

APPENDIX 1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF EAST KENTUCKY)
NETWORK, LLC D/B/A APPALACHIAN)
WIRELESS FOR DESIGNATION AS AN) CASE NO. 2005-00045
ELIGIBLE TELECOMMUNICATIONS)
CARRIER)

O R D E R

On January 26, 2005, East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian Wireless”) filed an application seeking Eligible Telecommunications Carrier (“ETC”) status within the territory of which it is licensed to operate. This company is owned by three telephone cooperatives and two investor-owned telephone companies.¹ The operating management is separate from the ownership of the company.

The Commission set a procedural schedule in this case that allowed for any public comments, data requests, and requests for a hearing. No comments on the application have been filed and no request for a hearing has been made.

Discussion

47 U.S.C. § 254(e) provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.” Pursuant to Section 214(e)(1), a common carrier designated as an

¹ Cellular Services Inc. (a subsidiary of Foothills Rural Telephone Cooperative, Inc.), Mountain Telecommunications Inc. (a subsidiary of Mountain Rural Telephone Cooperative, Inc.), Peoples Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and Gearheart Communications, Inc.

ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.²

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations. Under Section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of Section 214(e)(1).³ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁴

An ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution”; and (4) if the petitioner meets the definition of a "rural telephone company" pursuant to Section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a

² 47 U.S.C. § 214(e)(1).

³ 47 U.S.C. § 214(e)(6).

⁴ Id.

detailed description of the geographic service area for which it requests an ETC designation from the Commission.

Offering the Services Designated for Support

Appalachian Wireless has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Appalachian Wireless is authorized to provide cellular mobile radiotelephone service (“CMRS”). Appalachian Wireless certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in Section 54.101(a) of the Federal Communications Commission’s (“FCC”) rules. Appalachian Wireless has also certified that, in compliance with Section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

Offering the Supported Services Using a Carrier’s Own Facilities

Appalachian Wireless states that it intends to provide the supported services using its existing network infrastructure. Appalachian Wireless currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky.

The Commission finds that Appalachian Wireless has demonstrated that it satisfies the requirement of Section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.

Advertising Supported Services

Appalachian Wireless has demonstrated that it satisfies the requirement of Section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, Appalachian Wireless states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with Section 54.201(d)(2) of the FCC's rules.

Non-Rural Study Areas

The FCC previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act.⁵ The Commission finds that Appalachian Wireless's public interest showing here is sufficient, based on the detailed commitments Appalachian Wireless has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; that is, if Appalachian Wireless has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.

Rural Study Areas

In considering whether designation of Appalachian Wireless as an ETC in areas served by rural telephone companies will serve the public interest, the Commission

⁵ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must weigh the benefits of increased competitive choice, the impact of the designation 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 satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that Appalachian Wireless's universal service offering will provide a variety of benefits to customers. For instance, Appalachian Wireless has committed to provide customers access to telecommunications and data services where they do not have access to a wire-line telephone. In addition, the mobility of Appalachian Wireless's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Moreover, Appalachian Wireless states that it offers larger local calling areas than those of the incumbent Local Exchange Carriers it competes against, which could result in fewer toll charges for Appalachian Wireless's customers.

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.⁶ Appalachian Wireless asserts that granting ETC designation to

⁶ See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

Appalachian Wireless will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. It also asserts that granting the request will not harm consumers. Appalachian Wireless has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

Designated Service Areas

The Commission finds that Appalachian Wireless should be certified as an ETC in the requested service areas served by non-rural telephone companies, as listed in application. The Commission also finds that Appalachian Wireless should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, Appalachian Wireless's service area for each rural telephone company does not encompass the entire study area of each rural telephone company. Therefore the study areas of the affected rural carriers must be redefined to smaller study areas such that they will correspond to the wireless carrier's service area. The Commission finds that the study areas of the affected rural telephone companies should be redefined as necessary to match the licensed service area of the applicant. Appalachian Wireless should petition the FCC for concurrence.

Regulatory Oversight

In addition to its annual certification filing under rule Sections 54.513 and 54.314, NPCR, Inc., d/b/a Nextel Partners, the first wireless carrier to qualify as an ETC, agreed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers

were unfulfilled for the past year.⁷ The Commission finds that Appalachian Wireless should be required to file this information and make any other information as it relates to service available to the Commission.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.

2. Appalachian Wireless shall offer universal support services to consumers in its service area.

3. Appalachian Wireless shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.

4. Appalachian Wireless shall advertise the availability of and charges for these services using media of general distribution.

5. Appalachian Wireless is hereby certified to be in compliance with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.

6. By September 1, 2006, and each September 1 thereafter, Appalachian Wireless shall make its annual certification filing in Administrative Case No. 381⁸ and shall submit additional records as described herein.

⁷ Case No. 2003-00143, Petition of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky, December 16, 2004.

⁸ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

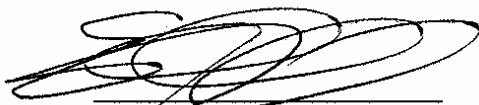
7. Appalachian Wireless shall file with the Commission a copy of its petition to the FCC seeking concurrence in the redefinition of its service area.

8. A copy of this Order shall be served upon the FCC and the Universal Service Administration Company.

Done at Frankfort, Kentucky, this 11th day of August, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2005-00045 DATED AUGUST 11, 2005

Designated areas for which East Kentucky Network, LLC d/b/a Appalachian Wireless is granted ETC Designation

1. Rural Telephone Company Study Areas

- 260406 Foothills Rural Telephone Company
- 260408 Gearheart Communications Co. Inc. dba Coalfields Telephone Co.
- 260415 Peoples Rural Telephone Cooperative Corporation, Inc.
- 260419 Thacker-Grigsby Telephone Company
- 260411 Leslie County Telephone Company, Inc.¹
- 260414 Mountain Telephone Cooperative, Inc.²
- 269691 Kentucky Alltel, Inc. London³

2. Non-Rural ILEC Wire Centers

- 265182 BellSouth – KY

ALLNKYMA	INEZKYMA	MCWLKYMA	PRBGKYES	VIRGKYMA
BYVLKYMA	JCSNKYMA	NEONKYES	SWSNKYMA	WRFDKYMA
ELCYKYES	MARTKYMA	PNVLKYMA	SNTNKYMA	WYLDKYES
FDCKKYES	MCCRKY	PKVLKYMA	STONKYMA	WHBGKYMA
FEBRKYMA				

- 269690 Kentucky ALLTEL, Inc. - Lexington

HZRDKYXA	LTWDKY	VICCKYXA		
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¹ East Kentucky Network, LLC only requests designation as an ETC in the wire centers CANOKYXA and BCKHKYXE. Subject to concurrence of the FCC the request is granted.

² East Kentucky Network, LLC only requests designation as an ETC in the wire centers JPTHKYXA, HZGRKYXA, EZELKYXA, SNDHKYXA, CMTNKYXA, and WLBTKYXA. Subject to concurrence of the FCC the request is granted.

³ East Kentucky Network, LLC only requests designation as an ETC in the wire centers IRVNKYXA and JNKNKYXA. Subject to concurrence of the FCC the request is granted.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-3324
Petition of N.E. Colorado)
Cellular, Inc., d/b/a Viaero)
Wireless, Fort Morgan,) GRANTED
Colorado, for designation as)
an Eligible Telecommunica-)
tions Carrier under 47) Entered: October 18, 2005
U.S.C. § 214(e)(2).

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BY THE COMMISSION:

Background

By Application filed December 23, 2004, N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Fort Morgan, Colorado ("Applicant" or "Viaero"), seeks designation as an eligible telecommunications carrier (hereinafter, "ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 54.201. The Application was amended by Viaero on May 2, 2005. Amended Notice of the Application was published in the Daily Record, Omaha, Nebraska, on May 16, 2005.

On January 28, 2005, a Protest was filed on behalf of the Rural Independent Companies, also known as the Rural Telephone Companies ("RTC"): Arlington Telephone Company; Blair Telephone Company; Cambridge Telephone Co.; Clarks Telecommunications Co.; Consolidated Telco, Inc.; Consolidated Telcom, Inc.; Consolidated Telephone Company; Dalton Telephone Company, Inc.; Eastern Nebraska Telephone Company; Elsie Telecommunications, Inc.; Great Plains Communications, Inc.; Hamilton Telephone Company; Hartington Telecommunications Co., Inc.; Hemingford Cooperative Telephone Co.; Hershey Cooperative Telephone Company; K & M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; Stanton Telephone Co., Inc. and Three River Telco.

On the same date, a Protest was filed on behalf of the Nebraska Independent Companies for Embedded-Cost Support, also known as the Rural Telecommunications Coalition of Nebraska ("RTCN"): Arapahoe Telephone Company, d/b/a ATC Communications; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; The Glenwood Telephone Membership Corporation; Hartman Telephone Exchanges, Inc.; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; Wauneta Telephone Company and WesTel Systems, f/k/a Hooper Telephone Company (RTC and RTCN hereinafter referred to as "Intervenors").

Hearings on the Application were held on July 18 and 19, 2005, in the Commission Hearing Room, Lincoln,

Nebraska, and on July 20, 2005, in the McCook, Nebraska, City Council Chambers, with appearances as shown above. In support of its Application, Viaero presented three witnesses at the hearings in Lincoln and seven witnesses in McCook. RTC presented three witnesses, and RTCN one witness, in Lincoln. Additionally, six members of the public made statements at the hearing in McCook.

Summary of Testimony and Evidence

Viaero is a commercial mobile radio service ("CMRS") provider organized under the laws of the State of Colorado and licensed by the Federal Communications Commission ("FCC"). In Colorado, Viaero is licensed in the northeastern portion of the state, an entirely rural area. In Nebraska, Viaero is licensed throughout the western two-thirds of the state, which comprises some of the most rural portions of the state. Viaero seeks an ETC designation in the non-rural and rural areas identified in Exhibits B and C to the Application as amended on May 2, 2005, and seeks designation in the rural ILEC service areas which it also requests to be redefined as identified in Exhibit D to the Application as amended in its May 2, 2005 Amended Application.

Mr. Larry Aisenbrey, Director of Government Relations for Viaero, in his prepared testimony, stated that Viaero has the capability and commitment to offer and advertise its services throughout its proposed ETC service area in Nebraska. He noted the company's record; specifically, that Viaero has been operating a rural cellular system in northeastern Colorado for over 15 years, growing the business from scratch to its current level of over 30,000 subscribers. Viaero offers virtual end-to-end coverage in its Colorado ETC service area, with a "virtually non-blocking system" so that calls may be completed during peak hours and emergency situations. When congestion of 10 seconds or more per week at a cell site is observed, Viaero adds capacity. As a result, Viaero claims a virtually non-blocking network with a 99.8% call completion rate.

Mr. Aisenbrey testified that Viaero offers the nine supported services throughout its Colorado ETC service area and has worked closely with the Colorado Public Utilities Commission to ensure that Colorado consumers receive the benefits of universal service. With support in Colorado, Viaero has constructed sites in communities that would not

have received new cell sites without funding.

Viaero maintains a hotline for customers to reach the company any time they need service. According to Mr. Aisenbrey, the company's crews respond immediately to outages on a "24/7" basis. Whenever a service-affecting alarm is activated at a cell site, the technician on call is paged immediately and automatically. Teams are then dispersed to correct the problem.

Viaero has implemented E-911 Phase II in Colorado where requested, and is functioning within FCC accuracy guidelines. Mr. Aisenbrey stated that Viaero is prepared to roll out Phase II in every area where a PSAP formally requests such service in Nebraska.

In 1998 and again in 2000, Viaero expanded its network by applying for cellular licenses in both Colorado and Nebraska under the FCC's 'Phase 2' licensing process, and has constructed network facilities in these rural areas after being licensed by the FCC. In 2002-2003, Viaero acquired several wireless licenses in the personal communications services ("PCS") spectrum from a group of Nebraska rural ILECs, and acquired several other licenses from AT&T Wireless/Cingular. As a result of these acquisitions, Viaero is now licensed to serve all of western and central rural Nebraska, comprising approximately 650,000 residents. According to Mr. Aisenbrey, since acquiring those licenses in Nebraska, Viaero has invested \$20 million in 2003 and \$20 million in 2004 to construct 70 new cell sites in western Nebraska and tie the system together with T-1, microwave, switching, and trunking facilities. The company has opened eight stores in Nebraska, employs 23 Nebraskans and expects to hire 47 more by year end 2005.

The Application and pre-filed testimony state generally that Viaero is a common carrier and provides the supported services including voice-grade access to the public switched network, local usage, dual tone, a functional equivalent to dual-tone, multi-frequency signaling, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory service, and will, upon designation, provide toll limitation for low-income consumers. Viaero's application also states that Viaero will offer and advertise the availability of supported services throughout its proposed ETC service

area. Specifically, the Application avers that the public interest test is or will be met because: 1) improved coverage and service quality will lead to significant health, safety and economic development benefits, 2) granting of the Application will impose a negligible burden on the Federal Universal Service Fund, and 3) designation will promote competition and thereby facilitate the provision of advanced communication services to residents of rural Nebraska.

Mr. Bob Dillehay also testified on behalf of the applicant. Mr. Dillehay testified to the nature of Viaero's network architecture.

Mr. Don Wood testified that Applicant's designation would serve the public interest. Mr. Wood was a paid consultant who testifies routinely on issues of telecommunications, economic policy and market development issues. Mr. Wood testified that this applicant's case is unique and warrants special consideration. First, Viaero serves rural and often remote areas. Viaero is not a national carrier. Viaero considers how the increased coverage will benefit its entire customer base. He further testified that Viaero is more likely to build facilities into the most remote areas of the state and to create truly ubiquitous coverage for its customers. Mr. Wood's testimony explained the reasons why redefinition is necessary and the standards the Commission should consider in Viaero's redefinition request.

Mr. Kevin Kelly testified on behalf of the Rural Telecommunications Coalition of Nebraska. Mr. Kelly testified that Viaero had not complied with the Interim Guidelines the Commission adopted in June. Mr. Kelly stated Viaero had not filed a compliant five-year plan for use of its federal support. Mr. Kelly further stated that a grant of this application has the potential to cause harm to the rural companies.

Mr. Lynn Merrill testified on behalf of the Rural Independent Companies. Mr. Merrill is President and Chief Executive of Monte R. Lee and Company which is a consulting and engineering service company. Mr. Merrill recommended the Commission consider this application using the policy of the Rural Utility Service regarding the duplication of service and provisioning standards. Mr. Merrill believed Viaero provided insufficient detail in its plans to make a

determination granting Viaero's request for ETC designation.

Ms. Sue Vanicek also testified on behalf of the Rural Independent Companies. She is employed with TELECOM consulting resources. Ms. Vanicek testified that it was not in the public interest to designate Viaero as an ETC in Nebraska. She urged the Commission to adopt a recommendation sponsored by Billy Jack Gregg, Director of the Consumer Advocate Division of West Virginia. Mr. Gregg recommends that study areas that receive more than \$7.46 per line per month in federal high cost universal service support should be presumed to be so costly to serve that it doesn't make sense to have multiple ETCs within those particular study areas.

Mr. Dan Davis, a consultant employed by TELECOM Consulting Services, also testified on behalf of the Rural Independent Companies. Mr. Davis testified that Viaero had not complied with the Interim Guidelines established in C-3415.

At the public hearing in McCook, the Commission also heard testimony generally supporting Viaero's application from the following witnesses called by Viaero: Dennis Bauer, Leslie Carlholm, Deann Doetker, Ed Bauer, Robert Esch, Mike Ketter and Donald Middleton. Terry Vilka, Jean Tobiasson, Stanley Farr, Jim Tierney, Rod Keiser and Richard Minnick also made statements to the Commission concerning wireless safety and coverage issues. In addition, the Commission received letters in support of Viaero's application from individuals who could not be present to testify at the hearings in Lincoln or McCook.

O P I N I O N A N D F I N D I N G S

Supported Services

In 1997, the FCC released its *Universal Service Report and Order* in CC Docket 96-45, FCC 97-157 (*Universal Service Order*), which implemented several sections of the Act. The FCC's Universal Service Order provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Section 214(e) of the Act delegates to the states the ability to designate a common carrier as an ETC for a

service area designated by the state commission. A service area is the geographic area established for the purpose of determining the universal service obligation and support eligibility of the carrier. The FCC also provided that "competitive neutrality" should be an added universal service principle. Section 214(e)(1) provides that an ETC Applicant shall:

[T]hroughout the service area for which such designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254 . . . ; and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

The FCC's supported services are found in 47 C.F.R. §54.101(a) and are as follows:

- a. voice grade access to the public switched network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange services;
- h. access to directory assistance; and
- i. toll limitation for qualifying low-income consumers.

