

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6934

Petition of RCC Atlantic Inc. for designation as)	Hearings at
an Eligible Telecommunications Carrier in areas)	Montpelier, Vermont
served by rural telephone companies under the)	August 2 and 3, 2004
Telecommunications Act of 1996)	

Order entered: 9/29/2004

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I. SUMMARY

In Docket 5918, RCC Atlantic, Inc., d/b/a Unicel ("RCC"), was designated as an Eligible Telecommunications Carrier ("ETC") in 93 exchange areas ("wire centers") comprising all of the area currently served by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon-Vermont"). Here, RCC seeks designation in the areas served by Vermont's Independent Telephone Companies (the "ITCs"),¹ thereby extending its designation to cover the entire state.

This Decision finds that RCC satisfies the federal criteria for designation and that designation is in the public interest and designates RCC as an ETC, with a single service area consisting of all wire centers in Vermont, through December 31, 2005, the same date on which RCC's designation will expire under Docket No. 5918.

This Decision also imposes several conditions on RCC relating to extending service and defining RCC's responsibilities under a number of existing Public Service Board ("Board") dockets and rules.

II. PROCEDURAL HISTORY

On March 11, 2004, RCC petitioned the Board, pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended (the "Act"),² and Federal Communications Commission ("FCC") rules,³ asking that the Board designate RCC as an ETC in the areas served by the ITCs. Along with its petition, RCC filed the direct testimony of Elizabeth L. Kohler and a supporting memorandum.⁴

In Docket 5918, the Board has previously designated RCC as an ETC in all areas served

1. Vermont's Independent Telephone Companies are: Vermont Telephone Company, Inc., d/b/a Vtel; Waitsfield-Fayston Telephone Company, Inc., d/b/a Champlain Valley Telecom and d/b/a Waitsfield Telecom; Topsham Telephone Company, Inc.; STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont, d/b/a Fairpoint New England; Ludlow Telephone Company; Northfield Telephone Company; Perkinsville Telephone Company; Franklin Telephone Company; and Shoreham Telephone Company, Inc. (collectively the "ITCs").

2. 47 U.S.C. § 214(e)(2).

3. 47 C.F.R. § 54.201.

4. The supporting memorandum is treated herein as an integral part of the petition.

by Vermont's sole non-rural carrier, Verizon-Vermont.⁵ In seeking here to expand its designation into the areas served by all of Vermont's rural telephone companies,⁶ RCC effectively seeks ETC designation for the entire state of Vermont⁷

On March 18, 2004, the ITCs filed a motion to intervene, which was granted.⁸ The Department of Public Service (the "Department" or "DPS") also participated.

A status conference was held on April 14, 2004. John Marshall, Esq. and Suzanne Monte, Esq. appeared on behalf of RCC. John J. Cotter, Esq. appeared on behalf of the Department. Cassandra LaRae-Perez, Esq. appeared on behalf of the ITCs. At that conference, the parties discussed and proposed a schedule for proceeding with the docket.

The Hearing Officer, based upon recommendations from the parties, issued a Procedural Order, on April 21, 2004, establishing a schedule for consideration of RCC's petition.⁹ The Order prescribed a discovery schedule¹⁰ and directed the filing of direct testimony by the Department and the ITCs and the filing of rebuttal testimony by RCC.¹¹ That Order also asked RCC to file a map of its existing and any proposed cell-tower locations on June 1, 2004. On June 15, at the request of the Department, the Hearing Officer issued another Procedural Order authorizing rebuttal testimony by all parties.¹² A Protective Order for confidential information was also issued on June 15, 2004. A third Procedural Order was issued on July 7, 2004, granting the motion of RCC to maintain under seal and treat as confidential an exhibit to the prefiled testimony of Mr. Douglas Meredith on behalf of the ITCs previously filed under seal in

5. Docket 5918, Order of 6/26/03 and amended by Order of 11/14/03. In Vermont, this effectively translates into the service area served by Verizon-Vermont. *See* Docket 5918, Order of 11/14/03 at finding 10.

6. Memorandum Supporting Application (Supporting Memo) at 1-3.

7. *See* exh. A to Supporting Memo.

8. The ITCs' Motion to Intervene was granted by Board Order dated 4/1/04. *See* Docket 6934, Order Opening Investigation, Granting Intervention and Admission, and Notice of Hearing dated 4/1/04 at 2.

9. Order of 4/21/04.

10. As requested by the ITCs, we note that the ITCs had one round of discovery on RCC. *See* ITC Comments of 9/13/04 at 4.

11. The ITCs elected not to file any written rebuttal testimony. *See* letter of 7/14/04 from Cassandra LaRae-Perez, Esq. to Susan M. Hudson, Clerk of the Board.

12. Order of 6/15/04.

discovery.¹³

Technical hearings were held on August 2 and 3, 2004. The parties filed briefs, proposed findings or proposed decisions on or before August 18, 2004. With permission of the Hearing Officer, on August 26, 2004, the ITCs filed a reply brief.

A Proposal for Decision was circulated on September 3, 2004, in accordance with 3 V.S.A. § 811 and 30 V.S.A. § 8. The parties filed written comments, and the Board heard oral argument on September 15, 2004. At the request of the Board, the parties filed supplemental comments on September 20, 2004.

The case is now ready for decision. The findings and conclusions below are based upon the proposed decision issued by the Hearing Officer, with adjustments to reflect the written and oral comments of the parties. A comparison draft showing changes from the Hearing Officer's Proposed Decision is available upon request to the Clerk.

III. LEGAL STANDARD

Before a "telecommunications carrier"¹⁴ may receive federal universal-service support, it must first be designated as an "Eligible Telecommunications Carrier."¹⁵ The Vermont Public Service Board has authority under the Telecommunications Act of 1996¹⁶ ("the Act") to designate ETCs in Vermont. The Act also prescribes many of the standards for such certifications ("ETC Requirements").¹⁷

A carrier seeking designation must show that it offers nine services: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its equivalent; single-party service; access to emergency services; access to operator services; access to

13. Order of 7/7/04.

14. "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.

15. 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

16. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201. If a state commission does not have authority to designate ETCs, the FCC will act in its stead. *E.g.*, *Federal State Joint Board on Universal Service, RCC Holdings, Inc.*, Wireline Competition Bureau, Memorandum Opinion and Order, released Nov. 27, 2002, ¶ 12.

17. The standards are found generally in 47 C.F.R. § 54.101 *et seq.*

interexchange service; access to directory assistance; and toll limitation.¹⁸ These nine services must be offered throughout the service area for which the designation is received, either using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services.¹⁹ The ETC must also advertise the availability of these services and the charges for those services using media of general distribution.²⁰

This docket involves areas of Vermont served by rural telephone companies.²¹ In such cases, the Board cannot designate a competitive telecommunications carrier as an ETC ("CETC") unless it first finds that designation is "in the public interest."²² This weighing of likely benefits and costs should be a "fact-specific exercise."²³ If the Board grants ETC status, it must also define a "service area" within which the ETC designation applies.

The Board cannot require, as a prerequisite to designation, that RCC provide service throughout its entire proposed service area. This would effectively preclude designation of new entrants as ETCs in violation of the intent of Congress.²⁴ The Board can, however, require the applicant to demonstrate a "capability and commitment" to serve throughout that entire service area.²⁵ This phrase, which runs through subsequent FCC decisions, requires more than a vague

18. 47 C.F.R. § 54.101(a) & (b).

19. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

20. *Id.*

21. Each of the ITCs is considered a "rural telephone company" under the Act.

22. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c). The "public interest" standard for areas served by rural telephone companies is contained in the third sentence of 47 U.S.C. § 214(e)(2). It prohibits designation unless the state commission finds that designation to be in the public interest. The second sentence of that same section applies more broadly to all applications for designation as an additional ETC, and it directs state commissions to grant designation "consistent with the public interest, convenience, and necessity." Although both sentences apply here, we consider the two tests identical for present purposes. For convenience, the following discussion refers simply to the "public interest standard."

23. *See Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum and Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004), para. 28 ("Virginia Cellular").

24. *Federal State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, FCC 00-248, rel. 8/10/00 ("South Dakota Preemption Order").

25. *See generally*, ITC Reply Brief at 4-5.

assertion of the carrier's intent to serve.²⁶

In one recent decision, the FCC said that a "more stringent public interest analysis" is required when considering the designation of additional ETCs in rural study areas.²⁷ Effectively reversing precedent, the FCC found that the value of increased competition does not by itself satisfy the public interest test. Instead, the FCC evaluated several additional factors, including: the impact of multiple ETC designations on the Universal Service Fund, unique advantages and disadvantages of the applicant's service offering, commitments by the applicant to the quality of telephone service to be provided, and the applicant's ability to provide the supported services throughout the designated area within a reasonable time frame. According to the FCC, an applicant for ETC status must make a "reasonable demonstration . . . of its *capability and commitment* to provide universal service."²⁸ There must also be some assurance that the CETC applicant can "satisfy its obligation to serve the designated service areas within a reasonable time frame."²⁹

The Joint Board has also recommended adopting more rigorous standards for ETC designations,³⁰ although those recommendations have not yet been acted on by the FCC. One of the Joint Board's recommendations is that the FCC:

adopt a guideline encouraging state commissions to require ETC applicants to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service.³¹

Specifically, the Joint Board suggests that such a demonstration might include "requiring a formal build-out plan for areas where facilities are not yet built out at the time the ETC application is considered."³²

26. *Id.*, para. 24.

27. *See Virginia Cellular*, para. 4.

28. *Virginia Cellular*, para. 17 (citation omitted)(emphasis added).

29. *Virginia Cellular*, para. 4.

30. *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 04-J1, released 2/27/04.

31. *Id.*, para. 23.

32. *Id.* para. 24.

RCC is a wireless or "CMRS" carrier.³³ Under the Act, state or local governments generally may not regulate the entry of or the rates charged by CMRS providers.³⁴ States may regulate other terms and conditions of CMRS, such as customer billing practices and consumer protection requirements. States may also impose on CMRS providers requirements related to universal service, so long as they do not amount to rate or entry regulation.

IV. POSITIONS OF THE PARTIES

RCC and the Department support designation as an ETC. They claim that RCC provides the nine required services in the area served by the ITCs, and properly advertise those services. They also maintain that the public interest would be served by a designation. They prefer that the Board create one or two "service areas" in which RCC will serve. The Department recommends numerous conditions to the designation.

The ITCs oppose designation, claiming that RCC is ineligible because it does not meet FCC standards for E-911 service. The ITCs also contend that RCC has failed to prove that designation of RCC as an ETC is in the public interest. Finally, if the Board should nevertheless grant designation, the ITCs ask the Board to designate RCC as an ETC separately in nine separate rural study areas, one for each of the nine ITCs.

V. COMPANY BACKGROUND

Findings

1. RCC provides certain telecommunications services in Vermont, within the meaning of Section 203(5) of Title 30 of the Vermont Statutes Annotated, owns and operates public-service property in connection therewith within the meaning of Section 201 of Title 30, and therefore is subject in certain respects to the Board's jurisdiction. Pet. at ¶ 1.

2. RCC holds a Certificate of Public Good to provide telecommunications services in Vermont, issued in Docket No. 6072. Id.

33. "CMRS" means "commercial mobile service." The "R" in the acronym implies "radio," but is not a statutory term. See 47 U.S.C. § 153(27).

34. See 47 U.S.C. § 332(c)(3).

3. RCC is a Minnesota corporation registered to do business in the State of Vermont as a foreign corporation and operates in Vermont under the tradename "Unicel." Id.

4. RCC's regional headquarters are located in Colchester, Vermont. Supporting Memo at 2.

5. RCC is a wholly-owned subsidiary of Rural Cellular Corporation (herein "Rural Cellular"), which is a publicly-traded company with over 111,000 telecommunications-service subscribers that operates (with its affiliates) "commercial mobile radio services" (PCS, cellular, and paging, collectively referenced as "CMRS"). RCC operates in 14 states. Pet. at ¶ 2; tr. 8/2/04 at 9 (Kohler).

6. RCC is a CMRS provider within the meaning of "mobile service" as defined by Section 153(27) of Title 47, United States Code, and provides telecommunications services as defined in Section 254(d) thereof and Section 54.703(a) of the Code of Federal Regulations. Pet. at ¶ 3; Supporting Memo at 2.

7. RCC is licensed to serve the entire State of Vermont and provides service in the Burlington, Vermont Cellular Geographic Service Area, the Vermont One Rural Service Area, and the Vermont Two Rural Service Area. Supporting Memo at 1-2.

8. RCC is a telecommunications carrier as defined by Section 153(44) of Title 47 and Section 51.5 of the Code of Federal Regulations, is a telecommunications carrier for the purposes of Part 54 of the FCC's rules, and therefore is considered to be a common carrier under the Act. Supporting Memo at 2.

9. RCC has the financial resources and ability to provide quality services throughout the proposed Service Area; RCC is a publicly-traded company that has invested over \$39 million into Vermont and currently has over 100,000 lines of service in this state. Supporting Memo at 21.

VI. THE NINE REQUIRED SERVICES

The services supported by the federal Universal Service Fund ("USF") are: (a) voice-grade access to the public-switched network; (b) local usage; (c) dual-tone, multi-frequency signaling or its functional equivalent; (d) single-party service or its functional equivalent;

(e) access to emergency services; (f) access to operator services; (g) access to interexchange service; (h) access to directory assistance; and (i) toll limitation for qualifying low-income consumers.³⁵ Each of the nine points is considered separately below.

A. Voice Grade Access to the Public Switched Network

Findings

10. RCC provides voice-grade access to the public-switched network through use of its own facilities and interconnection arrangements with local telephone companies. As required by FCC rules, this service transmits voice-generated sound waves in the frequency band from 300 to 3,000 Hertz. Supporting Memo at 4; Lackey pf. at 7.

11. In July of 2003, the FCC began requiring measurement of hearing-aid compatibility and labeling of cell phones. Frankel reb. pf. at 3.

12. RCC's digital handsets are not hearing aid compatible because their radio emissions interfere with the operation of many hearing aids. Meredith pf. at 18.

13. The record does not disclose whether RCC informs potential customers with hearing aids that digital phones are incompatible with many hearing aids or whether RCC has a written policy on this point. Tr. 8/3/04 at 71 (Frankel).

14. No commercially-available digital receivers on the market today are compatible with certain hearing aids. At least one Motorola phone offered by RCC (the T720) is currently capable of connecting with a Telecoil hearing aid and is compatible with a "neckloop" that reduces interference by moving the phone away from the hearing aid, thereby improving the quality. Kohler reb. pf. at 33; Frankel reb. pf. at 4.

