

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Northwest Missouri Cellular Limited)
Partnership for Designation as a)
Telecommunications Company Carrier)
Eligible for Federal Universal Service)
Support Pursuant to Section 254 of the)
Telecommunications Act of 1996.)

Case No. TO-2005-0466

**HOLWAY TELEPHONE COMPANY'S
POST HEARING BRIEF**

Introduction

On June 3, 2005, Northwest Missouri Cellular Limited Partnership ("NWMC") filed an Application with the Missouri Public Service Commission ("Commission") requesting designation as an eligible telecommunications carrier ("ETC") eligible to receive federal Universal Service Fund ("USF") support throughout its licensed area. NWMC is a wireless carrier that provides wireless telecommunications service in Northwest Missouri. After notice of the Application, several parties were granted intervention in the case including Holway Telephone Company ("Holway") an incumbent local exchange company ("ILEC") whose service area is included within the area in which NWMC seeks ETC designation.

Purpose of Federal Universal Service Fund

Before the Commission can make a decision as to whether a wireless carrier such as NWMC should be granted ETC status in areas where incumbent local exchange companies are already providing service and receiving federal USF support, it must first review and consider the USF principles and policies for the preservation and advancement of universal service.

NON-PROPRIETARY

Section 254(b) of the Telecommunications Act of 1996 (“the Act”) requires that the policies must be based on the following principles:

- (1) Quality and Rates - Quality services should be available at just, reasonable and affordable rates.
- (2) Access to Advanced Services - Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Access in Rural and High Cost Areas - Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable to rates charged for similar services in urban areas.
- (4) Equitable and Nondiscriminatory Contributions - All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
- (5) Specific and Predictable Support Mechanisms - There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
- (6) Access to Advanced Telecommunications Services for Schools, Health Care and Libraries - Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services (as described in subsection (h)).

(7) Additional Principles - Such other principles as the Joint Board and Commission determined are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with the Act.¹

In 1997, the Federal Communications Commission (“FCC”) adopted the following additional principle:

Competitive Neutrality - Universal support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.²

For ILECs such as Holway, USF support is based upon actual costs and investments that have been made in its service area. USF support includes three different funding mechanisms: High Cost Loop (“HCL”) to recover a portion of the cost of the subscriber loop plant in high cost areas; Local Switching Support (“LSS”) for switch support utilizing the frozen weighted interstate Dial Equipment Minute (“DEM”) factor; and Interstate Common Line Support (“ICLS”) based upon the residual amount of the interstate Carrier Common Line (“CCL”) revenue requirement not recovered from subscriber line charges (“SLC”).³ The HCL support that Holway received in 2005 was for reimbursement of loop costs incurred by Holway during

¹47 U.S.C. § 254)b).

²*In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 (May 8, 1997), ¶ 47; Exh. 10, Warinner Rebuttal, p. 9.

³Exh. 10; Warinner Rebuttal Testimony, p. 11

2003. The recovery of Holway's loop costs incurred in 2004 will be received in 2006. HCL support is based upon a calculation that includes only certain expenses and investments (related to subscriber plant) and consideration of only subscriber access lines (or loops).⁴

Each year on or before July 31, Holway, as a cost company, is required to file an interstate cost study for the preceding year with the National Exchange Carrier Association ("NECA). This cost study includes adjustments for investments and expenses not allowed in the cost study. This is the basis for NECA settlements and HCL, LSS and ICLS payments.⁵

In addition, each year Holway provides information to the Missouri Commission that supports its request for USF support certifying that Holway "shall use that support for the provision, maintenance, and upgrading of facilities and services for which it is intended." After review of this information, the Missouri Commission provides the appropriate certification to the FCC in order for Holway to continue to receive USF support.⁶

NWMC will, on the other hand, after certification by the Missouri Commission, be eligible to receive the same per line amount of federal USF support as Holway for any of its customers within the Holway service area.⁷ NWMC will not have to provide any information to NECA regarding its specific costs. Unlike Holway, which is only allowed to recover USF for

⁴Exh. 10; Warinner Rebuttal, p. 12

⁵Exh. 10; Warinner Rebuttal, p. 15.

