ORDER NO. 11 522

ENTERED DEC 20 2011

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1549

In the Matter of WARM SPRINGS TELECOMMUNICATIONS COMPANY, Application for Designation as an Eligible Telecommunications Carrier and Provider.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its Public Meeting on December 20, 2011, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter, attached as Appendix A.

BY THE COMMISSION:

Becky L. Beier

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. CA18

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 20, 2011

REGULAR ____ **CONSENT** X **EFFECTIVE DATE** December 20, 2011

DATE: December 12, 2011

TO: Public Utility Commission

FROM: Celeste Hart and Jon Cray

THROUGH: David Poston, Bryan Conway and Kay Marinos

SUBJECT: WARM SPRINGS TELECOMMUNICATIONS COMPANY: (Docket No. UM 1549) Application for Designation as Eligible Telecommunications Carrier and Eligible Telecommunications Provider.

STAFF RECOMMENDATION:

Staff recommends the Commission grant the Warm Springs Telecommunications Company (WSTC or Company) request for designation as a federal Eligible Telecommunications Carrier (ETC) for the purposes of receiving federal universal service high-cost and low-income support in the Warm Springs wire center of the incumbent local exchange carrier (ILEC), Qwest Corporation (Qwest). In addition, Staff recommends the Commission designate WSTC as an Eligible Telecommunications Provider (ETP) to participate in the Oregon Telephone Assistance Program (OTAP). WSTC demonstrates that it meets the requirements for ETC and ETP designation through its Amended Application.

DISCUSSION:

A. Background

WSTC is a new telecommunications Company owned and operated by The Confederated Tribes of Warm Springs of Oregon (Tribes) incorporated mainly for the purpose of serving the residents of the Warm Springs reservation lands. The Company was granted authority to provide telecommunications service as a competitive provider in Oregon on April 8, 2010, by Commission Order No. 10-137 in Docket No. CP 1470. WSTC is a facilities-based carrier that intends to provide service over its own network

facilities, and in some cases, the use of unbundled network element (UNE) loop facilities leased from Qwest.

On July 8, 2010, WSTC filed an application requesting designation as a federal ETC in the Warm Springs wire center of the ILEC, Qwest. Appendix A indicates the name, Common Language Location Indicator (CLLI) code,[1] center encompassed by the application. The Warm Springs wire center includes much of the federally designated tribal lands of the Warm Springs Reservation, as well as a small portion of land that is not part of the reservation. The Company desires to bring state-of-the-art communications services to the people on the reservation as it believes that the incumbent carrier has not fully met their needs. The Company will offer not only voice service, but broadband services as well, including high speed internet access. The Company has begun building its network through the use of grant and loan funds from the Rural Utilities Service (RUS). Designation as a federal ETC will enable WSTC to receive additional support from the federal universal service high-cost fund to build out its network. Designation will also enable WSTC to participate in the federal Lifeline and Link Up programs that provide discounts to qualifying low-income customers and tribal members. Designation as a federal ETC and ETP will also enable the Company to proceed to apply for additional needed support funds from the Oregon Universal Service Fund (OUSF), as such designations are prerequisites for that funding.

No parties filed to intervene in the docket. Staff and the Company worked together closely for many months to ensure that WSTC would be able to meet the requirements for both federal ETC and ETP designation. Based on those discussions, WSTC filed a First Amended Application on December 2, 2011, that demonstrates fully that the Company meets all requirements for designation.

B. ETC Designation

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, i.e., ETCs. State commissions may confer federal ETC status on ILECs or competitive common carriers that meet the 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. The carrier must provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's service.

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

Each state may adopt specific requirements for ETC designation that are consistent with requirements of the Act. The Commission adopted its own explicit set of requirements for federal ETC designation in Docket UM 1217, Order No. 06-292 (ETC Order). WSTC demonstrates in detail in its Amended Application that it satisfies each of these requirements as follows.

1. Common carrier status: WSTC is a common carrier certificated by the Commission to offer services in Oregon.

2. Commitment and ability to provide all supported services: WSTC demonstrates its commitment and ability to provide the supported services, which include voice grade access to the public switched network, local usage comparable to that provided by the ILEC, signaling, single-party service, toll limitation, and access to emergency service, operator service, directory assistance, and interexchange (toll) service. In addition, WSTC commits to offering Lifeline and Link Up services to qualifying low-income customers, and to participate in the OTAP, Oregon's corollary to the federal Lifeline program. OTAP participation requires ETP designation, which WSTC requests as part of its Amended Application. ETP designation is addressed in section C. of this memo.

