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Missouri Public
Service Commission

Via Federal Express

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor's Office Building
200 Madison Street
Jefferson City, MO 65102

Re: Case No. TA-2001-251

Dear Judge Roberts:

I have enclosed for filing an original and eight copies of ExOp of Missouri, Inc.'s Brief in Case No. TA-2001-251. A copy of this pleading has been served on the Office of the Public Counsel. I have also enclosed an extra copy of this filing for the Commission to file-stamp and return to me in the enclosed self-addressed, postage prepaid envelope. Thank you for bringing this filing to the Commission's attention.

Yours truly,

Kristine Becker

Kristine M. Becker

KMB:drh
Enclosures

cc: Mr. Dennis Devoy

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED³
MAR 23 2001

Missouri Public
Service Commission

In the Matter of the Application of)
ExOp of Missouri, Inc. for Designation as) Case No. TA-2001-251
a Telecommunications Company Carrier)
Eligible for Federal Universal Service)
Support Pursuant to § 254 of the)
Telecommunications Act of 1996)

BRIEF OF EXOP OF MISSOURI, INC.

COMES NOW ExOp of Missouri, Inc. ("ExOp") and for its Brief states as follows:

Introduction

The fundamental issue in this proceeding involves a question of timing: at what point in the course of a competitive local exchange carrier's (a "CLEC") business may the CLEC receive eligible telecommunications carrier ("ETC") designation from the Missouri Public Service Commission (the "Commission"). ExOp seeks a ruling from the Commission granting ExOp ETC status throughout its certificated exchanges. The result of affirming ExOp's position would be to make ExOp eligible to receive universal service funding upon a later showing that it actually provides compensable services. The result of denying ExOp's request and granting ExOp's ETC status only in the Kearney exchange, where ExOp presently provides service, would be to place ExOp in the position of needing to seek repeated ETC status grants each time it expands its service to a new exchange. Given the opposition ExOp is presently facing and the time and expense involved in an ETC application proceeding, a ruling against ExOp would mean that ExOp would never know when or whether it could hope to receive universal service funding to expand its network, which would greatly decrease the likelihood of ExOp's expansion and undercut the purpose of allowing CLECs to receive universal service funding.

Two issues are before the Commission in this proceeding:

- (1) Has ExOp sufficiently identified and defined the geographic area for which it seeks eligible telecommunications carrier ("ETC") status in its Application? What is the company's service area for purposes of this designation?
- (2) Must ExOp provide all of the services required by Section 254(c) of the Telecommunications Act of 1996 (the "Act") throughout each exchange in its service area and advertise the availability of those services using media of general distribution throughout each exchange in its service area before the Commission can determine that ExOp is an eligible telecommunications carrier for purposes of receiving Federal universal service support for all of its certificated area, or can the Commission grant ETC designation to ExOp for all of its certificated area prior to its actual provisioning and advertising of services throughout each exchange in its certificated area?

The first question in the first issue is simply answered. ExOp has clearly defined its requested service area. ExOp requests that the Commission designate ExOp as an ETC for all of ExOp's certificated exchanges. The real question for the Commission to answer is whether ExOp should be designated an ETC in all its certificated exchanges or whether ExOp's designation should be limited to the Kearney exchange or, perhaps, to Kearney and the other non-rural exchanges in which ExOp is certificated.

As this brief will demonstrate, ExOp is eligible now for ETC status throughout its certificated exchanges, even though it is not yet presently providing the services supported by the universal service mechanism outside of the Kearney, Missouri exchange. The FCC stated in its First Report and Order on universal service in May 1997 that a carrier is first declared *eligible* upon a demonstration of capability and commitment to provide the supported services, and *then* must actually provide the supported services. The FCC reiterated this point in its Declaratory Ruling on

August 10, 2000, in which it held that 47 U.S.C. § 214(e)(1) does not require a carrier to presently provide the supported services prior to designation as an ETC. Most recently, the South Dakota Supreme Court discussed the FCC's Declaratory Ruling and applied it to a CLEC's application for ETC designation in South Dakota. The Court found that while one possible literal interpretation of 47 U.S.C. § 214(e)(1) suggests that a carrier must offer the supported services throughout the designated service area in order to be designated as an ETC, the proper interpretation of § 214(e)(1), and the interpretation which is most consistent with both the literal language of the section and the pro-competitive goals of the 1996 Act, is that an ETC must offer the supported services throughout the designated service area only after receiving ETC status when it applies to receive funding. Thus, ExOp's position that it need not be currently offering the supported services in order to be designated as an ETC has been confirmed by both state and Federal authorities.

All parties agree that 47 U.S.C. § 214(e)(1) requires a carrier to offer and advertise the services supported by Federal universal service support mechanisms throughout the designated service area in order to be designated an ETC. All parties agree that a carrier must make a separate showing to the Universal Service Administration Company ("USAC") that it is actually providing the supported services in order to receive funding. The parties' views diverge, however, with regard to the proper interpretation of 47 U.S.C. § 214(e)(1) and whether a competitive carrier must presently advertise and seek to provide the supported services to every customer in every exchange throughout the designated service area prior to being designated as an ETC.

The Small Telephone Company Group (the "STCG") takes the position that a competitive carrier should not receive ETC designation until the CLEC has either completed a telecommunications infrastructure which duplicates that of the CLEC's directly competing incumbent local exchange carriers ("ILECs") or chosen to resell ILEC services in every exchange

in its service area. As will be explained in more detail below, not only did the Federal Communications Commission (the "FCC") specifically reject the STCG's position in August 2000, but federal and state authority supports ExOp's position that for business planning purposes, a competitive carrier is entitled to receive ETC designation prior to actually offering the supported services in every exchange throughout its designated service area. Denying ExOp ETC designation at this stage of its development, while its directly competing ILECs continue to receive universal service funding, would violate both the spirit and the letter of the Telecommunications Act of 1996 (the "Act") and would place ExOp at a competitive disadvantage in serving high cost areas.

1. Criteria for ETC Designation (Non-rural Areas)

In order to be eligible to receive Federal universal service support, a carrier must first be designated as an ETC under 47 U.S.C. § 214(e). Although the term "eligible telecommunications carrier" is not specifically defined in the Act, the Act describes an ETC in the following way:

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

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

47 U.S.C. § 214(e)(1). Under this subsection, an ETC must (1) offer the services which are supported by Federal universal service support mechanisms, as enumerated in 47 C.F.R. § 54.101(a), (2) offer such services throughout the service area for which the designation is received, (3) offer such services using its own facilities or a combination of its own facilities and resale of another

carrier's services, including the services offered by another ETC, and (4) advertise the availability of and charges for such services using media of general distribution. The state commissions bear the primary responsibility of determining whether a carrier meets the above criteria.¹

ExOp has specifically asserted that it offers the supported services listed in 47 C.F.R. § 54.101(a):

- 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 service;
- h. Access to directory assistance; and
- i. Toll limitation.²

(See Verification filed on December 12, 2000). The parties have stipulated that ExOp does in fact offer the first eight supported services and, to the extent it does not already do so, that it will offer toll blocking upon designation as an ETC. The parties have also stipulated that ExOp is currently offering such services throughout the Kearney, Missouri exchange, that ExOp is offering such

¹ Section 214(e)(2) describes the state commission's role in designating ETCs:

Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. 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.

47 U.S.C. § 214(e)(2).

² To the extent that it does not already do so, ExOp will offer toll blocking for qualifying low-income consumers.

services using its own facilities, and that ExOp advertises the availability of and charges for such services using media of general distribution throughout the Kearney, Missouri exchange. (See Stipulation of Facts at ¶¶ 4, 6, 7, 8). The only dispute in this case is whether ExOp offers and advertises the supported services “throughout the service area for which the [ETC] designation is received.”

The term “service area” (for non-rural areas³) is defined as “a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms.” 47 U.S.C. § 214(e)(5). Thus, the term “service area” is a flexible concept, under which the state commission determines the term’s geographic boundaries. In ExOp’s case, its existing and potential service areas in the state of Missouri would be all of its certificated exchanges.

Although the statutes which created the universal service mechanism were originally drafted with ILECs foremost in mind, since the passage of the Act in 1996, significant differences have developed in the law between universal service support to ILECs and universal service support to CLECs. See Public Notice, Docket No. 96-45, DA 98-2138 (rel. Nov. 3, 1998) (in which Western Wireless filed a Petition for clarification or change in the FCC’s policy regarding the distribution of Federal universal high cost support to carriers other than ILECs that have been designated as ETCs). The reason for such differences is that when a CLEC enters a market, it proceeds initially by building its telecommunications network in a distinct area and then offering its telecommunications services to customers within that area. As additional customers are signed on for service, customer line additions are made into new areas and the CLEC’s network and infrastructure is expanded. Contrary to ILECs’ previously existing customer base, CLECs make

³ The definition of “service area” for areas served by a rural telephone company will be discussed below; however, ExOp does not believe that this second definition alters ExOp’s proposed approach for designating CLECs as ETCs.

competitive inroads in this piece-meal fashion. See *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, attached as Appendix A to the Federal-State Joint Board's Recommendation to the FCC, Docket No. 96-45, FCC 00J-4, at A-35 (rel. Dec. 22, 2000) (hereinafter referred to as "Rural Task Force Recommendation"). The culmination of the developing differences between CLECs and ILECs with regard to universal service support occurred in an FCC Declaratory Ruling issued in August 2000.