Upon review of the Application and testimony presented, the Commission finds that Applicant has the ability and has committed to provide the supported services listed in a-i, above. We also find Applicant has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution.

Public Interest

Federal law also requires that the Commission find that "the designation is in the public interest." 47 USC § 214(e)(2). To determine whether designating Viaero as an ETC would serve the public interest, we engage in a fact specific inquiry about Viaero's proposed service and commitments. Recently, the FCC has offered more specific guidance on the public interest issue through its decisions in *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 03-338, 19 FCC Rcd 1563 (released Jan 22, 2004) (*Virginia Cellular*), *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37, 19 FCC Rcd 6422 (released April 12, 2004) (*Highland Cellular*) and in its March 17, 2005 Report and Order. Although these decisions are not binding on our inquiry, the FCC's decisions outline some factors we also find to be relevant to this proceeding, such as this applicant's commitment to provide high quality service throughout its designated area, the characterization of its proposed designation area, the unique advantages or disadvantages the service would have on consumers, and an analysis of creamskimming concerns.

We first examine Viaero's commitments to provide quality telephone service throughout the designated area. In its testimony, Viaero commits that it will build additional cell sites and make other network improvements in rural areas providing a mobile telecommunications alternative. The Intervenor's caution that what is characterized as competition by Viaero may actually be duplication, and the benefits attributed to competition will not necessarily be present if this Application is granted. We are not convinced that rural ILEC investments in infrastructure will diminish if Viaero's application is granted. The federal rules provide that an ILEC's network continues to be fully supported even when a line is lost to a facilities-based competitive ETC. 47 C.F.R. Section 54.307. Additionally, we find Applicant has satisfied the Commission with its commitment to meet its obligation to provision service throughout its designated ETC service area. Viaero has supplied plans to expand its service by building new cell sites in Nebraska, and will report to this Commission how much federal USF support was received in the last year and how it was spent, and how much federal USF support is projected to be received in the next year and how it will be spent.

We next examine the Applicant's commitments regarding quality of telephone service. We acknowledge that if service quality is inadequate, customers will drop the service, and Viaero will lose support for those customers, which gives Viaero an incentive to provide quality service. We also believe that the annual reporting requirements contained in this Commission's Guideline Order (as hereinafter defined) are necessary and important. Viaero has committed to work in conjunction with the Commission should any service quality issues arise.

The Commission must also consider whether an Applicant demonstrates the commitment and ability to provide service to customers should an incumbent local exchange carrier seek to relinquish its ETC designation. Viaero states that it is capable of serving as the carrier of last resort in the area in which it seeks ETC designation and has made the commitment to fulfill these obligations should it become necessary. In his testimony, Mr. Aisenbrey described Viaero's policy for responding to every customer request for service. We add such procedures to the weight of evidence that Viaero's designation as an ETC is in the public interest. We conclude that Viaero has made adequate commitments and demonstrated its ability to provide service to customers in this regard.

The Applicant acknowledges that designation of additional ETCs creates a burden on the federal Universal Service Fund. Viaero has represented that most recent projections of The Universal Service Administrative Company (USAC) indicate Viaero will receive approximately \$885,000 in high-cost support in its first year of eligibility, representing approximately 0.02% of the total federal high-cost support project for that time period. We find that Viaero's designation will not cause a significant burden on the federal high-cost fund.

We next consider whether there are unique advantages and disadvantages related to Viaero's service offering and designating Viaero as an ETC. Unquestionably, Viaero's wireless offering will offer consumers mobility. On that benefit, the FCC has noted:

[T]he mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of

employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.

Highland Cellular at ¶ 23. However, we do not believe the benefit of mobility in and of itself is a sufficient reason to designate a carrier as an ETC. The Commission considers Viaero's service offerings, pricing plans, proposed coverage area and other network qualities in its assessment of this application. The Commission concludes that Viaero's commitment as demonstrated by its testimony and evidence to add cell sites and expand capacity and quality of service at existing cell sites would provide real benefits to consumers. See Exh. 103, Aisenbrey Direct at Exh. 1. In reviewing the testimony of Mr. Aisenbrey and the attached Exhibits, the Commission is convinced that Viaero is committed to allocating its federal universal service support to improving wireless coverage and quality of service to benefit Nebraska consumers. In addition, the nature of Viaero's local calling area gives rural consumers the advantages of calling outside their wireline local calling area without toll charges. At least one McCook witness testified that there would be significant toll savings if she had access to a quality wireless network. Numerous witnesses in McCook testified to the substantial health and safety benefits that could be achieved if they had access to quality wireless networks. Others testified as to how difficult it is to bring economic development to rural Nebraska because quality wireless networks are not currently present. Further, we considered Viaero's pricing plans to be comparable to local plans of other providers. Viaero committed to offering a plan rated at \$14.95 once ETC designation was granted. See Exh. 103 at 11; Tr. at 57-58. Taking this \$14.95 rated plan into account, the Commission believes Viaero's service plans are comparable to other basic service plans offered by the wireline carriers in Viaero's area. Finally, as presented by Mr. Wood in his testimony, Viaero's business plan is uniquely designed to build facilities into the most remote areas of the state and to ultimately create truly ubiquitous wireless coverage throughout its designated service area.

Creamskimming Concerns

We next address the issue of creamskimming. The FCC has addressed creamskimming in its ETC designation orders. Creamskimming refers to the practice of targeting the customers that are the least expensive to serve. See *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, FCC 01-283, 16 FCC Rcd 18133, 18139 ¶ 15 (released Oct 5, 2001) (*Western Wireless Order*). The FCC has found that comparing population density inside the area proposed to be served to the population density outside the area proposed to be served is a useful proxy in making creamskimming determinations. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 05-46 at ¶ 20 (rel. March 17, 2005) ("*FCC ETC Order*"), 20 FCC Rcd at 6393. Although the FCC's ruling on this issue has been appealed to the courts, Viaero has provided the analysis for the Commission to consider.

Viaero has provided evidence that it is not proposing to selectively serve low-cost areas; rather, in each instance where Viaero is proposing to serve less than an entire ILEC study area, it is serving the highest-cost portions of the ILEC territories. See, Viaero's data derived from Exh. 102, E. In each case, Viaero is serving the least dense portion of the affected ILEC service area, and is serving areas below the average population density of the entire ILEC study area. Moreover, as discussed *infra*, all rural ILECs have had an opportunity to disaggregate high-cost support to move support from lower-cost areas out to higher-cost areas where it is needed, and they may amend their disaggregation plans going forward to address any residual concerns.

The Intervenors argue that some areas are so rural that it is improper to designate multiple ETCs for that area. Two arguments are built into that assertion: (1) designation of multiple ETCs will impose an unreasonable burden on the Federal Universal Service Fund, and (2) designation of a CETC will harm the rural ILEC and, ultimately, customers. The first argument has already been addressed above. We turn to the second argument, noting there are many benefits that will come with competition in rural areas, such as "incentives to the incumbent to implement new operating efficiencies, lower prices, and

offer better service to its customers." *Wyoming Order, supra*, at 57, ¶ 22.

We disagree that the present designation necessarily will harm rural ILECs and customers. Viaero will provide wireless communications in these areas, a different service than traditional wireline local exchange service. We also note that Viaero will not receive any funds for serving a rural area unless it constructs infrastructure and actually serves customers who have a billing address in that rural area. Accordingly, we reject the Intervenor's arguments that CETCs should not be designated for rural Nebraska.

Ultimately, each of the factors discussed above were included in our cost-benefit analysis. As we have discussed, Viaero's application would bring competition, spur innovation, provide advantages through increased mobile wireless offerings, and offer the supported services to customers who request service in the designated area. We acknowledge the costs of designating Viaero as an ETC, but believe the benefits outweigh any harm of granting the Application. Overall, we conclude that designating Viaero as an ETC would bring unique advantages weighing in favor of granting the application. Therefore, we find that Viaero's Application for designation as an ETC in its designated area is in the public interest.

The Commission finds the Applicant has presented sufficient and credible evidence that it is willing and capable of meeting the requirements of Section 214(e)(2) and has every intention of carrying out its plan to provide the supported telecommunications services throughout the designated area.

Redefinition of ILEC Service Areas

The following rural ILECs have service areas that include territory that is beyond Viaero's proposed ETC service area in Nebraska: Arapahoe Telephone Company; Cambridge Telephone Company; Citizens Telecommunications Company d/b/a Frontier Communications of Nebraska; Great Plains Communications, Inc.; Eastern Nebraska Telephone Company and Northeast Nebraska Telephone Company. Therefore, Viaero requests the Commission to redefine these rural ILECs' service areas pursuant to Section 54.207(c) of the FCC's rules so that each of the affected rural ILECs' wire centers is defined as a separate service area. Service

area redefinition is necessary in order to facilitate competitive entry and advance universal service for consumers living in areas served by those ILECs. Once the Commission establishes redefined service areas for these rural ILECs, Viaero shall file a petition requesting the FCC to concur with the state's redefinition.

In the *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*") that laid the foundation for the FCC's *First Report and Order*, the Joint Board recommended that state Commissions consider three issues when redefining a service area.

First, the Joint Board noted that breaking down ETC service areas below the study area level may create the potential for "creamskimming," which could occur if a competitor proposed to only serve the lowest-cost exchanges. In this case, Viaero is restricted to providing service in those areas where it is licensed by the FCC and is required to offer service throughout its designated service area. Moreover, as of May 2002, all rural ILECs, including those listed above, were required to select among three paths adopted in the *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (*Fourteenth Report and Order*), for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an ILEC's study area, a competitor no longer has the incentive or ability to enter into ILEC service territories in an uneconomic manner. Several states which have examined requests to redefine rural ILEC service areas have concluded that where rural ILECs have disaggregated support, the possibility for creamskimming is reduced.¹ Additionally, under the FCC's

¹ See, e.g., *RCC Maine Order, supra*, at p. 11 (finding that the affected ILECs "have the option of disaggregating their USF support . . . thereby lessening the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC's service."); *AT&T Washington Order, supra*, at p. 15 ("This Commission and the carriers in this state have taken significant action to prevent cream-skimming by a carrier that would obtain ETC designation but not serve the highest-cost portion of the service area. This Commission has required the disaggregation of federal support."); *GCC License Corp.*, Docket No. TC98-146 (S.D.

rules, rural ILECs that have not disaggregated support may do so in order to prevent uneconomic competition in low-cost areas. See 47 C.F.R. §§ 54.315(b)(4), 54.315(c)(5), 54.315(d)(5).

Second, the Joint Board noted the special status of rural carriers under the Act. See *Recommended Decision*, 12 FCC Rcd at 180. In deciding whether to designate Viaero as an ETC, the Commission has weighed numerous factors and considered how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, the Commission's finding that Viaero's ETC designation is in the public interest has taken into consideration the special status of the rural carriers for purposes of determining whether Viaero's service area designation should be adopted for federal universal service funding purposes. Further, no action in this proceeding will affect or prejudice any future action the Commission or FCC may take with respect to each affected ILEC's status as a rural telephone company.

Finally, the Joint Board recommended that the FCC and state Commissions consider whether a rural ILEC would face an undue administrative burden as a result of service area redefinition. *Id.* In the instant case, Viaero is proposing to redefine rural ILEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way the aforementioned rural ILECs calculate their costs, but it is solely to determine the areas in which Viaero is to be designated as an ETC. Accordingly, redefinition of the service areas referenced herein, as proposed in Applicant's

PUC, Oct. 18, 2001) ("If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible."); *Nextel Wisconsin Order*, Docket No. 8081-TI-101 (Wis. PSC, September 30, 2003), at p. 10 (finding that the ILECs' ability to disaggregate support renders concerns about creamskimming "largely moot."). See also *Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al.*, Case No. PU-1226-03-597 et al. at pp. 10-12 (N.D. PSC, Feb. 25, 2004); *Easterbrooke Cellular Corp.*, *Recommended Decision*, Case No. 03-0935-T-PC at p. 55 (W.V. PSC, May 14, 2004, aff'd by Final Order on Aug. 27, 2004).

Petition, will not impose any additional burdens on the affected rural ILECs.

Viaero has demonstrated that its proposed redefinition of the designated rural ILEC service areas fully satisfies the Joint Board's recommendations and the FCC's analysis under the Act. Viaero is serving the higher-cost and less densely populated portions of the affected ILEC study areas and as a result we are not concerned about creamskimming. Accordingly, the proposed redefinition should be approved and submitted to the FCC for concurrence.

Docket C-3415

On June 28, 2005, in Docket C-3415, this Commission adopted certain Interim Guidelines which were designed to provide clarity for carriers seeking ETC designation in Nebraska. The Interim Guidelines were intended to mirror the guidelines established by the FCC in its March 17, 2005 *FCC ETC Order* concerning ETC applications (the "FCC Guidelines"). In our Order adopting the Interim Guidelines (the "Guideline Order"), the Commission incorporated a provision that a common carrier seeking to be designated an ETC in Nebraska must submit a five-year plan describing with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area.

The Commission acknowledges that Viaero provided in discovery certain five-year build-out projections, which constituted the full extent of its five-year improvement projections at that time. At the hearing on the Application, Viaero's witness testified that Viaero would be willing to file a five-year plan upon the request of the Commission. The Commission did not make Viaero file a five-year plan conforming to the Commission's Interim Guidelines prior to its determination of its ETC application. However, the Commission finds that an additional five-year plan conforming to the Interim Guidelines must be filed by Viaero with the Commission on or before March 15, 2006. The Commission believes this will give Viaero sufficient time to prepare a five-year plan for the Commission.

In summary, we find Viaero's application for ETC designation should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, should be and it is hereby granted and Viaero Wireless is designated as an eligible telecommunications carrier in the state of Nebraska for the purpose of receiving federal universal service support as requested in the Application as amended consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Viaero file a five-year plan as provided above on or before March 15, 2006.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of October, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

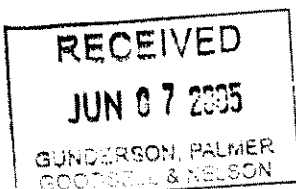
Executive Director

FINDINGS OF FACT

1. On November 18, 2003, the Commission received a Petition from RCC Minnesota, Inc. (RCC) and Wireless Alliance, L.L.C. (WALLC) d/b/a Unicel requesting designation as an ETC for service areas in northeastern and southeastern South Dakota. The service areas as originally proposed by the Petitioners for designation encompass all or portions of certain non-rural Qwest wire centers, as set forth on Exhibit B to the Petition, and all or portions of certain rural telephone companies' study areas, as set forth on Exhibits C and D to the Petition. Pet. Exh. 9.
2. The Commission granted intervention to James Valley, Union, Stockholm-Strandburg, Venture, ITC, Sioux Valley, PrairieWave, SDTA, Roberts County, RC Communications, and Alliance.
3. Rural Cellular Corporation owns or has a controlling interest in both RCC and WALLC. Tr. Vol. I at 45. RCC holds the license for the northeastern part of the licensed service area, using cellular mobile radio spectrum (CMRS). *Id.* at 45, 46. WALLC holds the license in the southeast portion, using personal communications services (PCS). *Id.* Each entity independently operates and maintains its network, but they do not have separate employees. *Id.* at 99, 100. RCC and WALLC requested that they be designated jointly for both the northeastern and southeastern licensed areas.
4. The statute provides that a carrier designated as an ETC shall offer the supported services "throughout the service area for which the designation is received. . . ." 47 U.S.C. § 214(e)(1). The Commission finds that it would not be appropriate to designate RCC and WALLC as joint ETCs for both areas for the simple reason that RCC is not serving the southeastern portion and WALLC is not serving the northeastern portion of the state. Moreover, the two companies are providing cellular services with two different technologies – one is using CMRS spectrum while the other is using PCS spectrum. Thus, although the Commission will generally refer to RCC and WALLC as the Petitioners, the Commission will designate each carrier only for the service areas that it will actually serve.

ABILITY TO OFFER SUPPORTED SERVICES

5. In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).
6. Voice grade access is defined as "a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." 47 C.F.R. § 54.101(a)(1). The FCC has defined the minimum bandwidth for voice grade access at 300 to 3,000 Hertz. *Id.* The Petitioners' customers will be able to make and receive calls on the public switched network with a bandwidth of approximately 2700 hertz. Pet. Exh. 5 at 2. The Commission finds that the Petitioners will provide voice grade access to the public switched network.



