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Issues: ETC Designation

Witness: Adam McKinnie
Sponsoring Party: MO PSC Staff
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Case No.: TO-2006-0172
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

FILED

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REBUTTAL TESTIMONY

Missouri Public
Service Commission

OF

ADAM MCKINNIE

MISSOURI RSA NO. 5 PARTNERSHIP

CASE NO. TO-2006-0172

Jefferson City, Missouri
March 2006

****Denotes Highly Confidential Information****

NP

Exhibit No. 9 NP
Case No(s) TO-2006-0172
Date 6-22-06 Rptr KF

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

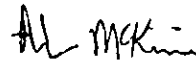
In the Matter of the Application of)
Missouri RSA No. 5 Partnership for)
Designation as a Telecommunications)
Company Carrier Eligible for Federal)
Universal Service Support Pursuant to)
§ 254 of the Telecommunications Act of)
1996)

Case No. TO-2006-0172

**AFFIDAVIT OF
Adam McKinnie**

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Adam McKinnie, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 23 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



Adam McKinnie

Subscribed and sworn to before me this 28th day of February, 2006.



Notary Public



DAWN L. HAKE
My Commission Expires
March 16, 2009
Cole County
Commission #05407643

My commission expires _____

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REBUTTAL TESTIMONY

OF

ADAM MCKINNIE

MISSOURI RSA NO. 5 PARTNERSHIP

CASE NO. TO-2006-0172

Introduction, Education and Experience

Q. Please state your name and business address.

A. My name is Adam McKinnie. My business address is 200 Madison Street, Jefferson City, MO 65102-0360.

Q. By whom are you employed?

A. I am employed by the Missouri Public Service Commission (MoPSC or Commission) as a regulatory economist for the Telecommunications Department Staff (Staff) of the Commission.

Q. What is your educational background?

A. I hold a Bachelor of Arts degree in English and Economics that I received from Northeast Missouri State University (now called Truman State University) in May 1997. I also hold a Master of Science degree in Economics (with electives in Labor, Tax, and Industrial Organization) that I received from the University of Illinois in May 2000.

Q. What are your current responsibilities at the Commission?

A. I review, analyze, and prepare recommendations on controversial tariff filings for both competitive and non-competitive companies, interconnection agreements, certificate applications and merger agreements. I also analyze cost studies and models related to cost structures of companies for various contentious tariff filings. I have also

1 conducted research and worked on special projects related to telecommunications and
2 economics.

3 Q. Have you worked on any cases or projects that are related to your
4 testimony in this case?

5 A. Yes, I have. I was the Staff witness in Case No. TO-2003-0531, *In the*
6 *Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri*
7 *Cellular, for Designation as a Telecommunications Company Carrier Eligible for*
8 *Federal Universal Service Support Pursuant to Section 254 of the Telecommunications*
9 *Act of 1996* (first MMC case), the first case in which the Commission considered a
10 wireless carrier's request for designation as an eligible telecommunications carrier (ETC)
11 for the purpose of receiving universal service support, and in Case No. TO-2005-0384,
12 *Application of USCOC of Greater Missouri, LLC For Designation As An Eligible*
13 *Telecommunications Carrier Pursuant To The Telecommunications Act Of 1996* (US
14 Cellular Case). I also filed testimony in Case No. TO-2004-0527, *In the Matter of the*
15 *Application of WWC License, LLC, d/b/a CellularOne(R), for Designation as an Eligible*
16 *Telecommunications Carrier, and Petition for Redefinition of Rural Telephone Company*
17 *Service Areas* (Western Wireless ETC Case) and Case No. TO-2005-0325, *In the Matter*
18 *of the Third Application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri*
19 *Cellular for Designation as a Telecommunications Company Carrier Eligible for Federal*
20 *Universal Service Support pursuant to § 254 of the Telecommunications Act of 1996*. I
21 have worked on the annual federal Universal Service Fund (USF) certification process. I
22 have also worked on the pending rulemaking for ETC designations.

23 Q. Have you testified in any other previous Commission cases?

1 A. Yes, in addition to the cases listed above, I have testified in Case No. IO-
2 2003-0281, *In the Matter of the Investigation of the State of Competition in the*
3 *Exchanges of Sprint Missouri, Inc.*, Case No. TO-2005-0035, *In the Matter of the Second*
4 *Investigation into the State of Competition in the Exchanges of Southwestern Bell*
5 *Telephone, L.P., d/b/a SBC Missouri*, Case No. IO-2006-0316, *In the Matter of*
6 *CenturyTel of Missouri, LLC's Request for Competitive Classification Pursuant to*
7 *Section 392.245.5, RSMo. (2005)*, and Case No. IO-2006-0317, *In the Matter of Spectra*
8 *Communications Group, LLC d/b/a CenturyTel's Request for Competitive Classification*
9 *Pursuant to Section 392.245.5, RSMo. (2005)*.

10 Q. What is the purpose of your testimony?
11

12 A. The purpose of my testimony is to respond to the Direct Testimony of
13 Missouri RSA No. 5 Partnership (MO5) witnesses Reeves, Simon, and Zentgraf, as well
14 as MO5's application for ETC status. My testimony will explain that Staff is not in favor
15 of granting MO5's request for ETC status because MO5's submitted application does not
16 pass the public interest test.

17 (Note that in Case No. TK-2005-0187, MO5 is listed as d/b/a "Chariton Valley
18 Wireless")

19 **Guidelines for ETC Status Review**
20

21 Q. According to Section 214(e)(1) of the Telecommunications Act (Act), a
22 carrier may be designated as an ETC and receive universal service support as long as the
23 carrier, throughout its service areas, offers services supported by federal support and
24 advertises the availability of those services using media of general distribution. Has
25 MO5 provided verification of these requirements?

1 A. No. MO5 verifies in its application that it currently provides all of the
2 services required by the Act, including operator services, and advertises the same
3 throughout its service area. However, MO5 witness Simon in his Direct Testimony on
4 page 4, starting at line 14 states:

5 **Q. Does MO 5 offer Access to Operator Services?**

6 A. MO 5 does not offer Operator Services at this time. MO 5 will offer
7 such access when it is granted ETC status.
8

9 In response to a Staff Data Request asking:

10 Please state MO5's current plan to offer operator services if granted ETC
11 status, if such a plan exists.
12
13

14 MO5 stated that:

15 MO5 presently intends to contract for operator services.

16 The entire Data Request is attached as Schedule 2.

17 Q. Does this conflicting information as to MO5's current offering of access to
18 operator services affect your recommendation?

19 A. No. If the Commission grants ETC status to MO5, Staff recommends the
20 Commission condition that designation on the requirement that MO5 offer operator
21 services in the areas where MO5 is designated an ETC.

22 Q. Are there any guidelines to assist the Commission in determining whether
23 to grant ETC status to a carrier?

24 A. Yes. On March 17, 2005, the FCC released a decision¹ regarding carriers'
25 burden of proof when applying for ETC status. This decision is attached as Schedule 1.
26 Paragraph one of the *Report and Order* states:

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46. Rel. March 17, 2005. ("*Report & Order*")

1 This Report and Order addresses the minimum requirements for a
2 telecommunications carrier to be designated as an "eligible
3 telecommunications carrier" or "ETC," and thus eligible to receive federal
4 universal service support.
5

6 Q. What direction has the FCC provided in its *Report and Order* regarding
7 the FCC's adoption of the minimum requirements for *designation as an ETC*?

8 A. Paragraph one of the order states:

9 Specifically, consistent with the recommendations of the Federal-State
10 Joint Board on Universal Service (Joint Board), we adopt additional
11 mandatory requirements for ETC designation proceedings in which the
12 Commission acts pursuant to section 214(c)(6) of the Communications
13 Act of 1934, as amended (the Act). (footnotes omitted)
14

15 Q. Has the FCC provided any guidance as to whether or not the Commission is
16 encouraged to follow the minimum requirements set forth in the FCC's order?

17 A. Yes. Paragraph one of the order continues:

18 In addition, as recommended by the Joint Board, we encourage states that
19 exercise jurisdiction over ETC designations pursuant to section 214(e)(2)
20 of the Act, to adopt these requirements when deciding whether a common
21 carrier should be designated as an ETC. We believe that application of
22 these additional requirements by the Commission and state commissions
23 will allow for a more predictable ETC designation process. (footnotes
24 omitted)
25

26 **Five FCC Guidelines**

27
28 Q. What are the guidelines the FCC puts forth in its *Report and Order*?

29 A. Paragraph two of the *Report and Order* states:

30 Specifically, in considering whether a common carrier has satisfied its
31 burden of proof necessary to obtain ETC designation, we require that the
32 applicant: (1) provide a five-year plan demonstrating how high-cost
33 universal service support will be used to improve its coverage, service
34 quality or capacity in every wire center for which it seeks designation and
35 expects to receive universal service support; (2) demonstrate its ability to
36 remain functional in emergency situations; (3) demonstrate that it will
37 satisfy consumer protection and service quality standards; (4) offer local
38 usage plans comparable to those offered by the incumbent local exchange

1 carrier (LEC) in the areas for which it seeks designation; and (5)
2 acknowledge that it may be required to provide equal access if all other
3 ETCs in the designated service area relinquish their designations pursuant
4 to section 214(e)(4) of the Act.
5

6 Q. Does MO5 provide information on the first of the five guidelines, “a five-
7 year plan demonstrating how high-cost universal service support will be used to improve
8 its coverage, service quality or capacity in every wire center for which it seeks
9 designation and expects to receive universal service support”?

10 A. Yes. MO5 provides information on a five-year build out plan discussed
11 on page 19 of MO5’s Application:

12 MO5 has developed a five (5) year network enhancement plan which
13 would improve GSM coverage throughout significant portions of its
14 proposed ETC service area. Appended hereto as Appendix E is a map
15 depicting the areas within MO5’s FCC-licensed service area where GSM
16 coverage would benefit from enhancement. Appendix F is a listing of
17 proposed cell sites which MO5 would deploy, and the timeline for their
18 deployment, assuming grant of ETC designation. Appendix F also depicts
19 the proposed timeline for implementation of each of these cell sites,
20 referenced to the date of grant of ETC status, the population that would be
21 served by each proposed cell site, as well as the wire centers where
22 coverage would be enhanced.
23

24 Q. In your opinion does this information satisfy the FCC’s requirements of
25 carriers which apply for ETC status at the FCC?

26 A. Yes and no. In Highly Confidential Appendix F, MO5 does break down
27 the information by the specific wire centers that will receive the enhanced coverage from
28 specific expected network improvements. However, MO5 does not explain how it will
29 “improve its coverage, service quality, or capacity in every wire center” where MO5
30 requests ETC designation. MO5 has also provided maps showing “Areas Where GSM
31 Coverage Would Benefit From Enhancement” (Appendix E) and the “Proposed
32 Enhanced GSM Coverage” of the ** _____ ** proposed Global System for Mobile

1 | communications (GSM) tower sites that are intended to be built in the first five years of
2 | MO5's ETC designation (assuming the instant application is granted). However,
3 | information is not provided as to how these new GSM sites will assist customers
4 | currently receiving GSM service from MO5.

5 | It may not be necessary for MO5 to build out new facilities in every wire center it
6 | requests ETC status in to meet the FCC's requirements. Paragraph 23 of the *Report and*
7 | *Order* provides additional detail about the expected five-year plan:

8 | 23. Second, we require an applicant seeking ETC designation from the
9 | Commission to submit a formal plan detailing how it will use universal
10 | service support to improve service within the service areas for which it
11 | seeks designation. Specifically, we require that an ETC applicant submit a
12 | five-year plan describing with specificity its proposed improvements or
13 | upgrades to the applicant's network on a wire center-by-wire center basis
14 | throughout its designated service area. The five-year plan must
15 | demonstrate in detail how high-cost support will be used for service
16 | improvements that would not occur absent receipt of such support. This
17 | showing must include: (1) how signal quality, coverage, or capacity will
18 | improve due to the receipt of high-cost support throughout the area for
19 | which the ETC seeks designation; (2) the projected start date and
20 | completion date for each improvement and the estimated amount of
21 | investment for each project that is funded by high-cost support; (3) the
22 | specific geographic areas where the improvements will be made; and (4)
23 | the estimated population that will be served as a result of the
24 | improvements. To demonstrate that supported improvements in service
25 | will be made throughout the service area, applicants should provide this
26 | information for each wire center in each service area for which they expect
27 | to receive universal service support, *or an explanation of why service*
28 | *improvements in a particular wire center are not needed and how funding*
29 | *will otherwise be used to further the provision of supported services in*
30 | *that area. We clarify that service quality improvements in the five-year*
31 | *plan do not necessarily require additional construction of network*
32 | *facilities. Furthermore, as discussed infra, in connection with its annual*
33 | *reporting obligations, an ETC applicant must submit coverage maps*
34 | *detailing the amount of high-cost support received for the past year, how*
35 | *these monies were used to improve its network, and specifically where*
36 | *signal strength, coverage, or capacity has been improved in each wire*
37 | *center in each service area for which funding was received. In addition,*
38 | *an ETC applicant must submit on an annual basis a detailed explanation*

1 regarding why any targets established in its five-year improvement plan
2 have not been met. (footnotes omitted, italics added)
3

4 The italicized portion of the paragraph does not appear to require MO5 to build
5 new facilities in every requested wire center; instead, the ETC applicant is expected to
6 provide a statement of how USF monies will “be used to further the provision of
7 supported services” in areas that may already have coverage.

8 Highly Confidential Appendix E in MO5’s application graphically depicts “Areas
9 Where GSM Coverage Would Benefit From Enhancement”. Presumably, there are areas
10 currently receiving GSM service from existing facilities that will not benefit from the
11 proposed cell towers listed in Appendix F. Thus, MO5 should be required to explain how
12 USF monies will “be used to further the provision of supported services” in those areas
13 that already have GSM coverage.

14 Q. Does MO5 state that the service improvements listed in Appendix F will
15 not occur absent the receipt of high cost USF support?

16 A. Yes. They do. Page 19 of MO5’s application states:
17 Significantly, none of the proposed additional cell sites would be deployed
18 absent USF support.
19

20 Q. Does MO5 provide any other information regarding their five-year plan?

21 A. Yes, they do. Page 19 of MO5’s application states:

22 34. The sites are identified by the geographic area near which MO5
23 anticipates that the cell site would be located. However, the precise
24 locations for these sites have not yet been identified. Included for each
25 proposed cell site is a listing of the wire centers that would receive
26 enhanced GSM coverage from the proposed construction of that site as
27 well as the population that would be covered by each proposed site’s
28 proposed service area. *The precise cell site locations, as well as the timing*
29 *for each cell site could change as the MO5 build-out plans evolve in these*
30 *areas in order to meet any changing customer needs over the next five*
31 *years.* (footnote omitted, emphasis added)

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Q. If the instant application is granted, how does Staff recommend MO5 inform the Commission about any changes to the proposed five-year plan?

A. Staff recommends that if the Commission grants the instant application, the Commission should require MO5 to provide annual updates as to the status of its five-year plan in MO5's annual recertification filing. Staff also recommends the five-year plan be an on-going, rolling plan, where each annual recertification filing would include MO5's future build out plans. This issue is currently being discussed in a rulemaking regarding ETC status in Case No. TX-2006-0169, *IN THE MATTER OF PROPOSED NEW RULE 4 CSR 240-3.570 REGARDING ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATIONS FOR RECEIPT OF FEDERAL UNIVERSAL SERVICE FUND SUPPORT* (ETC Rulemaking).

Q. In your opinion, does MO5 satisfy the requirements of the first guideline?

A. In its entirety, no. Staff recommends the Commission state in any order granting ETC status that annual certification is contingent upon MO5 submitting annual updates on the status of the build-out and the effects of that build-out on customers on a wire center-by-wire center basis. Furthermore, Staff recommends the Commission direct MO5 to provide information in this case about how the universal service money will be used to improve its "coverage, service quality or capacity" in the wire centers currently receiving GSM signal from MO5 cell towers, and then on an annual basis in the certification process.

Q. Does MO5 provide information on the second of the five guidelines, "demonstrat[ing] its ability to remain functional in emergency situations"?

1 A. Yes, it does. MO5 witness Simon, in the portion of his Direct Testimony
2 beginning on line 16, page 20 and ending on page 21, line 21, offers a lengthy,
3 satisfactory description of how MO5's network is redundant and how MO5's network
4 handles failures and outages.

5 Q. In your opinion, does MO5 satisfy the requirements of the second
6 guideline?

7 A. Yes, MO5 does.

8
9 Q. Does MO5 provide information on the third of the five guidelines,
10 "demonstrat[ing] that it will satisfy consumer protection and service quality standards"?

11 A. Yes, it does. On page 17, beginning on line 4 of his Direct Testimony,
12 MO5 witness Simon submitted the following question and answer:

13 **Q. What steps has MO 5 taken to address quality of service concerns?**

14 A. If granted ETC designation, MO 5 will fully adopt the CTIA Consumer
15 Code for Wireless Service. Under the CTIA Consumer Code, wireless
16 carriers agree to: (1) disclose rates and terms of service to customers; (2)
17 make available maps showing where service is generally available; (3)
18 provide contract terms to customers and confirm changes in service; (4)
19 allow a trial period for new service; (5) provide specific disclosures in
20 advertising; (6) separately identify carrier charges from taxes on billing
21 statements; (7) provide customers the right to terminate service for
22 changes to contract terms; (8) provide ready access to customer service;
23 (9) promptly respond to consumer inquiries and complaints received from
24 government agencies; and (10) abide by policies for protection of
25 consumer privacy. A copy of the CTIA Consumer Code is appended
26 hereto as Appendix L.

27
28 Q. Does the statement by MO5 that it will follow the CTIA Code if
29 designated an ETC alleviate all concerns regarding "consumer protection and service
30 quality standards"?