2. Analysis of Issues

A. The FCC's Declaratory Ruling

The FCC specifically interpreted 47 U.S.C. § 214(e)(1) in a manner consistent with the interpretation ExOp is urging the Commission to adopt in a Declaratory Ruling released on August 10, 2000. *In the Matter of Federal-State Joint Board on Universal Service, Declaratory Ruling* (hereinafter "Declaratory Ruling"), Docket No. 96-45, FCC 00-248, ¶ 15 (rel. August 10, 2000). Through the Declaratory Ruling, the FCC attempted to "provide guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) . . . requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier (ETC) that may receive Federal universal service support." *In the Matter of Federal-State Joint Board on Universal Service* ("Declaratory Ruling"), Docket No. 96-45, FCC 00-248, ¶ 1 (August 10, 2000). The factual background which highlighted the need for the Declaratory Ruling centered upon the South Dakota Public Utilities Commission's (the "South Dakota PUC") position, upon Western Wireless' application for ETC status, that a carrier could not receive ETC designation unless it was providing service throughout the service area. *Id.* at ¶ 3. The South Dakota PUC refused to grant ETC status to Western Wireless, a CLEC, because Western Wireless was not yet providing service to every location in the requested service area in South

Dakota. Although the South Dakota Circuit Court ultimately softened the South Dakota PUC's position by granting Western Wireless ETC status in each exchange served by non-rural telephone companies in South Dakota,⁴ the FCC recognized the need for clear guidance on the interpretation of § 214's requirement that the supported services be offered throughout the designated service area. Thus, in the Declaratory Ruling, the FCC held that a state commission's requirement that a carrier provide service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of § 253(a). *Id.* at ¶ 2.

As part of its reasoning underlying this ruling, the FCC found that “[a] new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas.” *Id.* at ¶ 12. The FCC believed that:

. . . requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition. *Id.* at ¶ 12.

Recognizing that no competitor would ever enter a high-cost market and compete against an incumbent that is receiving support without first knowing whether it is also eligible to receive support,⁵ the FCC interpreted § 214 to mean that a CLEC need not actually provide the supported

⁴ The Circuit Court remanded to the South Dakota PUC the question of whether Western Wireless should also have received ETC designation for its rural exchanges. Because of its ruling that Western Wireless could not satisfy the § 214(e)(1) requirement for the non-rural exchanges, the South Dakota PUC declined to address whether Western Wireless had also met the public interest test for the rural exchanges. Thus, the question of whether Western Wireless should have been designated as an ETC for its rural exchanges was not on appeal before the Circuit Court. The issue has since been remanded again by the South Dakota Supreme Court. *See The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 WL 256382, 2001 S.D. 32 (March 14, 2001).

⁵ The FCC recognized that a CLEC relies on a business plan of expansion into new exchanges, and that without knowing

services throughout the service area prior to ETC designation. The FCC stated that the language of § 214(e)(1), which provides that a common carrier designated as an ETC shall “offer” and advertise its services, “does not require the actual provision of service prior to designation.” *Id.* at ¶ 14. Thus, the FCC has effectively ruled that the word “offer” as used in § 214(e) does not mean that a carrier must “currently offer” the supported services throughout the service area. Through its Declaratory Ruling, the FCC has rejected the view that the language of § 214(e)(1) requires a CLEC to currently provide the supported services throughout the service area prior to receiving ETC designation, by holding that such an interpretation is subject to the FCC’s preemption authority under § 253 of the Act. *Id.* at ¶ 20.

B. State Interpretation of § 214(e)(1)

Since August 2000, at least one state court has recognized and applied the FCC’s interpretation of § 214(e)(1). The South Dakota Supreme Court recently ruled that § 214(e)(1) does not require a carrier to presently offer the supported services before qualifying as an ETC. *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 WL 256382, 2001 S.D. 32 (March 14, 2001). Although the South Dakota Supreme Court recognized that a plain reading of § 214(e)(1) may suggest a requirement that a carrier presently be offering the supported services before being designated as an ETC, the Court found that this was

whether it would be eligible to receive universal service support in high-cost areas, no CLEC would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support. *Id.* at 13. The FCC further stated:

We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

Id. at ¶ 13.

only one possible interpretation. The court determined that the plain language of § 214(e)(1) could also be read as requiring a carrier to offer the supported services as a post-designation condition. Such an interpretation is supported by the fact that § 214(e)(1) provides that the offering and advertising must occur “throughout the service area for which the designation is *received*” and that the word “received” is in the past tense. Because of the conflicting interpretations, the Court attempted to discern Congress’ intent underlying § 214(e)(1). The Court explained that the 1996 Act intended to promote competition and encourage the rapid deployment of new telecommunications technologies to underserved areas. The Court found it difficult to reconcile an interpretation of § 214(e)(1) which requires carriers to presently provide the supported services prior to receiving ETC designation with the pro-competitive goals of the 1996 Act. Specifically, the Court concluded that requiring a carrier to provide or offer all of the supported services throughout the area at the time it seeks designation would create an “onerous, perhaps overwhelming, burden” upon competitive carriers. Under such an interpretation, CLECs would “have to offer the supported services in high cost areas in competition with incumbent carriers without any assurance of support.” *Id.* at ¶15. Moreover, new carriers could seek ETC designation only after substantial investment and risk. For these reasons, the South Dakota Supreme Court held that a carrier need not be presently offering the supported services before qualifying as an ETC.

C. FCC Designations of CLECs as ETCs

ExOp’s interpretation of § 214(e) is further supported by the fact that the FCC recently granted a CLEC’s petition for ETC designation, where the CLEC simply demonstrated that “it will offer the services supported by the Federal universal support mechanism *upon designation as an ETC.*” *In re Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Docket No. 96-45, DA 00-2896, ¶ 8

(December 26, 2000) (emphasis added) (attached hereto as **Exhibit A**). In that petition, Western Wireless alleged that it currently offered each of the supported services throughout its existing service area, and that once designated as an ETC, it “intends (and commits) to make available a universal service offering that includes all of the supported services, for consumers in the designated service areas in Wyoming.” *Id.* at ¶ 9. The FCC concluded that the petitioner’s demonstration that it “will offer” such services, complied with the requirement of § 214(e)(1) to “offer the services that are supported by Federal universal service support mechanisms under section 254(c).” *Id.* at ¶ 8.

D. The Existing Universal Service Mechanism

The structure of the existing Federal universal service mechanism also supports ExOp’s position that it is not necessary for a CLEC to presently provide the supported services prior to ETC designation. In its Declaratory Ruling, the FCC noted that its interpretation of § 214(e)(1) as it relates to competitive carriers is consistent with the FCC’s earlier conclusion that a carrier must meet the § 214(e) criteria as a *condition* of being designated an ETC, “and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support.” Declaratory Ruling at ¶ 14 (citing First Report and Order at ¶ 137⁶) (emphasis in original). In other words, “ETC designation only allows a carrier to become *eligible* for Federal universal service support.” *Id.* at ¶ 15. *See also The Filing by GCC License Corporation*, 2001 S.D. 32 (March 14, 2001) (stating that “[a]fter all, obtaining ETC status is only the first step in receiving support.”). Once a carrier receives ETC designation, in order to actually receive federal support money, the carrier must submit an application to the fund administrator, USAC. The carrier must list on the

⁶ In May of 1997, the FCC had explained that “a carrier is not entitled automatically to receive universal service support once designated as an eligible telecommunications carrier.” First Report and Order ¶ 137 (May 8, 1997). Under the universal service support mechanism, “a carrier must meet the § 214(e) criteria as a condition of its being designated an eligible carrier and *then* provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support.” *Id.* (emphasis in original). In response to concerns that the FCC’s interpretation would encourage ETCs to apply for funding before providing actual services, the FCC noted that “a carrier’s continuing status as an

USAC application forms the number of low-income subscribers served and the number of working loops in high-cost areas. *See* Form 497, Lines (5)-(8), and (11)-(15) (attached hereto as **Exhibit B**); LSS Cost Form (attached hereto as **Exhibit C**). The carrier must also sign a certification, asserting that the information submitted on the forms is true, accurate and complete, subject to fines or imprisonment for making false statements under 18 U.S.C. § 1001. A competitive eligible telecommunications carrier (a "CETC") receives universal service support only to the extent that the CETC captures the subscriber lines of an ILEC or serves new subscriber lines in the ILEC's service area. 47 C.F.R. § 54.307(a). In order to receive support pursuant to this subpart, a CETC must report to USAC the number of working loops it serves in a service area. 47 C.F.R. § 54.307(b). Thus, a carrier like ExOp, although it has been designated as an ETC, would not be allowed to received funding for providing services to a subscriber in a high cost area when ExOp is not yet presently providing services in that area.

Other enforcement mechanisms also exist to ensure that ETCs are receiving universal service support only for services which are actually being provided. While USAC relies on ETCs' self-certifications of the amount of support they are entitled to receive, USAC also possesses the power to investigate and suspend universal service payments where USAC believes that an ETC is not in compliance with federal regulations. The USAC Board of Directors recently suspended universal service payments to Moultrie Independent Telephone Company because it felt that it could not rely on the cost data submitted by that carrier. *See* USAC Board of Directors High Cost & Low Income Committee Minutes (October 23, 2000) (attached hereto as **Exhibit D**). As demonstrated by USAC's suspension of payments to an ETC, mechanisms currently exist for ensuring compliance with universal service support. Because conferral of ETC status does not equate to universal service

eligible carrier is contingent upon continued compliance with the requirements of section 214(e)" *Id.* at ¶ 138.

support funding, it is not necessary for a carrier to provide the supported services throughout the designated service area prior to ETC designation.

