EXHIBIT A

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

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia	)	DA 03-1881
ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama	)	DA 03-1882

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

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ALLTEL Communications, Inc. ("ALLTEL"), pursuant to the Commission's public notices[1] and *Extension Order*,[2] replies to the pleadings filed by Verizon and the Alabama Rural Local Exchange Carriers ("Alabama LECs") in opposition to ALLTEL's amended applications for designation as an Eligible Telecommunications Carrier ("ETC") in the states of Virginia

[1] FCC Public Notice, *Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition For Designation as an Eligible Telecommunications Carrier in the State of Virginia; Pleading Cycle Established*, CC Docket No. 96-45, DA 03-1881 (June 3, 2003); FCC Public Notice, *Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition For Designation as an Eligible Telecommunications Carrier in the State of Alabama; Pleading Cycle Established*, CC Docket No. 96-45, DA 03-1882 (June 3, 2003). The notices were published in the Federal Register on June 18, 2003, inviting interested parties to file comments on June 30 and reply comments on July 7, 2003. 68 Fed. Reg. 36548 (June 18, 2003); 68 Fed. Reg. 36549 (June 18, 2003).

[2] *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 03-2194 (WCB July 3, 2003) ("*Extension Order*").

("Virginia Petition") and Alabama ("Alabama Petition") (collectively, "Petitions").[3] Verizon essentially protests the fully foreseeable implications for the *CALLS* plan[4] of additional mandated ETC designations in non-rural high-cost areas.[5] The Alabama LECs' position is predicated on a static, pre-1996 view of the rural local exchange market that allows no room for competitive ETCs. Neither Verizon nor the Alabama LECs have provided any compelling reason to deny or delay consideration of either of the Petitions.

I. INTRODUCTION AND SUMMARY

The ALLTEL family of companies provides diversified telecommunications services, including local exchange service, interexchange service and wireless services. ALLTEL is

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[3] Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Virginia, *Application of ALLTEL Communications, Inc. For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934*, CC Docket No. 96-45 (Apr. 14, 2003); Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama, *Application of ALLTEL Communications, Inc. For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934*, CC Docket No. 96-45 (Apr. 14, 2003). Amended ETC Petitions were filed on May 21, 2003. First Amendment to the Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Virginia, *Application of ALLTEL Communications, Inc. For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934*, CC Docket No. 96-45 (May 21, 2003); First Amendment to the Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama, *Application of ALLTEL Communications, Inc. For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934*, CC Docket No. 96-45 (May 21, 2003) ("First Amendment to Alabama Petition").

[4] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC,* 265 F.3d 313 (5th Cir. 2001).

[5] As explained below, Section 214(e)(6) of the Communications Act requires the designation of an additional non-rural ETC demonstrating compliance with the eligibility obligations of Section 214(e)(1) without any further public interest showing.

currently both a recipient of universal service support as a local exchange carrier ("LEC") and a contributor to universal service funding as an interexchange carrier and wireless carrier. Consequently, ALLTEL has a number of perspectives on the complex funding needs of carriers serving high-cost areas. ALLTEL affiliates encompass both rural and non-rural wireline LECs, as well as its wireless service operators. In fact, one of the rural areas in Alabama that would be covered by ALLTEL's Alabama Petition is served by one of its wireline affiliates. In view of this broad-based experience, ALLTEL, after full consideration of all aspects of the impact of ETC designations on universal service support and competition, has concluded that the public interest would be well served by its designation as an ETC in the Virginia and Alabama markets.[6] Verizon challenges both Petitions in identical, but separate, Oppositions ("Verizon Oppositions").[7] The Alabama LECs challenge only the Alabama Petition ("Alabama LEC Comments").[8] Although these oppositions are couched as selfless attempts to protect the public interest in reasonable and sustainable universal service support programs, they distort the objective purposes of those programs and the Commission's pro-competitive policies. The oppositions ignore the public interest benefits of wireless and local service competition, such as larger local calling areas, a variety of calling plans, the health and safety benefits of wireless,

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[6] ALLTEL continues to seek ETC designations before the commissions of other states in which it provides wireless services and is also seeking additional determinations as to the status of state regulation of wireless services for ETC designation purposes. ALLTEL intends to file for ETC designation with this Commission for those states in which the state commission declines to assert jurisdiction over wireless ETC designations.

