

**PUBLIC UTILITY COMMISSION OF OREGON
INTEROFFICE CORRESPONDENCE**

DATE: November 6, 2015

TO: Michael Grant, Administrative Hearings Division

FROM: Stephen L. Hayes and Kay Marinos

SUBJECT: In the Matter of Applications of the Warm Springs Telecommunications Company (dba Warm Springs Telecom): UA 166, For Allocation of Previously Unallocated Territory (Wanapine), and UM 1743, For Certification as a Telecommunications Utility

This memo is intended to provide information to the Administrative Hearings Division for use in processing two related requests that were filed by Warm Springs Telecommunications Company (WST) together in a common document.¹ The first request, docketed as UA 166, seeks allocation of unallocated territory. The territory to be allocated is geographically defined in the application and will constitute a new exchange named the Wanapine exchange. The second request, docketed as UM 1743, seeks a Certificate of Authority to serve as a telecommunications utility in the new exchange. Granting both requests will serve the public interest by enabling WST to bring telecommunications services to residents of this currently unallocated and unserved area of the Warm Springs Reservation.

Staff recommends that the Commission approve both requests, conditioned upon WST meeting all legal and regulatory obligations of a certificated telecommunications utility. Each request was issued for public notice per applicable Commission rules. No person filed to oppose either request. In the remainder of this memorandum, Staff addresses how WST meets the relevant requirements for each request and explains why there is no apparent reason to require a hearing before ruling on the application.

I. Background

This application is uncommon in that WST seeks certification to become a telecommunications utility, also commonly known as an Incumbent Local Exchange Carrier (ILEC). When seeking a certificate of authority to provide telecommunications services, an applicant may apply for status as either a utility or a competitive provider.

¹ WSTC first filed on June 23, 2015, and subsequently filed an amendment to correct the company's name on September 25, 2015.

Each category has its own requirements and obligations. Although the Commission receives applications from numerous entities requesting certification as a competitive provider, it has not received an application for certification as a utility in a very long time. The current telecommunications utilities were certificated many years ago, and this appears to be the first request for ILEC certification submitted since the late 1980s. The application is also uncommon in that it proposes to create a new exchange in unallocated territory to be served by a provider that is not currently an ILEC. For federal regulatory purposes, an ILEC is a local exchange carrier that was providing telephone exchange service as of February 8, 1996 or is a successor thereof, or in other instances that may be authorized by rule. 47 USC § 251(h). A state commission may request that the FCC treat a particular carrier, or a class or category of carriers as an ILEC. 47 CFR § 51.223(b).

WST is owned by the Confederated Tribes of Warm Springs and currently operates as a Competitive Local Exchange Carrier (CLEC) in Oregon under a competitive provider certificate authorized in Commission Order No. 10-137 (Docket CP 1470). The applicant's CLEC entity serves residences and businesses on the portions of the Warm Springs Reservation that lie within the Madras exchange, territory which is allocated to Qwest Corporation, dba CenturyLink, as the utility. Through its application, WST seeks to be able to provide service as a utility to a portion of the reservation that is outside of the area allocated to Qwest and is not allocated to any other utility at this time. To provide service in an unallocated territory, WST must also obtain a certificate to operate as a telecommunications utility.

The requirements and applicant's fulfillment for each of its requests are detailed below.

II. Allocation of Territory

Legal Requirements

The relevant statutory requirements for allocation of territory are found in ORS 759.506, 759.535 and 759.560. ORS 759.506 states that the purpose of establishing allocated territories is to ensure provisioning of safe and adequate local exchange services and that all customers are served in an adequate and nondiscriminatory manner. ORS 759.535 requires submission of an application with an exchange map of the territory for which allocation is sought, and also specifies notice requirements. ORS 759.560 states that the rights acquired by an allocation of territory may only be assigned with the approval of the Commission after a finding that the assignment is not contrary to the public interest.

OAR 860-034-0470 further defines the information to be included in an application for allocation of unserved territory for small telecommunications utilities (the relevant class based on the number of customers that WST expects to serve) as follows:

- 1) A map or maps, drawn to appropriate scale, showing the general location and boundaries of the applicant's service area.
- 2) A map or maps, drawn to appropriate scale, showing the location of the applicant's customers and facilities in the vicinity of the boundaries of the territory applied for in sufficient detail to enable the Commission to determine the boundaries of that territory served exclusively by applicant.
- 3) A description by county, section lines, river, highway, road, street, or metes and bounds, where applicable and necessary, of the boundaries of applicant's exclusive service area. Such map and legal description of boundary lines may be drawn and described to eliminate minor irregularities in the boundary².
- 4) Facts showing that applicant is lawfully and in good faith providing exclusive utility service within the area described in the application and that no other person is providing a similar utility service.³
- 5) Such additional information as needed for a full understanding of the situation.

