

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1202

In the Matter of)	
)	
WANTEL INC, d/b/a ComspanUSA)	ORDER
)	
Application for Designation as an Eligible)	
Telecommunications Carrier.)	

DISPOSITION: APPLICATION APPROVED

On March 31, 2005, Wantel Inc., d/b/a ComspanUSA (Wantel) filed an application with the Public Utility Commission of Oregon (Commission) requesting designation as a federal eligible telecommunications carrier (ETC) in three Southern Oregon wire centers – Roseburg, Sutherlin and Winston – where it currently offers residential and business voice and data services. Designation as a federal ETC will enable Wantel to receive federal universal service support. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

In order to be designated as an ETC, a telecommunications service provider must meet the basic requirements of 47 U.S.C. § 214(e)(1), and must comply with the additional public interest requirements of 47 U.S.C. § 214(e)(2). Commission Staff finds that Wantel has demonstrated that it meets the basic statutory conditions for eligibility, and Wantel has satisfied more recent FCC requirements, as further provided in Appendix A.


Staff intends to request that the Commission open a new docket to investigate adoption of the new FCC certification, recertification, and reporting requirements for ETCs in Oregon. Staff recommends that the Commission grant Wantel’s application for ETC status without specific reporting requirements, but notes that Wantel will be subject to any reporting requirements that the Commission may adopt.

At its Public Meeting on June 29, 2005, the Commission adopted Staff’s recommendation and approved Wantel’s application for designation as an ETC in the proposed designated service area.

ORDER

IT IS ORDERED that Wantel's application for designation as a federal Eligible Telecommunications Carrier in the wire centers listed in Appendix A is approved.

Made, entered, and effective JUL 14 2005.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 29, 2005

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: June 21, 2005

TO: Public Utility Commission

FROM: Kay Marinos

THROUGH: Lee Sparling, Phil Nyegaard, Dave Booth

SUBJECT: WANTEL INC, d/b/a ComspanUSA (Docket No. UM 1202) Application for Designation as an Eligible Telecommunications Carrier.

STAFF RECOMMENDATION:

Staff recommends the Commission grant the application by Wantel, Inc. dba ComspanUSA (Wantel) for designation as an eligible telecommunications carrier (ETC) for purposes of federal universal service support, in the proposed designated service area comprised of the Roseburg, Sutherlin, and Winston wire centers of the incumbent, Qwest Corporation. Wantel has met the requirements previously employed by this Commission in granting ETC status, as well as the more stringent permissive guidelines recently adopted by the Federal Communications Commission (FCC).

DISCUSSION:

A. Background

Wantel is a competitive local exchange carrier (CLEC) certified by the Commission on August 20, 1999, under Order No. 99-507, to provide telecommunications services in Oregon. Wantel is a facilities-based carrier that provides local exchange services over its own network facilities, leased UNE loop facilities, and resale of Qwest's retail services.

On March 31, 2005, Wantel filed an application requesting designation as a federal eligible telecommunications carrier (ETC) in three Southern Oregon wire centers – Roseburg, Sutherlin and Winston – where it currently offers residential and business voice and data services. Designation as a federal ETC will enable Wantel to receive federal universal service support for qualifying customer lines in these wire centers. It will also enable Wantel to participate in the federal Lifeline and Link Up programs that fund discounts to qualifying low-income customers. Qwest Corporation (Qwest) is the incumbent local exchange carrier (ILEC) in the three wire centers that will comprise Wantel’s designated service area. Appendix A shows the name, Common Language Location Indicator (CLLI) code¹, and serving ILEC study area for each wire center encompassed by the application.

Although interested in receiving federal universal service and low-income support funding, Wantel’s primary reason for seeking federal ETC designation is to enable it to apply for Oregon Universal Service (OUS) support and to participate in the Oregon Telecommunications Assistance Program (OTAP), the Oregon corollary to the federal Lifeline low-income subsidy program. Before submitting its application for federal ETC status, Wantel had initially submitted an application for OUS support in docket UM 1190. At the March 17, 2005, prehearing conference in that docket, the parties agreed that because federal ETC status is a prerequisite to participation in the OUS program, Wantel must obtain federal ETC status before proceeding with its application for designation to receive OUS support. Accordingly, further action in docket UM 1190 was suspended, pending the outcome of Wantel’s application for federal ETC status in this docket, UM 1202.

