



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Designation of Eligible Telecommunications Carriers
Under Part 54 of Title 47 of the Code of Federal Regulations

05-TI-162

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL ORDER**

Proceedings

Under § 47 USC 254(e) of the Telecommunications Act of 1996 (Federal Act or Act), implicit support mechanisms for telephone service are being replaced with explicit support. The Federal Communications Commission (FCC) promulgated rules covering support for rural, insular, and high-cost areas, and for other universal service support programs, in its May 8, 1997, order in docket 97-157, entitled *In the Matter of the Federal-State Joint Board on Universal Service*. That order adopted the requirements of § 47 USC 214(e)(1) of the Act in rules for determining which providers are eligible telecommunications carriers (ETCs), and specified that only providers designated as ETCs by state commissions under § 47 USC 214(e)(2) of the Act may receive federal universal service funding 47 C.F.R. 54. This requirement also applies to incumbent local exchange carriers (ILECs); ILECs must be designated as ETCs in order to continue to receive payments under current federal universal service programs, such as high-cost support, effective January 1, 1998.

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On October 22, 1997, the Commission issued a notice of investigation in this docket. That notice requested comments on various issues related to the designation of ETCs, and also requested providers to file applications to be certified as eligible telecommunications carriers. Initial comments were filed by Wisconsin Bell, Inc. (Ameritech Wisconsin or Ameritech), AT&T Communications of Wisconsin (AT&T), the Competitive Telecommunications Association (CompTel), MCI Telecommunications Corporation (MCI), GTE North Incorporated (GTE), and the Wisconsin State Telecommunications Association (WSTA). Reply comments were filed by Ameritech, AT&T, MCI, GTE, WSTA, and United States Cellular Association. In addition, all Wisconsin ILECs and a number of competitive local exchange carriers (CLECs) filed applications to be certified as eligible telecommunications carriers. These companies are listed in Appendix B.

Attached as Appendix A is a list of persons who are considered to be full parties to this docket for purposes of judicial review under §§ 227.52 and 227.53, Stats.

FINDINGS OF FACT

THE COMMISSION FINDS:

Requirements of ETC Status

Under § 47 USC 214(e)(2) of the Federal Act, to be eligible to receive universal service funding, a provider must be certified as an ETC by a state commission. To be certified, the provider must meet two basic criteria in § 47 USC 214(e)(1), which may be paraphrased as follows: (1) the provider must agree to provide essential telecommunications service to any customer in the entire area for which it is designated as an ETC, using at least some of its own

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facilities, and (2) it must advertise its services to customers and potential customers. Complete rules regarding these criteria, the procedures for becoming an ETC, and the procedures for relinquishing ETC status are being developed in the universal service rulemaking, docket 1-AC-166. Other issues, such as whether ch. PSC 165, Wis. Adm. Code, (which covers service standards) should apply to CLECs will be dealt with in the order on regulation of CLECs to be issued in docket 05-TI-138. A draft of that order will soon be routed for comments. The existing universal service rules, ch. PSC 160, Wis. Adm. Code, already apply to all providers, and do not require additional action here. This order will serve to designate as ETCs those companies that have already filed ETC applications, and to establish interim procedures for relinquishing ETC designation. Those interim procedures will remain effective until the administrative rules go into effect.

Rural and Nonrural ILECs

The Act and the FCC order treat rural and nonrural ILECs differently. The nonrural ILECs in Wisconsin are Ameritech Wisconsin and GTE North, Incorporated. All other incumbent LECs are rural ILECs. Under § 214(e)(2) of the Federal Act, states shall designate more than one ETC in an area served by a nonrural ILEC if the state commission determines that each additional carrier meets the requirements of § 47 USC 214(e)(1). For areas served by rural ILECs, the state commission must first make a finding that authorizing additional ETCs in the area is in the public interest, and a proceeding will be necessary if a CLEC asks for ETC designation in the rural ILEC's territory. Proceedings will also be necessary when a CLEC seeks

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authority to enter the small telecommunications utility's territory or requests interconnection.¹ It is reasonable to address all of these issues in the same proceeding, unless special considerations justify separate proceedings. In docket 05-TI-138, a proposed order is being drafted covering regulation of CLECs. That proposed order will state the process for resolving such petitions.

