

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 25, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Maureen O. Helmer
Thomas J. Dunleavy

CASE 94-C-0095 - Proceeding on Motion of the Commission to Examine Issues
Related to the Continuing Provision of Universal Service
and to Develop a Regulatory Framework for the Transition
to Competition in the Local Exchange Market.

CASE 28425 - Proceeding on Motion of the Commission as to the Impact of
the Modification of Final Judgment and the Federal
Communications Commission's Docket 78-72 on Provision of
Toll Service in New York State.

ORDER DESIGNATING ELIGIBLE
TELECOMMUNICATIONS CARRIERS
AND SERVICE AREAS, AND GRANTING WAIVERS

(Issued and Effective December 1, 1997)

BY THE COMMISSION:

Section 214 of the Telecommunications Act of 1996 (the Act) requires state commissions to designate eligible telecommunications carriers and service areas for the purpose of determining universal service obligations and eligibility to receive federal universal service funding.¹ Incumbent local exchange companies, competitive local exchange companies, and other parties were afforded the opportunity to comment on the requirements for this designation in the briefing schedule in these proceedings. Taking into consideration the Act, our policy, the Federal Communications Commission's (FCC) requirements, and the parties' arguments, we are designating specified carriers as eligible telecommunications carriers pursuant to 214 of the Act, defining their service areas, and granting waivers of certain requirements.

BACKGROUND

On May 8, 1997, the FCC released its Report and Order in its proceeding In the Matter of the Federal-State Joint Board on Universal Service.¹ The FCC established federal universal service funding mechanisms that will provide support to carriers (1) serving high-cost areas; (2) providing Lifeline programs for low-income customers; and (3) providing discounts to schools, libraries, and rural health care providers. In order to be eligible for certain of this federal support, the Act requires that carriers must be designated as eligible telecommunications carriers by state commissions.²

Pursuant to 214(e)(2) of the Act, state commissions must designate a common carrier that meets the requirements of 214(e)(1) as an eligible telecommunications carrier for a service area. Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. For areas served by a rural telephone carrier, 214(e)(5) equates service area with the rural carrier's study area³ unless and until the FCC and the state establish a different definition of service area for such company. For areas served by a non-rural carrier, state commissions have discretion to designate the service area.

The following services have been designated by the FCC as the services that must be provided by a carrier in order to be eligible for

FCC 97-157, CC Docket No. 96-45, Report and Order, In the Matter of the Federal-State Joint Board on Universal Service (issued May 8, 1997) (Universal Service Order).

Section 214(e)(1) of the Act provides:

common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with section 254 and shall, throughout service area for which designation is received --

offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services . . . ; and

advertise the availability of such services and the charges therefor using media of general distribution.

A study area is a geographical region generally composed of a telephone company's exchanges within a single state.

federal universal service support:

- Single-party service
- Voice grade access to the public switched network
- Dual tone multifrequency signalling or its functional equivalent
- Access to emergency services, including, in some circumstances, access to 911 and E911
- Access to operator services
- Access to interexchange service
- Access to directory assistance
- Lifeline and Link-up programs, including free toll limitation services for qualifying low-income consumers.

On November 4, 1997, a notice was sent to all carriers in the state notifying them of our filing requirements. Any carrier seeking eligible telecommunications carrier status was required to file a petition with the Secretary no later than November 14, 1997 in order to be designated as eligible for federal funding effective January 1, 1998.

SERVICE AREA DESIGNATIONS

The Act grants states the authority to designate geographic service areas, consistent with the goals of competition and universal service, for purposes of determining federal universal support for high cost areas.¹

For *rural* local exchange carriers, the FCC maintains that the service areas should remain their existing study area. Where a rural carrier operates in more than one study area within the state, states are encouraged by the FCC to consider each non-contiguous study area a separate service area. The responding parties agree to this designation for rural local exchange carriers.

However, the parties disagree regarding the definition of service territories for *non-rural* competitive local exchange carriers. Bell Atlantic-N.Y. d/b/a New York Telephone (New York Telephone) asserts that, as an interim measure, the study areas of incumbent local exchange carriers should serve as their service areas. It also asserts that as an interim measure, competitive carriers could either use the same service area as the incumbent's entire service territory, or a different service area (smaller or larger) provided

See Universal Service Order, 127-98; 47 C.F.R. 54.201, *et seq.*

the new entrant served a meaningful cross-section of customers in high- and low-cost areas.

