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

In re	)	
	)	
RCC ATLANTIC, INC.	)	
	)	**CC Docket No. 96-45**
Petition for Waiver of	)	
Sections 54.313	)	
of the Commission's Rules	)	

PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED

RCC Atlantic, Inc. ("RCC"), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. § 1.925(b), hereby requests a waiver of Sections 54.313 of the Commission's rules, 47 C.F.R. §§ 54.313.[1] RCC, a commercial mobile radio service ("CMRS") provider that was recently designated as an eligible telecommunications carrier ("ETC") in the State of Vermont, requests that the Commission waive these rules to enable RCC to receive high-cost universal service support as of June 26, 2003, the date it received ETC status.[2] In support of this Petition, the following is respectfully shown:

I. BACKGROUND

On October 15, 2002, RCC filed a Petition with the Vermont Public Service Board ("VPSB") requesting designation as an ETC in areas served by non-rural local exchange carriers ("LECs"). Following official notice and a public hearing, the VPSB designated RCC an ETC throughout its requested service area.[3]

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1 No fee is required to be submitted with this request.

2 For the Commission's convenience, copies of the certifications, as filed, are attached hereto as Exhibit A.

3 *RCC Atlantic, Inc. Order In Re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996*, Docket No. 5918 (June 26, 2003) ("Designation Order"). A copy of the Designation Order is attached hereto as Exhibit A.

As a competitive ETC, RCC is entitled to receive high-cost universal service support based on the per-line amounts received by the LECs serving the areas for which it was designated as an ETC. 47 C.F.R. §§ 54.807(a), 54.307(a). Before a competitive ETC can receive such support, the FCC's rules require, *inter alia*, that a high-cost certification by the state commission, be filed in accordance with a set of deadlines provided in the rules. This certification must state that the company has committed to use its universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. § 54.313(a).

Because of the schedule set forth in the rules, high-cost certifications must be on file well in advance of the calendar quarter for which support is received. Based on the schedule in Section 54.313(d)(3), the high-cost certification must be filed by October 1 for the carrier to be eligible for high-cost support for all four quarters of the following year; by January 1 for the second, third, and fourth quarters of that year; by April 1 for the third and fourth quarters of that year; and by July 1 for the fourth quarter of that year. Thus, even if the state files a high-cost certification on the date of the carrier's designation, a competitive ETC must endure a gap of several months or more during which it provides the supported services but receives no support.

In RCC's case, the VPSB filed its initial high-cost certification on or before July 1, 2003 the first certification deadline following RCC's designation.[4] Thus, notwithstanding the VPSB's compliance with all applicable deadlines, RCC began receiving support only as of October 1, 2003. Without a grant of this Petition, RCC will forgo high-cost support for its provision of universal service between June 26, 2003 and September 30, 2003.

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[4] A copy of the high-cost certification filed by the VPSB is attached hereto as Exhibit B.

II. ARGUMENT

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may grant a waiver of the application of any of its rules for "good cause shown." 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.

While rules are generally presumed valid,[5] federal courts have emphasized that the Commission may waive a rule where the specific facts make strict compliance with the rule inconsistent with the public interest.[6]

Strict application of Sections 54.313(d)(3) to the instant case would be contrary to the public interest. The rules tying high-cost support payments to the filing of certifications several months beforehand would be impossible to comply with, and would effectively nullify the VPSB's designation of RCC through the third quarter of 2003. The VPSB fully complied with the rules by filing a high-cost certification on or before the first certification deadline following RCC's designation. Yet, the timing of RCC's designation creates the unintended consequence of denying RCC high-cost support for over three months past its designation as an ETC. Moreover, RCC is offering universal service to subscribers in Vermont, and is actively working with the VPSB to advance Lifeline and Link-up support in the state. Given that RCC is taking on the

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[5] *See WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972).

[6] *See Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

responsibilities of an ETC, it would be grossly unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in rural Vermont who are expecting rapid deployment of facilities would be harmed by its denial.

The denial of support that would result from strict application of Sections 54.313(d)(3) would be inconsistent with the Commission's goal of competitive neutrality, which the Commission has stressed as a "fundamental principle of the Commission's universal service policies."[7] Additionally, the Commission has repeatedly recognized that designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas.[8] For newly designated ETCs, prompt commencement of high-cost support is crucial for constructing and upgrading networks to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service. Since the majority of newly designated ETCs are competitive carriers, strict enforcement of Sections 54.313(d)(3) would unfairly handicap new entrants, including carriers offering services using new technologies.

Furthermore, the Commission has granted similar requests in the past. Similar to the

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[7] *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations,* CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003) ("*Guamcell Waiver Order*").

[8] *See, e.g., Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota,* 16 FCC Rcd 18133, 18137 (2001) ("Designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies."); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* 16 FCC Rcd 48 (2000) ("[C]ompetition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers . . . by creating incentives to ensure that quality services are available at 'just, reasonable, and affordable rates.'") (footnote omitted).

instant situation, the Commission granted to RFB Cellular, Inc. ("RFB") a limited waiver of, *inter alia,* the annual high-cost certification deadlines in Section 54.313(d) of the Commission's rules in order to allow RFB to begin receipt of high-cost universal service support from the date on which it received its ETC designation.[9] In deciding to grant RFB's waiver request, the Commission agreed that denying high-cost support to the newly-designated ETC merely because of the timing of its ETC designation would undermine the FCC's well-established goal of competitive neutrality for universal service.[10] In addition, while acknowledging that the rule tying receipt of support to the prior filing of a certification is intended to provide the Universal Service Administrative Company ("USAC") with sufficient time to process the certifications before payment, the FCC concluded that the "special circumstances" of an ETC being designated after a filing deadline "outweigh any processing difficulties that USAC may face as a result of the late-filed certification."[11]

The same special circumstances are present in the instant case. RCC seeks a limited waiver of the certification filing deadlines that occurred prior to the company's designation as an ETC. RCC "could not have met, under any circumstances," the April 1, 2003, high-cost certification filing deadlines because it had not yet been designated as an ETC.[12] In the *RFB Waiver Order*, the Commission concluded that a waiver of the pre-designation filing deadlines

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9 *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations,* CC Docket No. 96-45, DA 02-3316 (WCB rel. Dec. 4, 2002) ("*RFB Waiver Order*"); *see also, In the Matter of Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations,* CC Docket 96-45, DA 01-1911 (Released August 15, 2001); In the Matter of *N.E. Colorado Cellular, Inc. Petition for Wavier of Section 54.314(d) of the Commission's Rules and Regulations,* CC Docket 96-45, DA 03-2482 (WCB rel. July 25, 2003).

10 *Id.* at ¶ 9.

11 *Id.* at ¶ 8.

12 *Id.*

was warranted, appropriate, and consistent with the public interest, and that "[i]t would be onerous . . . to deny an ETC receipt of universal service support for an entire quarter, as a result of a particular ETC designation having occurred after the certification filing deadline."[13] As the Commission found with respect to RFB, RCC "should not be penalized as a result of the timing of its ETC designation."[14]

Furthermore, on January 13, 2004, the VPSB filed a letter with the FCC stating that the VPSB has no objection to the FCC granting waiver which would enable RCC to receive the additional USF support requested in this petition. A copy of the VPSB's letter is attached to this request as Exhibit C.

III. REQUEST FOR EXPEDITED ACTION

Because RCC is a cellular carrier serving sparsely populated areas in Vermont, high cost support is critically important to RCC's ability to serve new customers who request service. Such support assists RCC in providing a quality universal service offering to underserved communities. It would be inequitable to penalize RCC — and to hinder a state's efforts to promote the development and improvement of telecommunications infrastructure for its citizens — by strictly applying rules that are impossible for states and competitive carriers to comply with. RCC requests expedited action on this Petition in order to ensure that consumers experience the benefits that were intended to result from RCC's designation sooner. RCC has made substantial commitments to construct additional facilities in Vermont's rural and high-cost areas. In the absence of expedited action, RCC may be forced to delay system construction and upgrades planned for 2004 based on anticipated high-cost universal service support.

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[13] *Id.*

[14] *RFB Waiver Order* at ¶ 9.

IV. CONCLUSION

For the reasons stated herein, RCC submits that granting a waiver of the filing deadlines set forth in Section 54.313(d)(3) of the Commission's rules to allow RCC to receive high-cost universal service support beginning as of June 26, 2003, is appropriate, consistent with the Commission's statutory goal of preserving and advancing universal service, and will serve the public interest. Expedited action is requested to minimize delays in construction and upgrading of infrastructure and provision of quality competitive service to consumers in Vermont's rural and high-cost areas. Without such support, RCC may be forced to slow the construction of planned system upgrades, which would ultimately punish consumers. High-cost support will enable RCC to invest in its network and improve and expand its service in Vermont.

Respectfully submitted,

RCC ATLANTIC, INC.

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January 14, 2004

EXHIBIT A

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5918

In re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unicel)	))))	Hearing at Montpelier, Vermont March 13, 2003

Order entered: 6/26/2003

PRESENT: Peter M. Bluhm, Esq., Hearing Officer

APPEARANCES: Dixie Henry, Esq.
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I. SUMMARY

For a telecommunications carrier to receive federal universal-service support, it must first be designated as an "Eligible Telecommunications Carrier" ("ETC"). Under federal law, the Vermont Public Service Board ("Board") is responsible for designating ETCs in Vermont. Consistent with a stipulation, this Proposal for Decision recommends that the Board designate RCC Atlantic, Inc., d/b/a Unicel ("RCC"), as an Eligible Telecommunications Carrier through December 31, 2005, within a service area consisting of 91 wire centers.

This Proposed Decision also recommends that the Board impose several conditions beyond those included in the stipulation. RCC should file periodic reports on its use of federal funds. The Board should announce that it may in the future require RCC to provide cell extenders, external antennas and more powerful telephones at reduced cost or at no cost to the customer. The Board should also explain to RCC that it expects RCC to provide detailed signal coverage information if and when it seeks recertification in 2005. Finally, the Board should require RCC to provide "CMRS Wireless Service Provider Local Number Portability" on and after May 24, 2004.

II. PROCEDURAL HISTORY

This Docket was initiated in October of 1996 to designate ETCs throughout Vermont. On October 15, 2002, RCC petitioned the Board, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended in 1996 ("the Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission ("FCC")'s rules, 47 C.F.R. § 54.201, asking that the Board designate RCC as an ETC. RCC seeks ETC certification in 91 exchange areas currently served by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon-Vermont"), and shown in Appendix A to this Order. RCC filed a memorandum in support of its petition.