31 A. Not entirely. The Commission expressed concerns about quality of
32 service issues in its Report and Order for the first MMC ETC case, beginning on page 24:

1 The Commission concludes that if ETC status were granted to MMC, it
2 would be necessary to place sufficient requirements regarding quality of
3 service to insure that customers would be protected.
4

5 Q. Does MO5 include any additional information on quality of service
6 standards?

7 A. Yes. On page 17, beginning on line 16, of his Direct Testimony, MO5
8 witness Simon discusses how MO5 is not subject to the same quality of service standards
9 that "this Commission has established for traditional LECs".

10 Q. If the Commission grants ETC status to MO5, do you recommend the
11 Commission place additional quality of service standards on MO5?

12 A. Not at this time. I recommend the Commission address any additional
13 quality of service standards in the ETC Rulemaking.

14 Q. In your opinion, does MO5 satisfy the requirements of the third guideline?

15 A. Yes, it does. However, Staff recommends the Commission provide a
16 condition as a grant of ETC status that MO5 abide by the CTIA Code of Conduct, and
17 that MO5 affirm in its annual recertification before the Commission that it continues to
18 abide by the CTIA Code.

19 Q. Does MO5 provide information on the fourth of the five guidelines, to
20 "offer local usage plans comparable to those offered by the incumbent local exchange
21 carrier (LEC) in the areas for which it seeks designation"?

22 A. Yes, it does. On page 8, beginning on line 18 of his Direct Testimony,
23 MO5 witness Simon states:

24 **Q. Returning to the general MO 5 service offerings, how will MO 5's**
25 **provision of the FCC Rule 54.101(a) (USF-Qualifying) services differ**
26 **from the provision of those services by ILECs operating in MO 5's**
27 **proposed ETC area?**

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A. The local calling area that MO 5 will offer to subscribers will equal or exceed in size the calling area offered by the local LECs, which will reduce intra-LATA toll charges associated with the service offered by these wireline carriers. Customers of these LECs placing calls to destinations beyond their local calling areas incur toll charges, while MO 5 customers making similar calls within MO 5's service area will avoid such charges. In addition, many of MO 5's calling plans include bundles of minutes which can be used for placing calls, whether local or domestic toll, without the caller incurring any additional per minute charges or toll charges. MO 5's plans also offer mobility including, in most cases roaming in other markets. Finally, MO 5 will make available multiple local usage plans that prospective customers can select from as part of its universal service offering.

Q. Does MO5 offer any specific plan details?

A. Yes. MO5 witness Simon, beginning on page 6, line 16 of his Direct Testimony, discusses two plans that would only be available to Lifeline customers.

Q. Would you please describe the proposed Lifeline-only plans MO 5 intends to offer?

A. The first plan is intended to provide a low-cost service option comparable in price to that offered by the incumbent local exchange carrier ("ILEC") but with the added advantage of limited mobility. This Plan would offer unlimited local calling and mobility in the area served by the subscriber's home cell site at a fixed monthly price of \$6.75 per month. The subscriber's outbound local calling area would correspond to its traditional ILEC calling area for that subscriber's address. With the advantage of limited mobility, calls could be originated by the MO 5 Lifeline subscriber to any numbers within that ILEC exchange from any location within the subscriber's home cell site serving area, not just the subscriber's home. Similarly, the Lifeline customer would receive inbound calls, wherever they originate from, throughout the geographic area served by its home cell site. The area served by a home cell site or cells would be defined to include coverage from all MO 5 cell sites necessary to encompass the callers entire corresponding ILEC exchange area. This plan also includes several vertical features in this price including call waiting, call forwarding, 3-way calling, caller ID and voicemail.

The second MO 5 Lifeline Plan would allow for local calling and mobility throughout the entire service area for which MO 5 is designated as an ETC, for a flat \$11.75 per month charge. Since the MO 5 ETC designated service area would be the MO 5 subscriber's local calling area, even toll restricted Lifeline subscribers would enjoy service area wide mobility and local calling, assuming grant of the MO 5 ETC Application as filed. This

1 would afford Lifeline customers a local calling scope extending to a
2 geographic area encompassing multiple telephone exchanges served by all
3 of the LEC wire centers for which ETC designation is being sought. The
4 same vertical features discussed with respect to the previous lifeline plan
5 are included in the cost of this plan, as well. While these Lifeline plans
6 would not allow roaming into other cellular networks to place and receive
7 routine calls, both plans would allow ubiquitous access to 911 for the MO
8 5 Lifeline subscribers even in a roaming situation. MO 5 is unable to
9 provide either of these Lifeline plans without ETC support. (footnotes
10 omitted)

11
12 Starting on line 14, page 8 of his Direct Testimony, MO5 witness Simon
13 describes the "ILEC-equivalent" plan, which would be available to all customers:

14 **Q. Can you describe the "ILEC-Equivalent" Plan?**

15 A. The ILEC-Equivalent Plan would offer the same features and services
16 as the first Lifeline Plan discussed above but would be available to all MO
17 5 subscribers at the price of \$15.00 per month.

18
19 MO5 will also offer Link Up discounts to eligible customers, as described by MO5
20 witness Simon in his Direct Testimony, starting on page 8, line 6:

21 **Q. Will MO 5 participate in Link Up Services?**

22 A. Yes. MO 5 will offer discounts of 50% off of the \$50 activation fee to
23 Link Up eligible subscribers. In addition, MO 5 will offer Link Up eligible
24 subscribers a deferred schedule for payment of the charges assessed for
25 commencing service, for which the consumer will not pay interest. The
26 interest charges not assessed to the consumer shall be for connection
27 charges of up to \$200.00 that are deferred for a period not to exceed one
28 year. This deferred payment plan would include the reduced activation fee
29 as well as the cost of the subscriber handset.

30
31 Q. In your opinion, does MO5 satisfy the requirements of the fourth
32 guideline?

33 A. Yes, MO5 does satisfy this guideline.

34 Q. Does MO5 provide information on the last of the five guidelines, to
35 "acknowledge that it may be required to provide equal access if all other ETCs in the

1 designated service area relinquish their designations pursuant to section 214(e)(4) of the
2 Act”?

3 A. Yes. MO5 witness Simon, on page 16, beginning on line 17 of his Direct
4 Testimony, submits the following question and answer:

5 **Q. Would MO 5 offer equal access if all other ETCs in MO 5’s**
6 **designated service area relinquished their ETC designations?**

7 A. Unlike LEC service, wireless calling plans include varying levels of
8 toll calls at no additional charge where the customer allows the carrier,
9 such as MO 5, to select the toll provider. Accordingly, there has been no
10 incentive for a MO 5 subscriber to select its own IXC where it means that
11 the customer would be paying toll charges instead of receiving toll
12 minutes bundled in its calling plan at no additional charge. Nevertheless,
13 MO 5 would commit to offer any customer the option to pre-select and
14 pay its toll carrier of choice for any and all toll calls placed by the
15 customer on the MO 5 network in any area where the underlying LEC
16 relinquishes its ETC designation.

17
18 Q. In your opinion, does MO5 satisfy the requirements of the fifth
19 guideline?

20 A. Yes, MO5 does satisfy this requirement.

21
22 **Public Interest Test**

23
24 Q. Is there any specific information about a public interest test in the *Report*
25 *and Order*?

26 A. Yes, there is. Paragraph 41 states:

27
28 41. In instances where the Commission has jurisdiction over an ETC
29 applicant, the Commission in this Report and Order adopts the fact-
30 specific public interest analysis it has developed in prior orders. First, the
31 Commission will consider a variety of factors in the overall ETC
32 determination, including the benefits of increased consumer choice, and
33 the unique advantages and disadvantages of the competitor’s service
34 offering. Second, in areas where an ETC applicant seeks designation
35 below the study area level of a rural telephone company, the Commission
36 also will conduct a creamskimming analysis that compares the population
37 density of each wire center in which the ETC applicant seeks designation
38 against that of the wire centers in the study area in which the ETC

1 applicant does not seek designation. Based on this analysis, the
2 Commission will deny designation if it concludes that the potential for
3 creamskimming is contrary to the public interest. The Commission plans
4 to use this analysis to review future ETC applications and strongly
5 encourages state commissions to consider the same factors in their public
6 interest reviews. (footnotes omitted)
7

8 Q. Has Staff considered "a variety of factors in the overall ETC
9 determination, including the benefits of increased consumer choice, and the unique
10 advantages and disadvantages of the competitor's service offering" in making its
11 recommendation concerning the instant application?

12 A. Yes. Two things stand out in particular for consideration as to whether
13 MO5's request is in the public interest. First, the FCC explicitly says that the public
14 interest standard is not satisfied simply by an increase in customer choice, which suggests
15 that state commissions can and should review other factors as Staff discusses throughout
16 this testimony. Second, by discussing whether MO5 is complying (or not complying)
17 with the five standards the FCC sets out as guidelines, Staff has taken strides to review
18 whether or not granting the application is in the public interest.

19 Q. What specific information was provided by MO5 to assist in Staff's
20 review of the public interest standard?

21 A. MO5's discussion of its five-year plan and MO5's discussion about the
22 public interest standard assisted in Staff's review of the public interest standard.

23 Q. Does MO5 provide information about the purpose of MO5's proposed five
24 year build-out plan?

25 A. Yes. In its application, beginning on page 18, MO5 states:

26 MO5 previously overbuilt its entire network with time division multiple
27 access ("TDMA") technology. That technology has been largely
28 abandoned by the industry and MO5 has since overbuilt its network with a
29 digital network operating with the Global System for Mobile

1 Communications ("GSM") technology. However, limitations in
2 propagation characteristics of the GSM protocol, coupled with the
3 migration to low-powered portable subscriber equipment, has resulted in
4 the need for MO5 to look to further enhance its network with additional
5 digital facilities in some of the rural-most portions of its FCC-licensed
6 service area. MO5 has developed a five (5) year network enhancement
7 plan which would improve GSM coverage throughout significant portions
8 of its proposed ETC service area.
9

10 Additionally, MO5 witness Simon states on page 9, beginning on line 15 of his Direct

11 Testimony:

12 **Q. MO 5 is already providing the services required for ETC**
13 **designation and has apparently done so for years without USF**
14 **support. Why would it be in the public interest to now afford USF**
15 **support to MO 5?**

16 A. MO 5 has brought wireless service to many rural parts of its
17 FCC-licensed service area and offers a level of coverage better than its
18 competitors in the market. The cost of providing those services continues
19 to rise. However, in the highly competitive wireless service market of
20 today, it is not enough for MO 5 to offer better coverage if its service
21 offerings are not competitive with respect to features, functionality and
22 price. Unlike MO 5's wireless competitors that also have licenses in major
23 urban areas, MO 5 is only licensed to offer commercial mobile radio
24 service ("CMRS") in Missouri RSA 5. The higher-cost of providing
25 service in this rural area must be supported solely from revenues derived
26 in this market. Yet, for competitive reasons, MO 5 has to match the
27 pricing offered by the major nationwide carriers who typically choose to
28 offer quality services only along the major traffic arteries and largest
29 population centers in the rural markets.

30 MO 5 is also incurring increased costs to meet its obligations to
31 comply with federal mandates such as E911 services. These services are
32 critical to public safety in general but their availability in the rural-most
33 portions of the service area is imperative.
34

35 MO5 witness Reeves adds in his Direct Testimony, starting at page 9, line 4:

36 **Q. Are there any other advantages associated with the deployment**
37 **of the additional cell sites proposed in the MO 5 five-year network**
38 **enhancement plan?**

39 A. Yes. One significant advantage relates to the accuracy with which
40 MO 5 will be able to provide locational services in conjunction with E911
41 calls. Since the MO 5 network utilizes GSM technology, unlike the case of
42 code division multiple access technology, there are no handsets available
43 which incorporate global positioning system ("GPS") capabilities to

1 enable the handset, via the GPS satellite service, to provide information to
2 the network as to its precise location. Accordingly, the network must
3 "locate" the handset. This is accomplished by analyzing the signal from
4 the handset at multiple cell sites and using that information to determine
5 the handsets location. As a general rule, the accuracy of this
6 "triangulation" process increases with the number of cell sites that are
7 deployed in a given service area. The proposed deployment of the
8 Network Enhancement plan if ETC designation is granted is in some of
9 the rural-most portions of the MO 5 service area. Accordingly, the
10 increased E911 accuracy will occur in those rural-most areas.

11
12 Q. Did Staff request any additional information about MO5's proposed five
13 year build-out plan?

14 A. Yes. Staff submitted the following Data Request to MO5:

15 Beginning on page 19 of the Application, paragraph 33:
16 *Appendix F is a listing of proposed cell sites which MO5 would deploy,*
17 *and the timeline for their deployment, assuming grant of ETC designation.*
18 Working under the assumption that the specific cell sites have yet to be
19 located, please provide a cost estimate for the construction of each cell site
20 listed in Appendix F. Also, please include the estimated cost of annual
21 maintenance for each cell site listed in Appendix F. Also include
22 separately any additional network improvements necessary to support
23 these additional cell towers, and the estimated cost of those network
24 improvements.
25 Assuming the instant application is granted and MO5 receives the
26 estimated \$1,532,230 in annual USF monies, please provide estimated
27 start and finish dates for the cell towers listed in Appendix F.

28
29 The entire Data Request and MO5's response are included as Highly Confidential
30 Schedule 3.

31 Q. Generally describe the spreadsheet (MO5 spreadsheet) that was provided
32 in response to the Data Request above.

33 A. The top row of the MO5 spreadsheet lists the "Estimated USF Support"
34 for each of the next five years. It is interesting that the expected amount of support in
35 Budget Year 1, ** _____ **, is different from annual USF receipt that MO5 witness
36 Zentgraf cites in her Direct Testimony on page 16, beginning at line 8:

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Q. With respect to this particular ETC designation, what would be the impact on the USF?

A. Based upon current subscriber counts and locations, the total USF support MO 5 expects to receive for its proposed service area is \$1,534,230 annually.

Over the five-year period of the plan, MO5 expects to receive a total of
** _____ ** in USF monies.

Q. Please continue describing the MO5 spreadsheet.

A. The third row of the MO5 spreadsheet is described as "Estimated Taxes" for the next five years. Over the five-year period, MO5 expects to spend
** _____ ** on "Estimated Taxes". It appears that MO5 intends to cover this expense with USF receipts. This is approximately ** _____ ** of the total amount of USF monies that MO5 expects to receive over the five-year period.

It is Staff's understanding that unless MO5 is a cooperative, the USF monies received by MO5 are taxable. Staff has concerns about the percentage of USF monies going to "estimated taxes".

Q. Does "estimated taxes" fall within the realm of Universal Service Support?

A. No. The 1996 Telecom Act (the Act) has specific rules for the spending of USF monies. Section 254(e) of Act reads:

(e) UNIVERSAL SERVICE SUPPORT- After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. *A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.* Any such support should be explicit and sufficient to achieve the purposes of this section. (italics added)

Q. Please continue describing the MO5 spreadsheet.

1 A. The next 22 lines describe the expenses that MO5 expects to incur
2 regarding the construction of new GSM cell tower sites, increasing the capacity of
3 existing GSM cell tower sites, and paying for the “ongoing operation” of these new
4 facilities. The expenses to construct any given site are incurred in the year which the site
5 is intended to be built, with expenses for the ongoing operation of that site incurred in
6 years thereafter.

7 In the five years described on the spreadsheet, ** _____ ** is expected to be
8 spent on these network improvements and their ongoing operations. This represents
9 ** _____ ** of the total USF monies MO5 expects to receive over the five-year period
10 of the plan.

11 Q. Please describe the bottom row of the MO5 spreadsheet.

12 A. The bottom row of the spreadsheet is labeled “TOTAL”. Upon inspection,
13 it is the sum of estimated taxes and the expenses for the construction and maintenance of
14 the network. Over the five-year period described in the MO5 spreadsheet, this “TOTAL”
15 expenses column sums to ** _____ **. This amount is more than the
16 ** _____ ** MO5 expects to receive over the five-year period.

17 Q. Can you provide more detail on the “TOTAL” column?

18 A. When examining years one and two of the five-year plan together, the
19 “TOTAL” amount (estimated taxes + network expenditure outlays) is ** _____ **
20 less than the amount of USF monies MO5 expects to receive. MO5 has stated that it is
21 possible that their plans for the monies will change in the future, as stated in page 19 of
22 its Application:

1 The precise cell site locations, as well as the timing for each cell site could
2 change as the MO5 build-out plans evolve in these areas in order to meet
3 any changing customer needs over then next five years.
4

5 Staff understands and supports the ability for a carrier to be flexible over a five-
6 year period of planning where network improvements are to occur. In this case, the
7 carrier initially intends to spend less money than it receives. However, in later years, the
8 planned expenditures exceed USF support.

9 One of the steps in reviewing carrier expenditures in the current annual
10 certification process is a determination that USF supported expenses exceed USF receipts
11 for a given time period. In the annual ETC recertification process, Staff would have
12 concerns about certifying a carrier for ETC status if that carrier received more USF
13 monies than was required to support USF-related expenses.

14 Q. Is Staff able to state that MO5's proposed five-year build out plan, as
15 described in the Application, with the additional information provided in the MO5
16 spreadsheet, in the public interest?

17 A. No. Staff is concerned about the amount of USF monies to be spent on
18 "estimated taxes", monies that will not be spent directly on network improvements,
19 upgrades or on-going maintenance. Staff is also concerned about the fact that there will
20 be a ** _____ ** difference between USF monies received and the total estimated to
21 be spent on taxes and network upgrades and on-going maintenance in the first two years
22 of the plan. Incumbent local exchange carriers, (ILECs) in their annual ETC certification
23 process, must demonstrate that their allowable expenses exceed USF receipts. Staff
24 would expect the same standard to apply to the applicant in this case.

1 Q. Are there additional expectations set forth by the FCC in the Report and
2 Order?

3 A. Yes, there are. In addition to the public interest analysis, the FCC sets
4 forth expectations that state commissions will complete a cream skimming analysis
5 where appropriate. On page 6, beginning at line 21 of his Direct Testimony, MO5
6 witness Reeves summarizes MO5's cream-skimming analysis as follows:

7 Accordingly, in each and every instance where MO 5 seeks redefinition of
8 the ILEC service area, the population densities within the portions of those
9 study areas sought to be included in the MO 5 ETC service area either fall
10 below or are virtually identical with the overall population densities upon
11 which the LEC level of support has been based.