E. Barriers to Competitive Entry

If the Commission adopts the position that in order to receive ETC designation ExOp must currently provide the supported services in each exchange throughout the designated service area, significant barriers will be created for CLECs attempting to obtain ETC status. If CLECs are limited to ETC designation only for the service area or exchanges in which they currently provide the supported services, every CLEC which requests ETC status will be required to re-apply for an ETC designation each time it begins serving customers in a new exchange. This approach would create an administrative backlog for the Commission. More importantly, from ExOp's standpoint, such an approach would create significant "lag time" between the time it expands its service into a new exchange and the time it becomes eligible to receive universal service support. During this lag time, the ILEC in ExOp's new exchange would continue to receive universal service support. Every time a carrier applies for ETC designation in a new exchange, other carriers are provided the opportunity to intervene. ExOp shares the Staff's concern for establishing a routine whereby an applicant's ETC designation application can be delayed by competing carriers. (*See* Response of Staff of the Missouri Public Service Commission ¶ 8 (filed Nov. 27, 2000)). In its most recent order on universal service, the FCC specifically stated that state commissions should resolve requests for ETC designation under § 214(e)(2) within six months of their filing because of the concern that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. (*See* Twelfth Report and Order, Docket No. 96-45, FCC 00-208, at ¶¶ 94, 114 (rel. June 30, 2000)).⁷ Adopting the position that a CLEC must presently

⁷ Even where competitive carriers are beginning service in rural areas, the Rural Task Force has recommended that "the

provide the supported services prior to ETC designation may work well for incumbent providers who already serve all of the exchanges for which they are certificated; however, requiring a CLEC to presently provide supported services throughout the service area prior to ETC designation “unfairly skews the universal service support mechanism in favor of the incumbent LEC.” Declaratory Ruling at ¶ 21 (stating that “[a]s a practical matter, the carrier most likely to be providing all the supported services throughout the requested designation area before ETC designation is the incumbent LEC.”). Thus, not only would adopting a position which requires a CLEC to presently provide the supported services prior to ETC designation contradict FCC authority and the universal service mechanism already in place, the net effect of such a ruling by the Commission would be to erect significant barriers to competitive entry into the market, in violation of federal statutory law. *See* 47 U.S.C. §§ 253 and 254.

F. Meaningful Commission Review: Capability and Commitment

Adopting ExOp’s position would allow the state commission to conduct meaningful review of whether an applicant should be granted ETC status without invading the roles of other regulatory entities. Congress carefully structured the universal service mechanism to involve three steps, each of which is allocated to a different regulatory entity: (a) conferral of ETC status by the state commission; (b) funding by USAC; and (c) review by the FCC, if necessary. The FCC has emphasized that in granting ETC status the state commission’s role is to determine whether a new entrant has made a reasonable demonstration of its capability and commitment to provide universal service. Declaratory Ruling at ¶ 24. The new entrant may make a demonstration of capability and commitment through several non-exclusive methods:

interval between the provision of service and receipt of universal service funding (known as the “lag”) should be as short as technically and administratively feasible to ensure provision of universal service.” (*See* Rural Task Force Recommendation, Appendix, at A-35).

(1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

Id. The FCC recognized that the carrier's demonstration of its capability and commitment to provide service must involve more than a vague assertion of intent on the part of a carrier to provide service,⁸ but believed that the above methods of demonstration would be sufficient to ensure that the determination of ETC status would not constitute a "rubber stamp" proceeding. Thus, the mechanism for designating CLECs as ETCs has already been considered and set forth by the FCC. The Commission should not upset this process by imposing a requirement that in order to obtain ETC status, a CLEC must currently provide the supported services throughout the designated service area. ExOp has demonstrated, and the parties have stipulated, that ExOp has been providing telecommunications services in the Kearney, Missouri exchange for the past three years. In addition to the supported services, ExOp offers high-tech services, such as DSL and Internet access, which have traditionally not been made available to customers in high-cost areas. The Commission has before it the information it needs to make a determination that ExOp has demonstrated its capability and commitment to provide universal service. Accordingly, the Commission should designate ExOp as an ETC.

⁸ The Commission recognized the line between sufficient demonstration of capability and commitment and insufficient assertions of intent when it denied ETC status to Southwest Missouri Cable TV (SMCTV) in April 1998. *See In the Matter of the Application of Southwest Missouri Cable TV, Inc. for Designation as an Eligible Carrier Pursuant to Section 254 of the Telecommunications Act of 1996*, Case No. TO-98-275. Although SMCTV's application for ETC status asserted that it currently offers or will soon offer eight of the nine services supported by federal universal service, the Commission quickly determined that SMCTV's application should be denied because SMCTV was not yet providing the most basic local service - voice grade access to the public switched network and local usage. The Commission noted that SMCTV was not yet certificated to provide basic local services in Missouri. The Commission determined that it could not grant ETC status to companies which clearly did not yet have the capability to provide any of the supported services in part over its own facilities in Missouri. Thus, maintaining a line between sufficient demonstration of capability and commitment and insufficient assertions of intent allows meaningful review by the Commission.

3. Criteria for Areas Served by Rural Telephone Companies

Although the state commission has a mandatory obligation to designate a qualifying additional carrier as an ETC where the carrier is serving in an area served by a non-rural telephone company, the state commission may consider the public interest where the carrier is serving in an area served by a rural telephone company.⁹ A "rural telephone company" is defined as follows:

A "rural telephone company" is a LEC operating entity to the extent that such entity:

- (1) Provides common carrier service to any local exchange carrier study area that does not include either:
 - (i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (4) Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

47 U.S.C. §153(37); 47 C.F.R. § 51.5.

When ExOp applied to become certificated on November 13, 1996, and when the Commission granted ExOp a certificate of service authority on November 25, 1997, none of the exchanges for which ExOp was certificated were classified as areas served by a rural telephone company. In fact, although ExOp initially requested certification in rural exchanges, ExOp later

⁹ Section 214(e)(2) provides in relevant part:

... 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.

47 U.S.C. § 214(e)(2). For the full text of § 214(e)(2), *see supra* note 1.

voluntarily limited its request to the non-rural exchanges in Missouri. The Commission granted ExOp a certificate of service authority for exchanges served by Sprint and GTE.

Effective August 1, 2000, GTE sold approximately 116,149 lines in 107 of its exchanges to Spectra Communications Group, LLC ("Spectra"). In December 2000, two months after ExOp applied for ETC designation, Spectra sent a letter to the FCC self-certifying that it should be classified as a "rural telephone company." Thus, due to actions over which ExOp had no control, some of ExOp's certificated exchanges may now be classified as areas served by a rural telephone company. The issue of whether Spectra actually qualifies as a "rural telephone company" under the above definition is a matter to be determined by the FCC and is not before the Commission. Even assuming, however, that Spectra is a "rural telephone company", ExOp believes that the Commission's designating it as an ETC would serve the public interest.

ExOp offers technologically advanced telecommunications services, such as DSL and high speed internet access. By offering innovative services in areas which have traditionally been neglected when it comes to new telecommunications technology, ExOp is fulfilling one of the main purposes of the Federal universal service program. Furthermore, ExOp is constructing its own fiber telecommunications network, based on the belief that it can offer higher quality phone service by being completely facilities-based. ExOp has specifically chosen not to resell service because it believes its customers should choose ExOp as a better, not necessarily a cheaper, alternative. Because ExOp is a facilities-based carrier, it offers a more stable presence in rural areas than resale carriers. Thus, concerns about ETCs serving high cost areas specifically to receive Federal universal service funding and suddenly abandoning service in that area are not present in ExOp's case.

Several state commissions have made public interest findings in petitions for ETC designations in rural areas. Rural Task Force's White Paper 5, *Competition and Universal Service*

at III, p. 14, (Sept. 2000). The FCC also recently granted ETC status to Western Wireless (a CLEC) in rural areas throughout Wyoming. *In re Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, DA 00-2896 ¶ 8 (December 26, 2000) (attached as **Exhibit A**). The FCC concluded that Western Wireless made the necessary threshold demonstration that its service offering fulfilled several of the underlying federal policies favoring competition. *Id.* at ¶ 16. In fact, the FCC stated that:

Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.

Id. at ¶ 17. Although several parties claimed that designating Western Wireless as an ETC would harm consumers, the FCC found that those consumers would actually benefit from the provision of competitive service and new technologies in their areas. *Id.* at ¶ 17. The FCC also noted that the provision of competitive service in rural areas would provide an incentive to the incumbent rural telephone companies to improve their existing networks. *Id.*

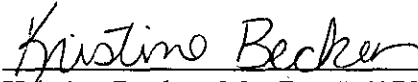
As in the Western Wireless proceeding, no evidence has been presented supporting the proposition that designating ExOp as an ETC in areas served by rural telephone companies would harm consumers. ExOp has made a threshold demonstration that designating it as an ETC would make available, exclusively through its own facilities, innovative telecommunications technologies to consumers in rural Missouri. Based on this showing, the Commission should find that designating ExOp as an ETC in rural areas would serve the public interest.

Conclusion

As this brief has demonstrated, ExOp should be designated an ETC throughout the service area covered by all of its certificated exchanges in the State of Missouri. ExOp has submitted a verified application to the Commission proving its present and future capability to provide the services supported by the Federal universal service fund mechanisms, so the question before the Commission is one of law and public policy: should ExOp be designated as eligible to receive universal service support throughout all of its certificated exchanges or should its eligibility be limited within its certificated service area? The FCC and the Supreme Court of South Dakota, when confronted with a situation very similar to ExOp's, have both very recently concluded that ETC designation should be predicated on a showing of the capability to offer and advertise the services supported by Federal universal service support mechanisms and not an actual service being offered in every exchange. As this brief has demonstrated, even the FCC's 1997 Order on universal service recognized that an ETC designation is a designation of eligibility and not of entitlement to receive universal service support. ExOp, as a CLEC, needs the certainty of ETC designation before it can risk the capital involved in building its telecommunications network into additional communities. On the strength of these legal and policy arguments, ExOp respectfully requests the Commission to designate ExOp as an ETC throughout all of its certificated exchanges in the State of Missouri.