A status conference was held on November 14, 2002, to consider the schedule for and issues raised by RCC's petition. At that conference, I asked RCC a number of questions relating to technological issues unique to wireless carriers. RCC responded in the prefiled testimony and exhibits of Elizabeth Kohler filed on November 22, 2002. Because this Docket has been open

for some years and has been used for other purposes, several parties who participated earlier did not participate in this phase of the proceedings.

Scheduling orders were issued on December 5, 2002, and February 19, 2003. In the latter, I asked the parties to analyze the legal standards applicable to this proceeding, and in particular the degree to which the Board has discretion to grant or withhold certification based upon considerations of the public good or similar standards. I also asked for analysis of recent FCC decisions and the evidentiary burden on RCC, if any, to demonstrate that it actually provides or has specific plans to provide service to all or a portion of the area for which it seeks ETC certification.

On February 14, 2003 the Vermont Department of Public Service ("DPS") and RCC ("Stipulating Parties") filed a stipulation in support of RCC's designation as an ETC. The stipulation was amended on February 25 to correct an inadvertent omission ("Amended Stipulation" or "Stipulation"). The Amended Stipulation provides that RCC should receive ETC designation through December 31, 2005. RCC also makes several undertakings in the Amended Stipulation relating to various Board policies for telecommunications carriers, including service quality requirements and deposit and disconnection requirements.

Subject to minor modifications to the schedule, the Docket proceeded in accordance with my procedural orders, which included discovery on RCC and the filing of testimony by the DPS. No other parties filed testimony or participated actively other than as observers. A technical hearing was conducted on March 13, and testimony was taken from the Stipulating Parties.[1] On March 17 the Stipulating Parties filed a joint proposal for decision. All other parties were required to file briefs by March 31, but none did so. After the record closed, RCC filed a letter making certain commitments in this proceeding.[2] The findings below incorporate the contents of this letter, and I propose to include the letter in the record of this proceeding. Any objection should be filed in comments to this Proposed Decision.

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1. Paul Phillips, Esq. attended the technical hearing on behalf of nine independent telephone companies listed on the first page of this Proposal for Decision.

2. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel, Department of Public Service.

III. FINDINGS

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. RCC provides certain telecommunications services in Vermont, within the meaning of Section 203(5) of Title 30 of the Vermont Statutes Annotated, and owns and operates public-service property in connection therewith within the meaning of Section 201 of Title 30, and therefore is subject in certain respects to the Board's jurisdiction. Amended Stipulation at ¶¶ I.5, II.1.

2. RCC holds a Certificate of Public Good to provide telecommunications services in Vermont, issued in Docket No. 6072. Amended Stipulation at ¶ I.6.

3. RCC is a Minnesota corporation registered to do business in the State of Vermont as a foreign corporation and operates in Vermont under the tradename "Unicel." Amended Stipulation at ¶¶ I.5-6.

4. RCC's regional headquarters are located in Colchester, Vermont. Exh. RCC-2 at 2.

5. RCC is a wholly-owned subsidiary of Rural Cellular Corporation (herein "Rural Cellular"), which is a publicly-traded company with over 111,000 telecommunications-service subscribers that, with its affiliates, operates "commercial mobile radio services" ("CMRS"), including PCS, cellular, and paging services, in the States of Maine, Minnesota, North Dakota, South Dakota, Vermont, and Wisconsin. Pet. at ¶ 2.

6. RCC is a CMRS provider within the meaning of "mobile service" as defined by Section 153(27) of Title 47, United States Code, and provides telecommunications services as defined in Section 254(d) thereof and Section 54.703(a) of the Code of Federal Regulations. Amended Stipulation at ¶ I.7; Exh. RCC-2 at 2.

7. RCC is licensed by the Federal Communications Commission to serve the entire State of Vermont and provides service in the Burlington, Vermont, Cellular Geographic Service Area, the Vermont One Rural Service Area, and the Vermont Two Rural Service Area. Amended Stipulation at ¶ I.8; exh. RCC-2 at 1-2.

8. RCC also is a telecommunications carrier as defined by Section 153(44) of Title 47 and Section 51.5 of the Code of Federal Regulations, is a telecommunications carrier for the purposes

of Part 54 of the FCC's rules, and therefore is considered to be a common carrier under the Act. Amended Stipulation at ¶ II.1; exh. RCC-2 at 2.

9. A telecommunications carrier must be designated as an ETC for a "service area" (an "ETC Service Area") to receive federal universal-service support. Exh. RCC-2 at 2.

10. RCC's petition seeks ETC designation for a non-rural service area in Vermont comprising all of the area currently served by Verizon-Vermont. A list of telephone exchanges comprising that area is described in Appendix A to this Order. Kohler pf. at 1-2; Petition exhibit B.

11. RCC offers its services throughout Vermont. It operates 68 cell sites, listed as Appendix B to this Order. These locations provide good coverage to many of Vermont's more rural areas, including the town of Burke and the village of Island Pond. Kohler pf. at 4; exh. RCC-3; Amended Stipulation at ¶¶ II.3-4; exh. RCC-2 at 3.

12. If RCC receives access to Universal Service Fund ("USF") subsidies, it will "look to bring" improved coverage to areas like Derby, Swanton, Highgate, Barre, East Barre, East Montpelier, Wilmington, Arlington, and Manchester. RCC states that it will also use USF subsidies to improve cellular service to communities that have some level of service, but need improved service through added channel capacity. Kohler pf. at 5.

13. Effective service at a particular location may require some enhanced equipment such as an external fixed antenna on a car or home, a "cell extender," or a more powerful telephone. Sometimes RCC adjusts its existing antennas or provides a "repeater" to improve service. If an RCC customer needs an antenna, a cell extender or a better handset, the customer may purchase those items at retail. The cost of a cell extender can range from $69 to $159. A more powerful antenna unit costs approximately $250. Tr. 3/13/03 at 29-36 (Kohler).

14. A number of areas in Vermont have little or no effective cellular service. It is possible that, even with extender devices, one or more municipalities and one or more wire centers within the proposed service area have no coverage from RCC's signal. Kohler pf. answer 8; tr. 3/13/03 at 30.

15. The FCC requires that RCC offer its services at geographically averaged prices. Tr. 3/13/03 at 39-41 (RCC Counsel).

16. Once designated as an ETC, RCC will be eligible to receive federal universal service support, including high-cost support based upon Verizon-Vermont's forward-looking cost of service. Support is paid based on the customer's billing address. When paid to RCC, this support will be "targeted" to wire centers that the FCC considers to have high costs. In Chelsea, support is $18.19 per line per month. Support will exceed $10 per month in more than a dozen wire centers and will exceed $5 per month in more than three dozen wire centers. Additional "targeted" support may be available under other programs as well. Exh. Board 1; tr. 3/13/03 at 26-27 (Kohler).

17. Once designated, RCC will advertise the availability of all USF-required services throughout its licensed service area by media of general distribution, which may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone-directory advertising. Amended Stipulation at ¶¶ II.3-4; exh. RCC-2 at 3.

18. RCC provides voice-grade access to the public-switched network through interconnection arrangements with local telephone companies. Amended Stipulation at ¶ II.3.i; exh. RCC-2 at 3-4.

19. RCC provides local usage under a variety of rate plans. Amended Stipulation at ¶ II.3.ii; exh. RCC-2 at 4.

20. RCC satisfies the dual-tone, multi-frequency ("DTMF") signaling requirement by using out-of-band, digital signaling and in-band, multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. Amended Stipulation at ¶ II.3.iii; exh. RCC-2 at 4.

21. RCC provides single-party service, as defined by FCC Rules in Section 54.101. Amended Stipulation at ¶ II.3.iv; exh. RCC-2 at 4.

22. RCC provides 911 access to emergency services throughout its service area. Amended Stipulation at ¶ II.3.v; exh. RCC-2 at 4.

23. RCC routes all wireless 911 calls to the designated "public answering safety point" ("PSAP"). Kohler pf. at 2.

24. RCC is in the process of implementing E-911 Phase I service that will enable the PSAP to receive a callback number and cell-site location along with the voice communication of a wireless 911 call. Kohler pf. at 2-3.

25. RCC has installed the hardware and software necessary for Phase I services. Kohler pf. at 3.

26. RCC is also in the process of implementing Phase II E-911 service, which will allow a PSAP to locate a caller by identifying a latitude and longitude location with a certain degree of accuracy. Kohler pf. at 3.

27. RCC provides customer access to operator services by dialing "0." Amended Stipulation at ¶ II.3.vi; exh. RCC-2 at 4.

28. RCC provides customer access to interexchange services, including a "dial-around" option to reach an interexchange carrier of choice, by means of interconnection agreements with interexchange carriers. Amended Stipulation at ¶ II.3.vii; exh. RCC-2 at 4.

29. RCC provides directory assistance to customers who dial "411" or "555-1212." Amended Stipulation at ¶ II.3.viii; exh. RCC-2 at 5.

30. In lieu of toll limitation, which is not technologically available at this time, upon designation as an ETC, RCC will provide toll-blocking service for Lifeline customers. Amended Stipulation at ¶ II.3.ix; exh. RCC-2 at 5.

31. RCC will offer Lifeline and Link-up assistance programs for qualifying low-income customers in the proposed service area. Amended Stipulation at ¶ II.3.

32. RCC plans to offer a "Basic Package" of services at $25.00 per month, nominal price. This package provides the basis for calculating the amount of benefits to Lifeline customers. After July 1, 2003, a customer who purchases the Basic Package from RCC and qualifies for Lifeline would receive a federal benefit of $10 plus $6.50 of state support for a total of $16.50. Net cost to the customer would be $8.50 per month. Tr. 3/13/03 at 17-18 (Frankel).

33. RCC provides most cell sites with backup power to maintain the continuity of its service in the event its main power supply goes down. RCC uses batteries that provide between two to three hours of power backup. Kohler pf. at 2.

34. RCC also equips hub cell sites (a hub site includes facilities to backhaul traffic from other cell sites to the switch) or remote cell sites with additional power backup from a propane or diesel generator, which extends the power backup to at least 12 hours. Kohler pf. at 2.

35. RCC maintains a large diesel generator at its switch location in Colchester, Vermont, that will provide up to two days of extended power backup before requiring refueling. Kohler pf. at 2.

36. The power backup facilities enable RCC to maintain its wireless network, including its 911 service, even in the event of a sustained power outage. Kohler pf. at 3.

37. RCC demonstrated its ability to maintain its network during the 1998 ice storm, with its resultant extended power and landline-telephone-service outages, when RCC kept a majority of its cell sites and its switch operational, served as the primary line of communications for public-safety personnel, and donated numerous cell phones to the National Guard, Red Cross and the State Police to ensure those organizations maintained critical lines of communication. Kohler pf. at 3.