7. Local usage is defined as "an amount of minutes of use of exchange service, prescribed by the [FCC], provided free of charge to end users[.]" 47 C.F.R. § 54.101(a)(2). The Petitioners "offer a large number of rate plans that include a variety of local calling areas and varying numbers of local calling minutes." Pet. Exh. 5 at 3. The Commission finds the Petitioners will provide local usage.

8. DTMF is defined as "a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time[.]" 47 C.F.R. § 54.101(a)(3). The Petitioners will provide the functional equivalent to DTMF by using out-of-band digital signaling and in-band multi-frequency signaling. Pet. Exh. 5 at 3. The Commission finds the Petitioners will provide the functional equivalent of dual tone multi-frequency signaling.

9. Single party service provided by wireless carriers is defined as a service which uses "spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission[.]" 47 C.F.R. § 54.101(a)(4). The Petitioners will provide a dedicated path for each customer's calls. Pet. Exh. 5 at 3. The Commission finds that the Petitioners will provide single party service or its functional equivalent.

10. Access to emergency services is defined as "access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations." 47 C.F.R. § 54.101(a)(5). Access to these services are required "to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911[.]" *Id.* Petitioners provide their customers with access to 911 and have completed Phase I deployment in some areas of the state. Pet. Exh. 5 at 4; Tr. Vol. II at 7. The Commission finds the Petitioners will provide access to emergency services.

11. Access to operator services is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call[.]" 47 C.F.R. § 54.101(a)(6). Petitioners will meet this requirement by providing their customers with access to operator services by the customers dialing "0" or "611." Pet. Exh. 5 at 4. The Commission finds the Petitioners will provide access to operator services.

12. Access to interexchange service is defined as "the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network[.]" 47 C.F.R. § 54.101(a)(7). Petitioners will meet this requirement by providing all of their customers with the ability to make and receive interexchange or toll calls through interconnection arrangements that the Petitioners have with interexchange carriers. Pet. Exh. 5 at 4. The Commission finds that the Petitioners will provide access to interexchange service.

13. Access to directory assistance is defined "as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings[.]" 47 C.F.R. § 54.101(a)(8). Petitioners provide access to directory assistance by dialing "411" or "555-1212." Pet. Exh. 5 at 4. The Commission finds that Petitioners will provide access to directory assistance.

14. Each company designated as an ETC must offer toll limitation through toll blocking, toll control, or both, to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.400(a)(b)(c)(d). Toll blocking is defined as "a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel." 47 C.F.R. § 54.400(b). Petitioners will provide toll blocking. Pet. Exh. 5 at 4. Petitioners currently provide toll blocking for international calls, "900" calls, and other calls. *Id.* The Petitioners will use this technology to provide toll blocking

to their Lifeline customers once designated as an ETC. *Id.* at 4-5. The Commission finds the Petitioners will provide toll limitation for qualifying low-income consumers.

15. A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services. . . ." 47 U.S.C. § 214(e)(1)(A). The Petitioners will provide the supported services using their existing network infrastructure and spectrum as well as using resale, roaming arrangements, and boundary extensions for areas outside of their licensed areas. Pet. Exh. 1 at 23; Pet. Exh. 5 at 5; Tr. Vol. I at 147. The Commission finds the Petitioners meet this requirement.

16. With respect to the advertising of its universal service offering, the Petitioners state that they will advertise the availability of each of the supported services by media of general distribution, which may include "newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising." Pet. Exh. 9 at 7. The Commission finds the Petitioners meet the advertising requirement.

PUBLIC INTEREST -- RURAL AREAS

17. Section 214(e)(2) provides, in part, as follows:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

18. In a previous decision, the Commission adopted the following public interest test for areas served by rural telephone companies:

The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part of the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part of the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning of universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, Findings of Fact and Conclusions of Law, Docket TC98-146 at 3.

19. Last year the FCC adopted a more stringent public interest analysis than it had used in the past for ETCs seeking designation in a rural telephone company's service area. *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum

and Order, FCC 03-338 (rel. January 22, 2004) (*Virginia Cellular*). First the FCC determined that "the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." *Id.* at para. 4. To determine the public interest, the FCC stated that it "would 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 provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service areas within a reasonable time frame." *Virginia Cellular* at para. 28. As part of its analysis, the FCC also evaluated whether the designation raises cream-skimming concerns. *Id.* at para. 32. In addition, the FCC adopted the commitments made by Virginia Cellular as conditions of the FCC's approval of Virginia Cellular's ETC designation. *Id.* at para. 46. These commitments included: the submission of records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the requested service area; a commitment to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service; a commitment to provide the number of consumer complaints per 1,000 mobile handsets on an annual basis; and information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year. *Id.*

20. In a recent ETC decision, the Commission used its prior definition of public interest and also adopted the FCC's public interest analysis. See *In the Matter of the Filing by WWC License, LLC D/B/A CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas*, Amended Order Designating Western Wireless as an Eligible Telecommunications Carrier; Findings of Fact and Conclusions of Law; and Notice of Entry of Order, Docket TC03-191 (dated Jan. 3, 2005) at paras. 17-19.

21. After briefing had been completed in this case, the FCC released its order regarding the recommendations of the Federal-State Joint Board on Universal Service. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (rel. March 17, 2005) (*FCC ETC Order*). The Intervenor filed a motion requesting supplemental briefing to address the FCC's order. The Commission granted the motion and the parties submitted briefs. The Commission heard oral arguments at its April 12, 2005 meeting. The Intervenor requested that the Commission adopt the new FCC requirements. The Petitioner objected to the adoption of the new requirements given that the hearing had already been held and the briefing had been completed prior to the issuance of the *FCC ETC Order*.

22. In its order, the FCC set specific eligibility requirements for ETC applicants. For example, one of the new requirements would require an ETC applicant to "submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area." *FCC ETC Order* at para. 23. This plan "must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support." *Id.* Another requirement requires the ETC applicant to "demonstrate its ability to remain functional in emergency situations." *Id.* at para. 25. These, as well as all of the other requirements adopted by the FCC are not required to be followed by the state commissions, although the FCC did encourage state commissions to voluntarily adopt these requirements. *Id.* at paras. 58-61.

23. The Commission finds that adoption of these most recent FCC requirements by the Commission after the hearing and briefing of the issues had been completed by the parties raises fairness issues. The adoption of these requirements could require the reopening of the record. At the very least it would most likely require the Petitioner to supplement the record in order to attempt to meet the

requirements. The Commission notes that it is under no obligation to adopt these requirements and that it is not fair to the Petitioners to require that the Petitioners put in additional evidence to address these requirements after briefing had been completed. The Commission further point out that although the *FCC ETC Order* has been released, it is not yet effective. The Commission may consider these requirements in future ETC proceedings or may address them in a rulemaking, or both.

24. Therefore, the Commission finds that it will again rely on its definition of the public interest it has used in prior cases and the FCC's public interest analysis contained in its *Virginia Cellular* order.

25. The Commission will first consider whether consumers will realize increased benefits from competition. The Petitioners stated that "[i]n areas where we extend new service as a result of constructing new facilities, our customers will have new choices in local calling area, number of minutes of local calling within that calling area and varying options to use their phone when traveling outside the local calling areas." Pet. Exh. 1 at 5. Petitioners also stated that their customers "will be able to take advantage of our service offerings that are competitive with ILEC prices, and offer mobility." *Id.* With respect to competitive service offerings, the Petitioners cited to one of their plans which costs \$32.95 and "provides a local calling area that we believe to be similar to or greater than our competition's, unlimited local calling for all calls placed from anywhere within the local calling area, and some additional features that consumers typically pay extra for, such as call waiting, call forwarding, and three-way conference calling." *Id.* at 5. In addition, Petitioners noted that their customers can receive service on a month-to-month basis or pursuant to a service contract for a specific term and receive a special offer or discounted phone. *Id.* at 3. The Petitioners stated that increased competition "will provide a greater choice of services, force all carriers to improve their service offerings, and ultimately lower prices or increase value to customers." *Id.* at 4. For low income customers, the Petitioners stated that they engage "in some creative outreach efforts" in order to make customers aware of the Lifeline and Link-Up benefits. Pet. Exh. 2 at 8. The Petitioners noted that "[m]any businesses consider the quality of telecommunications networks when deciding whether to locate, or remain, in a rural area." Pet. Exh. 2 at 7. So every time they "build a new site, the benefits we offer will be available on a wider scale, improving opportunities for economic development." *Id.* The Petitioners also contended that "[c]ompetition among wireless carriers for second lines has consistently resulted in lowered prices and led to new and improved services offered by all of the carriers." Pet. Exh. 1 at 7.

26. The Intervenor admitted that increased cellular signal coverage "could bring some benefit in the form of greater cellular signal coverage" but they contended that the Petitioners have only made a limited commitment to expand their facilities and have refused to submit a build out plan. Int. Exh. 1 at 32-33; Intervenor's Reply Brief at 21.

27. The Commission finds that the Petitioners' service offerings will bring benefits, including increased choices, expanded local calling areas, and mobility. Further, the Petitioners will provide cellular coverage in areas that are not currently served or are underserved. The Commission finds that although the Intervenor have questioned the Petitioners' commitment to expand their facilities, the Commission is imposing conditions that will ensure that the Petitioners use high-cost support to improve and expand the Petitioners' coverage in the designated areas. For example, condition six requires the following:

In conjunction with, but separate from and in addition to their annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, the Petitioners shall submit records and documentation on an annual basis detailing their progress towards meeting the

statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by the Petitioners within the State of South Dakota during the preceding annual period and shall include their proposed capital budgets for the State of South Dakota for the ensuing year. The Petitioners shall work with Commission Staff to determine what constitutes material expenditures. If the Petitioners and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

In addition, condition seven requires the Petitioners to "annually submit proposed plans for the upcoming calendar year which sets forth the Petitioners' proposed plans for construction of new facilities and service enhancements to existing facilities" as well as subsequent reports "stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations."

28. The Commission will next look at the impact of multiple designations on the universal service fund. In *Virginia Cellular*, the FCC found that the granting of ETC designation for that particular carrier would not dramatically burden the universal service fund. *Virginia Cellular* at para. 31. However, the FCC also noted that "in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive." *Id.* The Petitioners stated that "the amount of high-cost support the Applicants expect to receive in its first year as an ETC is a very small percentage of the amount of projected support for all carriers in South Dakota." Pet. Exh. 1 at 17. The Commission finds that designation of the Petitioners as ETCs will not dramatically burden the universal service fund.

29. With respect to the issue of any unique advantages or disadvantages of the Petitioners' service offerings, the Petitioners cited mobility, large local calling areas, varying amounts of minutes, and safety features. Pet. Exh. 1 at 17. Regarding the safety benefit, the Petitioners pointed out that with their expanded coverage, a customer will be able to dial 911 in more areas, enabling "farmers in the field, travelers in their vehicles, mobile workers, utility company employees, and others to call police, ambulance and fire professionals in the event of an emergency." *Id.* at 6. In addition, the expanded coverage areas will allow customers to make non-emergency calls when away from their home or business that promote safety such as calls to a service station if customers experience trouble with their vehicles. *Id.*

30. Although, as the Intervenors point out, there is another wireless carrier already designated as an ETC in these areas, that wireless carrier does not yet provide complete coverage of the area. Thus, through the use of its existing network and with additional support from the high-cost fund, the Petitioners will be able to improve on the wireless coverage of the areas in question. Further, the Commission points out that for rural telephone company service areas, the high-cost fund provides per-line support for competitive ETCs. Thus, if one of the competitive ETCs builds out in a service area in a sparsely populated area and captures most of the customers, the other competitive ETC will receive little if any support. If that competitive ETC is then unable or unwilling to also provide service throughout the service area within a reasonable time frame, the Commission will revoke that carrier's ETC status.

31. Another criteria to consider is whether the Petitioners have made any commitments regarding quality of telephone service. The Petitioners state that their current customers "enjoy a very high level of service quality" and that they have a call completion rate of around 98%. Pet. Exh. 5 at 6. The Petitioners further noted that their "network experiences almost no down time" and that they

"have never had a switch outage due to a failure." *Id.* The Petitioner's customer service representative can be reached at any time, 24 hours a day, seven days a week. *Id.* at 7. The Petitioners stated that their response time to an outage report is usually less than one hour. *Id.* at 5. The Petitioners also stated that their system is "reinforced by the presence of battery backups installed at its cell sites, accompanied by generators at more remote and key communications sites, along with a pair of diesel generators at its switch, which are capable of running indefinitely in the event of a major electrical outage." *Id.* In addition, the Petitioners have "portable generators on stand-by that can be moved to individual cell sites to supplement back-up batteries." *Id.* Further, the Petitioners have "committed to report the number of consumer complaints filed per 1,000 handsets each year" and their "customer service agreement includes important protections for consumers, including service complaint resolution procedures and provisions for customer-initiated termination of service." Pet. Exh. 1 at 18. Thus, the Commission finds that the Petitioners have made commitments regarding their quality of telephone service.

32. Another requirement regards the Petitioners' ability to provide the supported services throughout the designated service areas within a reasonable time frame. The Petitioners committed to serving every customer within their proposed ETC service areas upon reasonable request. Pet. Exh. 1 at 10. If the customer resides in an area where the Petitioners do not provide service, the Petitioners will use a six step process for provisioning service. Pet. Exh. 5 at 9-10. The six steps are: 1) determining whether the customer's equipment can be modified or replaced to provide acceptable service; 2) determining whether a roof-mounted antenna or other network equipment can be deployed to provide service; 3) determining whether adjustments at the nearest cell site will provide service; 4) determining whether any other adjustments to the network or customer facilities can be made to provide service; 5) exploring the possibility of offering resold service of other carriers that serve the location; and 6) determining whether an additional cell site, a cell-extender, or repeater can be employed or constructed to provide service. *Id.* The Petitioners also stated that they would provide to the Commission "a periodic report of the number of consumers who have requested service but for which service could not be provisioned." *Id.* at 10. The Petitioners further stated that, upon request, they would also include "the proposed cost of construction and why the request for service could not be filled." *Id.*

33. The Petitioners stated that with high-cost support they "will be able to build additional facilities to provide coverage in areas that are currently unserved or improve coverage that are underserved today, and to improve network capacity for calls, all to increase the number of areas within the proposed services areas in which a call can be made." *Id.* The Petitioners estimated that they would receive about 1.5 million per year in high-cost support. Tr. Vol. II at 7. The Petitioners stated that with the high-cost money they would construct four new cell sites within eighteen months following ETC designation. Pet. Exh. 5 at 11. Two of the new cell sites would be located in RCC's licensed area and would be in or near the towns of Willow Lake and Toronto. *Id.* The other two cell sites would be in WALLC's licensed area and would be in or near the towns of Lyons and Baltic. *Id.* A cell site typically costs between \$250,000 and \$400,000. *Id.*

34. The Intervenor's asserted that the Petitioners failed to show that they would provide the supported services throughout the designated service areas within a reasonable time frame. The Intervenor's noted that the four additional cell sites as proposed by the Petitioners covered only two of the ten rural service areas. Int. Exh. 1 at 32. The Intervenor's also pointed to the testimony of a Petitioners' witness who hesitated to say that the Petitioners will substantially cover the requested area within five years. Tr. Vol. I at 95-96.

35. The Commission finds that the Petitioners have shown that they will provide the supported services throughout the designated service areas within a reasonable time frame. The Commission finds that the Petitioners have shown that they intend to use the high-cost support to improve coverage and will begin with an additional four cell sites. Moreover, the Commission again notes that it will impose conditions that are designed to ensure that the Petitioners will provide the supported services throughout the area within a reasonable time frame. See Finding of Fact 27; see also Conditions 4-11.

36. The Commission's next consideration under the public interest analysis is whether the designation of the Petitioners as ETCs will have detrimental effects on the provisioning of universal service by the incumbent carriers. The Intervenor's point to the Joint Board's Recommended Decision in which the Joint Board recommended the funding of only one primary line to each customer location. See *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, FCC 04J-1, at para. 56. The Commission will take notice of the recently released *FCC ETC Order* for the limited purpose of noting that the FCC did not put into place a primary line restriction due to a federal Act which currently prohibits the FCC from using its funds to implement a primary line restriction. *FCC ETC Order* at para. 16. Thus, under the current system an incumbent LEC will continue to receive support for its total cost of serving its service area. Tr. Vol. II at 235. By contrast, a competitive ETC's support is "per-line" support. *Id.*

37. The Commission finds that the record does not support a finding that the rural areas in question are not capable of supporting competition. First the Commission notes that wireless services are often used as a second telephone, not as a substitution for the ILECs' wireline services. In fact, the addition of a second wireless ETC into the requested areas is more likely to have a detrimental effect on the other competing wireless ETC given that the two wireless ETCs will be competing with similar services in the same area, and to the extent a wireless ETC serves a customer whose line receives high-cost support. Second, the rural ILECs will continue to receive support for their service areas based on their total cost of serving the areas.

38. The Commission will evaluate creamskimming concerns in the next section when it evaluates whether to redefine any service areas since the Commission first needs to decide where it will designate the Petitioners in order to conduct a creamskimming analysis.

CREAMSKIMMING AND REDEFINITION OF RURAL SERVICE AREAS

39. Section 214(e)(5) defines a service area as follows:

The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

40. With respect to areas served by rural telephone companies, the Petitioners presented two options for the Commission to consider. The first option, which is the option that is preferred by the Petitioners, would allow the Petitioners to serve the area that is covered by their FCC licenses, with some exceptions. Tr. Vol. II at 150. The exceptions are the result of the Petitioners' failure to notify all of the affected rural telephone companies located in their licensed areas, such as Dickey Rural,

Red River Telecom, Citizens of Minnesota, and Fort Randall. Tr. Vol. I at 140-141. For the service areas of the rural companies that the Petitioners will not serve in their entirety, the Petitioners requested that each company's service area, which is currently its study area, be *redefined* so that each wire center is a separate service area. The Petitioners then requested that for the wire centers that are not entirely within the Petitioners' licensed areas, the Commission would *designate* the Petitioners as ETCs only for those areas that are within their licensed areas. Tr. Vol. II at 150. This would mean that, in some instances, the Petitioners would be designated as ETCs for partial wire centers even though the rural telephone companies' service areas would be comprised of entire wire centers.

41. The second option presented by the Petitioners also involved the Commission redefining some of the rural telephone companies current service areas into wire center service areas. Upon redefinition to wire center service areas, the Petitioners would serve most, but not all, of the rural telephone companies' service areas. Pet. Exh. 1 at 23. Petitioners submitted a list of those wire center service areas they would serve. Pet. Exh. 4. For the wire centers they committed to serve in their entirety, even though parts of the wire centers were outside of their licensed territory, the Petitioners stated they would serve those wire centers in their entirety through resale, roaming arrangements, and boundary extensions. Exh. 1 at 23; Pet. Exh. 5 at 5; Tr. Vol. I at 147.

42. The Commission rejects the first option presented by the Petitioners. The Commission finds that a service area, as designated by a state commission, is the area that is required to be served in its entirety by an additional ETC. This finding is consistent with the FCC's recent statements regarding this issue in *Virginia Cellular*. In that decision, the FCC found the following:

In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act. We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in these redefined rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest.

Virginia Cellular at para. 41. The Commission will not redefine an incumbent company's service area to the wire center level and then not require a competitive ETC to serve the entire service area by designating the competitive ETC in only part of newly determined service area. The Commission finds this is inconsistent with the statute that requires the ETC to offer the supported services "throughout the *service area* for which the designation is received. . . ." 47 U.S.C. § 214(e)(1) (emphasis added). In addition, it is inconsistent with ARSD 20:10:32:42 which provides that "[i]n reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission *may not* find it to be in the public interest if the provider requesting such designation *is not offering its services coextensive* with the rural telephone company's service area." (emphasis added).

43. Therefore, the Commission will evaluate the Petitioners' request under the second option. As recognized by the FCC, the Joint Board expressed the following concerns regarding the redefining of rural telephone company service areas: "(1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs

at something other than a study area level." *Virginia Cellular* at para. 41. The Commission will first review any creamskimming concerns.

44. Under the Petitioners' second proposed option, some of the rural telephone companies' service areas, which are currently comprised of study areas, would be redefined so that each wire center is a separate service area. The companies are: James Valley, Venture, ITC, Sioux Valley, PrairieWave, Alliance (Splitrock), and Alliance (Baltic).

45. Three of these companies, Sioux Valley, Alliance (Splitrock), and Venture, have disaggregated support in their study areas. Disaggregation is when a company disaggregates its high-cost support in order to more closely reflect geographic cost differences. Pet. Exh. 7 at 76; 47 C.F.R. § 54.315. Or, in other words, a company which has disaggregated its support has attempted to target the support so that higher per-line support is associated in the areas which are higher cost.

46. The FCC has found that "[r]ural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area." *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45 (rel. Feb. 24 2004) (*Highland Cellular*) at para. 13. The FCC has found that when a rural company disaggregates its support, "[t]here are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area..." *Highland Cellular* at 32, fn 96. However, the FCC has also found that for study areas that include "wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities." *Highland Cellular* at para. 32. For example, the FCC found that an example of a study area with highly variable population densities was when the highest density wire centers had persons per square mile that ranged from 98 to 143 as compared to the lower density wire centers with population densities of 18 to 22 persons per square mile. *Id.* at paras. 31, 32.

47. The Commission finds that when a company disaggregates its support, creamskimming concerns are minimized since any competitor which serves the low-cost customers will receive much less in high-cost support for those customers. For example, for Alliance (Splitrock), the company split its wire centers into two zones with the higher cost areas receiving support of \$10.93 per month and the lower cost areas receiving only \$2.24 per month. Pet. Exh. 16. Alliance (Splitrock) explained its disaggregation plan as follows:

We have principally developed a town, Zone 1, and an agricultural or rural area, Zone 2, USF Disaggregation Plan that targets support based only on the cost differentials between the two zones. The Path #3 USF Disaggregation Plan defines the Zone 1 or town costs as being typically lower than the Zone 2 or rural costs. This is due to demographics and the relative cost of delivering service to these respective customers based upon the equivalency of distance and cost.

Id. Disaggregation that is done incorrectly may allow a competitive ETC to receive high-cost support for low-cost areas. However, based on its review of the record, the Commission does not find that the three companies erroneously disaggregated and does not find that these areas present creamskimming concerns.

48. In addition, the Commission notes that many of the wire centers that the Petitioners are *not* proposing to serve are wire centers that are not contiguous to the wire centers that the Petitioners are proposing to serve as ETCs. Pet. Exh. 3. The Commission notes that the FCC encouraged

"states to consider disaggregating a rural telephone company's study area into service areas composed of the contiguous portions of that study area." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 129 (1997) (*First Report and Order*). The FCC found that "requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers." *Id.* at para. 190; *see also Virginia Cellular* at para. 38.

49. The remaining companies where the Petitioners requested service area redefinitions, James Valley, ITC, PrairieWave, and Alliance (Baltic), have not disaggregated. In order to determine if creamskimming may occur, the FCC has engaged in a "covered" to "uncovered" analysis. Or, in other words, the FCC looks at the average population density for the wire centers that the ETC applicant proposes to serve and then compares that with the average population density of the wire centers that the applicant does not propose to serve. *Highland Cellular* at para. 28. The purpose of this analysis is to not allow a competitive ETC to primarily serve customers located in the low-cost, high-density portions of a rural carrier's service area. *Id.* at para 31.

50. For Alliance (Baltic), the Petitioners propose to serve three of the four wire centers --- Baltic, Crooks, and Hudson. Those wire centers have an average density of 11.3 households per square mile. Pet. Exh. 14 at 1. The Petitioners will not serve the Alcester wire center which has a density of 8.1 households per square mile. *Id.* Thus the ratio of served to unserved is only 1.4 to 1. The Commission finds that this low ratio does not raise creamskimming concerns.

51. For ITC, the Petitioners propose to serve Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake. These wire centers have an average density of 3.5 households per square mile. *Id.* at 2. The Petitioners will not serve Brookings, Chester, Elkton, Hendricks, Nunda, Sinai, Wentworth, and White. These wire centers have an average density of 5.2 households per square mile. *Id.* Since the Petitioners will be serving the wire centers with the lower density (the ratio of served to unserved is .67 to 1), there are no creamskimming concerns.

52. For James Valley, the Petitioners propose to serve Andover and Bristol. These wire centers have an average density of 1.7 households per square mile. *Id.* at 3. The Petitioners will not serve Claremont, Conde, Groton, Turton, Columbia, Doland, Ferney, Frederick, Houghton, Hecla, and Mellette. These wire centers have an average density of 1.7, resulting in a served to unserved ratio of 1 to 1. Thus there are no creamskimming concerns with James Valley.

53. For PrairieWave, the Petitioners propose to serve Worthing and Lennox. These wire centers have an average density of 10.3 households per square mile. *Id.* at page 4. The Petitioners will not serve the Alsen, Flyger, Gayville, Hurley, Irene, Wakonda, Parker, and rural Beresford wire centers. These wire centers have an average density of 5.8 households per square mile. *Id.* The Commission finds that although the ratio of served to unserved is 1.8 to 1, this ratio is not high enough to deny ETC designation. The Commission notes that the FCC found that a ratio of 8 to 1 did pose creamskimming problems. *Virginia Cellular* at para. 35. Although the Commission declines to set a specific ratio that it will find as creating creamskimming problems, a ratio of 1.8 to 1 is not high enough to deny designation and redefinition.

54. With respect to the Joint Board's concern about recognizing that rural telephone companies are on a different competitive footing from other LECs, the Commission finds that the record does not show that redefinition will reduce the rural carriers' high-cost support since, as previously mentioned, the receipt of high-cost support by the Petitioners will not lessen the support that the rural carriers

receive. See *Virginia Cellular* at 43. And, regarding the concern about any added administrative burdens of requiring rural telephone companies to calculate costs at something other than a study area level, the Commission notes that redefinition does not change how the rural carriers will calculate their costs. *Id.* at 44.

55. Another concern that was raised by the Intervenors was the possibility that if the Commission redefined service areas from study areas to wire centers, it would be easier for a competitive ETC to stop providing the supported services in the high-cost, low density wire centers. The Commission notes this concern and finds that one way to alleviate it is to designate the requested rural company areas into groups of wire centers instead of designating each wire center separately. Thus the Commission will recommend to the FCC that the service areas be redefined as follows:

a. For Alliance (Baltic), the service area should be redefined by creating a service area comprised of the contiguous wire centers of Baltic and Crooks, with the noncontiguous wire center of Hudson as a separate service area;

b. For ITC, the service area should be redefined by creating a service area comprised of Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond,² Toronto, Waubay, Webster, and Willow Lake;

c. For James Valley, the service area should be redefined by creating a service area comprised of Andover and Bristol;

d. For PrairieWave, the service area should be redefined by creating a service area comprised of Worthing and Lennox;

e. For Sioux Valley, the service area should be redefined by creating a service area comprised of Colton, Dell Rapids, and Humboldt, with the non-contiguous wire center of Valley Springs as a separate service area;

f. For Alliance (Splitrock), the service area should be redefined by creating a service area comprised of Brandon and Garretson;

g. For Venture, the service area should be redefined by creating a service area comprised of the contiguous wire centers of Britton, Langford, Pierpont, Roslyn, and Sisseton, with the non-contiguous wire center of Rosholt as a separate service area.

56. The designation of the Petitioners in these service areas served by rural companies require FCC approval of the redefinition pursuant to section 214(e)(5). Thus, the Petitioners' ETC designations will become effective only if the FCC approves such redefinition.

57. For the remaining rural telephone companies, Stockholm-Strandburg, Union, Roberts County, RC Communications, and Valley, the Petitioners do not request redefinition and will serve the entire service areas that are located in South Dakota. Thus, no redefinition is required for these companies.

² The record is unclear whether the Raymond wire center still exists or if it has been combined with the Clark wire center.

RURAL DESIGNATIONS

58. The Commission finds it is in the public interest to designate RCC as an ETC for the entire service areas of Stockholm-Strandburg, Roberts County, RC Communications, and Valley.
59. The Commission finds it is in the public interest to designate WALLC as an ETC for the entire service area of Union Telephone Company.
60. The Commission finds it is in the public interest to designate RCC as an ETC for the following redefined service areas, contingent upon FCC concurrence in the redefinitions:
- a. ITC: Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake;
 - b. James Valley: Andover and Bristol;
 - c. Venture: Britton, Langford, Pierpont, Roslyn, and Sisseton; Rosholt.
61. The Commission finds it is in the public interest to designate WALLC as an ETC for the following redefined service areas, contingent upon the FCC's concurrence in the redefinitions:
- a. Alliance (Baltic): Baltic and Crooks; Hudson;
 - b. PrairieWave: Worthing and Lennox;
 - c. Sioux Valley: Colton, Dell Rapids, and Humboldt; Valley Springs;
 - d. Alliance (Splitrock): Brandon and Garretson.

NON-RURAL SERVICE AREAS

62. Qwest is a non-rural telephone company. The Petitioners originally listed Beloit, Forman, E. Harrisburg, Milbank, Big Stone City, three Sioux Falls' wire centers, Tea and Watertown as the Qwest wire centers where they were seeking ETC designation. Pet. Exh. 9. At the hearing, the Petitioners changed Beloit to Canton and deleted Forman because there is no Forman Qwest exchange. Pet. Exh. 4 at 1; Tr. Vol. I at 33. Small portions of the Tea and Canton exchanges are located outside of WALLC's licensed area. Pet. Exh. 3. After it was noted at the hearing that the Petitioners requested that they be designated within their licensed service areas but had left out some Qwest exchanges that were located partially within their service areas, the Petitioners added the Huron, Iroquois, DeSmet, Lake Preston, Arlington, and Madison wire centers. Tr. Vol. II. at 9-10. Only small portions of these added exchanges are actually located within the Petitioners' licensed areas. Pet. Exh. 3.
63. The Commission has previously designated Qwest's service areas as its individual exchanges. See *In the Matter of the Filing by U S West Communications, Inc. for Designation as an Eligible Telecommunications Carrier*, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order, Docket TC97-163 (dated Dec. 17, 1997). The Petitioners cited to the FCC's Universal Service Order in support of their position that the Commission could designate parts of a carrier's service

area as the designated area for the competitive ETC. Petitioners' Closing Brief at 16. One of the relevant paragraphs provides, in part, as follows:

We agree with the Joint Board that, if a state commission adopts as a service area for its state the existing study area of a large ILEC, this action would erect significant barriers to entry insofar as study areas usually comprise most of the geographic area of a state, geographically varied terrain, and both urban and rural areas. We concur in the Joint Board's finding that a state's adoption of unreasonably large service areas might even violate several provisions of the Act. We also agree with the Joint Board that, if a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage. We therefore encourage state commissions not to adopt, as service areas, the study areas of large ILECs.

First Report and Order, 12 FCC Rcd at 8880, para. 185. The Commission notes that, consistent with these statements, it did not adopt the entire study area of Qwest as its service area; it adopted Qwest's individual exchanges. It is apparent from the language in the above cited paragraph that the FCC believed that once a state commission designated a non-rural carrier's service areas, those would be the service areas that a competitive ETC would be required to serve.

64. Thus, the Commission declines to designate the Petitioners in the Qwest wire centers of Huron, Iroquois, DeSmet, Lake Preston, Arlington, and Madison since the Petitioners only proposed to serve small portions of these wire centers.

PUBLIC INTEREST - NON-RURAL AREAS

65. With respect to non-rural service areas, the FCC has noted that its Common Carrier Bureau had previously "found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act." *Virginia Cellular* at para. 27. The FCC backed away from this previous finding and found that it did not believe that "designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance." *Id.* The Commission agrees that in order to designate an additional ETC in a non-rural service area, the Commission must find that the designation is in the public interest.

66. Given that the Petitioners have met the public interest test for areas served by rural telephone companies, the Commission finds that the Petitioners have also met the public interest test for the non-rural wire centers. See Findings of Fact 25 through 37; see also *Virginia Cellular* at para. 27, "[G]iven our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.")

NON-RURAL DESIGNATIONS

67. The Commission finds it is in the public interest to designate RCC as an ETC in the Milbank, Big Stone City, and Watertown wire centers.

68. The Commission further finds it is in the public interest to designate WALLC as an ETC in the Tea, Canton, Harrisburg, and three Sioux Falls wire centers.

CERTIFICATION

69. In addition to designation, the FCC also requires that a state commission certify to the FCC and the Universal Service Administrative Company (USAC) that federal high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.313 and 54.314. In order to provide certification, the Commission generally requires that a carrier estimate the support it expects to receive from USAC as well as its estimated costs for the provision, maintenance, and upgrading of facilities and services.