15. To give manufacturers of digital equipment time to resolve the issues of hearing-aid compatibility with digital phones, while still affording hearing-impaired persons access to wireless service, the FCC adopted a five-year transition period from analog to digital. Carriers, including RCC, that offer digital wireless service are required to make analog service available to subscribers within their licensed service area until the end of the five-year sunset period, ending

35. 47 C.F.R. § 54.101(a).

on February 18, 2008. Kohler reb. pf. at 34; Frankel reb. pf. at 3; *see* 47 C.F.R. § 22.901(b); 47 U.S.C. § 214(e)(1); tr. 8/2/04 at 128, 138-39 (Kohler).

16. Analog wireless phones are hearing-aid compatible and can be used on RCC's network. RCC plans to support analog service for a foreseeable time into the future. However, analog service may not be available on some new sites, and may not be available in some parts of Burlington. New analog telephone handsets are not available, but RCC occasionally can provide a used analog handset to a customer who needs one. The FCC is making efforts to ensure the availability of analog handsets until the transition period ends. Kohler reb. pf. at 33-34; Frankel pf. rebuttal at 2-5; tr. 8/2/04 at 128, 134-38 (Kohler).

17. RCC has committed here to provide digital receivers to hearing-impaired subscribers as soon as they become available. Kohler reb. pf. at 33.

Discussion

"Voice grade access" is defined as a "functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." For the purposes of Part 54, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.³⁶

The record shows that RCC provides its customers with voice-grade access to the public switched network. RCC achieves this through use of its own facilities and through its interconnections to other carriers.

The ITCs contend that RCC does not provide appropriate access to the public switched network because its digital handsets are not hearing aid compatible. This problem is not unique to RCC, however, and the record shows that all currently available digital handsets can interfere with hearing aids.

RCC's analog handsets are hearing aid compatible, and RCC complies with FCC regulations regarding digital handset compatibility with hearing aids. Moreover, hearing-impaired service is not, per se, a required service, although it is relevant to the public

36. 47 C.F.R. § 54.101(a)(1).

interest test, discussed below.

We conclude that RCC should not be denied ETC status in Vermont because of a failure of the entire wireless industry to manufacture hearing aid-compatible handsets. Moreover, RCC has committed to make hearing aid-compatible digital handsets available to its customers as soon as vendors make them commercially available.³⁷

B. Local Usage

Findings

18. RCC offers a wide variety of rate plans that include some amount of calling without additional or separate charge within the home service area. From the customer's perspective, the price of some initial quantity of usage is built-in to the monthly fixed price. Lackey pf. at 7.

19. If the FCC does designate a specific local usage requirement, RCC has committed to comply with that requirement. Supporting Memo at 5-6; Lackey pf. at 7-8.

Discussion

"Local usage" is defined as the "amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users."³⁸ Unfortunately, this definition is doubly meaningless. First, although the rule has been in effect since 1998, the FCC has never actually prescribed a minimum quantity of local usage.³⁹ Second, it is difficult to know what the FCC means by "exchange service," either generally⁴⁰ or particularly with regard to wireless communications which often do not utilize "local" calling areas as normally understood in wireline communications.

37. Kohler pf. rebuttal at 34.

38. 47 C.F.R. § 54.101(a)(2).

39. Supporting Memo at 5.

40. The Rule does not define the term "exchange service." See 47 C.F.R. § 54.5 (terms and definitions). "Telephone exchange service" is defined in the Act, however, as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." See 47 U.S.C. § 153(47).

Notwithstanding these problems, we conclude that RCC has made a reasonable demonstration of its capability and commitment to provide local usage. First, competitive neutrality supports a finding of compliance. The basic exchange service offerings of many incumbent Local Exchange Carriers ("LECs") in Vermont require a per-minute payment for local usage ("Local Measured Service"). Some also sell, for an additional charge, optional packages of local usage minutes. If the incumbent LECs' basic exchange service offerings satisfy the local usage criterion, there is no reason to conclude that RCC's offerings do not.⁴¹

Second, RCC's future intentions are also apparently relevant. The FCC recently found an applicant's commitment to comply with any future FCC local usage requirements sufficient to obtain ETC designation.⁴² RCC has made a similar commitment here.

C. Dual-Tone, Multi-Frequency Signaling

Findings

20. RCC provides dual-tone, multi-frequency ("DTMF") signaling by using out-of-band, digital signaling and in-band, multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. Supporting Memo at 6; Lackey pf. at 8.

Discussion

"Dual tone multi-frequency" (DTMF) is defined as a "method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time."⁴³ It is undisputed that RCC satisfies this requirement.

D. Single-Party Service or its Functional Equivalent

Findings

21. RCC offers single-party service or its functional equivalent. Supporting Memo at 6; Lackey pf. at 8.

41. See Lackey pf. at 7-8.

42. *Virginia Cellular*, para. 20 (January 22, 2004).

43. 47 C.F.R. § 54.101(a)(3).

Discussion

"Single-party service" is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission." 47 C.F.R. § 54.101(a)(4). It is undisputed that RCC satisfies this requirement.

E. Access to Emergency Services

Findings

22. RCC currently provides 911 access to emergency services throughout its service territory. Supporting Memo at 6; Lackey pf. at 8-9.

23. Enhanced 911 ("E-911") provides locational information to the Public Safety Answering Points. The local governments in Vermont requested Phase II E911 services prior to 2003. Meredith pf. at 12.

24. RCC has deployed E-911 in its network. Today, RCC passes caller-location data to Public Safety Answering Points that request it. Kohler reb. pf. at 30.; tr. 8/2/04 at 239 (Wood).

25. RCC has stated a commitment to comply with all E-911 requirements. Supporting Memo at 6.

26. RCC currently offers analog and a digital "TDMA" (time division multiplexing) service. There is very little new development of TDMA services. RCC has decided to migrate to a "GSM" technology digital service, which is a "third generation" technology. With GSM, RCC will continue to offer all the current functions of voice service, but also will offer improved data services, initially with speeds of approximately 115 kilobits per second and ultimately with speeds of approximately 500 kilobits per second. Kohler reb. pf. at 14; tr. 8/2/04 at 127-28, 135 (Kohler).

27. Carriers using digital CDMA (code division multiplexing) technology can offer consumers handsets that include a Global Positioning System (or "GPS") chip that can locate the handset within a narrow range. Kohler reb. pf. at 30.

28. No GSM digital technology device currently contains a GPS chip. GSM carriers must

instead use a network solution that "triangulates" a consumer's location in relation to three cell towers. The accuracy varies depending upon technical factors including the number of towers deployed near the handset to be located. In rural areas, accuracy is limited by the smaller number of available towers. Vendors offering network-based solutions have not been able to deliver in rural areas accuracy levels that match urban areas. All carriers using GSM have this same problem, including Cingular, AT&T Wireless and T-Mobile. Kohler reb. pf. at 30-31.

29. Because it intends to use GSM technology, RCC has chosen a "network-based solution" for Phase II E-911 service in Vermont. This service depends upon triangulation from multiple towers. Kohler reb. pf. at 30; Meredith pf. at 14; tr. 8/2/04 at 127-28 (Kohler).

30. As of May of 2003, the FCC required RCC to provide "Phase II 911 enhanced service" to at least "50 percent of [its] coverage area or 50 percent of [its] population." RCC deployed equipment to meet this requirement. On March 1, 2004, the FCC further required RCC to provide "Phase II 911 enhanced service" to "100 percent of [its] coverage area or 100 percent of [its] population." RCC does not meet the new 100 percent standard. 47 C.F.R. § 20.18(f); Meredith pf. at 13-15; exhs. ITC-5 at 4, ITC-6 at 26, ITC-7, at 3.

31. Building more towers would improve triangulation and the accuracy of RCC's network. In rural areas there is often not enough capacity demand to justify enough towers to triangulate. Kohler reb. pf. at 31-32.

32. When determining compliance with Phase II locational accuracy requirements, the FCC allows carriers to average their accuracy results across wide areas. Large carriers operating in urban areas thereby are able to meet the accuracy requirements on average, even though their rural areas do not comply. RCC does not operate in large, urban areas, and therefore does not share in any averaging benefits experienced by larger carriers. Kohler reb. pf. at 30-31.

33. RCC is currently working with Polaris Wireless to improve accuracy in its existing network. If the Polaris solution does not work, RCC may seek a waiver of the accuracy standards from the FCC. RCC has not yet sought a waiver from the FCC. Kohler reb. pf. at 31-32; Meredith pf. at 14.

34. RCC has been working with the Vermont E-911 Board since 1996 regarding RCC's E-911 deployment. Kohler reb. pf. at 31-32.

35. RCC has an incentive to deploy E-911 as quickly as it can because it is required to do so and also because location-based technologies can add value for consumers and carriers both. Kohler reb. pf. at 33.

36. If RCC is granted ETC status and gains access to high cost support, RCC will be able to deploy additional infrastructure, including cell sites, that will not only increase RCC's coverage of emergency services generally, it will improve its ability to meet its federal E-911 obligations. Kohler pf. rebuttal at 33; Lackey pf. rebuttal at 4.

Discussion

"Access to emergency services" includes, at minimum, access to E911.⁴⁴ Because Vermont has requested RCC to provide E-911, RCC must also provide access to E-911 services. "Enhanced 911" is defined in the FCC's universal service rules as:

911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.⁴⁵

 The FCC has also imposed accuracy requirements on the ALI information provided by wireless carriers. In Phase I of the FCC's E-911 implementation schedule, RCC was required to deliver locational information to a public safety answering point. The location reported, however, was that of the antenna, not the calling customer.⁴⁶ Thereafter, the FCC established "Phase II" requirements that require reporting of the location of the customer. The accuracy of that reporting was phased in. The accuracy standards themselves are complex and depend on the technology chosen by the carrier. Because RCC has selected a "network-based technology," the FCC accuracy standard requires RCC to deliver locational information that is within 100 meters of the customer's location for 67 percent of the time and within 300 meters of the caller's location

44. "911" is defined as a "service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point ("PSAP") operated by the local government."

45. 47 C.F.R. § 54.101(a)(5).

46. 47 C.F.R. § 20.18(d).

for 95 percent of the time.⁴⁷ In what might be called "Phase II-A," RCC was required to meet specific accuracy standards for 50 percent of its locations or customers. On March 1, 2004, in what might be called "Phase II-B," the FCC extended those same accuracy standards to 100 percent of RCC's locations or customers.

 RCC does provide locational information for customers. This allows E-911 to function. But RCC has failed to meet the FCC's accuracy requirements for Phase II-B. The ITCs contend that RCC should not be designated because it does not meet the FCC's current locational accuracy standards, although the ITCs do not cite any precedent for denying ETC status on this ground; i.e., for demonstrating that denial of ETC status is the "remedy" for that.

 For two reasons, we conclude that meeting the FCC's current accuracy requirement for E-911 is not a necessary part of the "access to emergency services" requirement for ETC designation. First, no accuracy requirement, Phase II-B or otherwise, is explicitly referenced in the FCC's universal service regulations. While the ITCs dispute the accuracy of the information provided by RCC, they do not dispute that RCC does in fact provide the ANI and ALI information cited in the FCC's universal service rule. We conclude that providing such information is enough for ETC designation. If RCC has failed to meet the FCC's specific requirements for the accuracy of that information, the FCC has other enforcement remedies available.

If direct application of the accuracy standard is not mandatory, the question then is whether one should apply it in a discriminating basis, we think not. We are reluctant to import the FCC's Phase II-B locational accuracy standards here because they appear biased against companies, like RCC, that serve predominantly rural areas. As noted above, the accuracy standards apply to 100 percent of RCC's locations, but the accuracy standards themselves are further defined as probabilities. Also, averaging is allowed. The effect seems to be that a carrier can be "100 percent compliant" with Phase II-B standards even if up to 33% of its E-911 calls cannot be located within 100 meters and if up to 5% of the calls cannot be located within 300

47. 47 C.F.R. § 20.18(h).

meters.⁴⁸ RCC asserts, and we accept, that this standard can more easily be achieved using a network-based technology in an urban area with a high number of cell sites per square mile. Therefore, carriers that serve both urban and rural areas would be advantaged by the FCC standards. If so, importing the FCC's Phase II-B standards into ETC cases could raise an insurmountable permanent barrier to the designation in Vermont of any predominantly rural wireless carrier that uses network-based technology. Technology-selection (or preclusion) by governmental preference is not an attractive policy.

The ITCs argue that the FCC rules in 47 C.F.R. Part 20 relating to E-911 accuracy should be read *in pari materia* with the FCC rules in 47 C.F.R. Part 54 relating to universal service because they both relate to Enhanced 911.⁴⁹ While we agree with this general rule of construction, the ITCs ask us to apply it in an unusually broad context. Rather than try to understand one word or phrase in a context found elsewhere, the ITCs ask us to deny relief to RCC under one part of FCC rules adopted by the FCC's Wireline Competition Bureau due to RCC's failure under another part of FCC rules adopted by the FCC's Wireless Telecommunications Bureau. We do not believe that the principle of reading documents as a unified whole require us to go so far. The FCC rules are long and complex. Without more direct proof, we are reluctant to impute an intent to the FCC that a violation in one area disqualifies a company from relief in another area.

Second, we conclude that meeting the FCC's current accuracy requirement for E-911 cannot be a prerequisite for designation because any such policy would create a barrier to entry. RCC's only choice is to increase the number of cell sites so that network "triangulation" can be more accurate. As seen below, however, increasing the number of cell sites is the principal expected benefit of *granting* ETC certification. In other words, the ITCs contend that RCC cannot have money to build towers because RCC doesn't yet have enough towers.⁵⁰ The Board will not impose such a "Catch-22" on RCC. It is said that "the best is often the enemy of the good." In this case the independents invite us, in the name of perfect accuracy, to reduce the pace

48. 47 C.F.R. § 20.18(h).

49. ITC Supplemental Reply Brief of 9/20/04 at 3.

50. The DPS recognized this contradiction as well. *See* Lackey reb. pf. at 4.

of more incremental improvements. We decline to do so.

In Docket 5918 the Board was also concerned with the effect of imposing excessive burdens as a prerequisite to designation. In that case the Board imposed significant conditions on the ETC designation, but it held that a carrier cannot be required to demonstrate universal signal coverage prior to receiving an ETC designation.⁵¹ The complaint in both cases is insufficient cell towers. There we concluded that the absence of a signal in some areas, a "hole" in coverage, could not be a barrier to designation. Of course, in those areas without signal, a customer cannot receive any of the nine required services. Here, the problem is that while signal is available – and all the other nine services are available – E-911 is not of sufficient quality to allow accurate triangulation.