38. Pursuant to the Amended Stipulation, RCC will comply with the service quality standards established in Docket 5903, with clarifications set forth in the following three findings. Frankel pf. at 4-5.

39. RCC does not provide directory assistance, nor does it publish a directory. Should RCC provide such services in the future, it will comply with Docket 5903's requirements regarding such services. Frankel pf. at 5.

40. Not later than the receipt of ETC designation, as required in Docket 5903, RCC will begin providing a 40 percent discount to persons who are deaf, speech impaired or hearing impaired. Frankel pf. at 5.

41. Docket 5903 requires that customers cannot be disconnected for nonpayment of charges for toll and optional service. RCC will define the local portion of a customer's bill as the amount of $25.00 plus any accumulated local airtime minutes. The $25.00 charge will be the basis for the calculation of the amount required from a delinquent customer if the customer intends to keep his or her basic service. RCC retains the authority to restrict these customers' basic service to a restricted plan that prohibits roaming and toll calling. Should a customer insist on a plan that includes roaming and toll services, then RCC may require a larger payment in order for the customer to continue service. RCC is investigating the ability of its billing systems to apply customer payments first to the local service portion of a customer's bill. The Department of

Public Service has not objected to this plan. Frankel pf. at 5; letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

42. RCC will comply with the Board's rules regarding required customer deposits. RCC will not require a deposit greater than two-twelfths of average annual revenue, an amount currently equal to $110.00. RCC also will restrict some customers with poor credit ratings to a plan without toll or roaming capability, but such customers could make toll calls with prepaid calling cards. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

43. RCC will comply with the Board's rules regarding refunds of customer deposits. Deposits will be refunded on the customer's anniversary date along with accrued interest, except for customers who were disconnected and customers who received more than three disconnect notices. Letter of March 26, 2003, from Tom Murray, Regulatory Project Engineer, to Deena Frankel.

44. RCC will comply with the Board's rules regarding residential disconnections. Interception of outgoing calls is the method by which this wireless carrier "disconnects" service. Disconnection will be limited to persons who have received disconnection notices and in accordance with the rule. Frankel pf. at 6-7.

45. Under the Board's rules, disconnection of utility service may occur only between the hours of 8:00 A.M. and 2.00 P.M. of the business day specified on the notice of disconnection, or within a specified number of business days thereafter. Board Rule 3.306. "Business day" is defined as Monday through Thursday, with exceptions for holidays and days when the company's business office is not open to the public. Board Rule 3.301(F). This definition limits the days on which disconnections can occur. The purpose of this rule is to ensure that customers can readily restore service in case of disconnection and can have access to the Department of Public Service for assistance regarding disputes. RCC will provide customer service 24 hours per day, seven days per week, and can restore service at any time. When a disconnected RCC customer calls RCC outside the disconnection window set forth in the rule, RCC will immediately restore service without payment, and RCC will inform the customer of the availability of assistance from

the Department of Public Service in resolving the complaint. This service will continue at least until the close of the next business day. Frankel pf. at 7.

IV. DISCUSSION

This Docket requires the Public Service Board to exercise authority, created by federal law, to certify a "telecommunications carrier"[3]as an "Eligible Telecommunications Carrier." Section 254(e) of the Telecommunications Act of 1996 provides that only an "eligible telecommunications carrier" as designated under section 214(e) of that Act may receive federal universal service support. Section 214(e)(2) permits the Vermont Public Service Board to make this designation for service in Vermont as to wire centers served by Verizon-Vermont.[4]

Because the active parties have stipulated to certification, there are few issues in this proceeding. The following discussion covers the standards that apply to the Board's decision, and in particular whether the Board has broad discretion or must play a narrow factfinding role. It also discusses the actual extent of RCC's signal coverage of the service area in which RCC seeks certification. Finally, it discusses number portability. In several areas, the Proposed Decision recommends that the Board add conditions to RCC's certification that were not included in the Amended Stipulation.

A. Public Interest, Convenience and Necessity

Federal law establishes some minimum standards of factual proof for ETC certification. The most fundamental of those requirements is that the telecommunications carrier offer "the services that are supported by Federal universal service support mechanisms."[5] The carrier also must advertise the availability of those services using media of general distribution.[6]

The FCC has adopted rules defining "the services that are supported by Federal universal service support mechanisms." They consist of nine services: voice grade access to the public

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3. "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.
4. 47 U.S.C. § 214(e); 47 C.F.R. § 54.201. If a state commission does not have authority to designate ETCs, the FCC will act in its stead. *E.g., Federal State Joint Board on Universal Service, RCC Holdings, Inc.*, Wireline Competition Bureau, Memorandum Opinion and Order, released Nov. 27, 2002, ¶ 12.
5. 47 U.S.C. § 214(e)(1)(A).
6. 47 U.S.C. § 214(e)(1)(B).

switched network; local usage; touch-tone service; single-party service; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation ("Nine Requirements").[7] These Nine Requirements must be offered throughout the service area for which the designation is received, and the services must be offered either using the ETC's own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the availability of these services and the charges for those services using media of general distribution.[8] Under the Stipulating Parties' view of their stipulated findings, RCC clearly meets all of the federally established requirements for ETC certification.

A threshold issue in this proceeding is whether the Public Service Board has discretion to supplement federal requirements and to require either more stringent or additional standards. The Stipulating Parties contend that if the Board finds that RCC meets the Nine Requirements, then it *must* grant ETC certification. In particular, they argue that the Board may not perform any "public interest" analysis. They base this view on the terms of the 1996 Act, on FCC decisions holding that it is *per se* in the public interest to designate a qualified competitive ETC in areas served by non-rural telephone companies, and on decisions of other state commissions. I disagree with the Stipulating Parties' reading of the law. I conclude that the Board must make a determination on whether granting ETC status is in the public interest, convenience and necessity and that the Board has authority to impose additional criteria for ETC certification in the service area of a non-rural incumbent carrier.

(1) Statutory Analysis

Section 214(e)(2) of the 1996 Act sets forth a two-track analysis to be performed by the states in making ETC designations. One case applies to "rural telephone companies," the other to "other areas" which means areas served by "nonrural" telephone companies. Unfortunately, a single sentence of text controls both cases:

> Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone

7. 47 C.F.R. § 54.101(a), (b).
8. 47 C.F.R. § 54.101(b).

> company, *and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier* for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.[9]

RCC seeks certification only in parts of Vermont served by Verizon-Vermont, a wireline carrier characterized by FCC rules as a "nonrural" company. Therefore, the last sentence, which requires a finding that certification is in the public interest, is inapplicable.

Relying in part on this statutory language, the Stipulating Parties contend that the Public Service Board may not here impose any additional criteria for ETC certification. They argue that once an applicant has met the Nine Requirements, the statutory word "shall" requires the Board to grant the designation without adding new standards.

I disagree. The Stipulating Parties have overlooked another essential provision of the statute. It also provides that a state commission's decision should be made "consistent with the public interest, convenience, and necessity." In my view this clearly expresses Congressional intent that state commissions *should* exercise some discretion in ETC certification cases to protect the overall public interest. If Congress intended that state commissions exercise no discretion over these cases, it is difficult to see why it gave them the job at all,[10] and it is impossible to see why this language was included. State commissions must necessarily exercise broad discretion in determining that a certification is consistent with the public interest, convenience and necessity.

Once before the FCC decided that state commissions had no discretion in deciding ETC cases. In 1997, the Commission declared that states were without power to add to the requirements imposed by federal law and FCC rule. The FCC said that a state commission:

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9. 47 U.S.C. § 214(e)(2) (emphasis added). *See also*, 47 C.F.R. §54.201(c), which repeats the statutory language verbatim in all material respects.

10. As seen below, Congress can and did rely on the FCC to make these decisions directly when no state commission could do so. If Congress had wanted ETC certification decided solely based on federal standards, no better instrument could have been found than the FCC itself.

> must designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1). . . . [T]he discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest. The *statute does not permit* this Commission or *a state commission to supplement the section 214(e)(1) criteria* that govern a carrier's eligibility to receive federal universal service support.[11]

This holding in the First Report and Order was reversed, however, by the Fifth Circuit Court of Appeals. In a 1999 decision, that court held that the FCC had:

> . . . erred in prohibiting the states from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. The plain language of the statute speaks to the question of how many carriers a state commission may designate, but *nothing in the subsection prohibits the states from imposing their own eligibility requirements*. This reading makes sense in light of the states' historical role in ensuring service quality standards for local service. Therefore, we reverse that portion of the Order prohibiting the states from imposing any additional requirements when designating carriers as eligible for federal universal service support.[12]

I find the Fifth Circuit court's reasoning to be consistent with the statute, and I follow it. Accordingly, I conclude that a state commission may impose additional eligibility requirements on an ETC applicant seeking to serve an area served by a nonrural incumbent.

(2) The *Per Se* Standard

The Stipulating Parties also rely on a doctrine established in decisions from the FCC's Wireline Competition Bureau. The bureau has recently adopted a policy that granting ETC status is "*per se*" in the public interest where, as here, the proposed service area includes only areas served by a nonrural incumbent telephone company.

The bureau's jurisdiction derives from paragraph 214(e)(6) of the Act. This paragraph gives the FCC authority to directly certify ETCs for any service area that is not subject to state

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11. *In re Federal-State Joint Board on Universal Service*, Report and Order, released May 8. 1997, ____ FCC Rcd _____, ¶135.

12. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (footnote omitted, italics added).

commission jurisdiction. The Wireline Competition Bureau [13] has exercised this "(e)(6)" authority for tribal lands,[14] and more recently to non-tribal lands in Delaware and Alabama, where the state commissions have said that they lack jurisdiction to perform the designation.[15]

The statutory standard for deciding these "(e)(6)" cases is functionally identical to that applicable for the Board in this case under paragraph (e)(2).[16] Both paragraphs make a cross-reference to paragraph (e)(1) by requiring that applicants provide "the services that are supported by Federal universal service support mechanisms." Both paragraphs also qualify the obligation to certify ETCs with the phrase "consistent with the public interest, convenience and necessity."

The *per se* rule arose in a 2000 case involving Cellco Partnership d/b/a Bell Atlantic Mobile ("Cellco") in the state of Delaware.[17] The bureau's decision noted that the state of Delaware did not have high average costs, and for that reason the incumbent carrier was not

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13. The FCC delegated authority over these cases to the Common Carrier Bureau, now renamed as the Wireline Competition Bureau.