70. In this case, the Petitioners have estimated that they will receive approximately \$1.5 million per year in high-cost support. Tr. Vol. II at 7. The Petitioners stated that with the high-cost money they would construct four new cell sites. Pet. Exh. 5 at 11. Two of the new cell sites would be located in RCC's licensed area and would be in or near the towns of Willow Lake and Toronto. *Id.* The other two cell sites would be in WALLC's licensed area and would be in or near the towns of Lyons and Baltic. *Id.* A cell site typically costs between \$250,000 and \$400,000. *Id.* As a condition of receiving ETC designation, the Commission is requiring that the Petitioners construct the four cell sites within one year of receiving ETC status. See Condition 8. The Commission finds that this requirement is sufficient for the Commission to certify that the Petitioners will use its high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Thus, the Commission will send certification letters to USAC and the FCC for the service areas that are subject to immediate designation and will send certification letters for the other designated service areas if the FCC concurs in the Commission's redefinition of those service areas.

CONDITIONS

71. Based on the foregoing findings of fact the Commission finds it is in the public interest to designate the Petitioners as ETCs in the areas as listed above. The Commission further finds that, based on the evidence of record and the applicable rules and statutes, it is in the public interest to place conditions on the Petitioners' ETC designations. The conditions are as follows:

1. On or before August 1, 2005, the Petitioners shall file their advertising plans and materials for South Dakota that they plan to use to inform consumers of their universal service offerings. Included in these advertising plans and materials shall be the Petitioners' advertising plans and materials regarding the Lifeline and Link-up programs and the forms for applying for Lifeline and Link-Up in South Dakota.
2. On or before August 1, 2005, the Petitioners shall file their service agreements pursuant to which they intend to offer their universal service offerings in South Dakota. The agreements shall be consistent with the Commission's service quality rules and shall also advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and provide basic information on how to apply.
3. The Petitioners agreed to disputes being resolved by the Commission. The service agreement shall state that any disputes or claims arising under the service

agreement may be subject to the Commission's complaint jurisdiction, at the consumer's option. Thus, the Petitioners' service agreements shall not compel submission of disputes to arbitration which would deprive customers of access to the complaint procedures of SDCL chapter 49-13 and ARSD Chapter 20:10:01.

4. The Petitioners have been designated as ETCs in portions of some rural telephone company wire centers that lie outside the boundaries of the areas in which Petitioners have been licensed by the FCC to provide wireless service. The Petitioners shall provide service to requesting customers in such areas by extension, resale, or other arrangements with other carriers, consistent with section 214(e)(1)(A). The service shall be provided at prices and upon terms and conditions that are comparable to what is provided within the Petitioners' licensed areas.

5. Consistent with their obligations pursuant to section 214(e)(1), the Petitioners shall continue to build out facilities and extend service to meet the statutory objective of offering service "throughout the service area for which the designation is received. . . ."

6. In conjunction with, but separate from and in addition to their annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, the Petitioners shall submit records and documentation on an annual basis detailing their progress towards meeting the statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by the Petitioners within the State of South Dakota during the preceding annual period and shall include their proposed capital budgets for the State of South Dakota for the ensuing year. The Petitioners shall work with Commission Staff to determine what constitutes material expenditures. If the Petitioners and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

7. The Petitioners shall annually submit proposed plans for the upcoming calendar year which set forth the Petitioners' proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, the Petitioners' subsequent annual filings shall also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, the Petitioners shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

8. The Petitioners shall construct the four additional cell sites within one year of their receipt of high-cost support. The year shall begin from the date the Petitioners first begin to receive high-cost support for the entirety of their designated areas. If the Petitioners are unable to construct all four cell sites during this time frame, they shall submit a report detailing the reasons why they were unable to do so and shall thereafter submit monthly reports detailing their progress toward meeting this goal. The initial report shall be due at the end of the year end time frame.

9. The Petitioners shall commit to and abide by the terms of the Cellular Telecommunications Industry Association Consumer Code for Wireless Service as it is amended from time to time.

10. By March 1st of each year, the Petitioners shall provide annual reports detailing the consumer complaints that they have received during the previous one year period. This report shall include the nature and location of the complaints.

11. By March 1st of each year, the Petitioners shall provide a report itemizing the number of unfulfilled requests the Petitioners received to provide service to a current customer's residence during the previous year and requests for service from potential customers within the Petitioners' service areas that went unfulfilled during the previous year, including the steps the Petitioners took to provide service and the reasons why such requests went unfulfilled. Following the submission of this report, the Petitioners shall meet with Commission Staff to discuss the report.

12. In the event that Commission Staff believes that information beyond what the Petitioners have provided is necessary for Staff and the Commission to perform their responsibilities relating to the Petitioners' meeting their obligations under the law and this Order, Staff shall first make a request for such information to the Petitioners. If the Petitioners object to such request, Staff and the Petitioners shall first confer in an effort to resolve the issue. If after such conference, Staff and the Petitioners are unable to reach agreement concerning the need for such information or the reasonableness of such request, Staff may petition the Commission for an order modifying the Conditions herein upon a showing of good cause therefor.

72. If any of the above reports are unable to be completed by the date set forth for such filing or there is other good cause for a different filing date, the Petitioners shall work with Commission Staff to determine when the reports must be filed, and if the parties cannot agree, either party shall bring the issue before the Commission for a decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to section 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. 47 U.S.C. § 214(e)(2). The designation of an additional ETC must be consistent with the public interest, convenience, and necessity. *Id.* The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). *Id.* Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. *Id.*

3. Pursuant to section 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. 47 U.S.C. § 214(e)(1)(A).

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B).

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).
5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.
6. Pursuant to findings of fact 17 through 24, the Commission finds that it will use its prior definition of public interest and the FCC's public interest analysis in *Virginia Cellular*. The Commission declines to adopt the *FCC ETC Order* requirements, given that the order was not released until after briefing had been completed in this case and is not yet effective. See Findings of Fact 21-23.
7. ETC designation cannot be denied because a requesting carrier is not actually providing the service prior to its ETC designation. *Virginia Cellular* at para. 17. The South Dakota Supreme Court has agreed with that interpretation finding that "a carrier need not be presently offering required services before qualifying as an eligible carrier. Likewise, inability to provide service immediately upon designation is not a basis for denying ETC status. New carriers, like incumbent carriers, are required to serve new customers on "reasonable request." *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 S.D. 32, 623 N.W.2d 474, para. 19 (S.D. 2001).
8. Pursuant to findings of fact 5 through 38, the Commission finds that the Petitioners will offer the supported services, using their own facilities, resale, roaming arrangements, and boundary extensions, throughout the service areas within a reasonable time frame, subject to the conditions listed above.
9. Pursuant to finding of fact 16, the Commission finds that the Petitioners will advertise the availability and the charges for the supported services in the service areas, subject to the conditions listed above.
10. Section 214(e)(5) defines a service area as follows:

The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.
11. The Commission finds that it shall propose redefining service areas as outlined in findings of fact 39 through 56.

12. Pursuant to findings of facts 17 through 56, the Commission finds it is in the public interest to designate the Petitioners as ETCs in the service areas as listed in findings of facts 58 through 61 and 67 through 68, subject to the conditions listed above. However, the designation of the Petitioners in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefinitions.

It is therefore

ORDERED, that the Petitioners are designated as ETCs in the above listed areas, subject, in some service areas, to the FCC's concurrence with the proposed redefinitions; and it is

FURTHER ORDERED, that designation of the Petitioners in any service areas that require redefinition will not be effective until, and unless, the FCC concurs in such redefinitions; and it is

FURTHER ORDERED, that the Petitioners shall comply with the conditions as listed above.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 6th day of June, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 6th day of June, 2005.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>William Kelbo</u>
Date:	<u>6/6/05</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET NO. UT-043120
)	
SPRINT CORPORATION, d/b/a)	ORDER NO. 01
Sprint PCS, SPRINTCOM, INC.,)	
SPRINT SPECTRUM, L.P., and)	
WIRELESSCO, L.P.)	ORDER GRANTING PETITION
)	FOR DESIGNATION AS AN
)	ELIGIBLE
For Designation as an Eligible)	TELECOMMUNICATIONS
Telecommunications Carrier)	CARRIER
.....)	

1 **Synopsis:** *The Commission grants the petition of Sprint PCS for designation as an eligible telecommunications carrier. Sprint PCS meets the requirements for designation, and granting the petition is in the public interest. Sprint PCS is ordered to provide a map of its licensed service areas in electronic format.*

I. BACKGROUND

2 The federal Telecommunications Act of 1996 (Act)¹ requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs). In order to be eligible for federal universal service support, a common carrier must be designated by the state commission as an ETC. 47 U.S.C. § 214(e)(1). Once designated as an ETC, a carrier must advertise the availability of service and offer service in the geographic service area in which it is designated. *Id.*

3 On December 1, 2004, Sprint PCS requested ETC designation for those portions of its licensed service area that are also served by rural telephone companies.

¹ Public Law 104-104, 110 Stat. 154 (1996), codified in scattered sections of Title 47 U.S.C.

The Commission considered Sprint PCS's petition for ETC designation at its regularly scheduled open public meeting of December 29, 2004.

II. SPRINT PCS's PETITION FOR ETC DESIGNATION

A. The Petitioner

4 Sprint PCS is authorized to provide broadband personal communications service
("PCS") in Washington pursuant to Part 24 of the rules of the Federal
Communications Commission (FCC). *Petition*, ¶ 5. Sprint PCS is a common
carrier under 47 U.S.C. § 153(10) and it is a commercial mobile radio service
provider under 47 U.S.C. § 332(c)(1). *Id.*

5 Sprint PCS states that it operates a "robust, all-digital, nationwide mobile
wireless network" that includes over 20,000 cell sites in service. *Id.* ¶ 30. The
Sprint PCS network "offers its subscribers the capacity to view, download, and
share data, including the ability to shoot full-color digital pictures or 15-second
video clips and instantly share them with family and friends," and "also offers
consumers high data speed capabilities, supporting applications such as the
ability to watch TV on a PCS phone via the Web." *Id.*

6 As part of the operation of its network in Washington, Sprint PCS has entered
into interconnections agreements with non-rural and rural telephone companies.²

7 By order dated October 29, 2003, the Commission designated Sprint PCS as an
ETC for the portions of its licensed service area that are located in areas served
by non-rural telephone companies Qwest Corporation and Verizon Northwest
Inc.³

² See, e.g., Sprint PCS interconnection agreements with Verizon Northwest Inc., Docket No. UT-970312; St. John Co-operative Telephone and Telegraph, Docket No. UT-043054; The Toledo Telephone Company, Inc., Docket No. UT-043063; and Whidbey Telephone Company, Docket No. UT-043075.

³ The separate service areas are described using non-rural ILEC exchange names and Sprint PCS's licensed service area. Sprint PCS was designated as an ETC for service areas

8 Sprint PCS now requests designation for the portions of its licensed service area that coincide or overlap, in whole or in part, with some or all of the exchange areas served by the following rural telephone companies: United Telephone-Northwest d/b/a Sprint;⁴ CenturyTel of Washington, Inc.; CenturyTel of InterIsland, Inc.; Asotin Telephone Co.; Ellensburg Telephone Co.; Hat Island Telephone Co.; Hood Canal Telephone Co.; Inland Telephone Co.; Kalama Telephone Co.; McDaniel Telephone Co. (TDS Telecom, Inc.); Lewis River Telephone Co. (TDS Telecom, Inc.); Mashell Telephone, Inc. d/b/a Rainier Connect or The Rainier Group; St. John Telephone Co.; Tenino Telephone Co.; Toledo Telephone Co.; Whidbey Telephone Co.; and Ycom Networks, Inc.⁵

B. Statutory Requirements

9 ETCs are required to offer the services supported by the federal High Cost Fund (HCF) and advertise the availability of those services. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 101(a), (b). In addition, ETCs must offer discounts to low-income consumers through the Lifeline and Link Up programs. 47 C.F.R. §§ 54.405, 411.

10 Under the Act, state commissions shall designate as ETCs common carriers that request such designation provided the carriers meet the requirements for ETC designation. 47 U.S.C. § 214(e)(2). Notwithstanding the apparent command that

wherever its licensed service area coincides with or overlaps selected non-rural exchanges. Sprint PCS's designation is independent of wireline carrier ETC service area designations; exchange areas are used as descriptors because they have known geographic boundaries and because federal universal service support is distributed to all ETCs based on incumbent local exchange carrier (ILEC) per-line costs. *See In the Matter of the Petition of Sprint Corporation, d/b/a Sprint PCS, Sprintcom, Inc., Sprint Spectrum, L.P., and WirelessCo., L.P. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-031558, Order No. 01 (Oct. 29, 2003) ("*Sprint PCS Non-Rural Order*"), ¶¶ 7-9 and Appendix A.

⁴ In its petition, Sprint PCS refers to United Telephone-Northwest d/b/a Sprint as a rural telephone company. In Washington, for universal service purposes, the Commission has treated United Telephone-Northwest d/b/a Sprint as a non-rural telephone company. *See* Docket UT-980311. This has no bearing on our decision in this order.

⁵ Sprint PCS does not make any request in its petition that would require a change in rural telephone company study areas or service areas.

state commissions “shall” designate carriers meeting the requirements of 47 U.S.C. § 214(e)(1), the statute also provides that additional designations are permissive in some circumstances and mandatory in others. A state commission “may, in the case of an *area* served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a *service area* designated by the state commission so long as each additional requesting carrier meets the requirements of [§ 214(e)(1)] ”. *Id.* (*Italics added*)⁶. When the request is for designation of an additional ETC for an area served by a rural telephone company, the state commission must determine that the additional designation is in the public interest. *Id.*

11 The Act contemplates that service areas may have multiple ETCs. Where there are multiple ETCs, their service areas may coincide or overlap, in whole or in part. There is no requirement that coincident or overlapping service areas have identical boundaries. *Id.*⁷

12 The Act does not set forth the criteria state commissions must consider in determining whether the designation of an additional ETC in an area served by a rural telephone company is in the public interest.

C. Positions of Interested Persons

1. *Sprint PCS*

13 Sprint PCS states in its petition that it meets the requirements for ETC designation. *Petition*, ¶¶ 11-24. Sprint PCS has not stated in its petition whether it will participate in the Washington Telephone Assistance Program (WTAP).

⁶ This “area” is not a “service area” as that term is used in 47 U.S.C. § 214(e). A “service area” is the geographic location established by a state commission for ETC designation, not an area where a company serves with or without designation. 47 U.S.C. 214(e)(5). See *In the Matter of Petition of Hood Canal Telephone Company for Designation as an Eligible Telecommunication Carrier*, Order Granting Designation as an Eligible Telecommunications Carrier, Docket No. UT-043121, Order No. 1 (Dec. 29, 2004), ¶ 19.

⁷ See *Sprint PCS Non-Rural Order*, ¶¶ 7-9.

- 14 Sprint PCS contends that granting its petition will serve the public interest. *Petition*, ¶¶ 27-34. Sprint PCS states that the public interest will be served by promoting additional deployment of wireless facilities and services to the high-cost areas in rural Washington, and by bringing consumers in those areas the benefits of additional competitive universal service offerings. *Id.* ¶ 27.
- 15 Sprint PCS states that granting the petition will allow it to use federal support funds to invest in, and expand, its network in Washington. *Id.* ¶ 32. Sprint PCS states that receipt of HCF support will benefit the public interest because Sprint PCS will use the support to make its network available to deliver basic and advanced services to all telecommunications consumers. *Id.*
- 16 Sprint PCS also contends that ETC designation will provide incumbent companies with an incentive to improve their networks, offer advanced services at competitive prices, and improve customer service. *Id.* ¶ 33. At the same time, Sprint PCS states that the increased competition will not “threaten” the provision of universal services by rural telephone companies because under the federal funding mechanisms rural telephone companies will not lose any support even if they lose customers to Sprint PCS. *Id.* ¶ 34.
- 17 In response to comments filed by the Washington Independent Telephone Association (WITA), Sprint PCS stated that it seeks designation for its entire licensed service area that is coincident with rural telephone company service areas. *Sprint PCS Response at 2*. Sprint PCS also stated in response to WITA that it will provide service through roaming agreements to customers that live in the requested service areas and that Sprint PCS cannot serve with its own facilities. *Id.*
2. *Rural Incumbent Local Exchange Companies*
- 18 WITA and its member companies (Rural ILECs) oppose Sprint PCS’s petition. Rural ILECs submitted written comments at the request of the Commission, and appeared through counsel at the January 12, 2005, Open Meeting.

