STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-344

May 13, 2003

RCC MINNESOTA, INC.
SRCL HOLDING COMPANY
SACO RIVER COMMUNICATIONS CORPORATION
Request For Designation As Eligible
Telecommunications Carrier

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we designate RCC Minnesota, Inc. (RCC)[1] as an eligible telecommunications carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (TelAct) and Section 54.201 of the Federal Communications Commission's (FCC) Rules, 47 C.F.R. § 54.201.

II. PROCEDURAL HISTORY

RCC is a predominately rural wireless carrier which serves in many areas throughout the state. On June 7, 2002, RCC submitted an Application seeking designation as an ETC pursuant to Section 214 (e)(2) of the TelAct and 47 C.F.R. § 54.201. RCC requested that it be designated as eligible to receive all available support from the federal Universal Service Fund (USF) including, but not limited to, rural, insular and high cost areas and low income customers.

Following notice of the Proceeding, Petitions to Intervene (all of which were granted) were received from Community Service Telephone Company (CST), the Telephone Association of Maine (TAM), and the Office of the Public Advocate (OPA). Verizon Maine obtained limited intervenor status. CST, TAM and OPA filed comments on July 30, 2002, in response to a July 1, 2002 Procedural Order requesting a preliminary response to RCC's application. After discovery by the intervenors on RCC, a Technical Conference was held on October 8, 2002. Thereafter, pursuant to a November 27, 2002 Procedural Order, TAM, CST and OPA filed Briefs on December 23, 2002.[2] On January 24, 2003, RCC prefiled the testimony of Rick O'Connor, Senior Vice President for RCC's Northern Region (which includes Maine), three State of Maine Legislators (the "Legislative Witnesses") and nine other Maine citizens, together with its

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[1] RCC does business in Maine as Unicel.

[2] All parties were invited to file both testimony and legal briefs. TAM, OPA, and CST only filed legal briefs.

Brief. RCC then responded to a further round of discovery from OPA, TAM and CST on February 14, 2003. On February 26, 2003, RCC filed a letter with the Commission indicating that it would be offering the statements of its Legislative Witnesses as comments from interested parties, but not for evidentiary purposes.

On February 28, 2003, RCC and the OPA filed a Stipulation which recommended that the Commission accept and adopt the Stipulation as its final disposition in the case. On March 3, 2003, both a hearing and oral argument were held in this matter. All parties attended and participated.

On April 17, 2003, the Hearing Examiner issued an Examiner's Report in the form of a Draft Order recommending that the Commission accept the terms of the Stipulation submitted by RCC and the OPA and thereby designate RCC as an ETC. Exceptions to the Examiner's Report were filed by RCC, TAM, and CST.

III. LEGAL STANDARDS

The Telecommunications Act of 1996 provided for the continuing support of universal service goals by making federal USF available to carriers which are designated as ETCs. Section 214(e)(2) of the TelAct gives state commissions the primary responsibility for designating carriers as ETCs.[3] To be designated an ETC, a carrier must offer all nine of the services supported by the universal service fund[4] to all customers within the ETC's service area and advertise the availability of those services throughout the service area.[5] Further, as a condition for receipt of federal USF support, each year a carrier must certify to the state commission and the FCC that the funds it receives are being used in a manner consistent with the requirements of 47 U.S.C § 254(e).

In the case of an area served by a rural ILEC, the ETC's designation must be in the public interest.[6] There is little guidance, however, within the TelAct

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[3]47 U.S.C. § 214(e)(2). *See also* Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, ¶ 93 (2000) (*Twelfth Report and Order*).

[4]The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

[5]47 U.S.C. §214(e)(1); 47 C.F.R. § 54.101(a).

[6]47 U.S.C. § 214(e)(2).

regarding how state commissions should evaluate the "public interest" in this context. Other state commissions have found that they should take into account the purposes of the Act and consider the relative benefits and burdens that an additional ETC designation would bring to consumers as a whole.[7] The FCC, when acting in the place of a state commission because of jurisdictional limitations, has considered such factors as: (1) whether the customers are likely to benefit from increased competition; (2) whether designation of an ETC would provide benefits not available from ILECs; and (3) whether customers would be harmed if the ILEC decided to relinquish its ETC designation.[8]

IV. PARTIES' POSITIONS

A. RCC

RCC claims that designation as in ETC is in the public interest because it will allow RCC to "secure USF support for direct investments in Maine's wireless telecommunications infrastructure – investments that either would not be made in the absence of USF support, or will be substantially delayed." RCC also claims that competition will be bolstered by its designation.