A prehearing conference in the docket was held on April 13, 2005, with appearances from representatives of Wantel, Qwest, OTA, Clear Creek Mutual Telephone, and Staff. The participants agreed to a procedural schedule premised on resolution through the Commission’s public meeting process. On May 5, Wantel filed an amended application in response to Staff’s comments on its initial application. The parties discussed the amended application at a workshop on May 9, 2005, that was attended by representatives from Wantel, Qwest, OTA, Century Tel, and Staff. As a result of discussions at the workshop, Wantel filed a Second Amended Application on May 18, 2005. Qwest’s petition to intervene was granted on May 3 and OTA’s on May 18, 2005. Neither party objected to Wantel’s Second Amended Application by the previously agreed-to deadline for objections (May 25, 2005).

B. Commission Authority

¹ The CLLI code is a code the industry uses to identify individual wire centers.

Section 214(e)(2) of the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), delegates authority to state commissions to designate common carriers that are eligible to receive federal universal service support. State commissions may confer federal ETC status on common carriers that meet conditions set out in Section 214(e)(1) of the Act. In general, those conditions require that the ETC offer and advertise, throughout its designated service area, the services that are supported by Federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier's services. The Commission first used its power to designate the incumbent LECs as ETCs eligible for federal universal service support on December 2, 1997, in Order No. 97-481.

The same section of the Act also permits state commissions to designate additional, non-ILEC, carriers as eligible to receive federal universal service support in ILEC service areas. These additional carriers, sometimes referred to as competitive ETCs, or CETCs, must meet the same general ETC requirements in Section 214(e)(1) that apply to ILEC ETCs, and their designation must be consistent with the public interest.

The Commission has previously exercised its powers to designate CETCs in ILEC service areas. In 2003 the Commission granted federal ETC status, for the first time, to a CLEC, Stan Efferding dba Vilaire, now known as VCI Company (Vilaire). See Order No. 03-749. In 2004 the Commission granted ETC status to two wireless carriers, United States Cellular Corporation (USCC) and RCC Minnesota, Inc. (RCC). See Order Nos. 04-356 and 04-355, respectively.

C. Requirements for ETC Status

In past decisions granting ETC designation to CETCs, the Commission relied on requirements in Sections 214 and 254 of the Act, the FCC rules implementing the Act, the goals of the universal service program, and the actions of the FCC in reviewing ETC applications where it stood in the shoes of states that either disclaimed, or chose not to assert, jurisdiction.

The minimum requirements for designation of CETCs are set forth in the Act. Specifically, 47 USC § 214(e)(2) requires that CETCs meet the basic ETC requirements of 47 USC § 214(e)(1). Those basic requirements are that the carrier must offer and advertise, throughout its designated service area, the services that are supported by Federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier's services. The supported services that must be offered are specified by FCC rules in 47 C.F.R. Section 54.101(a)

as: 1) voice grade access to the public switched network, 2) local usage, 3) dual tone multi-frequency signaling or its functional equivalent, 4) single-party service or its functional equivalent, 5) access to emergency services, 6) access to operator services, 7) access to interexchange service, 8) access to directory assistance, and 9) toll limitation for qualifying low-income consumers.

Beyond the basic eligibility requirements, Section 214(e)(2) of the Act adds a public interest dimension to granting ETC status based upon whether the CETC is seeking designation in an area served by a rural or a non-rural ILEC. In areas served by a non-rural ILEC, the Act directs states to designate additional ETCs “[u]pon request and consistent with the public interest, convenience, and necessity.” In areas served by rural ILECs, the Act requires states to “find that the designation is in the public interest” before granting ETC status to any additional carriers other than the rural ILEC. In Oregon, for federal universal service purposes, Qwest and Verizon Northwest Inc. (Verizon) are classified as non-rural ILECs. All the other ILECs in the state are classified as rural. Qwest is the incumbent carrier in each of the three wire centers that comprise Wantel’s proposed designated service area. Therefore, Wantel’s application is subject to public interest standards applicable to carriers requesting ETC status in non-rural ILEC areas.