12
13 The creamskimming analysis is located in MO5's Application, beginning toward
14 the bottom of page 11, and in Appendix D of MO5's Application. This analysis shows
15 that MO5 is engaging in no creamskimming in any of its proposed ETC area.

16 Q Is Staff satisfied that MO5 has met its public interest burden in the
17 application?

18 A. No, Staff is not satisfied. While MO5 has met most of the burden in the
19 five guidelines in the latest FCC Report and Order put forth for competitive ETC carriers
20 and has provided satisfactory information regarding the creamskimming test, Staff has
21 concerns regarding MO5's five-year plan in terms of MO5 not planning to spend as much
22 money as it receives in the first two years of their plan as well as the amount of USF
23 monies MO5 allocated toward "estimated taxes". At this time, Staff recommends the
24 Commission find the application and the five-year plan are not in the public interest.

25 Q. If the Commission designates MO5 as an ETC, do you recommend any
26 additional conditions not already discussed?

1 A. Yes, I do.

2 Per discussions with a representative of the Universal Service Administrative
3 Company (USAC), in instances where states do not exert jurisdiction over wireless
4 carriers, wireless carriers are allowed to self-certify that they meet the conditions to
5 receive Universal Service support. Therefore, USAC encouraged state commissions to
6 explicitly include a statement in an order designating a carrier as an ETC that that carrier
7 cannot self-certify, but is subject to the state commission annual certification process.
8 Therefore, Staff recommends the Commission, if it grants ETC status to MO5, state
9 explicitly in its Report and Order that MO5 is not allowed to self-certify with USAC, but
10 must comply with the Commission's annual certification process.

11 Q. What is your recommendation on MO5's request to be designated as an
12 eligible telecommunications carrier?

13 A. I recommend the Commission not grant MO5 ETC status. While MO5
14 has met almost all of the requirements of the five guidelines in the latest FCC *Report and*
15 *Order* put forth for competitive ETC carriers and has provided information on potential
16 creamskimming, there is concern regarding MO5's lack of commitment to spend all the
17 USF monies it receives in the first two years. There is also a concern that MO5 will use
18 USF support for "estimated taxes". However, if the Commission grants ETC status to
19 MO5, Staff recommends the Commission place the following requirements on MO5 as
20 conditions of receiving ETC status:

21 (1) MO5 shall follow the CTIA Code.

1 (2) MO5 shall provide annual updates to Staff as described in paragraph 69 of the
2 *Report and Order*² in the annual certification process

3 (3) MO5 shall not self-certify to the Universal Service Administrative Company
4 (USAC), but shall comply with the Commission's annual certification
5 process.

6 (4) MO5 shall offer access to operator service to its end user in its ETC area.

7 Q. Does this end your testimony?

8 A. Yes, it does.

² See paragraph 69 of FCC *Report and Order* in Schedule 1

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

REPORT AND ORDER

Adopted: February 25, 2005

Released: March 17, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements;
Commissioner Martin approving in part, and dissenting in part.

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I. INTRODUCTION

1. This Report and Order addresses the minimum requirements for a telecommunications carrier to be designated as an “eligible telecommunications carrier” or “ETC,” and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In addition, as recommended by the Joint Board, we encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC.² We believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.³

2. We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.⁴ Specifically, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, we require that the applicant: (1) provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. In addition, we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the Commission, and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1,

¹47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

²47 U.S.C. § 214(e)(2). Section 214(e)(2) of the Act provides state commissions with the primary responsibility for designating ETCs.

³See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4258, para. 2 (2004) (*Recommended Decision*).

⁴See *id.*

2006, at the same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board's recommendation to evaluate separately whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this Report and Order.

3. In this Report and Order, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. Although the outcome of the Commission's section 214(e)(6) analysis may vary depending on whether the area is served by a rural or non-rural carrier, we clarify that the Commission's public interest examination for ETC designations will review many of the same factors for ETC designations in areas served by non-rural and rural incumbent LECs. In addition, as part of our public interest analysis, we will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC.

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual basis: (1) progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.

5. As explained below, we do not adopt the recommendation of the Joint Board to limit high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation.⁵ Nevertheless, we believe the rigorous ETC designation requirements adopted above will ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund.

6. We also agree with the Joint Board's recommendation that changes are not warranted in our rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this Report and Order, we grant several petitions for redefinition of rural incumbent LEC

⁵Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat 2809 (2004) (*2005 Consolidated Appropriations Act*). The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. *See id.*

service areas. Moreover, we direct the Universal Service Administrative Company (USAC), in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. We also modify the Commission's annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date. This will allow high-cost support to be distributed as of the date of ETC designation. In addition, to enable price cap LECs and/or competitive ETCs that miss the June 30 annual interstate access support (IAS) certification deadline to receive IAS support, we modify the quarterly certification schedule for the receipt of IAS support. These carriers may file their certification after June 30 in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, we decline to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

II. BACKGROUND

A. The Act

7. Section 254(e) of the Communications Act of 1934, as amended (the Act),⁶ provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁷ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC), and must advertise these services throughout the designated service area.⁸

8. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁹ Under section 214(e)(2), "[u]pon 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 designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Section 214(e)(2) further states: "[b]efore 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."¹¹ Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that

⁶See 47 U.S.C. § 254(e). The Communications Act of 1934 was amended by the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁷47 U.S.C. § 254(e).

⁸47 U.S.C. § 214(e)(1).

⁹47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹⁰47 U.S.C. § 214(e)(1).

¹¹47 U.S.C. § 214(e)(2).

is not subject to the jurisdiction of a State commission, the Commission shall upon request” perform the relevant ETC designation.¹²

B. Joint Board Recommended Decision

9. On June 28, 2002, the Commission released the *ETC Referral Order* requesting that the Joint Board “review certain of the Commission’s rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.”¹³ Specifically, the Commission requested that the Joint Board make recommendations regarding two issues: (1) a long-term universal service plan that ensures that support is “specific, predictable, and sufficient to preserve and advance universal service;” and (2) the manner in which support can be “effectively targeted to rural carriers serving the highest cost areas, while protecting against excessive fund growth.”¹⁴ Consistent with these directives, the Joint Board sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas.¹⁵ On February 27, 2004, based on its review and consideration of the record developed in response to the *ETC Referral Order*, the Joint Board released the *Recommended Decision*, which made several recommendations to the Commission regarding the ETC designation process and the Commission’s rules regarding high-cost support.¹⁶

¹²47 U.S.C. § 214(e)(6). See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice). The Commission requires that an ETC petition filed with the Commission contain the following: (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 or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution” and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission. In addition, similar to section 214(e)(2), section 214(e)(6) of the Act directs the Commission to determine whether designation of an ETC is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(6).

¹³See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*). See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for “rules of agency organization, procedure, or practice.”

¹⁴See *Referral Order*, 17 FCC Rcd at 22642, at para. 1.

¹⁵On February 7, 2003, the Joint Board issued a Public Notice inviting public comment on whether the Commission’s rules concerning high-cost support and the ETC designation process continue to fulfill their intended purposes. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (2003) (*Joint Board Portability-ETC Public Notice*). On July 31, 2003, the Joint Board held an *en banc* hearing on the Commission’s rules on designation and funding of ETCs in high-cost areas. See http://www.fcc.gov/wcb/universal_service/documents/030731.pdf. See also *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on the Portability of High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14486 (2003) (providing notice of Joint Board *en banc* hearing).

¹⁶*Recommended Decision*, 19 FCC Rcd at 4258-4260, paras. 1-4,

10. The Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214(e)(5) of the Act.¹⁷ The Joint Board concluded that permissive federal guidelines for minimum ETC qualifications would allow for a more predictable application process in the states. In doing so, the Joint Board concluded that permissive guidelines would also assist states in determining whether the public interest would be served by a carrier's designation as an ETC.¹⁸ The Joint Board further stated that permissive guidelines would improve the long-term sustainability of the universal service fund, ensuring that only fully qualified carriers that are capable of and committed to providing universal service would be able to receive support.¹⁹ The Joint Board further recommended that the Commission apply the guidelines as mandatory requirements to those proceedings in which the Commission acts under section 214(e)(6).²⁰

11. In order to curb growth of the fund due to the increasing number of ETC designations and the increased costs of rural incumbent LECs, the Joint Board also recommended that the Commission limit the scope of high-cost support to a single connection per household that provides access to the public telephone network in high-cost areas throughout the nation.²¹ The Joint Board determined that supporting a single connection would be more consistent with the goals of section 254 of the Act than the present system, which in some cases provides support for multiple connections to the public switched telephone network. The Joint Board determined that limiting the scope of support is necessary to preserve the sustainability of the universal service fund.²² The Joint Board also concluded that supporting a single connection would send more appropriate entry signals to carriers in rural and high-cost areas, and would be competitively neutral.²³ In conjunction with its proposal to limit high-cost support to a primary line, the Joint Board recommended that high-cost support be capped on a per-line basis and adjusted annually by an index factor in areas that are served by rural carriers and where a competitive carrier is designated as an ETC.²⁴ On December 8, 2004, however, Congress passed the 2005 Consolidated Appropriations Act, which prohibits the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service payments."²⁵

12. The Joint Board declined to recommend that the Commission modify the basis of support (*i.e.*, the methodology used to calculate support) in study areas with multiple ETCs.²⁶ Instead, the Joint

¹⁷See 47 U.S.C. § 214.

¹⁸See *Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

¹⁹See *Recommended Decision*, 19 FCC Rcd at 4261, para. 9.

²⁰See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

²¹See *Recommended Decision*, 19 FCC Rcd at 4258-4259, para. 3.

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵2005 *Consolidated Appropriations Act* at § 634.

²⁶See *Recommended Decision*, 19 FCC Rcd at 4259, para. 4.

Board recommended that the Joint Board and the Commission consider possible modifications to the basis of support as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.²⁷

13. On June 8, 2004, the Commission released a Notice of Proposed Rulemaking seeking comment on the proposals outlined in the Joint Board's *Recommended Decision* concerning the ETC designation process and the Commission's rules regarding high-cost universal service support.²⁸ In addition, the Commission sought comment on whether to modify its rules governing the filing of annual certifications and data submissions by ETCs.²⁹

C. Commission Decisions Pending the Commission's Action on the Joint Board's Recommendations

14. As the Commission and the Joint Board contemplated changes to the ETC designation process, the Commission acknowledged the need for a more thorough ETC designation framework. Specifically, on January 22, 2004, the Commission released the *Virginia Cellular ETC Designation Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.³⁰ In that order, the Commission imposed reporting and other requirements on Virginia Cellular as conditions of Virginia Cellular obtaining an ETC designation. These conditions required Virginia Cellular: (1) to report annually on its progress toward achieving its build-out plans, the total number of unfulfilled service requests, and the total number of complaints per 1,000 households; (2) to comply with consumer protection and quality of service standards; (3) to provision service to requesting customers in the area for which Virginia Cellular is designated, including those areas outside existing network coverage; and (4) to construct new cell sites in areas outside Virginia Cellular's network coverage.³¹ The Commission also conducted a more thorough public interest analysis, which analyzed the advantages and disadvantages of designating Virginia Cellular as an ETC and the potential for

²⁷*Id.* On August 16, 2004, the Joint Board issued a Public Notice that sought comment on issues related to the high-cost universal support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 04J-2, (rel. Aug. 16, 2004). Specifically, the Joint Board sought comment on three main issues: (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges. *Id.*

²⁸*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) (*ETC Designation NPRM*).

²⁹See *ETC Designation NPRM*, 19 FCC Rcd at 10802, para. 5.

³⁰See *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, para. 1 (2004) (*Virginia Cellular ETC Designation Order*).

³¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

“creamskimming” that could result from Virginia Cellular’s ETC designation.³² The Commission further stated that the framework it established in the *Virginia Cellular ETC Designation Order* henceforth would apply to all ETC designations pending completion of this Report and Order.³³

15. Following the framework established in the *Virginia Cellular ETC Designation Order*, on April 12, 2004, the Commission released the *Highland Cellular ETC Designation Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.³⁴ In the *Highland Cellular ETC Designation Order*, the Commission concluded, among other things, that an ETC may not be designated below the wire center level served by a rural incumbent LEC.³⁵ The Wireline Competition Bureau and Wireless Telecommunications Bureau subsequently issued several ETC designation orders that follow the framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*.³⁶

III. SCOPE OF SUPPORT

16. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to “modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.”³⁷ Accordingly, in this

³²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1585-86, paras. 26-33. Creamskimming occurs when ETCs serve a disproportionate share of the low-cost, high revenue customers in a rural telephone company’s study area. See *id.* at 19 FCC Rcd at 1585, para. 32.

³³See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

³⁴See *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438, para. 33 (2004) (*Highland Cellular ETC Designation Order*).

³⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

³⁶See *Federal-State Joint Board on Universal Service; Guam Cellular and Paging Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands*, Order, CC Docket No. 96-45, 19 FCC Rcd 13872 (2004) (*Guam Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, North Carolina and Virginia*, Order, CC Docket No. 96-45, DA 04-3046 (2004) (*ALLTEL ETC Designation Order*); *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, Order, CC Docket No. 96-45, 19 FCC Rcd 16530, (2004) (*Nextel Partners ETC Designation Order*); *Federal-State Joint Board on Universal Service; Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Order, CC Docket No. 96-45, 19 FCC Rcd 20985 (2004) (*Advantage Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; Sprint Corporation Applications for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, North Carolina, Tennessee, and Virginia*, Order, CC Docket No. 96-45, DA 04-3617 (2004) (*Sprint ETC Designation Order*); *Federal-State Joint Board on Universal Service; Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Georgia and Alabama*, Order, CC Docket No. 96-45, DA 05-259 (2005) (*PSC ETC Designation Order*).

³⁷See *2005 Consolidated Appropriations Act* at § 634. The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. See *id.*

Report and Order, we do not consider the portion of the Joint Board's *Recommended Decision* related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

IV. ETC DESIGNATION PROCESS

17. State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act.³⁸ A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.³⁹ The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁴⁰ The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution.⁴¹ In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.⁴² In this Report and Order, we adopt additional requirements consistent with section 214 of the Act that all ETC applicants must meet to be designated an ETC by this Commission.⁴³ Further, although specific requirements set forth in this Report and Order may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the Commission under section 214(e)(6) of the Act.⁴⁴

18. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on

³⁸See 47 U.S.C. § 214(e)(1).

³⁹47 U.S.C. § 214(e)(1)(A). The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. See 47 C.F.R. § 54.101. While section 214(e)(1) requires an ETC to "offer" the services supported by the federal universal service support mechanisms, the Commission has determined that this does not require a competitive carrier to actually provide the supported services throughout the designated service area before designation as an ETC. *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-75, paras. 10-18 (2000), recon. pending (*Section 214(e) Declaratory Ruling*).

⁴⁰47 U.S.C. § 214(e)(1)(A). An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.101(a)(5).

⁴¹See 47 U.S.C. § 214(e)(1)(B).

⁴²47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415.

⁴³See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

⁴⁴47 U.S.C. § 214(e)(6). Specifically, portions of this order discuss the ETC framework as it relates to wireless carriers because those are the common carriers that most frequently seek to be designated as ETCs before the Commission. See *infra* para. 37.

the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of our public interest analysis, we also will examine the potential for creamskimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.

19. We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this Report and Order. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.⁴⁵

A. Eligibility Requirements

20. As described above, ETC applicants must meet statutorily prescribed requirements before we can approve their designation as an ETC.⁴⁶ Based on the record before us, we find that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁴⁷ As noted above, these requirements are mandatory for all ETCs designated by the Commission. ETCs designated by the Commission prior to this Report and Order will be required to make such showings when they submit their annual certification filing on October 1, 2006. We also encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction. We do not believe that different ETCs should be subject to different obligations, going forward, because of when they happened to first obtain ETC designation from the Commission or the state. These are responsibilities associated with receiving universal service support that apply to all ETCs, regardless of the date of initial designation.

1. Commitment and Ability to Provide the Supported Services

21. We adopt the requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) by providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. We encourage states to adopt these requirements and, as recommended by the Joint Board, to do so in a

⁴⁵See 47 U.S.C. §§ 254(b)(3), (5). In addition to the universal service principles specified in the 1996 Act, Congress directed the Joint Board and the Commission to be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. See 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-04, paras. 45-52 (1997) (*First Universal Service Report and Order*). The Commission defines competitive neutrality as "universal service support mechanisms and rules that neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." See *id.*

⁴⁶See 47 U.S.C. § 214.

⁴⁷See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

manner that is flexible with applicable state laws and policies. For example, states that adopt these requirements should determine, pursuant to state law, what constitutes a “reasonable request” for service.⁴⁸ In addition, we encourage states to follow the Joint Board’s proposal that any build-out commitments adopted by states “be harmonized with any existing policies regarding line extensions and carrier of last resort obligations.”⁴⁹

22. First, we agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service.⁵⁰ We conclude that this requirement, which we adopted in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, is appropriate as a general rule to ensure that all ETCs serve requesting customers in their designated service area. Therefore, consistent with these orders, we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC.⁵¹ If the ETC’s network already passes or covers the potential customer’s premises, the ETC should provide service immediately.⁵² In those instances where a request comes from a potential customer within the applicant’s licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer’s equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier’s facilities to provide service;⁵³ or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.⁵⁴ We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.⁵⁵

23. Second, we require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service

⁴⁸ See *Recommended Decision*, 19 FCC Rcd at 4268, para. 27.

⁴⁹ See *id.*

⁵⁰ See *Recommended Decision*, 19 FCC Rcd at 4266, para. 23. The Commission and state commissions will need to determine whether a particular request for service is “reasonable.” We believe that requiring an ETC applicant to demonstrate its willingness and capability to provide service to all customers within the designated service area upon request will help determine whether a request is reasonable.

⁵¹ See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1570-1571, para. 15; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6429-6430, para. 16.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1571, para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6430, para. 17.