RCC seeks designation only in those areas covered by its federal licenses. Because federal wireless licenses are granted on the basis of municipal and county boundaries, they do not match wireline exchange boundaries. Thus, RCC also requests that the service areas of 20 rural independent telephone companies (ITCs) be modified so that RCC can meet its federal requirement of offering service throughout the service area. RCC believes that re-alignment of Verizon's service areas is not required. RCC states that modification of the ITCs' boundaries will not impact the amount of support the ILEC receives because the support is calculated on a study area, not service area, basis. RCC also claims that the Commission should not be concerned with "cream skimming" because it is willing to serve all areas covered by its federal license – it is not picking and choosing certain areas to serve because they are low cost.

Finally, RCC believes that the Commission's authority to regulate its practices is severely limited by both federal and state law. Specifically, federal law preempts state commissions from regulating the entry and rates of wireless carriers. RCC urges a broad interpretation of this limitation. In addition, RCC

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[7] *See e.g., In the Matter of the Petition of RCC Minnesota, Inc. For Designation as an Eligible Telecommunications Carrier*, Wash. Utilities and Transportation Commission, Docket No UT-02033, Order (Aug 14, 2002) at ¶ 10.

[8] *In the Matter of the Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama,* CC Docket 96-45, DA 02-3181, Memorandum Opinion and Order (Nov. 26, 2002) (*Alabama Order*).

argues that the Commission is a "creature" of the Legislature and that 35-A M.R.S.A. § 102(13) generally precludes Commission jurisdiction over wireless service. RCC acknowledges that 35-A M.R.S.A. § 102(13)(C) provides for Commission assertion of jurisdiction after an investigation and a determination that a wireless carrier is offering basic local exchange service but claims that TAM should have requested such an investigation at the outset of the proceeding and that no factual grounds exist to warrant an investigation.

RCC is a party to the Stipulation that was submitted to the Commission on February 28, 2003. The Stipulation is discussed in Section E below.

B. TAM

TAM argues that RCC has not met its burden of proof to show that it meets the requirements for becoming an ETC. TAM argues that the goal of universal service is not increased competition, but rather ensuring that as many people as possible are connect to the public switched network. It questions why RCC's designation would be in the public interest, especially in light of the fact that RCC admits that its service would not likely be used as a substitute for landline phones but instead as a secondary line for mobile telecommunications purposes. Thus, TAM believes that RCC has not shown that RCC's use of federal USF monies will advance universal service goals in Maine and, accordingly, be in the public interest.

TAM further argues, however, that if the Commission does decide to grant RCC ETC status, RCC should be subject to the same obligations as wireline ETCs. TAM also takes the position that before the Commission can designate RCC as an ETC it must find under 35-A M.R.S.A. § 102(13) that RCC is offering basic local exchange service and thus is subject to Commission regulation, including the requirements of Chapter 290. TAM argues that while the Commission is preempted from regulating the entry and rates of wireless carriers, the FCC has made clear that the state commissions may regulate wireless carriers in the areas of billing practices, customer protection, and matters relating to the provisioning of universal service.

C. CST

CST urges the Commission not to grant RCC's ETC application because it believes the consequences of granting ETC status to wireless carriers such as RCC are injurious to the public interest and outweigh any benefits that might exist. CST outlined a number of specific concerns, most of which center on four themes. First, CST believes that the potential positive effect on universal service resulting from granting ETC status to wireless carriers is *de minimis* because of Maine's already very high universal service penetration. Second, CST is concerned that support for wireless carriers will enable them to "take"

customers from rural carriers, resulting in lower revenue streams to rural carriers who will then look to both federal and state USF mechanisms for more support as well as to customers for higher rates. Third, CST believes that the strain on state and federal USF mechanisms will become politically impossible to support and that customers in rural areas will suffer because of increased rates. Finally, CST argues that there is no assurance that receipt of USF support will result in RCC doing anything different from what it would have done without USF support and that approval of RCC's Request could create additional costs for rural ILECs by causing them to redefine service areas.