14. The FCC will itself make the threshold determination of which entity - the state or this Commission - has jurisdiction to make the eligibility designation of carriers providing service on tribal lands. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking. CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) ¶ 95 ("*Twelfth Report and Order*").

15. The FCC will act on a section 214(e)(6) designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction. *Twelfth Report and Order* ¶ 93.

16. 47 U.S.C. § 214(e)(6) states:

> (6) Common carriers not subject to State commission jurisdiction. In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

17. *Federal-State Joint Board on Universal Service, Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 00-2895 (Common Carrier Bureau rel. Dec. 26, 2000) ("*Cellco*").

eligible to receive high-cost support. Granting ETC designation merely allowed Cellco to receive support for serving low-income consumers that qualify for the Lifeline or Link-Up support programs.[18] The bureau granted certification, and it announced the "*per se*" decisional standard for nonrural carrier service areas.[19] Under this rule, the determination of public interest is made upon the same Nine Requirements used to determine compliance with paragraph (e)(1). No further showing was required on any issue, including affordability, service quality, or landline substitutability.[20]

In a more recent decision, the Wireline Competition Bureau extended its *per se* policy in a decision issued in October, 2002, and affecting Alabama, a high-cost state.[21] The bureau also broadened its ultimate conclusion and here found that granting certification was "consistent with the public interest, *convenience, and necessity*."[22] This language exactly tracks the statutory

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18. *Id.*, ¶ 9.

19. For those areas served by non-rural telephone companies . . . designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest. The carrier need make no further showing to satisfy this requirement. . . . We note that an important goal of the Act is to open local telecommunications markets to competition [and] Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.

Id., ¶ 14 (emphasis added, footnotes omitted).

20. *Id.*

21. The bureau determined that Corr Wireless Communications, LLC should be granted ETC status in those portions of Alabama served by Bell South, a nonrural carrier. *Federal State Board on Universal Service, Corr Wireless Communications, LLC*, Memorandum Opinion and Order, DA 02-2855 (Wireline Comp. Bur. rel. Oct. 31, 2002) ("*Corr Wireless*")

22. *Id, ¶ 12.*

language in paragraph (e)(6).[23] In two other cases involving Alabama, the bureau has also recently granted ETC status in service areas served by rural incumbents.[24]

The Stipulating Parties contend that these Wireline Competition Bureau decisions establish a rule of law that the Public Service Board cannot in this proceeding impose added requirements for ETC certification. I agree with the Stipulating Parties that the Wireline Competition Bureau, when deciding ETC cases under paragraph (e)(6), has been willing to grant certification solely upon evidence of compliance with the Nine Requirements. However, paragraph (e)(2) and paragraph (e)(6) are distinct. Although the language concerning "public interest, convenience and necessity" is identical in both statutes, the manner in which the FCC elects to implement its authority under paragraph (e)(6) is not preemptive of state commissions acting under paragraph (e)(2). State commissions, including the Public Service Board, have discretion to make their own determinations as to the "public interest, convenience and necessity." I recommend that the Board decline to follow the Wireline Competition Bureau's precedent. I make this recommendation in large part because the bureau has not demonstrably addressed the requirements of the statute. In decisions involving areas served by nonrural incumbents, bureau decisions show little or no factual basis. Instead, the bureau recites a

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23. Similarly, in March, 2003, the bureau once again used the *per se* rationale to conclude that it was in the public interest to grant ETC status to Farmers Cellular Telephone, Inc.. Once again the service area consisted only of territory served by Bell South. *Federal-State Joint Board on Universal Service, Farmers Cellular Telephone, Inc.*, Memorandum Opinion and Order, DA 03-754 (Wireline Comp. Bur. rel. March 12, 2003) ¶ 7 ("*Farmers Cellular*"). For unexplained reasons the bureau here reverted to the older and narrower language from Cellco, stating only that granting the petition was consistent with the "public interest."

24. In November, 2002, the bureau designated RCC Holdings, Inc., which is affiliated with the petitioner here, as an ETC. *Federal-State Joint Board on Universal Service, RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, DA 02-3181 (Wireline Comp. Bur. rel. Nov. 27, 2002) (app. for review pending) ("*RCC Holdings - Alabama*"). In December, 2002, the bureau designated Cellular South to be an ETC. *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, DA 02-3317, (Wireline Comp. Bur. rel. Dec. 4, 2002) ("*Cellular South*") (app. for review pending). In both cases the petitioners were certified for service areas that included areas served by both rural and non-rural incumbents, and in both cases the bureau only discussed public interest issues in relation to areas served by rural companies. *RCC Holdings* ¶ 22, *Cellular South* ¶ 24. Because of the different statutory context for certifications in service areas served by rural incumbents, and because of the differences in the way that the bureau decides such cases, these decisions have little relevance here, other than to show the general tenor of the bureau's thinking.

catechism of the universal benefits of competition in which the only issue seems to be whether competition is desirable as a global policy. There is nothing to indicate a particularized understanding of the characteristics and needs of the service areas affected or of the applicant's plans to cover the service area.[25] It appears that the bureau believes the specific requirement that certification must be "consistent with the public interest, convenience, and necessity" can be satisfied solely by an essay concerning the overarching importance of competition. At the very least this violates the usual principle of statutory construction that a specific provision takes precedence over a general provision. At worst, it amounts to dismissing a portion of the statute that is inconsistent with current bureau policy.

The bureau's analysis is even less persuasive in cases where, unlike here, the proposed service area includes areas served by a *rural* incumbent. In these cases, paragraph (e)(6) imposes the added requirement that before an ETC can be certified, the bureau *must* conclude that the designation is "in the public interest."[26] Yet even in the face of this direct additional mandate for what appears to be factual findings, the bureau has concluded that the statutory

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25. *E.g.*, the following is the entire public interest discussion in the bureau's *Corr Wireless* decision:

> We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Corr as an ETC in the requested non-rural service area that is served by BellSouth. As the Commission has previously stated, for those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent per se with the public interest. An important goal of the Act is to open local telecommunications markets to competition, and Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies. Additionally, we note that no parties filed oppositions to the Corr Petition. We conclude that Corr has demonstrated that its designation as an ETC will fulfill the underlying federal policies favoring competition.

Corr Wireless, note 21 above, ¶ 12 (footnotes omitted).

26. It is not clear why Congress added this requirement for rural service areas without referring to another provision in the same paragraph that already requires that in all cases the certification be "consistent with the public interest, convenience and necessity."

requirements can be satisfied solely by boilerplate statements about the global benefits of competition.[27]

The bureau's reasoning in adopting the *per se* rule is unpersuasive, and it should not be adopted here. In my view, the Wireline Competition Bureau decisions have effectively written the "consistent with the public interest, convenience and necessity" language out of the statute. On the contrary, I conclude that section 214(e)(2) imposes on the Public Service Board an affirmative duty to reach a conclusion that ETC certification is consistent with the public interest, convenience and necessity. Before the Board can reach such a conclusion, it can and should require evidence on relevant facts. In other words, the Board may and must consider in this case factors that are normally considered under "public interest" type tests. Moreover, the Board may impose conditions on certification that are necessary for the application to be consistent with the public interest, convenience and necessity.

This conclusion is consistent with court precedent. If the FCC were to assert that a state commission must follow its *per se* reasoning, then a state could not impose additional standards for ETC certifications in areas served by nonrural incumbent carriers. That, in turn, would directly contravene the decision of the Fifth Circuit in the *Texas OPUC*.[28] As explained above, that decision, to which the FCC was a party, held that such a limitation would violate the Act, notably section 152(b), that preserves to the states the authority to regulate intrastate telecommunications.

(3) Other State Decisions

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27. For example, the bureau made the following analysis in *RCC Holdings - Alabama*:

> We find that the customers in Alabama affected by this designation will benefit from the designation of RCC Holdings as an ETC. An important goal of the 1996 Act is to open local telecommunications markets to competition. The Commission has held that designation of qualified ETCs promotes competition and benefits consumers by increasing customer choice, innovative services, and new technologies. Competition will allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Alabama by creating incentives to ensure that quality services are available at "just, reasonable, and affordable rates."

RCC Holdings - Alabama, note 24 above, ¶ 23 (footnotes omitted).

28. *See*, footnote 12, above, and accompanying text.

The Stipulating Parties also note that public utility commissions in several states have issued decisions largely along the lines that they advocate here. These states include Arkansas,[29] Kansas,[30] and Mississippi.[31] The Stipulating Parties also provided copies of a recent decision by the Public Service Commission of Wisconsin[32] granting ETC status to United States Cellular Corp for a service area that included territory served by rural and nonrural carriers. For areas served by rural carriers, the Wisconsin commission performed a public interest analysis and concluded that numerous benefits would follow certification. These included increased consumer choice and allowing the applicant to expand the availability of its services.[33]

These decisions do indeed show that several other state commissions have allowed ETC certifications to proceed solely on the basis of affidavits that the applicant met the Nine Requirements. The decisions of other state commissions do not, however, control whether the Public Service Board has discretion in this case to impose additional requirements. These cases do not alter my conclusion that the Board may and should consider here factors affecting the public interest and that it may impose standards in addition to those established under FCC rule, so long as they are reasonably related to the statutory language.

B. Geographic Coverage

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29. For example, the Arkansas Public Service Commission granted Sprint Spectrum, L.P. ("Sprint PCS") ETC status in areas served by Southwest Bell Telephone Co. ("SWBT") and several GTE companies based upon a sworn affidavit certifying that Sprint PCS "can provide all services designated for federal universal service support[.]" *In re Determining Eligible Telecommunications Carriers in Arkansas*, Docket No. 97-326-U, Order No. 2 at p. 6 (Arkansas PSC Nov. 7, 1997).

30. In 2000, the Kansas Corporation Commission designated two competitive ETCs in non-rural areas served by SWBT, based on affidavits demonstrating compliance with Section 214(e)(1) of the Act. *See GCC License Corp and Sprint Spectrum L.P.*, Docket Nos. 99-GCCZ-156-ETC and 99-SSLC-173-ETC, Order #6 at p. 12 (Kansas Corp. Comm'n Jan. 18, 2000), *recon. granted in part, denied in part, on grounds unrelated to federal ETC status in* Order #7 (rel. Feb. 29, 2000).

31. The Mississippi Public Service Commission bifurcated an ETC-designation proceeding to permit immediate designation in areas served by BellSouth Telecommunications, Inc., based on a showing in the application and prefiled testimony that the company met the requirements of Section 214(e)(1). *See* Cellular South Licenses, Inc., Docket No. 01-UA-0451 at pp. 6-7 (Miss. PSC Dec. 18, 2001). While the PSC found, *sua sponte*, that designation of a competitor in areas served by a non-rural carrier would serve the public interest, it did not require such a showing from the applicant as a condition of granting the ETC designation.