⁵⁵ See *infra* para. 69.

areas for which it seeks designation.⁵⁶ Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area.⁵⁷ The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;⁵⁸ (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received.⁵⁹ In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

24. Some commenters assert that an applicant should submit more detailed build-out plans than discussed above,⁶⁰ while other commenters request that the build-out plans include a specific timeline, including start and completion dates.⁶¹ Our approach incorporates many commenters' suggestions; however, mandatory completion dates established by the Commission would not account for unique circumstances that may affect build-out, including the amount of universal service support or customer demand. On balance, we find that our approach allows consideration of fact-specific circumstances of the carrier and the designated service area, while ensuring that high-cost support will be used to improve service.

⁵⁶See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 1565, at para. 17.

⁵⁷Universal service support is not distributed for lines provided through resale of another carrier's services. In addition, it should be noted that lines provided by an ETC through resale of another carrier's services will not impact the universal service fund, since high-cost support is not disbursed to ETC lines provided in this manner. 47 C.F.R. § 54.307. See also *First Universal Service Report and Order*, FCC Rcd at 8933-8934, para. 290. Therefore, carriers who improve their networks through resale will have little or no impact on the universal service fund.

⁵⁸See *infra* para. 69. Carriers can achieve this improvement through several different methods, such as the construction of cell towers, leasing space on existing towers, or resale of other carriers' services.

⁵⁹See *infra* para. 69.

⁶⁰See Dobson Comments at 8, Iowa Board Reply Comments at 3, OPASTCO Comments at 33; NTCA Comments at 17, State and Rural Coalition Comments at 8, and State and Rural Coalition Reply Comments at 13-14.

⁶¹See Nebraska RICs Reply Comments at 9; NTCA Comments at 17.

2. Ability to Remain Functional in Emergency Situations

25. We adopt the Joint Board's recommendation that we require an ETC applicant to demonstrate its ability to remain functional in emergency situations.⁶² Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶³ We believe that functionality during emergency situations is an important consideration for the public interest. Moreover, to ensure that ETCs continue to comply with this requirement, as discussed *infra*, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations.⁶⁴ Because most emergency situations are local in nature, we anticipate that state commissions that choose to adopt an emergency functionality requirement may also identify other geographically-specific factors that are relevant for consideration. If states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.⁶⁵

26. We also disagree with commenters that propose that the Commission adopt a specific benchmark requiring an ETC to maintain eight hours of back-up power and ability to reroute traffic to other cell sites in emergency situations.⁶⁶ We believe that such a benchmark is inappropriate because, although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic. Furthermore, we reject suggestions that ETCs should be required to publish signal strength for their primary digital technology because signal coverage, quality, or capacity will already be reported on an annual basis to the Commission as part of the five-year network improvement plan.⁶⁷

27. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit data concerning outages in its designated service areas on an annual basis.⁶⁸ In addition, to minimize the administrative burdens that may be associated with such reports, these

⁶²See *Recommended Decision*, 19 FCC Rcd at 4269, para. 30; NTCA Comments at 8, State and Rural Coalition Comments at 10, Iowa Board Reply Comments at 3.

⁶³See NTCA Comments at 18, and OPASTCO Comments at 35.

⁶⁴See *infra* para. 69.

⁶⁵See *supra* para. 19; Dobson Comments at 11.

⁶⁶Commenters also contend that specific enforceable requirements should be adopted that require ETCs to provide an affidavit stating that they will remain functional in an emergency. We believe that an affidavit is unnecessary and redundant because as part of its application, an ETC must already demonstrate the ability to function in emergency situations. See OPASTCO Comments at 35.

⁶⁷See CenturyTel Comments at 9. See also *Recommended Decision*, 19 FCC Rcd 4281-82, para. 61.

⁶⁸See *infra* para. 69.

reporting requirements are modeled after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*.⁶⁹

3. Consumer Protection

28. As recommended by the Joint Board, we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission.⁷⁰ We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission.⁷¹ We will consider the sufficiency of other commitments on a case-by-case basis.⁷² We believe that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements is consistent with section 254 of the Act, and with related Commission orders that require policies that universal service serve "the public interest, convenience and necessity"⁷³ and ensure that consumers are able to receive an evolving level of universal service that "tak[es] into account advances in telecommunications, and information technologies and services."⁷⁴ In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.⁷⁵

29. We also believe that adopting state specific requirements as part of our ETC designation process might require the Commission to interpret state statutes and rules. An ETC applicant must commit to serve the entire service area and must provide five-year network improvement plans

⁶⁹See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 04-35, 19 FCC Rcd 16830 (2004) (*Outage Reporting Order*).

⁷⁰See *Recommended Decision*, 19 FCC Rcd at 4270, para. 31; NTCA Comments at 20, Oregon Commission Comments at 5 and Iowa Board Reply Comments at 3.

⁷¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576-77, para. 30; *Highland Cellular ETC Designation Order* FCC Rcd at 6433, para. 24. See also Dobson Comments at 12, and Dobson Reply Comments at 7-8. CTIA, Consumer Code for Wireless Service, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

⁷²For example, to the extent a wireline or wireless ETC applicant is subject to consumer protection obligations under state law, compliance with such laws may meet our requirement.

⁷³See 47 U.S.C. § 254(b)(7).

⁷⁴See 47 U.S.C. § 254(c).

⁷⁵*Id.*

addressing each wire center for which it expects to receive support.⁷⁶ We therefore conclude, given the consumer protection measures and other requirements adopted above and the provision in section 214(e)(4) of the Act that protects customers in the event that another ETC relinquishes designation, that it is unnecessary to impose additional obligations as a condition of granting ETC status to a competitive carrier.

30. As with the other requirements adopted in this Report and Order, state commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. Several commenters argue that an ETC should be required to submit to the same state laws concerning consumer protection that the incumbent LEC must follow.⁷⁷ These include, for example, billing, collection, and mediation obligations. In determining whether any additional consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state – *i.e.*, where such a requirement would not otherwise apply to the ETC applicant – we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC. We agree with the Joint Board's assertion that "states should not require regulatory parity for parity's sake."⁷⁸ We therefore encourage states that impose requirements on an ETC to do so only to the extent necessary to further universal service goals.

31. We also reject commenters' arguments that consumer protection requirements imposed on wireless carriers as a condition for ETC designation are necessarily inconsistent with section 332 of the Act.⁷⁹ While Section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services.⁸⁰ Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.⁸¹

4. Local Usage

32. We adopt the Joint Board's recommendation that we establish a local usage requirement as a condition of receiving ETC designation.⁸² Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.

⁷⁶See *supra* para. 23.

⁷⁷See CenturyTel Comments at 11, NASCUA Comments at 39, SBC Comments at 7, and USTA Comments at 10-11.

⁷⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 34.

⁷⁹See Nextel Comments at 18.

⁸⁰See 47 U.S.C. § 332(c)(3).

⁸¹See 47 U.S.C. §§ 214, 254.

⁸²See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

33. The Commission requires an ETC to provide local usage in order to receive universal service high-cost support.⁸³ In the *First Report and Order*, the Commission determined that an ETC should provide some minimum amount of local usage as part of its "basic service" package of supported services, but declined to specify the exact amount of local usage required.⁸⁴ We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis.⁸⁵ For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area.⁸⁶ We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers.⁸⁷ Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.

34. We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC.⁸⁸ In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.⁸⁹

5. Equal Access

35. The Joint Board recommended that the Commission adopt guidelines that would encourage states to require an ETC be prepared to provide equal access⁹⁰ if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁹¹ Although we do not impose a

⁸³See 47 C.F.R. § 54.101(a)(2).

⁸⁴See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8812-14 (1997) (*First Universal Service Report and Order*). See 47 C.F.R. § 54.101(a)(2).

⁸⁵See *Recommended Decision*, 19 FCC Rcd at 4271-4272, para. 35-36; F. Williamson Comments at 31 (maintaining that wireless ETCs should be required to provide at least the average local usage utilized by the customers of the incumbent LEC in the designated service area).

⁸⁶In the *Highland Cellular ETC Designation Order* and the *Virginia Cellular ETC Designation Order*, the Commission found that Highland Cellular and Virginia Cellular customers were subjected to fewer toll charges than the customers using the incumbent's plan and that customers had a choice of a variety of local usage plans, many of which included a large volume of minutes. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 29.

⁸⁷See *Recommended Decision*, 19 FCC Rcd at 4272, para. 36.

⁸⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

⁸⁹See *Id.*

⁹⁰Equal access includes, among other things, the ability to access the presubscribed long distance carrier of the customer's choice by dialing 1+ the phone number. See *Definitions Order*, 18 FCC Rcd at 15092, para. 6.

⁹¹See *Recommended Decision*, 19 FCC Rcd at 4268, para. 28.

general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.⁹² Specifically, we find that if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement under the Act.⁹³ Accordingly, we will decide whether to impose any equal access requirements on a case-by-case basis.

36. Under section 214(e)(4) of the Act, if an ETC relinquishes its ETC designation, the Commission must examine whether the customers that are being served by the relinquishing carrier will be served by the remaining ETC or ETCs.⁹⁴ As part of that process, the Commission might also examine whether it is necessary to require the remaining ETC to provide equal access. Furthermore, under section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity.⁹⁵ One obligation imposed on incumbent LECs is the requirement to offer equal access in connection with their wireline services.⁹⁶

6. Adequate Financial Resources

37. We decline to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area.⁹⁷ We believe that compliance with the existing requirements for ETC designation, along with the criteria adopted above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported services in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request.⁹⁸ And in its annual

⁹²See *id.*

⁹³See, e.g., 47 U.S.C. §§ 214(e)(4), 332(c)(8), 252(h)(2).

⁹⁴47 U.S.C. § 214(e)(4). The statutory provision states that a state commission or, in the case of a common carrier not subject to state commission jurisdiction, the Commission "shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." *Id.* The carrier seeking to relinquish its designation must give advance notice to the state commission or the Commission. *Id.* Prior to allowing the carrier to cease providing universal service in the area, the remaining ETC or ETCs will be required to ensure that all customers served by the relinquishing carrier will continue to be served. The remaining ETC or ETCs will be permitted up to one year from the approval of the request to relinquish ETC status to purchase facilities or equipment and complete construction to be able to serve the relinquishing carrier's customers. *Id.*

⁹⁵See 47 U.S.C. § 251(h)(2).

⁹⁶See 47 U.S.C. § 251(g) (preserving equal access obligations applicable to local exchange carriers prior to the 1996 Act). See also 47 U.S.C. §§ 3(26), 251(b)(3). Section 3(26) of the Act excludes CMRS providers from the definition of "local exchange carrier," "except to the extent that the Commission finds that such service should be included in the definition of such term." If the Commission were to make such a finding, section 251(b)(3) requires provision of dialing parity, which is a major component of equal access. 47 U.S.C. § 251(b)(3).

⁹⁷See *Recommended Decision*, 19 FCC Rcd at 4266, para. 22.

⁹⁸See *infra* paras. 21-23.

certification and reporting requirements, an ETC must demonstrate that it has used universal service support to provide quality service throughout the designated area. In addition, most wireless carriers, the largest group of competitive ETCs that the Commission designates, are already operating systems within their licensed market areas, thereby demonstrating in practice their ability to provide such services. Since 1994, moreover, wireless licensees have purchased their licenses at auction, which evinces that they have sufficient resources to provide service.⁹⁹ After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service.¹⁰⁰ Therefore, we find additional financial requirements are unwarranted to demonstrate that an ETC applicant is capable of sustaining operations and supported services.¹⁰¹

38. We further disagree with commenters that argue that an ETC should be required to demonstrate that it has the financial capability to sustain operations and supported services if an incumbent LEC relinquishes its designation.¹⁰² As discussed *infra*, section 214(e)(4) of the Act already contemplates safeguards for protecting customers served by an ETC that relinquishes its designation.¹⁰³

39. In sum, we do not believe that additional requirements concerning financial qualifications are necessary when determining whether to designate an ETC applicant. We believe that existing ETC obligations adequately ensure financial stability. In the event that state commissions do consider financial qualification factors in their ETC designations, we encourage them to do so in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.¹⁰⁴

⁹⁹See Dobson Comments at 7-8.

¹⁰⁰The specific requirements vary according to service. For example, 30 MHz broadband PCS licensees must provide adequate service to 1/3 of the population within five years of being licensed and 2/3 of the population within 10 years of licensing. See 47 C.F.R. § 24.203(a). In the cellular service, any areas not built out within five years of licensing become "unserved areas" that may be licensed to another applicant. See 47 C.F.R. §§ 22.911, 22.947, 22.949. In other services, licensees may satisfy construction requirements by offering "substantial service" in their licensed area. See, e.g., 47 C.F.R. §§ 24.203(b) (substantial service as alternative to specific build-out requirements for 10 MHz broadband PCS licensees), 90.685 (substantial service as alternative to specific build-out requirements for Economic Area Specialized Mobile Radio licensees); 27.14(a) (substantial service requirement for Wireless Communications Services licensees). Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10843, at para. 111 (1997) (*WCS Report and Order*). In addition, the Commission considers whether a licensee offers substantial service in determining whether to grant a renewal expectancy. See, e.g., 47 C.F.R. §§ 22.940(a)(1) (cellular), 24.16 (PCS). The Commission has defined "substantial service" as "service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal." *Id.*

¹⁰¹See NTCA Comments at 16, and SBC Comments at 6-7. See also, WTA Comments, at 14 (WTA argues that prospective carriers seeking regulatory authorization have often employed "creative" methods for bolstering their financial representation).

¹⁰²See California Comments at 4, and USTA Comments at 8.

¹⁰³47 U.S.C. § 214(e)(4). See *infra* para. 36.

¹⁰⁴See *First Universal Service Report and Order*, 12 FCC Rcd at 8801-04, paras. 45-52.

B. Public Interest Determinations

40. Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.¹⁰⁵ The Commission also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act.¹⁰⁶ Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254.¹⁰⁷ The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service;¹⁰⁸ ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates;¹⁰⁹ and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.¹¹⁰ Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether the designation of an additional ETC is in the public interest.¹¹¹

41. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact-specific public interest analysis it has developed in prior orders.¹¹² First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.¹¹³ Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant

¹⁰⁵47 U.S.C. § 214(e)(2).

¹⁰⁶47 U.S.C. § 254(b)(7). Section 254 requires that support be distributed in a manner that is specific and predictable, and also requires that the Commission, in conjunction with the Joint Board, consider principles it determines "are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with this Act." 47 U.S.C. §§ 254(b)(1), (7).

¹⁰⁷"Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest." 47 U.S.C. § 214(e)(2).

¹⁰⁸47 U.S.C. § 254(b).

¹⁰⁹47 U.S.C. § 254(b)(1).

¹¹⁰47 U.S.C. § 254(b)(3). *See, e.g.*, Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418, PUC Docket No. 22289, SOAH Docket No. 473-00-1167, Order at 25 (Tex. Pub. Util. Comm'n Oct. 30, 2000).

¹¹¹For instance, the Alaska Commission considers the availability of new choices for customers; affordability; quality of service; service to unserved customers; comparison of benefits to public cost; and considerations of material harm. *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003).

¹¹²*See Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574-81, paras. 26-39; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-38, paras. 20-35.

¹¹³*See e.g.*, *Advantage Cellular ETC Designation Order*, at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, para. 22; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575-76, para. 28.

does not seek designation.¹¹⁴ Based on this analysis, the Commission will deny designation if it concludes that the potential for creamskimming is contrary to the public interest.¹¹⁵ The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews.

42. We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.¹¹⁶ In the *Virginia Cellular ETC Designation Order*, the Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.¹¹⁷ We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

43. We note that section 214 of the statute provides that, for areas served by a rural incumbent LEC, more than one ETC may be designated if doing so would serve the public interest.¹¹⁸ In addition, “[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest.”¹¹⁹ In contrast, section 214 provides that additional ETCs shall be designated in an area served by a non-rural incumbent LEC. Therefore, although we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in

¹¹⁴See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹¹⁵See *Advantage Cellular ETC Designation Order* at 24; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1580, para. 35.

¹¹⁶While the *Virginia Cellular ETC Designation Order* analysis did not require that the ETC applicant meet the same public interest standard for both rural and non-rural study areas, it found that if the applicant met the public interest standard for the rural study areas, that would be sufficient to satisfy the public interest test for non-rural designations. It deferred to this proceeding the broader question of whether applicants must always satisfy the same public interest requirements for rural and non-rural study areas. *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575, para. 27. See also *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21.

¹¹⁷See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575, para. 27. See also *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21. Prior to these orders, the Wireline Competition Bureau found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complied with the statutory eligibility obligations of section 214(e)(1) of the Act. See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

¹¹⁸47 U.S.C. §§ 214(e)(2), (6).

¹¹⁹*Id.*

the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.

1. Cost-Benefit Analysis

44. We conclude that we will continue to consider and balance the factors listed below as part of our overall analysis regarding whether the designation of an ETC will serve the public interest. In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.¹²⁰

- (1) *Consumer Choice*: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis.¹²¹ In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas.¹²² The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.¹²³
- (2) *Advantages and Disadvantages of Particular Service Offering*: The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas,¹²⁴ the possibility that an ETC designation will allow customers to be subject to fewer toll charges,¹²⁵ and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services.¹²⁶ The Commission also examines disadvantages such as dropped call rates and poor coverage.¹²⁷

¹²⁰See *Advantage Cellular ETC Designation Order* at para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431, para. 20; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574, para. 26.

¹²¹See *Advantage Cellular ETC Designation Order* at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

¹²²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²³See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

¹²⁴See *Advantage Cellular ETC Designation Order* at para. 19; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23.

¹²⁶See *Advantage Cellular ETC Designation Order* at para. 19.

¹²⁷See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 24; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 30.

45. In addition, we believe that the requirements we have established in this Report and Order for becoming an ETC will help ensure that each ETC designation will serve the public interest. For example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.¹²⁸

46. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations.¹²⁹ While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed.¹³⁰ The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

47. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest.¹³¹ These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation.¹³² We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this Report and Order, allow for an appropriate public interest determination.