The difference is only superficial. We conclude that denying ETC designation for lack of sufficient towers to triangulate 911 callers would create the same kind of barrier to entry that we eschewed in Docket 5918, and with even less justification.

The FCC has adopted a similar standard. It has held that a company may be designated once it has shown a "capability and commitment to provide the nine supported services,"⁵² and it is not necessary that the services actually be provided everywhere in advance. We are generally in agreement with this standard. While something more than a vague promise is needed from an applicant, something less than a deployed ubiquitous network will do.⁵³

Vermont has made a major commitment to providing high quality E-911 services throughout the state. However, E-911 is not the state's *only* important telecommunications goal, and withholding designation here might convey a message that the Board places E-911 accuracy before other equally worthy goals. Expanding wireless coverage, for example, not only provides non-emergency services, but it provides basic 911 service in new areas. On the present record, therefore, we do not wish to suggest that the next cell sites built in Vermont necessarily should

51. Docket 5918, Order of 11/14/03 at 33; *see also*, *South Dakota Preemption Order*, note 24 above (requiring a carrier to provide all nine supported services throughout a service area prior to receiving ETC designation would have the effect of prohibiting prospective entrants from providing telecommunications services).

52. *See Virginia Cellular*, note 23 above, at 19 FCC Rcd 1563.

53. RCC here has plausibly asserted the "capability and commitment" mentioned in the FCC orders. *See Kohler reb. pf.* at 30-33; *tr.* 8/2/04 at 239 (Wood).

be devoted primarily to improving the E-911 locational accuracy.

The Hearing Officer concluded that RCC met the emergency services requirement. The ITCs asserted that the Hearing Officer effectively placed the burden of proof on the ITCs, not RCC. We agree that RCC could have offered more detailed proof about its E-911 locational accuracy. However, RCC has met its minimum burden of proof here. It has shown that it provides the "ALI" locational data required to make E-911 function and that it has deployed equipment to improve the accuracy of the customer location information that is provided to PSAPs. That is sufficient proof to conclude that RCC has satisfied the FCC's universal service rules regarding access to emergency services.

The ITCs correctly note that RCC has not filed any data in this proceeding to enable the Board to make a determination of the extent of RCC's E-911 accuracy in Vermont. The Department recommends that, as a condition of ETC designation in this proceeding, the Board require RCC to report on its progress toward, and outlook for, fully implementing Phase II E-911 capabilities in Vermont as part of the company's annual certification process. We concur.

RCC's plan to resolve the FCC compliance issue is somewhat vague. RCC has only said that it is working with a vendor and "may" seek a waiver of the accuracy standards.⁵⁴ RCC is in nominal violation of the FCC rules, and it should clarify this situation. RCC shall seek an FCC waiver no later than September 1, 2005, if it is not yet otherwise in compliance with FCC rules by that date.⁵⁵

In conclusion, RCC has demonstrated its ability and commitment to offer access to emergency services in the service area for which it seeks designation and that designation will, in fact, assist the company in meeting those obligations.

54. Kohler reb. pf. at 32.

55. We also conclude below that RCC should be designated until December 31, 2005. At that time, the Board can review RCC's progress on clarifying the applicability of FCC accuracy standards.

F. Access to Operator Services

Findings

37. RCC provides customer access to operator services; customers reach operator services in the traditional manner by dialing "0." Supporting Memo at 6; Lackey pf. at 9.

Discussion

"Access to operator services" is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." 47 C.F.R. § 54.101(a)(6). It is undisputed that RCC satisfies this requirement.

G. Access to Interexchange Services

Findings

38. RCC provides access to interexchange services through interconnection agreements with interexchange carriers. Customers may also "dial around" to reach their interexchange carrier of choice. Supporting Memo at 6; Lackey pf. at 9-10.

Discussion

"Access to interexchange service" is defined as the "use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network."⁵⁶

RCC provides access to interexchange services through interconnection agreements with interexchange carriers. These arrangements enable RCC to provide its customers access to interexchange services. RCC customers may also "dial around" to reach a different interexchange carrier.

The ITCs ask the Board to require "equal access" as a prerequisite to ETC designation.⁵⁷ In other words, the ITCs would have the Board require RCC to allow its customers to presubscribe to other interexchange carriers.

56. 47 C.F.R. § 54.101(a)(7).

57. Nishi pf. at 17.

The Board is preempted from using state authority to mandate that wireless carriers provide equal access.⁵⁸ Moreover, while states may force wireless providers to meet requirements related to universal service, they may not regulate rates or entry. The FCC has also held that states may not use ETC proceedings to require a wireless provider to provide equal access.⁵⁹

By providing "dial around" access to interexchange carriers, RCC meets the explicit terms of the FCC's rule. The FCC recently considered adding equal access to the list of nine supported services, a decision that would have made equal access an explicit requirement of ETC certification. In a "Definitions Order" issued in July of 2003, the FCC decided to "make no decision" at that time.⁶⁰ Decision or not, the effect was to leave equal access off the list of minimum services required for ETC certification. Therefore the Public Service Board is not obligated to require equal access as a condition of ETC certification.

Nevertheless, the Board might want to give notice here that it may impose equal access obligations in one relatively narrow future scenario. The case concerns a future where multiple ETCs serve a local exchange market and an incumbent LEC seeks to "relinquish" its ETC designation in that market. The Joint Board recommends in that case imposing equal access on the remaining ETCs.⁶¹

The Joint Board's recommendation addresses a significant issue. Most incumbent LECs are required to provide equal access. Therefore, in the hypothetical circumstance above, departure of the incumbent LEC could deprive all customers in an area of "1-plus" equal access to interexchange carriers. The Joint Board would address this problem with notice. Essentially

58. 47 U.S.C. § 332(c)(8).

59. *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, WT Docket No. 00-239, Memorandum Opinion and Order, FCC 02-164, paras. 6, 30 (rel. August 2, 2002).

60. *See Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, 18 FCC Red 15090, 15104, para. 33 (2003) (Definitions Order). The Joint Board previously had been unable to reach agreement on whether equal access should be added to the list of supported services and made no recommendation regarding this service. *Id.*, para. 1.

61. *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1, rel. 2/27/04, para. 28. The FCC has not yet acted on this Joint Board recommendation.

the Joint Board recommends that the Board here should announce that it might impose equal access obligations in such a future proceeding.

We decline to take that step because it would not increase the Board's future authority in any meaningful way. If an incumbent LEC were to seek to withdraw from the Vermont market, as hypothesized, its customers would face a variety of problems. Very likely the most daunting would be finding a way to obtain replacement service from a wireless ETC for all or nearly all of a departing wireline carrier's customers.⁶² Perhaps for this reason, federal law gives state commissions the *duty* to ensure continued service. The Board "shall require the remaining eligible telecommunications carrier or carriers to ensure that *all customers* served by the relinquishing carrier *will continue to be served*."⁶³ This phrase affirms (and possibly augments) state authority over the minimum duties or all remaining carriers of last resort. Essential to this task will be to construe the statutory phrase "continue to be served." The Board might thereupon conclude that continuation of service implies continuation of all essential features of wireline service, including equal access.

In summary, adding an explicit condition here, as recommended by the Joint Board, would only claim a right in a future proceeding that already appears to have been created by statute. We defer decisions on how ETC relinquishment proceedings should be decided until such a case is actually filed.

RCC provides access to interexchange services consistent with the requirements for ETC designation, and no condition is required relating to equal access.

H. Access to Directory Assistance

Findings

39. RCC provides directory assistance to customers who dial "411" or "555-1212."
Supporting Memo at 6; Lackey pf. at 10.

62. The problems may be exacerbated by RCC's plan to rely, in part, on resale as a means of offering service. *See* finding 52 below. If the underlying wireline carrier seeks to abandon its plant, resale will become impossible.

63. 47 U.S.C. § 214(e)(4) (italics added). The Board also must "require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier." *Id.*

Discussion

"Access to directory assistance" is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings."⁶⁴ It is undisputed that RCC satisfies this requirement.

I. Toll Limitation for Qualifying Low-Income Customers

Findings

40. RCC provides toll limitation by utilizing its toll-blocking capabilities for Lifeline customers upon designation as an ETC. Supporting Memo at 7; Lackey pf. at 10.

Discussion

"Toll blocking" is a service provided by carriers that allows customers to elect not to allow the completion of outgoing toll calls.⁶⁵ "Toll control" is a more complex service that would allow a customer to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.⁶⁶

An ETC can comply with federal requirements by providing toll blocking, so long as it remains incapable of also providing toll control.⁶⁷ It is undisputed that RCC satisfies this requirement by providing toll blocking.

VII. LIFELINE AND LINK-UP

Findings

41. In Docket 5918, RCC was designated as an ETC in Vermont's non-rural service territory. The Department and RCC reached agreement in that docket concerning implementation of the Lifeline and Link-Up programs. The approach developed in that docket was approved by the Board and has subsequently been implemented by RCC. If ETC

64. 47 C.F.R. § 54.101(a)(8).

65. 47 C.F.R. § 54.400(b).

66. 47 C.F.R. § 54.400(c).

67. 47 C.F.R. §§ 54.101(a)(9) and 54.400(d). An ETC that is capable of providing both services must provide both. 47 C.F.R. § 54.400(d).

designation is granted in the territory of the independent telephone companies, RCC has committed to offer Lifeline and Link-Up uniformly throughout its Vermont service territory under the terms agreed to and ordered in Docket 5918. Supporting Memo at 7; Frankel pf. at 4-6; tr. 8/3/04 at 78 (Frankel).

42. RCC has 85 customers currently participating in the Lifeline program. Frankel pf. at 4.

43. As an ETC, RCC is subject to the same advertising requirement that the Board has imposed on other carriers annually in the Vermont Universal Service Fund ("VUSF") rate-setting docket. All such carriers are required to stuff their bills annually in January or February with information about Lifeline availability and how eligible customers may apply for Lifeline. Frankel pf. at 5.

44. RCC is making additional efforts to promote Lifeline and Link-Up. Since RCC was first designated an ETC in Vermont's non-rural territory, RCC has added advertisements of Lifeline and Link-Up in retail locations, agent locations, newspaper advertisement and its website; display posters in stores; and a page for Lifeline and Link-Up on the Unicel website. Frankel pf. at 5.

45. RCC's promotion of Lifeline and Link-Up generally exceeds that done by Vermont's incumbent local exchange carriers. Frankel pf. at 4-5.

46. RCC has committed to advertise the availability of Lifeline and Link-up benefits throughout the proposed service area by including mention of such benefits in advertising and by reaching out to community health, welfare and employment offices. Supporting Memo at 7; Frankel pf. at 4-6.

47. RCC does not offer toll control because toll control is not commercially available. RCC provides toll blocking for Lifeline Customers. Lackey pf. at 10.

48. RCC has become a full participant in the Lifeline Coordinating Committee, the interagency group that addresses issues related to Lifeline implementation. Frankel pf. at 4.

Discussion

FCC rules require ETCs to offer Lifeline and Link-Up to their customers and to advertise

the availability of the two programs.⁶⁸ The evidence of record supports a conclusion that RCC offers Lifeline and Link-Up to qualifying customers and advertises their availability in accordance with FCC requirements.

The Department has recommended that RCC be required, as a condition of its designation, to fulfill its commitments with respect to Lifeline and Link-Up provision and promotion. We concur.

VIII. OFFERING SERVICES THROUGHOUT THE SERVICE AREA

Findings

49. RCC's signal coverage does not reach significant portions of the geographic territory served by the ITCs. Lackey pf. at 11-12.

50. RCC has committed to expanding its coverage by constructing facilities in response to demand and specific customer requests, and it will attempt to serve all customers with its own facilities. RCC does not anticipate constructing plant to serve areas where there is no demand for service. Kohler pf. rebuttal at 9.

51. Docket 5918 requires RCC to respond to reasonable requests for service by providing service to a customer who has a billing address in the service area, at the customer's billing address or at a different address specified by the customer that represents the customer's home or work location. RCC recommitted to that condition in this proceeding. Docket 5918 Order of 11/14/03 at 34, 38-39, 51; Supporting Memo at 4, 21; Kohler reb. pf. at 9, 22; Frankel pf. at 11.

52. Upon designation, RCC will offer service throughout its ETC service area to all consumers, upon "reasonable request," using either its facilities or a combination of facilities and resale. Whether a request for service is reasonable can be determined, in some cases, only after investigation and an attempt to apply lesser means of supplying service. Pet. at 3; Kohler pf. at 3; Supporting Memo at 4-7; Kohler reb. pf. at 9; tr. 8/2/04 at 44-45 (Kohler).

53. If standard equipment has not worked at a customer's residence or place of business, RCC does not currently have an explicit policy and practice of advising customers that they may

68. 47 C.F.R. §§ 54.405, 54.411; Frankel pf. at 4.

seek an escalation process or otherwise make a "reasonable request for service" beyond standard equipment. Tr. 8/2/04 at 55-58 (Kohler).

54. When a customer makes a reasonable request for service, RCC begins by offering a new customer the use of a standard handset that is purchased by the customer. During a thirty-day trial period the customer may return the handset for a full refund. If the customer wishes to pursue service further, RCC makes available a variety of options, including external fixed antennas (including a large "yagi" antenna), more powerful telephones, hands-free car kits, "cell extenders" and digital boosters; all of these are obtained at the customer's added expense. RCC also considers adjusting its existing antennas, adding in-building "repeaters" to improve service, constructing new cell sites, and offering resale of wireline service as possible ways of complying with a reasonable request for service. Expansion of RCC's network is a last resort. Supporting Memo at 5; Kohler reb. pf. at 22; tr. 8/2/04 at 41-52 (Kohler).

55. RCC may consider a request for service unreasonable if providing service would require an expansion of RCC's network. An "unreasonable" request for service would include the case in which service to a single customer could be obtained only by constructing an additional cell site. The typical cost of such a cell site is approximately \$250,000.00. Tr. 8/2/04 at 42-45 (Kohler).

56. Disputes concerning RCC's individual decisions on whether requests were reasonable and how RCC responded may be reviewed by the Board on a case-by-case basis and generally in annual certification or redesignation proceedings. Tr. 8/2/04 at 42-44 (Kohler), 148, 181 (Lackey).