32. *United States Cellular Corporation*, Final Decision, Docket No. 8225-TI-102 (Wis. PSC Dec. 20, 2002) ("*Wisconsin U.S.Cellular*").

33. *Wisconsin U.S.Cellular*, slip op. at 8.

RCC's service is mobile. Therefore this case presents factual circumstances not present in previous Public Service Board decisions involving ETC certification of wireline carriers. The Board has expressed in many ways its strong interest in finding ways to expand wireless coverage in Vermont. Expansion of wireless coverage to the more remote and rural areas of this state is an important policy objective. For that reason I examine here in some detail the state of the record regarding the extent of RCC's present coverage, the legal issues raised by evaluating RCC's coverage in this ETC case, and actions that the Board may wish to take to ensure that RCC's coverage is adequate.

Based on the preceding discussion, I do not consider RCC's coverage irrelevant to this proceeding. In part it is relevant because the Nine Requirements require RCC to "offer" voice grade access to the public switched network. It is also relevant to whether certification is consistent with the public interest, convenience and necessity.

The Stipulating Parties assert that RCC meets the requirement that it "offer" service, and RCC asserts that the number of customers to whom it can actually provide service is irrelevant.[34] RCC did provide some data useful for evaluating coverage, but the record is sparse. There is no basis in the record to conclude, and I do not conclude, that a person randomly located within RCC's proposed service area who makes a service request would be certain, or even highly likely, to be offered useful wireless service at his or her residence or location of work. The issue is whether, to receive universal service support, the Board should require RCC to offer something like "universal" coverage.

(1) RCC's Facilities and Coverage

RCC has 68 cell transmitter sites in place. In constructing these sites, RCC has made a significant capital commitment to Vermont, and one that provides benefits to many Vermont communities in the proposed service area. RCC also correctly points out that service depends largely on the customer's equipment, and a more powerful antenna or better receiver can often

34. Kohler pf., answer 7.

eliminate what would otherwise be a "dead spot" where RCC's signal is too weak to provide service.[35]

RCC did not submit any quantitative evidence, however, concerning the geographic scope of its effective signal. RCC does not assert, for example, that its signal actually reaches any particular wire center at all. RCC has not submitted evidence on the percentage of its service area where its signal is effective. Nor does the record contain any evidence about the location and size of dead spots or concerning the strength of RCC's signals on major highways.

Appendix A lists the wire centers in which RCC requests certification. Appendix B lists the cell tower locations operated by RCC, although in some cases the location of the cell site is not obvious from the description.[36] Based on comparison of these two lists and testimony given at the hearing, I reach the following conclusions on RCC's actual service coverage:

1. RCC currently provides wireless service to the billing address of a large number of Vermont customers.
2. Some customers who cannot receive service using standard equipment could receive reliable service if they used enhanced equipment in the form of external fixed antennas (on a car or home) or more powerful telephones.
3. In most or possibly all wire centers in the proposed service area, RCC provides reliable service to some billing addresses using standard equipment, but not to others.
4. In one or more wire centers in the proposed service area, it is possible that not a single customer can obtain reliable service at his or her billing address using standard equipment.
5. In the service area as a whole, the record is insufficient to determine whether dead spots typically comprise small "holes" that operate as exceptions to the general rule of coverage, or comprise large portions of the service area.

Based on these conclusions, RCC's willingness to "offer" service in its service area provides no meaningful guarantee, or even a high probability, that a particular customer within the requested

35. Tr. 3/13/03 at 29-30 (Kohler).
36. For example, cell sites include "Hurricane Hill" and "Irish Hill."

service area will actually be able to receive that service at the customer's home or place of business.

(2) Federal Support Rules and ETC Status

If RCC is certified as an ETC, it will receive federal universal service including "high-cost support" that is calculated on the basis of Verizon-Vermont's forward-looking cost characteristics. Because RCC is a competitive carrier, that support is anchored to the customer's billing address. Regardless of where the customer may use RCC's services, the customer's "location" for universal service purposes is the customer's billing address.

Support is also "targeted" to those wire centers that the FCC considers to have a high cost of providing service.[37] In 30 of the 91 exchange areas in RCC's service area, no RCC customer can generate support because that exchange is deemed to have a low cost. By contrast, RCC will receive support for each of its customers in high-cost exchanges. Support will be $18.19 per month for each customer with a Chelsea billing address. Support will be at least $10 per month in more than a dozen wire centers and will exceed $5 per month in more than three dozen wire centers.[38] In summary, RCC will become eligible for substantial per-line support in relatively few wire centers.

This can create incongruous results. Consider a hypothetical RCC customer who cannot receive an RCC signal at her home in Chelsea, Vermont,[39] but who uses her RCC phone regularly for work while traveling to major U.S. cities. This hypothetical person from Chelsea generates over $18 per month of federal universal service support for RCC, even though RCC's signal cannot reach her home. The FCC intended by its policies that this support will make

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37. Support for nonrural local exchange carriers, and for competitive carriers serving the same areas, is based on the forward-looking cost of the incumbent carrier in that wire center, as determined by an FCC cost model.

38. Additional targeted support may be available under other programs as well, such as interstate access support.

39. For the sake of example, Chelsea is assumed here to be in the class of wire centers in which RCC can reach some but not all customers. RCC offered to determine from a map whether there are customers in Chelsea who cannot be served, but the suggestion was not taken because Chelsea is used here only to illustrate a more general point. Tr. 3/13/03 at 29-31 (Kohler). It should be emphasized that this is a hypothetical case only, and the number of such Chelsea customers, if any, cannot be determined from the record.

universal service available at the customer's house on a competitively neutral basis, yet the support is available even though the service itself is not.

RCC correctly points out that while this result makes little sense by itself, RCC also is subject to other factual situations where it faces costs but is ineligible for federal support. For example, RCC notes that it may have a customer from Rutland for whom RCC would receive no support; yet the customer may often use expensive rural facilities near a ski area.[40] RCC also notes that under federal law, customers in hard-to-serve rural areas may purchase service for the same monthly price as customers in densely populated low-cost areas.[41]

In part because of payments to wireless carriers, the national total annual payments for high cost support has increased recently. This could jeopardize the continuation of other federal support programs. Fortunately, these global issues are being addressed by the FCC and the Federal State Joint Board on Universal service,[42] and they need not detain the Public Service Board here.

The same dynamic does, however, affect capital investment, a matter that is proper for consideration in this docket. The federal funds create both an incentive and a loophole. The positive side is that RCC will naturally have an incentive to invest in rural areas like Chelsea. Chelsea customers bring revenue to RCC, and the best way to attract those customers may be to provide a strong signal. The loophole is that even if RCC's signal never reaches Chelsea, RCC could continue indefinitely to receive support for a few customers who cannot receive service.[43] While the incentive is comforting, the possibility for continued distortion of the program's goals provides reason to ensure that RCC uses its federal funds to enhance its coverage.

(3) Pre-Certification Coverage

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40. *See*, tr. 3/13/03 at 37-38 (statement of counsel).
41. *Id.*, at 38.
42. *See Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02-307, Order (released Nov. 8, 2002).
43. RCC correctly points out that the reverse is also true. RCC will have some low-cost urban customers for whom it does not receive any federal support. Yet RCC will build facilities in Chelsea, if at all, in part to serve these customers too.

RCC asserts, and I agree, that the absence of ubiquitous coverage today should not be a basis to deny ETC certification. In a decision issued in 2000,[44] the FCC held that to require a new entrant to provide service universally throughout a service area prior to designation as an ETC would place a new entrant in an impossible situation. In the *South Dakota Preemption Order*, the FCC said that:

> a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.[45]

The FCC concluded that to require universal service provision before certification would violate several federal statutes. It would, said the FCC: (1) be contrary to the intent of section 214(a), which contemplates certifying carriers first and then letting them provide services later;[46] (2) be a barrier to entry in violation of section 253(a);[47] (3) violate section 254(f) because it would be "inconsistent with the [FCC's] universal service policies and rules;"[48] and (4) violate the section 254(b) policies for universal service and in particular the "competitive neutrality" requirement that the FCC grafted into that subsection.[49]

RCC still carries the burden of proving that it meets the ETC qualification criteria set forth in the Act. The FCC has set forth the evidentiary standard that a carrier seeking ETC status must make to a state commission:

> A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the

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44. *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, FCC 00-248, released Aug. 10, 2000 ("*South Dakota Preemption Order*").

45. *Id.*, ¶ 13.

46. *Id.*, ¶¶ 14, 28 ("Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall "offer" and advertise its services.").

47. *Id.*, ¶ 10.

48. *Id.*, ¶ 31.

49. *Id.*, ¶¶ 21-22, 31.

> extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.[50]

In a more recent decision issued in November of 2002, the Wireline Competition Bureau granted ETC certification to one of RCC's affiliates in Alabama. This case also discussed whether the applicant was offering service. The bureau found that there were "pinpoint locations" within the proposed service area where calls could not be placed.[51] The bureau nevertheless granted certification. It noted that the FCC's rules for wireless carriers acknowledge the existence of "dead spots." These are defined in the FCC's wireless rules as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."[52] The bureau once again found that the applicant "offered" service throughout its proposed service area, not because the applicant factually established universal coverage, but because to require such a showing would have been a barrier to entry.[53]

The *South Dakota Preemption Order* applies here and must be followed. The Board cannot require universal coverage in advance of ETC certification. I would observe, however, that, even if it were not required, this policy should be followed. RCC undoubtedly faces unusual geographic and economic challenges in Vermont. Its proposed service area includes challenging topography and sparse settlement, requiring many cell sites to serve a relatively small population. All of this argues in favor of giving RCC a chance to enter the market and broaden its coverage as rapidly as it can. An appropriate policy should balance these economic realities

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50. *Id.*, 24; *see also, Cellular South, supra*, at ¶ 15 ("a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service").

51. *RCC Holdings - Alabama*, note 24 above, ¶ 15.

52. *See* 47 C.F.R. § 22.99.

53. *RCC Holdings - Alabama*, note 24 above, ¶ 16 (footnotes omitted). *See also, Midwest Wireless Communications, LLC*, Minnesota Public Utilities Commission, OAH Docket No. 3-2500-14980-2; PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law and Recommendation of Administrative Law Judge, Dec. 31, 2002, adopted by MPUC on Feb. 13, 2003 (carrier requesting ETC status is not required to provide ubiquitous service at the time of its application).

against the need for broad coverage, and the FCC policy seems appropriate for the initial certification.

