Decision No. C03-0243

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-276T

IN THE MATTER OF THE APPLICATION OF WIGGINS TELEPHONE ASSOCIATION FOR APPROVAL OF ITS DISAGGREGATION PLAN.

DECISION DENYING EXCEPTIONS

Mailed Date: March 5, 2003
Adopted Date: January 29, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of Exceptions to Decision No. R02-1409 (Recommended Decision) by N.E. Colorado Cellular, Inc. (NECC). In that decision, the Administrative Law Judge (ALJ) accepted a Stipulation between Wiggins Telephone Association (Wiggins), the Colorado Office of Consumer Counsel (OCC), and Commission Staff (Staff). The Stipulation disaggregates universal service support for Wiggins according to the methods specified there. NECC did not agree to the Stipulation and now excepts to the ALJ's recommendation to accept the Stipulation pursuant to the provisions of § 40-6-109(2), C.R.S. Wiggins, the OCC, and Staff (Stipulating Parties) filed a Response to the Exceptions. Now being duly advised, we deny NECC's Exceptions and affirm the Recommended Decision.

B. Discussion

2. This case concerns Wiggins' application to disaggregate or target universal service support for its study area, in accordance with rules adopted by the Federal Communications Commission (FCC) and the Commission itself. Specifically, 47 C.F.R.

§ 54.315 and 4 *Code of Colorado Regulations* (CCR) 723-42-10 require rural incumbent local exchange carriers (ILECs), such as Wiggins, to disaggregate their universal service support under one of three paths. Wiggins elected to disaggregate support under Path 2. Under that path, a rural carrier seeks specific Commission approval of its proposed method of targeting support. Generally, the purpose of any method of disaggregation is to target universal service support to high cost areas in a competitively neutral manner.

3. Wiggins' initial Path 2 application proposed five cost zones within each of its five wire centers, with each zone defined by concentric circles based on distance from the central offices. Eventually, however, Wiggins, Staff, and the OCC stipulated to a disaggregation plan reducing the number of zones to four in each wire center. Notably, the Stipulation calculates Local Switching Support (LSS) as a separate support element.

4. Wiggins has a single switch located in Wiggins that serves all of its central offices. Wiggins has remote switching units (RSUs) located in Briggsdale, Grover, and New Raymer wire centers, and a line concentration module (LCM) in Hoyt. All switching is done through the main switch in Wiggins. The RSUs are capable of switching calls between customers in the same wire center. However, no interoffice switching could take place over the RSUs, nor could vertical features such as call waiting be offered. The LCM functions similarly to an RSU, but it cannot switch calls even within the wire center. The LCM simply concentrates lines for transport to the central switch in Wiggins where all switching functions are performed.

5. The Stipulation between Wiggins, Staff, and the OCC disaggregates LSS below the switch level. That is, the Stipulation allocates the switching plant located at Briggsdale, Grover, and New Raymer over their respective subscribers evenly. The Stipulation also recognizes that the Hoyt concentrator costs are recovered through the Hoyt loop cost portion of

the study. Under the Stipulation, 30 percent of the Wiggins switch was allocated to the Wiggins exchange only. The remaining 70 percent of the switch was allocated to all Wiggins subscribers. This allocation method, based on actual 2002 data, results in LSS support of $8.41 for Briggsdale, $12.63 for New Raymer, $10.01 for Grover, $3.15 for Hoyt, and $6.18 for Wiggins.

6. NECC did not agree to the Stipulation. At hearing, NECC challenged only one issue contained in the Stipulation: the methodology and amount of disaggregated LSS support. NECC recommended that all switching costs be averaged across the entire area served by the single switch located in Wiggins. This methodology, using the 2002 fourth quarter data, would produce a uniform LSS of $7.14 per line per month.

7. NECC also requested clarification that any order approving a plan to disaggregate support in Wiggins' service territory also has the effect of redefining Wiggins' study area in accordance with Rule 11, Commission's Procedures for Designating Telecommunications Service Providers as Providers of Last Resort as an Eligible Telecommunications Carrier, 4 CCR 723-42 (Rule 11).