⁶*Id.*

⁷It does not matter what NWMC plan the customer subscribes to. Also, if one customer has four (4) phones (for his/her family members) all four (4) phones qualify for USF support. Transcript, p. 116.

monies already spent, NWMC will be entitled to the same cost recovery before any costs are incurred. In fact, it is possible that NWMC will receive support for costs that will never be incurred.⁸ It is for this reason that both the FCC and the Missouri Commission have established a rigorous process for the non-ILEC ETC applicant before it may be granted ETC designation. These commissions realize that they must determine that the applicant for ETC designation will use the USF support for the intended purposes and that the applicant provide a definite plan for the use of the support in order to comply with the USF principles and policies, particularly the concept of competitive neutrality. It is only through the application process that the Commission can be assured that the USF support will be used for the intended purposes and will further the policies and intent of the support.

ETC Designation Process

After applying the USF principles to multiple requests for ETC designation, the FCC in 2005, adopted additional requirements to allow for a more predictable ETC designation process. These mandatory minimum requirements “create a more rigorous ETC designation process whereby their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.”⁹ In considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, the FCC requires the applicant to:

⁸Exh. 10; Warinner Rebuttal, p. 16.

⁹*In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, ¶ 2 (March 17, 2005) (*Designation Order*).

- (1) Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects universal service support;
- (2) Demonstrate its ability to remain functional in emergency situations;
- (3) Demonstrate that it will satisfy consumer protection and service quality standards;
- (4) Offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and
- (5) Acknowledge that it may be required to provide equal access if all other ETCs in the designated area relinquish their designations pursuant to section 214(e)(4) of the Act.¹⁰

In this same *Designation Order*, the FCC set forth an analytical framework that the FCC will use to determine whether the public interest would be served by the applicant's designation as an ETC. States were also encouraged to apply the same analysis in determining whether the public interest would be served by designating a carrier as an ETC.¹¹ The FCC stated:

The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of

¹⁰*Id.*

¹¹*Designation Order*, ¶¶ 3 and 40- 53.

the nation, including rural and high-cost areas.¹²

The FCC stated that it would use the fact-specific public interest analysis developed in prior orders and consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.¹³ The FCC strongly encouraged state commissions to consider the same factors in their public interest reviews.¹⁴

Missouri ETC Designation Rule, 4 CSR 240-3.570

On May 31, 2006, the Missouri Commission's rule, "Requirements for Carrier Designation as Eligible Telecommunications Carriers," was published in the Code of State Regulations. Pursuant to Missouri law, this rule became effective June 30, 2006. All parties to this proceeding, including NWMC, have agreed that this rule should apply to NWMC's application. The Commission's rule sets out the requirements that must be met before an applicant can be designated as an ETC in Missouri.

In this rule, the Missouri Commission adopted the minimum requirements and the analytical framework suggested by the FCC in its *Designation Order* with a few additional requirements. The following additional and/or revised requirements for applicants seeking ETC designation are included the Commission's rule regarding carrier designation:

- (1) Provide specific details of a two-year plan (the FCC's requirement is a five-year plan)

¹²*Designation Order*, ¶ 40.

¹³*Designation Order*, ¶ 41.

¹⁴*Id.*

including specific geographic area and the related estimated investment and estimated population that will be served;

- (2) Provide a statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support;
- (3) Comply with a bill design that can be easily interpreted;
- (4) Commit to provide Lifeline and Linkup services;
- (5) Publicize construction of all new facilities in unserved areas;
- (6) Extend networks to serve a customer upon a reasonable request;
- (7) Prepare annual filing requirements for the certification process; and
- (8) Submit a report to the Commission regarding customer complaints.¹⁵

Because the support NWMC will receive is not cost-based and is instead based on the costs of the ILECs, both the FCC and the Commission have placed safeguards on the receipt of the money to make sure that the funds are used for the intended purposes. Thus, NWMC's compliance with the FCC guidelines and the Missouri ETC rule are crucial to this decision. NWMC has not demonstrated compliance with all provisions of the Commission's ETC rule, nor has it presented a plan "demonstrating with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted."¹⁶ Neither has NWMC demonstrated how the proposed plan would not otherwise occur

¹⁵Exh. 10; Warinner Rebuttal, pp. 9-10.

¹⁶4 CSR 240-3.570(2)(A)2.

absent the receipt of the high-cost support and that such support will only be used in addition to any expenses the ETC would normally incur.¹⁷

NWMC's Plan is Deficient

Section 2(A)(1) of the ETC rule states that each request for ETC designation shall include:

Intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts[.]