(4) Post-Certification Coverage Requirements

While the FCC has preempted the states from requiring universal coverage before ETC certification, nothing prohibits the states from requiring such coverage after federal support starts flowing. The record here provides little assurance that RCC will expand its coverage if granted ETC certification. RCC has promised no more than to "look to" upgrade its facilities with the new money.[54] The risk to customers is reduced where, as here, the applicant is an established wireless carrier with existing facilities; at worst, RCC will fail to expand. Nevertheless, while post-certification expansion need not be fully resolved here, the Board's expectations could arise in annual certification proceedings for support eligibility as well as in anticipated renewal of RCC's ETC certification in 2005. The Board can usefully provide some guidance here concerning its expectations in such proceedings.

Federal law does not clearly define post-certification construction requirements. I begin with the statute. Congress required that ETCs "offer" certain services. By this, Congress undoubtedly meant more than that the carrier will accept money from a customer who is willing to pay. In my view, a wireless company does not "offer" universal service to a customer if the customer cannot receive a signal from that company. For the term "offer" to have any meaning at all, there must be some expectation that the carrier actually can provide the service if the customer requests it. More specifically in the context of universal service, "offer" should mean that the company:

> (1) will provide service to a customer with a billing address in the service area who so requests and who pays for the service; and
> (2) has sufficient facilities to provide service (here, a usable wireless signal) to that customer at the customer's billing address or at a different address

54. *See,* finding 15, above.

specified by the customer that represents the customer's home or work location.

The FCC seems to agree, at least in principle, that some actual coverage is (at least eventually) required. FCC decisions suggest that wireless ETCs are obliged (through voluntary commitments or regulatory requirements) to provide service to many if not all of those who request service from within RCC's service area. For example, in the *South Dakota Preemption Order*, discussed above, the FCC recited that, like an incumbent, a new entrant ETC must "extend its network to serve new customers upon reasonable request."[55] This suggests an individual customer has the right to receive effective service upon request.

In its paragraph 214(e)(6) decisions, however, the Wireline Competition Bureau has been satisfied with a voluntary and apparently general commitment regarding future use of federal funds. For example, in the *RCC Alabama* decision issued in November, 2002, the Wireline Competition Bureau noted that RCC had promised to "use any high-cost support it receives to improve its network and enable Alabama's rural customers to have a meaningful choice of service providers."[56] The bureau also stated, somewhat vaguely, that RCC had "committed to improve its network" and "that coverage gaps can and will be filled once [RCC] begins receiving high-cost support."[57] In Alabama, RCC apparently promised to use *all* of its support for capital expansion.

The issue has also been addressed in two state commission decisions cited by the Stipulating Parties. The Wisconsin Public Service Commission has stated that when an ETC's customer makes a "reasonable request" for service the company would be "required to find a way to offer service, either through extending its own facilities or other options."[58] Consistent with the *South Dakota Preemption Order*, the Wisconsin commission appears to have recognized an individual right to service.

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55. *South Dakota Preemption Order*, note 44 above at ¶ 17.
56. *RCC Holdings - Alabama*, note 24 above, ¶ 16 and footnote 55 (internal quotations omitted).
57. *Id.*, ¶ 16 (footnotes omitted).
58. *Wisconsin U.S. Cellular*, note 32 above, slip op. at 6.

In Minnesota, a carrier applying for ETC certification planned to offer a "basic universal service" package using a "3-watt telephone" at $14.99 per month.[59] The Minnesota Administrative Law Judge concluded that the carrier was capable of providing service throughout its proposed service area "using a combination of the 3-watt telephone, external antennas, repeater technology, construction of additional cell sites, and if necessary, resale of another carrier's service."[60] While this does not clearly define an individual right to service, it nevertheless indicates that the commission expects the ETC to construct at least some additional cell sites and to resell wireline service, if necessary, to fill in dead spots.

I recommend that the Board establish three expectations for RCC regarding its use of federal funds made available through this ETC decision. Articulating these expectations here as a part of the initial certification Order will allow RCC to begin receiving federal support while at the same time ensuring that federal support provides the benefits for which it was intended.

First, RCC's capital construction budget for system expansion in Vermont should increase by the amount of its federal universal service support, at least until RCC's Vermont system has nearly universal coverage. This is consistent with my reading of the Wireline Competition Bureau's decision in *RCC Alabama*.

To implement this requirement, RCC will have to file periodic reports about its federal support and its investments. The reports should include information on capital spending. However, expenditures made primarily to comply with existing E-911 obligations and expenditures made primarily to comply with number portability requirements should be separately identified and excluded from current spending, because those expenses arise from sources of law unrelated to universal service. After deducting expenditures for these purposes, RCC's capital spending in Vermont should be at least equal to its federal support in Vermont, plus a reasonable base level of spending.

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59. *See also, Midwest Wireless Communications, LLC*, Minnesota Public Utilities Commission, OAH Docket No. 3-2500-14980-2; PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law and Recommendation of Administrative Law Judge, Dec. 31, 2002, adopted by MPUC on Feb. 13, 2003, ¶ 12.

60. *Id.*, ¶ 14.

Establishing a base spending level is not a simple matter, and I do not recommend that the issue be resolved at this time. Even though the record contains no information about RCC's past capital spending pattern, it would normally be possible to require use of, say, a four-year historic average as the base. However, a significant decline in capital available to the telecommunications industry after 2000 probably makes this method unreasonable. A suitable base spending level cannot be resolved on this record, and it must be left to future determinations. I recommend that the Board require RCC to make a compliance filing describing a capital expenditure base amount that would be fair under all the circumstances.

Second, the Board should expect continual actual improvements in RCC's signal coverage. It is not sufficient for RCC to "look to" provide new coverage in certain areas and improved coverage in others.[61] As time passes, RCC should actually have fewer and smaller "dead spots." Eventually, it should be possible for the Board to conclude, consistent with the FCC's rule, that dead spots in RCC's service area are in fact no larger than "small areas" and that they result either from a population density approaching zero or from particularly challenging topography.

Third, the Board should require RCC to assist potential customers to actually receive service at their place of residence or business. Clearly there are some limits to what is reasonable. RCC should not be required to build a new cell site simply to serve a single customer or even a few customers. A cell site costs tens or hundreds of thousands of dollars, and the payback period for such an investment could be infinite. Repeaters are less expensive, and may often be appropriate to serve a single customer or a group of customers.

Much can be done at the customer's location to improve service. RCC does this kind of work already, and this should continue. It is reasonable to expect that RCC will provide all the elements identified in the Minnesota case except resale.[62] This includes 3-watt telephones,

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61. *See,* finding 15, above.

62. RCC has not made a commitment to offer service through resale. However, such a commitment would appear to add little or no value to its services because, while it offers customers a different carrier, it provides only those services already offered by the wireline carrier.

external antennas, and "cell extenders."[63] RCC should also impose only just and reasonable charges on customers who need enhanced equipment to benefit from RCC's services. Such charges make service more expensive for rural customers, and in a particular case they could violate the goal, set forth in section 254(b)(3) of the Act, that service be provided at rates reasonably comparable to urban areas.

I do not recommend here that the Board object to RCC's current practice of charging customers for additional non-standard equipment needed to bring the RCC signal to the customer's home or place of business. These charges do add to the cost of service for rural customers. Nevertheless, the Board allows wireline utilities to charge customers for line extensions, and this is a roughly equivalent policy in the wireless world. The present record does not demonstrate that these charges are a barrier to universal service, and I recommend that the Board not require a change in RCC's current practice at this time.[64]

Three tools are available to enforce these expectations. Of narrowest scope is the consumer complaint. The Board and the Department of Public Service should stand ready to examine any complaints alleging that RCC does not provide effective assistance to customers seeking service or that RCC imposes unreasonable charges for that assistance. The standards for resolving such complaints will necessarily be based on particular facts, and will develop on a case-by-case basis.

Second, the Board will be required annually to certify RCC's use of federal funds under § 254(e) of the Act. In Docket 6530, the Board imposed periodic reporting requirements on rural incumbent local exchange carriers in order to ensure that their support is devoted to the purposes intended.[65] RCC should file analogous reports, and the Board should review these reports before making the required annual § 254(e) certifications. As with wireline ETCs, the primary concern in these cases will be whether RCC has used federal support for "the provision, maintenance, and

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63. "Cell extenders" are more powerful handsets and external antennas. RCC sells these at retail. RCC also requires customers to pay for these signal enhancing devices, in one case at a price of $250.

64. The Board should not resolve this question finally here. At a future time it may appear that these charges are effectively preventing service from reaching rural areas and thereby violate section 254 of the Act. At that time the Board could consider taking added steps to preserve and advance universal service.

65. Docket No. 6530, Amended Final Order, 1/16/02.

upgrading of facilities and services for which the support is intended."[66] The Board should establish here the principle that certification will be granted only on a showing either that: (1) RCC has substantially completed its network and offers full coverage to essentially all of its service area; or (2) that its construction spending in Vermont exceeds the sum of its recent federal support plus a baseline spending level that predates ETC status. I recommend that RCC make a compliance filing on the timing and contents of this report.[67]

Third, pursuant to the Stipulation, RCC will be certified as an ETC only through the end of 2005. The Stipulation establishes a procedure to review a request for recertification at that time. Under existing federal law an ETC designation may be revoked if the carrier fails to fulfill its ETC obligations after it has begun receiving universal service support.[68] The Board should describe now the minimum evidence that it expects to see in 2005 regarding the scope of RCC's actual coverage.

While RCC cannot reasonably be asked to provide a signal measurement for every single point in Vermont, it should provide detailed evidence in the recertification proceeding regarding the scope of its effective coverage. One or more large-scale maps should be provided. Maps should distinguish between: (1) an adequate signal, defined as a signal that supports reliable communications with common portable devices; (2) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (3) no usable signal. Sampling points should include, at minimum: (1) all state highways, measured at intervals of one mile or less; and (2) all population centers, measured at a density equivalent to the census block or better.

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66. 47 U.S.C. § 254(e).

67. For wireline carriers subject to separations, two reports per year are required, with the spring report containing estimated separations data and the fall report matching separations filings made with the National Exchange Carriers Association. For wireless carriers not subject to separations, only one report per year is needed. I suggest that this report could be filed by April 15 to cover the preceding calendar year's capital expenditures. That is the same date on which some wireline carriers file reports under Docket 6530.

68. *RCC Holdings - Alabama,* note 24 above, ¶ 18.

