

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-444T

IN THE MATTER OF THE APPLICATION OF N.E. COLORADO CELLULAR, INC. TO RE-
DEFINE THE SERVICE AREA OF EASTERN SLOPE RURAL TELEPHONE
ASSOCIATION, INC., GREAT PLAINS COMMUNICATIONS, INC., PLAINS COOP
TELEPHONE ASSOCIATION, INC. AND SUNFLOWER TELEPHONE CO. INC.

ORDER FOR SUPPLEMENTAL BRIEFING

Mailed Date: July 24, 2003

Adopted Date: July 23, 2003

I. BY THE COMMISSION

A. Statement

1. This matter concerns the application by N.E. Colorado Cellular, Inc. (NECC) to redefine the service areas of four rural incumbent local exchange carriers: Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Coop Telephone Association, Inc.; and Sunflower Telephone Co. Inc. (the rural ILECs) The application was filed to enable NECC to be designated an Eligible Telecommunications Carrier (ETC) in certain wire centers within the study areas of the rural ILECs, and to receive federal and state universal support for service provided in those areas.¹ After hearing on the application, an Administrative Law Judge for the Commission issued a Recommended Decision (Decision No. R03-0568) granting NECC's application. The Colorado Telecommunications Association (CTA) filed

¹ As explained in Decision No. R03-0568, a company seeking designation as an ETC in a rural ILEC's service territory must provide service throughout the entirety of the rural company's study area (or service area), unless the state commission and the Federal Communications Commission both agree to redefine the rural company's service area.

Exceptions to the Recommended Decision.² Therefore, the Commission is now considering the ALJ's recommendation to grant NECC's application to redefine the rural ILECs service areas. On our motion--CTA did not make this argument in its Exceptions--we raise the questions discussed here and invite the parties to file briefs addressing these questions.

2. In order to grant NECC's application to redefine the rural ILECs' current service areas, the Commission must take into account the recommendations of the Federal-State Joint Board. See 47 U.S.C. § 214(e)(5). The Joint Board identified a three-part test to be addressed by a state commission and the FCC before redefining a rural ILEC's service area.³ Recommended Decision, paragraph 34. The first part of the test is whether a proposed redefinition of a rural ILEC's service area minimizes the opportunity for cream-skimming on the part of competitive ETCs.

3. In this case, the Recommended Decision noted that the FCC permitted rural ILECs to address the possibility of cream-skimming by competitive ETCs, by allowing them to disaggregate their universal service support under one of three Paths (47 C.F.R. § 54.315). See Recommended Decision, paragraphs 47-48. The Recommended Decision observed that, notwithstanding the opportunity afforded them in 47 C.F.R. § 54.315, the rural ILECs here chose not to disaggregate their universal service support when they selected Path One (47 C.F.R. § 315(b)).⁴ By choosing Path One, the Recommended Decision concludes, each rural ILEC

² At the Commission's July 23, 2003 Weekly Deliberations Meeting, we orally denied the Exceptions in their entirety.

³ A rural ILEC's service area is its study area until both the state commission and the FCC establish a different service area. See 47 U.S.C. § 214(e)(5).

⁴ By choosing Path One, a rural ILEC certifies to the state commission that it will not disaggregate its universal service support.

"indicated that it was satisfied that its universal service support was already targeted in a manner which minimized 'cream-skimming'." Recommended Decision, paragraph 55.

4. Even though the Exceptions did not challenge the Recommended Decision's findings and conclusions regarding the possibility of cream-skimming (if we disaggregate the rural ILECs' service areas), the Commission has an independent responsibility to ensure that sufficient grounds exist to redefine the rural ILECs' service areas before granting NECC's application. In addition, if we grant the application, we will likely submit a petition to the FCC requesting concurrence with our decision, and, that petition must explain to the FCC why sufficient grounds exist to redefine these companies' study area. Therefore, on our own motion we raise the questions discussed in this order.

5. We request that the parties submit briefs on the following questions:

- Is the Joint Board's concern with cream-skimming (when considering redefinition of a rural ILEC's study area) adequately addressed for the rural ILECs here purely and simply by the rural ILECs' selection of Path One; alternatively stated, does each rural ILEC's selection of Path One by itself justify a finding that the possibility of cream-skimming is minimized under the redefined service areas proposed by NECC;
- Does the evidence in this case adequately address the possibility of cream-skimming by competitive ETCs if we redefine the rural ILECs' service areas as requested by NECC;⁵
- Should the Commission require the rural ILECs to disaggregate universal service support under Path 2 or 3; and
- In the event the Commission determines that universal service support for the rural ILECs should be disaggregated prior to any redefinition of service areas, how should the Commission proceed to disaggregate support (*e.g.* through show-cause proceedings)?⁶

Briefs shall be submitted within ten days of the effective date of this order.

⁵ Since the record in this case is closed, the parties may not introduce new facts into the record in their briefs. We note that the Commission orally denied CTA's Motion to Reopen the Record in this matter.

⁶ We note that under 47 C.F.R. § 54.315(b)(4), a state commission may direct a rural ILEC to disaggregate support under Path 2 or 3, notwithstanding that carrier's initial selection of Path 1.

II. ORDER

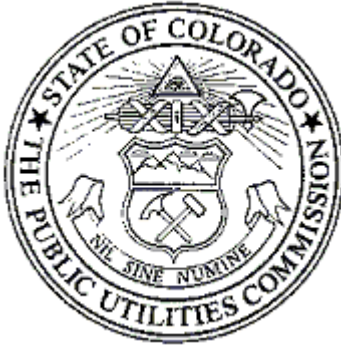
A. The Commission Orders That:

1. The parties may submit briefs on the questions discussed above within ten days of the effective date of this order.

2. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 23, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners