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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 4, 2003

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
236 Massachusetts Ave., NW, Suite 110  
Washington, DC 20002

Re: In the Matter of Federal-State Joint Board on Universal Service  
Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp.,  
Centennial Michigan RSA 7 Cellular Corp.  
Petition for Waiver of Section 54.314(d)(3) of the Commission's Rules  
CC Docket No. 96-45

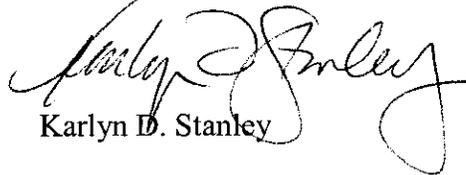
Dear Ms. Dortch:

Enclosed for filing in the above proceeding please find the original and four (4) copies, of *Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. Petition For Waiver of Section 54.314(D) of The Commission's Rules.*

Also enclosed is a "Stamp and Return" copy of this filing which we ask be stamped with the FCC's date of filing and then returned to our messenger.

Thank you for your assistance.

Sincerely,



Karlyn D. Stanley

Enclosures

cc: Service List

No. of Copies rec'd 0+4  
List ABCDE

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
Michiana Metronet Inc. )  
Centennial Michigan RSA 6 Cellular Corp. )  
Centennial Michigan RSA 7 Cellular Corp. )  
Petition for Waiver of Section 54.314(d)(3) )  
of the Commission's Rules )

**WAIVER - EXPEDITED ACTION REQUESTED**

**MICHIANA METRONET INC., CENTENNIAL MICHIGAN RSA 6  
CELLULAR CORP., AND CENTENNIAL MICHIGAN RSA 7 CELLULAR CORP.  
PETITION FOR WAIVER OF SECTION 54.314(d) OF THE COMMISSION'S RULES**

Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. (collectively "Centennial"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,<sup>1</sup> hereby petitions the Commission for a waiver of the April 1, 2003 filing deadline set forth in Section 54.314(d)(3) of the Commission's rules. Approval of this waiver request will allow Centennial to receive universal service support in Michigan beginning on September 11, 2003, the date the Michigan Public Service Commission ("MPSC") designated Centennial as an Eligible Telecommunications Carrier ("ETC").

**BACKGROUND**

Centennial is a Commercial Mobile Radio Service ("CMRS") carrier serving cellular customers in twenty-three (23) counties in Michigan, with the greatest population of subscribers

<sup>1</sup> See 47 C.F.R. §1.3; §1.925. Pursuant to §1.1105 of the rules, there is no filing fee associated with this request.

in the central and southern portions of the Lower Peninsula of Michigan. On March 28, 2003, Centennial submitted an application to the MPSC requesting designation as an ETC in rural areas of Michigan. On September 11, 2003, the MPSC approved Centennial's application and issued an Order designating Centennial as an ETC in Michigan for the purpose of receiving federal universal service support.<sup>2</sup> Centennial is eligible to receive rural high-cost universal service support pursuant to Section 54.307 of the Commission's rules, which provides for support to competitive ETCs.<sup>3</sup>

Section 54.314 of the Commission's rules sets forth the requirements for state certification of support for rural carriers. States that desire universal service high-cost support for rural ETCs must file an annual certification by October 1 with the Universal Service Administrative Company ("USAC") and this Commission stating that all high-cost support received by rural ETCs within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" (hereinafter referred to as a "Section 54.314 Certification").<sup>4</sup> Section 54.314 establishes a quarterly filing schedule that determines when an ETC may begin receiving support during the calendar year.<sup>5</sup> Universal service support will only be provided to a rural ETC in a state to the extent the state has filed the requisite certification.

On September 30, 2003, the first Section 54.314 Certification deadline following Centennial's ETC designation, the MPSC filed a Section 54.314 Certification with this

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<sup>2</sup> *In the Matter of the Application of Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp. and Centennial Michigan RSA 7 Cellular Corp., for Designation as Eligible Telecommunications Carriers*, Case No. U-13751, Opinion and Order (September 11, 2003). A copy of the Order is attached hereto as Exhibit A.

<sup>3</sup> See 47 C.F.R. § 54.307.

<sup>4</sup> See 47 C.F.R. § 54.314.