C. Number Portability

"Local number portability" ("LNP") allows local exchange subscribers to maintain their phone numbers when changing carriers. "CMRS Wireless Service Provider Local Number Portability" ("CMRS Provider LNP") allows a wireless customer to transfer an existing telephone number, but only to another wireless carrier.[69]

On July 2, 1996, the FCC promulgated rules and deployment schedules for number portability.[70] In the *First Report and Order*, the FCC determined that "CMRS Provider LNP" would enhance competition between wireline carriers as well as promote competition between wireless and wireline carriers.[71] Implementation of CMRS Provider LNP was originally scheduled for June 30, 1999. However, the FCC has since granted extensions, and the current deployment date is November 24, 2003.[72]

In an order issued in July of 2002, the FCC adopted two geographic rules for CMRS Provider LNP. In any of the 100 largest Metropolitan Statistical Areas in the country, a wireless provider that receives a request from another carrier to allow end users to port their numbers after February 24, 2003, must comply within 30 to 180 days of the request.[73] In other parts of the country, including all of Vermont, a wireless carrier that receives a request must be capable of providing LNP within six months after receiving the request, but in no event is it required to do so before May 24, 2004.[74]

A "request," however, can only be made by another wireless provider, and in a market with only a few participants, universal restraint appears to be a distinct possibility. The risk is

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69. While it may be theoretically useful to have LNP from wireline to wireless and the reverse, that apparently imposes additional technical issues and is a less frequent problem since for most customers wireline and wireless are not substitutable services.

70. Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*First Report and Order*).

71. *Id.* at 8434-36, paras. 157-160.

72. Telephone Number Portability, CC Docket No. 95-116, FCC 02-273, *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, (rel. July 26, 2002)("*Verizon Forebearance Order*"), paras. 2, 31.

73. *Id.* at para. 31.

74. *Id.*

particularly strong in rural states like Vermont that have limited wireless competition. Therefore, wireless customers in Vermont might conceivably have to do without LNP indefinitely.

Number portability can be important to wireless customers. If competition is truly to provide benefits in Vermont, customers should be able to change carriers at low cost and little inconvenience. To force a customer to change his or her telephone number is to impose an inconvenience and often an expense as well. Particularly in a rural state where competition is attenuated and its benefits have been limited, it is not in the public interest to impose this inconvenience and expense on customers who wish to change their wireless carrier.

In order for RCC's application to be consistent with the public interest, convenience and necessity, RCC should be required to implement CMRS Provider LNP within a reasonable period. Under the FCC order, RCC could be required to provide CMRS Provider LNP as soon as May 24, 2004, more than a year from the date of this Proposed Decision. Thus, I conclude that requiring RCC to provide CMRS Provider LNP on and after May 24, 2004, is reasonable and should be a condition of ETC certification. This condition will impose no greater burden than a request made by another wireless carrier in November, 2003.

V. CONCLUSION

Based on the preceding, RCC will provide the services that are supported by the federal universal service support mechanisms, on a non-discriminatory basis, using its own facilities or a combination of its own facilities and resale of another carrier's services, and it will advertise the availability of such services. Also, granting ETC status to RCC is consistent with the public interest, convenience, and necessity.

I reach these conclusions for the following reasons:

1. As conditioned, RCC will use the new federal funds to expand its coverage in Vermont. The expectations described above about expanding coverage, use of funds and customer assistance are all material components of this conclusion.

2. RCC will offer a Basic Service Package to customers eligible for Lifeline benefits. With state and federal discounts, low income Vermonters will be able to obtain this service for $8.50 per month, a rate that is considerably below those normally available from wireless providers.

3. RCC will take the steps described in the Amended Stipulation to reduce call blockage.

4. RCC will be subject to the standards established in Docket No. 5903, Order of 7/2/99, with modifications described in the above findings. These include limiting disconnections for nonpayment of toll and requiring RCC to provide discounts to persons who are blind or visually impaired.

5. RCC will be subject to the standards of Board Rule 3.200, regarding treatment of customer deposits, with the modifications described in the above findings.

6. RCC will be subject to the standards of Rule 3.300, regarding disconnections, with the modifications described in the above findings.

In addition, the following are essential elements in my conclusion that granting the application is consistent with the public interest, convenience and necessity. I recommend that the Board impose the following conditions not included in the Stipulation:

1. Each year, RCC shall file reports similar to those required in Docket 6530 for rural incumbent carriers. RCC shall demonstrate, through these reports, that: (a) RCC has substantially completed its network and offers full coverage to essentially all of its service area; or (b) that its construction spending in Vermont exceeds the sum of its recent federal support plus a baseline spending level that predates ETC status. For these purposes, expenditures to comply with existing E-911 obligations and expenditures to comply with number portability requirements shall be excluded, and RCC's reports shall separately identify these amounts. Within 30 days of the Board Order, RCC shall make a compliance filing consisting of a proposed specimen report and stating the frequency and optimum due dates for such reports. Other parties may file comments on RCC's compliance filing within two weeks. RCC's report in 2004 should describe RCC's baseline construction spending level and the methods by which RCC has established that amount.

2. RCC shall provide CMRS Provider LNP on and after May 24, 2004.

3. When the current ETC designation expires in 2005, RCC shall provide detailed evidence in its ETC recertification proceeding regarding the scope of its effective coverage. RCC shall provide one or more large-scale maps. Maps shall distinguish between: (a) an adequate signal, defined as a signal that supports reliable communications with common portable

devices; (b) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (c) no usable signal. Sampling points shall include, at minimum: (a) all state highways, measured intervals of one mile or less; and (b) all population centers, measured at a density equivalent to the census block or better.

4. To ensure that customers in all areas of Vermont receive universal service at reasonably comparable rates, the Board may in the future require RCC to provide cell extenders, external antennas and more powerful telephones at reduced cost or at no cost to the customer.

Accordingly, I propose that the Board issue the following Order. Some provisions regarding review and renewal in the proposed Order have not been discussed above but were proposed by the Stipulating Parties. This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 20th day of June, 2003.

s/Peter Bluhm

Peter Bluhm, Esq.
Hearing Officer

VI. BOARD DISCUSSION

RCC Atlantic has requested that the Board hear oral argument before rendering a decision.[75] At the same time, RCC Atlantic has requested that the Board issue a decision by June 30 certifying RCC Atlantic as an ETC, thereby making RCC Atlantic eligible for receipt of payments from the USF. This would make a significant amount of federal support funds available to support infrastructure in Vermont.

Under 3 V.S.A. § 811, the Board must grant oral argument if requested. Moreover, Section 12 of Title 30 requires that the Board provide a 12-day notice of an oral argument. However, at the present time, it is not possible to comply with these statutory requirements and also issue a final decision by June 30 as requested by RCC Atlantic.

As a result of the inability to accommodate both of RCC Atlantic's requests, we convened a conference call by telephone on June 20, 2003 at which all parties that had appeared at the hearing on RCC Atlantic's Petition or submitted comments on the Proposal for Decision were represented. At that time, the Board stated that, considering the timing, we would adopt the Proposal for Decision, while at the same time treating RCC Atlantic's comments as a Motion for Reconsideration and request for oral argument on that motion. The Board also stated that, in reviewing the Motion, we would not apply the standards set out in V.R.C.P. Rules 59 or 60, but would instead give the Motion for Reconsideration the same level of consideration that it would normally provide to comments on a Proposal for Decision and an oral argument. No party objected to this proposal, although the Independents requested an opportunity to comment further.

Subsequently, the Independents filed a letter in which they assented to the Board's proposed approach, with two comments. The Independents requested that the Board further explain the procedural rights of the parties (including the post-judgment rights) and the legal basis on which the Board would grant the waiver of the customary standards for reconsideration under Rules 59 and 60.

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75. RCC Atlantic has submitted several comments upon the Proposal for Decision. In particular, RCC Atlantic has suggested that the Hearing Officer's recommendations are not competitively neutral, that they exceed the Board's authority, and that they create a prohibited barrier to entry.

In this Order, we adopt the Hearing Officer's Proposal for Decision and certify RCC Atlantic as an ETC. This action will make RCC Atlantic eligible for USF funds beginning the third quarter of 2003. At the same time, we recognize that RCC Atlantic has concerns with several of the specific conditions set out in this Order and has requested oral argument. The Board will consider RCC Atlantic's comments as a Motion for Reconsideration and will hear argument upon it. From a procedural standpoint, we adopt a final Order today, with the recognition that we will be considering a request to reconsider that decision. For purposes of appeal, the Order is final, although the statutory time in which a party must appeal our Order is tolled by the Motion to Reconsider until the date that we rule upon that Motion.

Under the Board's Rules of Practice, we have incorporated V.R.C.P. Rules 59 and 60 (which govern post-judgment motions) by reference (see Rule 2.105). These rules limit the scope of review for such motions. Board Rule 2.107 also permits the Board to waive any of our rules of practice for good cause shown. Although this rule provides the Board substantial discretion, to ensure fair application of our rules, waivers are granted sparingly and only for good cause.

In this case, we find good cause because if we do not grant a waiver, RCC Atlantic would not be eligible to begin receiving federal USF support until the fourth quarter of 2003. The likely affect of this delay is only in part upon RCC Atlantic. In particular, under the conditions we adopt today (which require RCC Atlantic to expand its service area), federal USF funds directly benefit Vermont consumers by providing additional capital for expanding a valuable telecommunications service. Granting a waiver will allow the state to benefit from the USF funds.

Therefore, pursuant to Board Rule 2.107, we are waiving the standards in V.R.C.P. Rules 59 and 60 that apply to a motion to reconsider. Instead, we will employ the same standard to review RCC Atlantic's Motion to Reconsider that we would normally use to consider comments on a Proposal for Decision.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings of fact and conclusions of law of the Hearing Officer are adopted.

2. RCC is designated as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e), with a Service Area comprised of the 91 exchange areas described in Appendix A. This designation expires December 31, 2005.

3. The Board will initially certify to the Federal Communications Commission that RCC complies with § 214(e) for USF support in calendar 2003 and 2004.

4. Designation as an ETC is subject to each of the conditions set forth in the Hearing Officer's findings and conclusions. These include:

a. RCC shall use the new federal funds to expand its coverage in Vermont.

b. RCC shall offer a Basic Service Package to customers eligible for Lifeline benefits. With state and federal discounts, low income Vermonters will be able to obtain this service for $8.50 per month, a rate that is considerably below those normally available from wireless providers.

c. RCC shall take the steps described in the Amended Stipulation to reduce call blockage.

d. RCC shall be subject to the standards established in Docket No. 5903, Order of 7/2/99, with modifications described in the findings. These include limiting disconnections for nonpayment of toll and requiring RCC to provide discounts to persons who are blind or visually impaired.

e. RCC shall be subject to the standards of Rule 3.200, regarding treatment of customer deposits, with modifications described in the findings.

f. RCC shall be subject to the standards of Rule 3.300, regarding disconnections, with modifications described in the findings.

g. RCC shall notify customers as to the amount of federal funds received similar to the manner prescribed in Docket 6530.