57. RCC apparently has no current practice or firm plans to advertise to potential customers that they may make a "reasonable request for service" that might obligate RCC to provide additional facilities to serve the customer. The record is unclear about how helpful the RCC sales force actually is at explaining that a potential customer who cannot obtain satisfactory service using standard equipment has other options available. Tr. 8/2/04 at 55-58 (Kohler).

58. If designated, RCC will receive support for all of its customers in high-cost areas, even those who bore the expense of this additional equipment. Tr. 8/2/04 at 49, 53 (Kohler).

59. The Department does not currently require that RCC track or report its responses to reasonable requests for service. Tr. 8/3/04 at 81-2 (Frankel).

60. Incumbent LECs today serve a very high percentage of the fixed-location residences and businesses within their territories, their facilities are actually limited to a small portion of the franchised area, and they impose significant charges for long new line extensions. Tr. 8/2/04 at 31 (Kohler); tr. 8/2/04 at 224-47 (Wood).

61. The ITCs presently are required to file tariffs describing how the filing carrier handles requests for service. Tr. 8/3/04 at 122 (Nishi).

62. Vermont's E-911 location data layer includes the geographic coordinates of each household or commercial address, and while it is not a perfect match to locations that have or may request phone service, it should correlate to a high degree. Lackey pf. at 14-15.

63. RCC can compile and periodically update an analysis of the extent of its geographic coverage using GIS analytic software to overlay RCC's detailed coverage maps on the E-911 location data layer. Using this approach, RCC could calculate the percentage of E-911 addresses, by exchange or study area, to which it is capable of providing service. Changes from year to year would serve as an objective indicator of RCC's progress toward universal coverage. Lackey pf. at 14-15.

64. RCC has committed to provide detailed coverage maps in connection with recertification proceedings. Kohler reb. pf. at 28.

Discussion

The nine services must be "offered" throughout the service area for which the designation is received.⁶⁹ This can be accomplished using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services.⁷⁰ The issue is whether RCC "offers" its services sufficiently widely to be eligible for certification as an ETC.

The Board has repeatedly expressed its concern about the limited scope of wireless signal coverage in Vermont. Expanding that coverage to Vermont's more remote and rural areas is an important policy objective of this state.

Ultimately a wireless company cannot be said to "offer" universal service to a customer if

69. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §54.201(d).

70. *Id.*

the customer cannot receive a signal from that company. If the term "offer" is to have any meaning, there must be some expectation that the carrier actually can provide the service if the customer requests it.⁷¹

RCC argues that it is not required to provide ubiquitous coverage without compensation, any more than wireline carriers are so required. It is true that wireline carriers often impose significant charges to extend service. While the current scope of RCC's signal coverage is quite limited, RCC seeks designation on the promise that, beginning immediately, it will respond to all future "reasonable requests for service," even if there is not yet signal coverage at the customer's billing address or other home or work location specified by the customer. RCC contends that it will respond by offering a variety of measures, including external antenna kits, "cell extenders" or more powerful telephones, adjusting RCC's existing antennas, and constructing new infrastructure. RCC has committed to expend all high cost support received in an appropriate manner. We expect that RCC will spend a significant proportion of such support to expand coverage. Thus, we shall require RCC to report its receipt and use of the funding to the Board on an annual basis so the Board can determine whether RCC is meeting its obligations. We expect the first such report, in writing, on or before September 1, 2005, and yearly thereafter.

In a recent ETC decision, the FCC described similar commitments, and found them sufficient.

In instances where a request is made by a potential customer within [the competitive ETC applicant's] licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) the requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and, (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service.⁷²

71. Docket 5918, Order of 6/26/03 at 34.

72. *Virginia Cellular*, para. 15. Virginia Cellular also promised to construct several additional cell sites in sparsely populated areas. *Id.*, para. 16.

RCC envisions a hierarchy of escalating steps to provide service. Customer-paid enhancements (e.g., higher-powered telephones and better antennas) would come first. If that fails, then come relatively low-cost options for RCC, such as antenna adjustments. Finally, there is the most expensive option, adding a cell site. In the end, a customer may be told that his or her request for service is "unreasonable" because it requires RCC to spend too much money.

The key to RCC's success in serving all of Vermont will be how it implements this commitment to respond to all "reasonable" requests. It is probably more accurate to say that RCC is promising to make a "reasonable response" to any request. We agree with the DPS and RCC that the concept will need to be defined in some measure on a case-by-case basis. Unfortunately, it is impossible to determine beforehand when RCC's responses are reasonable. This increases the importance of clear procedures and adequate staff training. Without them, RCC's commitment could be deprived of much of its value to the public. Therefore, some conditions are needed to ensure that RCC responds sensibly to customer requests for further measures to obtain an adequate signal quality at the customer's billing address or at a different address specified by the customer that represents the customer's home or work location. These conditions are discussed below in part XIII.

So long as appropriate conditions are attached, RCC "offers" the nine services throughout the proposed service area. Therefore, RCC has demonstrated its ability and commitment to offer access to the public switched network throughout its proposed service area.

IX. ADVERTISING

Findings

65. RCC has an extensive advertising campaign in multiple daily, weekly and monthly print publications, more than two dozen radio stations, four television stations and Adelphia Cable, and other advertising. RCC is a competitive carrier, and its level of advertising generally exceeds that which is typical of the ITCs. Frankel pf. at 3-4.

66. RCC has committed to advertise the availability of each of the supported services throughout its licensed service area using media of general distribution through methods that may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts and

telephone-directory advertising. Supporting Memo at 7.

67. RCC has also committed to advertising the availability of Lifeline and Link-Up benefits throughout its service area by including mention of the benefits in its advertising and through reaching out to community health, welfare and employment offices to provide information to those most likely to qualify for these benefits. Supporting Memo at 7.

Discussion

FCC rules condition ETC designation on the carrier advertising the availability of the nine services required for designation.⁷³ It is undisputed that RCC satisfies this requirement.

The Department has recommended that RCC be required, as a condition of its designation, to fulfill its commitments with respect to advertising the availability of the nine checklist services.⁷⁴ We concur generally, but think that advertising can be tailored to more effectively benefit consumers.

As recommended by the Department, RCC would be obligated to advertise the availability of the nine services required for designation. While advertising by RCC could benefit the public, in this configuration, we anticipate little benefit from advertising that describes the elements in the FCC's rules. There is particularly little value in advertising items, like tone dialing or connection to the interexchange network, that they are so common they are simply assumed by most customers. There is also no apparent benefit from advertising items, like local usage, that, as seen above, has little meaning in the cellular environment.

Of greater use to the public would be advertising aimed to demonstrate to the public that RCC, as an ETC, has an obligation to make efforts to provide service in areas where customers cannot easily obtain it. In other words, it might benefit the public to learn that RCC is willing to make extra efforts to provide service in rural areas. Therefore, RCC will be required, as a condition of its designation, to advertise the commitments it has made with regard to extending service or otherwise enhancing the customer's ability to receive a signal in areas with weak or nonexistent coverage. RCC will be required to file a plan for such advertising within 60 days of

73. 47 C.F.R. § 54.201; Frankel pf. at 3.

74. Frankel pf. at 4.

designation.

X. PUBLIC INTEREST

This petition would affect the service areas of nine rural telephone companies. When one or more such areas are affected, the third sentence of § 214(e)(2) imposes an affirmative obligation for factual findings regarding the public interest. The public interest test requires a balancing of benefits and costs, and is a fact-specific exercise. For example, in its *Virginia Cellular* decision, decided under a parallel statute, the FCC considered the benefits of increased competitive choice, the impact the designation might have on the universal service fund, the unique advantages and disadvantages of the competitor's service offerings, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated area within a reasonable time frame.⁷⁵

The following sections consider a number of potential benefits and costs from ETC designation, each of which may affect the public interest.

A. Expanding RCC's Network

Findings

68. If RCC is designated in this docket, RCC will receive approximately \$6.3 million in federal universal service support each year for its Vermont operations. This includes \$2.3 million resulting from Docket 5918 in which RCC was designated for non-rural service areas. It also includes an incremental \$4.0 million for rural service areas considered in this docket. Supporting Memo at 12; tr. 8/2/04 at 10 (Kohler).

69. RCC recognizes an obligation to demonstrate that every dollar of Federal support is invested to construct, maintain, and upgrade RCC's facilities and services in a way that benefits consumers in Vermont's rural service areas and to certify to the Board annually (and subject to Board review) that it has done so. RCC Brief at 20; Kohler reb. pf. at 8.

70. Access to high cost support will allow RCC to accelerate expansion of its coverage to

75. *Virginia Cellular*, para. 28; *see also*, RCC Brief at 14.

areas of the state without sufficient coverage by allowing it to increase its capital investment. RCC has committed to use all Federal support received in accordance with federal regulations and to "expand coverage area [sic] in the ETC Service Area." Supporting Memo at 12-13; *see* Kohler reb. pf. at 8, 10-11, 28; Lackey pf. at 11-12, 15.

71. RCC has agreed to report its use of federal support and capital-construction spending annually and to provide detailed coverage maps in connection with its recertification proceedings. Supporting Memo at 14-15, 23; Kohler reb. pf. at 2-3, 11, 28.

72. RCC has submitted specific planned investments for calendar year 2004, but it has not finalized construction plans for 2005 or beyond. RCC expects to make these decisions based on a variety of factors, such as service requests and siting and permitting constraints. RCC is unable to project exactly where wireless facilities will be added after 2005, in part, due to uncertainty about permits. Supporting Memo at 12; Kohler pf. at 12; Kohler pf. rebuttal at 8; Lackey pf. at 13-14; tr. 8/2/04 at 71-2 (Kohler).

73. RCC's construction plan for 2004 includes numerous projects unrelated to expanding signal coverage in Vermont. These include numerous GSM upgrades and seven projects at locations outside Vermont. Exh. ITC-14.

74. RCC has committed in the first year following designation to build wireless facilities, including cell sites, in Wallingford/Danby, Charlotte, Marshfield/Cabot and Franklin/Highgate, provided that it receives sufficient support and appropriate land-use and other environmental approvals. Supporting Memo at 12, 21; tr. 8/2/04 at 131-34 (Kohler); *see id.* at 134 (counsel's rep.); *see also* Lackey pf. at 13-14.

75. The mobility of RCC's services provides a significant benefit to consumers, especially those living in rural areas who must often travel long distances. Many areas where people travel, hike, camp, fish or work outdoors have no telephone service. The mobile service also facilitates emergency services that can help mitigate one of the risks of living in isolated, rural areas. Supporting Memo at 12, 15; tr. 8/2/04 at 228 (Wood).

76. RCC's customers also benefit from wider local-calling areas, advanced features available through RCC's network and handsets, advanced messaging services, as well as favorable long distance calling prices and packages with multiple capabilities, including mobility, several

customer calling features. RCC is currently deploying GSM-based high-speed data services. Kohler reb. pf. at 17; Lackey reb. pf. at 9-10.

77. RCC is in the process of converting its network to GSM, a third-generation technology, which it hopes to complete by the end of 2004 or beginning of 2005. Approximately 46 of RCC's 65 cell sites have been upgraded to support GSM, in addition to the existing analog and TDMA platforms. The new GSM platform will support a data component that will allow RCC to offer data applications that include around 115 kilobits per second ("kbps"). A subsequent technology upgrade is expected to boost speeds to around 500 kbps. Kohler reb. pf. at 13-14, 20; tr. 8/2/04 at 127-129, 133 (Kohler).

78. Wireless technology offers the hearing-impaired community a variety of services, including text messaging, e-mail, web and TTY access via wireless phone. These forms of communications via cellular technology are especially valuable for deaf and hearing-impaired individuals because wireless equipment is portable. Notwithstanding the current limitations on hearing-aid compatibility for digital service, deaf and hard-of-hearing individuals currently benefit from wireless-service features including text messaging, email, web and TTY access via a wireless phone. Frankel reb. pf. at 4-5.

79. Designation of RCC and the associated Lifeline and Link-up benefits will benefit low-income consumers that otherwise would not have the opportunity to obtain discounted, mobile-telephone service. Kohler reb. pf. at 18.

80. Expanded signal coverage can have significant benefits during emergencies. During the 1998 ice storm and its resultant extended power and landline-telephone-service outages, ". . . RCC kept a majority of its cell sites and its switch operational, serv[ing] as the primary line of communications for public-safety personnel." RCC also donated numerous cell phones to the National Guard, Red Cross and State Police to ensure that these organizations maintained communications. RCC has developed a disaster-recovery plan and has placed wireless-telecommunications field kits at locations around the state, each containing five wireless phones activated, fully charged and available for use by emergency personnel. Supporting Memo at 11-12, 22; Kohler reb. pf. at 15-16.

81. Increased cell site deployment, and the associated improvements in signal coverage, will

improve the accuracy of E-911 locational activities. Kohler reb. pf. at 14-15; Lackey reb. pf. at 4; tr. 8/2/04 at 158-59 (Lackey); tr. 8/3/04 at 20 (Wood).

82. To maintain the continuity of its service in the event its main power supply goes down, RCC provides most cell sites with battery backup that provides between two to three hours of power. RCC also equips hub cell sites or remote cell sites with additional power backup from a propane or diesel generator, which extends the power backup to at least 12 hours. RCC maintains a large diesel generator at its switch location in Colchester, Vermont, that will provide up to two days of extended power backup before requiring refueling. Supporting Memo at 22.

Discussion

Designation will increase RCC's federal universal service revenues by \$4.0 million per year. This in turn will allow RCC more rapidly to extend its coverage into the rural service territories covered by this petition and generally throughout the state.⁷⁶ This prospect weighs heavily in favor of the public interest.

Some benefits of expanded wireless service are inherent in the technology. The most obvious benefit of network expansion is that it will allow some citizens who live or work in remote locations to obtain a first connection to the telephone network. Expanded RCC service would provide a great benefit to such customers. Even in areas already served by incumbent LECs, some customers will consider wireless a viable alternative to landline service. For these customers, RCC can provide a more valuable service than the incumbent provider.⁷⁷

Mobility gives wireless communications some unique capabilities. In rural Vermont, many areas where people travel, hike, camp, fish or work outdoors have no landline service. Availability of wireless coverage in these areas will provide an important benefit to consumers, even if those consumers live and work elsewhere. Wireless service also has great value for reaching emergency services when, as happens frequently in rural areas, the customer finds himself or herself far from a landline phone. In addition, wireless provides benefits for deaf and

76. The average cost of a new cell site is \$250,000.00. See finding 53 above. If all the additional support were applied to new cell sites, that would produce approximately 16 new cell sites per year.

