

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	DA 03-45
	)	
RCC Holdings, Inc.	)	DA 02-746/DA 02-3181
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Throughout its Licensed Service Area	)	
In the State of Alabama	)	
	)	
Cellular South Licenses, Inc.	)	DA 02-1465/DA 02-3317
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
Throughout its Licensed Service Area	)	
In the State of Alabama	)	

**JOINT REPLY COMMENTS OF CELLULAR SOUTH  
LICENSES, INC. AND RCC HOLDINGS, INC.**

CELLULAR SOUTH LICENSES, INC.  
RCC HOLDINGS, INC.

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## Summary

The Wireline Competition Bureau (“Bureau”) properly granted eligible telecommunications carrier (“ETC”) status to RCC Holdings, Inc. and Cellular South Licenses, Inc. (“RCC/CS”) throughout their licensed service areas in Alabama. RCC/CS amply demonstrated their commitment to provide the services required under Section 214(e) of the 1996 Act, and that their designation would benefit consumers and thus serve the public interest. On the strength of these showings, the Bureau properly concluded that the designation of competitive ETCs serves the pro-competitive objectives of the 1996 Act, and that consumers would not be harmed by such designation.

None of the parties commenting on behalf of incumbent local exchange carriers (“ILECs”) has provided any valid reason to disturb the Bureau’s well-reasoned decisions. The ILECs attempt to downplay or ignore the pro-competition directives of the 1996 Act, and they dismiss the large number of state and federal judicial and agency decisions finding the designations of competitive ETCs in rural areas to bring important benefits to consumers in rural areas. The ILECs also fail to demonstrate that consumers will be harmed by the designation of competitive ETCs in rural Alabama, instead making broad, theoretical arguments about rural markets without addressing Alabama at all. Finally, the ILECs raise a host of collateral issues that scarcely warrant discussion in a proceeding considering individual ETC designations, and they falsely assert that the ongoing review of ETC-related issues by the FCC and the Joint Board warrant the suspension of all ETC designations.

For all these reasons, the Commission should reject the ILECs’ arguments and affirm the Bureau’s well-reasoned grants of ETC status to RCC/CS.

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**JOINT REPLY COMMENTS OF CELLULAR SOUTH  
LICENSES, INC. AND RCC HOLDINGS, INC.**

RCC Holdings, Inc. (“RCC”) and Cellular South Licenses, Inc. (“Cellular South”) (jointly referred to as “RCC/CS”), by counsel and pursuant to the Commission’s *Public Notice*,<sup>1</sup> hereby submit their Joint Reply Comments in the consolidated proceeding captioned above. In the *Public Notice*, the Commission requested comments in response to the Applications for Review (“Applications”) filed by the Alabama Rural Local Exchange Carriers (“ARLECs”) on December 23, 2002, and December 30, 2002, challenging the decisions of the Wireline Competition Bureau (“WCB”) granting eligible telecommunications carrier (“ETC”) status to RCC/CS in Alabama.<sup>2</sup> As explained below, neither the ARLECs nor any commenting party has

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<sup>1</sup> Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama, *Public Notice*, DA 03-45 (rel. Jan. 10, 2003) (“*Public Notice*”).

<sup>2</sup> See *RCC Holdings, Inc.*, DA 02-3181 (WCB rel. Nov. 27, 2002) (“*RCC Order*”); *Cellular South License, Inc.*, DA 02-3317 (WCB rel. Dec. 4, 2002) (“*Cellular South Order*”) (collectively “the Alabama Orders”).

presented a single valid reason to disturb the Bureau's well-considered decision to allow RCC/CS to receive universal service funding for the purpose of introducing high-quality competitive service to rural Alabama.

## I. INTRODUCTION

In their Oppositions submitted in response to the ARLECs' Applications, RCC and Cellular South demonstrated that the Bureau's recent *Alabama Orders* will help to preserve and advance universal service as well as serve the pro-competitive objectives of the 1996 Telecommunications Act ("1996 Act").<sup>3</sup> Specifically, RCC/CS demonstrated that the Bureau followed the 1996 Act, as well as the judicial and FCC precedent flowing therefrom, in focusing on the compelling benefits consumers will experience when local exchange markets are finally opened to viable competitors. RCC/CS also demonstrated that the Bureau properly found that no party had demonstrated that rural consumers will suffer harm as a result of competitors receiving high-cost support on equal footing with incumbents. Finally, RCC/CS demonstrated that collateral issues such as universal service fund growth were properly excluded from the scope of the Bureau's public interest analysis, and that the ongoing review of FCC rules and policies does not warrant the suspension of existing rules.