D. OPA

The OPA's position throughout this proceeding has been that RCC's application should only be approved if RCC satisfies "certain conditions required by the public interest." In its December 23, 2002 Comments, the OPA outlined the conditions it sought, namely, that RCC offer a "basic service" plan that is priced at or below the basic rates of other local providers and that RCC provide specific information to the Commission concerning how the USF funds are being used to improve wireless coverage of wireless areas in Maine. The OPA also took the position in December that the Commission should assert jurisdiction over RCC pursuant to 35-A M.R.S.A. § 102(13)(C) and that all Commission Rules applicable to wireline ETCs should apply equally to RCC.

In late February, the OPA modified its position when it and RCC came to an agreement regarding the terms under which RCC should be granted ETC status. The OPA's modified position is discussed below.

E. Terms of the Stipulation

On February 28, 2003, the OPA and RCC submitted a Stipulation "intended to resolve the outstanding issues" in this proceeding. It appears that TAM and CST were not included in the early stages of discussions between the OPA and RCC but that they were advised of the discussions several days before the Stipulation was filed and were given an opportunity to participate in the discussion at that time.

The Stipulation provides for the following resolution of the case:

a. RCC is designated an ETC in the areas where it is licensed to provide wireless service in Maine, thus necessitating the redefinition of certain ILEC service areas;

b. RCC will make good faith efforts to establish a call placement service which would allow persons to reach RCC customers even when the person does not know the customer's number;

c. RCC will establish a Universal Service Rate Plan for $15.00 per month; and

d. RCC will comply with Chapters 290 and 294 of the Commission's Rules.

At the hearing, both the OPA and RCC urged the Commission to adopt the Stipulation as a fair resolution of the matter. The OPA stated that the most obvious benefit of RCC's designation would be additional monies for infrastructure improvement in Maine. The OPA also noted that the Stipulation included benefits that were not originally included in RCC's application, including the provision of a basic service plan and compliance with Chapter 290 of the Commission's Rules. Finally, the OPA responded to TAM's concerns regarding RCC compliance with other Commission rules by commenting that there were no "burning issues" associated with those rules and thus no immediate need to pursue their enforcement against RCC.

TAM, both in written comments and at the hearing, argued that the Stipulation falls far short of the necessary safeguards to protect customers of an ETC, whether it is wireless or wireline, and to ensure that the goals of universal service are truly met. TAM believes that the Stipulation is not in the public interest, and would undermine the requirement that the Commission find that granting RCC ETC status is in the public interest before approving RCC's request to be certified as an ETC. Moreover, TAM believes that the Commission should have regulatory jurisdiction over RCC pursuant to 35-A MRSA § 102(13)(C) and that this issue would be best resolved as a part of this proceeding. Additionally, TAM believes that, in addition to Chapter 290, RCC should be required to comply with many other Commission rules, such as Chapters 130, 140 210, 296, 297, and 895. Ultimately, however, TAM's greatest concern, and the focal point of its arguments, is the long-term viability of universal service (and thus the viability of the independent telephone companies that rely upon universal service) if RCC and other wireless carriers are certified as ETCs.

CST's arguments against both RCC's application and the Stipulation focused on the public interest standard. CST argued that granting RCC's application might be at odds with statutes requiring that telephone service be adequately provisioned and reasonably priced. CST's arguments were based upon concerns similar to those of TAM regarding the long-term viability of universal service if wireless carriers are certified as well as the competitive impact of ETC designation on the ITCs. CST also raised arguments relating to its need to average costs over its service area in order to meet requirements that pricing be averaged.