- 19 Rural ILECs contend Sprint PCS seeks ETC designation not for its licensed cellular geographic service area (CGSA), but rather “only where it actually provides service today, which is some smaller portion of its licensed service area.” *Rural ILEC Comments, at 2 (underline in original)*.
- 20 Rural ILECs contend that Sprint PCS commits in its petition to provide service where it physically provides service today, not to the extent of its licensed service areas. *Id.* Rural ILECs note an apparent discrepancy between the supporting affidavit stating that Sprint PCS will use resale as described in the petition, and the lack of any statement in the petition about the use of resale. Rural ILECs contend the failure of Sprint PCS to say how it will use resale implies that Sprint PCS does not use resale. *Id.*
- 21 Rural ILECs contend that Sprint PCS’s request for designation for areas where it currently serves, and not to the extent of its licensed service area, raises cream-skimming concerns. Rural ILECs also contend that Sprint PCS’s network is set up to accommodate roaming, and that its service along major highways should raise the issue of cream-skimming on its own. *Id. at 3.*
- 22 Rural ILECs contend Sprint PCS will serve very little of the rural telephone company service area. *Id.* Rural ILECs contend that Sprint PCS has provided too little information to determine whether Sprint PCS will serve only the densely populated areas of rural telephone company service areas. Rural ILECs are concerned that Sprint PCS will be required to serve only the densely populated portions of rural telephone companies’ service areas. Rural ILECs cite the FCC’s *Highland Cellular* decision as support for the proposition that where a wireless ETC seeks to become an ETC in only a portion of a rural service area, the concern about rural cream-skimming is raised.⁸ *Highland Cellular*, according to Rural ILECs, states cream-skimming is a particular concern if the wireless ETC will

⁸ See *In the Matter of Federal-State Joint Board on Universal Service Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, 19 FCC Rcd. 6422, 6434-35, FCC 04-37 ¶ 26 (2004) (“*Highland Cellular Order*”).

serve only the lower cost (more densely populated) portions of a rural telephone company's service area. *Id.*

23 Rural ILECs provide information about the anticipated service area for Sprint PCS in areas served by eleven rural telephone companies. *Id. at 3-7.* Rural ILECs indicate that for the Anatone exchange and the Hat Island exchange, it appears Sprint PCS is not even licensed to serve. For other areas, rural ILECs note that Sprint PCS will serve the more densely populated portions of rural ILEC service areas, but indicate that in some areas Sprint PCS may be serving the less densely populated areas of Rural ILEC service areas.

24 Rural ILECs also raise the question of whether it is in the public interest to designate multiple ETCs in areas served by rural telephone companies. The Rural ILECs contend that multiple designations will have an adverse effect on the size of the federal high-cost fund (HCF). *Id. at 7-8.*

3. *Commission Staff*

25 Commission Staff recommends granting the petition. According to Commission Staff, it would be in the public interest to grant Sprint PCS's petition for ETC designation because it would bring the benefits of competition to rural customers.

26 Commission Staff contends that granting the petition is consistent with the two purposes of the federal Act—to promote local competition and to preserve and advance universal service. Staff cites prior decisions of this Commission where we have held that rural customers benefit from competition because additional customer choice will bring downward pressure on prices, greater availability of innovative products, and more attention to customer service. *Staff Memorandum at 2.*

27 Commission Staff also states that granting Sprint PCS's petition is consistent with our previous decisions designating additional ETCs in areas served by rural carriers. *Id., at 3-4.*

28 Commission Staff, addressing resale and roaming, notes that the federal Act permits ETCs to provide service using the company's own facilities or its own facilities in combination with resale of another carriers' service. Commission Staff asserts that resale and roaming are functional equivalents. *Id. at 4.*

29 Commission Staff suggests the question before the Commission is whether to limit altogether Sprint PCS's access to federal HCF support by denying it ETC designation, or whether to designate Sprint PCS as an ETC and let the FCC adjust support amounts if the revenue replacement provided by the HCF is providing more than sufficient support to ETCs. *Id. at 5.*

III. COMMISSION DISCUSSION AND DECISION

30 We base our decision on the written materials provided in this matter, information presented at the Open Meeting, and on our knowledge and experience regarding ETC designation. We have a substantial number of thorough and reasoned decisions on which we rely to reach our conclusion. As a result, we will not discuss in detail every issue that has come before the Commission and has been discussed and decided in prior proceedings.

A. Legal and Policy Issues

31 Congress has authorized state commissions to designate common carriers as ETCs. 47 U.S.C. § 214(e)(2). The FCC may designate common carriers as ETCs where the state commission has no jurisdiction over the common carrier. *Id.* § 214(e)(6). The FCC does not have jurisdiction to designate common carriers as ETCs in areas where a state commission has jurisdiction to do so.⁹

32 Congress left to the state commissions to determine whether the designation of a common carrier as an ETC is in the public interest. 47 U.S.C. § 214(e)(2). The Commission may look to the decisions of the FCC and other states to assist it in

⁹ Because Sprint PCS does not seek to alter the study areas or service areas of any rural telephone company, neither 47 U.S.C. § 214(e)(5) nor 47 C.F.R. § 54.207 apply.

making that determination, but the Commission is not bound by those decisions.¹⁰

33 The Act has interrelated goals of fostering competition and advancing universal service.¹¹ Access to a variety of telecommunications service for rural consumers is one of the goals of the federal Act. 47 U.S.C. § 254(b)(3). This is also state policy. RCW 80.36.300.

B. Designation of Sprint PCS Meets the Requirements of Section 214(e) and Is in the Public Interest

1. *Sprint PCS Will Provide the Required Services*

34 Sprint PCS provides or will provide with its facilities and through roaming the nine services ETCs must provide pursuant to 47 C.F.R. § 54.101(a) and (b). *Petition*, ¶¶ 11-24; *Sprint PCS Response* at 2. Sprint PCS will advertise the availability of these services throughout its service area in media of general distribution. *Id.* ¶ 24. Sprint PCS states it will offer Lifeline and Link Up discounts. *Id.* ¶ 26. Sprint PCS may use the support it receives from the federal HCF *only* for the provision, maintenance, and upgrading of facilities and services for which support is intended. 47 U.S.C. § 254(e).

35 In seeking ETC designation, Sprint PCS is not required to demonstrate that it can provide service in every portion of the area for which it seeks designation. If that

¹⁰ The only restriction on state commission decisions regarding service areas is that a rural telephone company must be designated as an ETC for its entire "study area" (all the areas it serves in one state combined) unless the state and the FCC agree to establish a different service area for a rural company. 47 U.S.C. § 214(e)(5). This restriction on state commission determination of the service area does not prevent a state from designating another carrier as an ETC for an area that is coincident with, or overlaps in whole or in part, a portion of a rural telephone company's study area or service area. 47 U.S.C. § 214(e)(2).

¹¹ *Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n*, 149 Wn.2d 17, 28, 65 P.3d 319, 330 (2003)(citing *Alenco Communications, Inc. v. Fed. Communications Comm'n*, 201 F.3d 608, 615 (5th Cir. 2000) ("FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other.")).

were the standard, carriers would be required to make the investment to serve non-economic markets before knowing whether or not federal support would be available to supplement the otherwise insufficient revenue available in the service area. Such an approach would not advance universal service, and it would eliminate any possibility of fair competition throughout low-revenue service areas.¹² Here, Sprint PCS states that it can provide service through roaming agreements with other wireless carriers. *Sprint PCS Response at 2*. We will not dictate the manner in which ETCs meet their obligations, especially when more than one technology may be employed. Sprint PCS will have to meet its obligations, but is free to do so in a manner consistent with its business plans.

2. *Granting Sprint PCS's Petition Is In the Public Interest*

36 “Public interest” is a broad concept encompassing the welfare of present and future consumers, stakeholders, and the general public. The “public interest” is broader than the goal of fostering competition alone, and broader than the goal of advancing universal service alone;¹³ and we believe the decision today advances these two goals. Designating Sprint PCS as an ETC furthers the public interest because rural consumers, like urban consumers, will benefit from increased competition in the form of a greater variety of services and more comparability of services. Rural customers also benefit because they, rather than the government, will choose which services and technologies meet their telecommunications needs.

i. Multiple ETC designations fosters competition

37 Urban customers can choose among many companies and technologies because companies serving urban areas can earn sufficient revenue to recoup investment

¹² See *In the Matter of the Petition of RCC Minnesota, Inc., d/b/a Cellular One For Designation as an Eligible Telecommunications Carrier*, WUTC Docket No. UT-023033, Order Granting Petition for Designation as an Eligible Telecommunications Carrier (August 14, 2002) (“*RCC Order*”), ¶ 48.

¹³ See *United States Cellular Order*, ¶¶ 38-39.

and make a profit. Rural ILECs receive support because they serve fewer customers and, in some cases, those customers are located in difficult, expensive to serve terrain. State and federal policies support all lines provided by Rural ILECs; even multi-line businesses receive supported service. Because of the limited opportunities for revenue in areas served by Rural ILECs, there will be no competition—and no customer choice—unless all carriers receive support where the market does not provide sufficient revenue to support service.

38 We disagree with Rural ILECs that too many ETCs in rural areas runs counter to the public interest. Rather, that the public interest is better served by multiple ETCs. By competing with Rural ILECs, and other ETCs, each ETC will have to offer its services at a competitive price with a high level of quality to attract and keep customers.¹⁴ It is possible that changes in the administration of the HCF will prompt a review of our current policy, but under the current HCF rules, our current policy is sound.

39 The Commission's experience is that this approach, if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non-rural*, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.

40 Granting Sprint PCS's petition also is consistent with the principles of competitive and technological neutrality. Sprint PCS offers service through technologies that Rural ILECs do not use. Consumers are better off when the

¹⁴ See *In The Matter of The Petition of Inland Cellular Telephone Company et al. for Designation As An Eligible Telecommunications Carrier*, WUTC Docket No. UT-023040, Order Granting Petition for Designation as an Eligible Telecommunications Carrier (August 30, 2002) ("*Inland Order*"), ¶¶ 38, 59; *U.S. Cellular Order*, ¶¶ 31, 41, 47; and *RCC Order*, ¶¶ 36, 59, 68.

government does not favor one technology over another, but instead lets consumers choose the technology that best serves their needs.¹⁵

ii. Effect on the Federal High-Cost fund of Designation of Sprint PCS

41 Rural ILECS have raised concerns about the effect of additional ETC designations on the federal fund. The companies are concerned about the size of the fund from which they draw support. When we addressed this same concern in a recent proceeding, we stated that this concern should be addressed at a national level. We noted that not even the FCC was able to draw a conclusion regarding the effect of a single ETC designation on the HCF.¹⁶

42 We agree with Commission Staff that the decision before us is whether to limit altogether Sprint PCS's access to federal HCF support by denying it ETC designation or to designate Sprint PCS as an ETC and let the FCC adjust support amounts if the revenue replacement provided by the HCF is providing more than sufficient support to ETCs. The FCC is in the better position to adjust either HCF support or PCS licenses if the FCC decides that it is necessary to do so.

iii. Preservation and advancement of universal service

43 Rural ILECs stated that the licensed service area of Sprint PCS along major highways alone should raise cream-skimming concerns. *Rural ILEC Comments at 3*. Rural ILECs appear to be raising a concern that providing support to a carrier that serves the traveling public as well as households and businesses may be inconsistent with the goals of universal service. In the past, Rural ILECs have contended that HCF support was intended to assist families and small business

¹⁵ The FCC stated the principle of competitive and technological neutrality is properly applied when "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997).

¹⁶ See *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al. for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-043011, Order Designating Eligible Telecommunications Carriers, ¶ 36 and n.7 (April 13, 2004).

in rural areas to obtain affordable telephone service in their homes and places of business and that support for telephones that will be carried in cars along major highways is contrary to the purposes of universal service.¹⁷

44 We disagree with this limited view of universal service. The federal Act plainly defines universal service as “an evolving level of telecommunications services that the FCC establishes periodically, taking into account advances in telecommunications and information technologies and services.” 47 U.S.C. § 254(c)(1). Congress declared that 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 and that available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3).

45 We have already stated the FCC has determined that mobile wireless service qualifies as basic service. We do not believe we should constrain rural citizens to communication only from their homes. Indeed, wireless phones can be critically important for citizens who live and work in rural areas, where a road-side accident or a mishap on a farm can occur far from the nearest landline telephone.¹⁸

46 Granting Sprint PCS’s petition is consistent with federal and state statutes and policies. ETC designation of Sprint PCS will preserve and advance universal service. 47 U.S.C. § 254(b)(1). Designation of Sprint PCS will also maintain and advance the efficiency and availability of telecommunications services, ensure

¹⁷ Wireless carriers obtain federal support for “lines” serving customers whose billing addresses are within the service areas for which the wireless carrier has received ETC designation. Sprint PCS will not receive any universal service support as a result of non-resident drivers that use their wireless telephones as they transit through rural service areas.

¹⁸ See *RCC Order*, ¶¶ 65-66.

that customers pay reasonable rates for their services, and promote diversity in the supply of telecommunications services throughout the state. *RCW 80.36.300.*

IV. OTHER ISSUES

47 The Commission orders Sprint PCS to produce electronic maps of its licensed service areas. Production of electronic maps will assist Sprint PCS in claiming federal universal service funds to which it will become entitled. Those maps will also assist Rural ILECs, the FCC (through the Universal Service Administration Company), and, if need be, this Commission, to determine the accuracy of requests for federal support that are based on customer location.¹⁹ Sprint PCS must prepare maps with the same standards and attributes required of Rural ILECs, and its maps must be filed with the Commission, where they will be available to Rural ILECs. The availability of electronic maps from ETCs serving rural areas (including Rural ILECs, Sprint PCS, and others) will permit all interested persons to have an accurate representation of exchanges and service areas for the purpose of ensuring accurate requests for, and payment of, federal universal service support.

48 A combination of state and federal laws impose upon all ETCs an obligation to offer reduced-price telephone service to low-income customers within the designated service area of the ETC. *47 U.S.C. § 254(i), (j); 47 C.F.R. §§ 54.405, 411; RCW 80.36.420; WAC 480-122-020; Chapter 388-273 WAC.* There is some

¹⁹ When creating geographic service areas for wireless companies, the WUTC has referred to the known boundaries of wireline exchanges as descriptors in combination with the known licensed service areas of wireless companies to create ETC service areas unique to each wireless carrier. Reference to the known boundaries of wireline exchange companies in combination with licensed service area boundaries of wireless carriers eliminates the expense and effort that would be needed to define each service area by latitude and longitude, township and range, or meets and bounds. Reference to wireline exchange boundaries in combination with licensed service areas also has the beneficial result that calculation of support amounts for wireless carriers is made simple. This is so because non-ILEC ETCs receive support from the FCC based on the per-line support amounts received by non-rural and rural ILECs wherever a non-ILEC ETC service area overlaps an ILEC's exchange.

uncertainty about the appropriate role of wireless carriers in the state low-income program. In the event of a statutory change or changes in administrative rules that address wireless carrier participation in WTAP, Sprint PCS must comply with the statutory or administrative rule change.

V. FINDINGS OF FACT

49 Having discussed above all matters material to our decision, and having stated
general findings and conclusions, the Commission now makes the following
summary findings of fact.

50 (1) Sprint Corporation, d/b/a Sprint PCS, SprintCOM, INC., Sprint
Spectrum, L.P., and Wirelessco, L.P. (collectively "Sprint PCS") and
referred to in this order as Sprint PCS, are telecommunications companies
doing business in the state of Washington.

51 (2) Sprint PCS currently provides service in the exchanges listed in Appendix
A to this Order.

52 (3) Sprint PCS's petition satisfies the requirements of 47 U.S.C. § 214(e).

53 (4) Sprint PCS offers all of the services that are to be supported by the federal
universal service support mechanisms set forth in 47 C.F.R. § 54.101(a).

54 (5) Sprint PCS competes with Rural ILECs, ETCs, and other
telecommunications carriers in the licensed areas where it serves.

VI. CONCLUSIONS OF LAW

55 (1) The Commission has jurisdiction over the subject matter of this petition
and over Sprint PCS with respect to its designation as an ETC.

- 56 (2) The Commission is not required by the Act or by any provision of state law to hold an adjudicative proceeding or other hearing prior to designating a telecommunication carrier an ETC.
- 57 (3) Granting Sprint PCS's petition for designation as an ETC in its licensed service areas coincident with the rural telephone company exchanges listed in Appendix A is in the public interest, and is consistent with applicable federal and state law.
- 58 (4) Granting Sprint PCS's petition for designation as an ETC in areas also served by rural telephone companies is in the public interest.
- 59 (5) Granting Sprint PCS's petition for designation as an ETC does not alter the study area or the service areas of any rural telephone company and neither Sprint PCS nor any rural telephone company or any previously designated ETC must take any action under 47 U.S.C. § 214(e)(5) or 47 C.F.R. § 54.207.
- 60 (6) Requiring Sprint PCS to create electronic maps of its licensed service areas is in the public interest.
- 61 (6) The Commission has authority to modify, suspend, or revoke the designations granted in this order at a future date.

