog bag phones, and thereby effectively shrink the coverage provided by a cell site. In turn, customers have been reluctant to part with this old technology. See DR PSC -001(d).

[15] SCI further explained that PCS equipment covers on average an 8 mile radius around a PCS site while cellular equipment will cover on average a 12 mile radius, assuming -104dBm. See DR PSC -010 and DR PSC -017.

compliance with ETC requirements, including reporting requirements. SCI fully intends to comply with reporting requirements including filings that: (1) describe build-out plans (filed at six-month intervals); (2) provide a map of actual coverage capabilities to be filed within 60 days of a final order and annually thereafter for the duration of the build-out period; (3) report on quality of service including the number of unsatisfied service requests and the number of customer complaints (quarterly); (4) report on federal universal service fund receipts (USF, Lifeline, Link Up, and Enhanced Lifeline credits, on a quarterly basis); and (5) contain filed rate plans. SCI does not believe that these reports will require a protective order. SCI understands ARM 38.5.3218 to involve an annual certification process for ETCs. SCI expects to receive advance notice of any certification deadline.

Public Comments

SCI's June 29, 2005 filing contains numerous affidavits that were filed in support of SCI's petition.[16] Importantly, these comments nearly unanimously agree that improved and expanded wireless service will provide public safety and public convenience benefits. Another benefit is enhanced productivity for businesses etc. Included were sixteen affidavits from schools and libraries and from the Daniel's County Ambulance Association. In addition, numerous county commissioners and the Crow Nation's Tribal Executive Branch filed affidavits in support. These public comments express genuine interest in SCI's ability to provide broader wireless coverage. SCI's designation as an ETC should enable it to improve upon existing wireless service quality and to expand coverage.

Findings of Fact

General The PSC finds that SCI has sufficiently satisfied the requirements set forth in § 214, including the public interest standard, to be designated an ETC in the study areas of Nemont and Project. SCI's ongoing compliance with the additional conditions set forth in this order is required. In this regard, the PSC's evaluation of SCI's compliance will be as is appropriate and

[16] SCI summarized the benefits that will result from designating it as an ETC. DR PSC -014.

consistent with recent PSC orders designating ETCs and with the PSC's rules. There is, however, the potential for unique aspects with each ETC petition, aspects that may require unique PSC findings.

Public Interest In order for a designation to be in the public interest the PSC must thoroughly review whether SCI complied with both the requirements set forth in § 214 of the 1996 Act and with any additional requirements that the PSC has established either in its rules, previous orders, or this order. The PSC has authority to establish such requirements and it has chosen to exercise that authority. In its decision, the PSC will consider the standards that were in the PSC's final order approving the CCC ETC petition (PSC Docket No. D2003.8.105, Order No.6518a, April 7, 2005). The Federal Communications Commission's (FCC) recent March 17, 2005, Report and Order (FCC 05-46, CC 96-45) adopted mandatory minimum requirements for ETC designations that are subject to § 214(e)(6) proceedings. These requirements are, however, optional recommendations that the FCC urged states to adopt. Many of the PSC's ETC rule requirements are within the FCC's recent minimum requirements.

Designated Study Areas and Service Coverage Just as CCC did not have to satisfy the 98 percent population coverage requirement upon designation nor should SCI have any such similar obligation: there is no reason to impose an obligation on SCI to serve, upon designation, 98 percent of either company's study area. Since the USFs that will port to SCI from each of Nemont and Project are based upon each carrier's own costs for each carrier's entire study area, it is only appropriate that SCI expand its coverage into un-served areas. As discussed below, SCI will build out into those areas. In addition, those entities that filed public comments highly value geographically wider availability of cellular service and support SCI's petition so that they may receive such service.

Build out Plans SCI has provided Mylar maps that explain SCI's build out plans. SCI has agreed to file within 60 days of issuance of a final order a map of its actual signal coverage. In addition to a filing made within 60 days, at 6 month intervals SCI is to file reports on its progress in expanding its wireless coverage to achieve its goals. The PSC finds that while 5 years, in the case of the Project study area, seems to be a long time to achieve build out plans, that amount of time is consistent with the PSC's recent rules (ARM 38.5.3213). Five years is also allowed in the FCC's recent rules establishing minimum requirements for carriers that seek to be designated as ETCs (March 17, 2005, Report and Order, FCC 05-46, CC 96-45). While five years exceeds the amount of time that the PSC allowed Western Wireless to achieve 98 percent coverage (PSC Docket No. D2003.1.14), the circumstances are different. The PSC's designation of CCC as an ETC also allowed five years to achieve 98 percent coverage. Nemont's and Project's study areas are, most likely, two of the least densely populated study areas in the continental United States.[17] Therefore, in the case of the rural study area of Project, five years is a reasonable amount of time for SCI to achieve 98 percent coverage. The PSC finds that SCI must serve, by means of its own resources, all reasonable requests for wireless service at residences and businesses in each of Nemont's and Project's study areas so long as there is no conflict with other licensed wireless carriers.