77. While the value to individual customers is high, this benefit will be limited to relatively few people, because customers in extremely remote areas may find it the hardest to make a "reasonable" request for service.

hearing impaired customers in the form of portable text services.

Marketing and regulatory decisions also give wireless services some advantages.⁷⁸ Wireless companies typically offer a wider range of service plans than those available from landline companies. Wireless plans typically also include a geographically larger local calling area than is characteristic of landline services. Designation will also allow low-income Vermonters to access the Lifeline program.

Still, other benefits can be expected from RCC's own technological and deployment decisions. RCC is upgrading its advanced data handling capabilities, and RCC is deploying high-speed data links using GSM technology. These technology upgrades will offer enhanced data handling capabilities and more reliable service. RCC also has expended significant capital so that it can remain functional in emergencies.

Expanding wireless service into all areas of rural Vermont is consistent with the goals of the Act, which seeks to ensure that consumers in rural, insular and high-cost areas:

have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁷⁹

Additional facilities deployment also furthers the Governor's objective of increasing wireless service coverage along Vermont's highways.⁸⁰

RCC's construction planning for 2005 and beyond is not complete. RCC points out that detailed construction plans are not required by law.⁸¹ They are, however, one means of demonstrating a commitment to serve, although such plans cannot anticipate customer demand and thus may not prove accurate. Moreover, construction depends upon support, which depends on line counts, and those are presently unknown.⁸² The DPS agrees that detailed advance

78. Wireless has a different system for intercarrier compensation than wireline carriers, and it has a different functional definition of "local" calling.

79. 47 U.S.C. § 254(b)(3).

80. Lackey pf. at 16.

81. Kohler reb. pf. at 9; *see* Wood reb. pf. at 41-45.

82. Wood reb. pf. at 42-45.

construction plans should not be required.⁸³

On balance, RCC's designation will allow for a service expansion that will be of significant direct value to many Vermont consumers and to the state as a whole.⁸⁴ To ensure that federal funds translate into network expansion however, some conditions will be imposed on the designation. These are discussed in Section XIII, below.

B. RCC's Service Quality Commitments

83. RCC has committed here to reduce call blockage, and accepts the same conditions on call blockage and coverage that it accepted in Docket No. 5918. RCC will use, as necessary, a portion of Federal support to reduce the frequency of blocked calls. RCC will file a quarterly report with the Board and the Department tracking its efforts to reduce call blockage and improve service overall. RCC also notifies its subscribers annually, and will continue to do so, that its services do not provide coverage in some areas of the state and that, in areas where coverage is available, call blockage may occur. Supporting Memo at 13-15, 23; Kohler reb. pf. at 2-3, 11, 18-19, 28. *See* Docket 5918 Order of 11/14/03 at 48-53.

84. RCC has committed here to comply with the Cellular Telecommunications and Internet Association Consumer Code for Wireless Service (the "CTIA Code"). Although it has not yet filed the paperwork to obtain a certification of compliance with the CTIA Code, RCC believes that it is in compliance with the CTIA Code. Tr. 8/2/04 at 59-61 (Kohler).

85. The Department does not monitor compliance with the CTIA code, which is a voluntary code. If it did monitor compliance, the Department would rely on a combination of RCC's self-reporting and information received through customer complaints. Tr. 8/3/04 at 79-80 (Frankel).

86. The CTIA Code provides that the wireless carriers should supply customers with a map of coverage. RCC offers a map to the public through its website, but the map lacks a zoom function that would allow customers to perceive coverage detail. The only map RCC currently

83. Tr. 8/2/03 at 178, 180 (Lackey).

84. How those funds will be used is considered below in part XIII.

provides to customers does not give customers any meaningful level of detail. RCC does currently have a map of its coverage in greater detail, but it does not provide this map to customers, nor does it post that map at retail sites. Tr. 8/2/04 at 59-63 (Kohler).

87. RCC has committed here to comply with the consumer-protection standards established by the Board in Docket No. 5903 (by its Order of 7/2/99), but with modifications to adopt the standards to wireless service. RCC worked with the Department to establish how the requirements of the Order in Docket 5903 must be altered to apply to a CMRS carrier, but RCC has not sought a waiver of portions of the rules it considers inappropriate to wireless. Tr. 8/2/04 at 75, 92-95 (Kohler).

88. RCC does not file the service quality reports required of local exchange carriers by Docket 5903. Those reports include "metrics" that arose from a stipulation between the incumbent phone companies and the Department. The Department does not expect RCC to file reports pursuant to Docket 5903. Tr. 8/3/04 at 72 (Frankel).

89. When the DPS negotiated the standards in Docket 5903, only wireline carriers participated in the negotiations over the reporting standards. Frankel reb. pf. at 6-7.

90. RCC has committed here to comply with the standards of Board Rules 3.200 and 3.300, with respect to the treatment of customer deposits and disconnections, with certain modifications to adopt the standards to a wireless carrier. Supporting Memo at 13-14, 22-23; Kohler reb. pf. at 18-19, 28; *see* Frankel pf. at 7-9; Frankel reb. pf. at 5-7.

91. RCC has committed to accept each of the preceding consumer-protection standards as conditions to its designation as an ETC in this docket. Kohler reb. pf. at 18-19, 28; Frankel pf. at 7-9.

Discussion

RCC has made numerous quality-related commitments here, some amounting to the renewal of promises made in Docket No. 5918. These commitments enhance the public benefit wherever RCC has a useable signal, and they weigh in favor of RCC's designation.

The Department recommends that these commitments become conditions of RCC's ETC

designation in order to provide significant incentive for the company to meet these obligations.⁸⁵ We agree.

RCC agrees to reduce call blockage, and it again accepts the conditions on call blockage and coverage that it accepted in Docket 5918. RCC also agrees to use a portion of Federal support to reduce the frequency of blocked calls. RCC agreed to file a report with the Board and the Department tracking its efforts to reduce call blockage and improve service overall. RCC also notifies its subscribers annually, and will continue to do so, that its services do not provide coverage in some areas of the state and that, in areas where coverage is available, call blockage may occur. We agree with all of these steps, except that a quarterly call blocking report is not necessary. With so many other things reported annually, this can also be reported annually.

In this docket, RCC makes a commitment to comply with the CTIA Code. It is noteworthy that RCC complied belatedly with a related requirement from Docket 5918. In the November, 2003 Order in that docket, the Board noted that the recently adopted CTIA Code requires that a wireless carrier make a coverage map available to persons seeking service.⁸⁶ Consistent with its earlier notice,⁸⁷ RCC asserts here that it is in compliance with that code.⁸⁸ Yet at the date of hearings, RCC did not offer an adequate coverage map (although it predicted that it would do so by the end of the week during which technical hearings were held).⁸⁹ RCC does not currently provide or post its map at its retail sites, although its web site does have maps.⁹⁰

The Department and RCC agreed in Docket 5918 that RCC would be bound by Docket 5903. They assert here, however, that they had not expected or intended that RCC should be bound by what are known as the "service quality standards" portion of that Order, or their related reporting requirements. Rather, they assert that it was their intent that only the consumer

85. Lackey pf. at 17-18; Frankel pf. at 4, 6, 8,10-12.

86. See tr. 8/2/04 at 59 (Kohler).

87. Letter of Suzanne M. Monte to Clerk of the Board dated December 12, 2003. See RCC Comments of 9/10/04 at 2.

88. Tr. 8/2/04 at 17, 59 (Kohler).

89. Tr. 8/2/04 at 59 (Kohler).

90. Tr. 8/2/04 at 60 (Kohler).

protection standards would apply.

The ITCs argue that "RCC understood that it had agreed in Docket 5918 to comply with all the requirements of the Docket 5903 Order."⁹¹ They point to numerous instances where RCC has asserted that it complies with Docket 5903, or with the "service quality" requirements of Docket 5903.

 It is not in dispute that RCC agreed to something in Docket 5918 that the parties at the time referred generally to that obligation as "service quality." What is in dispute is what those words mean. The disagreement may have semantic roots. In previous dockets, we have used "service quality" to describe both the broad subject of Docket 5903 (which includes consumer protections) as well as a narrower set of reporting requirements (that are independent of consumer protections). In short, as we have used the terms, "service quality" plus "consumer protection" equals "service quality."

The ITCs offer no direct testimony supporting their conclusion; instead they attempt to rely on admissions by RCC. The ITCs assert, for example, that "Ms. Kohler stated that RCC's obligation was subject to certain modifications for wireless carriers, but at no time did Ms. Kohler indicate that RCC did not anticipate being held to the Retail Service Quality Standards of Docket 5903."⁹² The ITC's Counsel examined witness Kohler in detail on this point. Ms. Kohler consistently answered that RCC had agreed to comply only "to the extent that it applies to wireless carriers."⁹³ While some of Ms. Kohler's statements could support the ITC's position, the questions were broad and her answers largely nonresponsive. When read as a whole, the testimony suggests that although RCC believes it is in full compliance with Docket 5903, it has the right to modify those standards to reflect the differences between wireless and wireline service.

We have found nothing in the record that proves the ITCs' assertion. On the contrary, the record evidence supports RCC. As DPS witness Frankel testified, only wireline carriers participated in developing the reporting standards, and those standards still have not been

91. ITC Brief of 9/13/04 at 14.

92. ITC Reply Brief at 8.

93. Tr. 8/2/04 at 74:21, 75:7, 93:1, 93:16, 96:11.

evaluated for their applicability to the wireless context. The DPS did not consider that the retail service quality portion of the Docket 5903 Order would apply to wireless carriers.

There is no record evidence that RCC or any other wireless carrier ever undertook to comply with the wireline-based service quality standards in that Docket. Nor is there any record evidence that RCC or any other wireless carrier was ever challenged, before now, for failure to make "service quality" filings that wireline carriers routinely make.

The ITCs argue that the Board said "in three separate places that RCC should be subject to the "service-quality" or "retail service-quality" standards established in Docket 5903."⁹⁴ The ITCs also quote language from Docket 5903 in which the Board stated that consumer protection standards are subsumed in service quality.⁹⁵ This confirms the semantic confusion, but does not clarify whether RCC was expected to file periodic reports.

Later, in the Docket 5918 Order, the hearing officer said, "[p]ursuant to the Amended Stipulation, RCC will comply with the service quality standards established in Docket 5903, with clarifications set forth in the following three findings."⁹⁶ Each of the following findings deals with consumer protection, rather than service quality.⁹⁷

We are not persuaded that this Board or any of the parties to Docket 5903 or Docket 5918 ever thought that the service quality reporting requirements of Docket 5903 would apply to wireless carriers.

We concur with the DPS's and RCC's recommendation. RCC subjected itself to the broader "service quality" category in Docket 5918, with some qualifications that the parties did not at the time define. We see no evidence before us to indicate that anyone ever thought that RCC was subject to the narrower "service quality" periodic reporting requirements.

In conclusion, RCC's service quality commitments weigh in favor of designation, although the company's failure to comply with the CTIA mapping requirement by the date of

94. *Id.*

95. ITC Brief of 9/13/04 at 14; ITC Supplemental Reply Brief of 9/20/04 at 8.

96. Page 10, paragraph 38,

97. A similar use of the term "service quality" when the context refers to consumer protection occurs on page 44, paragraph 3, and in ordering clause 4c of the Docket 5918 final order.

hearings is a significant offsetting factor. As a condition of ETC designation in this proceeding, RCC should be required to abide by the consumer protection standards embodied in Docket 5903 as appropriately modified in the Amended Stipulation in Docket 5918, but not the service quality reporting standards.

C. Improved Services By Incumbents

Findings

92. Rural areas historically have trailed urban areas in receiving competitive, local exchange service and advanced telecommunications services, and in some rural areas no meaningful choice of local exchange carrier exists. Supporting Memo at 16-17.

93. If RCC is designated and expands its network, some consumers will choose RCC as their principal service. Even where a customer uses RCC's service as an ancillary communications tool, RCC will provide a meaningful choice to subscribers in remote rural areas, which often have only one service provider. Pet. at 3; Kohler pf. at 3; Supporting Memo at 16-17; Lackey pf. at 15.

94. Investment by RCC in network facilities in rural areas will increase competition. This could spur competitive responses from other carriers. Service quality and customer service may improve, new investments in plant may be made, and wider local-calling areas, bundled service offerings and lower prices overall may be introduced. Supporting Memo at 17; Kohler reb. pf. at 12-13; Lackey pf. at 16; tr. 8/3/04 at 56, 59 (Wood).

95. The ITCs have recently sought and obtained a change in Vermont law that will allow them to offer packages that bundle basic exchange service and interstate or non-regulated services. Lackey pf. rebuttal at 10.

Discussion

Promoting competition was the greatest single theme of the 1996 Act.⁹⁸ The Department and RCC predict numerous benefits from an increased RCC presence in areas served by the ITCs. They foresee faster development of advanced communications as carriers vie for a consumer's business. They also anticipate competitive responses in terms of service quality, customer service, local-calling area size, variety of service offerings and lower prices overall. These predictions are repeated frequently in FCC designation cases.

While these predictions are orthodox, they are also vague, unverifiable and probably overstated. They do not predict a specific response by particular carriers within a stated time frame. Rather, they assert general benefits that will appear at an indefinite future time.

Moreover, the predicted benefits seem more an assertion of the benefits of competition in general, or in the past, than a specific prediction of the incremental benefits that will be *added* as the result of designation here. Accordingly, the predictions disregard that the ITCs have already made changes to make their services more attractive to customers.⁹⁹ They also disregard that the ITCs have made extraordinary progress in deploying and marketing advanced services.

If even a small portion of the rosy predictions are correct, however, Vermont customers would receive at least some incremental benefit from induced ITC competitive responses. Therefore, an increased RCC presence resulting from designation would generate an incremental competitive response, and that response would have at least some benefit to consumers in some portions of the ITC's service areas. Because the claims by RCC and the Department are so general, however, we do not attribute great weight to this factor.

98. The Act described itself as "An Act to promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." *See* Pub.L. 104-104.

99. For example, they presuppose that it will be RCC that generates broader service packages than the incumbents, even though the findings show the incumbents have already sought legislation for this precise purpose.

D. Revenue Effects on Incumbents

Findings

96. Some consumers may choose RCC as their principal service, as opposed to confining their use of RCC's service to an ancillary communications tool. Approximately two or three percent of wireless customers typically terminate their landline service, although the percentage is increasing. Supporting Memo at 17; tr. 8/2/04 at 123 (Kohler).