VII. ORDER

62 This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

- 63 (1) The Commission grants the petition of Sprint Corporation, d/b/a Sprint PCS, SprintCOM, INC., Sprint Spectrum, L.P., and Wirelessco, L.P. (collectively "Sprint PCS"), as modified by this Order. Each of the

requested designations set forth in Appendix A is granted and each designation is for a separate service area.

- 64 (2) Sprint PCS must provide Lifeline and Link Up discounts consistent with 47 C.F.R. §§ 54.405 and 411.
- 65 (3) Sprint PCS must prepare electronic maps of its licensed service areas with standards and attributes as described in the Commission's Order in Docket No. UT-013058 and UT-023020, entered August 2, 2002.
- 66 (4) The Commission has authority to modify, suspend, or revoke these designations, including the service areas accompanying those designations, at a future date.

DATED at Olympia, Washington, and effective this day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

APPENDIX A

Designation of Sprint PCS licensed service areas coincident with listed exchanges.

ILEC	CLLI	EXCHANGE NAME
<u>UNITED TELEPHONE - NORTHWEST</u>	BCTNWAXX	Bickleton
	CLMAWAXA	Columbia
	CNTRWAXX	Chimacum
	DLPTWAXA	Dallesport
	GDVWWAXA	Grandview
	GRNGWAXA	Granger
	GRNRWAXX	Gardiner
	HRRHWAXA	Harrah
	LYLEWAXA	Lyle
	MBTNWAXX	Mabton
	MTWAWAXA	Mattawa
	PASNWAXA	Paterson
	PLSBWAXX	Poulsbo
	PRSRWAXA	Prosser
	QLCNWAXA	Quilcene
	RSVTWAXA	Roosevelt
	SNSDWAXA	Stevenson
	TPNSWAXX	Toppenish
	WHSLWAXX	White Salmon
	WHSWWAXX	White Swan
	WHTSWAXA	Whitstran
	WPATWAXX	Wapato
	WSHRWAXA	Wishram
	ZLLHWAXA	Zillah
<u>ASOTIN TELEPHONE CO.</u>		

ASOTWAXA

Asotin

CENTURYTEL OF
WASHINGTON,
INC.

ARLTWAXX	Arletta
ASFDWAXA	Ashford
ASLKWAXA	Ames Lake
BSCTWAXX	Basin City
CHNYWAXC	Cheney
CRNTWAXX	Carnation
EDWLWAXA	Edwall-Tyler
ELMAWAXA	Elma
ELTPWAXX	Eltopia
EURKWAXA	Eureka
FLCYWAXX	Fall City
GGHRWAXA	Gig Harbor
HMPLWAXA	Lake Quinault
KGTNWAXA	Kingston
LINDWAXA	Lind
LKBYWAXA	Lakebay
MCCLWAXA	McCleary
MDLKWAXX	Medical Lake
MESAWAXX	Mesa
MNTSWAXA	Montesano
MTCOWAXX	Mathews Corner
NBNDWAXA	North Bend
OCSTWAXA	Ocosta
ORNGWAXA	Orting
PEELWAXA	Curtis
RRDNWAXX	Reardan
RTVLWAXA	Ritzville-Benge
RYCYWAXA	Royal City
SNPSWAXA	Snoqualmie Pass
SPNGWAXA	Spangle
SPRGWAXA	Sprague
SPRRWAXX	South Prairie
VADRWAXA	Vader

<u>CENTURYTEL OF INTER-ISLAND, INC.</u>	VSHNWAXA WSCKWAXA	Vashon Wilson Creek
<u>ELLENSBURG TELEPHONE CO.</u>	BLKIWAXX ESNDWAXA FRHRWAXA	Blakely East Sound Friday Harbor
	ELBGWAXA KTTSWAXX	Ellensburg Kittitas
	SELHWAXX THRPWAXA VNTGWAXX	Selah Thorp Vantage
<u>HAT ISLAND TELEPHONE CO.</u>	SWHDWAXX	Hat Island
<u>HOOD CANAL TELEPHONE CO.</u>	UNINWAXB	Union
<u>INLAND TELEPHONE CO.</u>	RSLNWAXX UNTWAXA	Roslyn Uniontown
<u>KALAMA TELEPHONE CO.</u>	KALMWAXB	Kalama
<u>LEWIS RIVER TELEPHONE COMPANY</u>	LACTWAXA	LaCenter
<u>MCDANIEL TELEPHONE CO.</u>	ONLSWAXA SLKMWAXB	Onalaska Salkum

<u>MASHELL</u> <u>TELECOM, INC.</u>	ETVLWAXA	Eatonville
<u>ST. JOHN</u> <u>TELEPHONE CO.</u>	STJHWAXA	St John
<u>TENINO</u> <u>TELEPHONE CO.</u>	TENNWAXA	Tenino
<u>TOLEDO</u> <u>TELEPHONE CO.,</u> <u>INC.</u>	TOLDWAXA	Toledo
<u>WHIDBEY</u> <u>TELEPHONE CO.</u>	CLTNWAXA LNGLWAXA	South Whidbey Port Roberts (Langley)
<u>YCOM</u> <u>NETWORKS, INC.</u>	RANRWAXA YELMWAXA	Rainier Yelm

September 8, 2005

U.S. CELLULAR
Request for Designation as Eligible
Telecommunications Carrier

ORDER APPROVING
STIPULATION

ADAMS, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we approve a Revised Stipulation among all the parties. Pursuant to the terms of the Stipulation, we designate U.S. Cellular Corporation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e). The Stipulation contains provisions establishing how U.S. Cellular will comply with various requirements of 47 C.F.R. § 54.101 ("Supported Services") that apply to all ETCs, attaches certain other conditions to the designation of U.S. Cellular as an ETC, and defers certain issues for future consideration. We approve all of these additional provisions.

II. BACKGROUND; RECORD

U.S. Cellular filed its application for the Commission to designate it as an ETC on April 8, 2004. The Company filed prefiled testimony on September 16, 2004. It filed additional testimony and comments on March 24, 2005. No other party filed testimony, but during the course of the proceeding, the other two parties in the case, the Public Advocate and the Telephone Association of Maine (TAM) filed comments. The application, the prefiled testimony and comments of all the parties constitute the record in this case for the purpose of approving the stipulation

III. LEGAL STANDARDS

A. For Approval of the Stipulation

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). All parties joined the Stipulation. The Public Advocate represents the interests of utility ratepayers in Maine. TAM represents the rural incumbent local exchange carriers (ILECs) in Maine, including the several ILECs that are ETCs. All parties participated in the process that led to the Stipulation. In this proceeding, as

discussed below, federal law requires that we find that designation of U.S. Cellular as an ETC is in the public interest. Necessarily, that finding also applies to the Stipulation.

B. For Designation of a Carrier as an ETC

The Telecommunications Act of 1996 provided for the continuing support of universal service goals by making federal USF available to carriers that are designated as ETCs. Section 214(e)(2) of the TelAct gives state commissions the primary responsibility for designating carriers as ETCs. To be designated an ETC, a carrier must offer the nine services supported by the universal service fund¹ to all customers within the ETC's service area and the availability of those services throughout the service area. 47 U.S.C. §214(e)(1). In addition, as a condition of receiving 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. 47 U.S.C. § 214(e)(2). There is little guidance, however, within the TelAct about 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.² 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.³ In our only previous designation of a wireless carrier as an ETC we found that designation of RCC was in the public interest because:

¹ 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).

² 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.

³ *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*).

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.

RCC Minnesota, Inc., SRCL Holding Company, and Saco River Communications Corporation, Request For Designation As Eligible Telecommunications Carrier, Docket No. 2002-344, Order (May 13, 2003) at 8. (RCC Order)

III. DESIGNATION; PUBLIC INTEREST

On August 18, 2005, U.S. Cellular, the Public Advocate, and the Telephone Association of Maine (TAM) filed a Revised Stipulation. The Revised Stipulation replaced the Stipulation filed on August 10, 2005, that in turn replaced Partial Stipulation filed on June 20, 2005. The Partial Stipulation, in addition to leaving several issues unresolved, was signed only by the Company and the Public Advocate. The Revised Stipulation contains an agreement that the Commission should find that designation of U.S. Cellular as an ETC in the public interest, that it should make other findings required for that designation, and should make the designation. We find this agreement is reasonable.

Specifically, we find that designation of U.S. Cellular as an ETC is in the public interest for the reasons stated in Section B.3 of the Stipulation. These include the representations that designation of U.S. Cellular as an ETC will allow rural customers to enjoy new services comparable to those enjoyed by urban customers, including mobility, voice mail, short message service ("SMS"), call waiting, and additional access to broadband through wireless devices; that U.S. Cellular has committed to using the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended, the improvement and expansion of its wireless coverage, and for providing service upon reasonable request. Federal high-cost universal service support will enable U.S. Cellular to build out its network to areas that lack adequate cellular service, enhancing wireless communications for public safety and law enforcement, thus mitigating the unique risks of geographic isolation associated with living in rural communities. We also find that U.S. Cellular's commitments to abide by Chapters 290 and 294 (Lifeline and Link Up Service Provisions), and its agreement to provide access on its towers to competitors and to public agencies (without charge on an *ad hoc* basis) are all in the public interest. In addition, because of the way federal USF is calculated, the designation of U.S. Cellular will not result in a reduction of support to Maine's rural ILECs.

We designate U.S. Cellular as an ETC for the areas described on Exhibit A, including the wire centers listed on Exhibits B and C, attached to the Application filed by U.S. Cellular on April 9, 2004, and we conditionally designate U.S. Cellular as an ETC

for the areas listed on Revised Exhibit D⁴, attached to the Stipulation. In *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, Report and Order (released March 17, 2005) (*FCC March 17, 2005 Order*), the Federal Communications Commission concurred in this Commission's redefinition, in the *RCC Order*, of various rural incumbent local exchange carrier ("ILEC") service areas. Therefore, there is no need for further redefinition of ILEC service areas for U.S. Cellular's purposes

U.S. Cellular has certified, in Exhibit E to its application, that it will comply with the requirement of 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7 of the FCC's regulations that high-cost support will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

IV. OTHER STIPULATION PROVISIONS

The Revised Stipulation contains a number of other provisions. These include provisions stating that U.S. Cellular will comply with Chapters 285 and 288 of the Commission's rules,⁵ that the "Basic Service Plan" offered in Mr. Stein's March 2 testimony complies with the local usage requirement of 47 C.F.R. § 54.101(a)(2), and that U.S. Cellular will provide toll blocking for low income customers, as required by 47 C.F.R. § 54.101(a)(9) and as described in the Stein Testimony. The Revised Stipulation does not contain specific provisions about how U.S. Cellular will meet the other service requirements of 47 C.F.R. § 54.101(a), but U.S. Cellular's testimony addressed some of those requirements, and they are requirements that U.S. Cellular (and all ETCs) must meet. U.S. Cellular must also advertise the availability of the supported services, as required by 47 U.S.C. §214(e)(1) and 47 C.F.R. § 54.101(a).

The Revised Stipulation states, as a condition of the ETC designation, that U.S. Cellular will comply with Ch. 290 of the Commission's Rules for its "Basic Service Plan"

⁴ Revised Attachment D corrected an error in the original Attachment D filed with the Application.

⁵ Chapters 285 and 288, respectively, are the Commission's rules governing the Maine Telecommunications Education Access Fund (MTEAF) and the Maine Universal Service Fund (MUSF). They require all carriers, including all wireless carriers (both ETCs and non-ETCs) to contribute to the Funds. The agreement by U.S. Cellular to comply with the Rules in this respect therefore adds nothing to what is already required by the Rules. The Rules also provide that carriers subject to the Commission's direct regulation cannot impose surcharges on their customers that exceed the percentage of intrastate retail revenues that the carriers pay into the Funds. Wireless carriers are not subject to rate regulation of the Commission, however, and the surcharge provisions of Chapters 285 and 288 do not apply to wireless carriers. U.S. Cellular's agreement to comply with the provisions of these Chapters, as a condition of the ETC designation, means that it must comply with the surcharge provisions, both as to level and billing requirements. We will not, however, require U.S. Cellular to comply with tariffing requirements of the Rules, but U.S. Cellular must inform the Commission whether it is imposing surcharges for either Fund and the amount of the surcharges.

that satisfies the “local usage” requirement under 47 C.F.R. § 54.101(a)(2), with the exception that Section 12(l) of Chapter 290, requiring an apportionment of bills between “basic” and “toll” service (a distinction not relevant in the wireless industry) will not apply.

Finally, under the Stipulation, U.S. Cellular has committed to a planning horizon of five years. As part of its annual reporting requirement, beginning on September 1, 2006, U.S. Cellular will file a description of its proposed disposition of Universal Service Funds for the 24-month period beginning October 1 of each year (the “Two-Year Plan”)⁶ and a statement (the “Goals Statement”) explaining its network expansion goals over the 36-month period beginning with the conclusion of the period covered by the Two Year Plan. The Goals Statement will indicate the areas selected by USCC for network expansion (beyond those addressed in the Two-Year Plan). The Two-Year Plan and the Goals Statement do not constitute a commitment on the part of U.S. Cellular to build any given facility, and the network expansion plans and goals are subject to change for various reasons, including reduced universal service funding levels.

V. FURTHER PROCEEDINGS

This docket shall remain open for the filing of the annual reports that U.S. Cellular must file as required by law and by the Stipulation. Pursuant to Section B.7 of the Stipulation, the Commission will address the question of the extent to which the requirements, applicable in Federal Communications Commission proceedings pursuant to the *FCC March 17, 2005 Order* in CC Docket No. 96-45, should apply in the future to wireless ETCs in Maine, as well as the other issues described in Stipulation Section B.7.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. DESIGNATE U.S. Cellular as an eligible telecommunications carrier for the areas described on Exhibit A, including the wire centers listed on Exhibits B and C, to the Application filed by U.S. Cellular on April 9, 2004, and Revised Exhibit D attached to the Stipulation;
2. FIND that U.S. Cellular has met the “high-cost certification” requirement of Section 54.313 and 54.314 of the FCC’s Rules, and that it will use the resulting support for its intended purposes;
3. FIND, in light of the concurrence by the Federal Communications Commission, in the *FCC March 2005 Order* in CC Docket No. 96-45, in the prior

⁶ The initial two-year plan, which is effective from October 1, 2005 to September 30, 2006, is the proposed build-out plan set forth in the Prefiled Direct Testimony of Markham Gartley and Attachment A to the Stipulation.

redefinition of various rural incumbent local exchange carrier ("ILEC") service areas by the Maine Public Utilities Commission in the *RCC Order*, there is no need for further redefinition of ILEC service areas for the purpose of designating U.S. Cellular as an eligible telecommunications carrier;

4. CERTIFY that from the date of this Order that U.S. Cellular has certified that it will comply with the requirement of 47 U.S.C. § 254(e) and 47 C.F.R. § 54.7 of the FCC's regulations that high-cost support will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended;

5. FIND that designation of U.S. Cellular as an eligible telecommunications carrier in rural ILEC areas meets the public interest test under 47 U.S.C. § 214(e)(2) for the reasons stated in above in this Order;

6. ORDER U.S. Cellular annually to file the reports required by Section B.5 of the Revised Stipulation;

7. REQUIRE, as a condition of the ETC designation and as provided in the Stipulation, U.S. Cellular to comply with all provisions of Chapters 285 and 288 applicable to contributing carriers, except that U.S. Cellular shall not comply with the tariff filing requirements of Chapter 288, § 5(B)(12); but shall instead inform the Commission by letter to be filed in this case whether it is imposing surcharges for the Maine Telecommunications Education Access Fund or the Maine Universal Service Fund, or both, and the amount of the surcharges; U.S. Cellular shall file letters updating the above information when such information changes;

8. APPROVE the Revised Stipulation filed by all the parties in this case on August 18, 2005 and INCOPORATE its provisions as part of this Order.

Dated at Augusta, Maine, this 8th day of September, 2005.

BY ORDER OF THE COMMISSION

Patrick Damon
Administrative Director

COMMISSIONERS VOTING FOR: Adams
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.