WHEREFORE, ExOp of Missouri, Inc. respectfully requests that the Commission accept the foregoing as ExOp's Brief in this case, and designate ExOp as an eligible telecommunications carrier in ExOp's non-rural and rural certificated exchanges.

Respectfully submitted,

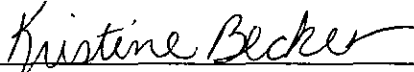


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Certificate of Service

On this 22nd day of March, 2001, a true and correct copy of the above document was served upon each of the parties set forth below via United States Mail, postage prepaid.



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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Western Wireless Corporation)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of Wyoming)	

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2000

Released: December 26, 2000

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of Western Wireless Corporation (Western Wireless) to be designated as an eligible telecommunications carrier (ETC) in designated service areas within Wyoming pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Western Wireless has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Western Wireless has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanism throughout the designated service areas.³ In addition, we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Wyoming. We conclude that consumers in Wyoming will benefit as a result of Western Wireless' designation as an ETC.

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications

¹ *Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, filed October 25, 1999 (Western Wireless Petition). See 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(1).

³ 47 U.S.C. § 214(e)(1).



carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁴ Section 214(e)(1) requires that a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁵

3. Pursuant to section 214(e)(2), state commissions have the primary responsibility for designating carriers as ETCs.⁶ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission."⁷ Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, 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, so long as the requesting carrier meets the requirements of section 214(e)(1).⁸ 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.⁹ On December 29, 1997, the Commission released a Public Notice establishing the procedures that carriers must use when seeking Commission

⁴ 47 U.S.C. § 254(e).

⁵ Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received --

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

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

47 U.S.C. § 214(e)(1).

⁶ 47 U.S.C. § 214(e)(2).

⁷ 47 U.S.C. § 214(e)(6). See *Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, CC Docket No. 96-45, 13 FCC Rcd 4547 (Com. Car. Bur. 1998); *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, 13 FCC Rcd 22433 (Com. Car. Bur. 1998).

⁸ 47 U.S.C. § 214(e)(6).

⁹ See 47 U.S.C. § 214(e)(6).

designation as an ETC pursuant to section 214(e)(6).¹⁰

B. The Western Wireless Petition and Twelfth Report and Order

4. On September 1, 1998, Western Wireless petitioned the Wyoming Public Service Commission (Wyoming Commission) for designation as an ETC pursuant to section 214(e)(2) for service to be provided in Wyoming. On August 13, 1999, the Wyoming Commission dismissed Western Wireless' request for designation on the grounds that the Wyoming Telecommunications Act denies the Wyoming Commission the authority to regulate "telecommunications services using . . . cellular technology," except for quality of service.¹¹ The Wyoming Commission interpreted this prohibition as preventing it from designating Western Wireless as an ETC because Western Wireless provides service using cellular technology.¹²

5. On September 29, 1999, Western Wireless filed with this Commission a petition pursuant to section 214(e)(6) seeking designation of eligibility to receive federal universal service support for service to be provided in parts of Wyoming.¹³ In its petition, Western Wireless contends that the Commission should assume jurisdiction and designate Western Wireless as an ETC pursuant to section 214(e)(6) given the Wyoming Commission's determination that it lacked jurisdiction under applicable state law to designate wireless carriers as ETCs.¹⁴

¹⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (rel. Dec. 29, 1997) (*Section 214(e)(6) Public Notice*). In this Public Notice, the Commission delegated authority to the Chief of the Common Carrier Bureau to designate carriers as ETCs pursuant to section 214(e)(6). The Commission instructed carriers seeking designation to, among other things, set forth the following information in a petition: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission;" (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution." In addition, 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. If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service area for which it requests a designation for eligibility from the Commission.

¹¹ *The Amended Application of WWC Holding Co., Inc., (Western Wireless) For Authority To Be Designated As An Eligible Telecommunications Carrier*, Order Granting Motion to Dismiss Amended Application, Docket No. 70042-TA-98-1 (Record No. 4432) (Aug. 13, 1999) (*Wyoming Order*), citing Wyoming Telecommunications Act of 1995.

¹² *Wyoming Order* at 2-4.

¹³ See Western Wireless Petition. The petition contains a list of the specific rural telephone company study areas and non-rural incumbent local exchange carrier (LEC) exchanges for which Western Wireless is seeking designation. Western Wireless Petition, App. D. See also Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Magalie Roman Salas, FCC, dated Dec. 20, 2000 – Proposed Designated ETC Service Areas (Western Wireless Dec. 20 *ex parte*).

¹⁴ See generally Western Wireless Petition.

6. In the *Twelfth Report and Order*, the Commission concluded that only in those instances where a carrier provides the Commission with an “affirmative statement”¹⁵ from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation will the Commission consider section 214(e)(6) designation requests from carriers serving non-tribal lands.¹⁶ Consistent with this framework, the Commission concluded that it has authority under section 214(e)(6) to consider the merits of Western Wireless’ petition for designation as an ETC in Wyoming.¹⁷

III. DISCUSSION

7. We find that Western Wireless has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the designated service areas in the state of Wyoming. As discussed above, the Commission previously concluded in the *Twelfth Report and Order* that Western Wireless is a common carrier not subject to the jurisdiction of the Wyoming Commission. We conclude that Western Wireless has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanism throughout the designated service areas upon designation as an ETC. In addition, we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Wyoming. We therefore designate Western Wireless as an ETC for the requested service areas within Wyoming.

8. Offering the Service Designated for Support. We conclude that Western Wireless has demonstrated that it will offer the services supported by the federal universal service mechanism upon designation as an ETC. We therefore conclude that Western Wireless complies with the requirement of section 214(e)(1)(A) to “offer the services that are supported by Federal universal service support mechanisms under section 254(c).”¹⁸

9. As noted in its petition, Western Wireless is a commercial mobile radio service (CMRS) provider with operations in 17 states, including the eastern portion of Wyoming.¹⁹ Western Wireless states that it currently offers each of the supported services enumerated in

¹⁵ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.” See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) at para. 113 (*Twelfth Report and Order*).

¹⁶ *Twelfth Report and Order* at para. 113.

¹⁷ *Twelfth Report and Order* at para. 137.

¹⁸ 47 U.S.C. § 214(e)(1)(A).

¹⁹ Western Wireless Petition at 2. See also Letter from David L. Sieradzki, Counsel for Western Wireless, to Magalie Roman Salas, FCC, dated October 24, 2000 (Western Wireless Oct. 24 *ex parte*).

section 54.101(a) of the Commission's rules throughout its existing cellular service area.²⁰ Once designated as an ETC, Western Wireless "intends (and commits) to make available a 'universal service' offering that includes all of the supported services, for consumers in the designated services areas in Wyoming."²¹ Western Wireless indicates that it will make available its universal service offering over its existing cellular network infrastructure and spectrum. Western Wireless also commits to provide service to any requesting customer within the designated service areas, and if necessary, will deploy any additional facilities to do so.²²

10. No party disputes that Western Wireless has the capability to offer single-party service, voice-grade access to the public network, the functional equivalent to DTMF signaling, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.²³ Nor does any party dispute that Western Wireless complies with state law and Commission directives on providing access to emergency services.²⁴ In addition, although the Commission has not set a minimum local usage requirement, Western Wireless currently offers varying amounts of local usage in its monthly service plans.²⁵ In fact, Western Wireless intends to offer its universal service customers a rate plan that includes unlimited local usage.²⁶ In sum, we conclude that Western Wireless has demonstrated that it will offer each of the supported services upon designation as an ETC in the requested service areas in Wyoming.²⁷ Several state commissions have examined Western Wireless' proposed service

²⁰ Western Wireless Petition at 3, 7-10. *See also* Western Wireless Petition, App. C – Affidavit of Gene DeJordy.

²¹ Western Wireless Petition at 7.

²² Western Wireless Petition at 3.

²³ Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanism to include: (1) single-party service; (2) voice grade access to the public switched network; (3) local usage; (4) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator service; (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).

²⁴ *See* 47 C.F.R. § 54.101(a)(5) ("Access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems"). Western Wireless currently offers access to emergency services throughout its cellular service area by dialing 911. Western Wireless indicates that no public emergency service provider in Wyoming has made arrangements for the delivery of E911 to Western Wireless. Western Wireless indicates that it is capable and ready to provide E911 upon request. Western Wireless Petition at 9.

²⁵ Western Wireless Petition at 8.

²⁶ Western Wireless Petition at 8.

²⁷ AT&T Comments at 3; CTIA Comments at 3; PCIA Comments at 3-4.

offering and reached the same conclusion in designating Western Wireless as an ETC.²⁸

11. We reject the suggestion that Western Wireless' proposed service offering lacks the requisite specificity to satisfy the eligibility requirements of section 214(e).²⁹ Western Wireless has provided supplemental information relating to the services offered, the charges for those services, and availability of customer assistance services.³⁰ We also reject the contention that Western Wireless has not sufficiently specified whether it intends to use its fixed or mobile service to fulfill its ETC obligations.³¹ In so doing, we reject the implication that service offered by CMRS providers is ineligible for universal service support.³² In the *Universal Service Order*, the Commission concluded that universal service support mechanisms and rules should be competitively neutral.³³ The Commission concluded that the principle of competitive neutrality includes technological neutrality.³⁴ Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria. Western Wireless indicates that it has the ability to offer the supported services using its existing facilities.