<sup>5</sup> Pursuant to Section 54.314(d), a state's certification must be filed by October 1 of the preceding calendar year for eligible carriers to receive support beginning in the first quarter of the subsequent calendar year. If the October deadline is missed, the certification must be filed by January 1 for support to begin 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.

Commission and USAC certifying Centennial as eligible to receive federal universal service funds.<sup>6</sup> However, due to the April 1 filing deadline set forth in Section 54.314(d) of the Commission's rules, Centennial will be denied universal service support for most of September and for the entire fourth quarter of 2003 unless the Commission grants this waiver request.

As set forth below, a waiver of the April 1, 2003 filing deadline will allow Centennial to receive universal service support beginning on the date it was designated as an ETC in Michigan. Such action would be consistent with Commission precedent, consistent with the Commission's well-established competitively neutral universal service policies, and would serve the public interest.

### **REQUEST FOR WAIVER**

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>7</sup>

Federal courts also have recognized that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the

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<sup>6</sup> See Michigan Public Service Commission Minute Action, Federal Universal Service Fund, Certification of ETCs, Case U-13873, dated September 30, 2003.

<sup>7</sup> See 47 C.F.R. §1.925(b)(3).

public interest.”<sup>8</sup> Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”<sup>9</sup>

The Commission established the quarterly Section 54.314 Certification filing schedule to facilitate USAC’s ability to report universal service support projections to the FCC. In adopting the schedule, the FCC did not intend to create a process that disadvantages carriers receiving ETC designation subsequent to one of the quarterly certification deadlines. The April 1, 2003 filing deadline for third and fourth quarter 2003 support fell more than 5 months prior to Centennial’s ETC designation by the MPSC. Thus, it is clear that the MPSC could not have met, under any circumstances, the deadline required for Centennial to receive support beginning in the third quarter of 2003.

As the Commission has previously concluded, strict application of the Section 54.314 Certification filing schedule is inconsistent with the public interest and undermines the Commission’s goals of competitive neutrality when a carrier is denied universal service support it is otherwise entitled to receive. In granting waiver requests to competitive ETCs in similar circumstances as Centennial, the Commission has acknowledged that strict application of the certification filing schedule set forth in Section 54.314(d) may have the effect of penalizing newly designated ETCs. For that reason the Commission has determined that it would be “onerous” to require an ETC to forego universal service support solely because it was designated as an ETC after a certification deadline.<sup>10</sup>

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<sup>8</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>9</sup> *Northeast Cellular Telephone Co.*, 897 F.2d at 1166 (citing *WAIT Radio* 418 F.2d at 1159).

<sup>10</sup> *RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, Order, 17 FCC Rcd 24387, para. 6 (“RFB Waiver Order”); *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 (rel. April 17, 2003) (“Guamcell Waiver Order”); *Western Wireless Corporation Petition for Waiver of Sections 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003) (“Western Wireless Order”).

It would be onerous to deny Centennial receipt of universal service support for more than three months because its ETC designation occurred after the Section 54.314 Certification filing deadline for receipt of third and fourth quarter support.<sup>11</sup> Centennial's circumstances are similar to the circumstances of several competitive ETCs that have been granted waiver of the filing deadlines set forth in Section 54.314.<sup>12</sup> Denying support to Centennial, a competitive ETC, merely because of the timing of its ETC designation would undermine the Commission's goals of competitive neutrality.

Moreover, the Section 54.314 Certification filing schedule creates an unintended consequence with respect to Centennial in Michigan by delaying universal service support beyond the date of its ETC designation. This result is inconsistent with and frustrates the underlying purpose of the Commission's rules, and is inequitable and unduly burdensome to Centennial.

For the reasons stated herein, Centennial submits that granting a waiver of the filing deadline set forth in Section 54.314(d) of the rules will allow Centennial to receive universal service support beginning on September 11, 2003, the date it received ETC designation in Michigan. Such action is appropriate and consistent with Commission precedent, consistent with the Commission's statutory goal of preserving and advancing universal service, and in the public interest.

### **REQUEST FOR EXPEDITED TREATMENT**

Centennial requests expedited action on this waiver request. Centennial and the Michigan consumers that it serves should not be deprived of universal service support for more than three months as a result of the unintended timing problem created by the quarterly filing

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<sup>11</sup> See *Western Wireless Order*, para. 7.