V. DECISION

Based upon the record before us and for the reasons discussed below, we find that RCC meets all of the requirements of 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201 and designate RCC as an ETC in those areas covered by its federal wireless license in Maine.[9]

A. Required Service and Advertising

As stated above, an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.[10] Early in the proceeding there were concerns regarding the ubiquity of RCC's service within its territory and the quality of the service provided. RCC witness Rick O'Connor testified that RCC did, in fact, offer the required services and advertise their availability. He further testified that RCC would agree to supply service to anyone who asked for it within its designated service area. At the hearing, none of the parties cross-examined Mr. O'Connor regarding these assertions nor did the parties offer any testimony to controvert Mr. O'Connor's assertions.

Based upon our own review of the record, we find that RCC does offer all of the required services and that it does (or will) advertise their availability. With regard to concerns relating to ubiquity of service and the obligation to serve all customers, we first find that the FCC's rules do not require a carrier to have the capability to serve all customers at the time of designation, only that the carrier be willing to serve all customers.[11] The FCC has said that to

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[9] In reviewing a stipulation submitted by the parties to a proceeding, we consider whether the parties joining the stipulation represent a sufficiently broad spectrum of interests such that there is no appearance or reality of disenfranchisement, whether the process was fair to all parties, and whether the stipulated result is reasonable and in the public interest. Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). The Hearing Examiner recommended accepting the Stipulation based upon a finding that all of the conditions for accepting a Stipulation were met. In its Exceptions, CST argued that the Commission should not accept the Stipulation because it does not represent the full spectrum of interests involved in the case and does not provide a basis for findings of fact on the public interest standard. We find it unnecessary to reach the question of the validity of the Stipulation because the record before us contains sufficient information upon which to base our decision. Thus, we do not address in detail the concerns of CST about the full spectrum of interest signing onto the Stipulation. We do note, however, that TAM and CST were afforded an opportunity to participate in the settlement discussions, albeit later in the process. Further, neither TAM nor CST complained about the settlement process during the hearing and oral argument held on March 5, 2003.

[10] 47 U.S.C. § 214(e)(1).

[11] *See* Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 at 15175, ¶ 17 (2000) (*Declaratory Ruling*), *pet'n for recons. pending*.

"require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service."[12] Instead, "a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service."[13] Section 22.99 of the FCC's rules acknowledges the existence of "dead spots" in cellular service and states that "[s]ervice within dead spots is presumed."[14] Finally, we take judicial notice of the extensive advertising done by RCC and other cellular providers in Maine and we accept RCC's commitment to use a portion of its advertising budget to increase customer awareness of Lifeline and Link-Up.

B. Public Interest

The concept of universal service is a broad one, especially as articulated in TelAct. Universal service should include choice in providers and access to modern services. Designating RCC as an ETC will allow rural customers to enjoy the same choices in telecommunications that urban customers have, including additional access to broadband through wireless devices. Further, because of the way federal USF is calculated, designation of RCC will not take any money away from Maine's rural ILECs. Indeed, neither TAM nor CST specifically refuted the assertions by RCC that the support to all the incumbent wireline carriers will be unchanged by the granting of ETC status to RCC. Finally, CST's claim that granting RCC ETC status could result in higher rates for incumbent customers is not supported by any evidence or analysis.

In its Exceptions, CST argues that the public interest standard has not been met. Specifically, CST claims that the Examiner's Report did not make findings on many public interest issues, such as the impact on the universal service fund, rates of rural telephone companies, and the harm to rural telephone companies by increased competition.

While we acknowledge the possibility raised by CST (and TAM) that providing USF support for wireless service (which in most instances will be a second line) may ultimately not be a sustainable policy and may have competitive impacts on ITCs, we find that RCC meets the statutory requirements and that Maine consumers (who pay into the federal USF) should not be denied benefits. The public interest is not as narrow as CST has defined it. The evidence that RCC will the funds made available by ETC status to increase the availability of additional services and increase investment in rural Maine supports our conclusion that granting ETC status is the public interest.

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[12] Id. at ¶¶ 12-14.

[13] Id. at ¶ 24.

[14] Id.