The Oppositions of RCC and Cellular South are incorporated herein by reference and are attached hereto as Exhibits 1 and 2, respectively. RCC/CS will focus their Joint Reply Comments primarily on arguments raised in the current comment cycle.

The ILECs and their representatives have distorted the purposes of the Act and ignored the FCC's clearly pro-competitive congressional mandate. In response to the Bureau's well-reasoned finding that federal high-cost support will enable RCC and Cellular South to bring

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<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

important competitive benefits to rural Alabama — including innovative pricing and service offerings and deployment of new technologies<sup>4</sup> — the ILECs attempt to slam the door on competition and deny Alabama’s rural consumers any opportunity to experience those benefits. Their strategy is to preserve an artificial competitive advantage by choking off critical support to potential competitors, even though they do not lose support as a result of competitive entry.

The ILECs wish to ignore the “pro-competitive, de-regulatory” purposes of the 1996 Act. They cite no persuasive support in the 1996 Act or subsequent case law for claims that they should be effectively immunized from competitive pressures. Instead, they attempt to recast the debate in pre-1996 terms by relying on dated “natural monopoly” arguments and urging the imposition of LEC-style regulation on competitors despite clear congressional language to the contrary. The rural ILECs also blithely dismiss the fact that state commissions across the country have almost unanimously found, after applying a robust analysis under Section 214(e)(2) of the Act, that the use of federal high-cost support to spur competition in rural areas is in the public interest. Undeterred by the substantial weight of state precedent, the ILECs advocate a paternalistic policy toward the states that ignores the explicit congressional grant of authority to the states under Section 214(e)(2) of the Act.

Finally, the rural ILECs falsely claim that the FCC’s rules on issues surrounding the designation of competitive ETCs are “unsettled” or “uncertain” and therefore all ETC decisions should be “suspended” until the completion of the current Joint Board review process and possibly beyond. It is by no means clear that the review process will yield any changes that would change the analysis in this case. Moreover, any pertinent rule changes will of course apply to all existing ETCs, including those designated subsequent to the referral. PUCs and state courts

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<sup>4</sup> See *RCC Order* at ¶ 23; *Cellular South Order* at ¶ 25.

across the country have realized this, as evidenced by the continuing designation of competitive ETCs under the framework provided by Congress and the FCC.

RCC/CS urge the FCC to deny the ARLECs' Applications and affirm the Bureau's *Alabama Orders*.

## II. THE COMMISSION SHOULD REJECT ILEC ATTEMPTS TO CIRCUMVENT THE "PRO-COMPETITIVE, DE-REGULATORY" OBJECTIVES OF THE 1996 ACT

The 1996 Act was enacted with the goal of opening "all telecommunications markets" to competition<sup>5</sup> and providing rural consumers with a choice among services comparable to those available to urban consumers.<sup>6</sup> Consistent with these goals, Congress provided competitive carriers that commit to provide the supported services and reach out to eligible Lifeline and Link-Up subscribers the means to receive high-cost support and begin chipping away at the "almost insuperable competitive advantage"<sup>7</sup> enjoyed by monopoly incumbent LECs.<sup>8</sup> Specifically, it gave states and, in some cases, the FCC, the authority to designate more than one ETC in any given market.<sup>9</sup>

Despite clear congressional intent to disrupt local telephone monopolies everywhere, the rural ILECs now take the position that the areas they serve are exempt from the pro-competitive

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<sup>5</sup> See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113.

<sup>6</sup> See 47 U.S.C. § 254(b)(3).

<sup>7</sup> See *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646, 1662 (2002).