Appropriate Area for ETC Designation

In its May 8, 1997, order, the FCC states that the area for which providers can be designated as ETCs in the service territories of non-rural ILECs can be no larger than the wire center² (although a provider can be designated as an ETC in any number of areas.) The areas should be consistent with the areas used for universal service cost modeling, because the subsidies eventually calculated under the cost model will help providers determine whether they wish to be ETCs. At present, the Commission is considering cost study methodologies in docket 05-TI-160, and the models proposed by the nonrural ILECs are tied to wire centers. If docket 05-TI-160 results in the use of different areas for cost models, the areas for designation of ETCs can and should be adjusted accordingly.

Some parties have proposed allowing each ETC candidate to define its own area for ETC designation. While this approach arguably would restrict competition less, any benefits are greatly outweighed by administrative problems. First, customers, and the Commission, need to

¹ Under § 251 of the Act, rural ILECs also have the right to request exemption from requests for interconnection and unbundling. Further, under state law (§ 196.50[1][b], Stats.), the Commission is required to make a finding that the public interest requires a competitor before the Commission can authorize a competitor to serve in a small telecommunications utility's territory.

² The wire center is the territory served from a single central office. An exchange may contain several wire centers. For example, the Madison exchange contains six wire centers.

be able to easily identify the ETCs serving a particular customer or community. Although Geographic Information Systems (GIS) software may make this feasible in the future, at present this would require considerable effort. Furthermore, ETCs are to be allowed to relinquish that status, provided another ETC is serving that area (see § 214[e][4] of the Act). Allowing company-specific ETC areas opens a host of issues, such as whether a provider can relinquish its ETC status if other ETC providers serve in 95 percent of its ETC territory. In addition, other Commission policies, as well as technical factors related to call routing and interconnection, drive competitors to enter markets on a wire center by wire center basis. As a result, the potential benefits of provider-specific ETC areas are greatly reduced. It is not reasonable, therefore, to allow provider specific ETC areas.

The FCC has set the ILEC's study area as the maximum area for ETC designation in areas served by rural ILECs, but also recommended that states adopt a smaller area. The study area means, for Wisconsin ILECs at least, the entire area (within Wisconsin) served by the rural ILEC. The WSTA has proposed using the study area as the area in which ILECs and competitors must serve all customers if they are to be designated as ETCs. The primary effect of using such a large area would be to make it more difficult for providers to enter the market, since they would be required to enter the entire service territory. Since some companies are composed of several separate groups of exchanges which are noncontiguous and occasionally even in different LATAs, the cost of complete entry would be a barrier to entry and effective competition. The WSTA's primary argument, that federal support funding is provided on a study area basis, may be made in the proceedings to authorize a competitor in a rural ILEC's territory; it does not need to be adopted in advance. Therefore, the Commission rejects the WSTA

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argument that the entire study area be used as the area for designation of ETCs. The Commission finds it appropriate to allow competitors to apply for authority to enter rural ILEC territories on an exchange basis and to use the exchange as the ETC designation for rural ILECs. Under FCC rules, the Commission must petition the FCC for authority to use an area smaller than the FCC-defined study area. Until such a petition is approved, the study area will be used. These details will be more fully addressed in the universal service rulemaking in docket 1-AC-166.

Along the border between Wisconsin and Illinois, several exchanges have boundaries that extend over the border. In all cases, the exchanges are considered part of the study area in the state where the exchange operations are based. For some of these exchanges, such as Apple River and North Warren, the central office and bulk of the customers are in Illinois. These exchanges are generally regulated by the Illinois Commerce Commission (ICC), and the ICC is in the process of designating the serving ILECs as an ETC for these entire exchanges. If the ICC does not designate the ILEC as an ETC for the Wisconsin portion of these exchanges, or if the FCC does not accept IXC authority to certify these portions, then this order will serve to designate the incumbent ILECs, GTE and Ameritech, as ETCs for the Wisconsin portions of those exchanges. For two other exchanges, Bergen and Sharon, the central office and bulk of the customers are in Wisconsin. The ICC has traditionally deferred to the Commission in regulating those exchanges. The rural ILECs serving these exchanges have requested ETC status for these exchanges, and the ICC has not designated ETCs for the Illinois part of these exchanges. Therefore, the ETC designation for Bergen Telephone Company and Sharon Telephone Company includes the portions of their service territories in Illinois.