At this time, there is no evidence before us to suggest that the list of horribles advanced by CST will, in fact, occur. As the events of the last three years have shown, predicting the future in the telecommunications arena has proven to be one of the fastest roads to bankruptcy. Absent good reason to believe that an adverse consequence will occur, or that the effects will be severe and irreversible[15], we are unwilling to forgo the benefits that are likely to be achieved by granting the petition. Further, while granting RCC status as an ETC may exacerbate CST's concerns, it does not bring them into existence. Federal policy already allows wireless carriers to compete with rural telephone companies. Thus, the FCC has already determined that the benefits of having this new and potentially competing technology outweigh the harm that may flow to the rural telephone companies or the potential impact on the USF.

Finally, we do not believe this proceeding is the appropriate forum for resolving many of the issues raised by TAM and CST. The FCC has recently requested the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations to the FCC relating to high-cost universal service support in study areas in which a competitive ETC is providing service, as well as issues relating to USF support for second lines.[16] Issues of rate rebalancing and deaveraging are very complex. An exploration of those issues will require the development of an extensive record and consideration of many factors beyond the scope of this proceeding. We do not believe the decision we make today will foreclose our ability to address the issues in full at the appropriate time.

C. Service Area Boundaries

No party has contested RCC's designation in Verizon's study area. Further, no party has disputed RCC's assertion that the Commission does not have to re-draw Verizon's service area boundaries to conform with RCC's licensing boundaries but instead may designate RCC's ETC service area as those portions of Verizon's service area covered by RCC's cellular license. It appears from our review of the FCC's recent decision designating RCC as an ETC in Alabama that RCC's assertions are correct.[17]

Differences in RCC coverage and ITC boundaries, as well as federal law regarding rural study areas, require a different approach in rural independent telephone company areas. Under section 214(e)(5), a rural company's "service area" (for purposes of competitive ETC coverage) is the

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[15]This possibility is greatly reduced by the requirement that we review the ETC designation annually.

[16]*See* Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 02-307, Order (rel. Nov. 8, 2002).

[17]*Alabama Order* at ¶ 33.

same as the company's "study area" (used to determine USF) unless and until the FCC and the State, after taking into account recommendations of the Joint Board, establish a different definition of service area for such company.

In the FCC's *RTF Order*, the FCC determined that USF support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area.[18] Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service.[19] Section 54.315 of the FCC's rules required rural carriers to choose one of three disaggregation paths by May 15, 2002. All carriers in Maine, except CST, Island, and Somerset chose Path 1, which does not require them to disaggregate support.[20] Community Service, Island, and Somerset chose Path 3, which required them to self–certify to the state commission that they had disaggregated in compliance with FCC rules.

The circumstances described above require us to take two different approaches to certifying RCC in ITC areas. First, we address rural ILECs whose entire study area is covered by RCC, namely Bryant Pond, China, Cobbosseecontee, Hampden, Hartland & St. Albans, Lincolnville, Mid-Maine, Saco, Sidney, Tidewater, Unity and Warren. For these companies, no additional steps need be taken by the Commission to certify RCC because their service areas and study areas are the same. There is a question, however, concerning whether RCC's certification would cause these ITCs to reconsider their decision not to disaggregate and whether that causes a significant administrative burden. In its Exceptions, TAM argues that while it cannot provide specific information on the costs and administrative burdens associated with disaggregating, rural telephone companies should not be forced to disaggregate. TAM claims that "catering" to RCC impedes the ability of the ITCs to make their own business choices regarding dissagregation.

While dissagregation may impose some administrative burden, the benefit of preventing "cream skimming" by any future CLEC ETCs is generally desirable, even if RCC is not granted ETC status. Neither TAM nor CST has provided any detailed analysis of the costs or burdens associated with disaggregating USF support. CST has stated that the dissagregation it undertook voluntarily pursuant to the *RTF Order* took some time and effort to determine how to disaggregate. However, CST also acknowledged that disaggregation itself did not impact CST's bottom line. Further, we do not see dissagregation to the wire center level as a serious cause for concern. Most wire

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[18] *See* RTF Order, 16 FCC Rcd at 11302, ¶ 145.

[19] Id.

[20] Path 1 remains in place for at least four years unless modified by a state commission to require targeting and disaggregation as provided in Path 2 or Path 3.

centers in Maine contain a mix of downtown, suburban, and rural areas. Even if RCC can only service one exchange rather than a carrier's entire study area, RCC will still be serving many of the more rural customers, which are generally more expensive to serve.