2. Potential for Creamskimming Effects

48. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*.¹³³ As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the

¹²⁸ See *supra* paras. 21-23.

¹²⁹ See CenturyTel Comments at 11-12, GVNW Comments at 13, F. Williamson Comments at 18-20, ITTA Comments at 21-27, NASUCA Comments at 33-34.

¹³⁰ See *Recommended Decision*, 19 FCC Rcd. at 4274, para. 42.

¹³¹ CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³² CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³³ In this Order, the term "service area" is used in reference to both study and service areas. The 1996 Act provided that the term "service area" means the company's "study area" in areas served by a rural telephone company. See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8791-92, para. 25 (1997).

Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.¹³⁴

49. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.¹³⁵ The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service area.¹³⁶ By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.¹³⁷ Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas.¹³⁸ In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural

¹³⁴ 47 U.S.C. § 214(e)(5). Section 54.207 of the Commission's rules, which implements section 214(e)(5) of the Communications Act of 1934, as amended, provides that a rural telephone company's service area will be its study area "unless and until the Commission and the states, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." 47 C.F.R. § 54.207(b). Among other things, the Joint Board recommended that the state commissions and the Commission consider and protect against the potential for creamskimming when contemplating a request to redefine a service area. See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 97, 179-80 para. 172 (1996) (*1996 Recommended Decision*). In *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, the Commission applied to certain service area redefinition petitions the creamskimming analysis the Commission uses to decide ETC applications. *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹³⁵ See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹³⁶ See *1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172. The Commission recognizes that the type of service provided by a competitive ETC may force it to seek designation in a service area that is smaller than or different from the rural incumbent LEC's service area. For example, the Commission has recognized that the lowest cost portion of a rural service area may be the only portion of the service area that a wireless carrier is licensed to serve. See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 33; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6435, para. 27. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural service may have the same effects on the universal service fund and the rural incumbent LEC as creamskimming. Accordingly, the analysis should consider not whether the competitive ETC intends to creamskim, but whether the ETC applicant's proposed service area has the effect of creamskimming.

¹³⁷ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9454-55, para. 196, App. J (1997).

¹³⁸ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9399, para. 82 (1997).

incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (e.g., at the wire center level).¹³⁹

50. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.¹⁴⁰ For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve.¹⁴¹ Even if a carrier seeks to serve both high and low density wire centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.¹⁴²

51. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area.¹⁴³ Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level.¹⁴⁴ By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area.¹⁴⁵ By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas.¹⁴⁶ Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.¹⁴⁷ This problem may be

¹³⁹ See 47 C.F.R. § 54.315. As discussed *infra*, a rural incumbent LEC's wire center is the minimum geographic area for ETC designation. See *infra* paras. 77-78.

¹⁴⁰ See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578-79, para. 34.

¹⁴¹ See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35. In that case, the highest-density study area had a population density of 273 persons per square mile, while the average population density of the remaining wire centers in the study area was about 33 persons per square mile. *Id.*

¹⁴² See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6436-37, para. 31.

¹⁴³ See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁴ See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11300, para. 137 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), recon. pending; 47 C.F.R. § 54.315.

¹⁴⁵ See *id.*

¹⁴⁶ *Virginia Cellular ETC Designation Order*, FCC Rcd at 1580, para. 35. See also TDS Comments at 12.

¹⁴⁷ See *Recommended Decision*, 19 FCC Rcd at 4278-79, para. 54; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially.¹⁴⁸ Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.¹⁴⁹

52. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount.¹⁵⁰ Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.¹⁵¹

53. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present.¹⁵² As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis.¹⁵³ We believe that the factors indicated above provide states adequate guidance in determining whether an ETC application presents creamskimming concerns.

¹⁴⁸ *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁹ *See id.*

¹⁵⁰ *See* 47 C.F.R. §§ 54.309; 36.611 to 36.641. We note that rural incumbent LECs may also disaggregate support to the wire center level. *See* 47 C.F.R. § 54.315.

¹⁵¹ The non-rural mechanism determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide cost benchmark that is two standard deviations above the national average cost per line. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559, 22589, para. 49 (2003) (*Ninth Report and Order Remand Order*), appeal pending sub nom. *Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *Vermont Public Service Board v. FCC & USA*, D.C. Cir. No. 04-1015; and *SBC Communications Inc. v. FCC & USA*, D.C. Cir. No. 04-1018. Even in a non-rural study area where an incumbent LEC receives high-cost support, creamskimming concerns would not be present because support is targeted at the wire-center level based on relative cost, thereby calculating high-cost support on a more granular basis and significantly reducing the possibility that carriers would receive a windfall from support for that wire center. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20471, para. 70 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest*).

¹⁵² State and Rural Coalition Comments at 9 (recommending a bright-line test for creamskimming when an applicant seeks to serve only the highest-density wire centers in a rural study area).

¹⁵³ *See Highland Cellular ETC Designation Order*, at 19 FCC Rcd 6436-37, para. 31; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35.

3. Impact on the Fund

54. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive.¹⁵⁴ Indeed, given the size of the total high-cost fund — approximately \$3.8 billion a year — it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.¹⁵⁵ In addition, the Commission is considering in other proceedings, such as the *Rural Referral Proceeding*, how support is calculated for both rural incumbent LECs and ETCs.¹⁵⁶ We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission orders.

55. We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.

56. We decline, however, based on the record before us to adopt a specific national per-line support benchmark for designating ETCs. As the Joint Board noted, “[m]any factors mentioned by commenters as relevant to the public interest determination—such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment—may all affect the level of high-cost support received in an individual service area.”¹⁶² Many commenters have argued that a per-line benchmark that denies entry to competitive ETCs in high-cost areas may prevent consumers in high-cost areas from receiving the benefit of competitive service offerings.¹⁶⁵ Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country

¹⁵⁴ See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, n. 73; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1577, n. 96.

¹⁵⁵ See *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2005*, Appendix HC 1 (Universal Service Administrative Company, November 2, 2004); *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004*, Appendix HC 1 (Universal Service Administrative Company, August 2, 2004); *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004*, Appendix HC 1 (Universal Service Administrative Company, April 30, 2004); *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter of 2004*, Appendix HC 1 (Universal Service Administrative Company, January 30, 2004).

¹⁵⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*).

¹⁶² *Recommended Decision*, 19 FCC Rcd at 4274-75, para. 43.

¹⁶⁵ CTIA Comments at 13, Sprint Comments at 33, WTA Comments at 1, Oregon Commission Comments at 5.

access to services comparable to services in urban areas and ensuring competitive neutrality.¹⁶³ In addition, as a practical matter, we do not believe we currently have an adequate record to determine what specific benchmark or benchmark should be set.

57. For similar reasons, we also decline to adopt a proposal that would allow only one wireline ETC and one wireless ETC in each service area.¹⁵⁷ Such a proposal that limits the number of ETCs in each service area creates a practical problem of determining which wireless and wireline provider would be selected. We also reject the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area.¹⁵⁸ We believe that a more comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent. We also reject arguments that we should treat smaller wireless rural carriers differently than larger carriers.¹⁵⁹ We do not believe that subjecting smaller wireless carriers to an expedited ETC application process or a lower level of scrutiny would serve the public interest,¹⁶⁰ and we further believe that it may be contrary to the principle of competitive neutrality.

C. Permissive Guidelines for State ETC Designation Proceedings

58. We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

59. As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this Report and Order when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier,¹⁶¹ an

¹⁶³ See *First Universal Service Report and Order*, 12 FCC Red at 8801-02, paras. 46-48 (pursuant to section 254(b)(7), adopting the principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies).

¹⁵⁷ F. Williamson Comments at 10-11.

¹⁵⁸ Verizon Comments at 9-14.

¹⁵⁹ See Rural Telecommunications Associations Comments at 30-31.

¹⁶⁰ See Rural Telecommunications Associations Comments at 30-33, Attach. A.

¹⁶¹ See, e.g., *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996*, RCC Atlantic, Inc. d/b/a UniceL, Docket No. 5918 (Vt. Pub. Serv. Bd. June 26, 2003) (*Vermont UniceL ETC Order*).

area served by one or more rural carriers,¹⁶² or both.¹⁶³ A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

60. We also find that states that exercise jurisdiction over ETC proceedings should apply these requirements in a manner that will best promote the universal service goals found in section 254(b).¹⁶⁴ While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund. In addition, these guidelines are designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.¹⁶⁵

61. We decline to mandate that state commissions adopt our requirements for ETC designations.¹⁶⁶ Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.¹⁶⁷ We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law.¹⁶⁸ States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements.¹⁶⁹ Because the guidelines we establish in this Report and Order are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to

¹⁶²See, e.g., *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003) (*Alaska Digitel ETC Order*).

¹⁶³See 47 U.S.C. 214(e)(2) (noting that state commissions can designate both rural and non-rural carriers providing the carriers meet the requirements of the Act).

¹⁶⁴47 U.S.C. § 254(b).

¹⁶⁵See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

¹⁶⁶See *Recommended Decision*, 19 FCC Rcd at 4261, para. 10. See also ALLTEL Comments at 5, Bell South Comments at 4, Iowa Board Comments at 2, Nebraska Companies Comments at 2, Iowa Board Reply Comments at 2.

¹⁶⁷47 U.S.C. § 214(e)(2).

¹⁶⁸See 47 U.S.C. § 214(e)(2).

¹⁶⁹See *Recommended Decision*, 19 FCC Rcd at 4261, at para. 10.

make ETC designations.¹⁷⁰ We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1).¹⁷¹ Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.

62. We reject the argument that mandatory requirements are necessary to prevent waste, fraud, and abuse in the distribution of high-cost support.¹⁷² We note that safeguards already exist to protect against the misuse of high-cost support. For example, if a state commission believes that high-cost support is being used by an ETC in a manner that is inconsistent with section 254 of the Act, the state commission may decline to file an annual certification or may withdraw an ETC's designation, which would ensure that funds are no longer distributed to the ETC.¹⁷³

63. We also note that the Commission may institute an inquiry on its own motion to ensure that high-cost support is used "only for the provision, maintenance, and upgrading of facilities and services" for the areas in which ETCs are designated.¹⁷⁴ In addition, if an ETC designated by the Commission fails to fulfill the requirements of sections 214 and 254 of the Act, the Commission has the authority to revoke a carrier's ETC designation.¹⁷⁵ The Commission also may assess forfeitures for violations of Commission rules and orders.¹⁷⁶ Consequently, we find that adequate measures exist to prevent waste, fraud and abuse of high-cost support by ETCs. Nevertheless, the Commission will continue to monitor use of universal service funds by ETCs and develop rules as necessary to continue to ensure that funds are used in a manner consistent with section 254 of the Act.

64. Commenters further argue that mandatory requirements are necessary to prevent growth of the universal service fund.¹⁷⁷ As discussed above, the Joint Board is currently contemplating in the *Rural Referral Proceeding* how universal service support can be effectively targeted to rural incumbent

¹⁷⁰See *id.* (citing CTIA Comments at 10, Idaho Tel. Ass'n Comments at 12, Montana Telecomms. Ass'n Comments at 10, Nebraska Rural Indep. Cos. Comments at 27).

¹⁷¹See *TOPUC v. FCC*, 183 F.3d at 418. The Fifth Circuit Court determined that states may subject carriers designated as ETCs to eligibility requirements in addition to the eligibility requirements detailed in section 214(e)(1) of the Act. *Id.*

¹⁷²See ITTA Comments at 18. Because section 214(e)(2) of the Act gives primary responsibility to the states to designate ETCs, we reject comments that support guidelines that are binding on state commissions to counteract an alleged state bias in designating ETCs. See NASCUA Comments at 36, WTA Comments at 9, USTA Comments at 5-6.

¹⁷³See 47 C.F.R. §§ 54.313, 54.314.

¹⁷⁴47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁷⁵See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, at 14174, para. 15 (2000) (*Declaratory Ruling*), recon. pending. See also 47 U.S.C. § 254(e).

¹⁷⁶See 47 U.S.C. § 503(b).

¹⁷⁷See Alaska Telephone Comments at 3, ITTA Comments at 18, TDS Comments at 6, Montana ITS Reply Comments at 6.

LECs and ETCs serving high-cost areas, while protecting against excessive fund growth.¹⁷⁸ We believe that proceeding is a more appropriate forum for determining ways to limit fund growth.

D. Administrative Requirements for ETC Designation Proceedings

65. Consistent with USAC's request, we note that all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code.¹⁷⁹ In addition, in instances where follow-up filings or other conditions have been imposed before the ETC designation is final, the Commission will notify USAC when the conditions have been fulfilled.¹⁸⁰ We also encourage state commissions to follow these procedures in ETC orders they adopt. USAC contends, and we agree, that inclusion of this information in ETC designation orders will greatly facilitate USAC's data validation and other efforts to ensure that all carriers receive high-cost universal service support only in the areas in which they have been deemed eligible.¹⁸¹

66. In addition, for carriers that file ETC petitions with the Commission seeking designation on tribal lands, we establish procedures to ensure that the appropriate tribal governments and tribal regulatory authorities are notified and provided with an opportunity to engage in consultation with the Commission and to comment in the ETC designation proceeding.¹⁸² We find these procedures are consistent with the Commission's *Tribal Policy Statement*, released in June 2000, which commits the Commission "to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources."¹⁸³ Through consultation, the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments.¹⁸⁴

67. Specifically, the Commission requires that any applicant seeking ETC designation on tribal lands before the Commission provide copies of its petition to the affected tribal governments and tribal regulatory authorities at the time of filing.¹⁸⁵ In addition, the Commission will send the relevant public

¹⁷⁸ See *Rural Referral Order*, 19 FCC Rcd at 11538, para. 1.

¹⁷⁹ USAC Comments at 21.

¹⁸⁰ See *id.*

¹⁸¹ *Id.*

¹⁸² See NTTA Comments at 2; NNPC Reply Comments at 2. See also *Twelfth Report and Order*, 15 FCC Rcd at 12265, para. 115 (concluding that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service offered on tribal lands may petition the Commission for designation under section 214(e)(6) without first seeking designation from the state commission).

¹⁸³ See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4081 (2000) (*Tribal Policy Statement*).

¹⁸⁴ See NTTA Comments at 5-8; See also *Tribal Policy Statement* at 4.

¹⁸⁵ See NTTA Comments at 4.

notice seeking comment on those petitions to the affected tribal governments and tribal regulatory authorities by overnight express mail.¹⁸⁶ As with the other guidelines adopted herein, we encourage state commissions to follow these guidelines for ETC designation proceedings affecting tribal lands so that the appropriate tribal governments and tribal regulatory authorities are notified of any tribal ETC petitions, related comment cycles or other opportunities to consult with the state commission and participate in the specific ETC designation proceeding.¹⁸⁷

V. ANNUAL CERTIFICATION AND REPORTING REQUIREMENTS

68. Our rules currently require all ETCs to make an annual certification, on or before October 1, that universal service support will be used for its intended purposes.¹⁸⁸ As recommended by the Joint Board, we maintain and augment this requirement. Specifically, in order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this Report and Order, to submit annually certain information regarding its network and its use of universal service funds.¹⁸⁹ These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.¹⁹⁰ In addition, following the effective date of this Report and Order, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under section 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

69. Every ETC designated by the Commission must submit the following information on an annual basis:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an

¹⁸⁶See NTTA Comments at 4. See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for "rules of agency organization, procedure, or practice."

¹⁸⁷Although commenters request that the FCC impose mandatory requirements upon state commissions that exercise jurisdiction over ETC designations on tribal lands, we find state commissions are better suited to determine how to amend their ETC designation proceedings that involve tribal lands, in order to encourage consultation and participation by the affected tribal governments and tribal regulatory authorities.

¹⁸⁸47 C.F.R. §§ 54.313, 54.314.

¹⁸⁹These reporting requirements go beyond the current certification requirements of sections 54.313 and 54.314 of the Commission's rules. See 47 C.F.R. §§ 54.313, 54.314 (requiring annual certification that carrier is using high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."). See also 47 U.S.C. § 254(e).

¹⁹⁰See e.g., 47 C.F.R. § 54.313; 54.314.

explanation regarding any network improvement targets that have not been fulfilled.¹⁹¹ The information should be submitted at the wire center level;

- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).¹⁹² An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.¹⁹³ Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;¹⁹⁴
- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;¹⁹⁵
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;¹⁹⁶

¹⁹¹If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

¹⁹²See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

¹⁹³See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

¹⁹⁴We do not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, we believe that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, we instead require that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, we require these reports annually instead of shortly after the outage occurs.

¹⁹⁵See *supra* para. 22 for a description of the steps a carrier must take to provide service upon reasonable request.

¹⁹⁶*CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to (continued....)

- (6) certification that the ETC is able to function in emergency situations;¹⁹⁷
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

70. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas.¹⁹⁸ The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.¹⁹⁹

71. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.²⁰⁰ In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

72. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC.²⁰¹ Likewise, as the Joint

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consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

¹⁹⁷If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

¹⁹⁸In addition, the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁹⁹See 47 U.S.C. § 254(b)(3).

²⁰⁰See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1584-85, para. 46; *TOPUC v. FCC*, 183 F.3d at 417-18.

²⁰¹Rural Telecommunications Associations Comments at 48-50, US Cellular Comments at 20-23. In addition, carriers must submit their reports on a timely basis. In order to encourage timely filings, if a carrier files its annual reports late, it will not receive the entire amount of funding for the year. Instead, it will lose funding for the quarter of the funding year, consistent with how late it files. For example, if a carrier files its report on December 10, it will (continued...)

Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.²⁰²

VI. OTHER ISSUES

A. Service Area Redefinition Process

73. Section 214(e)(5) of the Act provides that states may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations and are eligible to receive universal service support.²⁰³ For an area served by a rural incumbent LEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."²⁰⁴ This process of changing the incumbent LEC's service area — and therefore the competitive ETC's service area — is known as the redefinition of a service area. The Commission adopted section 54.207(c) of its rules to implement this requirement.²⁰⁵

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lose funding for the first quarter of the next year. If the carrier does not file until the second quarter after the due date, for example, on February 4, it will not receive funding for the first two quarters.