<sup>12</sup> See *RFB Waiver Order*, *GuamCell Order*, *Western Wireless Order*.

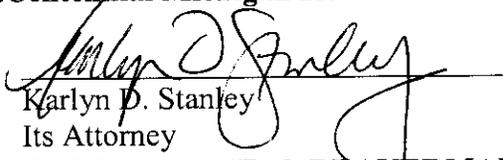
deadlines of Section 54.314(d). Denying Centennial support for the remainder of the third quarter and the entire fourth quarter of 2003 under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost and rural areas. For that reason, expedited action is in the public interest.

**CONCLUSION**

For the reasons stated herein, Centennial respectfully requests, pursuant to Sections 1.3 and 1.925 of the FCC's rules, a waiver of Section 54.314(d) of the Commission's rules; and expedited consideration of this waiver request.

Respectfully submitted,

**Michiana Metronet Inc.**  
**Centennial Michigan RSA 6 Cellular**  
**Corp. Centennial Michigan RSA 7 Cellular Corp.**

By:   
Karlyn D. Stanley  
Its Attorney  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
1919 Pennsylvania Avenue, NW  
Suite 200  
Washington, D.C. 20006  
(202) 659-9750

November 4, 2003

# **Exhibit A**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application of )  
MICHIANA METRONET, INC., CENTENNIAL )  
MICHIGAN RSA 6 CELLULAR CORP., )  
and CENTENNIAL MICHIGAN RSA 7 )  
CELLULAR CORP., for designation as eligible )  
telecommunications carriers pursuant to )  
Section 214(e)(6) of the Communications Act of 1934.)  
\_\_\_\_\_)

Case No. U-13751

At the September 11, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On March 28, 2003, Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp., (Centennial) filed an application seeking designation as eligible telecommunications carriers (ETCs) under Section 214(e)(6) of the federal Communications Act of 1934, as amended, 47 USC § 214(e)(6) (federal Act). If granted, designation as an ETC would permit Centennial to receive universal service support in Michigan.

Several parties petitioned to participate in the proceeding. On May 6, 2003, the Commission Staff (Staff) filed a notice of appearance. On May 21, 2003, CenturyTel of Michigan, Inc.,

CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., and CenturyTel of Upper Michigan, Inc., (CenturyTel) jointly filed a petition to intervene. Also on May 21, 2003, Hiawatha Telephone Company, Chippewa County Telephone Company, Midway Telephone Company, and Ontonagon County Telephone Company (Hiawatha) jointly petitioned to intervene. The Michigan Exchange Carriers Association, Inc., (MECA), a voluntary association of 33 small incumbent local exchange carriers (ILECs) in Michigan, also filed a petition. On May 28, 2003, AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T) filed a notice of intent to participate.

On May 28, 2003, a pre-hearing conference was conducted by Administrative Law Judge Mark E. Cummins (ALJ). Centennial, CenturyTel, MECA, AT&T, and the Staff attended. The ALJ granted the petitions to intervene and ordered the parties to file their direct testimony by June 10, 2003 and rebuttal testimony by June 23, 2003. Cross-examination of witnesses was to take place on July 7, 2003,<sup>1</sup> with a briefing schedule to be determined thereafter. In order to meet the 180-day Federal Communications Commission (FCC) guideline for state commissions to act on ETC applications, the Commission agreed to read the record in this proceeding.

Several parties filed testimony. Centennial filed the direct and rebuttal testimony of Phillip H. Mayberry, President, US Wireless Operations for Centennial Communications Corp. CenturyTel filed the direct and rebuttal testimony of Ted M. Hankins, its Director of State Government Relations. MECA filed the direct and rebuttal testimony of Robert W. Orent, President and CEO of Hiawatha Communications, Inc. The Staff filed the direct testimony of Daniel J. Kearney, Supervisor of the Operations Section of the Commission's Telecommunications Division.

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<sup>1</sup>This date was later moved to July 8, 2003.

On July 8, 2003, the ALJ conducted an evidentiary hearing. All testimony was bound into the record by stipulation of the parties and cross-examination of witnesses was waived. Centennial, CenturyTel, MECA, and the Staff filed briefs and reply briefs on July 23 and August 1, 2003, respectively.