Thus, we certify RCC as an ETC in the areas described above and leave it up to the individual ITC to determine whether disaggregation of support is needed. If they choose to disaggregate further, they should file a petition with the Commission.

The second approach[21] to certification involves rural ILECs where RCC does not serve the full study area but either completely covers some of the ILEC's individual wire centers or covers only part of a specific wire center. (See Attachment A.) In order to certify RCC in these wire centers, we must first make certain findings relating to recommendations made by the Joint Board regarding rural study areas. The Joint Board factors to be considered include: (1) the potential for "cream skimming" if a competitive ETC does not have to serve the full study area; (2) the different competitive footing of rural telephone companies under the TelAct; and (3) the administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.[22] After we make our findings, either RCC or the Commission must petition the FCC for concurrence with our determination.

We find that the cream-skimming concerns are alleviated by the fact that RCC has not specifically picked the exchanges or partial exchanges that it will serve but instead the area was defined by the FCC in its wireless licensing process. We are not concerned the RCC is targeting any specific areas or that any of the partial exchanges would result in a windfall due to service to a highly populated area. Indeed, all of the partial exchanges are located in very rural areas of Maine. We further find that these companies, like the companies discussed above, have the option of disaggregating their USF support beyond just wire center boundaries, thereby lessening the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC's service.

Thus, for the companies listed in Attachment A, we will require that their service area be disaggregated into service areas that are conterminous with wire center boundaries. To the extent that these companies wish to further disaggregate support, they should file a petition with the Commission. Finally, RCC should petition the FCC for concurrence in the new service area definitions.

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[21]The Examiner's Report incorrectly stated that a third approach involving a waiver from the FCC was necessary to certify RCC in areas where it only covers part of an exchange. In its Exceptions, RCC correctly pointed out that the FCC found that wireless carriers need only service those portions of a wire center covered by the their federal wireless license. *Alabama Decision* at ¶ 33.

[22] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (*Recommended Decision*).

D. Compliance with Commission Rules and Other Conditions

Finally, with regard to RCC's status as an ETC and the jurisdiction of the Commission, we concur with the result reached in the Stipulation, namely, that RCC must comply with the two Rules which directly apply to ETCs – Chapters 290 (consumer protection) and 294 (Lifeline) but that RCC is not considered a provider of basic service under 35-A M.R.S.A § 102(13)(C) and therefore is not subject to the Commission's general jurisdiction.

CST and TAM[23] both argued that the Commission should assert jurisdiction over RCC and then require compliance with all Commission Rules but both failed to explain the nexus between RCC gaining ETC status and a finding under section 102(13) that RCC was providing basic service. Generally speaking, however, the service RCC will provide as an ETC is the same as it provides today. There is nothing about our designation that changes the type of service being provided by RCC. We agree with the OPA that other than Chapters 290 and 294, we do not see any current issues involving RCC or wireless carriers that need to be addressed by our current rules. If, at some future time, a specific showing can be made that circumstances have changed significantly, we can revisit this decision.

Finally, with regard to the two remaining conditions contained in the Stipulation (establishment of a call placement service and a $15.00 per month USF plan), we find that the record supports the benefits of such services to Maine consumers. While the terms of the Stipulation release the parties from their obligations under the Stipulation if the Commission fails to accept the Stipulation, we encourage RCC to follow through on the agreements embodied in the Stipulation. Rather than address the legal question of whether the Commission could order RCC to comply with the conditions at this time, we ask

[23] TAM also argued that RCC should not be designated an ETC unless it also assumed carrier of last resort responsibilities in its service area. The FCC specifically rejected adding such a requirement for ETC designation. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8855 (1997).

RCC to notify the Commission within ten (10) of the date of this Order whether it intends to comply.[24] If RCC chooses not to comply, we may re-open the record for argument on these issues.

O R D E R E D

Dated at Augusta, Maine, this 13th day of May, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

[24] We would treat a statement that it intends to comply as consent to making such compliance a condition of this Order.