3. Commitment and ability to provide service throughout the designated service area: WSTC demonstrates its commitment and ability to provide service throughout its entire proposed designated service area, which is comprised of the area served by the Warm Springs wire center. Because it is owned by the Tribes, the Company is very committed to providing service to all residents on the Warm Springs reservation. While most of the proposed service area is comprised of reservation land, there is also a small area that is off-reservation. WSTC commits to offer service to any requesting customers in that area as well. Until the network is fully built out, WSTC will offer service in some areas through use of some Qwest facilities. The Company has an interconnection agreement with Qwest for this purpose.

4. Use of its own facilities to provide service: WSTC is in the start-up phase of its operations. It plans to eventually serve all customers using its own, newly built network, but must necessarily build out in stages over time. Therefore, until the entire build-out is completed, the Company will serve some requesting customers by reselling Qwest facilities. This is consistent with ETC requirements.

5. Commitment to use support only for the intended purposes: WSTC's Amended Application includes a five-year network improvement plan, as required by the ETC Order. Although the details of the plan are confidential, Staff can attest that it spent considerable time with the Company to ensure that the plan meets all requirements and demonstrates how the Company will build out its network and use support money for the purposes intended by the Act. The plan details annual forecasts of line growth for supported services, anticipated federal universal service support amounts, facility build-out plans and service improvement projects. Also included are forecasts and uses of support funds that the Company hopes to receive later from the OUSF to give a more complete picture of the Company's plans. In addition, the Amended Application includes maps of the types and locations of key network components.

   Although the basic components of the network are in place, WSTC still faces a great deal of network expansion and build-out activity. The large area and difficult terrain will require significant expenditures and the use of creative network configurations in order to reach all residents. Each of the five years in the network plan is largely dedicated to obtaining the coverage and access necessary to bring telecommunications to customers throughout the reservation and wire center area.

6. Commitment to advertise supported services: WSTC commits to advertising its supported services for tribal residents through the tribal newspaper, radio station, and internet sites. The Company will directly contact the residents living outside the reservation to inform them of the availability of its services.

7. Commitment to offer and advertise Lifeline, Link Up and OTAP services: WSTC commits to offer and advertise Lifeline, Link Up and OTAP services for qualifying low-income customers. These services are discussed in more detail below as they pertain to ETP designation.

8. Ability to remain functional during emergencies: WSTC 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. The Company also addresses the provisioning of, and access, to 911 services.

9. Commitment to service quality and consumer protection standards: As a licensed CLEC in Oregon, WSTC is subject to Oregon consumer protection laws and will

submit any applicable service quality reports to the Commission required by Oregon Administrative Rules (OARs).

10. Public interest: Designation of WSTC as an ETC to receive federal universal service funds is in the public interest. WSTC's designation will result in increased consumer choices, new advanced service offerings, and improved service in many areas of the wire center. Designation would allow WSTC to bring telecommunications services to the residents of the Warm Springs reservation that have no service today because they live too far from the ILEC's central office. The Company is committed to serving the residents and has well-developed plans to accomplish that goal. In addition, the success of the Company will increase employment opportunities in an area where unemployment is extraordinarily high.

11. Annual reporting requirements: WSTC agrees to abide by all ETC annual reporting requirements established by the Commission in the ETC Order.

C. ETP Designation

Federal Communications Commission (FCC) rules require that an ETC for federal universal service support funds offer Lifeline and Link Up (if applicable) services to qualifying low-income customers. In order to offer Lifeline services in Oregon, a carrier must participate in the OTAP, which is administered by the Commission, and funded through the Residential Service Protection Fund (RSPF) established by the Oregon Legislature in 1987. The RSPF is funded through a surcharge assessed on each landline and wireless retail subscriber who has access to the telecommunications relay service.

The OTAP is the state-mandated corollary of the FCC Lifeline and Link Up[2] low-income program. The OTAP is set forth and explained in both state statute and in Commission OARs.[3] The program currently provides support to all ILECs, one competitive local exchange carrier, and four wireless carriers designated as ETCs and ETPs in Oregon. The support enables the carriers to pass through discounts on their basic voice services, whether sold separately or in combination with other services, to low-income

[2] Link Up provides qualified customers with a one-time discount that equal to half of the initial installation fee (up to a maximum of $30) for one landline phone service at the primary residence or the activation fee for one wireless phone service. *See* generally C.F.R. § 54.411. The OTAP does not contribute support for Link Up discounts, only the federal universal service low-income fund does.