12. We reject the contention of a few commenters that it is necessary to adopt eligibility criteria beyond those set forth in section 214(e) to prevent competitive carriers from attracting only the most profitable customers, providing substandard service, or subsidizing

²⁸ See, e.g., Minnesota Public Utilities Commission, *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285 (Oct. 27, 1999); Public Utilities Commission of Nevada, *Application of WWC License LLC d/b/a CELLULAR ONE to be designated as an Eligible Telecommunications Carrier in the State of Nevada pursuant to NAC 704.680461 and Section 254 of the Telecommunications Act of 1996*, Compliance Order, Docket No. 00-6003 (Aug. 17, 2000); Public Service Commission of Utah, *Petition of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Carrier*, Report and Order, Docket No. 98-2216-01 (July 21, 2000).

²⁹ Wyoming Telecommunications Association Comments at 7; US West Comments at 2; Coalition of Rural Telephone Companies Reply Comments at 11.

³⁰ Western Wireless indicates that the charge for its basic universal service offering, excluding taxes and regulatory assessments, will be \$14.99 per month. In addition, Western Wireless indicates its intention to make reasonable arrangements to resolve service disruptions. Customer service personnel will also be available 24 hours per day, 7 days per week. See Western Wireless Oct. 24 *ex parte* - Attachment 1 (Information Sheet).

³¹ Coalition of Rural Telephone Companies Comments at 11; Wyoming Telecommunications Association Comments at 11, 14.

³² Coalition of Rural Telephone Companies Comments at 5-7; Wyoming Telecommunications Association Comments at 11-14.

³³ *Universal Service Order*, 12 FCC Rcd 8776, 8801, para. 46.

³⁴ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49 ("We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms . . .").

unsupported services with universal service funds.³⁵ As the Commission noted in the *Universal Service Order*, section 214(e) prevents eligible carriers from attracting only the most desirable customers by limiting eligibility to “common carriers”³⁶ and by requiring eligible carriers to offer and advertise the supported services “throughout the service area.”³⁷ We also note that section 254(e) requires that “[a] carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁸

13. We find that these statutory provisions are sufficient to ensure that competitive carriers use universal service funds to make the supported services available to all requesting customers throughout the service area. We also believe that the forces of competition will provide an incentive to maintain affordable rates and quality service to customers. Competitive ETCs will receive universal service support only to the extent that they acquire customers. In order to do so, it is reasonable to assume that competitive ETCs must offer a service package comparable in price and quality to the incumbent carrier. In addition, we emphasize that a carrier’s ETC designation may be revoked if the carrier fails to comply with the statutory ETC and common carrier obligations.

14. Offer the Supported Services Using a Carrier’s Own Facilities. We conclude that Western Wireless has satisfied 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.³⁹ Western Wireless states that it intends to provide the supported services using its “existing cellular network infrastructures, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to the network.”⁴⁰ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

15. Advertising the Supported Services. We conclude that Western 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 therefor using media of general distribution. Western Wireless certifies that it intends to advertise the availability of its universal service offering, and the charges therefor, using media of general distribution.⁴¹ Specifically, Western Wireless

³⁵ US West Comments at 12-14; Wyoming Telecommunications Association Comments at 7.

³⁶ The Act requires common carriers to furnish “communications services upon reasonable request,” 47 U.S.C. § 201(a), and states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services. . . .” 47 U.S.C. § 202(a).

³⁷ See *Universal Service Order*, 12 FCC Rcd at 8855-56, paras. 142-43.

³⁸ 47 U.S.C. § 254(e).

³⁹ 47 U.S.C. § 214(e)(1)(A).

⁴⁰ Western Wireless Petition at 10-11.

⁴¹ Western Wireless Petition at 11.

indicates that it will expand upon its existing advertising media, including television, radio, newspaper, and billboard advertising, as necessary, to ensure that consumers within its designated service area are fully informed of its universal service offering.⁴² Moreover, given that ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal service offering in Wyoming.

16. Public Interest Analysis. We conclude that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies.⁴³ Western Wireless has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. We find that there is no empirical evidence on the record to support the contention that the designation of Western Wireless as an ETC in those designated service areas served by rural telephone companies in Wyoming will harm consumers.⁴⁴ In fact, we conclude that those consumers will benefit from the provision of competitive service and new technologies in high-cost and rural areas.

17. We note that an important goal of the Act is to open local telecommunications markets to competition.⁴⁵ Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers.⁴⁶ In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at "just, reasonable, and affordable rates."⁴⁷

18. Although we recognize the substantial benefits of competition to consumers, we conclude that additional factors may be taken into consideration in the public interest examination

⁴² Western Wireless Petition at 11.

⁴³ See 47 U.S.C. § 214(e)(6).

⁴⁴ See Coalition of Rural Telephone Companies Comments at 9-11; Wyoming Telecommunications Association Comments at 7-8.

⁴⁵ According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . ." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

⁴⁶ Western Wireless Petition at 11-13.

⁴⁷ 47 U.S.C. § 254(b)(1).

required by section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed. In so doing, we recognize that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.⁴⁸ In particular, we believe that Congress was concerned that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company exercise its option to relinquish its ETC designation under section 214(e)(4).⁴⁹

19. Western Wireless demonstrates a financial commitment and ability to provide service to rural consumers that minimizes the risk that it may be unable to satisfy its statutory ETC obligations after designation.⁵⁰ We note that Western Wireless currently provides service in 17 western states.⁵¹ Western Wireless also indicates that it can provide the supported services using its own facilities.⁵² By choosing to use its own facilities to provide service in Wyoming, Western Wireless can continue to offer service to any requesting customer even if the incumbent carrier subsequently withdraws from providing service.⁵³

20. Nor are we convinced that the incumbent rural telephone carriers will relinquish their ETC designation or withdraw service altogether in the event that Western Wireless is designated as an ETC in Wyoming.⁵⁴ None of the incumbent rural telephone companies at issue in this proceeding has indicated any intention to do so.⁵⁵ In the absence of any empirical information

⁴⁸ 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). *See also* 47 U.S.C. § 254(b)(3).

⁴⁹ *See* Letter from Earl W. Comstock, Counsel for Nucentrix, to Magalie Roman Salas, FCC, dated October 25, 2000.

⁵⁰ We note that Western Wireless has filed its 1999 Annual Report containing substantial financial information for the period between 1997-1999 in this proceeding. *See* Western Wireless Oct. 24 *ex parte* - Attachment 2 (Western Wireless 1999 Annual Report).

⁵¹ Western Wireless Petition at 2.

⁵² Western Wireless Petition at 10.

⁵³ We note, however, that an ETC is not required to provide service using its own facilities. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." *See* 47 U.S.C. § 214(e)(1)(A).

⁵⁴ US West Comments at 17.

⁵⁵ Even if the incumbent carrier determined that it no longer desired to be designated as an ETC, section 214(e)(4) requires the ETC seeking to relinquish its ETC designation to give advance notice to the Commission. Prior to permitting the ETC to cease providing universal service in an area served by more than one ETC, section 214(e)(4) requires that the Commission "ensure that all customers served by the relinquished carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier." The Commission may grant a period, not to exceed one year, within which such purchase or construction shall be completed. *See* 47 U.S.C. § 214(e)(4).

to support this assertion, we decline to conclude that this constitutes a serious risk to consumers. In addition, Western Wireless, as an ETC, has a statutory duty to offer service to every customer within the designated service area. We reiterate that a carrier's ETC designation may be revoked if the carrier fails to comply with the statutory ETC and common carrier obligations.

21. Western Wireless also indicates that, in many instances, its local calling area is larger than the local calling area of the existing local exchange carrier.⁵⁶ We believe that rural consumers may benefit from expanded local calling areas by making intrastate toll calls more affordable to those consumers.⁵⁷ As discussed above, Western Wireless also indicates that it will offer varying amounts of local usage, including a package containing unlimited local usage to consumers.⁵⁸ In addition, Western Wireless has stated its intent to offer a new fixed wireless service to consumers in Wyoming.⁵⁹

22. We reject the general argument that rural areas are not capable of sustaining competition for universal service support.⁶⁰ We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.⁶¹ While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.

23. Designated Service Areas. We designate Western Wireless as an ETC for the specific service areas in Wyoming discussed herein.⁶² For those areas served by the non-rural

⁵⁶ Western Wireless Oct. 24 *ex parte* – Attachment 1 (Information Sheet) at 1.

⁵⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 14 FCC Rcd 21177, 21227 at paras. 122-123 (1999).

⁵⁸ Western Wireless Petition at 8.

⁵⁹ Western Wireless Petition at 8.

⁶⁰ Wyoming Telecommunications Association Comments at 7-8.

⁶¹ As noted in the *Universal Service Order*, we believe that arguments like those of the Wyoming Telecommunications Association “present a false choice between competition and universal service.” *Universal Service Order*, 12 FCC Rcd at 8803, para. 50.

⁶² The term “service area” means a geographic area established by a state commission (or the Commission under section 214(e)(6)) for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the *Universal Service Order*, the Commission recommended that the states designate non- (continued....)

carrier Qwest (formerly US West), we designate the specific exchanges requested by Western Wireless to the extent that such exchanges are located within the state of Wyoming.⁶³ We note that Western Wireless has requested designation in two of Qwest's exchanges, Laramie and Cheyenne, that extend beyond the boundaries of Wyoming. We limit the designation in these two exchanges to the area that they cover within the state of Wyoming. Section 214(e)(6) directs the Commission to designate a carrier as an ETC only in those instances when the relevant state commission lacks jurisdiction.⁶⁴ Because the Wyoming Commission has indicated by order that it lacks jurisdiction to perform the designation in Wyoming,⁶⁵ we conclude that the Commission's authority, in this instance, does not extend beyond the boundaries of Wyoming.