MCI Communications Corp., Inc. (MCI) and AT&T argue that competitive local exchange carriers should be permitted to designate their own service areas within the boundaries set by their respective certificates of authority, and that companies should not be required to serve an incumbent's entire service area to obtain universal service support. They assert that new entrants should be allowed optimum flexibility in their marketing decisions to foster development of competition in the local market. Time Warner agrees that allowing the carriers to self-select their own service territory is superior, albeit difficult to administer.

New entrants argue that allowing them to designate their own service areas is competitively and technologically neutral, because wireless carriers and other future transmission technologies may not cover the same service area as existing wireline local service providers. In their view, self-designed service areas will enhance, not hinder, their market entry.

In response, New York Telephone objects to the limited areas described in competitive carriers' tariffs, fearing added costs to customers who have no competitive alternative, little incentive to ubiquitous development of competition, and encouragement of competition only for the most lucrative customers.

Generally, Frontier Telephone of Rochester, Inc. (Frontier) objects to allowing competitive local exchange carriers to define service areas as anything less than the incumbents' existing service territory. Moreover, Frontier believes that the definition of service areas should differ depending upon the incumbent's operating territory, advocating to allow competitors to use their own tariffed service territory when they provide service within New York Telephone's operating territory. However, for non-New York Telephone territory--including Frontier's--competitors must serve the incumbent's entire service territory to qualify for universal service funding. Time Warner accepts the use of Frontier's territory as its own service area, but only for the limited purpose of universal service funding.

AT&T and Sprint assert that service areas should be sufficiently small to ensure accurate targeting of high cost support areas and to encourage entry by new competitors, thereby encouraging states not to adopt the study

areas of large incumbents.¹ New entrants agree that service areas should not be unreasonably large so new entrants are not forced to greatly increase their scale of operations, a market entry barrier in violation of 253 of the Act. Sprint views as inappropriate New York Telephone's interim proposal to declare the entire study area of an incumbent local exchange carrier as a service area, asserting that service areas should be sufficiently small to ensure accurate targeting of high cost support and encourage competitive market entry.

Parties agree that service areas should be definable by reference to physical or political boundaries so that the cost of providing supported services can be identified. Sprint argues for adopting the same geographic unit for both the service areas and those areas used in the determination and designation of high cost support areas in order to ensure consistency regarding eligibility, the cost of serving, and the available support. Sprint and Sprint PCS urge the use of census block groups since costs vary greatly, even within a wire center.

For incumbent local exchange carriers, rural or non-rural, we will adopt the existing study areas as their 214(e) service areas. For competitive local exchange carriers, we will adopt as their service areas their respective existing service territories as described in their tariffs filed with this Commission. This outcome appears the most conducive to vigorous competitive entry. The incumbents' proposal to require new entrants to serve throughout the incumbents' existing territories appears to provide incentives for competitive alternatives in all parts of the state and for all customers. However, at this early stage of market penetration, this approach is more likely to discourage competitive entry--including provision of service to universal service funding eligible communities--because of the burdensome requirement to serve.

Universal Service Order, 185.

CARRIERS SEEKING DESIGNATION

All incumbent local exchange carriers providing service in New York State filed petitions¹ seeking designation throughout their existing service territories, which are equivalent to their study areas. However, each petition describes circumstances where the carriers cannot fully comply with the universal service requirements listed above. States have the discretion to grant waivers associated with the immediate provisioning of universal service in three instances: (1) the provision of free toll limitation services for low-income Lifeline customers, (2) the provision of access to E911 service, and (3) the provision of single-party service. The special circumstances cited by the petitioners fall into one or more of these waiver categories.

Toll Limitation Services

Toll limitation encompasses both toll blocking and toll control. Toll blocking is defined by the FCC as a service provided by carriers that lets consumers elect to prevent the completion of outgoing toll calls from their telecommunications channel. Toll control is defined by the FCC as a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or billing cycle.

Both Frontier and NYSTA comment that the technological capability to offer toll control service does not yet exist. Such service would require real-time capability to record and rate every call instantaneously as the caller attempts to make a toll call. This becomes impracticable where the calls are rated and billed by the customer's presubscribed toll carrier. All of the petitioners indicate their willingness to provide toll blocking, free, to their Lifeline customers and to file tariffs to that effect.

Based upon the obstacles cited by the petitioners, a waiver will be granted relieving carriers from offering toll control service until it is technologically available.

New York State Telecommunications Association (NYSTA) filed a petition on behalf of 38 incumbent local exchange carriers, excluding Frontier and New York Telephone. Frontier and New York Telephone filed individual petitions.