Relinquishing ETC Status

Under § 214(e)(4) of the Act, states are required to develop a process for providers to relinquish ETC status in some or all of the areas in which the provider is an ETC. Those procedures are being developed in docket 1-AC-166, the universal service rulemaking. In the interim, providers should be able to relinquish ETC status, provided other ETCs are designated in those areas. Notice of intent to relinquish shall be given by letter addressed to the Commission. Such letters will not be effective until 15 days after receipt, to allow the Commission staff time to verify that another provider is indeed designated as an ETC for the territory involved. If no other provider is so designated, the staff will refer the matter to the Commission for a formal proceeding to address how and when the provider's ETC status will be lifted. If another provider is designated as an ETC for the area, the Commission will confirm, by letter, that the requesting provider no longer has ETC status.

Some parties have raised the issue of imposing additional requirements on LECs, either incumbent or competitive, that provide underlying facilities to other providers, and are seeking to have their ETC status lifted. While it is true that, if a facilities provider were to cease operations, the competitors reselling or using its facilities would have to make other arrangements, the procedure being addressed herein is ETC status, not provision of service. This procedure deals only with relinquishing ETC designation for the purpose of receiving universal service support. A provider can relinquish its ETC designation and continue to provide service to its customers. It can also provide service to new customers in the area for which it is no longer an ETC. Furthermore, the procedures to become, or to cease being, an ETC do not eliminate or supersede

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the rules and statutes covering abandonment of services and facilities § 196.81, Stats.; § PSC 2.71, Wis. Adm. Code. Abandonment requirements thereunder provide the necessary protection for competitors using the underlying facilities of a competitor. It is not reasonable or necessary to place additional constraints on the ability of facilities-based ETCs to relinquish this status.

Advertising

The Act requires all ETCs to advertise their services in a medium of general distribution (see § 214[e][1][B]). Nearly all parties have commented on this requirement. This issue will be addressed more fully in the universal service rulemaking in docket 1-AC-166. However, the Commission has reached some tentative conclusions.

First, advertisements must include some indication of price and affordability of service. This includes giving information on low income programs.

Second, the Act and FCC rulings do not distinguish between rural and nonrural ILECs, with regard to advertising. Therefore, although the rural ILECs will not generally be competing with other providers yet, they are still required to advertise. The WSTA has proposed having the distribution of a telephone directory satisfy the requirement. The Commission cannot agree, at this time, that the telephone directory is one of the advertising media envisioned by the Act.

Third, several parties have discussed the frequency of advertising, with proposals for a minimum frequency ranging from once per year to twice per year. If the Commission were to require advertisements at such intervals, it is likely that the new universal service rates may

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supersede any requirement set now. It is more appropriate to address this matter in the universal service rule docket.

The requirements for advertising and monitoring of advertisements will be set in the universal service rulemaking.

Pricing of Services

Several parties have recommended restrictions on the pricing of basic service by eligible telecommunications carriers. Other parties have objected to price controls as being unnecessary and unduly restricting competitive options. Since the purpose of the high cost area universal service program is to assure service in areas where the market would not provide it at affordable rates, these concerns are understandable. However, it is not necessary to address the issue of price controls here. The high rate assistance credit program, (§ PSC 160.09, Wis. Adm. Code) which is already in place and which applies to both ILECs and CLECs, ensures that rates will remain affordable. Modifications to that program, as required, will be made in the universal service rulemaking.