24. For the requested service areas served by rural telephone companies,⁶⁶ we designate as Western Wireless' service area the study areas that are located within the state of Wyoming.⁶⁷ The study area of Chugwater Telephone is located entirely within Wyoming, and we designate this study area as Western Wireless' service area without modification. Western Wireless also requests designation for the study areas in Wyoming of Golden West Telephone (Golden West), Range Telephone Coop. (Range), RT Communications, Inc.,⁶⁸ and United Telephone Company of the West (United Telephone).⁶⁹ The study areas of these telephone companies include exchanges that extend beyond the boundaries of Wyoming.⁷⁰ As discussed

(Continued from previous page) _____

rural service areas that are smaller than the incumbent carrier's study area. *Universal Service Order*, 12 FCC Rcd at 8879, para. 185.

⁶³ Western Wireless seeks designation for the following exchanges of Qwest in Wyoming: Buffalo, Cheyenne, Casper, Douglas, Glendo, Glenrock, Gillette, Laramie, Lusk, Rawlins, Riverton, Sheridan, Wheatland, and Wright. See Western Wireless Petition, App. D. See also Western Wireless Dec. 20 *ex parte* – Proposed Designated ETC Service Areas.

⁶⁴ 47 U.S.C. § 214(e)(6).

⁶⁵ *Wyoming Order* at 2-4.

⁶⁶ Western Wireless seeks designation for the following areas served by rural telephone companies in Wyoming: Chugwater Telephone Co. (Chugwater); Golden West Telephone Coop. Inc. (Edgemont); Range Telephone Coop. Inc. (Alzada, Arvada, Clearmont, Decker, Southeast, Sundance); RT Communications, Inc. (Albin, Burns, Carpenter, Gas Hills, Hulett, Kaycee, Midwest, Moorcroft, Newcastle, Osage, Pine Bluff, Upton, Jeffrey City, Thermopolis, Shoshoni, Worland) and United Telephone Company of the West (Lyman, Guernsey, Lingle, Lagrange, Torrington). Western Wireless Petition, App. D. See also Western Wireless Dec. 20 *ex parte* – Proposed Designated ETC Service Areas.

⁶⁷ For areas served by a rural telephone company, section 214(e)(5) of the Act provides that the company's service area will be its study area unless and until the Commission and states establish a different definition of service area for such company. 47 U.S.C. § 214(e)(5). See also *Universal Service Order*, 12 FCC Rcd at 8880, para. 186.

⁶⁸ RT Communications, Inc. is a wholly-owned subsidiary of Range.

⁶⁹ See Western Wireless Dec. 20 *ex parte*.

⁷⁰ Golden West's Edgemont exchange serves lines in both South Dakota and Wyoming. Range's Alzada and Decker exchanges serve lines in both Montana and Wyoming. United Telephone's Wyoming study area extends (continued...)

above, we conclude that we have authority under section 214(e)(6) to designate such study areas only to the extent that they are contained within the boundaries of the state of Wyoming.⁷¹ Accordingly, we designate as Western Wireless' service area the study areas of Golden West, Range, RT Communications, and United Telephone to the extent that such study areas are contained within Wyoming. We exclude from Western Wireless' service area those portions of the requested study areas that are outside the state of Wyoming.⁷²

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁷³ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁷⁴ Western Wireless has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁷⁵ We find that Western Wireless has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in

(Continued from previous page) _____

into Nebraska (LaGrange) and its Nebraska study area extends into Wyoming (Lyman). RT Communications' Wyoming study area extends beyond Wyoming into Montana and South Dakota. See Western Wireless Dec. 20 *ex parte*. See also Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Magalie Roman Salas, FCC dated Dec. 19, 2000 – Attached Maps.

⁷¹ We note that in the *Universal Service Order*, the Commission set forth procedures for modifying a rural telephone company's study area through joint action by the Commission and the relevant state. See *Universal Service Order*, 12 FCC Rcd at 8880-83, paras. 186-190. The instant case deals with study areas that cross state boundaries, however, unlike the situation addressed in the *Universal Service Order*. Accordingly, we find inapplicable the procedures for modification of a study area contained within a state's boundaries.

⁷² In so doing, we follow the approach of state commissions that have designated carriers in similar circumstances. See, e.g., *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168, Order at 6-7 (Texas Pub. Util. Comm'n, rel. Oct., 2000).

⁷³ 47 C.F.R. § 1.2002(a); 21 U.S.C. § 862.

⁷⁴ Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁷⁵ See Western Wireless Petition at 13, App.E.

sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Western Wireless Corporation IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for designated service areas in Wyoming, as discussed herein.

27. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Common Carrier Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

LIFELINE AND LINK UP WORKSHEET

USAC Service Provider Identification Number (1) _____

Serving Area (2) _____

<p>(3)</p> <p>Company Name: _____</p> <p>Mailing Address: _____</p> <p>_____</p> <p>Contact Name: _____</p> <p>Telephone Number: _____</p> <p>Fax Number: _____</p> <p>E-mail Address: _____</p>	<p>(4)</p> <p>a) Submission Date _____</p> <p>b) Data Month _____</p> <p>c) Type of filing (Check one): Original <input type="checkbox"/> Revision <input type="checkbox"/></p> <p>d) State Reporting _____</p>
--	---

Lifeline	# Lifeline Subscribers (a)	x	Lifeline Support/ Subscriber (b)*	=	Total Lifeline Support (c)
Tier 1 Low-Income Subscribers receiving federal Lifeline Support (5)	_____	x	\$ _____	=	\$ _____
Tier 2 Low-Income Subscribers receiving federal Lifeline Support (6)	_____	x	\$ _____	=	\$ _____
Tier 3 Low-Income Subscribers receiving federal Lifeline Support (7)	_____	x	\$ _____	=	\$ _____
Tier 4 Low-Income Subscribers receiving federal Lifeline Support (8)	_____	x	\$ _____	=	\$ _____

Check box to the right if **partials** or **pro rata** amounts are used. Indicate dollar amount, if applicable, on line 9. \$ _____

NOTE: (Do not include partials or pro rata amounts on lines 5 - 8 above)

Total federal Lifeline support claimed \$ _____
(Sum of lines 5c, 6c, 7c, 8c & 9)

* For multiple rates, use an average amount

Link Up	Non-Tribal (a)	Tribal (b)	Total Link Up (c)
Number of Connections waived (11)	_____	_____	_____
Charges waived per Connection (12) *	\$ _____	(\$30 max) \$ _____	(\$100 max)
Total Connection charges waived (13)	\$ _____	\$ _____	_____
Deferred Interest (14)	\$ _____	\$ _____	_____
Total Link Up dollars waived (15)	\$ _____	+ \$ _____	= \$ _____

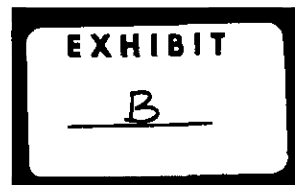
* For multiple rates, use an average amount

Toll-Limitation Services (TLS)	(16)	(17)	Total TLS dollars claimed
Incremental cost of providing TLS	\$ _____	_____	\$ _____
Number of subscribers for whom TLS initiated	_____	_____	_____

Presubscribed Interexchange Carrier Charge (PICC)	(19)	(20)	Total PICC dollars waived
Monthly charge per line	\$ _____	_____	\$ _____
Number of Subscribers per month	_____	_____	_____

ETC Payment (22)			
Total Lifeline \$ _____		Total TLS \$ _____	
Total Link Up \$ _____		Total PICC \$ _____	
		Total Dollars \$ _____	

If you have any questions, please call USAC at (973) 884-8027 or (973) 884-8553



CERTIFICATIONS AND SIGNATURES (23)

I certify that my company will publicize the availability of Lifeline and Linkup services in a manner reasonably designed to reach those likely to qualify for those services.

I certify that my company will pass through the full amount of all Tier Two, Tier Three, and Tier Four federal Lifeline support for which my company seeks reimbursement, as well as all applicable intrastate Lifeline support, to all qualifying low-income subscribers by an equivalent reduction in the subscriber's monthly bill for local telephone service.

I certify that my company has received any non-federal regulatory approvals necessary to implement the required rate reduction(s).

I certify that my company is _____ is not _____ subject to state regulation. (Please check one.)

Based on the information known to me or provided to me by employees responsible for the preparation of the data being submitted, I certify that the data contained in this form has been examined and reviewed and is true, accurate, and complete.

I acknowledge the Fund Administrator's authority to request additional supporting information as may be necessary.

DATE

OFFICER/EMPLOYEE SIGNATURE

OFFICER/EMPLOYEE TITLE

OFFICER/EMPLOYEE NAME

NOTICE: To implement Section 254 of the Communications Act of 1934, as amended, the Federal Communications Commission has adopted changes to the federal low-income programs. The Commission has expanded the availability of these programs and the level of funding for discounts to low-income customers.

The following worksheet provides the means by which eligible telecommunications carriers will be reimbursed by the Universal Service Administrative Company (USAC) for their participation in these programs. Failing to collect the information, or collecting it less frequently, would prevent the Commission from implementing sections 214 and 254 of the Act, would thwart Congress' goals of providing affordable service and access to advanced services throughout the nation, and would result in eligible telecommunications carriers not receiving universal service support reimbursements in a timely fashion.

We have estimated that each response to this collection of information will take, on average, three hours for each respondent. Our estimate includes the time to read this data request, review existing records, gather and maintain required data, and complete and review the response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0819). We will also accept your comments on the burden estimate via the Internet if you send them to jboley@fcc.gov. Please DO NOT SEND the data requested to this e-mail address.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your worksheet may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your worksheets may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding.

If you do not provide the information we request on the form, the FCC may delay processing of your worksheet or may return your worksheet without action.

The foregoing Notice is required by the Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974, 5 U.S.C. Section 552, and the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. Section 3501, et seq.