The application filed by NWMC does not provide any detailed descriptions of any of its construction plans. Neither does it include any start and end dates. And at hearing, NWMC witness Bundridge was not able to explain with any specificity how the funds would be used.¹⁸ While Highly Confidential Appendix E to Mr. Bundridge's testimony does provide the total population affected by each tower addition and possible sites for the towers, none of the appendices show or demonstrate the improvements in signal quality that will be experienced by rural consumers. In fact, Mr. Reeves testified at hearing that he was not familiar with the rule that requires customers in rural areas to receive service that is reasonably comparable to the service received in urban areas.¹⁹ Budgeted amounts are included in Appendix E and Highly Confidential Appendix P to Mr. Bundridge's Surrebuttal Testimony, but these amounts also

¹⁷4 CSR 240-3.570(2)(A)(3)G).

¹⁸Transcript, pp. 144-150.

¹⁹In-camera Transcript, p. 193.

include amounts for Evolution Data Only (“EVDO”) technology which is not a USF supported service and should not be included in the budgeted amounts for construction.²⁰

Section 2(A)2 of the ETC rule requires that the Applicant include with its Application:

A two (2)-year plan demonstrating, with specificity, that high-cost support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

The plan presented by NWMC in Highly-Confidential Appendix E and Highly-Confidential Appendix P, is incomplete, poorly documented, not easily understood and fails to demonstrate that the support will only be used for its intended purposes.²¹ From filed testimony and testimony at the hearing, it appears NWMC will receive \$1,469,000 per year in high-cost support. Yet the expenditure plan submitted by NWMC contains substantial capital expense amounts for EVDO (which is not a supported service) and for maintaining existing cell sites which will be spent regardless of whether NWMC receives ETC designation and USF support. Stripped of these amounts, NWMC only plans to spend approximately ** ** annually on USF supported investments and/or expenses. This is approximately ** ** short of the total annual USF receipts of approximately \$1.5 million.²² NWMC’s plan does not explain what it plans to do with this shortfall. NWMC has not met the requirements of this provision as its plan fails to demonstrate specifically how the high-cost support will be fully used in the Missouri

²⁰Transcript, pp. 117-118; In-camera transcript, pp. 139, 145.

²¹Exh. 9, Brown Rebuttal, p. 29.

²²In-camera transcript, pp. 147 - 150.

service area in which ETC designation is requested.

Section (2)(A)2.A(III) reminds the ETC applicant that the phrase “support is intended” should be defined consistent with the Telecommunications Act including:

Access in rural and high-cost areas - consumers in all regions of Missouri including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas[.]

NWMC’s witnesses could not (or would not) explain what was meant by this section and provided no good explanation as to how its plan would comply with this provision of the rule.²³ Instead, they chose to engage in semantics regarding the plain meaning of this section, refusing to admit that there was any difference in signal strength or usage between an urban area or the most remote area of its proposed designated area.²⁴

Section (2)(A)3 of the ETC rule states that:

The two (2)-year plan shall include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation including:

²³In-camera transcript, p. 193.

²⁴In-camera transcript, pp. 204 -209.

- A. A detailed map of coverage area before and after improvements and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers;
- B. The specific geographic areas where improvements will be made;
- C. The projected start date and completion date for each improvement;
- D. The estimated amount of investment for each project that is funded by high-cost support;
- E. The estimated population that will be served as a result of the improvements;
- F. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area; and
- G. A statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur[.]

Thus, the Commission has given the ETC applicant a specific road map to follow when preparing its application and its plan. Yet NWMC has chosen not to follow these requirements despite being allowed to file supplemental direct testimony in order to meet the requirements of the pending rule. NWMC has not demonstrated that the support will be used “to improve coverage, service quality or capacity on a wire center-by-wire center basis” throughout the area for which it seeks designation. NWMC has not provided the Commission with a specific plan for improving service. NWMC has not included the projected start date and completion date for each improvement. It has not explained why no service improvements are planned for some

wire centers or explained its basis for that determination. Neither has NWMC included a statement as to how the proposed plans would not otherwise occur without the receipt of the high-cost support or that the support used will be in addition to expenses NWMC would normally incur. In short, NWMC has failed to comply with the Commission's ETC rule.