Treatment of Open Territory

In Wisconsin a number of areas are parts of two or more overlapping exchanges. These are called "open territories." These are not necessarily territories opened to competition. Instead, these are historic remnants. In general, open territories occurred between two small cities, served by two different telephone companies. As a small enclave developed between the two communities, both telephone companies extended lines to customers in the enclave. By the time

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the Commission required boundary maps, it was impossible to draw a reasonable line between the companies' service territories. The two telephone companies' customers were inextricably mingled in that enclave. Accordingly, the Commission declared such enclaves to be open territory, and allowed customers in the open territory to choose either of the serving providers. When designating exchanges, the open territory was considered part of both exchanges, meaning that the exchanges overlapped. That overlap was the open territory.

Wisconsin has approximately 50 open territories. None of them exceed about five square miles in size, and most have relatively few customers. In comments, all parties agreed that it was in the public interest to designate each of the serving ILECs as ETCs in the open territory, even if one or both was a rural ILEC. To do otherwise would be to prevent all but one of the ILECs from receiving universal service support for its customers in the open territory. Because such support is calculated on a per line basis, and because the ILECs count only their own customers in open territories in universal service filings, designating multiple providers in these territories will not result in double recovery of universal service funds. Therefore it is reasonable and in the public interest to designate multiple ETCs in open territories.

Treatment of Unassigned Territory

Wisconsin also has a significant amount of unassigned territory. Unassigned territory is territory which is not served by any incumbent provider. Generally, unassigned territory is extremely rural, and contains few, if any, potential customers. The uninhabited portions of state forests are a good example of unassigned territory.

The parties in this docket commented that they are not aware of any unserved customers currently requesting service in unassigned territories. Under the Act and FCC rules these areas are not "requesting" territories. Therefore, it is not necessary to designate ETCs for unassigned territory at this time. Further, since no providers filed requests to serve as ETCs in that territory, it is not possible to equitably assign unassigned territory before January 1, 1998. Therefore, the methods for assigning unassigned territory will be developed in the universal service rulemaking.

Toll Blocking and Toll Control

The FCC order, FCC 97-157, at paragraph 82, includes "toll limitation and toll control services" as part of essential services which must be provided by eligible telecommunications carriers, at least to low-income customers. Paragraph 385 of the FCC order describes toll control as allowing "customers to limit in advance their toll usage per month or per billing cycle." The paragraph continues by stating that these service should be available to low income customers without charge.

All providers that have applied to become ETCs have the capability to provide toll blocking, and most have already implemented the service. Toll control, a service which limits customer toll bills to a preset amount, is more of a problem. No Wisconsin provider has stated that they have the technical capability to offer the service. Several parties submitted letters from the major switch vendors stating that the software to provide this service has not yet been developed.

A few providers can offer partial toll control. This service will block the toll calls placed to long distance providers using the LEC's billing systems, once a set amount of usage is

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reached. This service does not work if the LEC is not billing for the long distance provider, since, in that case, the LEC would not know what the customer is being charged for the call. The service will also not block calls placed by calling a long distance provider's 800 access numbers. If the customer calls long distance information, and asks the operator to place the call to the requested number, that call would also not be blocked by the available toll control services, even if the pre-selected limit had been reached.

Given that toll control is not feasible at present, and given that all providers have toll blocking available, it is not reasonable to refuse ETC status on the grounds that the providers have not implemented toll control. Instead, the Commission grants an extension of the toll control requirement to all providers. Once toll control services become generally available from switch providers, the Commission will consider setting a deadline by which all ETCs must implement toll control.

FINDINGS OF ULTIMATE FACT

THE COMMISSION FINDS:

1. It is just and reasonable for the Commission to grant ETC status to those providers listed in Appendix B, for the exchanges listed.
2. It is just and reasonable for the Commission to use the wire center as the ETC area for nonrural LECs, until final designations are determined in docket 1-AC-166. Until FCC approval of the use of the exchange is granted, the ETC service area for rural ILECs is the FCC-defined study area.