[7] Opposition of Verizon, *Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc. Petition For Designation as an Eligible Telecommunications Carrier In the State of Virginia*, CC Docket No. 96-45 (June 30, 2003); Opposition of Verizon, *Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc. Petition For Designation as an Eligible Telecommunications Carrier In the State of Alabama*, CC Docket No. 96-45 (June 30, 2003).

[8] Comments of the Alabama Rural Local Exchange Carriers, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *ALLTEL Communications, Inc. Petition For Designation As An Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 03-1882 (June 30, 2003).

mobile services in isolated areas, and, of course, the competitive opportunities that ETC designations are intended to provide. All of the opposing LECs remain overwhelmingly dominant in the local service markets in their service areas in Virginia and Alabama, assisted by universal service subsidies to retain their dominance against challenges by competitive wireless ETCs, such as ALLTEL, that contribute to that support.

More importantly, the oppositions ignore established precedent governing ETC designation petitions. The Wireline Competition Bureau ("Bureau") repeatedly has rejected both the procedural arguments for delay raised by the opposing LECs and the arguments on the merits raised by the Alabama LECs. Moreover, Section 214(e)(6) of the Communications Act and applicable Commission precedent -- including an order granting ETC status to Verizon Wireless in Delaware -- on their face rebut Verizon's argument. The Bureau has routinely granted similar applications for ETC status by wireless carriers serving rural and non-rural LEC areas in Alabama and in other states, and the oppositions fail to demonstrate why the Commission should treat these Petitions any differently. ALLTEL urges that the Petitions be granted expeditiously.

II. STAYING CONSIDERATION OF ALLTEL'S PETITIONS UNTIL THE JOINT BOARD HAS CONCLUDED ITS REVIEW OF THE ETC DESIGNATION PROCESS WOULD CONSTITUTE LEGAL ERROR AND DISSERVE THE PUBLIC INTEREST.

A. The Opponents' Procedural Arguments Have Been Rejected Repeatedly

The pending Federal-State Joint Board on Universal Service deliberations on ETC designation procedures and the distribution of universal service support to ETCs ("*Joint Board Review*")[9] address issues of general *future* applicability that are outside the scope of the instant proceedings. The prospect of future changes cannot be allowed to delay Bureau consideration of ALLTEL's narrow requests to be designated under *today's* existing rules as an ETC in Virginia

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[9] *Federal-State Joint Board on Universal Service,* Order, 17 FCC Rcd 22643 (2002) ("*Joint Board Review*"). *See also,* FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process,* 18 FCC Rcd 1941 (2003).

and Alabama. Specifically, the Bureau has rejected repeatedly the identical universal service high-cost support arguments raised by the Alabama LEC Comments, concluding that the Joint Board is examining the issues and that "these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC" under the current rules.[10] Similarly, the Bureau has denied the Alabama LECs' request to suspend or stay ETC designation proceedings pending resolution of the ETC and universal service policy issues being considered in the *Joint Board Review*. The Bureau concluded that a suspension would "unnecessarily delay resolution of this matter well beyond the Commission's informal commitment to resolve ETC petitions within a six-month time frame."[11] That commitment derives from the Commission's recognition that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas."[12]

Neither the Alabama LECs, nor Verizon, in its parallel arguments addressing interstate access support under the *CALLS Order*,[13] has demonstrated any persuasive reason for the Bureau

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[10] *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*, 17 FCC Rcd 24393, 24405-06 (WCB 2002) ("*Cellular South*"). *See also, 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*, 17 FCC Rcd 23532 (WCB 2002) ("*RCC Holdings*").

[11] *RCC Holdings*, 17 FCC Rcd at 23535 n.27 (citing *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265 (2000) ("*Promoting Deployment*")).

[12] *Promoting Deployment*, 15 FCC Rcd at 12255-56.

[13] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC,* 265 F.3d 313 (5th Cir. 2001).

to revisit precedent in these proceedings. It is a bedrock principle of administrative law that an agency is not permitted "to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, [and] another for Tuesday...."[14] Any delay or denial of these Petitions premised upon the universal service and ETC designation policy grounds raised by the Alabama LECs or Verizon would violate "the Commission's responsibility to assure comparable treatment of similarly situated parties...."[15] The Commission should stand by its commitment to resolve ETC petitions within six months or less by rejecting the opponents' requests to stay the consideration of these Petitions.

Moreover, Commission rules and policies are continuously examined and improved to reflect changes in the market. In fact, reexamination is statutorily required for all regulations issued under the Telecommunications Act of 1996 ("1996 Act") on a biennial basis.[16] If the Commission were to follow Verizon's and the Alabama LECs' logic that all proceedings should be stayed when rules or policies affecting those proceedings are subject to a pending rulemaking or other review, few if any decisions would ever be reached. Verizon and the Alabama LECs have shown no reason to delay the application of the current criteria and precedents governing ETC designation requests to these Petitions.

The rationale for delay is especially weak because there is no reason to expect that ALLTEL will be otherwise deterred from its efforts to obtain ETC status even assuming, *arguendo*, that the pending *Joint Board Review* will significantly change ETC procedures or

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[14] *Sharron Motor Lines, Inc. v. United States*, 633 F.2d 1115, 1117 (5th Cir. 1981) (reversing denial of authority where agency, citing insignificant differences between applicant and its competitors, failed to accord them uniform treatment) ("*Sharron*") (*quoting Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5th Cir. 1964)(Brown, J., concurring), *rev'd on other grounds*, 382 U.S. 46 (1965) ("*Mary Carter*")). *See also, NLRB v. Sunnyland Packing Co.*, 557 F.2d 1157, 1160 (5th Cir. 1977).

[15] *Revocation of License of Robert J. Listberger, Jr.*, 76 FCC 2d 212, 217 (Rev. Bd. 1980). ALLTEL notes that, in its view, the prohibition against disparate treatment applies both in the context of requests for formal stays and stays effectively created by excessive delay.

[16] 47 U.S.C. § 161.

criteria. The Commission previously considered and rejected a proposal by the Rural Task Force to freeze high-cost loop support upon competitive entry by additional ETCs in rural carrier study areas, which had been suggested as a means of preventing excessive high-cost fund growth following such competitive entry.[17] The Commission explained its rejection of such a freeze:

> First, the possibility of excessive fund growth is speculative.... Second, the indexed cap on the high-cost loop fund will operate as a check on excessive fund growth to a certain extent.
>
> ....
>
> More importantly, freezing support in competitive study areas may have the unintended consequence of discouraging investment in rural infrastructure.... Furthermore, we are concerned that adoption of this proposal could hinder competitive entry in rural carrier study areas, again contrary to a fundamental goal of the Rural Task Force plan.[18]

All of these same considerations also argue against the types of changes in universal service support for ETCs that the opposing LECs hope will emerge from the *Joint Board Review*. In light of these considerations and the uncertainty attending any contentious policy rulemaking, there is even less reason to await the outcome of the *Joint Board Review* before acting on these Petitions.

Finally, even if the *Joint Board Review* does modify the distribution of universal service funding to wireless ETCs, any changes will be applied to ALLTEL and all other ETCs at that time. It is axiomatic that any new regulations issued in a rulemaking proceeding are applied across the board to all participants. Future modifications to universal support rules accordingly provide no basis to delay a competitive carrier's request for ETC status under existing criteria.

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[17] *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11248 (2001) ("*RTF Order*").

[18] *Id.* at 11295, 11296-97.

B. The Opponents' "Public Interest" Arguments Serve Only Anticompetitive Purposes

The Alabama LECs' concerns as to the growth in the high-cost fund is misplaced. They cite Universal Service Administrative Company ("USAC") data showing that annual high-cost funding for wireless ETCs has risen to over $106 million,[19] but they ignore that the Commission approved an increase of over twice as much high-cost support for rural incumbent LECs ("ILECs") in 2001 -- amounting to over $1.2 billion over five years -- which, according to the Commission, requires only a "modest" increase in universal service contributions.[20] High-cost support to rural ILECs is projected to total approximately $3.2 billion in 2003,[21] more than 30 times the amount projected for wireless ETCs. The Alabama LECs certainly have not opposed this tremendous increase in their high-cost support. Indeed, some of the Alabama LECs were among the rural ILECs challenging limits on their high-cost support in *Alenco Communications, Inc. v. FCC* ("*Alenco*").[22] Their concern over the growth in the high-cost fund thus seems to be motivated more by their desire to prevent competitive carriers from receiving high-cost support for the provision of alternative services in high-cost areas than by any public interest concern over the size of the fund.

Verizon and the Alabama LECs ignore the basic tenet that "[t]he purpose of universal service is to benefit the customer, not the carrier."[23] The 1996 Act contemplated and encouraged

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[19] Alabama LEC Comments at 8.

[20] *RTF Order*, 16 FCC Rcd at 11258.

[21] *See* Comments of the Cellular Telecommunications & Internet Association at 3, *Federal-State Joint Board on Universal Service; Valor Telecommunications of Texas, L.P. Petition for Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45 (May 30, 2003).

[22] 201 F.3d 608 (5th Cir. 2000) ("*Alenco*"). The following names appear in both the *Alenco* caption and the list of companies on the Alabama LEC Comments: Graceba Total Communications, Inc., Gulf Telephone Company, Millry Telephone Company, Inc., National Telephone of Alabama, Inc., Peoples Telephone Company, Inc. and Roanoke Telephone Company, Inc.

[23] *Alenco*, 201 F.3d at 621.

competitive service offerings in rural and high-cost areas. In providing universal service portability in Section 214(e) of the Communications Act, Congress removed a significant barrier to local service competition.[24] Nothing in the 1996 Act or Commission orders supports the view, as Verizon puts it, that "portability principles necessarily are subordinate to the primary goal of" maintaining the sufficiency of universal service funding for the ILECs.[25] Like the Alabama LECs that challenged the Commission's previous implementation of the universal service portability requirements of Section 214(e) in *Alenco*, these opponents "seek ... not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act."[26] The opponents' view of universal service as an emolument of incumbency is firmly rejected by the 1996 Act and Commission orders.

Verizon's and the Alabama LECs' anticompetitive agenda also would undermine the Commission's wireless local number portability ("LNP") policy, now intended in large part to enable wireless carriers to compete with wireline carriers.[27] Last year, the Commission denied Verizon Wireless' petition to forbear permanently from enforcing its wireless LNP rules, concluding that wireless LNP was an essential element to intermodal competition ("*Verizon Forbearance Order*").[28] This position was recently reaffirmed by the Commission in responding

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[24] 47 U.S.C. § 214(e). *See Alenco*, 201 F.3d at 616 ("the [universal service] program must treat all market participants equally -- for example, subsidies must be portable -- so that the market ... determines who shall compete for and deliver services to customers.")

[25] Verizon Opposition at 8.

[26] *Alenco*, 201 F.3d at 622.

[27] *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (subsequent history omitted).

[28] *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14979-80 (2002) ("*Verizon Forbearance Order*"), *aff'd sub nom., Cellular Telecommunications & Internet Association and Cellco Partnership, d/b/a Verizon Wireless v. FCC*, 330 F.3d 502,

to Verizon Wireless' appeal of the *Verizon Forbearance Order* and served as a basis for the D.C. Circuit's decision upholding the order on the grounds that "having to change phone numbers presents a barrier to switching carriers...."[29]

LNP is "hardwired" into the Communications Act for LECs, and now that wireless number portability is imminent, by the Commission's own order, it would be senseless to undercut wireless carriers' ability to serve the larger, pro-competitive goals of the 1996 Act by depriving them of universal service portability. Ultimately, a wireless carrier that captures a high-cost line -- as intermodal number portability promises to promote -- must be positioned to obtain the high-cost support for that line through ETC status. The Commission should not allow Verizon to insulate itself from the competitive effects of wireless LNP that its affiliate Verizon Wireless now openly advocates. If Verizon successfully delays these Petitions or other ETC applications, it will have achieved the intermodal competitive benefits of wireless LNP for its wireless affiliate while retaining the economic advantage of the lion's share of interstate access support in Virginia, all without having to face the market-opening effects of ETC status for another wireless carrier in Virginia. The Commission should not permit the opponents to manipulate its competitive policies in this manner.

III. ALLTEL'S VIRGINIA PETITION SHOULD BE GRANTED

A. Section 214(e)(6) Disposes Of Verizon's Opposition To The Virginia Petition

Section 214(e)(6) of the Act on its face requires approval of ALLTEL's Virginia Petition. That provision states, in part:

> 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

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513 (D.C. Cir. 2003) ("*CTIA*"). The Commission granted a limited extension of the wireless LNP deadline until November 24, 2003. *Id.* at 14981.

[29] *CTIA*, 330 F.3d at 513.

> 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.[30]

As the Bureau held, in granting Verizon Wireless ETC status in Delaware, this provision establishes that designation of an additional non-rural ETC demonstrating compliance with the 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."[31] ALLTEL's Virginia Petition demonstrates compliance with the eligibility obligations of Section 214(e)(1) in detail.[32] The Verizon Opposition, which was limited explicitly to the non-rural aspects of the Virginia Petition, fails to offer any challenge to that showing.[33] ALLTEL's unchallenged demonstration of compliance with the Section 214(e)(1) obligations is therefore dispositive, and Section 214(e)(6) accordingly requires that the Virginia Petition be granted.