A. Introduction and Procedural History.

On April 9, 2004, United States Cellular Corporation (“U.S. Cellular” or the “Applicant”)¹ submitted an Application seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214 (e)(2) of the Communications Act of 1934, as amended, (the “Act”) 47 U.S.C. Section 214(e)(2) and Section 54.201 of the Rules of the Federal Communications Commission (“FCC”), 47 C.F.R. Section 54.201 (“Application”). The Application asked that U.S. Cellular be designated as eligible to receive all available support from the federal Universal Service Fund (“USF”) including, but not limited to, support for rural, insular and high cost areas and low income customers.

On September 16, 2004, the Applicant submitted the prefiled direct testimony of three of its officers describing U.S. Cellular’s Maine operations and its fitness for Eligible Telecommunications Carrier designation. In addition, U.S. Cellular provided the prefiled direct testimony of thirty-four Maine citizens from the towns of Jonesport, Bingham and Fort Fairfield, Maine in support of its Application.

On September 21, 2004, the Examiner entered a Procedural Order setting deadlines for intervention and other matters. The Office of the Public Advocate (“OPA”) had previously submitted a Petition to Intervene on April 13, 2004. The Telephone Association of Maine submitted a Petition to Intervene on October 7, 2004.

On September 14, 2004, the Applicant submitted a Motion seeking a protective order covering certain radio frequency propagation maps that it intended to file as exhibits to the prefiled direct testimony of Markham Gartley, U.S. Cellular’s Manager of Construction for the Northeast Region. On October 22, 2004, the Examiner entered an order declining to grant the protective order.

Following a Conference of Counsel held on November 1, 2004, the parties agreed that the record, consisting of the Company’s prefiled direct case, would be closed and that the case was in order for briefing. On November 17, 2004, the Examiner entered a Briefing Order, pursuant to which TAM submitted its brief on November 22, 2004, and the OPA and U.S. Cellular submitted their briefs on December 6, 2004.

¹ U.S. Cellular owns all or a majority interest in Maine RSA #1, Inc., Maine RSA #4, Inc., Bangor Cellular Telephone, L.P. and Lewiston Celltelco Partnership (the “Licensees”), each of which holds FCC licenses to provide cellular service and/or broadband Personal Communications Service (“PCS”) in Maine. In this Stipulation, the words “U.S. Cellular” and “Applicant” shall refer collectively to U.S. Cellular and the Licensees.

On December 2, 2004, the Applicant submitted a Resolution adopted by the Maine Sheriffs Association endorsing its Application.

On Friday, December 17, 2004, the Examiner held a case conference with all parties to discuss various issues in the case.

On January 26, 2005 the Examiner entered a Procedural Order requesting comments and, if deemed necessary by any party, additional prefiled testimony on various issues. On March 2, 2005, U.S. Cellular filed a Supplemental Brief together with the Prefiled Direct Testimony of Bradley Stein addressing the issues set forth in the Examiner's Notice. (No other party made a responsive filing.)

On May 3, 2005, the Examiner entered a Procedural Order calling for comments on the Federal Communications Commission's ("FCC") decision *In the Matter of Federal-State Board on Universal Service*, CC Docket No. 96-45, *Report and Order* (rel. March 17, 2005) (the "*FCC ETC Order*"). U.S. Cellular appealed the Procedural Order, arguing, among other things, that the existing record was sufficient for the Commission to make a decision on its Application, and that the Application should be evaluated based on the laws and policies then in effect. The Commission granted U.S. Cellular's appeal during a deliberative session held on May 23, 2005 by Order dated June 24, 2005.

On June 20, U.S. Cellular and the Public Advocate filed a Partial Stipulation resolving various issues in this case, and leaving other issues open for further litigation.

On July 11, the Examiner issued a Procedural Order (the "July Procedural Order") indicating various issues that the parties should be prepared to address at any upcoming oral argument and/or hearing. The Commission then held a teleconference of counsel on July 18 to discuss potential settlement terms and other matters.

On August 10, the parties submitted a Stipulation containing a comprehensive resolution of all issues in the Docket. Following an August 17 conference call with the Commission Staff, the parties made changes to the August 10 Stipulation to address issues raised by Staff, resulting in this Revised Stipulation.

The parties to this Stipulation have engaged in additional settlement discussions and have now arrived at a Stipulation, set forth in Section B below, which, if accepted by the Commission, will fully and finally dispose of all matters raised in this Docket. The parties jointly recommend that the Commission accept and adopt this Stipulation as its final disposition of all of the issues in this case.

B. Stipulation.

The parties hereby agree as follows:

1. U.S. Cellular Designated an ETC.

The Commission shall enter an Order:

- (a) designating U.S. Cellular as an ETC for the areas indicated on Exhibit A, including the wire centers indicated on Exhibits B and C, to U.S. Cellular's Application, and conditionally designating U.S. Cellular as an ETC for the areas indicated on Exhibit D pending FCC concurrence (see 1(c) *infra*),²
- (b) finding that U.S. Cellular has met the "high-cost certification" requirement of Section 54.313 and 54.314 of the FCC's Rules, and that it will use the resulting support for its intended purposes,
- (c) finding that, in light of the concurrence granted in the *FCC ETC Order*, the previous redefinition of rural incumbent local exchange carrier ("ILEC") service areas in the *RCC Order* eliminates any need for further redefinition for U.S. Cellular's purposes, and
- (d) stating that the Commission shall promptly certify to the FCC that U.S. Cellular complies with the requirement under Section 254(e) of the Act and Section 54.7 of the FCC's Rules that high-cost support be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.
2. Compliance with Chapters 285 and 288.

Applicant agrees that it will abide by Chapters 285 and 288 of the Commission's Rules.

3. Public Interest.

The parties agree that a grant of ETC status to U.S. Cellular in rural ILEC areas meets the "public interest" test under 47 U.S.C. § 214(e)(2). Designating U.S. Cellular as an ETC will allow rural customers to enjoy new services comparable to those enjoyed by urban customers, including mobility, voice mail, short message service ("SMS"), call waiting, and additional access to broadband through wireless devices. *See Advantage Cellular Systems, Inc.*, 19 FCC Rcd 20,985, 20,993 (2004). A grant of the Application is also supported by U.S. Cellular's commitment to provide service upon reasonable request and to use a portion of its support for the improvement and expansion of its wireless coverage.³ *See NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16,530, 16,539 (2004). U.S. Cellular's additional

² U.S. Cellular's April 9 Application incorrectly showed the Moosehorn Exchange, which is a part of Somerset Telephone Company's service territory, as being a portion of Northland Telephone Company's service territory. Attached is a Revised Exhibit D correcting this error. Exhibit A of the Application, a map of the Applicant's proposed ETC service territory overlaying the service territories of existing ETCs, did not include this error.

³ U.S. Cellular specifically commits to follow the requirements of the Tel Act with respect to its use of Universal Service Funds: "A carrier that receives [federal universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

commitments described herein, including its agreement to abide by Chapters 290 and 294 and report annually on its USF expenditures, also support a favorable public interest finding. Federal high-cost universal service support will enable U.S. Cellular to build out its network to areas that lack adequate cellular service, enhancing wireless communications for public safety and law enforcement, thus “mitigat[ing] the unique risks of geographic isolation associated with living in rural communities.” *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1576 (2004) (“*Virginia Cellular*”). Further, because of the way federal USF is calculated, designation of U.S. Cellular will not result in a reduction of support to Maine’s rural ILECs. See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11294 (2001) (“*Fourteenth Report and Order*”).

4. Cream Skimming.

The parties agree that the redefinition of the rural ILEC service areas listed in Exhibit D will not result in the uneconomic receipt of high-cost support in relatively low-cost portions of a study area (“cream skimming”). U.S. Cellular is not attempting to cream-skim affected areas. Instead, it proposes to serve its entire FCC-licensed area in rural Maine. To the extent there may be concerns that U.S. Cellular will unintentionally receive uneconomic levels of support, this possibility has been substantially eliminated by the ability of all rural ILECs to reallocate support among wire centers pursuant to the FCC’s disaggregation rules. Indeed, all but one of the affected ILECs has already done so. Moreover, the possibility of cream skimming is rendered even more remote by the fact that the counties in which the relevant wire centers are located—Aroostook, Franklin, Hancock, Oxford, Somerset, and Waldo—are among the most sparsely populated in the state.

5. Reporting Requirement; Goals Statement.

U.S. Cellular shall file on an annual basis a report with the Commission stating (1) the total amount it received as a result of its designation as an ETC in Maine during the prior calendar year, (2) the investments it made during the prior calendar year in support of its Maine operations that would not have been made but for its designation as an ETC in Maine, (3) a description of its proposed disposition of Universal Service Funds for the 24-month period beginning October 1 of each year (the “Two-Year Plan”, and (4) a statement (the “Goals Statement”) explaining its network expansion goals over the 36-month period beginning with the conclusion of the period covered by the Two Year Plan. The Goals Statement shall indicate the areas selected by USCC for network expansion (beyond those addressed in the Two-Year Plan), taking into account the “dead spot” information found on the “I Can’t Hear You Now” Map maintained by the OPA. The parties agree that the Two-Year Plan and the Goals Statement do not constitute a commitment on the part of U.S. Cellular to build any given facility, and that network expansion plans and goals are

subject to change for various reasons, including reduced funding levels. U.S. Cellular shall file its initial report on September 1, 2006 (which report shall cover funds received and disbursed during 2005, and its proposed dispositions for the 24-month period beginning October 1, 2006). The parties agree that the Applicant's proposed build-out plan set forth in the Prefiled Direct Testimony of Markham Gartley and attached hereto as Attachment A shall constitute its initial Two Year Plan. Applicant estimates that it will take approximately 24 months to complete this build-out plan. The parties acknowledge that the precise locations of the construction and other improvements may change as a result of shifts in consumer demand and fluctuations in available support levels. *See Virginia Cellular*, 19 FCC Rcd at 15171.

6. Commission Power to Modify Orders.

The parties acknowledge that the Commission retains continuing jurisdiction to review, modify, or revoke its designation of U.S. Cellular as an ETC or to alter or amend the service area in all manners allowed to it under state and federal law.

7. Notice of Inquiry

Upon acceptance of this Stipulation, the Commission shall issue a Notice of Inquiry ("NOI") to examine (a) whether and to what extent the requirements of the FCC's ETC Order (referenced in Part A above) should be adopted in Maine, and/or (b) to what extent Commission rules should apply to wireless ETC service. No party shall be precluded from proposing amendments to existing Commission rules or making a recommendation to the Commission regarding the applicability of the Commission's rules, in current form or as may be amended, to all ETCs in Maine.

8. Applicability of Chapter 290; Toll Blocking.

U.S. Cellular shall be subject to the provisions of Chapter 290 of the Commission's Rules, provided that:

(a) the only U.S. Cellular calling plan that shall be subject to Chapter 290 shall be the so-called "Basic Service Plan" described in Bradley Stein's Testimony of March 1, 2005 (the "Stein Testimony") and attached hereto as Stipulation Attachment B. U.S. Cellular shall (i) include the Basic Service plan in its standard marketing material for Maine, such as its Maine "map and rate sheet" (and any future brochures describing its Maine rate plans) and displayed on its web site with equal prominence to other Maine rate plans, and (ii) file reports semi-annually (beginning July 1, 2006) on the number of customers subscribing to the Basic Service Plan (such reports to be subject to the entry of a reasonable protective order sufficient to ensure that such information shall be protected against disclosure to competitors, including TAM). No other U.S. Cellular calling plan shall be subject to Chapter 290.

(b) as to said Plan, the Commission shall waive the provisions of Section 12(1) of Chapter 290, requiring an apportionment of bills between “basic” and “toll” service, a distinction not relevant in the wireless industry. (See *RCC Minnesota, Inc., Request for Waiver of Certain Requirements of Chapter 290*, MPUC Docket No. 2002-344 (Order dated April 13, 2004).

In addition, U.S. Cellular shall provide toll blocking, as described in the Stein Testimony.

9. Local Service Issues.

The parties agree that U.S. Cellular’s existing rate plans, and the “Basic Service Plan” offered in Mr. Stein’s March 2 Testimony, comply with the FCC’s local usage requirements. Pursuant to this Stipulation, but subject to any rule that may be promulgated pursuant to Section B(7) hereof, U.S. Cellular shall not be required to provide a service that “closely resembles the local exchange service provided by wireline ETCs.” See July Procedural Order at 2.

10. Public Safety Tower Attachments

U.S. Cellular understands that the Commission (a) has inquired regarding U.S. Cellular’s willingness to permit competitors to obtain space on towers in Maine that U.S. Cellular owns and controls (“Tower Space”), and (b) wishes it to explore the possibility of making unused Tower Space available to the State of Maine and/or one or more of its political subdivisions for the purpose of attaching equipment (antennas, etc.) to be used to provide communications for public safety purposes.

As to (a), U.S. Cellular hereby confirms that it is its policy to bargain in good faith with competitors (and all other potential Tower Space users) for the lease of Tower Space on commercially reasonable, market-based terms, in fact makes Tower Space available to competitors in Maine and elsewhere, and has no plans to alter this policy.

As to (b), U.S. Cellular can advise that in fact it has made Tower Space available at no charge to public safety agencies in the State of Maine (such as Sheriffs and Police Departments) on about a dozen of its towers located in Maine. Each of these free attachments has occurred on an ad hoc basis – in other words, U.S. Cellular has no formal policy regarding free public safety attachments. U.S. Cellular will continue to consider such requests on an ad hoc basis and will file a report annually describing such requests and any responses thereto.

D. Standard Stipulation Provisions.

1. Purpose; Rejection of Portion Constitutes Rejection of Whole.

The parties are entering into this Stipulation for the purpose of finally disposing of all issues raised in this Docket. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void, and will not bind the parties in this proceeding.

2. No Precedent.

The making of this Stipulation by the parties shall not constitute precedent as to any matter of fact or law, nor, except as expressly provided otherwise herein, shall it foreclose any party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other trial or action. Specifically, no aspect of this Stipulation may be used as evidence or otherwise for the proposition that U.S. Cellular either is or is not providing “basic exchange telephone service” as defined in 35-A M.R.S.A. Section 102 (13(B)).

IN WITNESS WHEREOF, the parties have caused this Stipulation to be executed and delivered, or have caused their lack of objection to be noted, by their respective attorneys.

Maine RSA #1, Inc.,
Maine RSA #4, Inc.,
Bangor Cellular Telephone, L.P.
Lewiston Celltelco Partnership

Dated: _____

By: _____
Their Attorney

OFFICE OF THE PUBLIC ADVOCATE

Dated: _____

By: _____
Attorney

TELEPHONE ASSOCIATION OF MAINE

Dated: _____

By: _____
External Affairs Manager

STIPULATION ATTACHMENT A

**UNITED STATES CELLULAR CORPORATION
TWO-YEAR MAINE BUILD-OUT PLAN**

<u>Site no.</u>	<u>Cell Name</u>	<u>Market</u>	<u>Area Description</u>
1	Fort Fairfield	ME2	Near Ft Kent
2	Peru	ME3	Near Black Mtn
3	Jonesport	ME 4	East of Millbridge
4	Rumford	ME3	Near Black Mtn
5	Bingham	ME2	North of Skowhegan
6	Grand Isle	ME2	Near Ft Kent
7	Beddington	ME4-B	Near Lead Mtn
8	Sedgewick	ME4-B	Western ME4
9	Orland	ME4-B	Western ME4
10	West Forks	ME3	South of Jackman
11	Bridgton	PCS	On 302 by ShawneePeek
12	Greenbush	Bangor	South of Vinegar Hill
13	Norridgewock	ME2	West of Skowhegan
14	North Amity	ME2	North of Weston
15	Benedicta	Bangor	South of Patten
16	Portage	ME2	North of Ashland
17	Deblois	ME4	NW of Millbridge
18	Rockwood	ME2	East of Jackman
19	West Seboeis	ME2	North of Milo
20	Hedgehog Hill	ME2	North of Ashland
21	Canton	ME3	ME3 South of Peru

Source: Prefiled Direct Testimony of Markham L. Gartley, September 16, 2004

STIPULATION ATTACHMENT B

**UNITED STATES CELLULAR CORPORATION
MAINE BASIC SERVICE PLAN**

	\$25 Maine 290 Price Plan
Available State(s)	Maine
Account type	Individual
Price to consumer	\$25
Monthly discount	\$0
Included minutes	125
Overage	\$0.40/min
Contract term	1 or 2 years
Included Features	Call Forwarding, Call Waiting, 3-WAY Calling
Activation Fee	\$30
Handset Charges	Price varies by handset selected – No subsidy provided
Long Distance	Included
International Toll	Blocked
Roaming	Blocked
ShareTalk	No
Credit Check	Yes
Deposit Required	No
USF Charges	Charged
Local Calling Area	Continental United States
Calling Area Scope	Local calling area