²⁰²See *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15174, para. 15 (2000), recon. pending. In addition, state commissions that believe support is not being used for its intended purposes may refrain from certifying a competitive ETC, which in turn will suspend distribution of high-cost support to that ETC.

²⁰³See 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.")

²⁰⁴*Id.*

²⁰⁵Section 54.207(c) of the Commission's rules provides the mechanism by which a state commission may propose to redefine a rural incumbent LEC's service area for purposes of determining universal service obligations and support. See 47 C.F.R. §§ 54.207(a), (c). The Commission has authority to propose a service area redefinition on its own motion under section 54.207(d) of the Commission's rules, but such redefinition would not go into effect without the agreement of the relevant state commission. See 47 C.F.R. § 54.207(d). Under section 54.207(c)(1), a state may petition the Commission for a redefinition or a party may petition the Commission with the state's proposal to redefine. The petition must contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. See 47 C.F.R. § 54.207(c)(1). Section 54.207(c)(3) provides that the Commission may initiate a proceeding to consider a state commission's proposal to redefine the area served by a rural incumbent LEC within 90 days of the release date of a public notice. See 47 C.F.R. § 54.207(c)(3). If the Commission initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state commission and the Commission agree upon the definition of a rural carrier service area, in accordance with section 214(c)(5) of the Act. If the Commission does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the Commission and takes effect in accordance with state procedures. See 47 C.F.R. § 54.207(c)(3)(ii).

74. In its *Recommended Decision*, the Joint Board recommended that the Commission retain procedures established by the Commission in 1997 for the redefinition of rural service areas.²⁰⁶ We agree with that recommendation, and do not believe that changes are necessary at this time to our procedures for redefining rural service areas. We agree with the Joint Board that in redefining an incumbent LEC's service area so as to conform with the service area of a new ETC, the states and Commission should continue to work in concert to decide whether a different service area definition would better serve the public interest.²⁰⁷ First, under the current redefinition procedures for new ETCs, both state commissions and the Commission employ rigorous and fact-intensive analyses of requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC's ability to serve the entire study area, including the potential for creamskimming that may result from the redefinition.²⁰⁸ In addition, public comment is invited during every step in the process to ensure that the states and Commission are fully apprised of any impact the redefinition may have on the rural incumbent LEC.²⁰⁹

75. We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are designated in an incumbent LEC's service area.²¹⁰ In particular, we find that this proposal ignores the provision in section 214(e)(5) that allows redefinition to occur.²¹¹ In any event, the process described above adequately protects against harm to the rural incumbent LEC that may result from redefinition. We also reject the argument posed by certain commenters that contend that the Commission should require redefinition of all service areas for which competitive ETCs seek designation or have been designated instead of redefining service areas on a case-by-case basis.²¹² At this time, we believe that the existing case-specific analysis adequately protects the interests of incumbent LECs.

B. Pending Redefinition Petitions

76. The Commission has before it several petitions seeking redefinition of incumbent LEC service areas.²¹³ We grant these petitions as described below. These petitions, which were filed by

²⁰⁶See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

²⁰⁷See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

²⁰⁸See *supra* paras. 48-52. The Commission employs the same creamskimming analysis based on population density data used in the ETC designations for which it possesses jurisdiction for redefinition petitions. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1582, para. 42. See also *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

²⁰⁹See *Recommendation Decision*, 19 FCC Rcd at 4279, para. 55.

²¹⁰See USTA Comments at 12-13; Nebraska RICs Reply Comments at 13.

²¹¹47 U.S.C. §214(e)(5).

²¹²See Dobson Comments at 15; GCI Comments at 24; Rural Telecommunications Associations Comments at 23; US Cellular Comments at 40; Cox Reply Comments at 3-5.

²¹³See Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan, filed December 17, 2003 (ALLTEL-Michigan Petition); Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin, filed November 21, 2003 (ALLTEL-Wisconsin Petition); Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company, filed August 12, 2002 (Colorado PUC-Delta Petition); (continued...)

either a competitive ETC or a state commission, fall into three categories. One category involves petitions seeking to redefine a rural incumbent LEC's service area into multiple smaller service areas at the wire center level.²¹⁴ The second category of petitions involves ETCs that were designated for service areas that included portions of the incumbent LEC's wire centers instead of entire wire centers. These petitions seek to redefine the rural incumbent LEC service area for the same areas, including some partial wire centers, such that the ETC's designated service area and the incumbent LEC's redefined service area would be the same.²¹⁵ The third category involves two petitions that seek to redefine the incumbent LEC's service area into multiple smaller service areas at the wire center level.²¹⁶

However, the state commissions had designated these carriers' service areas to include some areas smaller than the incumbent LEC's wire centers. As a result, the designated service areas and the proposed redefined areas are not the same.

77. Since these petitions were filed,²¹⁷ the Commission released the *Highland Cellular ETC Designation Order*, in which the Commission rejected Highland's petition for designation in only a portion of a rural incumbent LEC's service area.²¹⁸ Specifically, Highland requested that it be allowed to serve parts of the rural incumbent LEC's wire centers. We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest.²¹⁹ We also found that the competitive ETC applicant must commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural

(Continued from previous page)

Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, a Rural Telephone Company, filed May 30, 2003 (Colorado PUC-Wiggins Petition), Petition of the Minnesota Public Utilities Commission for FCC Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies, filed August 7, 2003 (Minnesota PUC Petition); Petition by RCC Minnesota, Inc., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Maine, filed June 24, 2003 (RCC Minnesota-State of Maine Petition); American Cellular Corporation Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. § 54.207(c), filed July 16, 2004 (American Cellular Petition); Petition of CTC Telecom, Inc. for Redefinition of the Service Area of CenturyTel of the Midwest-Wisconsin, filed June 30, 2004 (CTC Telecom-Wisconsin); Petition by RCC Minnesota, Inc. and Wireless Alliance, LLC., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Minnesota, filed August 27, 2004 (RCC Minnesota-State of Minnesota Petition).

²¹⁴ See ALLTEL-Michigan Petition; ALLTEL-Wisconsin Petition; CTC Telecom-Wisconsin; See Colorado PUC-Delta Petition; Colorado PUC-Wiggins Petition.

²¹⁵ See American Cellular Petition; Minnesota PUC Petition.

²¹⁶ See RCC Minnesota-State of Maine Petition; RCC Minnesota-State of Minnesota Petition.

²¹⁷ Three of the pending petitions seeking redefinition were submitted subsequent to the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions. Specifically, the *CTC Telecom-Wisconsin* was filed on June 30, 2004, the *American Cellular Petition* was filed on July 16, 2004, and the *RCC Minnesota-State of Minnesota Petition* was filed on August 27, 2004. We believe that because these proceedings were being conducted as our *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions were being released, it was difficult for the petitioners and their respective state commissions to be fully aware of the requirements of our decisions.

²¹⁸ See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

²¹⁹ See *id.*

carrier wire centers typically correspond with county or town boundary lines.²²⁰ We continue to believe, as we stated in the *Highland Cellular ETC Designation Order*, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.²²¹

78. In this Report and Order, we conclude that the same principles that we apply to ETC designation requests also apply when we are considering whether to grant a petition for redefinition.²²² We recognize, however, that because of the timing of the underlying state ETC designation decisions, many of these pending petitions could not be in full compliance with the factors considered in the *Highland Cellular ETC Designation Order*. For example, some petitions follow the ETC designation and redefinition framework that was applied by the Commission prior to the *Highland Cellular ETC Designation Order*.²²³ Other petitions have not presented a creamskimming analysis that examines population density data to determine whether the ETC is seeking designation only in high-density wire centers of the affected study area, which could undercut the rural incumbent LEC's ability to provide service throughout its entire study area, as detailed in the *Virginia Cellular ETC Designation Order*.²²⁴ As a result, because the Commission had not fully elaborated on its creamskimming analysis based on population density or adopted the policy that competitive LEC service areas should not be defined below the wire center level, these state commissions granting ETC designation and seeking redefinition could not have applied the requirements set forth in the *Highland Cellular ETC Designation Order*.

79. Because the states complied with applicable federal rules and guidelines at the time the redefinition petitions were filed, we decline to upset those determinations. We therefore find that granting these redefinition petitions would serve the public interest. Accordingly, we grant these redefinition petitions pursuant to section 214(e)(5) of the Act.²²⁵ On a going forward basis, however, we intend to rigorously apply the standards set forth in the *Highland Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order*.

C. Identification of Wireless Customer Locations

80. *Background.* In the *Rural Task Force Order*, the Commission required wireless competitive ETCs to use the customer's billing address to identify the location of a mobile wireless customer.²²⁶ The Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes.²²⁷ The Commission recognized, however, that the use of a customer's billing address might allow carriers to identify a customer in a high-cost zone when service is primarily

²²⁰See *id.*

²²¹*Id.*

²²²See *supra* para. 74.

²²³See *RCC Alabama ETC Designation Order*, 17 FCC Rcd at 23547-49, paras. 37-42.

²²⁴See e.g., ALLTEL-Wisconsin Petition; RCC Minnesota-State of Maine Petition. See *supra* paras. 49-51.

²²⁵47 U.S.C. § 214(e)(5).

²²⁶*Rural Task Force Order*, 16 FCC Rcd at 11314, para. 180.

²²⁷*Rural Task Force Order*, 16 FCC Rcd at 11314-15, paras. 180-181.

taken in a low-cost zone for the purpose of receiving a higher level of per-line support.²²⁸ The Commission stated that it would take appropriate enforcement action if an ETC were to engage in such arbitrage, and that it might revisit the use of a customer's billing address as more mobile wireless carriers become eligible to receive support.²²⁹

81. In the *Rural Task Force Order*, the Commission declined to use the Mobile Telecommunications Sourcing Act (MTSA) definition of "place of primary use" to determine a mobile wireless customer's location.²³⁰ In declining to adopt the MTSA definition to determine wireless customer location for universal service purposes, the Commission expressed concern that states might not have established databases pursuant to the Act, and that use of the MTSA definition might impose undue administrative burdens on mobile wireless ETCs.²³¹ In its *Recommended Decision*, the Joint Board determined that the Commission should further develop the record on defining mobile wireless customer location in terms of place of primary use, as defined by the MTSA, for universal service purposes.²³² In particular, the Joint Board concluded that the place of primary use represents the preferred definition of wireless customer location for universal service purposes because it reflects whether a customer actually uses mobile wireless phone service in a high-cost area. The Joint Board therefore recommended that the Commission develop the record on: (1) whether the MTSA's place of primary use approach is an efficient method for determining the location of mobile service lines; (2) whether a "place of primary use" definition should be optional or mandatory; (3) whether a definition based on place of primary use would alleviate concerns about fraudulent billing addresses, and; (4) if the place of primary use definition is adopted, how it should work in conjunction with virtual NXX.²³³

82. *Discussion.* We are not convinced that there is a significant difference between our current definition, which relies on a customer's billing address, and the MTSA definition, which relies on the customer's residential street address or primary business street address. In a large percentage of cases, the two will be the same. In both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider.²³⁴ If anything, customers have a greater incentive to provide false or misleading information under the MTSA, which will govern applicable taxes imposed on the customer. Further, as noted in the *Rural Task Force Order*, if a competitive ETC misuses a customer's billing

²²⁸ *Rural Task Force Order*, 16 FCC Rcd at 11315-16, para. 183.

²²⁹ *Id.*

²³⁰ *Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182. The MTSA, which was intended to address the difficulty in identifying the site of a mobile telephone call for transactional tax purposes, sources all wireless calls and mobile telecommunications services to the "place of primary use." Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116-126. In the MTSA, the place of primary use is defined as "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be - (A) the residential street address or the primary business street address of the customer; and (B) within the licensed service area of the [customer's mobile telecommunications service provider]." *Id.*

²³¹ *Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182.

²³² *See Recommended Decision*, 19 FCC Rcd at 4280, para. 57.

²³³ *Recommended Decision*, 19 FCC Rcd at 4300, para. 103. NXX refers to the first three digits of a seven digit telephone number. Virtual NXX is a service where carriers assign an NXX to a customer who is physically not located in the exchange where the NXX is rate centered.

²³⁴ 4 U.S.C. § 122(a)(1) (service providers may rely on the address provided by the customer).

address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the purpose of receiving a higher level of per-line support, the Commission may take appropriate enforcement action.²³⁵ We further note that, to date, we are not aware of any carriers filing petitions before the Commission contending that a wireless ETC is misusing customer billing addresses for arbitrage purposes.

83. As a result, we decline to change our method for identifying the location of mobile wireless customers. We, therefore, do not adopt the place of primary use definition at this time. Moreover, we note that few commenters provided responses to the specific questions from the Joint Board.²³⁶ The Iowa Utilities Board, one of the few commenters responding to the Joint Board's questions, submitted an analysis concerning the billing address methodology that found that only a small number of customers have billing addresses in locations other than where service is located.²³⁷ Given the limited data we currently have, we see no reason to modify our method of determining wireless customer locations.²³⁸

D. Accurate, Legible, and Consistent Maps

84. *Background.* Under the Commission's rules, a rural incumbent LEC electing to disaggregate and target high-cost support must submit to USAC "maps which precisely identify the boundaries of the designated disaggregation zones of support within the incumbent LEC's study area."²³⁹ In the *Rural Task Force Order*, the Commission explained that "the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner."²⁴⁰ The Commission further stated that, "in order to ensure portability and predictability in the delivery of support," it would require rural incumbent LECs to "submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified."²⁴¹ USAC was directed to make those maps available for public inspection by competitors and other interested parties.²⁴² Some commenters indicate that the maps filed by rural incumbent LECs pursuant to section

²³⁵See *Seventh Report and Order*, 14 FCC Rcd at 8115-16 para. 78 (noting the availability of the formal complaint process under section 208 of the Act if a State or other party believes a carrier has mis-applied its high-cost support in a manner that violates the Communications Act or Commission rules). See also *Ninth Report and Order*, 14 FCC Rcd at 20488, para. 110.

²³⁶CenturyTel states that the billing address method and primary use standard proposed by the Joint Board are not sufficient for determining wireless ETC lines in a service area. See CenturyTel Comments at 10-11. ITTA and Sprint support the Joint Board's proposal that wireless customer location should be the place of primary use. See ITTA Comments at 28, Sprint Comments at 35.

²³⁷Iowa Board Comments at 8-9. Centennial also stated that no evidence suggests the current method results in support being distributed improperly. Centennial Comments at 17.

²³⁸For similar reasons, we see no need to adopt CenturyTel's proposal to provide support to wireless ETC customers where usage primarily occurs in high-cost areas. See CenturyTel Comments at 10-11. Specifically, because we do not distribute high-cost support based on an ETC's customer's usage, we do not believe that we should look into wireless ETC customers' usage to determine support levels.

²³⁹47 C.F.R. § 54.315(f)(4).

²⁴⁰*Rural Task Force Order*, 16 FCC Rcd at 11307-08, para. 161.

²⁴¹*Id.*

²⁴²*Id.*

54.315(f)(1) and the information available through USAC are of varying quality and utility.²⁴³ Others suggest that improved quality and reliability of maps submitted by incumbent LECs would allow for better targeting of support.²⁴⁴

85. In response to the concerns raised by commenters, the Joint Board recommended that the Commission direct USAC to develop standards for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules in a uniform, electronic format. The Joint Board contended that the development of such standards would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC and that, as the universal service administrator, USAC is the appropriate entity to develop such standards.²⁴⁵

86. *Discussion.* We agree with the Joint Board and commenters and find that accurate, legible and consistent maps would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC.²⁴⁶ Among other things, accurate and legible maps will assist in the ETC designation process and ensure that high-cost support is targeted to the appropriate service areas. Accordingly, we direct USAC, in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules.

E. Support to Newly Designated ETCs

87. *Background.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."²⁴⁷ Once a carrier is designated as an ETC, additional requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. In particular, section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."²⁴⁸

88. To implement this statutory provision, the Commission adopted an annual certification requirement. Specifically, sections 54.313 and 54.314 of the Commission's rules provide that state commissions must file an annual certification with USAC and with the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."²⁴⁹ In instances

²⁴³ See, e.g., US Cellular Comments at 17-18; Rural Indep. Competitive Alliance Comments at 27.

²⁴⁴ See *Recommended Decision*, 19 FCC Rcd at 4300, n. 290 ("What will improve the ability to target subscribers is an FCC requirement that incumbent LECs who disaggregate support submit accurate and legible cost zone maps in a consistent electronic format so that competitive ETCs are able to easily determine the appropriate cost zones for customers." (quoting Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Comments at 26)).

²⁴⁵ See *Recommended Decision*, 19 FCC Rcd at 4301, para. 105.

²⁴⁶ Dobson Comments at 31; Iowa Board Comments at 9-10.

²⁴⁷ 47 U.S.C. § 254(e).

²⁴⁸ 47 U.S.C. § 254(e).

²⁴⁹ 47 C.F.R. §§ 54.313, 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission's rules.

where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and to USAC that federal high-cost support will be used in a manner consistent with section 254(e).²⁵⁰ Sections 54.313 and 54.314 also provide that certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.²⁵¹ If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.²⁵² The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and to calculate estimated high-cost demand amounts for submission to the Commission.²⁵³

89. Under the Commission's current certification rules, the timing of a carrier's ETC designation may cause it to miss a certification filing deadline. As a result, a recently designated ETC's support may not begin to be disbursed until well after the ETC's designation date. For example, if a carrier is designated as an ETC on December 20, and the state commission with jurisdiction over the carrier files a certification on behalf of the ETC on January 15, that carrier will not begin to receive support until the third quarter of that year — more than six months after the carrier was designated an ETC. Therefore, although the Commission's rules provide a mechanism for certifications to be filed on a quarterly basis, payment of high-cost support for recently designated ETCs under this schedule may be delayed until well after the initial certification is made. Consequently, newly designated ETCs that have missed the Commission's certification filing deadlines due to the timing of their ETC designation date have been granted waivers of the certification filing deadlines.²⁵⁴

90. Under section 54.307(d) of the Commission's rules, as a prerequisite for universal service high-cost support, ETCs serving both rural and non-rural service areas must also file the number of

²⁵⁰ See *Rural Task Force Order*, 16 FCC Rcd at 11318, para. 189; 47 C.F.R. § 54.314(b).