C. Recommended Decision

8. The Recommended Decision accepted the Stipulation including its proposed method for determining LSS support. The ALJ concluded that the allocation of switching elements to individual wire centers is competitively neutral, not just as between NECC and Wiggins, but also as between Wiggins and any other new entrant. The ALJ determined that the Stipulation properly reflects the higher costs to serve areas furthest from Wiggins, and the lower costs to serve the Wiggins and Hoyt areas. According to the ALJ, while NECC focused only on the LSS support methodology, he viewed the Stipulation's universal service support methodology in its entirety, and concludes that the Stipulation is not anti-competitive.

9. The ALJ finds that the Stipulation's proposed methods for disaggregating Wiggins' universal service support are just and reasonable and non-discriminatory, and recommends that we approve the Stipulation. The ALJ also grants NECC's requested clarification that any order approving a plan to disaggregate support in Wiggins' service territory also has the effect of redefining Wiggins' study area in accordance with Rule 11.

D. NECC Exceptions

10. In its Exceptions, NECC urges the Commission to reject that portion of the Recommended Decision approving the Stipulation's methodology for allocation of the LSS component of the Universal Service Fund support. In its place, NECC urges adoption of its proposed method that allocates the LSS portion evenly across all subscribers in Wiggins' service areas. According to NECC, the method of allocating LSS support proposed in the Stipulation is not justified by legitimate cost differentials, and, if implemented, will minimize competitive entry and network investment by competitors.

11. NECC continues: The fact that an RSU is located in one wire center does not, from a cost causation standpoint, increase the switching costs for that wire center, and, correspondingly, decrease switching costs for other wire centers. The Stipulation improperly treats RSUs and LCMs as separate, unrelated, and self-sufficient switching facilities. This does not reflect the reality of Wiggins' single-switch network architecture.

E. Response to Exceptions

12. The Stipulating Parties (Wiggins, Staff, OCC) oppose NECC's exceptions. These parties argue that the LSS cost allocation methodology and the associated per line monthly support amounts per Wiggins wire center set forth in the Stipulation should be approved by this Commission. According to the Stipulating Parties, the arguments in NECC's Exceptions can be

reduced to two chief complaints. First, the Recommended Decision improperly accepts a flawed methodology for the allocation of LSS support because it "…improperly disaggregates below the switch." Second, the allocation method accepted by the Recommended Decision results in an allocation of support that is not competitively neutral.

13. In considering the Exceptions, the Stipulating Parties suggest, the Commission should be aware of several important factors. First, the disaggregation methodology established in this docket will apply only to Wiggins and its competitors. Second, there is no approved or accepted formula for the disaggregation of LSS support. Neither the FCC nor this Commission's rules require the use of a particular approach. Third, after giving direct consideration to the question whether to utilize a proxy model or actual cost information, the FCC chose, for purposes of disaggregation, to authorize the affected companies to utilize an actual cost approach. NECC's reliance on proxy model analysis is misplaced in this context. Wiggins' LSS allocation is based on historical investment and expenses, not forward looking hypothetical investments. Fourth, Wiggins expended the resources to analyze its actual cost data as the underpinning for its Path 2 filing. Fifth, NECC conducted no study and developed no model concerning the allocation of Wiggins' LSS costs. Sixth, the decision here is not just about NECC, it is about the need to fairly allocate LSS across all five of Wiggins' wire centers to ensure that all competitors and potential competitors are treated in a competitively neutral and nondiscriminatory fashion. Seventh, it is important to recognize, as the ALJ did, that LSS is one component of a larger "whole" that together make up the Federal Universal Service Support program for rural ILECs and their competitors. And lastly, there are no rules, prohibitions, or limitations concerning sub-switch disaggregation.