97. Under the current federal support programs, entry of a CETC does not reduce a rural ILEC's support. In some programs, a decline in the incumbent's line counts or a decline in customer revenue can cause federal support to increase. Kohler reb. pf. at 4; tr. 8/3/04 at 24-27 (Wood).

98. Hypothetically, if 50 percent of an ITC's subscribers were to also subscribe to RCC's service, keeping their ILEC service, there would be no federal support effects on the ILEC. Tr. 8/3/04 at 24-26 (Wood); *see also id.* at 119-21 (Nishi).

99. Also hypothetically, if 50 percent of an ITC's subscribers were to subscribe to RCC's service, and all were to drop wireline ILEC service: (a) the amount of high-cost loop support and local-switching support received by the ILEC would stay the same; and (b) the amount of Long Term Support ("LTS") and Interstate Common Line Support ("ICLS") revenue would increase to offset a portion of the lost customer revenues. Tr. 8/3/04 at 24-26 (Wood); *see also id.* at 119-21 (Nishi).

100. A CETC receives high-cost support if it obtains and keeps a high-cost-area customer. Kohler reb. pf. at 5.

101. RCC has no plans to seek state USF support at this time, assuming that high-cost support were available from this fund. Kohler reb. pf. at 24.

102. If RCC is designated in this proceeding, that decision, combined with the Board's previous designation from Docket 5918, would produce an ETC designation for the entire state. RCC therefore is not "cream skimming" Vermont's service areas. Supporting Memo at 16; Kohler pf. at 2; *see* tr. 8/2/04 at 15-18 (Kohler).

103. Some very rural areas within Vermont are contained within RCC's existing ETC Service

Area. Supporting Memo at 16; tr. 8/2/04 at 17 (Kohler).

104. RCC's incremental revenue from this docket will be approximately \$4.0 million, or 0.105 percent of the fund. Supporting Memo at 16; Kohler reb. pf. at 27; tr. 8/2/04 at 10, 142 (Kohler).

105. Vermont ILECs will receive almost \$19 million of federal support in 2004. From 1998 to 2003, universal service support to the nine Independents increased by \$7.2 million, or 73%. Kohler reb. pf. at 6; Lackey reb. pf. at 14.

106. The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") estimated that the USF would grow by approximately \$2 billion as a result of designation of wireless carriers as ETCs, however, that estimate was based on the assumption that all CMRS providers would be designated as CETCs. Nishi pf. at 9; tr. 8/3/04 at 93-94 (Nishi); Wood reb. pf. at 48.

107. Nationally, greater federal support increases have been produced by policy changes that benefit rural ILECs than by granting ETC designation to CMRS carriers. Kohler reb. pf. at 27; Wood reb. pf. at 51; tr. 8/3/04 at 6-7 (Wood); *see* Nishi pf. at 9; tr. 8/3/04 at 90 (Nishi).

108. Wireless carriers will pay approximately \$2 billion into the federal high-cost fund in 2004. Tr. 8/3/04 at 95-96 (Nishi).

Discussion

RCC's designation, and the subsequent expansion of wireless service, certainly will have at least some effect on ILEC revenues. We consider below first the effect on customer and access revenues, then the effect on federal support revenues.

The record shows that a small but growing percentage of customers simply drop their wireline service. Other customers keep both services, but decrease their wireline toll usage, thereby affecting access and interconnection revenues. All of this could affect the ITCs adversely. Even absent other events, this could make it more difficult for the ITCs to maintain service at comparable rates.

Decline in customer and access revenue must be a major concern of a utility commission in a rural state. Even using the "forward-looking" assumption of a newly installed efficient network, the average cost of providing telephone service in some areas of Vermont is in excess

of \$100 per line per month.¹⁰⁰ It is often said that competition drives out implicit subsidies. If so, the rates in these rural areas are headed upwards, and the arrival of wireless could be a significant contributing factor. If a substantial number of customers adopt wireless service as a substitute, the number of remaining wireline customers could in some cases be too small to maintain service without either very high rates or very large explicit subsidies.¹⁰¹ This could accelerate the need for an explicit state universal service program. Vermont has not yet perceived a need for a state universal service fund, even though ten years ago the legislature anticipated such a fund might be needed soon.¹⁰²

Granting RCC's petition here could also affect the ITCs' federal universal service support. The facts were explored in detail at technical hearings, and they led to unexpectedly sanguine conclusions. An ITC's federal support would not decline merely because RCC would sell wireless service to an ITC customer. Moreover, even if that customer then ceases subscribing to wireline service, some kinds of federal support remain invariant and other kinds actually increase to replace some of the lost customer revenues. In short, the immediate effects of increased competition are either null or, in a "worst case," increase ITC support.

The ITCs foresee harm through systemic change. They suggest that designating RCC here would increase the risk of catastrophic future failure of universal service support programs or, at the very minimum, significant changes to federal rules about how support is calculated.

The ITCs certainly have good reason to worry about the overall health of the universal service system; they rely heavily upon it. But if the federal universal service program is threatened by its own size, there are many possible culprits. Support paid to wireless carriers

100. These cost estimates were produced for rural exchange areas served by Verizon. Exchange areas served by the ITCs are similar in many ways.

101. The DPS argued in its comments on the Proposed Decision that the Independents have the ability to respond to wireless competition by offering "packages" that bundle basic exchange service and interstate or non-regulated services. This is true, and it may alter the number of customers who would leave the wireline network or use wireless as a cheaper alternative. The argument, however, relates only to the speed of a transition, not to its ultimate effects; it does not address the underlying problem of supporting a wireline service with fewer remaining customers and less usage.

102. *See* 30 V.S.A. § 715(a) (Legislature intends that state fund be used as a means of "keeping basic telecommunications service affordable in all parts of this state.")

certainly has grown dramatically, but schools and libraries also have drawn heavily from the federal funds for many years. Moreover, the FCC has significantly expanded the size of the federal fund by using universal service as a mechanism to finance interstate access reform, such as through the creation of the "Interstate Access Support" and "Interstate Common Lines Support" ("ICLS") programs. Additionally, as RCC showed, rural incumbent carriers have been able to substantially increase their own draw on the fund, partly as a result of 2001 reforms to existing programs and partly through the addition of the costly new ICLS program.

There is no evidence that the federal universal service fund faces imminent failure. Moreover, the designation of RCC in Vermont will have a *de minimis* effect on that national fund. RCC's designation will increase the federal universal service fund by slightly more than one tenth of a percent. This in itself is highly unlikely to alter the future course of the national fund.

The ITC's best argument is that the fund may be in jeopardy if Vermont *and other states* designate too many wireless carriers. In that event, the FCC may be tempted to make some changes to funding rules. The ITCs are correct that there is widespread concern about the size of the federal universal service fund. But changes to the funding rules are still speculative at this time.

Even assuming a decision to reduce the total amount of federal support, it is far from clear that the reductions would be felt by the ITC community. For example, the FCC faces strong Congressional concerns about changes to ILEC support, and even the Joint Board's recent recommendations included statements that rural companies be held harmless from support reductions.¹⁰³

Finally, even if subsequent changes to federal law were to cause problems for the ITCs,¹⁰⁴ the Board may still have remedies. For example, it is possible that the FCC might adopt certain measures that disadvantage incumbent LECs after a second ETC has been designated in their areas. Even then, there is a possibility that the Board could "vacate" the

103. Wood reb. pf. at 29-30.

104. One such scenario would be the adoption of a primary line cap upon designation of a second ETC in a service area without any hold harmless support. *See* tr. 8/3/04 at 119-121 (Nishi).

original designation, retroactively voiding it as though it had never existed.¹⁰⁵

For these reasons we conclude that the possibility of a future change to federal universal service support rules is too speculative to be considered here in the public interest weighing test. These national issues are best addressed by the FCC and the Federal State Joint Board on Universal service.

In conclusion, designation of RCC seems likely to make it more difficult for the ITCs to continue to provide service without relying on rate increases or enactment of a state universal service fund. This is likely to arise primarily due to erosion of customer and access revenue, not federal support. Thus the financial effects on the ITCs counts as a negative factor in evaluating the overall public interest.

E. Secondary Economic Benefits

Findings

109. Designation and the resultant investment will cause RCC to spend money locally to construct the additional facilities and to maintain its network. Those expenditures will generate employment, income, tax receipts, and an increased property tax base, all of which will promote the general welfare of Vermont's economy. Lackey pf. at 16.

110. Additional wireless deployment will also provide an economic-development benefit because the quality of telecommunications networks is a critical factor for businesses deciding whether to locate or remain in a rural area. Business and community leaders, as well as ski and golf resorts, often say that they need high-quality networks to permit contractors, farmers and other businesses that rely on mobile communications to conduct their businesses efficiently. Kohler reb. pf. at 16.

Discussion

The record shows that federal support received by RCC and spent in the local community will have some flow-through effects. Although the chain of causation is long, designating RCC will lead to increased spending in Vermont, and that will have some beneficial economic effects

105. Tr. 8/3/04 at 171-172 (Meredith).

for the state.

F. Public Interest

Designation of RCC in the service territories of Vermont's ITCs would serve the public interest. The benefits that will flow from such a designation are in excess of any harm that may be caused.

Assuming that RCC honors its commitments, the chief benefit is the availability of additional federal support to expand wireless coverage. This is augmented by RCC's service quality commitments and by secondary economic benefits from the associated capital investment. Some beneficial effect on the incumbents' service quality may also occur as a competitive response.

The chief foreseeable harm is a decline in customer revenues for the ILECs, who stand to lose some lines and some network usage. Surprisingly, federal support will not decline (unless there are significant changes in federal policy). To the contrary, federal support programs will partially offset customer revenue reductions.

The likely long-term financial effects on the ITCs counts as a significant negative factor. However, we agree with RCC's witness Don Wood who counseled that it is probably better in the short term to increase federal support, thereby making wireless service more available to rural subscribers. In the long-run, this Board (and the FCC) may face more difficult issues of whether it is feasible to continue using universal service payments as a principal tool for supporting two or more carriers.¹⁰⁶ At that time, the Board may not be able to return the state precisely to the *status quo ante*, but it will still have tools to ensure that rural areas retain telephone service at reasonable rates.

The ITC's raise an additional argument regarding competitive equality.¹⁰⁷ They maintain that RCC seeks competitive equality in support, but the two kinds of service providers have numerous fundamental differences. These differences affect which companies are rate-regulated,

106. Wood reb. pf. at 53-57.

107. See, e.g., ITCs Brief at 18.

which companies have meaningful carrier-of-last-resort responsibilities, and which companies have equal access responsibilities. These differences are real, and they are financially significant; but they are not relevant. Essentially, the ITCs argue that it is against the public interest to give equal support to RCC because RCC does not share all of the ITCs' burdens. This argument, while emotionally appealing, has no legal merit.

Overall, designating RCC as an ETC is consistent with the public interest. We reach this conclusion assuming that the Board will impose the conditions described in Appendix A, hereto.

XI. NUMBER OF SERVICE AREAS

A competitive ETC (or "CETC")'s ETC Service Area is the area defined by a state commission.¹⁰⁸ If the Board grants designation to RCC, it could establish one, two, or ten service areas.

The ITCs propose ten service areas, one new area for each of the nine ITCs. The ITCs argue that federal support funds generated in a rural ITC's study area should, more or less, be used in that study area, and not elsewhere.¹⁰⁹ With ten service areas, the ITCs argue that the Board can ensure that federal "support from one area is rationally related to [ensure] a benefit to the customers on which that support is based."¹¹⁰ Also, the ITCs argue that a "fact-specific" analysis requires consideration of each ITC study area separately.¹¹¹ In the end, the ITCs argue that "the plain meaning of the applicable federal statute and federal regulations concerning the definition of service areas served by rural telephone companies" requires a single service area.¹¹²

The DPS is willing to accept either one or two service areas. RCC would prefer a single service area.¹¹³

 We establish a single service area. While the ITCs raise legitimate issues about the need

108. 47 C.F.R. § 54.207(a). In areas served by rural telephone companies, the local-exchange carrier's "service area" is its study area unless and until the FCC and the states establish a different definition of service area, taking into account the recommendations of the Federal-State Joint Board on Universal Service. 47 C.F.R. § 54.207(b).

109. Tr. 8/3/04 at 124 (Nishi); RCC Brief at 21.

110. ITC Brief at 22.

111. *Id.*

112. ITC Comments of 9/13/04 at 21-22.

113. RCC Brief at 43; Kohler pf. at 2; tr. 8/2/04 at 15-18, 131 (Kohler).

for uniform deployment of wireless facilities into rural areas, their proposed solution is not required by the law, and it overlooks numerous technological, economic and administrative difficulties.

The ITCs argue that the federal statute supports their view. Federal law defines "service area" to mean:

a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. *In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.*¹¹⁴

The ITCs argue that the italicized language, relating to rural telephone companies, requires that RCC's service area be coterminous with the ITC's own "study areas."

The ITCs correctly identify the relevant statutory and regulatory sections in their analysis, but they have failed to properly interpret that language. A service area is a geographic area that is established by a state commission for the purpose of determining universal service support and obligations.¹¹⁵ As a general rule, the Board has broad discretion to define a service area for any carrier seeking ETC designation, including both incumbent and competitive carriers.

The ITCs' argument focuses on the exception to this general rule, italicized above. We conclude that the exception applies only when a rural telephone company seeks ETC designation for itself. Congress may have had reasons to prevent state commissions from breaking up or aggregating existing rural ILEC "study areas," which traditionally were the units for which universal service support was paid. We see no reason to believe, however, that this language applies to a competitive ETC. On the contrary, a CETC like RCC doesn't even have a "study area" because it isn't an incumbent and has never received support that traditionally was tied to study areas. Therefore, we conclude that the italicized language above clearly *does not* apply to a case, such as this one, where a competitive carrier seeks ETC designation. Therefore the general

114. 47 U.S.C. § 214(e)(5) (emphasis added).

115. - 47 U.S.C. § 214(e)5 and 47 C.F.R. § 54.207(a).

rule applies, and this Board has broad discretion to assign a service area.

The ITC's arguments also create numerous policy difficulties. The effect of the ITC's recommendation is that where support is based upon facts measured at a certain place, support must also be spent in that place.¹¹⁶ We reject this argument. Congress might have done this if federal support were actually *collected* from customers in the ITC areas where it is distributed. Support, however, is collected nationally from all industry sectors, including the wireless industry.