## II.

### POSITIONS OF THE PARTIES

There are two issues in this proceeding. First is whether Centennial should be designated as an ETC for purposes of receiving universal service support. Second, if Centennial is granted ETC status by the Commission, for what service area(s) should Centennial's status be granted.

#### Centennial

Centennial is a regional telecommunications company that provides service to approximately 530,000 customers in 30 markets across 6 states. Centennial currently provides wireless telecommunications service to approximately 115,000 Michigan customers in 23 counties. Its service area encompasses much of southwestern Michigan, including Battle Creek, Benton Harbor, Jackson, Kalamazoo, and Michigan Rural Service Areas 6-9.

Centennial argues that it meets the requirements for ETC designation under the federal Act. Centennial indicated in its application that its designation as an ETC serves the public interest because it promotes competition and the provision of new technologies to Michigan customers in high-cost, rural areas. Centennial represents that once it receives its ETC designation, it plans to make a "universal service" offering to customers that includes all of the supported services, including lifeline and link up services. Centennial further avers that it possesses the necessary financial, managerial, and technical qualifications to provide wireless service and that it provides

all the services supported by universal service mechanisms. Centennial says that it will advertise the availability of the supported services and charges in a way that fully informs the general public throughout its designated service area. Centennial's witness testified that Centennial currently advertises its wireless services via newspapers, television, radio, and the Internet.

Centennial argues that its application is in the public interest. Centennial asserts that granting it ETC status will help bring meaningful choice to Michigan customers who have few, if any, choices for local exchange service. Centennial further asserts that its ETC status will bring the benefits of competition to customers, increase choices, provide higher service quality, and lower rates. Centennial also asserts that granting it ETC status will not adversely affect the level of support awarded to existing rural telecommunications companies.

Centennial plans to use the universal service funds to expand and upgrade its infrastructure to deploy wireless service to rural areas. It intends to use the funds to expand its coverage and improve signal strength to more remote areas by establishing and maintaining additional cell sites. Centennial also plans to use the funds to provide and expand interconnection between the cell sites and its switching offices. In remote areas, Centennial would like to move away from leasing landlines that provide the interconnection towards using more reliable microwave paths.

Centennial notes that the FCC has determined that wireless providers may be designated as ETCs.<sup>2</sup> Where the FCC has granted ETC status to a wireless carrier, the FCC emphasized that the designation promoted competition and benefited customers in high-cost and rural areas by

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<sup>2</sup>See, Centennial application, p. 2, citing, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCCR 8776, 8858-59, ¶¶ 145-47 (1997).

increasing customer choice, innovative services, and new technologies.<sup>3</sup> Centennial asserts that the FCC recognizes that designating competitive ETCs promotes competition and benefits customers in rural and high-cost areas by increasing customer choice, promoting innovation and new technologies, and encouraging affordable service.<sup>4</sup> Centennial claims that it is dedicated to serving rural areas in Michigan where there are few choices for local telecommunications services. Centennial claims that its customers will benefit from having an expanded local calling area, making intrastate toll calls more affordable.

Centennial also requests that the Commission establish its service area for purposes of determining universal service support. Centennial specifically requests that it be granted ETC status in each of the exchanges where it is licensed to provide service. Attached to its application is Exhibit E that identifies each of the requested areas by rate center.

Finally, Centennial requests that the Commission “certify” Centennial’s compliance with Section 254(e) of the federal Act pertaining to “high-cost” certification. Centennial asserts that pursuant to FCC Rules 54.313 and 54.314, carriers seeking high-cost universal service support must either be certified by the state commission or self-certify with the FCC and the Universal Service Administrative Corporation. In support of its certification, Centennial presents an affidavit of Lourdes Lucas attesting that all high-cost support provided to Centennial will be used

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<sup>3</sup>See, Centennial application, p. 2, citing, *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama; Federal State Joint Board on Universal Service*, Memorandum Opinion and Order, CC Docket No. 96-45, 2002 FCC Lexis 6406 (December 4, 2002), ¶ 25.

<sup>4</sup>See, Centennial application, p. 8, citing, *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming; Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, CC Docket No. 96-45, 12 FCCR 48, ¶ 17 (2000).

only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

### CenturyTel

CenturyTel argues that Centennial's application must be denied. CenturyTel believes that Centennial's application does not meet the requirements for the granting of ETC status under Section 214(e), because granting ETC status to Centennial would not be in the public interest. CenturyTel asserts that Centennial has been successful at providing service without the need for universal service support. It argues that giving Centennial universal service funds would give Centennial an unearned windfall, would work to increase charges for Michigan customers, and will ultimately jeopardize the universal service support mechanism altogether.