LOCAL SWITCHING SUPPORT
DATA COLLECTION FORM
AVERAGE SCHEDULE COMPANY

Approved by OMB
3060-0814
Expires 9/30/2001

Ave. Burden Estimate per Respondent: 24 Hours

- (010) Exchange Carrier Study Area Code. (010) _____
- (020) Exchange Carrier Study Area Name (020) _____
- (023) Data Period (023) _____
- (025) Submission Period (Check One) Original Projection True-up to Actual
- (030) Contact Name: Person USAC should contact for questions about this data (030) _____
- (040) Contact Telephone Number: Number of the person identified in Data Line (030). (040) _____

II. WORKING LOOPS, EXCHANGES & ACCESS MINUTES

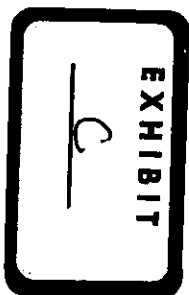
- (050) Access Lines (050) _____
- (060) Exchanges (060) _____
- (070) Access Minutes (070) _____

Note: Definitions are from the NECA Average Schedule Pool Administration Procedures Glossary:

Access Line: end of period count of all working communication facilities extending from an end user's premises terminating in an end office (Class 5) that are or may be used for local exchange service.

Exchanges: unit generally smaller than a Local Access and Transport Area (LATA), established by the telephone company for the administration of communications service in a specified area which usually embraces a city, town, or village and its environs.

Access Minutes: total of all premium and non-premium interstate traffic sensitive switched access minutes of use which qualify for a Central Office Switched Access settlement.



**Local Switching Support
Instructions for 2001 Support Calculation**

I. EXCHANGE CARRIER/DATA IDENTIFICATION

These Data Lines contain pre-printed information about your company and the Data Period. Please verify and correct if necessary.

- (010) Exchange Carrier Study Area Code.
- (020) Exchange Carrier Study Area Name
- (023) Data Period: For 2001 Local Switching Support, enter 2001
- (025) Submission Period: Check the appropriate Box (i.e., Original Projection if this is projected data or True-up to Actual if the submission is being made to report actual results for a prior period Local Switching Support amount.)
- (030) Contact Name: Person USAC should contact for questions about this data.
- (040) Contact Telephone Number: Number of the person identified in Data Line (030).
- (045) Tax Status: If company is subject to Federal Income taxes, indicate with a 'Y'. If company is a cooperative or other entity not subject to Federal Income Taxes indicate with an 'N'.

II. WORKING LOOPS & DIAL EQUIPMENT MINUTE FACTOR

Working loops reported for Local Switching Support must be a projected count as of December 31, 2001, i.e., the same number that would be reported on line 070 of NECA=s Annual USF Data Collection. Do not use average number of loops from cost studies, access line counts, presubscribed line counts or estimates.

- (050) Category 1.3 Loops: Enter the count of Category 1.3 Loops excluding Category 1.3 TWX (Teletypewriter Exchange service) loops.
[Part 36.154 (a)]
- (060) 1996 Interstate Unweighted Dial Equipment Minute (DEM) Factor used in 1996 Cost Study
[Part 36.125(b)]
- (070) 1996 DEM Weighting Factor
[Part 36.125(f)]

**Local Switching Support
Instructions for 2001 Support Calculation**

II. INVESTMENT, PLANT OPERATIONS EXPENSE AND TAXES

Net Plant Investment

- (100) Account 2001 - Telecommunication Plant in Service
[Part 32.2001]
- (110) Account 2210 - Central Office Switching Equipment
[Part 32.2210]
- (115) Account 2210 Cat. 3 - COE Category 3 (local switching)
Determine from a study of switching equipment investment, the portion of Central Office Switching Equipment associated with COE Category 3, Local Switching.
- (120) Account 2220 - Operator System Equipment
[Part 32.2220]
- (130) Account 2230 - Central Office Transmission Equipment
[Part 32.2230]
- (140) Total Central Office Equipment
Sum of Data Lines (110) plus (120) plus (130)
- (150) Account 2310 - Information Origination/Termination
[Part 32.2310]
- (160) Account 2410 - Cable and Wire Facilities
[Part 32.2410]
- (170) Account 2110 - General Support Facilities
[Part 32.2110]
- (180) Account 2680 - Amortizable Tangible Assets
[Part 32.2680]
- (190) Account 2690 - Intangibles
[Part 32.2690]
- (200) Account 2002 - Property Held for Future Telecommunications Use
[Part 32.2002]
- (210) Account 2003 - Telecommunications Plant Under Construction
[Part 32.2003]
- (220) Account 2005 - Telecommunications Plant Adjustment
[Part 32.2005]

**Local Switching Support
Instructions for 2001 Support Calculation**

- (230) Account 1402 - Investments in non-Affiliated Companies (Rural Telephone Bank Stock)
[Part 32.1402]
- (240) Account 1220 - Materials and Supplies
[Part 32.1220]
- (250) Cash Working Capital
[Part 36.182]
- (260) Account 3100 - Accumulated Depreciation - Switching
[Part 32.3100]
Determine the portion of Account 3100 that is attributable to Switching Equipment
- (265) Account 3100 - Accumulated Depreciation - Support Assets
[Part 32.3100]
Determine the portion of Account 3100 that is attributable to Support Assets
- (270) Account 4100 - Net Deferred Operating Income Taxes
[Part 32.4100]
- (280) Account 4340 - Net Noncurrent Operating Income Taxes
[Account 32.4340]
- (290) Account 3400 - Accumulated Amortization - Tangible
[Account 32.3400]
- (300) Account 3500 - Accumulated Amortization - Intangible
[Account 32.3500]
- (310) Account 3600 - Accumulated Amortization - Other
[Account 32.3500]
- (320) Account 6110 - Network Support Expense
[Account 32.6110]
- (330) Account 6120 - General Support Expense
[Account 32.6120]
- (340) Account 6210 - Central Office Switching Expense
[Account 32.6210]
- (350) Account 6220 - Operator Systems Expense
[Account 32.6220]

**Local Switching Support
Instructions for 2001 Support Calculation**

- (360) Account 6230 - Central Office Transmission Expense
[Account 32.6230]
- (361) Account 6310 - Information Origination/Termination Expense
[Account 32.6310]
- (362) Account 6410 - Cable and Wire Facilities Expense
[Account 32.6410]
- (370) Account 6510 - Other Property Plant and Equipment Expense
[Account 32.6510]
- (380) Account 6530 - Network Operations Expense
[Account 32.6530]
- (381) Account 6540 - Access Expense
[Account 32.6540]
- (390) Account 6610 - Customer Services Marketing Expense
[Account 32.6610]
- (400) Account 6620 - Customer Operations Services Expense
[Part 32.6620]
- (410) Account 6710 - Executive and Planning Expense
[Part 32.6710]
- (420) Account 6720 - Corporate Operations Expense
[Part 32.6720]
- (430) Account 7230 - Operating State and Local Income Taxes
[Part 32.7230]
- (440) Account 7240 - Operating Other Taxes
[Part 32.7240]
- (450) Account 7210 - Operating Investment Tax Credits - net
[Part 32.7210]
- (460) Account 7250 - Provision for Deferred Operating Income Taxes -net
[Part 32.7250]
- (470) Account 6560 - Depreciation and Amortization Expense - Switching
[Part 32.6560]
Determine the portion of Account 6560 attributable to switching

**Local Switching Support
Instructions for 2001 Support Calculation**

- (475) Account 6560 - Depreciation and Amortization Expense - Support
[Part 32.6560]
Determine the portion of Account 6560 attributable to support facilities

- (480) Account 7300 - Non-Operating Income & Expense
[Part 32.7300]

- (490) Account 7500 - Interest and Related Items
[Part 32.7500]

- (500) Account 7340 - Allowance for Funds Used During Construction
[Part 32.7340]

- (510) Account 1410 - Other Non-current Assets
[Part 32.1410]

- (520) Account 1500 - Other Jurisdictional Assets - net
[Part 32.1500]

- (530) Account 4370 - Other Jurisdictional Liabilities and Deferred Credits - net
[Part 32.4370]

- (540) Account 4040 - Customer Deposits
[Part 32.4040]

- (550) Account 4310 - Other Long-Term Liabilities
[Part 32.4310]

- (560) Account 1438 - Deferred Maintenance and Retirements
[Part 32.1438]

**Local Switching Support
Instructions for 2001 Support Calculation**

VII. CERTIFICATION

This certification statement must be signed by the officer or employee responsible for the overall preparation of the data submission. (Ref. Part 54 of FCC Rules, 47 C.F.R. Section 54.707).

The completed certification statement must accompany the data submission.

CERTIFICATION

I am _____ . I hereby certify that I have overall responsibility for
(Title of Certifying Officer or Employee)
the preparation of all data in the attached _____ data submission
(Title of Data Submission)
for _____ and that I am authorized to execute this certification. Based
(Name of Carrier)
on information known to me or provided to me by employees responsible for the preparation of
the data in this submission, I hereby certify that the data have been examined and reviewed and
are complete, accurate, and consistent with the rules of the Federal Communications Commission.

Date: _____

Certifying Signature: _____

Name: _____

Title: _____

Period Covered: January 1, 2001 to December 31, 2001

(FCC Rules state that persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001.)

USAC Board of Directors

High Cost & Low Income Committee Minutes October 23, 2000

The quarterly meeting of the High Cost & Low Income (HCLI) Committee of the Universal Service Administrative Company (USAC) Board of Directors was held at the Westin Grand, 2350 M Street, N.W., Washington, DC, on Monday, October 23, 2000. Ms. Heather Gold, Chair of the Committee, called the meeting to order at 1:16 p.m. Eastern Time. Ms. Cathy Howard, Executive Assistant to the USAC CEO, called the roll.