²⁵¹ 47 C.F.R. § 54.314(d)(1).

²⁵² See 47 C.F.R. § 54.314(d).

²⁵³ See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Two months prior to the beginning of each quarter, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC needs to know no later than October 1 which carriers have been certified under the Commission's rules. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

²⁵⁴ See, e.g., *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Declaratory Ruling, CC Docket No. 96-45, 18 FCC Rcd 14689, 14691, para. 6 (Wireline Compet. Bur., Telecom. Access Policy Div. rel. July 18, 2003) (*Western Wireless Order*).

working loops and other related data for the customers they serve in the incumbent's service area.²⁵⁵ To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, the Commission requires that ETCs submit such line count data on a quarterly basis.²⁵⁶ Therefore, under the quarterly schedule established by the Commission, line count data are due on July 31, September 30, December 30, and March 30 of each year.²⁵⁷ Consistent with section 54.307(c) of the Commission's rules, under its administration of the high-cost program, USAC bases its quarterly support payments on these quarterly line count data submissions. For ETCs designated in areas served by rural incumbent LECs, line count data submitted on March 30 are used to target support for the third and fourth quarters of each year, line count data filed on September 30 are used to target support for the first quarter of the following year, and line count data filed on December 30 are used to target support for the second quarter of the following year. For ETCs designated in areas served by non-rural incumbent LECs, line counts filed on March 30 are used for third quarter support, line counts filed on July 31 are used for fourth quarter support, line counts filed on September 30 are used for first quarter support, and line counts filed on December 30 are used for second quarter support.²⁵⁸

91. Under the filing schedules described above, carriers that receive a late ETC designation may miss quarterly filing deadlines that could affect USAC's cost estimates for the relevant quarter. Also, an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support. In light of the delay in support that can be caused by ETC designations occurring after line count certification filing deadlines, we sought comment in the *ETC Designation NPRM* on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.²⁵⁹

92. *Discussion.* We conclude that in order to provide universal service support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.²⁶⁰ As suggested by commenters, including USAC, revising the certification and line count deadline rules will enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date. Additionally, this modification will eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis. At the same time, for administrative efficiency and predictability, we must impose some

²⁵⁵ 47 C.F.R. § 54.307(b).

²⁵⁶ 47 C.F.R. § 54.307; see *Rural Task Force Order*, 16 FCC Rcd at 11298, para. 134; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Order on Reconsideration, 15 FCC Rcd 12070, 12078, para. 18 (2000) (*Twentieth Order on Reconsideration*).

²⁵⁷ 47 C.F.R. § 54.307(c). Specifically, section 54.307 states, "(c) [a] competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year; (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year; (3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year; (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year."

²⁵⁸ See *Twentieth Order on Reconsideration*, 15 FCC Rcd at 12078, para. 17, n. 25.

²⁵⁹ See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5. See also 47 C.F.R. §§ 54.307, 54.313, 54.314.

²⁶⁰ See Appendix A for the revised rules.

time limits so that USAC can accurately calculate total high-cost support payments. Therefore, a newly-designated ETC's certification and line-count data must be filed within 60 days of its initial ETC designation from the state commission or Commission. If the newly designated ETC does not file within 60 days of the carrier's ETC designation date, the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis. We note that although USAC supports this revision, it has indicated that such funding should not flow to a newly designated ETC until its line count data are included in USAC's quarterly demand projections.²⁶¹ In order to avoid any administrative burdens associated with processing payments to a newly designated ETC, we agree that USAC shall distribute support only after the required line count data are available in USAC's quarterly demand projections.²⁶² As a result, unless a carrier has filed its data with USAC in advance of its ETC designation date, a carrier might have to wait an additional quarter before it begins receiving support.

F. Accepting Untimely Filed Certifications For Interstate Access Support.

93. *Background.* Section 54.809(c) of the Commission's rules states that in order for an ETC to receive Interstate Access Support (IAS), the ETC must file an annual certification on the date that it first files line count information and thereafter on June 30 of each year.²⁶³ As a result, the current rule prohibits an otherwise eligible carrier from receiving IAS for as much as a year if it misses the annual certification deadline. In the *MAG Order*, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support (ICLS) would not be eligible for support until the second calendar quarter after the certification is filed.²⁶⁴ For example, if a carrier untimely files its required annual June 30 certification on July 15, it will be eligible to receive ICLS support beginning January 1 of the following year. Therefore, the *MAG Order* establishes a supplemental certified filing process that prevents an ETC from losing ICLS for an entire year if it misses the June 30 certification deadline.²⁶⁵ In the *ETC Designation NPRM*, the Commission proposed adopting a similar supplemental process for accepting untimely certifications for the receipt of IAS.²⁶⁶

94. *Discussion.* We adopt the proposal in the *ETC Designation NPRM* that establishes a procedure for accepting untimely filed certifications for IAS. We conclude that allowing an ETC that

²⁶¹ See USAC Comments at 19.

²⁶² See e.g., *Federal-State Joint Board on Universal Service, Grande Communications, Inc.*, Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15584, para. 9, n.34 (2004) (establishing a process for USAC to disburse funds retroactively to an ETC's designation date).

²⁶³ 47 C.F.R. § 54.809(c). IAS helps offset interstate access charges for price-cap carriers. 47 C.F.R. §§ 54.800, *et seq.* Each competitive ETC that provides supported services within the study area of a price-cap local exchange carrier receives IAS for each line that it serves within that study area. 47 C.F.R. § 54.807(a).

²⁶⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket No. 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613, 19687-88, para. 176 (2001) (MAG Order); 47 C.F.R. § 54.904(d).*

²⁶⁵ *MAG Order*, 16 FCC Rcd at 19687-88, para. 176.

²⁶⁶ See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5.

misses the June 30 certification deadline to receive IAS support following the filing of the untimely certification will not unduly harm a carrier that files an annual certification late and will eliminate the need for a carrier to seek a waiver of the filing certification deadlines rules.²⁶⁷ At the same time, by not allowing a carrier to receive IAS support for the entire year, the carrier still has the incentive to file the certification on a timely basis in order to not interrupt its receipt of IAS support. We, therefore, adopt a quarterly certification schedule to accommodate late filings. Specifically, a price cap LEC or competitive ETC that misses the June 30 annual IAS certification deadline shall receive support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2) carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

VII. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

95. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*, set forth at Appendix C.

B. Congressional Review Act

96. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress pursuant to the Congressional Review Act.²⁶⁸ In addition, the Commission will send a copy of the *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the *Federal Register*.²⁶⁹

C. Paperwork Reduction Act

97. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

D. Filing Procedures

98. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²⁷⁰ interested parties may file comments not later than 60 days after publication of this *Report and Order* in the Federal Register and may file reply comments not later than 90 days after publication of this Report and Order in the Federal Register. In order to facilitate review of comments and reply comments, parties should include

²⁶⁷See Appendix A for the revised rule.

²⁶⁸See 5 U.S.C. § 801(a)(1)(A).

²⁶⁹See 5 U.S.C. § 604(b).

²⁷⁰47 C.F.R. §§ 1.415, 1.419.

the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁷¹

99. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at www.fcc.gov/e-file/email.html.

100. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

101. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method...	It should be addressed for delivery to...
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 th Street, SW Washington, DC 20554

102. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The

²⁷¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Red 11322, 11326 (1998).

diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02-60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger).

103. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

104. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on this *Report and Order*, i.e., on or before 60 days after publication of this *Report and Order* in the Federal Register. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before 60 days after publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jbherman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JThornton@omb.eop.gov.

105. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

E. Further Information

106. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This Report and Order can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/universalservice/highcost>.

107. For further information, contact Gina Spade or Thomas Buckley at (202) 418-7400 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VIII. ORDERING CLAUSES

108. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 214, 254, and 403, this *Report and Order* IS ADOPTED.

109. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in the attached Appendix A, effective thirty (30) days after the publication of this *Report and Order* in the Federal Register, except that the requirements subject to the Paperwork

Reduction Act are not effective until approved by Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the effective date of the requirements.

110. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

111. IT IS FURTHER ORDERED that the Universal Service Administrative Company shall to develop standards for the submission of any maps that eligible telecommunications carriers are required to submit to the Universal Service Administrative Company under the Commission's rules, to the extent discussed herein.

112. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on August 12, 2002, IS GRANTED, to the extent discussed herein.

113. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on May 30, 2003, IS GRANTED, to the extent discussed herein.

114. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc, on June 24, 2003, IS GRANTED, to the extent discussed herein.

115. IT IS FURTHER ORDERED that the petition for redefinition filed by the Minnesota Public Utilities Commission, on August 7, 2003, IS GRANTED, to the extent discussed herein.

116. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on November 21, 2003, IS GRANTED, to the extent discussed herein.

117. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on December 17, 2003, IS GRANTED, to the extent discussed herein.

118. IT IS FURTHER ORDERED that the petition for redefinition filed by CTC Telecom, Inc., on June 30, 2004, IS GRANTED, to the extent discussed herein.

119. IT IS FURTHER ORDERED that the petition for redefinition filed by American Cellular Corporation, on July 16, 2004, IS GRANTED, to the extent discussed herein.

120. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc. and Wireless Alliance, LLC, on August 27, 2004, IS GRANTED, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE**Subpart C – Carriers Eligible for Universal Service Support**

1. Section 54.202 is added to subpart C to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) On or after the effective date of these rules, in order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and

(B) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

- (2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- (3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determine that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

2. Section 54.209 is added to subpart C to read as follows:

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

- (1) a progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;
- (2) detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the

geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (3) the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(A);
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that it is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the carrier is able to function in emergency situations as set forth in §54.201(a)(2);
- (7) certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

- (1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.
- (2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.
- (3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

3. Section 54.307 is amended by adding paragraph (d) to subpart D to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a)-(c) * * * [unchanged]

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c).

4. Section 54.313 is amended by adding paragraph (d)(3)(vi) to subpart D to read as follows:

§ 54.313 State certification of support for non-rural carriers.

(a)-(d)(3)(v) * * * [unchanged]

(vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

5. Section 54.314 is amended by adding paragraph (d)(6) to subpart D to read as follows:

§ 54.314 State certification of support for rural carriers.

(a)-(d)(5) * * * [unchanged]

(6) (vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§ 54.301, 54.305, or 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

6. Section 54.809 is amended by adding the last sentence to paragraph (c) to subpart D to read as follows:

§ 54.809 Carrier certification.

(a)-(b) * * * [unchanged]

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

- (1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.
- (2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.
- (3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

APPENDIX B

PARTIES FILING COMMENTS IN *ETC DESIGNATION*
*FRAMEWORK PROCEEDING*Comments:

<u>Commenter</u>	<u>Abbreviation</u>
Alaska Regulatory Commission	RCA
Alaska Telephone Association	Alaska Telephone
ALLTEL Corporation	ALLTEL
American Congress on Surveying and Mapping	ACSM
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
Beacon Telecommunications Advisors, LLC	Beacon
BellSouth Corporation	BellSouth
People of the State of California and the California Public Utilities Commission	California
CC Communications	
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel
Coalition of State Telecommunications Associations and Rural Telephone Companies	State and Rural Coalition
California Telephone Association Small Company Committee	
Colorado Telecommunications Association	
Independent Telephone Companies of Vermont	
Indiana Exchange Carrier Association	
New Hampshire Telephone Association	
Oklahoma Rural Telephone Coalition	
Oregon Telecommunications Association	
Telephone Association of Maine	
Washington Independent Telephone Association	
ILEC Division of the Wisconsin State Telecommunications Association	
Commnet Wireless, LLC	Commnet
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Dobson Cellular Systems, Inc.	Dobson
Fred Williamson and Associates, Inc.	F. Williamson
General Communication, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Hopi Telecommunications, Inc.	Hopi Telecommunications
Independent Telephone & Telecommunications Alliance	ITTA
Iowa Utilities Board	Iowa Board
John Staurulakis, Inc.	JSI
Mid-Sized Carrier Coalition	Mid-Sized Carrier Coalition
Innovative Telephone	Innovative
Iowa Telecommunications and	

Valor Telecommunications of Texas, L.P.	Valor
Missouri Public Service Commission	MoPSC
Montana Independent Telecommunications Systems	Montana ITS
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Association	NTCA
National Tribal Telecommunications Association	NTTA
Nebraska Rural Independent Companies	Nebraska RICs
New York State Department of Public Service	NYDPS
Nextel Communications, Inc.	Nextel
Nextel Partners, Inc.	
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Rural Independent Competitive Alliance	RICA
Rural Telecommunications Group	RTG
Oregon-Idaho Utilities and Humboldt Telephone Company	OIU HTC
Public Utility Commission of Oregon	Oregon Commission
PetroCom License Corporation	PetroCom
Puerto Rico Telephone Company	PRT
Qwest Communications International	Qwest
Rural Carrier Group	
Rural Cellular Association and The Alliance of Rural CMRS Carriers	RCA
SBC Communications Inc.	SBC
South Dakota Telecommunications Association	SDTA
Townes Telecommunications, Inc.	Townes
Sprint Corporation	Sprint
TCA, Inc. – Telecom Consulting Associates	TCA
TDS Telecommunications Corporation	TDS
Telscape Communications, Inc.	Telscape
United States Cellular Corporation	US Cellular
United States Telecom Association	USTA
Universal Service Administrative Company	USAC
Verizon telephone companies	Verizon
Wireless Division of the Wisconsin State Telecommunications Association	Wireless Division
Western Telecommunications Alliance	WTA
Western Wireless Corporation	Western Wireless

Reply Comments:

Ad Hoc Telecommunications Users Committee	Ad Hoc
ALLTEL Corporation	ALLTEL
AT&T Corp.	AT&T
Cellular Telecommunications & Internet Association	CTIA
Centennial Communications Corp.	Centennial
CenturyTel, Inc.	CenturyTel

Coalition of State Telecommunications Associations and Rural Telephone Companies	State and Rural Coalition
Corr Wireless Communications, LLC	Corr Wireless
Cox Communications, Inc.	Cox
Dobson Cellular Systems	Dobson
Fred Williamson and Associates, Inc.	F. Williamson
General Communications, Inc.	GCI
GVNW Consulting, Inc.	GVNW
Iowa Utilities Board	Iowa Board
Mid-Size Carrier Coalition	
Innovative Telephone	(Vitelco)
Iowa Telecommunications Services, Inc.	(Iowa Telecom)
Valor Telecommunications of Texas, L.P.	(Valor)
Montana Independent Telecommunications System	Montana ITS
Montana Public Service Commission	MPSC
Missouri Public Service Commission	MOPSC
National Association of State Utility Consumer Advocates	NASUCA
National Exchange Carrier Association, Inc.	NECA
National Telecommunications Cooperative Association	NTCA
Native Networking Policy Center	NNPC
Nebraska Rural Independent Companies	Nebraska RICs
Nextel Communications, Inc.	NEXTEL
Office of Advocacy of the U.S. Small Business Administration	Advocacy
Puerto Rico Telephone Company	PRT
Rural Carriers	
Rural Cellular Association and Alliance of Rural CMRS Carriers	RCA-ARC
Rural Telecommunications Associations	Associations
Sprint Corporation	Sprint
Texas Statewide Telephone Cooperative, Inc.	TSTCI
United States Cellular Corporation	US Cellular
United States Telecom Association	USTA
Universal Service Administrative Company	USAC
Verizon Verizon	
Western Telecommunications Alliance	WTA
Western Wireless Corporation	Western Wireless
Wyoming Office of Consumer Advocate	Wyoming OCA

APPENDIX C: FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

(Report and Order)

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁷² an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking to which this *Report and Order* responds.²⁷³ The Commission sought written public comment on the Federal-State Joint Board's (Joint Board) recommendations in the *Recommended Decision*, including comment on the IRFA incorporated in that proceeding.²⁷⁴ The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²⁷⁵

A. Need for, and Objective of, this *Report and Order*

2. This *Report and Order* addresses the minimum requirements that a telecommunications carrier must meet in order to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support.²⁷⁶ Specifically, consistent with the recommendations of the Joint Board, this *Report and Order* adopts additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).²⁷⁷ In addition, for states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, as recommended by the Joint Board, this *Report and Order* encourages such state commissions to consider these requirements when examining whether an ETC should be designated.²⁷⁸ The application of these additional requirements by the Commission and state commissions should allow for a more predictable ETC designation process.²⁷⁹ In addition, because the additional requirements in this *Report and Order* create a more rigorous ETC designation process, their application by the Commission and state commissions will support the long-term sustainability of the universal service fund.²⁸⁰

3. In considering whether carriers have satisfied their burden of proof necessary for ETC designation, this *Report and Order* now requires that applicants: (1) provide five-year plans

²⁷² See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁷³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) (*ETC Designation Framework NPRM*).

²⁷⁴ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Recommended Decision*).

²⁷⁵ See 5 U.S.C. § 604.

²⁷⁶ See *supra* paras. 17-72.

²⁷⁷ See *supra* paras. 17-39.

²⁷⁸ See *supra* paras. 58-60.

²⁷⁹ See *supra* para. 1.