CenturyTel claims that Centennial should not be granted ETC status because, as a wireless carrier, Centennial's costs are unrelated to landline costs from which universal service support is derived. CenturyTel also asserts that it is held to higher service standards and regulatory obligations than wireless carriers, which result in higher operating costs for CenturyTel. CenturyTel specifically objects to the fact that Centennial has lower costs than CenturyTel, but would receive the same universal service support. CenturyTel argues that granting Centennial ETC status would create an uneven playing field, biased against higher cost providers, and could actually reduce competition.

CenturyTel also expressed concern over the fact that wireless carriers are not subject to the same regulatory oversight as incumbent carriers. CenturyTel contends that while wireless carriers are seeking support from a regulatory cost recovery mechanism, the Commission has no regulatory oversight over these carriers to ensure that the monies are used to advance universal service. CenturyTel contends that this uneven playing field, and the fact that the benefits of granting

wireless carriers ETC status do not exceed the costs, means that granting Centennial's application would not be in the public interest.

CenturyTel also believes that it would be premature for the Commission to grant any ETC applications while the FCC is in the process of considering new rules for the granting of ETC status to competitive carriers.<sup>5</sup> CenturyTel suggests waiting until the FCC makes its pronouncements regarding any changes.

Furthermore, if the Commission decides to grant Centennial's application, then CenturyTel requests that Centennial's ETC status be conditioned on Centennial's compliance with regulatory safeguards to ensure a level competitive playing field with rural providers. CenturyTel also argues that allowing Centennial to have ETC status in only a portion of a rural incumbent local exchange carrier's (ILEC's) service area is contrary to the public interest, and that the Commission should not redefine CenturyTel's rural ILEC service area.

### Hiawatha

Hiawatha believes that Centennial's application does not satisfy the requirements of granting ETC status and therefore should be denied. Hiawatha asserts that it provides rural telecommunications services and would be economically harmed if Centennial's application were granted. Hiawatha believes that universal service support is a scarce resource that is jeopardized by granting ETC status to providers like Centennial whose lower costs do not justify receiving the same level of support as rural carriers. Hiawatha also believes that granting Centennial ETC status would create an uneven competitive playing field for rural carriers. Hiawatha claims that wireless carriers given ETC status should be subject to the same service quality and reporting requirements

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<sup>5</sup>See, Public Notice, *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*, FCC 03J-1, CC Docket No. 96-45 (February 7, 2003).

as ILECs. Hiawatha also believes that Centennial should be required to serve the same areas as the ILECs and that the Commission should not redefine Hiawatha's service areas. Hiawatha also contends that in order for Centennial's application to satisfy the public interest requirement, Centennial should have to demonstrate that the benefits of supporting multiple networks outweigh the cost of supporting multiple networks.

### MECA

MECA also opposes Centennial's application for designation as an ETC. MECA asserts that it and its members, many of whom provide service to rural areas of the state, will suffer from a loss of universal service support. MECA asserts that a loss of universal service funds will affect small rural telecommunications providers' ability to maintain and invest in the infrastructure needed to serve high-cost areas.

MECA argues that Centennial's application cannot be granted unless granting the application is in the public interest. MECA asserts that merely providing all universal service supported services does not mean that an applicant's application is in the public interest. MECA alleges that the further public interest finding should be based upon universal service purposes and principles. MECA asserts that Congress, in placing this added requirement, did not believe that the public interest would always be served by encouraging competition in rural areas.

MECA claims that Congress did not intend universal service support to be a subsidy program. Rather, MECA argues, Congress intended universal service support to provide for cost recovery in order to promote infrastructure investment in high-cost rural areas where providing the same quality service at affordable rates comparable to urban areas is not suitable for carriers. MECA argues that without this support, high-cost investment would not have occurred in the past and will

not occur in the future. MECA sees infrastructure investment as the primary goal of the universal service program.