3. It is reasonable to allow ETCs to relinquish that status by written notice to the Commission if at least one other provider is an ETC in the area being affected and the Commission approves the relinquishment. If no other provider is designated as an ETC, the Commission will institute a procedure to name a replacement ETC.
4. It is not necessary to establish rules and monitoring procedures for advertising at this time. Those issues will be addressed in docket 1-AC-166.
5. It is in the public interest to designate multiple providers as eligible telecommunications carriers in all open territories, including open territories where one or both of the serving ILECs is a rural telephone company.
6. It is not necessary to establish rules and procedures for assignment of unassigned territory at this time. Instead, that issue should be addressed in docket 1-AC-166.
7. It is reasonable to grant an extension of the toll control requirement. When switch software manufacturers have made toll control products generally available, the Commission will consider establishing a deadline for implementation.
8. This is a Type III action under s. PSC 4.10(3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11 Stats., nor an environmental assessment is required.

CONCLUSIONS OF LAW

THE COMMISSION CONCLUDES:

1. It has jurisdiction and authority under §§ 196.02, 196.218, and other pertinent provisions of ch 196, Stats., and ch 227, Stats., and under §§ 47 USC 214, 47 USC 254, and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and Conclusions of Law and Order herein made.

2. The providers listed in Appendix B meet the requirements for ETC status, in the areas listed therein, under §§ 215 and 254 and other pertinent sections of the Telecommunications Act of 1996, and 47 C.F.R. 54.

ORDER

THE COMMISSION THEREFORE ORDERS:

1. This order is effective on the date of mailing.
2. The appropriate areas for designation of ETC status are wire centers for non-rural ILECs, and exchanges for rural ILECs. Until FCC approval of the use of the exchange is granted, the ETC service area for rural ILECs is the FCC-defined study area.
3. The providers listed in Appendix B are designated as Eligible Telecommunications Carriers (ETCs) for the areas shown for each in Appendix B.
4. All ETCs may relinquish ETC status for an exchange or wire center upon advance notice to the Commission and approval by the Commission, provided that another ETC is designated as serving that exchange or wire center. Providers may file notice by submitting a

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letter to the Commission. Authority to sign letters approving relinquishment is delegated to the Administrator of the Telecommunications Division.

5. The deadline for installing toll control service is extended indefinitely. When the technology necessary to provide for the service is generally available from switch manufacturers, the Commission will consider imposing a deadline for implementation.

6. Jurisdiction is retained.

Dated at Madison, Wisconsin, December 23, 1997

By the Commission:


Lynda L. Dorr
Secretary to the Commission

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Attachments

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91

**APPENDIX A
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This proceeding is not a contested case under Chapter 227, Stats., therefore there are no parties to be listed or certified under s. 227.47, Stats. However, an investigation was conducted, and the persons listed below participated.

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**Appendix B
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Providers Designated as Eligible Telecommunications Carriers

- **Nonrural Incumbent Local Exchange Carriers**
(The following nonrural ILECs have requested ETC designation for all wire centers in their service territories)

Utility Number	Utility Name
6720	Ameritech
2180	GTE North Incorporated

- **Rural Incumbent Local Exchange Carriers**
(The following rural ILECs have requested ETC designation for all exchanges in their service territories)

Utility Number	Utility Name
150	Amery Telcom, Inc.
170	Amherst Telephone Company
300	Badger Telecom, Inc.
330	Baldwin Telecom, Inc.
390	Bayland Telephone, Inc.
450	Belmont Telephone Company
470	Bergen Telephone Company
540	Black Earth Telephone Company
590	Bloomer Telephone Company
640	Bonduel Telephone Company
820	Bruce Telephone Company, Inc.
850	Burlington Brighton & Wheatland Tel
1020	Central State Telephone Company
1070	Chequamegon Telephone Coop, Inc.
1090	Chibardun Telephone Cooperative, Inc.
1130	Citizens Telephone Cooperative, Inc.
1170	Clear Lake Telephone Company, Inc.
1230	Cochrane Cooperative Telephone Co
1350	Coon Valley Farmers Telephone Co
1410	Crandon Telephone Company
1460	Cuba City Telephone Exchange Company
1630	Dickeyville Telephone Corporation
1910	Century Telephone of Fairwater-Brandon-Alto, Inc.
1940	Farmers Independent Telephone Co
1960	Farmers Telephone Company
2050	Century Telephone of Forestville, Inc.