The Application Meets the Requirements for Allocation of Territory

The application meets the statutory requirements by describing and providing maps of the area requested for allocation, i.e., the proposed Wanapine exchange area, and demonstrating that the area is not served by another person providing similar local exchange telecommunications service. The application also provides evidence that WST's desire to provide service in the proposed Wanapine exchange area is consistent with the purposes of such allocation as stated in the law. The allocation would serve the public interest by bringing telecommunications services to customers that currently do not have service available. The Administrative Hearings Division fulfilled the application noticing requirements by having the required notice published and by

² Under ORS 759.535(1), an application must include an exchange map that shows the unserved territory subject to the request. OAR 860-034-0470(3) further requires a legal description of the exclusive service area. WST has submitted with its application a map depicting legal boundaries, rather than a written description. Staff finds the application contains sufficient material to meet the intent of the Section (3) requirement.

³ Section (4) of OAR 860-034-0470 is partially inapplicable because the Applicant has not yet begun to provide telecommunications service as a utility. Its application for a certificate of authority to begin providing service is being considered concurrently with this request for territory allocation.

providing written notice of the filing to providers of similar local exchange telecommunications services in adjacent territory. No person responded within the allowed time.

The application also meets the more detailed administrative rule requirements to provide maps and certain pertinent information. The proposed Wanapine exchange area is defined by existing Reservation boundaries but excludes territories already allocated to other ILECs. The maps submitted in the application accurately show that a few ILECs have been allocated territory within the current Reservation boundaries, but not within the boundaries of the proposed Wanapine exchange. Staff observes that the Reservation boundary has changed over time and it is possible that other ILECs attempted to avoid the Reservation boundary in the past. WST indicates that, as an ILEC, they do not propose to serve customers in those areas that have already been allocated to other local exchange carriers.⁴ Staff notes that grant of the current application will establish the allocated territory boundaries according to current Reservation boundaries. If the Reservation boundaries change in the future in such a way that WST's ability to provide service within the established area is impacted, WST would need to file to modify the boundaries of its allocated area to reflect changes.

The applicant requests a waiver of the requirement in OAR 860-034-0470(2) to show facility locations. Staff recommends that the Commission approve this request, if indeed a waiver is necessary, for the reason provided in the application, i.e., that there are no facilities currently located in the requested Wanapine Exchange. The application does include a map that indicates that most of the nearly thirty existing buildings in the proposed new exchange are located reasonably close to the Warm Springs wire center area in which WST currently provides service as a CLEC. Based on discussions with WST, Staff understands that the company will provide service in the proposed Wanapine exchange through use of its own existing switch and by extending fixed wireless facilities to locations within the new exchange.⁵

⁴ Staff notes that according to FCC mapping information, there appear to be a few entities that could provide broadband services in or near the proposed Wanapine exchange area. However, even if that data is accurate, the entities cannot be legally providing local exchange telecommunications service as defined in ORS 759.005 as this is currently unallocated territory.

⁵ It is Staff's understanding that the FCC accepts fixed wireless systems known as basic exchange telephone radio systems (BETRS) or BETRS-like systems as alternatives to copper or fiber infrastructure to provide local exchange services. Staff is not aware of any state prohibitions, as long as the service provided meets the definitions in Oregon statutes and rules, which the applicant represents it will. It will be WST's responsibility to meet any FCC requirements relative to needed spectrum or otherwise.

III. Telecommunications Utility (ILEC) Certificate of Authority

Certificate Application Requirements

ORS 759.020 requires that any entity providing intrastate telecommunications services on a for-hire basis in Oregon must have a certificate of authority issued by the Commission. ORS 759.020 also governs the requirements for issuance of certificates. The statutory requirements are reflected and expanded in requirements in OAR 860-032-005. This rule basically requires the filing and approval of a complete and accurate application that includes certain specific information in the form prescribed by the Commission.

The Commission has a standard form that certificate applicants must complete and submit. The form requests all of the items of information required in the rules. WST submitted a complete certificate application form as part of its filing. The most critical pieces of information are as follows: 1) WST requests authorization to provide service as a telecommunications utility; 2) the geographic area for authorization is the proposed Wanapine exchange; 3) telecommunications services to be provided are intra-exchange switched and dedicated services, as well as inter-exchange switched and dedicated services; and, 4) services will be provided using the company's own facilities and switching equipment.

The Administrative Hearings Division provided notice regarding the certificate application according to OAR 860-032-0002(1) on August 26, 2015. No parties filed a protest within the allowable time.

Conditions of Certification as a Telecommunications Utility

Grant of a request for certification is conditioned upon the applicant meeting certain requirements within the geographic areas for which it is certificated. The certificate application states that "As a condition of a certificate of authority, applicant must comply with all applicable Commission rules and state law, as well as conditions listed in the certificate." It also identifies some of the most important requirements in OAR Chapter 860 Divisions 32 and 33, including collection and payment of certain fees which apply to all certificate holders unless specifically exempted. In order to maintain its certificate, WTS must abide by the applicable requirements.