MECA argues that the only providers of high quality, facilities-based services throughout their respective service areas are the rural ILECs. MECA claims that once a rural ILEC loses the ability or incentive to continue investing in its network, then rural areas may be deprived of affordable, high quality telecommunications services. MECA asserts that lack of sufficient funding will also affect the deployment of advanced services to consumers, such as schools, libraries, and health care facilities.

Consequently, the granting of ETC status to competitive carriers in areas served by rural carriers, MECA contends, must be properly managed to foster the goals of the federal Act. MECA claims that if the overall demand for funding grows to an unsustainable level, then support payments will be frozen or curtailed, resulting in serious operating issues for many rural telephone companies. MECA claims that this would result in reductions in service quality, higher rates, and perhaps even financial failure of rural companies that serve as the "lifeline" for many remote customers. MECA argues that the proliferation of "uneconomic competition" in rural areas could jeopardize rural telecommunications services altogether.

MECA also asserts that state commissions have placed far too great an emphasis on the benefits of competition when deciding ETC applications for rural service areas. MECA claims that subsidized competition does not serve the public interest. MECA believes that this over-emphasis has been to the detriment of ensuring that all consumers will retain and gain access to high quality, affordable telecommunications services, including advanced services, on a comparable basis to those available in urban areas. Because of this, MECA believes that the

Commission must establish a set of principles to guide its decisions on ETC applications affecting rural areas.

To assist the Commission in establishing this set of principles, MECA offers its own. First, rural consumers should receive access to affordable, high quality telecommunications and information services, including advanced services that are reasonably comparable to those in urban areas and at reasonably comparable prices. Second, high-cost support should not be used as an incentive for uneconomic competition in areas served by rural carriers. Third, universal service funds are a scarce national resource that telephone companies must carefully manage to serve the public interest. Fourth, rural universal service support reflects the difference between the cost of serving high-cost rural areas and the rate levels mandated by policymakers. Fifth, the public interest is served only when the benefits from supporting multiple carriers exceed the costs of supporting multiple networks. Sixth, in areas where costs of supporting multiple networks exceed the public benefits from supporting multiple carriers, the public interest dictates providing support to a single carrier that provides critical telecommunications infrastructure. Seventh, the cost of market failure in high-cost rural Michigan could be severe.

In addition to the guiding set of public interest principles, MECA believes the Commission should create a standard set of minimum qualifications, requirements, and policies to be applied when considering ETC applications for rural service areas. MECA believes that using such a template would help the Commission determine whether the public interest would be served by granting an application. MECA also asserts that such a guideline would improve the long-term viability of the universal service fund because it believes only the most qualified carriers that are capable of, and committed to, being "true providers" of universal service should receive the ETC designation.

To assist the Commission, MECA offers the following qualifications and requirements that it believes the Commission should adopt when considering ETC applications: 1) A carrier must demonstrate its ability and willingness to provide all supported services throughout the service area. 2) To fulfill the advertising requirement, an ETC must emphasize its universal service obligation to offer service to all consumers in the service area. 3) A carrier must have formal arrangements in place to provide service where facilities have yet to be built. 4) A carrier must have a plan for building out its network once it receives ETC status and must make demonstrative progress toward achieving its plan to retain its status. 5) A carrier must demonstrate that it is financially stable.

In addition to public interest principles, and minimum qualifications and requirements, MECA urges adoption of the following policies that it believes the Commission should adhere to when reviewing ETC applications involving rural areas: 1) ETC designations in rural areas should be made at the study area level (an ILEC's entire service territory within one state). 2) The Commission should ensure that competitive ETCs will be capable of providing high-quality service to all customers in the service area should the rural ILEC find it necessary to relinquish its own ETC designation. 3) Any service quality standards, reporting requirements, and customer billing requirements established by the Commission should apply equally to all ETCs in the state. 4) The Commission should retain the authority to decertify any ETC that is not meeting any of the Commission's qualifications and requirements.

In short, MECA does not believe that granting Centennial's application would be in the public interest. MECA also supports deferring the decision on Centennial's application until the Federal-State Joint Board clarifies the process for designating ETCs.

## Staff

The Staff's testimony references background material that it believes will assist the Commission in determining whether granting Centennial's application would be in the public interest. In so doing, the Staff directs attention to portions of the MTA and the federal Act that support the development and the use of competition to make available quality telecommunications services at prices that are just, reasonable, and affordable even in rural, high-cost areas. The Staff also presents a number of questions for the Commission's reflection. The Staff would like more guidance as to the definition of "public interest." The Staff suggests that healthy competition is the most significant factor in a public interest analysis, followed closely by choice and reasonable rates. In the end, the Staff sees no reason to further delay or deny Centennial's ETC designation.