<sup>8</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15506-07 (1996), *subseq. hist. omitted* ("Local Competition Order") ("The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.")

strictures of the Act.<sup>10</sup> Nothing could be further from the truth. Congress sought to promote competition in rural areas by creating, for the first time, a mechanism for designating competitive carriers as ETCs in rural areas. There is no indication that the universal service provisions of the 1996 Act were intended to prevent rural consumers from experiencing the benefits of competition. Indeed, the Act provides exactly the opposite, setting forth the following basic principle:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>11</sup>

Clearly, consumers in rural areas do not have access to services that are “comparable” to those available in urban areas if they do not have a similar choice among competing service providers. Moreover, competition among carriers in rural areas will raise service quality and lower prices in a manner comparable to competitive processes in urban areas, all to the consumer’s benefit.

In attempting to show that Congress tacitly granted a waiver of its pro-competitive mandate for rural areas, some commenters<sup>12</sup> point to the “rural exemption” — the provision of the 1996 Act that allows rural ILECs to avoid many market-opening provisions until specific

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<sup>9</sup> See 47 U.S.C. § 214(e)(2).

<sup>10</sup> See, e.g., Fred Williamson & Associates (“FWA”) Comments at pp. 4-6; OPASTCO Comments at p. 6; Oregon Telecommunications Association and Washington Independent Telephone Association (“OTA/WITA”) Comments at pp. 10-16.

<sup>11</sup> 47 U.S.C. § 254(b)(3).

<sup>12</sup> See FWA Comments at pp. 5-6; OTA/WITA Comments at p. 12.

showings can be made.<sup>13</sup> However, unlike section 214(e)(2), which simply requires the FCC or state commission to find that a competitive ETC designation “is in the public interest”, the rural exemption provisions include a multi-part test for termination of the exemption that clearly represents a higher barrier than a straightforward “public interest” determination.<sup>14</sup> It can thus be inferred that Congress set a more permissive standard for competitive ETC designations because it recognized that rural ILECs already had sufficient protections from competition in place in the form of the rural exemption.

The ILECs also fail to cite any judicial precedent that would indicate a universal service exception from the Act’s pro-competitive goals. Contrary to OTA/WITA’s assertion, *Alenco Communications, Inc. v. FCC* does not stand for the proposition that “designation of a second ETC in rural areas requires careful consideration.”<sup>15</sup> In that case, the Fifth Circuit flatly rejected arguments by rural ILECs seeking reversal of the FCC-imposed caps on high-cost support and the amount of reportable corporate operations expenses. In summing up its assessment of the ILECs’ arguments, the Court stated: “What petitioners seek is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act.”<sup>16</sup> Thus, far from an affirmation of rural ILECs’ exclusionary vision of rural ETC policy, *Alenco* stands for the proposition that the purpose of universal service is to protect consumers, not incumbents.<sup>17</sup>

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<sup>13</sup> See 47 U.S.C. § 251(f).

<sup>14</sup> See 47 U.S.C. § 251(f)(1)(B) (“. . .the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (other than subsections (b)(7) and (c)(1)(d) thereof.”)

<sup>15</sup> OTA/WITA Comments at p. 13.

<sup>16</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000).

<sup>17</sup> See *id.* at 621.

The ILECs also ignore *Verizon Communications, Inc. v. FCC*, a 2002 U.S. Supreme Court decision that resoundingly affirmed the pro-competitive objectives of the 1996 Act.<sup>18</sup> In that case, the majority concluded that the Act represented a fundamental rethinking of telecommunications policy assumptions in favor of competition:

For the first time, Congress passed a ratesetting statute with the aim not just to balance interests between sellers and buyers, but to reorganize markets by rendering regulated monopolies vulnerable to interlopers, even if that meant swallowing the traditional federal reluctance to intrude into local telephone markets.<sup>19</sup>

Given the federal courts' affirmation of the 1996 Act's pro-competitive mandate, the Bureau was clearly justified in focusing its public interest analysis on the benefits that competition would bring to consumers in rural Alabama. Accordingly, the FCC should reject the ILECs' attempt to deflect attention from the clearly pro-competitive goals of the 1996 Act and uphold the Bureau's considered public interest determination.