Grant of ETC Designation Not in Public Interest

In analyzing whether or not the grant of ETC designation is in the public interest, the FCC considers factors such as whether consumers are likely to benefit from increased competition; whether the additional designation will provide benefits not available from incumbent carriers; and whether consumers will be harmed should the incumbent withdraw from the service area and whether the grant will cause harm to the rural incumbent LEC.²⁵ In addition, the Joint Board in its Recommendation stated that:

The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility. Rural carrier service areas often have low customer densities and high per-customer costs. These circumstances support our belief that state commissions should apply a particularly rigorous standard to the minimum qualifications of applicants seeking ETC designation in rural carrier service areas.²⁶

And, the Joint Board stated further:

This additional requirement demonstrates Congress' recognition that supporting competition might not always serve the public interest in areas served by rural carriers,

²⁵Exh. 10; Warinner Rebuttal, p. 39.

²⁶Exh. 10; Warinner Rebuttal, pp. 39-40.

and Congress' intent that state commission exercise discretion in deciding whether the designation of an additional ETC serves the public interest.²⁷

The Missouri Commission's ETC rule also requires a showing that the grant of ETC designation is in the public interest. 4 CSR 240-3.570(2)5 states that the ETC applicant must demonstrate that "the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity." As was shown above, NWMC does not meet all of the requirements of the Commission's ETC rule, but additionally, NWMC does not meet the public interest standard of either the FCC or the Missouri Commission.

As was stated in the FCC's *Virginia Cellular* order, increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. The FCC stated:

Instead, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to provide the supported services throughout the designated area in a reasonable time frame.²⁸

Additional competition is not a factor in the Commission's public interest analysis as

²⁷Exh. 10; Warinner Rebuttal, p. 40.

²⁸Exh. 10; Warinner Rebuttal, pp. 40-41; *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (Rel. January 22, 2004), ¶4 ("*Virginia Cellular Order*").

NWMC already provides service throughout the area for which it requests ETC designation. NWMC could not identify any additional customers it expected to add over the next five (5) years if it is able to receive USF support.²⁹ The public interest analysis should instead focus on whether there will be unique advantages to NWMC's service offerings or commitments made regarding the quality of service. Aside from the mobility of the service, NWMC does not offer any distinct advantages. NWMC has committed to offer an "ILEC equivalent" service and to offer Lifeline service to qualifying customers. These are services already available to customers within the Holway service area. It is impossible to determine from NWMC's plan whether or not cellular service will be improved in the Holway service area.³⁰ At hearing, NWMC witness Bundridge was not able to say how much, if anything, NWMC intended to spend in the Holway exchanges.³¹ The plan and maps presented do not distinguish signal strength, nor does the plan show that NWMC plans to build any additional towers in the Holway service area. NWMC has not made any demonstration that the benefits of expanded signal coverage would exceed the significant costs that its designation as an ETC would create.³² While NWMC has committed to comply with the Commission's ETC rule and meet the service standards found in the Cellular Telecommunications and Internet Association ("CTIA") code, these standards are not as extensive as those the Missouri ILECs, such as Holway, are required to meet. At least in the

²⁹Exh. 10; Warinner Rebuttal, p. 44; Exh. WJW-11.

³⁰Exh. 10, Warinner Rebuttal, p. 46.

³¹In-camera transcript, p. 148.

³²Exh. 9; Brown Rebuttal, p. 30.

Holway exchanges, NWMC has failed to show that there will be any public interest benefit from its ETC designation.

One of the principles of universal service is to provide just, reasonable and affordable rates for basic telephone service comparable to the services and rates offered in urban areas. Holway's services and rates conform to that USF principle. USF support has allowed Holway to improve the services offered to its customers while maintaining basic local rates at affordable levels. If future USF support is impacted from the designation of additional ETCs, Holway's earnings level would be affected and could require it to request an increase in basic local rates from the Commission that would cause its basic local rates to exceed those of urban areas.³³

There are no landline competitors in the exchanges of Holway because the customer base cannot sustain duplicate investments in landline facilities. Even with USF, the existence of competing landline carriers would be jeopardized because the revenues would not cover the cost of providing service, and neither carrier would be able to provide communications services at rates comparable to urban areas. In the case of commercial mobile radio service ("CMRS") providers, however, there is already robust competition in the exchange areas served by Holway, and the rates and services offered by the CMRS providers are already comparable to the rates and services offered by the CMRS providers in urban areas.³⁴ For example, there are five (5) other wireless carriers providing service in the area for which NWMC seeks ETC designation.³⁵

³³Exh. 10; Warinner Rebuttal, p. 45.

³⁴*Id.*

³⁵Exh. 10, Warinner Rebuttal, p. 43.