### **III.**

## **DISCUSSION**

### ETC Designation

Pursuant to 47 USC 214(e)(2), the Commission may designate more than one carrier in a rural area as an ETC if the Commission finds doing so consistent with the public interest, convenience, and necessity. The parties to this proceeding opposing Centennial's application argue that granting Centennial's application is not in the public interest. The Commission disagrees. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. In this case, designating Centennial as an ETC is in the public interest because it is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies, and encouraging affordable telecommunications services. Further, Centennial provides service where there are few, if any, competitive local exchange carriers.

The Commission disagrees with the significance of the numerous arguments advanced by the opposing parties. To the extent that the opposing parties claim that wireless service is inferior to landline service, the Commission responds that customers should not be denied an opportunity to determine which of these services best meets their needs. In response to the argument that wireless service providers are not subject to the same regulations designed to protect customers, the Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service. To the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition. Moreover, concerns over the effects of competition on the universal service mechanism are better addressed by the FCC, which is responsible for disbursing the federal universal service funds.

There is ample precedent in support of a wireless carrier's designation of ETC status. On at least three prior occasions, this Commission has granted ETC status to wireless carriers.<sup>6</sup> In addition, numerous ETC proceedings involving competitive carriers, including wireless carriers, have taken place at the FCC and before other state commissions with the competitive carrier ultimately being granted ETC status.<sup>7</sup> The Commission provided parties an opportunity to voice their concern about the granting of ETC status to a wireless carrier by conducting an evidentiary

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<sup>6</sup>See, the August 26, 2003 order in Case No. U-13714, the November 20, 2001 order in Case No. U-13145, and the December 6, 2002 order in Case No. U-13618.

<sup>7</sup>See, e.g., *RCC Minnesota, Inc. et. al. Request for Designation as Eligible Telecommunications Carrier*, Order, Maine Public Utilities Commission Docket No. 2002-344 (May 13, 2003); *In the Matter of Federal State Joint Board on Universal Service Cellular South License Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3317 (rel. Dec. 4, 2002); *In the Matter of Federal State Joint Board on Universal Service RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181 (rel. Nov. 2, 2002).

hearing. Virtually every argument raised by the parties in opposition to Centennial's application, however, has been addressed previously. No new information was brought to the Commission's attention that would persuade the Commission that designating a competitive carrier as an ETC in an area served by a rural ILEC would be contrary to the public interest.

Furthermore, the Legislature has decided that the Commission should not regulate wireless service. For that reason, the Commission must also decline to adopt the conditions proposed, such as requiring Centennial to assume carrier of last resort responsibilities, which would require that the Commission regulate wireless service. Consistent with prior designations, however, the Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.

The Commission declines CenturyTel's and MECA's recommendation to defer its determination on Centennial's application until after the Federal-State Joint Board provides further clarity on ETC designations. At this point, there is no time frame in which the Joint Board will act. The Commission, however, has been urged by the FCC to act upon ETC applications within 180 days and the end of that period with respect to this application is fast approaching. The Commission believes the better course of action is to act upon Centennial's application within the desired timeframe and take recommendations of the Federal-State Joint Board into account when deciding future cases.

#### Service Area

Centennial also requests that the Commission establish a "service area" for purposes of determining universal service support. The federal Act defines the term "service area" to be a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." 47 USC 214(e)(5). As stated above, Centennial

requests that each of the exchanges in the counties covered by its licensed service area be the designated service area for universal service support.

CenturyTel, Hiawatha, and MECA oppose Centennial's service area proposal. They argue that Centennial must serve the same service area as the rural ILEC. CenturyTel contends that redefining a rural carrier's service area acts as a disincentive for an additional ETC to serve the most rural parts of a relevant study area. CenturyTel contends that the goal of universal service would be better served by requiring "ETCs to expand their horizons." CenturyTel Brief, p. 17. CenturyTel is also concerned that if additional ETCs are not required to serve a rural ILEC's entire study area, then there is a greater risk of "cream-skimming," where the additional ETC can choose to provide service to lower cost customers without being subject to providing service to attendant higher cost customers while receiving the same level of universal service support as the rural ILEC.

