STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-829

April 16, 2004

UNITED SYSTEMS ACCESS TELECOM, INC.
Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214 of the Telecommunications Act of 1996

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

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

II. PROCEDURAL HISTORY

USAT is a competitive local exchange carrier (CLEC), serving areas of Maine where Verizon Maine is the incumbent local exchange carrier (ILEC). On November 14, 2003, USAT submitted an application seeking designation as an ETC pursuant to Sections 214 and 254 of the TelAct and 47 C.F.R. § 54.201. USAT requested that it be designated as eligible to receive all available support from the federal Universal Service Fund (USF) including, but not limited to, high cost support and low-income customer support.

On January 13, 2004, a case conference in this matter was held via conference call. At that case conference, Verizon and the Office of the Public Advocate (OPA) were orally granted intervenor status. During the call, Verizon raised several policy issues related to universal service funding and requested an opportunity to brief those issues. The Advisors confirmed with USAT that it would use any universal service monies received as a result of its ETC status in a manner consistent with federal requirements. The Advisors also confirmed the need for USAT to comply with all Commission Rules applicable to ETCs if USAT's application is granted. All parties agreed that there were no factual issues requiring a hearing.

Briefs and reply briefs were filed in a timely manner by USAT, OPA and Verizon.

III. LEGAL STANDARDS

The TelAct 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.[1] To be designated an ETC, a carrier must offer all nine of the services supported by the universal service fund[2] to all customers within the ETC's service area and advertise the availability of those services throughout the service area.[3] Further, as a condition for receipt of federal USF support, each year the 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).

IV. POSITIONS OF THE PARTIES

A. USAT

USAT claims that its designation as an ETC is in the public interest because it will allow USAT to "secure (USF) support for additional investments in telecommunications equipment needed to extend phone and internet service to rural areas in Maine, where there is generally only one local service provider." USAT argues that ETC designation will promote competition by providing a choice in service providers and facilitate a network build-out that has already begun. USAT stated that it has already applied for and received ETC designation in the State of New York.

Finally, USAT argues that Verizon has not, and cannot, contend that USAT does not qualify for designation as an ETC. It urges the Commission to reject Verizon's request that the Commission delay action on USAT's Petition until the Federal-State Joint Board on Universal Service and the FCC complete their

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[1] 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*).

[2] 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).

[3] 47 U.S.C. §214(e)(1); 47 C.F.R. § 54.101(a).

examination of the rules regarding ETC designation and USF portability for non-rural carriers.

B. OPA

The Public Advocate supports the granting of ETC status to USAT. Although the OPA states that it has substantial concerns about the growth of the federal high cost and low-income funds and the current structure of program, it believes that those issues are immaterial to this proceeding. The OPA points out that as an ETC, USAT's compliance with both federal and state rules applicable to ETCs is mandatory and that USAT has acknowledged those responsibilities. Finally, the OPA states that it believes that the granting of ETC status to USAT will have little or no effect on Verizon, except that the new subsidies will allow USAT to become a slightly stronger competitor. For that reason, the OPA argues the opposition by Verizon to the prompt designation of ETC status for USAT should be rejected.

C. Verizon

Verizon urges that the Commission take no action on ETC designation until after questions concerning universal service, now pending before the FCC, have been resolved. Thus, Verizon urges suspending further action in this proceeding because the outcome of the federal proceedings may be directly relevant to the consideration of USAT's petition.[4]

Verizon identified two specific areas being addressed by the FCC that it believes are relevant to consideration of USAT's petition: (1) consideration of guidelines for determining whether the designation of an ETC is consistent with the public interest; and (2) review of certain portability and funding issues. In addition to the two issues identified above, Verizon states that the FCC is considering whether to limit interstate access support to only one ETC per customer.

Verizon argues that the CALLS-based interstate access support[5] was designed to compensate LECs for interstate portions of the loop costs and that because the CALLS support is capped, when a competitive ETC receives CALLS support, there

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[4] At the time Verizon filed its comments, the Federal-State Joint Board on Universal Service had not yet issued its decision. That recommended decision was issued on February 27, 2004. Although Verizon literally suggested that the Commission wait for the Joint Board decision, we believe that its intention was that we wait until the FCC acts on the Joint Board's recommendation.

[5] CALLS (Coalition for Affordable Local and Long Distance Service) was a coalition of large local exchange carriers and AT&T who proposed the transfer of some support amounts from federal intercarrier compensation (access charges) to the federal universal service fund.

is a reduction in support for Verizon's interstate loop costs. It states that under the FCC's current rules, a competitive ETC receives the same level of per-line high-cost universal service support that the LEC receives for serving that same customer. Verizon argues that the FCC did not anticipate an outcome in which the ILEC actually incurs the interstate loop costs would be threatened with a dilution of that support. Verizon argues that allowing new ETC designations to dilute the CALLS-based support will make this support insufficient to compensate for its interstate loop costs.

V. DECISION

Based upon the record before us and for the reasons discussed below, we find that USAT meets all of the requirements of 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201, and we designate USAT as an ETC.

No party challenges the fact that USAT has met all the federal ETC requirements. The only issue remaining is whether we should await the decision of the FCC regarding the Federal-State Joint Board recommendation before considering this request for ETC designation.

Verizon has not provided any information on when the FCC will issue its decision or exactly what impact the FCC decision will have on Universal Service Fund funding issues before us. Although Verizon states that the federal proceeding "may be directly relevant to consideration of USAT's petition," we believe that its possible but undefined relevance at some time in the future provides very little basis for delaying a decision in this case. Furthermore, it is unknown whether and when the FCC will adopt any of the recommendations made by the Joint Board.[6] In the light of this uncertainty, there is no basis for delaying the designation of USAT as an ETC, where USAT unquestionably has met all the requisite qualifications.

Verizon also urged that this proceeding be delayed, arguing that if USAT is designated as an ETC, it will unfairly dilute the interstate CALLS support it currently receives. Verizon, however, has failed to quantify the extent of that dilution or show that any such dilution would make insufficient the amount of interstate support it will receive. Even if Verizon were to show a significant dilution of its interstate CALLS support because of the designation of USAT as an ETC, our lack of authority over the CALLS USF money may limit what actions we can take to ameliorate that problem.[7]

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[6] Normally the FCC requests comments and reply comments on a Joint Board decision. That process, as well as the FCC's own decision making process, is likely to take considerable time.

[7] The revenues received for the CALLS USF are jurisdictionally interstate and therefore do not impact the "sufficiency" of intrastate support under § 254.

If, at some future time, the FCC takes any action based on the Joint Board recommendation that significantly changes the rules for granting ETC status or for governing the portability of support, we can reopen this case pursuant to 35-A M.R.S.A. § 1321.

Dated at Augusta, Maine, this 16th day of April, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.