### **III. THE ILECs PROVIDE NO VALID REASON TO DISTURB THE BUREAU'S FINDING THAT THE DESIGNATION OF COMPETITIVE ETCs WILL BENEFIT CONSUMERS IN RURAL ALABAMA**

In the Sherlock Holmes mystery "Silver Blaze," the famous detective remarks upon a "curious incident" that occurred during the night of the crime, namely, that the watchdog did not bark. Here, it is similarly curious that, out of all the comments submitted by ILECs and their trade associations, none contained any discussion of costs or benefits specific to Alabama. This is a critical omission in that the ILECs attempt to show that designation of competitive ETCs was not appropriate without ever submitting evidence relevant to the specific areas in question. As RCC/CS explained in their Oppositions, the appropriate inquiry as applied consistently by the

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<sup>18</sup> OTA/WITA's citation (p. 16) of a Supreme Court case from 1956, several regulatory ages ago, is of little or no assistance in understanding a sweeping pro-competitive mandate enacted in 1996.

<sup>19</sup> *Verizon Communications, supra*, 122 S.Ct. at 1661.

FCC and the states is whether the ILECs have demonstrated that harm to consumers will result from designation of competitive ETCs in a particular area.<sup>20</sup> In the *Alabama Orders*, the Bureau properly dismissed the ARLECs' general claims about the purported inability of rural areas to support competition:

The Alabama Rural LECs have merely presented data regarding the number of loops per study area, the households per square mile in their wire centers, and the high-cost nature of low-density rural areas. The evidence submitted is typical of most rural areas and does not, in and of itself, demonstrate that designation of Cellular South as an ETC will harm the affected rural telephone companies or undermine the Commission's policy of promoting competition in all areas, including high-cost areas.<sup>21</sup>

The Commission should similarly dismiss the ILECs' generalized claims about rural areas. The ILECs in this comment cycle have presented only broad generalizations about rural areas and fail to provide any data or analysis relating specifically to Alabama. One ILEC association's comments ignored Alabama altogether and focused instead on competitive conditions in Alaska.<sup>22</sup>

By advocating a presumption that rural areas are unable to support competition,<sup>23</sup> the ILECs essentially argue that local telephone service in rural areas is a "natural monopoly."<sup>24</sup>

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<sup>20</sup> See *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 57 (2000); *Order on Reconsideration*, FCC 01-311 at ¶ 19 (rel. Oct. 19, 2001); *GCC License Corp., Sprint Spectrum L.P.*, Docket Nos. 99-GCCZ-156-ETC and 99-SSLC-173-ETC, Order No. 10 at pp. 3-4 (Kansas State Corp. Comm'n May 19, 2000); *Midwest Wireless LLC*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, adopted Feb. 13, 2003 (order pending), adopting ALJ's Findings of Fact, Conclusions of Law, and Recommendation (ALJ Dec. 31, 2002) at p. 12 ("Midwest Minnesota Order"); *Minnesota Cellular Corporation*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P5695/M-98-1285 (October 27, 1999) at p. 17 ("Minnesota Cellular"), *GCC License Corp.*, 647 N.W.2d 45, 54-55 (Neb. 2002) ("*GCC Nebraska*") *WWC Texas RSA L.P.*, PUC Docket Nos. 22289, 22295, SOAH Docket Nos. 473-00-1167, 473-00-1168 at p. 20 (Tex. P.U.C. Oct. 30, 2000) ("*WWC Texas ETC Order*"). See also *RCC Opposition* at pp. 4-6; *Cellular South Opposition* at pp. 5-7.

<sup>21</sup> See *Cellular South Order* at ¶ 28 (footnote omitted); *RCC Order* at ¶ 26.

<sup>22</sup> See *Alaska Telephone Association ("ATA") Comments* at p. 13.

<sup>23</sup> See, e.g., *OPASTCO Comments* at p. 5; *ATA Comments* at pp. 3-4; *FWA Comments* at p. 8.

However, the ILECs completely fail to provide factual support for this general claim, and they provide no data whatsoever that would tend to show this to be the case in the ETC service areas proposed by RCC/CS.