Since the Commission last granted ETC status to competitive carriers, the FCC has modified its requirements for ETC designation. On February 25 of this year, the FCC adopted new, more stringent guidelines for granting ETC status, based largely on recommendations from the Joint Board. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46 (released March 17, 2005). Under the new requirements, an ETC applicant must demonstrate 1) commitment and ability to provide supported services throughout the proposed service area, including submission of a 5-year service quality improvement and/or build-out plan; 2) ability to remain functional in emergency situations; 3) commitment to meeting consumer protection and service quality standards; 4) offering of a local usage plan comparable to the ILEC in the serving area; and 5) acknowledgement that it may be required to offer equal access to long distance carriers in the event that no other ETC is providing equal access within the service area. Further, the FCC revised its public interest analysis and concluded that carriers requesting designation in a non-rural service area must meet certain public interest requirements previously applied only to carriers requesting designation in rural service areas.

Although states are not required to adhere to the new guidelines, the FCC strongly encourages states to employ the new requirements in designating ETCs. The FCC believes that because the new requirements create a more rigorous ETC designation

process, their application will improve the long-term sustainability of the universal service fund. Staff concurs, and believes that the Commission should apply these guidelines in deciding whether to grant new ETC requests. Doing so would be consistent with the Commission's past practice of looking to the FCC for guidance when it is available. Although the Commission has not procedurally addressed or adopted the new guidelines to date, Wantel has consented to application of these stricter guidelines in its application.

D. Wantel has satisfied the requirements for ETC status.

1. Basic Requirements

Wantel's application demonstrates that it meets the basic statutory conditions for eligibility. Wantel currently offers all of the nine supported services required by FCC rules. It provides these services throughout its proposed service area using a combination of its own subscriber plant, leased UNE loop facilities, and resale of Qwest's retail services. In addition, Wantel has committed to offering Lifeline and Link Up low-income assistance programs upon designation, as required by 47 C.F.R. Sections 54.405 and 54.411, respectively. As also required by the Act, Wantel currently advertises, and plans to continue to advertise, the supported services throughout its service area using media of general distribution. In addition, Wantel plans to specifically advertise the availability of Lifeline and Link Up services at locations where low-income customers most likely to be eligible can be reached.

2. 2005 Requirements.

As explained below, Wantel has also satisfied the new FCC requirements set forth in the FCC's March 2005 order.

a. Commitment and ability to provide supported services. Wantel has demonstrated its commitment and ability to provide supported services throughout the proposed service area, and has met the specific requirement of submitting a 5-year service quality improvement and network build-out plan. Wantel's application includes, under confidential cover, a plan for the next five years that details annual forecasts of line growth for supported services, federal universal service support, facility build-out plans, and service improvement projects, on a wire center-by-wire center basis. Wantel has also submitted maps of its current network, as well as maps of future network expansion projects, in confidential exhibits in its application.

The amount of federal universal service support that Wantel will receive is determined by the amount of support per eligible line that is received by the incumbent carrier, Qwest. Qwest currently receives only federal interstate access support (IAS) in the Sutherlin and Winston wire centers, in the amount of \$1.0896 for each residence and single-line business line, and \$0.0207 for each multi-line business line, per month. In the third wire center, Roseburg, no federal support is available. Because the available federal support is quite small, and Wantel's objective is to apply for the larger amounts of Oregon universal service support, Wantel submitted a 5-year plan that includes projects it hopes to fund with OUS support, as well as projects that will use federal support. The plan for use of both federal and Oregon support demonstrates Wantel's commitment to universal service and the benefits that ETC designation will bring to Oregon's rural consumers. Although Wantel's application for OUS eligibility will be evaluated and decided separately in UM 1190, a review of Wantel's plan for OUS funding demonstrates the potential value of granting the federal ETC status that Wantel needs to proceed with its plans to apply for OUS funding. Wantel's long-term plan is to build out its network and use its own plant to provide service in lieu of using the facilities or reselling the services of the incumbent, Qwest.