The Commission appreciates the concerns raised by CenturyTel, Hiawatha, and MECA, but declines to accept the proposal that the wireless carrier's service area should encompass the ILEC's entire study area. In granting ETC status to RFB Cellular, Thumb Cellular, and NPI-Omnipoint Wireless, LLC, the Commission did not require the wireless carrier to provide service to the entire study area of the rural ILEC.

The Commission is sensitive to the "cream-skimming" issues that could exist if every ETC applicant is able to carefully craft its own desired service area. Consequently, the Commission has decided to delineate service areas for purposes of universal service support by exchanges. In so doing, the Commission finds that the "cream-skimming" concerns are alleviated because Centennial has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC's wireless licensing process. Additionally, exchanges tend to encompass many

types of customers, including rural and high-cost customers. The Commission is persuaded that Centennial is not targeting any specific area or that serving any of the partial study areas would result in a windfall due to service to a highly-populated area. Much of the area covered by Centennial's wireless carrier license is in very rural parts of Michigan. The Commission is also convinced that designating service areas utilizing entire exchanges will minimize the administrative burden on rural telephone companies to calculate costs at something other than a study area level. This approach will require affected ILECs to disaggregate into service areas that are coterminous with existing telecommunications boundaries for which costs are already calculated.

#### "High-Cost" Certification

As mentioned above, Centennial requests that the Commission "certify" Centennial's compliance with Section 254(e) of the federal Act pertaining to "high-cost" certification. Pursuant to 47 CFR 54.313 and 54.314, jurisdictional carriers seeking high-cost universal service support must be certified annually by the state commission. Each year, the state commission must file with the FCC and the Universal Service Administrative Corporation a letter identifying which carriers in the state are eligible to receive universal service funds and certify that those carriers will use those funds only for the provision, maintenance, and upgrading of facilities and services for which universal service support is intended. This certification must be filed on or before October 1 if the carriers are to receive universal service funds in the first, second, third, and fourth quarters of the succeeding year. Carriers whose certifications are filed after October 1 will not be eligible to receive support in the first quarter of the succeeding year.

The Commission has historically issued its order identifying eligible carriers late in the month of September.<sup>8</sup> Because the Commission is granting Centennial's ETC designation today, it is appropriate to include Centennial in the Commission's annual certification for year 2004 when it makes this submission. Since the deadlines have already passed for an ETC to receive support for any quarter in year 2003, there is no reason to issue a separate certification for Centennial at this time.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. Centennial should be designated as an ETC for the purpose of receiving federal universal service funds.
- c. Centennial's designation as an ETC is in the public interest.
- d. Centennial's service area for purposes of determining universal service obligations and support mechanisms should be coterminous with established exchanges.
- e. Centennial should be directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.
- f. The granting of Centennial's ETC status should be conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

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<sup>8</sup> See, the September 27, 2001 order in Case No. U-13100, and the September 23, 2002 order in Case No. U-13490.

g. Centennial's ETC designation should be subject to the annual Commission re-certification process. Centennial should be directed to contact the Staff regarding the 2004 re-certification process prior to September 17, 2003.

THEREFORE, IT IS ORDERED that:

A. Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. are designated eligible telecommunications carriers for the purpose of receiving federal universal service funds.

B. The service areas of Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp., for purposes of determining universal service obligations and support mechanisms, are to be coterminous with established exchanges.

C. Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. are directed to file in this docket (and serve upon the other parties) a listing of the exchanges where they currently provide service or intend to provide service under their licenses and for which they wish to receive universal service support and are able to meet universal service obligations.

D. Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. eligible telecommunications carrier designations are conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

E. Michiana Metronet, Inc.'s, Centennial Michigan RSA 6 Cellular Corp.'s, and Centennial Michigan RSA 7 Cellular Corp.'s eligible telecommunications carrier designations are subject to the annual Commission re-certification process. The companies are directed to contact the Commission Staff regarding the 2004 re-certification process prior to September 17, 2003.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(SEAL)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of September 11, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

## CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 4<sup>th</sup> day of November, 2003, I caused a copy of the foregoing *Petition for Waiver* to be sent via hand delivery(\*), or U.S. Mail to the following:

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