For example, FWA's argument that "the existence of CMRS competitors has resulted in the loss of both local and access revenues" and that "[t]his loss will convert into a requirement to increase universal service funding for rural ILECs or to raise, not lower, customer rates"<sup>25</sup> incorrectly assumes that rural ILECs will not avail themselves of other means to remain competitive. To the contrary, it is highly probable that the entry of a competitor will induce an incumbent carrier to improve its efficiency.<sup>26</sup> Improved efficiency will ease pressure on the federal high-cost fund by lowering the amount that ILECs receive and, correspondingly, the amount that competitive ETCs receive as well. In addition, ILECs may decide to begin aggressively advertising, developing more attractive rate plans, and improving their service quality to retain and win back customers. All of these things benefit consumers.

FWA does not illustrate how lost local and access revenues would result from competitive ETC designations in the ARLECs' service territories. For instance, FWA assumes, without foundation, that large numbers of ARLEC customers would abandon wireline service altogether in favor of wireless. FWA ignores the fact that many RCC/CS customers will not be defecting from ILECs but instead will be using wireless service as a second line in addition to wireline service or taking telephone service for the first time. In the absence of any data

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<sup>24</sup> An industry or market is considered to be a natural monopoly if it cannot efficiently support more than one firm, *i.e.*, the "economies of scale" are sufficiently great that unit costs of service would rise significantly if more than one firm supplied service in a particular area. STEPHEN BREYER, REGULATION AND ITS REFORM 15 (1982).

<sup>25</sup> FWA Comments at p. 8 n.12.

<sup>26</sup> See Declaration of Don J. Wood at pp. 4-5 (submitted with *ex parte* letter from RCC/CS counsel to Anita Cheng, Wireline Competition Bureau, dated Sept. 23, 2002).

suggesting that customers will leave the ARLECs in large numbers, there is no basis for FWA's speculation that the Bureau's designation of RCC/CS will result in lost local and access revenues.

In sum, the commenting parties have provided only broad, theoretical assertions about competition in rural areas and have failed to demonstrate that the ARLECs' service areas cannot support competition. Accordingly, the ILECs' claims about "harmful" effects of competitive ETC designations should be rejected.

#### **IV. THERE IS NO "UNCERTAINTY" THAT WOULD WARRANT SUSPENSION OF ETC DESIGNATION PROCESSES**

Despite the plainly worded statutory provisions and FCC rules governing competitive ETC designations in rural areas, the ILECs claim that "uncertainty" or "unsettled" matters justify suspension of all competitive ETC designations.<sup>27</sup> As support for this claim, the ILECs point to the FCC's referral of certain ETC-related issues to the Joint Board last November.<sup>28</sup> However, the ILECs fail to demonstrate how the designation of additional ETCs pursuant to the clear statutory framework provided under the Act would undermine the Joint Board's review process.

The fact of the matter is that there is no "uncertainty" in matters regarding competitive ETC designations, and certainly none that should induce the regulatory paralysis the ILECs seek. At the state level, ETC designations are proceeding apace in spite of vigorous ILEC opposition. During calendar year 2002, at least eight competitive ETC designations were made by state

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<sup>27</sup> See, e.g., TCA Comments at p. 2; NTCA Comments at p. 5; OPASTCO Comments at p. 2; ATA Comments at p. 7.

<sup>28</sup> *Federal-State Joint Board on Universal Service, Order*, CC Docket No. 96-45, FCC 02-307 (rel. Nov. 8, 2002) ("Referral Order").

PUCs (or upheld by state courts) for areas including rural ILEC service territories.<sup>29</sup> In fact, in the time since the release of the *Referral Order*, at least two state PUCs have designated additional ETCs in areas served by rural ILECs.<sup>30</sup> Clearly, the FCC's existing rules and policies are sufficient to ensure a thoroughgoing public interest analysis.

Even if there were significant "outstanding issues of concern"<sup>31</sup> to be resolved, the appropriate response is *not* to freeze existing and ongoing processes at a time when it by no means clear that changes affecting the relevant issues will be adopted. As with all rulemaking processes, any prospective rule changes will apply to existing ETCs, including those that have been designated since the *Referral Order*. For example, if the method of calculating support to competitive ETCs is altered, RCC/CS will be among the many competitive ETCs across the nation who will make the necessary adjustments. NTCA's purported concern that "carriers may come to depend on the windfall support"<sup>32</sup> borders on absurd. Every business makes decisions with the knowledge that laws and regulations may change. If a prospective ETC applicant believes the risks involved in possible future rule changes are too great, then it will simply not seek ETC designation.