§ 214(e)(1) supported Services: Voice Grade Access One of the nine supported services requires ETCs to provide voice grade access including at least 300 to 3000 Hertz bandwidth (FCC rule 47 C.F.R. 54.101(a)(1)). The PSC expects, as required by the FCC's rules, that SCI's service at least spans the 300 to 3000 Hertz bandwidth and that the service quality for transmission will be at least -104dBm.[18] Hanson has explained that SCI will offer voice grade access by means of interconnecting (transport etc.,) both SCI's and Nemont's networks and SCI's

[17] SCI explained that Nemont and Project's areas are so sparsely populated that they cannot support even a single voice provider without substantial FUSF support. See DR PSC -012.

[18] SCI asserted that the only standard with which it must comply is the MPSC's standard of -104dBm. See DR PSC -013. SCI adds that the -104dBm standard is an appropriate standard irrespective of cellular or PCS spectrum and irrespective of analog versus digital service. See DR PSC -017(a).

and Project's networks -- once SCI serves Project's service area. SCI did not, however, provide information on how it has satisfied the bandwidth requirement. Therefore, at the latest, in SCI's first filing made 60 days after issuance of this final order, SCI must explain how all of its wireless service offerings comply with this FCC rule (cellular and PCS and analog and digital offerings). To the extent that SCI does not have such capability, it must explain how it will attain this FCC minimum bandwidth standard.

Use of Federal Universal Service Funds Although the PSC does not otherwise regulate SCI, Nemont or Project, how each company uses USFs is controlled by statute, principally § 254(e). The annual certification process involves the PSC in fund-usage matters, as will any PSC investigation into how such funds are used.[19] Whereas the PSC has relied on a self-certification mechanism, if and when this approach appears inadequate for a specific carrier, the PSC will then consider a more in depth review.

Fund Size The PSC is concerned about the size of the USF.[20] The FCC has also expressed heightened concern about the size and growth of the USF.[21] There is a real risk that if the USF 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).

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[19] A.R.M 38.5.3216. Also, Section 254(e) of the Telecommunications Act of 1996 states, in relevant part: "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section."

[20] SCI estimated to have over 7,000 customers, compared to only 700 in 1995. DR PSC -007.

[21] In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserted: "*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*." (paragraph 31, emphasis added)

Service Quality Monitoring The PSC will monitor SCI's ability to provide service. SCI must report to the PSC the requests for wireless service for each of the Nemont and the Project study areas that it is unable to satisfy. SCI must report the number of unsatisfied requests regardless of how those requests were communicated (*e.g.*, voice, email, letter etc).

The PSC requires these reports to detail the unsatisfied service requests by location for each of the two study areas, ideally by CGSA. The reports must provide a detailed description of why customer requests for service could not be satisfied. SCI must file such reports for each study area on a quarterly basis for as long as SCI is designated an ETC. SCI must also document and report to the PSC on the customer complaints that it receives.[22] For each of the two study areas for which SCI is designated an ETC SCI must record the complaints that it received 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 study area. Ideally, SCI's reports will be by CGSA. If repeat complaints are received, then a record of such repeat complaints must be maintained. The customer complaints reporting requirement pertains to SCI's provision of service only at the addresses of both residential and business subscribers in study areas, ideally CGSAs, for which SCI is designated an ETC. The reports must be supplied to the PSC on a quarterly basis.

Federal Universal Service Fund Receipts The PSC finds that in conjunction with being designated as an ETC, SCI must report to the PSC the USFs, including Lifeline, Enhanced Lifeline, and Link Up funds that it receives. The reports must also disaggregate the amount of other portable support that SCI receives (*i.e.*, high cost loop, local switching, etc.). The reports must be filed quarterly for each study area in which SCI is designated an ETC. Prior to SCI's

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[22] SCI asserted that its primary wireless service will match the quality, transmission and reliability characteristics of voice wireless services that carriers provide in urban areas. See DR PSC -004. As background, Virginia Cellular agreed to provide to the FCC on an annual basis the number of consumer complaints (FCC 03-338, CC Docket 96-45, Released January 22, 2004.

seeking USF support for customers served by means of other than cellular or PCS technology (*e.g.*, VoIP) SCI must file with the Commission a statement of such intent.[23]

Service Package As long as SCI is designated an ETC it must have on file with the PSC a copy of each rate plan that it offers for which it may receive USF support. Each plan must include the rates, terms and conditions of service. SCI offers plans that begin at $20 a month and other plans that feature unlimited local minutes but with long distance and roaming restrictions for Lifeline customers.