Wantel plans to use the relatively small amount of federal support funding for the provisioning, maintenance and upgrade of loop facilities, and to improve access loop service quality by installing loop management systems. The support that will be received for the Sutherlin and Winston wire centers will be reinvested in these wire centers, and none will be used in Roseburg, which will not generate any federal support. Wantel has detailed its plans to use OUS funding, assuming it is obtained, to significantly build out a fiber-based network that will enable existing and new customers to have access to high-quality, reliable, and efficient advanced residential and business services. Wantel has also included in its application a statement certifying, consistent with 47 USC § 254(e), that it will use any universal service support that it receives only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

b. Ability to remain functional during emergencies. Wantel's application demonstrates its ability to remain functional in emergency situations by describing the availability of battery and emergency generator back-up power, the redundancy and diversity that is built into its network, and its capabilities for handling traffic spikes.

c. Commitment to consumer protection and service quality standards. As a licensed CLEC in Oregon, Wantel is subject to Oregon consumer protection laws and submits service quality reports to the Commission. Wantel's application includes service quality reports that demonstrate it has met or surpassed the Commission's quality standards.

d. Local usage. The fourth requirement is a demonstration that the applicant offers a local usage plan comparable to the ILEC in the serving area. Wantel's application includes information on basic local usage plans that mirror Qwest's in terms of the local calling area and EAS definitions, offer unlimited local calling, and are comparably priced.

e. Equal access. To satisfy the fifth requirement announced by the FCC in its March 2005 order, the applicant must acknowledge that it may be required to offer equal access to long distance carriers in the event that no other ETC is providing equal access within the service area. This requirement is largely aimed at wireless carriers, as they are not currently required, as wireline local exchange carriers are, to provide equal access to long distance providers. Wantel currently offers equal access, and will continue to meet this requirement in the future.

3. Public Interest

Under the *Pine Belt Cellular* guidelines used previously by this Commission to grant ETC status to CETCs in non-rural ILEC service areas, Wantel's designation would be viewed as *per se* in the public interest, and no further public interest considerations would be warranted.² However, under the FCC's new guidelines, public interest factors are to be considered in designating all additional ETCs, regardless of whether the proposed service area is served by a non-rural, or rural, ILEC. The new guidelines also set out an analytical framework to determine whether the public interest would be served by the designation of an additional ETC. Using that framework, the FCC will consider and balance two factors: 1) the benefits of increased consumer choice, and 2) the advantages and disadvantages of a particular service offering. The FCC adopted one set of public interest factors for designations in both non-rural and rural ILEC areas. However, the FCC or a state commission may weigh these factors differently depending on the type of area served. The FCC will continue to require a test for cream-skimming

² In designating USCC and RCC as ETCs in requested wire centers of non-rural carriers Qwest and Verizon, the Commission relied on the FCC's interpretation of the Section 214(e)(2) public interest requirements as applied in their *Pine Belt Cellular Order* (e.g., see PUC Order No. 04-356, Section III.A. pp. 5-6). The FCC stated in *Pine Belt* that "[F]or those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest." *In the Matter of Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, DA 02-1252, 17 FCC Rcd 9589, paragraph 13 (released May 24, 2002). Based on this ruling, the Commission required no public interest tests in granting ETC status to USCC and RCC in non-rural wire centers. However, as noted above, the analysis previously employed by the Commission is not consistent with the new requirements announced by the FCC earlier this year.

in rural areas, but it will not use such a test in non-rural areas. Additionally, the new filing guidelines that require the inclusion of more information in ETC applications, e.g., a 5-year service quality improvement plan and various types of commitments, will also help to ensure that designation will serve the public interest.