In addition, WST must abide by other rules that apply specifically to utilities. WSTC falls under the definition of a "small" telecommunications utility per ORS 759.040, and therefore will be subject to rules in Division 34. These rules address conditions of service, tariffs, rates, service quality, finance, accounting and reporting, etc. WST will

need to comply with some of these requirements prior to offering services, and some after, as appropriate. A few of the specific areas worthy of note here are tariffs, service quality measurement and financial accounting.

WST did not include a proposed tariff with its application for certification, but represents that it will file consistent with the rates in effect where WST operates as a CLEC. It is expected that WST will file local exchange and interexchange access tariffs after approval of its requests for certification and allocation of territory, but before beginning to actually provide services in the Wanapine exchange.⁶ The local exchange services tariff must include a map of the allocated territory, i.e., the Wanapine exchange. In addition, WST must also provide an electronic GIS file of the Wanapine exchange boundaries in the format designated by Staff. We recommend that WST consult appropriate Commission Staff members to discuss and clarify requirements before actually filing any tariffs.

Additionally, as a small telecommunications utility, WST must abide by applicable service quality standards in OAR 860-034-0390. However, it will not be required to track and report service quality measurements until it serves 1,000 or more customers in the ILEC area.

WST must become familiar with accounting and reporting requirements in Division 34, particularly as they relate to affiliate transactions and cost allocations between the ILEC and CLEC portions of the company.

Section 6, chapter 290, Oregon Laws 1987, as amended, requires that all public utilities participate in the Oregon Telephone Assistance Plan (OTAP) and make available Lifeline discounts on local exchange voice services to qualifying low-income customers. It is expected that the residents in the Wanapine area will qualify for enhanced federal benefits available on Tribal Lands. To be able to offer, and be reimbursed for, such discounts, the utility must receive federal Eligible Telecommunications Carrier (ETC) and state Eligible Telecommunications Provider (ETP) designations for this service area. Such designations are also necessary if WST wishes to seek federal high-cost support. Staff encourages WST to request such designations several months before actually offering service in the proposed exchange. If WST is also interested in the possibility of receiving Oregon USF support in the new exchange, a company representative should contact Commission Staff to explore the possibilities.

⁶ Under ORS 759.175, the Commission must fix a date for tariff filings. ORS 759.040 exempts telecommunication utilities with less than 50,000 lines from ORS 759.180-190 which requires the PUC to investigate rates, hold hearings, and requires telecommunication utilities to provide notice of schedule changes as long as ORS 759.040(6) is not applicable.

Operational and Federal Requirements

Before WST can actually provide service in the proposed new Wanapine exchange, the company must address several operational aspects associated with creating a new exchange. And although the ILEC operations will share some common equipment and facilities with the CLEC operations, establishment of a new exchange will require some distinctions in operations between the two.

The new ILEC will likely need to obtain its own operating carrier number (OCN), as well as its own NPAC service provider identification number (SPIN) to facilitate number porting. The ILEC must also obtain its own FCC required identification numbers, including a federal registration number (FRN) and a 499 Filer ID which must be acquired before any other telecom providers can interconnect with the new WST ILEC. See *e.g.*, 47 CFR § 64.1195.

Additionally, routing and rating information for the new Wanapine exchange needs to be established. Normally an exchange would have an established way to complete outgoing and incoming calls. The applicant in this case proposes to serve customers in the new exchange through the CLEC's existing switch in Warm Springs and through their existing relationships for sending and receiving interexchange and interstate calls. But the WST ILEC will need to acquire telephone number resources for the new wire center and create the needed relationships in the business rating and routing database (BRRDS) and establish the switch relationships in the local exchange routing guide (LERG). To obtain numbers to serve its new exchange/rate center, the WST ILEC must obtain the certificate of authority which it seeks in its application. Because there are mandatory waiting periods for LERG inputs, these processes will take a number of months to complete. Even though WST will have common CLEC and ILEC operations, it is Staff's understanding that WST will need to obtain separate number resources and establish separate rating and routing information for use in its new ILEC operations.

WST must also meet federal requirements to obtain ILEC status in the new Wanapine exchange before it can begin offering services in the area. Staff has limited knowledge of all such requirements, but expects that WST will identify and meet such requirements, and notify staff of important FCC approvals as they occur.

IV. Summary

Staff does not find any evidence indicating that WST's requests are contrary to the public interest and recommends that the Commission grant WST's requests for certification as a telecommunications utility and for allocation of territory in the area

proposed to be known as the Wanapine exchange. As with all requests for certification, grant would be conditioned upon WST meeting all legal and regulatory obligations of a certificated telecommunications utility. The requested approvals are a reasonable and necessary first step that will enable WST to next seek federal approval and financing to provide service to the unserved residents of the Warm Springs Reservation. Also to that end, Staff requests that the Commission include in its approval order, a request to the FCC to treat WST as an ILEC in the area of the Wanapine exchange per 47 CFR § 51.223(b). Explicitly identifying such a request within the order will eliminate the need for WST to make this request on its own and indicate the Commission's support for the designation.