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<sup>29</sup> See, e.g., N.E. Colorado Cellular, Inc., Recommended Decision of ALJ William J. Fritzel Approving Stipulation and Settlement Agreement, Docket Nos. 00A-315T and 00A-491T at p. 6 (mailed Dec. 21, 2001) (effective date Jan. 11, 2002) ("NECC Colorado Order"); Midwest Wireless Iowa, L.L.C., Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) ("Midwest Iowa Order"); Midwest Minnesota Order, *supra*; *GCC Nebraska*, *supra*; Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001 ("SBI N.M. Recommended Decision"), adopted by Final Order (Feb. 19, 2002); Inland Cellular Telephone Company, d/b/a Inland Cellular, Docket No. UT-023040 at pp. 13-14 (Wash. Util. & Transp. Comm'n, Aug. 30, 2002) ("Inland Washington Order"); RCC Minnesota, Inc., Docket No. UT-023033 (Wash. Util. & Transp. Comm'n Aug. 14, 2002) ("RCC Washington Order"); United States Cellular Corporation, 8225-TI-102 (Wisc. PSC Dec. 20, 2002) ("U.S. Cellular Wisconsin Order").

<sup>30</sup> See, e.g., Midwest Minnesota Order, *supra*; U.S. Cellular Wisconsin Order, *supra*.

<sup>31</sup> See ATA Comments at p. 7.

<sup>32</sup> NTCA Comments at p. 5.

## V. THE COMMISSION MUST REJECT COLLATERAL ISSUES RAISED BY ILEC COMMENTERS

CenturyTel, TCA, FWA, NTCA and others raise a number of issues that are not properly raised within an individual ETC designation proceeding. Although these issues were properly excluded from the Bureau's analysis, RCC/CS will briefly address the more egregious assertions.

### A. Growth of Universal Service Fund.

Perhaps there is no greater evidence of the ILECs' truly anticompetitive motives than their professed concern about growth of the federal fund. Rural ILECs falsely state that competitive ETCs, who now receive less than 2% of all high-cost support, are "primarily" responsible for the growth of the fund.<sup>33</sup> In May 2001, the FCC approved an increase in high-cost support for rural ILECs amounting to over \$1.2 billion in additional funding over the next five years.<sup>34</sup> That is the primary source of growth in the fund. In their lobbying efforts to obtain this increase, no ILEC came forward to caution against "excessive fund growth." Quite to the contrary, ILECs vigorously argued that the size of the fund should *not* be considered when assessing whether their support should be increased.

In order to assure sufficient support to rural areas, the FCC rejected a proposal to freeze ILEC support in areas where a competitive ETC enters, noting that it "may have the unintended consequence of discouraging investment in rural infrastructure, contrary to the fundamental goals of the Rural Task Force Plan," and that such a proposal "may hinder the competitive entry into rural study areas by creating an additional incentive for incumbents to oppose the designation of

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<sup>33</sup> See TCA Comments at p. 6.

<sup>34</sup> See *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11296 (2001) ("Fourteenth Report and Order").

eligible telecommunications carriers in rural study areas.”<sup>35</sup> Finally, as RCC/CS noted in their Oppositions,<sup>36</sup> at least five ARLEC member companies were among those ILECs who, unconcerned about the size of the high-cost fund, sued in federal court to remove caps on the high-cost support they receive.<sup>37</sup>

As some ILEC commenters pointed out, the growth of the fund is one issue that will be addressed in the ongoing Joint Board review proceeding.<sup>38</sup> At the same time, the FCC is in the midst of an ongoing effort to more fairly apportion the responsibility of contributing to the universal service fund among providers of interstate telecommunications service.<sup>39</sup> Because the FCC and Joint Board are currently considering program-wide changes to address the size and sustainability of the fund, there is no justification for blocking an individual ETC designation as a stopgap measure — particularly when 98% of all high-cost support goes to rural ILECs.