²⁸⁰ See *supra* para. 15.

demonstrating how high-cost universal service support will be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout their proposed designated service areas; (2) demonstrate their ability to remain functional in emergency situations; (3) abide by service quality standards, such as the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; (4) offer local usage plans comparable to those offered by the incumbent LEC in the areas for which they seek designation; and (5) acknowledge that the Commission may require them to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.²⁸¹ In addition, these additional requirements are made applicable to all ETCs previously designated by the Commission and therefore, such ETCs are required to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006.²⁸² This *Report and Order*, however, does not adopt the Joint Board's recommendation to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because the Commission concludes the objective of these criterion will be achieved through the other requirements adopted in this *Report and Order*.²⁸³

4. In this *Report and Order*, the Commission also sets forth its analytical framework for determining whether or not the public interest would be served by an applicant's designation as an ETC. The Commission finds that, under the statute, an applicant should only be designated as an ETC where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. The Commission clarifies that its public interest analysis for ETC designations for which it has jurisdiction pursuant to section 214(e)(6) of the Act will review many of the same factors in areas served by non-rural and rural incumbent LECs, although the Commission recognizes that the outcome of the analysis might vary depending on whether the area is served by a rural or non-rural carrier.²⁸⁴ In addition, as part of its public interest analysis, the Commission will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.²⁸⁵ The Commission also encourages states to apply the Commission's analysis because it believes such application will assist them in determining whether or not the public interest would be served by designating a carrier as an ETC.²⁸⁶

5. In addition, in this *Report and Order*, the Commission strengthens its reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. Specifically, each ETC designated by the Commission must provide on an annual basis: (1) progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan in every wire center for which designation was received, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of

²⁸¹ See *supra* paras. 21.

²⁸² See *supra* para. 20.

²⁸³ See *supra* paras. 37-39.

²⁸⁴ See *supra* paras. 42-43.

²⁸⁵ See *supra* paras. 48-53.

²⁸⁶ See *supra* para. 53.

onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. Similar to the ETC designation requirements adopted above, the Commission, in this *Report and Order*, encourages states to require these reports to be filed by all ETCs over which they possess jurisdiction.²⁸⁷

6. The Commission, however, does not adopt the recommendation of the Joint Board to control growth of the high-cost universal service fund by limiting the scope of high-cost support to a single connection that provides access to the public telephone network.²⁸⁸ Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to “modify, amend, or change” its rules or regulations to implement this recommendation.²⁸⁹

7. In this *Report and Order*, the Commission also agrees with the Joint Board’s recommendation that changes are not warranted in its rules concerning procedures for redefinition of service areas served by rural incumbent LECs.²⁹⁰ In addition, in this *Report and Order*, the Commission grants several petitions for redefinition of rural incumbent LEC service areas.²⁹¹ Moreover, the Commission directs the Universal Service Administrative Company (USAC) to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission’s rules.²⁹² The Commission also modifies its annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date in order to allow high-cost support to be distributed as of the date of ETC designation.²⁹³ In addition, the Commission modifies the quarterly certification schedule for the receipt of interstate access support (IAS) so that price cap local exchange carriers and/or competitive ETCs that miss the June 30 annual IAS certification deadline may file their certification thereafter in order to receive IAS support in the second calendar quarter after the certification is filed.²⁹⁴ Finally, the Commission declines to define mobile wireless customer location in terms of “place of primary use,” as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.²⁹⁵

²⁸⁷ See *supra* para. 71.

²⁸⁸ See *supra* para. 16.

²⁸⁹ Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat 2809 (2004) (*2005 Consolidated Appropriations Act*).

²⁹⁰ See *supra* para. 74.

²⁹¹ See *supra* paras. 76-79.

²⁹² See *supra* paras. 84-86.

²⁹³ See *supra* paras. 87-92.

²⁹⁴ See *supra* paras. 93-94.

²⁹⁵ See *supra* paras. 80-83.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on small entities that are designated as ETCs.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²⁹⁶ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁹⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.²⁹⁸ Under the Small Business Act, a "small business concern: is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA)."²⁹⁹

10. We have included ETCs that may meet the definition of "small business" in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation.³⁰⁰

11. *Incumbent Local Exchange Carriers (Incumbent LECs)*. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.³⁰¹ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

²⁹⁶ 5 U.S.C. § 604(a)(3).

²⁹⁷ 5 U.S.C. § 601(6).

²⁹⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

²⁹⁹ 15 U.S.C. § 632.

³⁰⁰ *Id.*

³⁰¹ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

12. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).*³⁰² The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees.³⁰³ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.³⁰⁴ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.³⁰⁵ Thus, under this size standard, the great majority of firms can be considered small.

13. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers.³⁰⁶ Under that SBA definition, such a business is small if it has 1,500 or fewer employees.³⁰⁷ According to recent data, there are 1,310 incumbent LECs, 563 CAPs, 281 IXCs, 21 OSPs, 613 payphone providers and 772 resellers.³⁰⁸ Of these, an estimated 1,025 incumbent LECs, 472 CAPs, 254 IXCs, 20 OSPs, 609 payphone providers, and 740 resellers have 1,500 or fewer employees. In addition, an estimated 285 incumbent LECs, 91 CAPs, 27 IXCs, 1 OSP, 4 payphone providers, and 32 resellers,³⁰⁹ alone or in combination with affiliates, have more than 1,500 employees.³¹⁰ We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

14. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has

³⁰²For the limited purposes of the FRFA, we will use the term "Wired Telecommunications Carriers" to connote wireline carriers and service providers.

³⁰³13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310.

³⁰⁴U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax; 1997," Table 5, NAICS code 517110.

³⁰⁵*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

³⁰⁶NAICS code 513310.

³⁰⁷13 C.F.R. § 121.201, NAICS code 517110.

³⁰⁸FCC, *Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service*, Table 5.3 (May 2004) (*Trends in Telephone Report*). The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs).

³⁰⁹The total for resellers includes both toll resellers and local resellers.

³¹⁰See *Trends in Telephone Report* at Table 5.3.

1,500 or fewer employees.³¹¹ According to *Trends in Telephone Report* data, 1,387 companies reported that they were engaged in the provision of wireless service.³¹² Of these 1,387 companies, an estimated 945 reported that they have 1,500 or fewer employees and 442 reported that, alone or in combination with affiliates, they have more than 1,500 employees.³¹³ Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

15. *Cellular Radio Telephone Service.* The Commission has not developed a definition of small entities specifically applicable to cellular licensees. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which provides that a small entity is a radiotelephone company employing no more than 1,500 persons.³¹⁴ The size data provided by SBA do not enable us to make a meaningful estimate of the number of cellular providers that are small entities because it combines all radiotelephone companies with 500 or more employees.³¹⁵ We therefore have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees.³¹⁶ Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder would be small businesses under the SBA definition.

16. There are presently 1,758 cellular licenses. However, the number of cellular licensees is not known, since a single cellular licensee may own several licenses. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.³¹⁷ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 732 or fewer small cellular service carriers that may be affected by the rules, herein adopted.

17. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross

³¹¹13 C.F.R. § 121.201, NAICS code 517212.

³¹²*Trends in Telephone Report* at Table 5.3.

³¹³*Id.*

³¹⁴13 C.F.R. § 121.201 (SIC Code 4812).

³¹⁵U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

³¹⁶U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

³¹⁷*Trends in Telephone Service*, Table 19.3 (February 19, 1999).

revenues of \$40 million or less in the three previous calendar years.³¹⁸ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³¹⁹ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.³²⁰ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.³²¹ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small businesses.” Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission’s auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

18. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.³²² Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.³²³ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the

³¹⁸See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); See also 47 C.F.R. § 24.720(b).

³¹⁹See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

³²⁰See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84, paras. 115-17 (1994).

³²¹FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997), 62 Fed. Reg. 55348 (Oct. 24, 1997).

³²²*Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196, para. 46 (1994).

³²³See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (released Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (released Nov. 9, 1994).

Narrowband PCS Second Report and Order.³²⁴ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.³²⁵ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.³²⁶ The SBA has approved these small business size standards.³²⁷ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.³²⁸ Three of these claimed status as a small or very small entity and won 311 licenses.

19. *Specialized Mobile Radio (SMR)*. The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the three previous calendar years, respectively.³²⁹ In the context of both the 800 MHz and 900 MHz SMR service, the definitions of “small entity” and “very small entity” have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

20. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.³³⁰ A significant subset of the Rural Radiotelephone

³²⁴ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

³²⁵ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

³²⁶ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 15 FCC Rcd 10456, 10476, para. 40 (2000).

³²⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

³²⁸ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

³²⁹ 47 C.F.R. § 90.814.

³³⁰ The service is defined in section 22.99 of the Commission’s Rules. 47 C.F.R. § 22.99.

Service is the Basic Exchange Telephone Radio Systems (BETRS).³³¹ For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* – an entity employing no more than 1,500 persons.³³² There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

21. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.³³³ For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* – an entity employing no more than 1,500 persons.³³⁴ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

22. *Reporting and Recordkeeping.* The Commission requires all ETCs over which it possesses jurisdiction, including ETCs designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding their networks and their use of universal service funds.³³⁵ These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation so that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, as part of the carrier's certification that the universal service funds are being used consistent with the Act.³³⁶

23. Every ETC designated by the Commission must submit the following information on an annual basis:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.³³⁷ The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or

³³¹BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

³³²13 C.F.R. § 121.201, NAICS code 517212.

³³³The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

³³⁴13 C.F.R. § 121.201, NAICS code 517212.

³³⁵See *supra* paras. 68-69.

³³⁶See *supra* para. 68.

³³⁷If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).³³⁸ An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.³³⁹ Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;³⁴⁰
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;³⁴¹
- (6) certification that the ETC is able to function in emergency situations;³⁴²
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of

³³⁸ See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

³³⁹ See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

³⁴⁰ See *supra* para. 22 for a description of the steps a carrier must take to provide service upon reasonable request.

³⁴¹ *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf.

³⁴² If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁴³

25. The Commission concludes in this *Report and Order* that the above reporting regulations are reasonable and consistent with the public interest and the Act. In particular, these reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligations under section 214(e) of the Act to provide supported services throughout their designated service areas. In addition, the Commission concludes that any administrative burdens placed on carriers as a result of this *Report and Order* are outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

26. The Commission has considered the above alternatives when establishing these reporting requirements. For example, to simplify and consolidate the administrative burdens that may be associated with annual reports concerning outages, the Commission modeled its outage reporting requirements after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*. As a result, many ETCs may be able to file the same or similar information instead of having to compile and submit new outage data. In addition, the Commission has not imposed financial reporting requirements on ETCs because it believes any such requirements are unwarranted in light of the other commitments and reporting requirements adopted in this *Report and Order*. Moreover, the Commission has only required annual certifications, instead of actual data submissions, for certain of its reporting requirements, such as local usage plans, functionality in emergency situations, and compliance with consumer protection standards. Such certifications ensure compliance with section 254 of the Act without imposing data submissions that would impose significant administrative burdens on small entities that may not possess the resources to compile and submit such information on an annual basis.

F. Report to Congress

27. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁴⁴ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.³⁴⁵

³⁴³ 5 U.S.C. § 603(c)(1)-(c)(4).

³⁴⁴ See 5 U.S.C. § 801(a)(1)(A).

³⁴⁵ See 5 U.S.C. § 605(b).

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).

Last year, the Federal-State Joint Board on Universal Service recommended a comprehensive set of guidelines to govern the designation of eligible telecommunications carriers (ETCs) by state commissions and the FCC. I am pleased that this Order adopts those guidelines without significant modifications, and I again want to thank my state colleagues for their important contributions to this effort.

As the Joint Board and the Commission both have recognized, the designation of ETCs — particularly in rural areas facing competition — is an important responsibility about which the statute provides little concrete guidance. For several years following the enactment of the 1996 Act, there was widespread uncertainty regarding the appropriate standards for determining whether the designation of a competitive ETC serves the public interest. Last year, the FCC adopted interim measures, and this Order will provide for far greater certainty and uniformity by memorializing a comprehensive set of minimum standards based on input from a broad array of state and federal regulators.

The Commission has appropriately recognized, consistent with section 214 of the Act, that competitive carriers (often CMRS carriers) should be eligible to receive universal service funding in high-cost areas. At the same time, this Order, like the Joint Board recommendation, calls for a rigorous designation process to ensure that all ETCs are prepared to serve all customers upon reasonable request and to offer high-quality services at affordable rates throughout the designated service area. In other words, competitive carriers seeking ETC status must serve as carriers of last resort, just as incumbents must. Moreover, wireless carriers must submit build-out plans — backed by reporting requirements and annual certifications — demonstrating that the universal service funding will be used to deploy infrastructure capable of providing service (possibly in combination with resale) throughout the designated service area. I am pleased that the Commission has endorsed the Joint Board's recommendations, and I hope that state commissions and the FCC heed this guidance in upcoming designation proceedings.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).

Today the Commission largely adopts the ETC designation recommendations of the Federal-State Joint Board on Universal Service. In doing so, we provide a more rigorous template for review of ETC applications. This is long overdue, and I am pleased to support it. I especially am encouraged by the build-out plans, reporting requirements and annual certifications we require in this decision. Collectively, these will provide this Commission and our state counterparts with a way to monitor and ensure that ETC funding truly is being used to preserve and advance universal service.

As promising as this development is, much more work needs to be done to secure the long-term sustainability of universal service. As ETC designations grow, new challenges will arise. In particular, the Commission will need to face the consequences of multiple designations in high-cost areas on the overall size of the fund. In addition, key questions are teed-up in the current Joint Board referral concerning the high-cost support mechanism and the level of support made available to multiple ETCs. While we don't resolve these issues here, they are an important part of the larger picture. I am hopeful that today's decision is only the foundation for this broader discussion and that in the near future we will build on the efforts to increase accountability that we adopt here.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (FCC 05-46).

Through this Order, the Commission acts on the recommendations of the Federal-State Joint Board on Universal Service concerning the designation of eligible telecommunications carriers (ETCs). I support this Order because it largely reflects the consensus of the Joint Board, which worked hard to establish useful guidelines for the designation of multiple ETCs in high cost areas.

I am pleased that this item recognizes, as Congress did in the Telecommunications Act of 1996, that the FCC and State commissions must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural, high cost areas. Establishing a more substantive public interest test and providing meaningful guidance on ETC designations will help ensure that federal universal service funding is available only to those providers who are committed to serving rural communities. For example, this Order adopts the Joint Board's recommendation that State commissions have flexibility to harmonize existing carrier-of-last-resort and line extension obligations when designating additional ETCs. The Order also establishes more rigorous certification and reporting requirements for FCC-designated ETCs, and encourages State commissions to take similar approaches.

While establishing a more meaningful public interest test is a necessary step in our efforts to manage responsibly the growth of the universal service fund, there may be some missed opportunities here. Commenters argued that the Commission should adopt specific tools to enable or incent the FCC and State commissions to consider the impact of additional designations on the overall size of the fund, a growth dynamic that this Order lightly acknowledges and does not adequately attempt to forecast. I believe that we could have done more to explore frameworks to identify those very high-cost areas where it may be prohibitive to fund more than one ETC. This Order declines to adopt a specific national benchmark based on this record, but I am pleased that it gives State commissions the flexibility to consider whether the dilution of support caused by additional designations would undermine the ability of carriers to offer comparable service at comparable rates.

It also bears emphasis that the FCC must lead by example in applying these designation criteria and a rigorous public interest standard. Commenters have raised concerns about the Commission's past application of the existing ETC designation standards and I take these concerns seriously. Even if some of the tools available to the FCC for our designations lack the nuance or sophistication of the tools available to State commissions, our FCC designation criteria should not be applied in a rote or mechanical fashion. Rather, our designation decisions must involve careful consideration of the facts before us and the unique nature of individual circumstances, in order to satisfy our obligations as stewards of the universal service fund.

Although I would have considered additional measures to strengthen FCC designation of ETCs and to address the impact of ETC designations on the universal service fund,, I find that this Order is largely faithful to the recommendations of my colleagues on the Joint Board, whose contributions and efforts I value highly, and that it marks a measurable improvement in the level of guidance that the FCC previously provided to State commissions and ETC applicants, alike. The Order also includes a firm commitment to revisit these issues again, which will provide an opportunity to assess the effectiveness of the measures we adopt today. For these reasons, I support this item.

MISSOURI PUBLIC SERVICE COMMISSION
Data Request

Data Request No. 0009
Company Name Missouri RSA No. 5 Partnership
Case/Tracking No. TO-2006-0172
Date Requested January 6, 2006
Requested From Paul S. DeFord
Requested By Adam McKinnie
Description On page 4 of his Direct Testimony, beginning on line 14, MO 5 witness Simon writes:

Q. Does MO 5 offer Access to Operator Services?

A. MO 5 does not offer Operator Services at this time. MO 5 will offer such access when it is granted ETC status.

Please state MO5's current plan to offer operator services if granted ETC status, if such a plan exists.

Due Date January 26, 2006

The attached information provided to the Missouri Public Service Commission in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission if, during the pendency of Case No. TO-2006-0172 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Missouri RSA No. 5 office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g., book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Missouri RSA No. 5 Partnership and its employees, contractors, agents or others employed by or acting in its behalf.

Security Public
Rationale N/A

With Proprietary and Highly Confidential Data Requests a Protective Order must be on file.

Missouri RSA No. 5 Partnership's Response to DR No. 0009:

MO5 presently intends to contract for operator services.

MISSOURI PUBLIC SERVICE COMMISSION
Data Request

Data Request No. 0005

Company Name Missouri RSA No. 5 Partnership

Case/Tracking No. TO-2006-0172

Date Requested January 6, 2006

Requested From Paul S. DeFord

Requested By Adam McKinnie

Description Beginning on page 19 of the Application, paragraph 33:

Appendix F is a listing of proposed cell sites which MO5 would deploy, and the timeline for their deployment, assuming grant of ETC designation.

Working under the assumption that the specific cell sites have yet to be located, please provide a cost estimate for the construction of each cell site listed in Appendix F. Also, please include the estimated cost of annual maintenance for each cell site listed in Appendix F. Also include separately any additional network improvements necessary to support these additional cell towers, and the estimated cost of those network improvements.

Assuming the instant application is granted and MO5 receives the estimated \$1,532,230 in annual USF monies, please provide estimated start and finish dates for the cell towers listed in Appendix F.

Due Date January 26, 2006

The attached information provided to the Missouri Public Service Commission in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission if, during the pendency of Case No. TO-2006-0172 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

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Security Public

Rationale N/A

With Proprietary and Highly Confidential Data Requests a Protective Order must be on file.

Pages 2 & 3

Of Schedule 3

Are deemed

Highly Confidential

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