F. Commission Decision

14. We deny NECC's exceptions, and agree with the findings and conclusions of the ALJ and the arguments of the Stipulating Parties. The Stipulation's methodology for allocation of the LSS component of the Universal Service Fund support is based on Wiggins' historical investment and expenses, and, therefore, will result in an allocation of support that ensures that all competitors and potential competitors are treated in a competitively neutral and nondiscriminatory fashion.

15. NECC contends that the Recommended Decision improperly adopts a flawed method of allocating LSS unsupported by legitimate cost differentials, which if implemented will minimize competitive entry. In its place, NECC urges adoption of the method proposed by NECC that allocates the LSS portion evenly across all subscribers in Wiggins' service areas.

16. NECC's arguments are unpersuasive. The contention that the Stipulation's methodology finds no support among commonly used proxy cost models is successfully rebutted by the Stipulating Parties. They point out that such costing models do not apply to rural ILECs such as Wiggins. Wiggins' use of historical investment and expense in the allocation of LSS support is appropriate and consistent with its status as a rural ILEC.[1] We find that the position taken by Staff and the OCC, in the Stipulation and at hearing, that the LSS settlement proposal strikes a reasonable balance by directly assigning the remote switch costs to each of the communities served by the separate remote switches, plus including a portion of the traffic sensitive cost of the Wiggins' host switch to each of the separate communities. It properly reflects the higher cost of the separate remote switches in those areas being served by the

[1] During cross-examination by Staff, NECC witness Mr. Wood agreed the embedded cost approach rather than modeling approach was appropriate for rural providers. TR., p 132-133.

Wiggins' switch.[2] Additionally, the Stipulation assigned an appropriate amount of LSS support to the Wiggins and Hoyt wire center areas, and recognized that the Hoyt concentrator costs were recovered through the Hoyt loop cost portion of the study.

17. The Stipulating Parties also successfully rebut NECC's contention that the proposed LSS calculation improperly disaggregates below the switch. As the Stipulating Parties pointed out, the FCC has granted a great deal of flexibility in the development of a Path 2 disaggregation plan.[3] We find that the allocation or suballocation of costs below the switch level is appropriate for a major investment such as the remote switching units that are in place.

18. With respect to competitive neutrality, we agree with the Stipulating Parties. The stipulated allocation of switching costs correctly attributes costs to the cost causers. Therefore, this allocation creates a competitively neutral position for all prospective competitors. Costs are properly allocated, and efficient competition should occur with the allocation of costs these parties suggest.

19. We finally note that NECC's recommendation to allocate the LSS portion evenly across all subscribers in Wiggins' service areas is unsupported by any specific analysis, studies, or model.[4]

20. For the foregoing reasons, we deny NECC's Exceptions and affirm the Recommended Decision in its entirety. We grant the application of Wiggins for approval of its

[2] TR., Klug, p. 45.

[3] FCC Fourteenth Report and Order in CC Docket No. 96-45, released May 23, 2001, the FCC, in paragraph 150 of the order, stated: "Because there are no constraints on disaggregation and target support to multiple levels below a disaggregation area, a disaggregation and targeting method can be tailored with precision, subject to state approval, to the cost and geographic characteristics of the carrier and the competitive and regulatory environment in which it operates. Thus, this path provides the highest flexibility in the development of the disaggregation plan, but at the same time provides for regulatory approval to ensure that the methodology implemented is competitively neutral."

disaggregation plan as set forth in the Stipulation and Settlement Agreement filed October 16, 2002. We also approve the LSS cost allocation methodology and the associated per line monthly support amounts per Wiggins' wire center as set forth in the Stipulation. We find the proposed disaggregation plan presented in the Stipulation to be in the public interest and competitively neutral.

II. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R02-1409 by N.E. Colorado Cellular, Inc., are denied.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

[4] *See* Staff cross-examination of NECC witness Wood. TR., p 131-137.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 29, 2003.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN RAYMOND L. GIFFORD DID NOT PARTICIPATE IN THIS DECISION. HE LEFT THE COMMISSION ON JANUARY 30, 2003.

ATTEST: A TRUE COPY

Bruce N. Smith
Director

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