**B. Local Usage, “Affordability” and “Quality of Service”.**

CenturyTel and FWA provide no valid basis for their arguments that competitors such as RCC/CS should be subjected to LEC-style regulations, such as an unlimited local usage requirement, “affordable” rates, and “quality of service” standards.<sup>40</sup> With respect to local usage,

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<sup>35</sup> *Id.* at 11326.

<sup>36</sup> See RCC Opposition at p. 12; Cellular South Opposition at pp. 12-13.

<sup>37</sup> See *Alenco*, 201 F.3d at 620-21.

<sup>38</sup> See, e.g., ATA Comments at p. 7; OPASTCO Comments at p. 3.

<sup>39</sup> See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, *Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 02-329 (rel. Dec. 13, 2002).

<sup>40</sup> See CenturyTel Comments at p. 5; FWA Comments at p. 11.

an ETC is required by 47 C.F.R. § 54.101(a) to *offer* included local minutes, but it is not required to include local minutes *on every rate plan*. The FCC and a number of states have confirmed that a carrier offering varying amounts of local usage meets the local usage requirement.<sup>41</sup> Several petitions have been granted to companies that proposed no rate plans containing unlimited minute offerings.<sup>42</sup> What an ETC cannot do is *force* a customer into a rate plan that has zero minutes included, effectively failing to offer some number of local minutes as required by Section 54.101(a)(2) of the FCC's rules.

CenturyTel also misstates applicable state precedent in arguing for mandating unlimited local usage and an "affordability" requirement. Citing a 1999 ETC designation order,<sup>43</sup> CenturyTel claims erroneously that the Minnesota Public Utilities Commission ("MPUC") "has advocated an increase in the minimum local usage afforded universal service customers" by requiring at least one package with unlimited local minutes and a price that does not exceed 110% of current ILEC rates.<sup>44</sup> CenturyTel ignores the subsequent history of the case, in which

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<sup>41</sup> See, e.g., *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as Eligible Telecommunications Carrier*, CC Docket 96-45, Memorandum Opinion and Order, 17 FCC Rcd. 9589, 9593 (rel. May 24, 2002) ("Pine Belt ETC Order") (holding that Pine Belt met the local usage requirement by offering "several service options including varying amounts of local usage, and . . . a *rate plan* that includes unlimited local usage."); *WWC Wyoming ETC Order*, *supra*, 16 FCC Rcd at 52 ("although the Commission has not set a minimum local usage requirement, Western Wireless currently offers varying amounts of local usage in its monthly service plans."); *SBI New Mexico ETC Decision*, *supra* at p. 7 (some local usage to be provided as part of a universal service offering); *RCC Washington ETC Order*, *supra* at pp. 14-15.

<sup>42</sup> See, e.g., *SBI Arizona ETC Order*, *supra*, *SBI N.M. Final Order*, *supra*, *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) at pp. 2-3 (Iowa Util. Bd. July 12, 2002) ("Midwest Iowa ETC Order"); *RFB Cellular, Inc.*, Case No. U-13145 (Mich. P.S.C. Nov. 20, 2001) ("RFB Michigan ETC Order"); *Cellular South License, Inc.*, Docket No. 01-UA-0451 at pp. 5-6 (Miss. P.S.C. Dec. 18, 2001) ("Cellular South Mississippi ETC Order"); *WWC Nevada ETC Order*, *supra*, *WWC Texas ETC Order*, *supra*, *RCC Washington ETC Order*, *supra*, *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications*, CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) ("Guamcell ETC Order"); *Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 00-2895 (C.C.B. rel. December 26, 2000) ("Cellco ETC Order").

<sup>43</sup> See *Minnesota Cellular*, *supra*.