Eight of the nine members were present, representing a quorum: Tony Butler - *by telephone*, Ed Eichler, Heather Gold, Frank Gumper, Martha Hogerty, Jimmy Jackson, Cheryl Parrino, Tom Wheeler

One member was absent: Allan Thoms

Other Board of Directors members present: Kevin Hess

Officers of the Corporation present: Scott Barash - Assistant Secretary, Robert Haga - Assistant Treasurer

Others present for the meeting from USAC: Kristy Carroll, Irene Flannery, Cathy Howard.

Others present for the meeting: Paul Garnett - FCC, John Ricker - NECA, Colin Sandy - NECA

OPEN SESSION:

ACTION ITEMS:

1. **Approval of the Minutes.** On a motion duly made and seconded, the Committee approved the minutes of the High Cost & Low Income Committee meetings of Monday, July 17, 2000, and Wednesday, August 2, 2000, as distributed.
2. **Approval of Administrator's Deadlines for Distributing Universal Service Support and Criteria for Exceptions to the Administrator's Deadlines.** Ms. Parrino reviewed the need for establishing firm deadlines for service providers submitting requests for payment and for USAC's distribution of support for all the support mechanisms, as well as exceptions to those deadlines. While the FCC has not established firm deadlines, it does expect USAC to make timely payments. Ms. Parrino noted that establishing firm deadlines would enable USAC to comply more fully with the FCC's expectations.

On a motion duly made and seconded, the Committee adopted the following resolutions:

RESOLVED, That the High Cost & Low Income Committee recommends that the USAC Board of Directors determine that it is appropriate for USAC to establish absolute and interim deadlines in consultation with the FCC; and

RESOLVED FURTHER, That the High Cost & Low Income Committee recommends that the USAC Board of Directors adopts the criteria proposed in this issue paper for setting aside administrative deadlines.

3. **Approval of 1st Quarter 2001 High Cost and Low Income Programmatic Budget and Information on Estimated 2001 Budget.** Ms. Parrino informed the Committee that the contingency in the budget covering the possible re-coding of the high cost forward-looking model has been rolled over to the 2001 budget. Additional costs for the new Interstate Access Support Mechanism and the enhancements to the Lifeline and Link-Up Programs attributable to the FCC's Tribal Lands initiative have been factored into the budget. There is still uncertainty as to the costs that will be associated with implementing disaggregation approaches approved by the FCC, such as the use of the Benchmark Cost Proxy Model (BCPM) model for rural carriers in Washington state, but staff

EXHIBIT

D

anticipates the costs will be significant. Staff will continue to work closely with the FCC on this issue.

On a motion duly made and seconded, the Committee adopted the following resolutions:

RESOLVED, That the USAC High Cost & Low Income Committee approves a 1st Quarter 2001 High Cost Programmatic Budget of \$794,500; and

RESOLVED FURTHER, That the USAC High Cost & Low Income Committee approves a 1st Quarter 2000 Low Income Programmatic Budget of \$201,600.

4. **Approval of 1st Quarter 2001 High Cost and Low Income Projections and Resolution on the November 2000 FCC Filing.** Ms. Flannery reported that projections for the High Cost Program would be approximately \$659 million and approximately \$164 million for the Low Income Program. Mr. Haga noted that administrative costs were inadvertently omitted in the calculations as presented in the issue paper for the Low Income Program and said that the correct amount should be \$164.365 million. Mr. Jackson brought to the Committee's attention that one of the unintended results of the Tribal Lands enhancements to the Low Income Support Mechanism is that all persons in Alaska appear to be eligible for additional support because all lands in Alaska are considered tribal lands. Ms. Flannery clarified that while all lands in Alaska may be considered tribal lands, only persons who qualify under the state-determined or FCC-mandated low-income criteria would be eligible to benefit from the enhanced support.

On a motion duly made and seconded, the Committee adopted the following resolution:

RESOLVED, That the USAC High Cost & Low Income Committee, having reviewed at its meeting on October 23, 2000, a summary of the 1st Quarter 2001 program estimates, including administrative costs for High Cost Loop Support, Long Term Support, Local Switching Support, Interstate Access Support, and Lifeline and Link-Up Assistance, hereby directs USAC staff to proceed with the required November 2, 2000, filing to the FCC on behalf of the Committee. Staff may make adjustments in accordance with approved variance thresholds.

In addition, the Committee **DIRECTED** staff to prepare a timeline showing the support levels filed with the FCC each quarter for the Committee to review at future quarterly meetings.

5. **Approval of Suspension of a Local Exchange Carrier Support Payments.** Ms. Flannery explained that Moultrie Independent Telephone Company (Moultrie) entered a sale/lease-back arrangement with an affiliated entity in 1997. As a result of that transaction, Moultrie has reported extremely high loop costs. USAC has worked with NECA to investigate the matter further. NECA has asked the company numerous times to submit revised cost data that complies with FCC rules but to date has not received the requested information. Since USAC cannot rely on the data submitted by Moultrie, staff recommends that affected universal service support payments be suspended until reliable and accurate data is submitted and reviewed. Staff believes that USAC has an obligation to suspend the payments based on the fact that USAC must base support payments on data that is reliable and in compliance with FCC rules. Ms. Flannery reported that she is not aware of any state investigation into this matter.

On a motion duly made and seconded, the Committee adopted the following resolutions:

RESOLVED, That the USAC High Cost & Low Income Committee finds that it cannot rely on data submitted by the Moultrie Independent Telephone Company to accurately and conclusively calculate 2001 High Cost Loop and Local Switching Support payments for same; and

RESOLVED FURTHER, That the USAC High Cost & Low Income Committee authorizes USAC staff to suspend High Cost Loop and Local Switching Support funding to Moultrie Independent Telephone Company, effective January 1, 2001, until such time as USAC staff determines that accurate and verifiable data is submitted on which to base 2001 payments; and

RESOLVED FURTHER, That the USAC High Cost & Low Income Committee directs staff to consult with the FCC regarding the proposed action.

In addition, the Committee **DIRECTED** staff to send a letter to the Illinois Public Service Commission informing it of the action being taken by USAC against Moultrie in an effort to alert the Illinois

Commission to the possibility of Moultrie requesting a rate increase to offset the loss of the universal service support payments.

6. **Approval of Criteria and Procedure for Recommending that the FCC Initiate Enforcement Action Against a Participant in the Universal Service Support Mechanisms.** Mr. Barash reminded the Committee that this issue was before the Board of Directors at its last quarterly meeting, and that staff now brings to the Committee the criteria and procedures USAC would follow to take action against a participant. It was noted that these criteria and procedures would only be used in the most serious of situations, and that if a referral action is brought before the Committee, notification, timeframe, warning period, and any unique circumstance will be addressed for the Committee's consideration.

On a motion duly made and seconded, the Committee adopted the following resolution:

RESOLVED, That the USAC High Cost & Low Income Committee recommends to the USAC Board of Directors that the USAC Board of Directors adopt the proposed criteria for recommending FCC enforcement action against a participant in the universal service support mechanisms.

7. **Miscellaneous.** None.

INFORMATION ITEMS:

1. **High Cost and Low Income Programs Status Report.** Ms. Flannery noted that all states eligible for High Cost Model support in 2001, with the exception of West Virginia, complied with the FCC's certification requirement by October 1, 2000. A number of states did not file certifications for 2001 hold-harmless support by October 1. Staff contacted each state in which carriers were projected to receive support in 2001 well in advance of the October 1 deadline. Ms. Flannery then distributed a copy of Attachment B of the issue paper and reviewed some preliminary data comparing state penetration rates for the Low Income Support Mechanism. She noted that some states have an automatic enrollment feature whereby a person who qualifies for certain low-income assistance programs is automatically enrolled in Lifeline and Link-Up. The revised Form 497 has been submitted to the FCC and staff anticipates approval by the end of October.
2. **Status of Implementation of the New High Cost Model.** Ms. Flannery reviewed the major points of the issue paper.
3. **Report on the Implementation of the Coalition for Affordable Local and Long Distance Services (CALLS) Interstate Access Support Mechanism.** Ms. Flannery commented on the two orders released by the Common Carrier Bureau relating to confidential treatment of line count data. It was noted that a proposal was filed recently that would restructure access charges and universal service for rural carriers in a manner similar to the CALLS plan. The recent filing is known as the "MAG proposal." Staff will monitor the proceeding so that USAC will be prepared to implement any additional changes to the Universal Service Support Mechanisms mandated by the FCC.
4. **Report on the Changes to the Low Income Universal Support Mechanism due to the Implementation of Providing Telecommunications Access on Tribal Lands.** Ms. Flannery reviewed the *Tribal Stay Order*. She pointed out that Attachment A, the draft FCC Form 497, Lifeline and Link-Up Worksheet, has been modified slightly since printing, but only in the instructions for preparing the form. The revised form should be approved by the end of October.
5. **Summary of the Rural Task Force Recommendations to the Federal-State Joint Board on Universal Service.** Ms. Flannery reviewed the major points of the issue paper. The Committee requested that staff fully document the administrative costs and impacts on USAC of implementing any revisions to the Universal Service Support Mechanisms.
6. **Report on the Disaggregation of Rural Federal High Cost Support in Washington State and Similar Activity in Other States.** For information only. No discussion held.
7. **High Cost and Low Income Program Timeline and Key Dates.** For information only. No discussion held.
8. **Miscellaneous.** None.

There being no further business to attend to, Ms. Gold adjourned the meeting at 2:42 p.m. Eastern Time.

D. Scott Barash
Assistant Secretary

Date

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