B. Verizon's Policy Arguments Are Without Merit And Self-Serving

Verizon argues that because the interstate access support fund is capped at $650 million under the *CALLS Order*, designation of more wireless ETCs will siphon off ever greater portions of the fund from the intended beneficiaries, namely, the price cap LECs.[34] As discussed above, Verizon is wrong that the ILECs have an exclusive right to universal service support that supersedes any other consideration. Moreover, the *CALLS Order*, which was strongly supported

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[30] 47 U.S.C. § 214(e)(6) (emphasis added).

[31] *Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd 39, 45 (CCB 2000) ("*Verizon Wireless ETC*").

[32] Virginia Petition at 3-7.

[33] There was no challenge by any party to the rural aspects of ALLTEL's Virginia Petition.

[34] Verizon Opposition at 2, 5-8.

by Verizon's predecessors, explicitly acknowledged that the capped interstate access fund is portable to other ETCs, including wireless ETCs, thereby possibly diminishing the support received by price cap LECs, and emphasized the competitive benefits of such portability.[35] ETC status has been granted to other wireless carriers serving price cap LEC service areas without any delay or other Bureau comment on the impact on interstate access support.[36]

Furthermore, although Verizon characterizes the ETC threat to interstate access support as unique, based upon the $650 million cap, the universal service funding mechanisms applicable to ETCs serving rural rate-of-return areas and price cap areas are not as distinct as Verizon claims. The high-cost fund available to rural rate-of-return carriers is also capped, albeit by an indexed cap, which limits the fund growth that would otherwise result from the designation of additional ETCs.[37] Verizon therefore has not raised a new universal service support issue, but, rather, a variation on a theme that has been presented repeatedly, and unsuccessfully, in the previous ETC designation proceedings cited in Part II above. Moreover, the limitation on the growth of the high-cost fund imposed by the indexed fund cap has never been considered as a justification for denying or delaying action on an ETC designation petition. Verizon's concern that it and other price cap LECs will receive less interstate access support whenever a non-rural ETC designation petition is granted accordingly does not raise a public interest concern justifying different treatment for these Petitions.

Finally, an increase in the number of access lines serving price cap service areas will not necessarily have an immediate impact on the amount of interstate access support available to current recipients. According to USAC, interstate access support for 2003 is projected to total

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[35] *CALLS Order*, 15 FCC Rcd at 13039, 13053.

[36] *See, e.g., Verizon Wireless ETC*, 16 FCC Rcd at 44 n.31, 46 (service area covers entire state of Delaware, which receives interstate access support); *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier*, 17 FCC Rcd 21435, 21440 (2002) (designated as ETC in the service area served by BellSouth) ("*Corr Wireless*").

[37] *See RTF Order*, 16 FCC Rcd at 11259-66, 11295.

only slightly more than $625 million,[38] leaving considerable headroom before the cap is reached. Thus, the effect of additional ETC designations on interstate access support would be less significant than Verizon represents.

Verizon accordingly has shown no reason to deny or delay consideration of the Virginia Petition. Its sole policy argument, which is addressed only to non-rural service areas, cannot constitute a basis for denial or delay under Section 214(e)(6).

IV. ALLTEL'S ALABAMA PETITION SHOULD BE GRANTED

The Alabama Petition fully satisfies the requirements of Section 214(e)(1) and (e)(6) of the Communications Act, and the Alabama LECs fail to raise any issues that would warrant denial of the Petition or that cannot be disposed of pursuant to established Commission precedent. Section 214(e) establishes certain conditions that a carrier must meet in order to become an ETC.[39] Specifically, carriers seeking ETC status must commit, *inter alia*, to provide and advertise all services supported by universal service and must show that receiving ETC status is in the public interest.[40] ALLTEL demonstrates in its Alabama Petition that it satisfies all the statutory and regulatory prerequisites for receiving ETC status and that its designation as an ETC in Alabama serves the public interest.

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[38] Universal Service Administrative Company Interstate Access Support Projected by State by Study Area: Third Quarter 2003, Appendix HC12 at 33 (May 2, 2003) (showing "Reserved Support" of almost $25 million for the year), *available at* http://www.universalservice.org/overview/filings/2003/Q3/.