Technologically, the ITCs recommendation would produce wasteful expenditures, because it fails to recognize that wireless networks serve at a distance. Plant located outside an ITC's existing service area can still provide service within that area, and vice-versa.¹¹⁷ The point is particularly significant in Vermont because some of the ITCs serve only a single exchange area or "wire center" that only is a few miles across. For this reason, ten service areas, each with their own accounting, could produce substantial duplication of facilities and ultimately an inefficient wireless network.¹¹⁸

Nor would ten service areas make economic sense. Wire center boundaries were defined long ago based on two things: the technical limits of wireline technology; and the economics of wireline technology. Neither factor today has much bearing on where wireless investments are needed in Vermont. As RCC's witness Kohler put it, wire center boundaries "don't have any meaning in [the wireless] business."¹¹⁹ Moreover, if there were ten service areas, RCC could not invest any support in a high-cost area where it had no customers, because there would be no support generated in that area.

Ten study areas would be likely to hamper timely and effective investment. Federal support would build up in ten separate bank accounts, and could not be transferred between

116. RCC's support for a customer will depend on the location where that customer is billed and on the average characteristics of the incumbent telephone company at that location. A customer in a high-cost ILEC area will produce more support for RCC than a customer in a low-cost ILEC area.

117. *See* tr. 8/2/04 at 19 (Kohler) (radio service "does not understand wireline boundaries, and so oftentimes the best cell site to serve Topsham community is not necessarily in Topsham.").

118. *See, e.g.* tr. 8/3/04 at 115-116 (Nishi).

119. Tr. 8/2/04 at 16 (Kohler).

accounts to meet more pressing needs elsewhere. One area could get a new cell site only when its capital reserve grew sufficiently, possibly a matter of years or even decades. In the interim, large amounts of support would be left unused, providing no benefit to the state. Under the best of circumstances this would delay construction in many areas. At worst, some areas might never get service if they generate little federal support.¹²⁰ We conclude that a single service area will more promptly result in meeting the needs of the state as a whole.

Establishing ten service areas would essentially create significant administrative burdens. It would require RCC to keep ten sets of accounts on universal service revenue and capital expenditures. This would obviously be a significant burden, but in the end accuracy may be unattainable, regardless of the effort expended. Many of RCC's facilities, such as backhaul facilities and switches, are network facilities and are not properly attributable to one cell site, much less to one wireline exchange.

It is a closer question whether the Board should establish one or two service areas, one for Verizon and the other for the ITCs taken as a whole. This would create some assurance that ITC areas receive, at least roughly, a share of RCC's investment for network expansion. However, even this choice presents some problems. It suggests, inaccurately, that facilities built in Verizon's territory serve only customers with addresses in Verizon's territory, and vice-versa. The harm is less than with ten service areas, but they have the same nature. Moreover, since there is more money per capita available in the ITC areas, it would produce a wireless network that favors the areas served by the ITCs. We see no valid public policy reason to do this.

We are also persuaded by the transactional nature of RCC's duties to prospective customers. The ITCs' suggestions are motivated by a laudable desire to get deployment of cell sites into rural areas. But RCC is committed here to – and its continued designation depends upon – effectively responding to reasonable consumer requests for service. A single service area

120. In their Reply Brief filed on 9/13/04, the ITCs asserted that support could be "allocating the costs of that cell site proportionately among the rural service areas in accordance with the respective benefit that each area would receive." Brief of 9/13/04 at 23. However, this is only a partial response because it assumes that Vermont ITC study areas are adjacent and will share a benefit from a single facility. This is only true in limited cases. More common would be a situation, which the ITCs apparently abhor, in which the benefit of a new facility would be shared between an ITC study area and the area served by Verizon Vermont.

would be coterminous with its FCC license boundaries, allowing RCC to think about its service to the state as a single entity. This should produce a more reliable system for ensuring that rural customers who want cell phones will be able to get them.

We conclude as a matter of policy that a single service area is the best approach. Its greatest advantage is that it provides RCC with great flexibility in planning to meet the needs of the state as a whole and to make capital available for areas with the greatest need.

XII. DURATION OF DESIGNATION

In Docket No. 5918, the Board designated RCC as an ETC for areas served by Verizon, which is Vermont's only nonrural incumbent carrier. That designation expires on December 31, 2005. At that time, the Board will consider whether to extend the designation, and it will have a chance to evaluate RCC's progress in meeting the conditions imposed in the 5918 Order.

The conditions recommended here are broadly similar to those imposed in Docket 5918. This suggests coincident expiration of the two ETC designations. Given that wireless service has little regard for wireline exchange area boundaries, a single proceeding would be more efficient for the Board and would also allow RCC to focus its efforts on a single, effective system, rather than two similar subsystems.

Designation for a fixed duration will require a proceeding in 2005 if designation is to continue. This will have several benefits. It will allow the Board to test RCC's actions to meet the many commitments it has made here. It will allow the Board to determine the degree to which designation has produced the benefits anticipated in the preceding public interest analysis. In conjunction with data that should be available at that time on actual signal coverage, a 2005 review will allow the Board to determine whether continued designation of the entire state is justified.

The ITCs also point out that there are significant uncertainties in federal law at this time. The Joint Board has suggested a number of fundamental changes to the ETC designation process,

and the FCC may be considering other changes that would limit support to the ITCs.¹²¹ The ITCs maintain that this should cause the Board to delay a decision here. While we disagree with that recommendation, the ITCs have identified some potential risks that can be minimized by granting designation for a relatively short period. The FCC is expected to clarify at least some of these issues by February of 2005.¹²² Before the first designation expires, the FCC may have removed some of the present uncertainties.

Accordingly, the designation of RCC as an ETC in service areas served by ITCs will expire on December 31, 2005, at the same time as RCC's existing designation under Docket 5918. RCC does not object.¹²³

XIII. CONDITIONS AFFECTING SERVICE COVERAGE

Findings

111. If the Board failed in a given year to make a certification of an ETC for continued support, the ETC could still self-certify and would continue to receive ICLS support. This is true of incumbent carriers, who receive ICLS support based on their own costs, and competitive carriers, whose support is equal on a per-line basis to the local incumbent. Tr. 8/3/04 at 149 (Meredith).

112. ICLS support accounts for approximately 50%, or approximately two million dollars, of the 2005 Federal support RCC is expected to receive. Tr. 8/3/04 at 149 (Meredith).

Discussion

This section proposes some conditions to be imposed on RCC. These conditions are related to the current legal consequences of designation, some of which may not be revocable. They also are related to the importance of RCC's commitments to expand the wireless network in the state.

Once RCC is "designated" as an ETC, FCC rules do not provide for withdrawal of ETC

121. For example, the ITCs point to the "possibility of per-line caps, primary line restrictions and other mechanisms designed to curb the growth of the Universal Service Fund."

122. Nishi pf. at 5.

123. RCC Brief at 37.

designation. However, all parties agreed that the Board can revoke RCC's designation for non-compliance.¹²⁴

States must "certify" each ETC annually in order for that ETC to receive support. The ITCs point out that there are significant differences between a state commission's failure to grant annual "certification" and the original absence of an ETC "designation." One difference regards ICLS support, which is intended to cover costs that are separated to the interstate jurisdiction. Because designated ETCs are permitted to "self-certify" for ICLS, benefits are paid even to an ETC that has not received state certification. In RCC's case, this will amount to approximately half of its expected support. Accordingly, the ITCs argue that the Board should not place undue reliance on annual certifications as a means of ensuring that RCC meets its commitments here. We agree with the ITCs' conclusion, but we also conclude that the risk can be managed by imposing meaningful conditions that reduce the future risk of decertification.

As noted in Section X above, the principal benefit of designation is the prospect of expanded cell telephone usage in Vermont. But to deliver on this promise, RCC must do some things right.

First, it must apply federal support to the promised purposes, and it must not use that money for competing goals such as the GSM upgrade project¹²⁵ and the need to improve E-911 locational abilities.¹²⁶ There is significant uncertainty in RCC's construction plans, beginning in January of 2005.¹²⁷ While more detailed plans may not be required or even practicable, their absence leaves RCC's future use of federal support somewhat undefined. Moreover, although RCC will receive an additional \$4 million per year as a result of designation,¹²⁸ it has

124. E.g., tr. 8/2/04 at 126-27, 141 (Kohler), 198-99 (Lackey); tr. 8/3/04 at 15-16 (Wood), 152 (Meredith). It is also possible that the Board could "vacate" its original Order, making it retroactively void, although the existence of that authority and its effects are in dispute. Meredith pf. at 8. Even if retroactive vacation is possible, its effect is unclear. The ITCs assert that if the original designation were vacated, RCC would have to repay all universal service support received to date. This, they assert, would make vacation of the Order very unlikely. ITC Brief of 9/13/04 at 24-25.

125. See finding 71, above.

126. See finding 30, above.

127. See findings 70-75, above.

128. See finding 66, above.

conditionally committed to build only four more cell sites. The approximate cost of those four sites should be approximately \$1 million,¹²⁹ or about one-fourth of RCC's expected incremental federal support revenue.

In addition, discussed above, RCC must develop appropriate sales procedures and training for dealing with customer service requests. Without that, customers may simply be turned away whenever serving them might be somewhat inconvenient or expensive for RCC.

All of this suggests the need for some conditions that will ensure continuing actual improvement in RCC's effective coverage of its service area. We impose several conditions.

First, the Department has recommended that RCC be required to inform customers at the time of sale that they can ask for service extending measures if they have a weak signal.¹³⁰ We concur. The record is unclear about how helpful the RCC sales force actually is at explaining that a potential customer who cannot obtain satisfactory service using standard equipment has other options available.¹³¹ While RCC made a similar commitment in Docket 5918, RCC does not seem to have yet adopted a clear policy for its retail employees, and there apparently has been little or no training. Strong policies and practice are essential if RCC is actually to offer customers something more than a take-it-or-leave-it approach to standard equipment service.

Second, we agree with the Department that RCC should continue to file annual reports, originally required in Docket 5918,¹³² describing federal support amounts and capital construction spending ("Support and Construction Reports"). These reports, due on or before September 1, facilitate annual certifications required each year on or before October 1 under Section 254(e) of the Act, that RCC will use federal support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."¹³³

Absent detailed advance planning, the Support and Construction Report is also the chief

129. The average cost of a new cell site is \$250,000.00. *See* finding 53, above.

130. DPS Brief at 13.

131. *See* finding 55, above.

132. Docket No. 5918, Order of 11/14/03 at 52.

133. *See* 47 U.S.C. § 254(e); 47 C.F.R. § 54.313. Under Docket 6530, the ITCs are required to file two reports per year, but that is a consequence of the fact that these companies are rate regulated in two jurisdictions and are subject to cost separations.

vehicle to ensure that RCC will indeed expand the geographic scope of its service rather than using support designed for high-cost areas to enhance services in more densely populated areas. Without this report, RCC might be be tempted to apply its new federal support to other uses unrelated to the public interest analysis above. RCC recognizes an obligation to demonstrate that every dollar of Federal support is "invested to construct, maintain, and upgrade RCC's facilities." Yet RCC is also installing new GSM equipment that will continue to support voice service but will also support advanced data services. RCC also may have to overbuild its existing areas with more cell towers in order to provide better E-911 locational information. Requiring a recurring report on fund usage will keep RCC better focused on geographic signal expansion.

Third, beginning in 2005, the Support and Construction Report should include an additional section describing the actual extent of RCC's geographic coverage.¹³⁴ As recommended by the Department, this should be based on a compilation of the percentage of Vermont E-911 addresses, by LEC wire center area or by municipality, in which RCC is capable of providing service at the time the report is prepared.¹³⁵

Fourth, beginning in 2005, the Support and Construction Report should include a new section reporting on RCC's experience offering non-standard measures to extend service to customers in Vermont ("service extending measures").¹³⁶ This report should describe the number and location of people in RCC's Vermont service territory who have requested service extending measures, the nature of the measures tried, the number of times that such measures were successful in providing reliable service.¹³⁷

RCC asks for reconsideration of the Board's previous instructions regarding the Support

134. If this condition is adopted, the Department recommends that the Docket 5918 coverage sampling requirements be superceded, as RCC and the Board would have a reliable means of evaluating coverage without the on-site sampling. See ¶ 4.1.1 of Docket 5918, Order of 11/14/03. Lackey pf. at 18.

135. We also concur with the Department that the coverage sampling and reporting required by paragraph 4.1.(1) in the Docket 5918 Order of 11/14/03 should be displaced and the new recommendation substituted for both rural and non-rural areas.

136. The Department recommended that this information be collected and retained, but not that it be reported regularly. Rather, the DPS anticipated reviewing the information as a part of preparing for any redesignation proceedings. Tr. 8/3/04 at 82 (Frankel).

137. The Department believes this will assist in an evaluation of how effective RCC's procedures are in responding to requests for service. Frankel pf. at 11-12.

and Construction Report. In Docket 5918, construction spending explicitly excluded expenditures to comply with existing E-911 obligations and expenditures to comply with number portability requirements. The Hearing Officer's reasoning was that expenditures made primarily to comply with existing obligations and expenditures "arise from sources of law unrelated to universal service."¹³⁸ The Board affirmed, holding that:

expenses incurred as a result of compliance with existing federal and state mandates unrelated to universal service, such as E-911 or LNP implementation, are properly excluded from capital construction spending supported by universal service funds.¹³⁹

RCC has sought reconsideration of the treatment of its E-911 expenditures. First, RCC argues that it has "demonstrated its capability and commitment to extend this service throughout its proposed ETC service area."¹⁴⁰ Second, RCC argues that no similar limitations apply to incumbent LECs, and they may have spent federal support, in part, to support E-911 activities.¹⁴¹

RCC's fundamental legal analysis is accurate. Federal support must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."¹⁴² Those purposes include constructing and operating facilities used to provide the nine supported services to existing customers. There is no federal requirement that federal universal service support be limited solely to geographic expansion of existing service. The incumbent LECs, for example, are under no such obligation, and they are free to use federal support to maintain and operate existing facilities. It would be error to hold that federal law requires RCC to expend all universal service receipts solely for geographic expansion.

At the same time, whether designation is in the public interest is a central issue in this docket. We concluded above that designation is in the public interest, largely because incremental federal revenues will allow RCC to extend geographic coverage into the state's rural

138. Docket No. 5918, Order of 11/14/03 at 36.

139. Docket No. 5918, Order of 11/14/03 at 48.

140. RCC Brief at 10-11.

141. *See* tr. 8/3/04 at 105 (Nishi).