In determining whether the grant of ETC designation to NWMC is in the public interest, the Commission must consider the potential effect on the USF fund of multiple ETC designations. In order to remain competitive all other wireless providers operating in Holway's service area will likely seek ETC status and USF support, otherwise NWMC will have a competitive advantage over those carriers.³⁶ Expanding USF support to all wireless providers in rural areas may not impact wireless competition in rural areas, but it may have a devastating impact on the USF as a whole because each and every wireless carrier would now become eligible for USF support causing the fund to escalate to an unsustainable level.³⁷ When multiple wireless providers seek ETC designation in the same wire centers, the Commission must be especially vigilant in order to assure that the increased public costs created by each additional wireless ETC designation produce commensurately increasing public benefits.³⁸ As population density decreases below 100 households per square mile, the level of public benefit necessary to justify the corresponding increase in public costs becomes larger than would be the case in a more densely populated area. In the least populated areas, very significant additional public benefit would be necessary to justify the substantial increase in public costs that would be created by providing public support to multiple carriers.³⁹

In this case, NWMC will receive approximately \$1.5 million per year in USF support if it

³⁶Exh. 10; Warriner Rebuttal, p. 44.

³⁷Exh. 10; Warinner Rebuttal, p. 45.

³⁸Exh. 9; Brown Rebuttal, p. 12.

³⁹Exh. 9; Brown Rebuttal, p. 18.

is granted ETC status in all of the requested study areas. There are at least five (5) other wireless carriers that currently provide service in the areas where NWMC seeks designation. If the Commission grants ETC status to NWMC, it is likely that the other wireless carriers will also apply for and receive ETC status as well. As stated by CenturyTel witness Brown, the most recent public data available from the FCC indicates that there were 3.51 million wireline loops and 3.11 million wireless handsets in the state of Missouri at the end of 2004. This yields a wireless handset to wireline loop ratio of 89%. Publicly available data from the Universal Service Administration Company ("USAC") indicates that as of the third quarter of 2005, ILECs in the state of Missouri were receiving USF support at a rate of \$91.1 million per year. Thus, if all wireless carriers in the state of Missouri were to receive ETC status, the overall draw of the federal USF from Missouri wireless carriers could go up by as much as \$81.1 million per year.⁴⁰ This shows the potential adverse effect of multiple designations on the USF fund based on data from only one state. This analysis is an important factor in the Commission's public interest analysis.

Another reason the grant of ETC designation to NWMC is not in the public interest is the differing service quality standards and consumer protections required of the wireless ETC and ILEC ETCs. Missouri ILECs are required to comply with Chapter 32 and Chapter 33 of the Commission's rules which contain detailed service quality and consumer protection laws. NWMC will only be required to comply with the CTIA Consumer Code for Wireless Service which does not contain quality of service standards. If NWMC is not required to comply with

⁴⁰Exh. 9; Brown Rebuttal, pp. 13-14.

the same quality of service standards as Holway, it will have a distinct competitive advantage.⁴¹ Likewise, Holway is subject to consumer protection regulations as a Missouri ILEC. Since NWMC will receive support based on the costs of ILECs such as Holway whose costs include the cost of complying with the quality of service and consumer protection standards, NWMC will receive a distinct competitive advantage in that it will receive the funds, yet not have the expense of compliance. Holway does not believe that this is competitively neutral and creates unfair regulatory discrimination between Holway and NWMC.⁴²

Conclusion

The Commission should determine whether NWMC has met the criteria established by the Commission's ETC rule, ensure that the Commission's decision is competitively neutral, and decide if funding multiple ETC providers in high-cost areas where it is uneconomical for even one provider to operate without support is in the public interest. NWMC has not demonstrated that it meets all of the standards in order to be granted ETC designation. Furthermore, NWMC is not offering any USF supported services that are not already available to Holway's customers nor has it identified any new competitive or innovative services. The grant of ETC designation to multiple providers will have a potentially devastating impact on the USF fund because of the proliferation of carriers receiving support. And finally, allowing NWMC to be subject to substantially different regulatory requirements related to quality of service and consumer protection does not satisfy the FCC principle of competitive neutrality and is, in fact,

⁴¹Exh. 10; Warinner Rebuttal, p. 35.

⁴²Exh. 10; Warinner Rebuttal, p. 37.

discriminatory. For these reasons, NWMC's application for ETC designation should be denied.

Respectfully submitted,

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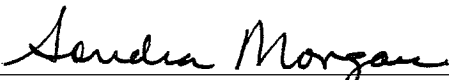
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