[39] *See* 47 U.S.C. § 214(e); FCC Public Notice, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997).

[40] The Alabama LECs do not dispute that ALLTEL satisfies the other enumerated prerequisites, such as certifying that it is not subject to the jurisdiction of the state commission and that the supported services will be offered using ALLTEL's own facilities or a combination of its own facilities and resale of another carrier's services.

A. ALLTEL Has Committed To Provide All Services Supported By The Universal Service Mechanism.

Section 214 requires ETCs to "offer the services that are supported by Federal universal service support mechanisms under Section 254(c)" and to advertise such services.[41] The Alabama LECs argue that ALLTEL does not offer single-party voice grade service and local usage and that it does not advertise for the supported services.[42] ALLTEL committed in its Petition, however, to provide all services supported by the universal service mechanism when it receives ETC status and committed to advertise the availability of such services. Specifically, it certified that it would provide single-party voice grade service in all of its service areas where it has ETC status. ALLTEL also guaranteed that it would offer minimum local usage as part of its universal service offering. Although the Commission has not set a minimum local usage requirement, ALLTEL provided assurances that it will comply with any local usage requirements adopted by the Commission and will provide a variety of local usage plans. Furthermore, ALLTEL certified that it would advertise the availability of its universal services using media of general distribution.[43] The Bureau found in *RCC Holdings* and *Cellular South* that such commitments were sufficient under Section 214(e)(1)(A).[44] If ALLTEL fails in any way to live up to its commitments, the Commission may revoke its ETC designation.

The Alabama LECs also unsuccessfully raised the same argument when they opposed the designations of RCC Holdings and Cellular South as ETCs in Alabama.[45] In this case, however, the Alabama LECs argue that the Commission fails to apply the universal service requirements in a technologically neutral way if applicants can meet the Section 214(e)(1) requirements

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[41] 47 U.S.C. § 214(e)(1)(A) - (B).

[42] Alabama LEC Comments at 23-28.

[43] Alabama Petition at 3-7.

[44] *RCC Holdings*, 17 FCC Rcd at 23537-40; *Cellular South*, 17 FCC Rcd at 14398-402.

[45] *RCC Holdings*, 17 FCC Rcd at 23537-40; *Cellular South*, 17 FCC Rcd at 24398-402.

merely by making service commitments, rather than actually offering service prior to filing for ETC status.[46] The Alabama LECs assert that the Alabama Public Service Commission ("APSC") requires wireline carriers to provide the services supported by the universal service mechanism prior to receiving ETC status, while this Commission requires a wireless carrier seeking ETC status merely to commit to providing such services. The standard applied by the APSC in designating the Alabama LECs as ETCs, however, is totally irrelevant to this proceeding. The APSC declined jurisdiction over ALLTEL's Alabama Petition. Thus, this Commission will properly apply its own precedent, rules and policies in assessing the Petition, and its established precedent requires grant of the Petition.

Moreover, the APSC and this Commission agree that "requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the prospective entrants from providing telecommunications services and would deprive the consumers in high-cost areas of the benefits of competition."[47] Thus, no difference exists between the Commission and the APSC in this aspect of their approaches to the ETC designation of new entrants, irrespective of the technology used. Finally, the Bureau has consistently applied consistent standards to all petitions for ETC status brought before it, thus maintaining the neutrality the Alabama LECs claim is lacking. Accordingly, the Bureau should conclude that ALLTEL has met the requirements for offering and advertising the supported services.[48]

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[46] Alabama LEC Comments at 23-28.

[47] Comments of the Alabama Public Service Commission at 3, *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA No. 02-746 (May 23, 2002).

[48] Because the Alabama Petition meets all of the eligibility obligations of Section 214(e)(1), Verizon's opposition to the non-rural service aspects of the Alabama Petition is foreclosed by Section 214(e)(6) for the reasons discussed in Part III above.