Wantel's application demonstrates that designation would be in the public interest under the new FCC framework. Wantel has met the specific new requirements within its application, as discussed above. In addition, Wantel's designation would result in increased consumer choices, and advantageous service offerings. Due to the small amount of federal support that will flow to Wantel, the public interest benefits of its designation should be viewed from the larger perspective of the potential benefits that will be realized if Wantel also receives OUS funding. Wantel's designation will result in increased consumer choice as Wantel invests universal service support funds to provide genuine facilities-based competition in high cost areas of Oregon. Wantel plans to use support to improve the quality of service and to build out its current network, and reduce reliance on the resale of Qwest facilities. In so doing, it will be expanding a feature rich, fiber network for local exchange services that will give consumers another wireline choice for access to internet, DSL, high speed data, and other advanced services. In addition, Wantel's plans to extend connections to a regional high speed fiber transport network will bring advanced services and increased cost savings to more customers in the high cost areas.

The advantages of Wantel's proposed service offerings include all the advanced features offered by the incumbent, e.g., voicemail, call waiting, caller ID, three-way calling, last call return, call forwarding, etc. In addition, Wantel offers access to several different ISPs in the area through dial-up internet service, as well as DSL service. The upgrades that Wantel has proposed to make with support funding will improve call and service quality for existing and new customers, as well as increase the reliability of services in emergencies through diverse traffic routing and SONET ring technology. Wantel will be offering Lifeline and Link Up services to qualifying low-income customers. An additional advantage of Wantel's service is its local approach to customer care. Wantel has walk-in offices that are located within the service area, where customers can interact with Wantel employees and technical staff is on hand locally for instant response to service situations.

E. Reporting Requirements

In granting federal ETC status to USCC and RCC Minnesota, the Commission imposed annual reporting requirements on the carriers. Those requirements included items related to the number of lines for USF support, the support amount received, how the

support was used, forecasts of the coming year's support and how it will be used, documentation of advertising, service quality complaints, and items related to the offering of service outside the carriers' cellular license area, but inside the designated service area. The reporting requirements were imposed largely as mechanisms to ensure that the ETCs fulfilled their universal service commitments during the year, and to determine if they should be recertified to continue receiving high cost support in the following year. However, since Wantel will be receiving only federal interstate access support, and not rural high cost support, it is not subject to annual Commission recertification. Under FCC rules, ETCs can continue to receive federal access support if they self-certify on an annual basis directly to the FCC and USAC. This self-certification process consists of submitting a signed affidavit certifying that the ETC will use the support funds received only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Qwest and Verizon, the incumbents that receive IAS funding, are not recertified annually by this Commission either. They recertify themselves directly to the FCC and USAC.

The FCC's new ETC certification rules also include reporting requirements that it will use to recertify CETCs to which it granted initial designation. The new annual reporting requirements include a progress report on the 5-year plan, reporting on outages, the number of unfulfilled service requests, and the number of complaints per 1,000 lines, as well as certifications of compliance with service quality standards and consumer protection rules, the ability to function in emergency situations, the offering of a local usage plan comparable to the ILEC's, and acknowledgment of potential equal access responsibilities. It is not clear, however, whether these reporting requirements will affect recertification for interstate access universal service support. The FCC recommends that states impose these reporting requirements not just on CETCs, but on all ETCs. The first annual reports are not due to the FCC until October 1, 2006.

Staff intends to request in the near future that the Commission open a new docket to investigate adoption of the new FCC certification, recertification, and reporting requirements for ETCs in Oregon. Assuming that new reporting requirements will be determined in that docket, Staff recommends that the Commission grant Wantel's application for ETC status without specific reporting requirements, but note that Wantel will be subject to any reporting requirements that the Commission may adopt.

PROPOSED COMMISSION MOTION:

Wantel, Inc. dba ComspanUSA's application for designation as a federal ETC in three Qwest wire centers, Roseburg, Sutherlin, and Winston, be granted.

| Docket No. UM 1202
June 21, 2005
Page 10

ORDER NO. 05-856

| UM 1202

APPENDIX A

WANTEL Federal ETC Designated Service Area

<u>Wire Center*</u>	<u>CLLI Code</u>	<u>ILEC Study Area</u>
1. Winston	WNTNOR57	Qwest Corp – OR
2. Sutherlin	STHROR58	Qwest Corp – OR
3. Roseburg	RSBGOR57	Qwest Corp – OR

*Entire wire centers are included in designated service area.