142. *See* 47 U.S.C. § 254(e).

areas. If RCC files a construction report, but that report fails to differentiate between a new urban cell tower that improves E-911 accuracy and a new rural cell tower that expands coverage, a principal advantage of designation could be dissipated.

RCC also maintains that FCC accuracy requirements create incentives for a rural wireless carrier to deploy new cell towers near existing towers (typically found in lower-cost and more urbanized areas) to improve accuracy. Conversely, building new towers in rural areas to extend service, although it is consistent with universal-service goals, can reduce E-911 accuracy.¹⁴³ To offset this incentive, RCC recommends that the capital spending reports be allowed to include expenditures for E-911 equipment. Unfortunately, the facts cut against RCC's position. If there are new incentives for RCC to spend universal service on things other than network expansion, that only *increases* the need to protect network expansion funds.

The DPS has suggested adding a new element to the Support and Construction Report based on actual coverage data. A results-based reporting system can properly reduce reliance on financial reporting systems, which are based on inputs, not outputs. This E-911 spending dispute illustrates the difficulties in input-based analysis.

We clarify our earlier position and recognize that federal universal service support may be used to maintain and operate existing equipment, as well as to meet other federal mandates, including E-911 accuracy. More broadly, we reconsider and withdraw the equation stated in Docket 5918 that RCC has a burden to demonstrate that its construction spending is greater than or equal to the sum of its original construction spending plus its network expansion spending. The parties' arguments regarding E-911 funding have convinced me that precise compliance with this equation creates more problems than it solves.

We refrain here from attempting to explain to RCC what it must show in 2005 to have its designation extended. Of course, the same two fundamental facts will still be in issue: federal support; and construction spending. But the analysis should take into account a large number of factors, many of which cannot be adequately predicted today. The conditions set out in Attachment A reflect this change.

143. Tr. 8/3/04 at 21-22 (Wood).

XIV. CONCLUSION

Based on the preceding findings and discussion, RCC will provide the services that are supported by the federal universal service support mechanisms, on a non-discriminatory basis, using its own facilities or a combination of its own facilities and resale of another carrier's services, and it will advertise the availability of such services. Designating RCC as an ETC is in the public interest. RCC has adequate financial resources to serve the area, that it has the ability to remain functional in emergencies, and that it is likely to meet the state's consumer protection requirements. RCC's service area should be the entire state of Vermont. The designation should sunset at the end of 2005, and be renewable.

The designation should be subject to the conditions described in Appendix A, which are necessary to protect the public interest.

XV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Board hereby designates RCC as an ETC under 47 U.S.C. § 214(e), with a Service Area covering the entire state, including areas served by rural telephone companies.
2. Before October 1, 2004, the Board will certify to the Federal Communications Commission that RCC complies with § 214(e) and is eligible for federal universal service support in 2005.
3. Designation expires December 31, 2005.
4. Designation is subject to the conditions described in Attachment A.
5. This Board retains continuing jurisdiction to review, modify, or revoke its designation of RCC as an ETC or to alter or amend the service area in all manners allowed to it under state and federal law, which may include dividing the service territory. This jurisdiction may be exercised on petition or at the discretion of the Board, in circumstances including but not limited to FCC alteration of the list of requirements for ETCs. The Board also reserves the right to alter service areas, including by dividing them or assigning to a rural carrier a service area other than

its current study area.

6. Redesignation.

a. On or before October 1, 2005, RCC may file with the Board, with a copy to the Department, a certification stating that it wishes to extend its designation beyond December 31, 2005. The certification shall also:

(1) state that RCC continues to satisfy all of the requirements set forth in federal law for designation as an ETC (the "ETC Requirements"), including 47 C.F.R. § 54.101(a) as it may be amended from time to time;

(2) include detailed evidence regarding the scope of RCC's effective coverage. RCC shall provide a compilation of the percentage of Vermont E-911 addresses, by LEC wire center area or by municipality, in which RCC is capable of providing service at the time the report is prepared

b. On or before November 15, 2005, any party to this proceeding¹⁴⁴ may object, stating that RCC does not continue to satisfy one or more of the ETC Requirements or has failed to comply with a condition of this Order ("Notice of Objection").

c. If no Notice of Objection is filed, the Board shall issue a new designation Order extending the designation for an additional period.

d. If a Notice of Objection is filed, the Board shall give RCC an opportunity for hearing. RCC will have the burden of demonstrating that it continues to satisfy the applicable ETC Requirements listed in the Notice of Objection. If it carries that burden, the Board may then renew the contested designation for an additional period.

e. During the pendency of any proceedings under this paragraph, the current designation shall be extended without further notice or order.

7. Non-Compliance. The DPS or the Board may at any time provide to RCC a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. In that event, RCC shall within 30 days certify in writing to the Board, and deliver a copy to the DPS,

144. The Hearing Officer had previously offered the right to object only to the DPS. We agree with the ITCs that they, too, should be allowed to demonstrate noncompliance in future proceedings.

that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance ("Claim of Continued Compliance"). The Board may revoke RCC's designation as an ETC or order such other remedies as the Board deems appropriate if either of the following occurs:

- a. RCC fails to file a Claim of Continued Compliance; or
- b. The Board determines, after opportunity for hearing, that RCC has not demonstrated that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance.

During the pendency of any proceedings under this paragraph, the current designation Order shall remain in effect. The DPS and RCC may at any time informally resolve or attempt to resolve compliance issues.

8. This Order is intended to restate and therefore supplant all procedures and requirements imposed in Docket 5918.

9. Unless there are pending motions, the Clerk of the Board shall close this docket on December 31, 2004.

Dated at Montpelier, Vermont, this 29th day of September, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 29, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Attachment A - Designation Conditions

1. **Offering Service.** In order to effectively offer USF-required services throughout Vermont:
 - a. For any customer whom RCC is unable to serve at the customer's Preferred Usage Location, RCC shall continue to offer the right to cancel service with a refund within 30 days following purchase. Refunds shall include charges that are billed in advance, including the activation fee, the monthly access charge, and the price of the phone (if any), feature charges, and taxes and surcharges. Refunds shall not apply to third-party charges, such as per-minute roaming charges not included in the customer's plan.
 - b. RCC shall inform customers at the time of sale that they can ask for service-extending measures if they have a signal at their billing address or at a different address specified by the customer that represents the customer's home or work location ("Preferred Usage Location") that is not reliably useful using standard equipment.
 - c. RCC shall develop a protocol for making reasonable responses to requests for service-extending measures. The protocol shall discuss measures to be offered to customers, including customer-specific enhancements (such as external antenna kits and more powerful telephones) and system enhancements (such as adjusting RCC's antennas, using resale of wireline service, and constructing new facilities). The protocol may describe the order in which various measures will be tried. Within 60 days of this Order, RCC shall file that protocol with the DPS and the Board.
 - d. RCC shall design and implement a training program for its sales staff to ensure compliance with this paragraph.
2. **Emergency Services.** Not later than September 1, 2005, RCC shall request a waiver of the FCC rule requiring 100 percent accuracy coverage in Phase II of E-911 or take other action necessary to comply with all related FCC requirements.
3. **Blocked Calls.** As necessary, RCC will use a portion of the Federal support it receives to maintain a reasonably low frequency of blocked calls by users of the services for which RCC receives federal support. RCC shall report annually to the Board and Department beginning February 1, 2005, for each calendar month of the preceding year: (a) the number of RCC cell

sites serving Vermont that experience call blockage rates in excess of 2% during that month; (b) the number of RCC cell sites serving Vermont for which call blockage rates have exceeded 2% for six or more consecutive months; and, (c) the aggregate proportion of blocked calls at all RCC sites serving Vermont at all hours during that month. The call blockage rate will be calculated as the total blocked call attempts divided by the total call attempts made at each cell site. The call blockage rate for each site will be based on the respective one-hour "floating busy hour" intervals of each site, which may vary among cell sites. The "floating busy hour" is defined as the busiest hour over a 24-hour period. RCC shall, upon request, provide information on the call blockage performance of individual, specific cell sites to the Board or Department.¹⁴⁵

4. RCC will use a portion of the Federal support it receives to reduce the frequency of blocked calls by users of the services for which RCC receives Federal support. RCC shall comply with the call blockage conditions and metrics established in the Amended Stipulation and Board Order from Docket 5918.

5. RCC shall report to the Board, in writing, on or before September 1, 2005, and yearly thereafter while it carries this designation, the support received and the uses for which its high cost support has been expended with particular dollar amounts attached to each.

6. Consumer Protection. RCC shall comply with the Board's Order in Docket 5903, Order of 7/2/99, with the following modifications:

- a. The service quality requirements of that docket, and associated reporting requirements, do not apply to wireless carriers.
- b. RCC does not publish a directory of its customers' telephone numbers. Should RCC provide such services in the future, it will comply with Docket 5903's requirements.
- c. RCC will provide a 40 percent discount to persons who are deaf, speech impaired or hearing impaired.
- d. RCC will provide discounts to persons who are blind or visually impaired.
- e. Docket 5903 requires that customers cannot be disconnected for nonpayment

145. The text of this condition was provided by the DPS in comments filed on 9/15/04 at the request of the Hearing Officer.

of charges for toll and optional service. To implement this requirement, RCC will define the "local portion" of a customer's bill as the amount of \$25.00 plus any accumulated local airtime minutes. The \$25.00 charge will be the basis for the calculation of the amount required from a delinquent customer if the customer intends to keep his or her basic service. RCC may restrict these customers' basic service to a plan that prohibits roaming and toll calling. RCC may require a larger payment from a customer who insists on a plan that includes roaming and toll services.

f. RCC will continue investigating the ability of its billing systems to apply customer payments first to the local service portion of a customer's bill.

7. Deposits. RCC shall comply with the provisions of PSB Rule 3.200, "Ratepayer deposits for gas, electric, water, telephone and cable service," with the following modifications:

a. Deposits will be refunded on the customer's anniversary date along with accrued interest, except for customers who were disconnected and customers who received more than three disconnect notices.

b. RCC will not require a deposit greater than two-twelfths of average annual revenue, an amount currently equal to \$110.00. RCC also will restrict some customers with poor credit ratings to a plan without toll or roaming capability, but such customers will still be able to make toll calls with prepaid calling cards.

8. Disconnections. RCC shall comply with the provisions of PSB Rule 3.300, "Disconnection of residential gas, electric, telephone and water service," with the following modifications:

a. Interception of outgoing calls is the method by which this wireless carrier "disconnects" service. Disconnection will be limited to persons who have received disconnection notices and in accordance with the rule.

b. Because RCC will continue to provide customer service 24 hours per day, seven days per week, it can restore service at any time. Therefore RCC is exempt from the time of day restrictions ("disconnection window") found in Rule 3.306. When a disconnected RCC customer calls RCC outside the disconnection window set forth in Rule 3.300, RCC will immediately restore service without payment, and RCC will inform the customer of the availability of assistance from the Department of Public Service in

resolving the complaint. Service will continue at least until the close of the next business day.

9. CTIA Code. RCC shall comply with the CTIA Consumer Code for Wireless Service.

a. Within 30 days of the issuance of this Order, RCC shall develop and submit to the Department and Board for review and Board approval, a plan for training staff, monitoring compliance and periodic reporting to the Board and Department concerning its compliance with the CTIA Consumer Code for Wireless Service.

b. RCC shall promptly provide at its retail outlets coverage maps sufficient to provide customers with detailed information about RCC's signal coverage.

10. Lifeline and Link-Up. RCC shall offer a Basic Service Package to customers eligible for Lifeline benefits.

11. E-911. By September 1, 2005, RCC shall either comply with the FCC's Phase II E-911 locational accuracy requirements or seek a waiver.

12. Customer Notices. RCC shall give subscribers the following notices in writing:

a. Annually, RCC shall notify subscribers that: (1) RCC's wireless-telecommunications services do not provide coverage in some areas of the state; and (2) in areas where coverage is available, subscribers may experience blockage such that calls may not immediately be completed.

b. Annually in the first quarter of the year, RCC shall notify subscribers of the total amount of USF funds received in the previous year as a result of its designation as an ETC and the approximate per-subscriber per-month benefit that support provides.

c. Annually in January or February, RCC shall notify subscribers about Lifeline availability and how to apply. The information shall be provided through bill stuffers.

13. Advertising. RCC shall advertise the following:

a. RCC shall continue to advertise the availability of its services throughout its licensed service area by media of general distribution, which may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone-directory advertising.

b. RCC shall continue to advertise the availability of Lifeline and Link-up

benefits by including mention of such benefits in its advertising and by reaching out to community health, welfare and employment offices.

14. Studies and Records. RCC shall:

a. Compile and update periodically an analysis of its geographic coverage, including the percentage of Vermont E-911 addresses, by LEC wire center area or by municipality, in which RCC is capable of providing service. This requirement supercedes the coverage sampling and reporting requirement imposed in Docket 5918. If RCC is unable to obtain information from the Vermont Enhanced 911 program, it shall utilize its own household data and other public data sources. RCC shall make a compliance filing within 60 days of the date of this Order describing how it intends to comply with this condition.

b. Within 30 days of the issuance of this Order, RCC shall develop and implement a system to track the number of consumers who inquire about service-extending options, the number of customers who request such equipment, and the number of times the company provides or installs such equipment. Such information shall be retained for a period not less than five years from the service request date.

15. Support and Construction Reports. To facilitate the annual certifications required under section 254(e) of the Act, each year on or before September 1, RCC shall file a Support and Construction Report.

a. The report shall state and explain whether support has been and will continue to be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

b. The report shall summarize all federal universal service support received between July 1 of the preceding year and June 30 of the current year.

c. The report shall identify the principal purposes of major capital expenditures made between July 1 of the preceding year and June 30 of the current year, and shall particularly explain: the extent to which those expenditures were in response to independent FCC obligations, including number portability requirements and E-911 accuracy requirements; and whether the expenditure facilitated enhanced high-speed data

services in existing service areas. The report shall also describe the location, by town, of any new cell towers or repeaters.

d. The report shall also describe RCC's efforts to reduce call blockage and improve service overall.

e. This report should describe the number and location of people in RCC's Vermont service territory who have requested service-extending measures, and for each person the nature of the measures tried and the number of times that such measures were successful in providing reliable service.

f. The report shall also describe the percentage of E-911 addresses, by Vermont LEC wire center area or by municipality, in which RCC is capable of providing service.

g. Until RCC has fully complied with the FCC's E-911 Phase II locational requirements, the report shall also describe the outlook for fully implementing those requirements.

16. Subsequent Rules. The preceding conditions may be modified by subsequent adopted and generally applicable administrative rule.