[3] *See* generally Oregon Laws 1987, chapter 290, Sections 1 through 8; OAR Chapter 860, Division 033.

residential customers who meet eligibility requirements. The OTAP provides $3.50 of monthly support so that an ETC can obtain an additional $1.75 in Tier III[4] federal Lifeline support. Depending on the subscriber line charge of the ILEC, the maximum combined support an eligible customer in Oregon can receive is $13.50 ($3.50 from the OTAP and $10.00 of Lifeline support from the federal universal service low-income fund).

Customers in Oregon are eligible to receive Lifeline, Link Up and OTAP assistance if they receive benefits from the federal supplemental nutrition assistance program or participate in another Commission approved, low income public assistance program (e.g. Supplemental Security Income, etc.) for which eligibility requirements do not exceed 135 percent of the federal poverty level. Approximately 60,000 low income customers currently are the beneficiaries of the Lifeline and OTAP subsidy on their phone bill.

Unlike many other states where ETCs are permitted to verify the eligibility of Lifeline customers, Oregon requires applicants to submit a Lifeline application to the Commission and staff must verify that customers meet initial and ongoing eligibility requirements.[5] Staff analyzes and inputs customer application data into the Commission database and reviews the Department of Human Services database to verify applicants' initial eligibility for Lifeline, Link Up and OTAP. Staff performs audit tasks to ensure that ETCs are compensated only for truly eligible recipients. As the direct point of contact, Commission staff responds to public inquiries via inbound and outbound phone support to explain the program rules, regulations, application and program processes, policies, and procedures in addition to eligibility criteria, benefits and ETC selection.

Before an ETC applicant is authorized to offer and advertise Lifeline, Link Up and OTAP services, the Commission must designate it as an ETP. OAR 860-033-0005(5) defines an ETP as "a provider of telecommunications service, including a cellular, wireless or other common carrier that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area" by having met ETC eligibility criteria and demonstrating that it will comply with OAR 860-033-0005 through 860-33-0100.

[4] C.F.R. § 54.403 defines Lifeline support amounts.
[5] *See* OAR 860-033-0030.

WSTC seeks designation as an ETP from the Commission so that it can provide Lifeline, Link Up and OTAP discounts to its customers in the Warm Springs wire center, and be reimbursed accordingly. WSTC also seeks ETP designation to provide Enhanced Lifeline a.k.a. Tribal Lifeline and Enhanced Link Up support to eligible residents of Tribal lands.[6] Exhibit 13 of WTSC's Amended Application contains the completed ETP application form. WSTC will abide by all FCC regulations and Commission OARs (i.e., 860-033-0005 through 860-033-0100), including the collection and remittance of the RSPF surcharge, for ETP designation.[7] WSTC's commitment ensures that disbursements from both the federal universal service low-income fund and RSPF are documented, justifiable and in compliance. WSTC does not request or seek waivers of any OAR from the Commission.

WSTC will primarily provide Enhanced Lifeline a.k.a. Tribal Lifeline and Enhanced Link Up support to eligible residents of Tribal lands. As a Tribal based telecommunications service provider, WSTC possesses inherent knowledge, awareness, and understanding of the telecommunications needs of Tribal members. Designating WSTC as an ETP in Oregon will enable it to expand the availability of affordable telecommunications services to Tribal residents and other qualifying low-income consumers in the Warm Springs area and is therefore in the public interest. The impact to the Commission's administrative role in Lifeline, Link Up and OTAP is expected to be minimal.[8]

PROPOSED COMMISSION MOTION:

The application of Warm Springs Telecommunications Company for designation as an Eligible Telecommunications Carrier for purposes of receiving federal universal service high-cost and low-income funds and as an Eligible Telecommunications Provider to participate in OTAP, in the Warm Springs wire center of the incumbent Qwest Corporation, be granted.

[6] *See* C.F.R. § 54.400(e), C.F.R. § 54.403(4) and C.F.R. § 54.411(3) (2008).
[7] As required by OAR 860-033-0005(5)(b), WSTC's non-Tribal marketing collateral will reflect Oregon-specific Lifeline, Link Up and OTAP eligibility requirements to promote the availability of affordable telecommunications services to qualifying low-income customers.
[8] The Commission does not provide administrative or eligibility verification support for Enhanced Lifeline a.k.a. Tribal Lifeline and Enhanced Link Up. Therefore, WSTC will provide and receive reimbursement for Enhanced Lifeline a.k.a. Tribal Lifeline and Enhanced Link Up in accordance with FCC regulations. *See* generally C.F.R. § 54.400 et seq.

APPENDIX A

Warm Springs Telecommunications Company
Federal ETC Designated Service Area – Oregon

Wire Center	CLLI Code	ILEC Study Area
Warm Springs	WRSPOR	Qwest Corporation (535163)