Comparable Services SCI has maintained that pursuant to the Act customers in this most rural area of Montana must be able to avail themselves of telecommunications services that are comparable to those in urban areas and at rates that are comparable to those in urban areas. The PSC's decision to grant SCI's petition should, in part, be premised on achieving comparable services and rates in rural areas as are available in urban areas. There is not, however, any information in this proceeding that the rates SCI will charge are comparable to those in urban areas outside of Montana or that such a comparison is irrelevant.[24]

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[23] SCI explained that all of the wireless carriers licensed in the Nemont and Project study areas may provide either analog or digital service. See DR PSC- 001(a). SCI added that the spectrum license in the Nemont area is for cellular but analog or digital technology may be used; the license in the Project area is for PCS service and SCI intends only to provide digital service. See DR PSC -011. SCI also testified that it has the "B" band cellular license for Rural Service Areas 3 and 4 in Nemont's area and the "F" Block PCS license in the Project serving area. See DR PSC -005(c). SCI has no immediate plan to provide voice services over the SCI network using VoIP or packet technology. See DR PSC -010. SCI further explained that cellular licensing commenced with two (the A and the B) 25 MHz spectrum blocks, The "B" Block was reserved for assignment to LECs such as Nemont and the "A" block was reserved for unaffiliated entities. See DR PSC -019. SCI added that whereas it has no interconnection agreements with either of Nemont or Project that Gold Creek Cellular does have an interconnection agreement with Nemont. See DR PSC -022.

[24] SCI explained that its rates need only be comparable to the ILEC ETC's wireline rates. See DR PSC -003. SCI added that it believes the broad intent of 38.5.3209(2)(c) is to ensure that an ETC offers services reasonably comparable to that of other provider. See DR PSC -003. Whereas SCI believes all of Nemont's and Project's service areas would be considered rural (See id) SCI agrees that its wireless services are not substitutes for ILEC landline services. SCI agreed that it competes in urban areas in Montana and throughout the United States against national price plans offered by Western Wireless and Verizon. SCI also asserted that its primary wireless service will match the quality, transmission and reliability characteristics of voice wireless services that carriers provide in urban areas. See DR PSC -004. SCI explained that designating it as an ETC will have no impact on the current EAS offerings of Nemont and Project; EAS broadens calling areas, giving customers technology-neutral alternatives for whether or not to make calls using either their cell or their landline phones. See DR PSC -015. In addition, Nemont and Project customers are afforded the same benefits from EAS regardless of whether they are terminating a call to another landline customer or a SCI wireless customer for a defined EAS region. See DR PSC -022(c).

Competition SCI has stated that by designating SCI as an ETC competition between wireless and wireline technologies for customers will be enhanced. SCI also testified that its application is competitively neutral in that both wireless and wireline services will receive support and the two technologies must then compete with each other. The PSC doubts the veracity of these arguments. Because SCI, Nemont, and Project are affiliates, it is unlikely that SCI will enhance competition in the two study areas. In addition, and as SCI has testified, wireless service is not a substitute but rather is a complement to landline service. The PSC agrees with SCI that wireless service is a complement to landline service. If competition is a relevant public interest consideration, SCI certainly would not appear to provide any such benefits as a designated ETC in each of Project's and Nemont's service areas. As there are other wireless providers that serve both the Nemont and the Project service areas, SCI faces wireless-on-wireless competition.[25] These other wireless carriers do not, however, receive USFs for serving Nemont's and Project's service areas. SCI points out that because the service areas are so sparsely populated that the ILEC providers cannot provide voice service absent substantial federal support. SCI adds that whereas providing support to at least one complementary service provider makes sense the designation of yet more ETCs may place unjustifiable pressure on the FUSF, for what would be redundant service offerings.

Conclusions of Law

The PSC has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e)(2); § 69-8-840, MCA*. The PSC has considered all laws, federal and state, applicable to state designation of ETCs for receipt of federal USFs. The PSC determines that SCI has met the legal requirements for designation.

ORDER

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[25] SCI competes with each of Western Wireless and Verizon Wireless. See DR PSC -004.

It is hereby ordered that Sagebrush Cellular, Inc.'s application for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order.

Done and dated this 29th day of November, 2005, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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BRAD MOLNAR, Vice-Chairman

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DOUG MOOD, Commissioner

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ROBERT H. RANEY, Commissioner

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THOMAS J. SCHNEIDER, 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.