5. Each year, RCC shall file reports similar to those required in Docket 6530 for rural incumbent carriers. RCC shall demonstrate, through these reports, that: (a) RCC has substantially completed its network and offers full coverage to essentially all of its service area; or (b) that its construction spending in Vermont exceeds the sum of its recent federal support plus a baseline spending level that predates ETC status. For these purposes, expenditures to comply with existing E-911 obligations and expenditures to comply with number portability requirements shall be excluded, and RCC's reports shall separately identify these amounts. Within 30 days of the Board Order, RCC shall make a compliance filing consisting of a proposed specimen report and stating the frequency and optimum due dates for such reports. Other parties may file comments on RCC's compliance filing within two weeks. RCC's report in 2004 should describe RCC's baseline construction spending level and the methods by which RCC has established that amount.

6. RCC shall provide CMRS Provider LNP on and after May 24, 2004.

7. To ensure that customers in all areas of Vermont receive universal service at reasonably comparable rates, the Board may in the future require RCC to provide cell extenders, external antennas and more powerful telephones at reduced cost or at no cost to the customer.

8. RCC shall notify the Board and the DPS within 30 days if information previously provided in relation to its provision of the Nine Services or to advertising for those services is no longer accurate. This information previously provided is summarized in Paragraphs II.3 and 4 of the Amended Stipulation.

9. The Board retains continuing jurisdiction to review, modify, or revoke its designation of RCC as an ETC or to alter or amend the service area in all manners allowed to it under state and federal law, which may include dividing the service territory. This continuing jurisdiction may be exercised if the FCC should alter the list of requirements for ETCs.

10. On or before October 1, 2005, if it wishes to apply for recertification, RCC shall file with the Board a certification stating that it continues to satisfy all of the requirements set forth in federal law for designation as an ETC (the "ETC Requirements"), including 47 C.F.R. § 54.101(a) as it may be amended from time to time. A copy of any such certification shall also be given to the DPS.

a. RCC shall provide detailed evidence in the recertification proceeding regarding the scope of its effective coverage. RCC shall provide one or more large-scale maps. Maps shall distinguish between: (a) an adequate signal, defined as a signal that supports reliable communications with common portable devices; (b) a weak signal, defined as a signal that supports reliable communications only with enhanced devices; and (c) no usable signal. Sampling points shall include, at minimum: (a) all state highways, measured intervals of one mile or less; and (b) all population centers, measured at a density equivalent to the census block or better.

b. On or before November 15, 2005, the DPS may object to continued designation, stating that RCC does not continue to satisfy one or more of the ETC Requirements ("Notice of Objection").

c. If no Notice of Objection is filed, the Board may issue a new designation order extending the designation for an additional period.

d. If a Notice of Objection is filed, the Board shall give RCC an opportunity for hearing. The existing ETC designation created by this Order shall remain in effect until the Board issues a final order on the merits. RCC will have the burden of demonstrating that it continues to satisfy the applicable ETC Requirements listed in the Notice of Objection. If RCC carries that burden, the Board may then renew the contested designation for an additional period.

11. At any time during the term of RCC's ETC designation, the DPS or the Board may provide to RCC a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. In that event, RCC shall within 30 days certify in writing to the Board, and deliver a copy to the DPS, that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance ("Claim of Continued Compliance"). The Board may revoke RCC's designation as an ETC or order such other remedies as the Board deems appropriate if either of the following occurs:

a. RCC fails to file a Claim of Continued Compliance; or

b. The Board determines, after opportunity for hearing, that RCC has not demonstrated that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance.

During the pendency of any proceedings under this paragraph, the current designation Order shall remain in effect. The DPS and RCC may at any time informally resolve or attempt to resolve compliance issues, but such resolution shall be subject to Board approval.

12. This Docket shall be closed when this Order becomes final and unappealable. Any new ETC petitions shall be processed in separate dockets.

Dated at Montpelier, Vermont, this 26th day of June, 2003.

s/Michael H. Dworkin	)	PUBLIC SERVICE
s/David C. Coen	)	BOARD
s/John D. Burke	)	OF VERMONT

A true copy:

OFFICE OF THE CLERK

FILED: June 26, 2003

ATTEST: [signature]

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Docket 5918
RCC Atlantic, Inc.

Appendix A -- Exchanges Comprising RCC Service Area

Arlington	Essex Junction	Newbury	South Londonderry/
Barnet	Fair Haven	Newfane	Stratton
Barre	Fairfax	Newport	South Royalton
Barton	Fairlee	Norwich	South Strafford
Bellows Falls	Grand Isle	Orleans	Stamford
Bethel	Greensboro	Pittsfield	Stowe
Bennington	Guildhall	Pittsford	Swanton
Bloomfield	Hardwick	Plainfield	Thetford
Bradford	Island Pond	Poultney	Troy
Brandon	Jacksonville	Pownal	Tunbridge
Brattleboro	Jamaica	Proctor	Underhill
Brookfield	Jeffersonville	Putney	Vergennes
Burlington/Shelburne	Johnson	Randolph	Wardsboro
Burlington/Winooski	Lemington	Reading	Waterbury
Burlington	Lunenburg	Readsboro	Wells River
Canaan	Lyndonville	Richford	West Burke
Castleton	Maidstone	Rochester	West Rutland
Chelsea	Manchester	Rupert	Westminster
Concord	Middlebury	Rutland	White River
Danville	Milton	Saint Albans	Williamstown
Derby	Montpelier	Saint Johnsbury	Wilmington
Dorset	Morgan	Salisbury	Windsor
East Fairfield	Morrisville	South Londonderry	Woodstock
Enosburg Falls			

Docket 5918
RCC Atlantic, Inc.

Appendix B: RCC Cell Sites

Site #	Location		
1	Redstone Campus - Burlington	61	Newbury Church
2	Mt. Pritchard	62	Georgia Mountain
3	Bolton	63	Smugglers Notch
4	Bringham Hill	70	East Barre
5	Milton	71	Sugarbush
6	Dorset Street - S. Burlington	75	Island Pond
7	Williston Rd - S.Burlington	80	Stratton Mountain
9	Alburg	81	Hurricane Hill
10	DT Burlington	83	Pico Peak
11	Colchester	84	Killington Ski Area
12	Williston	85	Mt Ascutney
13	South Hero	86	Pico Peak
14	Williston Road	87	Springfield
15	Shelburne Water Tank	88	Cherry Hill
16	Barlow Building Winooski	89	Chester
17	WCAX Burlington	90	Brattleboro
41	Mt Mansfield	91	Putney
42	Middlesex	92	Mt Olga
43	Brookfield	97	East Dorset
44	Randolph	103	Gleebe Mountain
45	Newport	104	Mt. Anthony
48	Waterbury	105	Grandpa Knob
49	Morrisville	106	Ludlow
50	WCAX - Montpelier	107	Brandon
51	City Center	108	Chipman Hill
52	Roundtop Mtn - Stowe	110	Carpenter
53	St Albans	112	South Royalton
54	Danville	113	New Haven
55	Irish Hill	114	Vergennes
56	Newbury	115	Woodstock
57	Burke Mtn	116	Mt. Snow
58	Jay Peak/No	118	Downtown Rutland
59	Barton	119	Rutland
60	Georgia	120	West Brattleboro

EXHIBIT B

DOCKET FILE COPY ORIGINAL

112 State Street
Drawer 20
Montpelier, VT 05620-2701
Tel.: (802) 828-2358

TTY/TDD (VT): 1-800-734-8390
Fax: (802) 828-3351
E-Mail: clerk@psb.state.vt.us
Internet: http://www.state.vt.us/psb

State of Vermont
Public Service Board

June 30, 2003

RECEIVED & INSPECTED
JUL 2 2003
FCC - MAILROOM

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554 (by FEDEX overnight delivery)

Ms. Irene Flannery
Vice President - High Cost and Low Income Division
Universal Service Administrative Company
2120 L Street, N.W., Suite 600
Washington, DC 20037 (by FEDEX overnight delivery)

Re: RCC Atlantic, Inc. High Cost Certification for Non-Rural Carriers, CC Docket No. 96-45

Dear Ms. Dortch and Ms. Flannery:

Pursuant to 47 C.F.R. § 54.313, the Vermont Public Service Board ("PSB") files an initial high-cost certification for RCC Atlantic, Inc. ("RCC") as an eligible telecommunications carrier. Attached is a copy of the Board's Final Order in its Docket No. 5918.

In addition, the PSB hereby certifies that RCC's federal universal service high-cost support for the year 2003 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This certification is consistent with Section 254(e) of the Communications Act of 1934, as amended and is in accordance with the Federal Communications Commission's requirements in Federal-State Joint Board on Universal Service, Ninth Report and Order, Eighteenth Order on Reconsideration, FCC No. 99-306.

Enclosed is a stamped, addressed envelope and an additional copy of this letter for you to use in forwarding a date-stamped receipt copy of this correspondence. Thank you for your assistance in this matter.

Sincerely,

Susan Hudson

Susan Hudson, Clerk of the Board

enclosure
cc: Parties in Docket 5918

No. of Copies rec'd 0
List ABCDE

EXHIBIT C

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Drawer 20
Montpelier, VT 05620-2701
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Internet: http://www.state.vt.us/psb

State of Vermont
Public Service Board

January 13, 2004

RECEIVED
JAN 14 2003
DOWNS RACHLIN & MARTIN

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: RCC Atlantic, Inc. - Petition for Waiver of Section 54.313 of the Commission's Rules

Dear Ms. Dortch:

The Vermont Public Service Board (the "PSB") does not object to the request by RCC Atlantic, Inc. ("RCC") for a waiver from the Federal Communications Commission ("FCC") of the certification filing deadlines set forth in FCC Rules Section 54.313. The PSB understands that approval of the requested waiver will allow RCC to begin receiving high-cost universal service support as of June 26, 2003, the date on which the PSB designated RCC as an eligible telecommunications carrier in areas served by Vermont's non-rural telephone company.

Thank you for your assistance with this matter.

Sincerely,

Susan M. Hudson
Clerk of the Board

c: Elizabeth L. Kohler, Esq.
Suzanne M. Monte, Esq.
PSB Docket 5918 Service List