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• **Rural Incumbent Local Exchange Carriers
(Continued)**

Utility Number	Utility Name
2420	Hager Telecom, Inc.
2520	Headwaters Telephone Company
2560	Hillsboro Telephone Company, Inc.
2815	Kendall Telephone, Inc.
2930	Century Telephone of Wisconsin, Inc.
2970	Lakefield Telephone Company
3010	Frontier Communications-Lakeshore, Inc.
3070	Century Telephone of Larsen-Readfield, Inc.
3090	La Valle Telephone Cooperative, Inc.
3110	Lemonweier Valley Telephone Company
3230	Luck Telephone Company
3310	Manawa Telephone Company, Inc.
3400	Marquette Adams Telephone Coop, Inc.
3650	Mid-Plains Telephone Incorporated
3660	Midway Telephone Company
3690	Milltown Mutual Telephone Company
3790	Frontier Communications of Mondovi, Inc.
3810	Century Tel of Monroe County, Inc.
3880	EastCoast Telecom, Inc.
3900	Mosinee Telephone Company
3940	Mount Horeb Telephone Company
3970	Mt. Vernon Telephone Company
4070	Nelson Telephone Cooperative
4160	Niagara Telephone Company
4210	Northeast Telephone Company
4260	North-West Telephone Company
4580	Grantland Telecom, Inc.
4590	Century Telephone of Southern Wisconsin, Inc.
4860	Indianhead Telephone Company
4870	Price County Telephone Company
5020	Rhineland Telephone Company
5040	Rib Lake Telephone Company
5080	Richland-Grant Telephone Cooperative
5140	Riverside Telecom, Inc.
5210	Frontier Communications-St. Croix, Inc.
5280	Scandinavia Telephone Company
5340	Sharon Telephone Company
5490	Siren Telephone Company Incorporated

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• **Rural Incumbent Local Exchange Carriers**

(Continued)

Utility Number	Utility Name
5530	Century Tel of Northwest Wisconsin, Inc.
5560	Somerset Telephone Company, Inc.
5570	Southeast Telephone Co of Wisc, Inc.
5660	Spring Valley Telephone Company, Inc.
5680	State Long Distance Telephone Co.
5710	Stockbridge & Sherwood Telephone Co.
5850	Tenney Telephone Company
5950	Tri County Telephone Coop, Inc.
6000	Union Telephone Company
6030	UTELCO, Inc.
6040	Century Telephone of Northern WI, Inc.
6050	Frontier Communications of Wisconsin, Inc.
6090	Vernon Telephone Cooperative
6150	Frontier Communications of Viroqua, Inc.
6250	Waunakee Telephone Company
6440	West Wisconsin Telcom Coop, Inc.
6750	Wittenberg Telephone Company
6770	Wood County Telephone Company

• **Competitive Local Exchange Carriers:**

Name	PSC #	Exchanges in which provider is Designated as an ETC
Bayland Communications, Inc.	0387	Oconto, Oconto Falls, Green Bay
CTC Telecom, Inc.	7157	Barron, Rice Lake
CTC Communications, Inc	1455	Barron, Rice Lake
Chequamegon Telecomm. Company	1065	Ashland, Bayfield, Hayward, Spider Lake, Superior, Washburn
Sharon Telephone Co.	5340	Darien
TCG Milwaukee	5837	Milwaukee Zones (1,2,3,4,5), Burlington, Hartford, Hartland, Lake Geneva, Oconomowoc, Kenosha, Menomonee Falls, Racine, Thiensville, Waukesha, West Bend, Big Bend, Sussex, Pewaukee, Cedarburg
Wausau Cellular License Corp.	8260	All GTE exchanges in the Wausau MSA
West Wisconsin Communications Systems, Inc.	7073	Boyceville, Chippewa Falls, Colfax, Eau Claire, Elk Mound, Elmwood, Knapp, Menomonie, Wheeler