E911 Service

NYSTA comments that the requirement that an eligible telecommunications carrier provide access to 911 or E911 applies only to the extent the local government in its service area has developed 911 or E911 systems. Therefore, an allowance for additional time to upgrade carrier networks need only be granted where a local government has implemented 911/E911, but the carrier that serves that area is not yet capable of providing 911/E911 access to callers. We adopt NYSTA's position; the affected eligible telecommunications carriers may file petitions requesting waivers to upgrade, as needed, as their local governments convert to 911/E911 systems.

Single-Party Service

Most petitioning carriers are capable of providing single-party service upon request throughout their service areas. However, Citizens Communications Company of New York, Inc. (Citizens) and Taconic Telephone Corp. (Taconic) do not yet have that capability and submit that exceptional circumstances exist warranting waiver of the single-party service requirement.

Approximately 10,800 of Citizen's 292,900 access lines (4%) are limited to party-line service. These customers are in various locations throughout the company's 126 exchanges and the company contends that the cost to accomplish the upgrades will exceed \$24.5 million. However, Citizens has committed to accomplish the upgrades necessary to offer single-party service to these customers over the next five years.

Taconic, in Case 95-C-0498 (the incentive-based Quality Assurance Plan), committed to upgrade its network to provide single-party service throughout its service area by December 31, 1998. We approved this upgrade proposal as part of the company's incentive plan. Taconic currently has 1,050 customers with party-line service out of a total of 24,000 access lines (4%) and submits that it would be contrary to the public interest to withhold eligible status. Accordingly, Taconic requests a waiver of the single-party service requirement until December 31, 1998.

Waivers requested by Citizens and Taconic will be granted, as the requested time extensions are reasonable and in the public interest.

EMERGENCY SAPA ADOPTION

Although a State Administrative Procedure Act (SAPA) notice has not yet been filed in these proceedings, designation of eligible telecommunications carriers and service areas is justified pursuant to SAPA 202(6), to ensure that New York's carriers are eligible to receive federal universal service funding commencing January 1, 1998. Therefore timely action is being taken as an emergency measure under SAPA, and is necessary to preserve the general welfare of New York.

CONCLUSION

The carriers listed in the Appendix are designated eligible telecommunications carriers for the purpose of participating in the new federal universal service support mechanisms, and the service areas for which these designations apply are the existing study areas for the incumbent local exchange carriers and the existing service territories for the competitive local exchange carriers.

The Commission orders:

1. The carriers listed in the Appendix are designated eligible telecommunications carriers, throughout their existing study area or service territories.
2. The waivers applicable to all carriers listed in the Appendix from the requirement to provide toll control services to Lifeline customers, are granted pending further notice.
3. The waivers requested by Citizens and Taconic regarding their implementation schedules for the provision of single-party service throughout their service areas, are granted.
4. This order is adopted as an emergency measure pursuant to 202(6) of the State Administrative Procedure Act.

5. These proceedings are continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

Carriers Granted Eligible Telecommunications Carrier Status

ALLTEL New York, Inc.
Armstrong Telephone Company
Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company, The
Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telecommunications Company of New York, Inc.
Citizens Telephone Company of Hammond, New York, Inc.
Crown Point Telephone Corporation
Delhi Telephone Company
Deposit Telephone Company, Inc.
Dunkirk & Fredonia Telephone Company
Edwards Telephone Company, Inc.
Empire Telephone Corp.
Fishers Island Telephone Corporation, The
Frontier Communications of AuSable Valley, Inc.
Frontier Communications of New York, Inc.
Frontier Communications of Seneca Gorham, Inc.
Frontier Communications of Sylvan Lake, Inc.
Frontier Corporation, Inc.
Germantown Telephone Company, Inc.
Hancock Telephone Company, Inc.
Margaretville Telephone Company, Inc.
Middleburgh Telephone Company, The
New York Telephone Company
Newport Telephone Company, Inc.
Nicholville Telephone Company, Inc.
Ogden Telephone Company
Oneida County Rural Telephone Company, Inc.
Ontario Telephone Company, Inc.
Oriskany Falls Telephone Corp.
Pattersonville Telephone Company
Port Byron Telephone
State Telephone Company
Taconic Telephone Corporation
Township Telephone Company, Inc.
Trumansburg Home Telephone Company
Vernon Telephone Company, Inc., The
Warwick Valley Telephone Company