<sup>44</sup> CenturyTel Comments at pp. 5-6.

the MPUC reversed the 110% restriction.<sup>45</sup> More important, CenturyTel neglected to mention that the MPUC recently reversed its Minnesota Cellular decision and completely rejected affordability requirements for another competitive ETC. In addition, the MPUC affirmed the FCC's position that, while an ETC is required to offer local usage, it is not include unlimited local calling in all rate plans.<sup>46</sup>

Local usage, pricing and service quality are best determined by the discipline imposed by competitive markets. As the Washington Utilities and Transportation Commission succinctly put it: "Customers can choose for themselves if the amount of local usage is worth the price."<sup>47</sup> ILEC quality-of-service rules were developed long ago to protect consumers from monopolies lacking the competitive pressures needed to drive improvements in customer service. Carriers in competitive markets, by contrast, have every incentive to maximize service quality to win and keep customers. Self-serving attempts by ILECs to saddle competitors with monopoly regulation fly directly in the face of the "pro-competitive, de-regulatory" purposes of the 1996 Act<sup>48</sup> and ignore the fact that if competitive markets develop, ILEC rules developed to protect customers from monopoly practices can be relaxed or eliminated.

### **C. Mobility.**

Without any supporting authority, CenturyTel argues that the mobility of wireless service offerings would "allow[] subsidies to flow to carriers that might not provide service in high-cost

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<sup>45</sup> See Order Acting on Petitions for Reconsideration and Opening Investigation at pp. 5-6 (Feb. 10, 2000).

<sup>46</sup> See Midwest Minnesota Order, *supra*.

<sup>47</sup> RCC Washington Order, *supra*, at pp. 14-15.

<sup>48</sup> See Preamble of 1996 Act.

areas” and therefore “will send incorrect market signals to potential entrants.”<sup>49</sup> These assertions are baseless and presume that recipients of high-cost support will break the law. High-cost support must be spent on facilities that serve the ETC service area. There is no public policy reason to deny a subscriber the ability to purchase a feature that permits a mobile phone to be used for its intended purpose. Moreover, such a restriction would violate the core principle of technological neutrality.<sup>50</sup> Sufficient enforcement mechanisms exist to ensure that high-cost support is properly applied.<sup>51</sup> Moreover, CenturyTel is unable to cite a single state or FCC decision, and RCC/CS are unaware of any, imposing the kinds of restrictions on mobility it advocates here.<sup>52</sup>

#### **D. “Necessity” of Support.**

Several ILEC commenters assert that the designation of competitive ETCs is unnecessary because wireless carriers are already engaged in a competitive service.<sup>53</sup> This assertion is based on a failure to properly define the competitive market at issue. The question is not whether CETCs are successfully competing against each other in the mobile wireless market. Nor is it whether CETCs are successfully competing with wireline companies for second lines and ancillary services. The proper question is whether CETCs are successfully competing against rural ILECs for local exchange business. The answer to that question is no.

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<sup>49</sup> CenturyTel Comments at p. 7.

<sup>50</sup> See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801 (“*First Report and Order*”).

<sup>51</sup> See *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11316 n.433 and accompanying text; *Order on Reconsideration*, FCC 02-171 at ¶ 14 (rel. June 13, 2002).

<sup>52</sup> CenturyTel wrongly states that the New Mexico Public Regulatory Commission removed stipulated mobility restrictions from its final order “without explanation”; in fact, it expressly adopted the administrative law judge’s detailed conclusions rejecting such restrictions as unnecessary. See SBI N.M. Recommended Decision, *supra*, at p. 19, Final Order at p. 2. Accordingly, CenturyTel’s reliance on the New Mexico proceeding is misplaced.

The ILECs presented no evidence to demonstrate that any wireless carrier is making any dent in the near 100% ILEC market share for local exchange customers in Alabama. More importantly, even if it can be shown that RCC/CS are already effective at competing with the ARLECs in some areas, the purpose of high-cost support is to enable RCC/CS to fulfill the universal service commitment to construct new facilities and build out to areas currently lacking service. Without high-cost funding, no business plan can support building out beyond metropolitan areas and major roadways. Thus, high-cost support is truly essential for competition to emerge, particularly in the more remote reaches of the ARLECs' service areas.

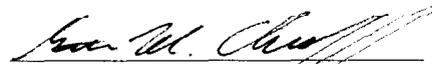
## VI. CONCLUSION

For the reasons stated above, RCC/CS urge the Commission to reject the arguments of the ILEC commenters and affirm the Bureau's *Alabama Orders*.

Respectfully submitted,

**CELLULAR SOUTH LICENSES, INC.  
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<sup>53</sup> See, e.g., FWA Comments at p. 3; OPASTCO Comments at p. 7; ATA Comments at p. 10.