B. Designating ALLTEL As An ETC In Alabama Serves The Public Interest.

1. ALLTEL's Status As An ETC Will Promote Competition In Rural Markets.

ALLTEL listed many consumer benefits in its Alabama Petition. One important benefit is the promotion of competition, which results in: (1) greater consumer choices for telecommunications services, (2) promotion of higher quality services, (3) lower rates, (4) deployment of new technologies, and (5) greater opportunity for consumers to select a telecommunications provider based upon quality of service, availability of service, and rates. The Alabama LECs, however, consider the benefits explained by ALLTEL "generalized platitudes" not worthy of a public interest finding.[49]

To the contrary, the Bureau has repeatedly found the same benefits to satisfy the public interest requirement, particularly when carriers seek ETC status in rural areas. For example, in *RCC Holdings* and *Cellular South* the Bureau concluded that public interest showings similar to those ALLTEL has made satisfies the "threshold demonstration that [the petitioner's] service offering fulfills several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers."[50] To consider these benefits mere platitudes disparages the Commission's and the industry's efforts to ensure all consumers have access to reasonable and affordable telecommunications services.

As discussed in Part II above, increased competition in local markets, including rural areas, was an overarching Congressional goal when it adopted the 1996 Act.[51] Furthermore, the

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[49] Alabama LEC Comments at 11.

[50] *See RCC Holdings,* 17 FCC Rcd at 23540; *Cellular South,* 17 FCC Rcd at 24402.

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

Commission has previously recognized the benefit of wireless services competing against wireline services.[52]

2. ALLTEL's Designation As An ETC Also Will Benefit The Public In Numerous Other Ways.

As ALLTEL explained in the Alabama Petition, other benefits, unavailable from the incumbent rural telephone companies, also will result from its designation as an ETC in Alabama. For example, ALLTEL's local calling areas, in most, if not all, cases, will be larger than those of the LECs.[53] As a result, customers calling within ALLTEL's service area will not be subjected to toll charges that they would otherwise incur when calling outside the wireline carriers' local service areas. ALLTEL also will provide consumers with the choice of multiple calling plans.[54] In granting other petitions for ETC status, the Bureau has previously emphasized such public interest considerations, stating that "rural consumers may benefit from expanded local calling areas and an offering of a variety of calling plans."[55]

Furthermore, the mobility of wireless services provides an especially significant public benefit in rural areas because it protects the public's health and welfare and likely will save lives.[56] People in rural areas often work in secluded locations, such as farms, and drive long

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[52] *See, e.g., Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, 16 FCC Rcd 48 (2000) (determining that grant of ETC status to a cellular company in Wyoming enhances competition). The Alabama LECs note in their comments that they serve approximately 94 percent of all inhabited residences in their rural service areas, which is just further evidence of the need for competition in these markets. Alabama LEC Comments at 3.

[53] Alabama Petition at 12.

[54] *Id.*

[55] *RCC Holdings*, 17 FCC Rcd at 23541.

[56] See, e.g., *Smith Bagley, Inc.*, Order, Decision No. 63269, Docket No. T-02556A-99-0207 at 12 (Arizona PSC 2001) (concluding that designating a cellular company as an ETC is a potential solution to "health and safety risks associated with geographic isolation"). The Commission has long recognized the benefits of wireless services to the public's health and

distances through remote areas that lack accessible wireline telephones. If a farmer tending his fields is injured, or a motorist becomes stranded, they would be able to call for help using their mobile telephones. Many low income residents in rural areas, however, are unable to obtain wireless service without Lifeline service. Because ALLTEL cannot provide Lifeline service unless it is designated as an ETC, consumers may not be able to take advantage of wireless technology until ALLTEL receives ETC status.[57]

C. Designation Of ALLTEL As An ETC Will Not Harm Consumers Or The Rural Telephone Companies.

1. The Alabama LECs Fail To Demonstrate That Costs Associated With Designating ALLTEL As An ETC Outweigh The Benefits.

Contrary to the Alabama LECs' assertion, ALLTEL has demonstrated that the public will benefit from its designation as an ETC and that such benefits will far outweigh any "costs" that the Alabama LECs claim will result from such designation. Also contrary to the Alabama LECs' arguments,[58] the Commission has never required carriers seeking ETC status to provide quantifiable data regarding how their designations as ETCs will impact universal service support or network efficiencies. Furthermore, neither Commission policy nor its rules require such an additional showing. It would be discriminatory for the Bureau to impose a higher burden on ALLTEL than it imposed on other wireless carriers recently awarded ETC status in Alabama.[59]

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welfare. For example, the Commission has adopted rules to improve the effectiveness and reliability of wireless emergency 911 services. 47 C.F.R. § 20.18.

[57] 47 C.F.R. §§ 54.400-54.415. Although a carrier may not necessarily provide the supported services at the time it seeks ETC status, it may "make a reasonable demonstration...of its capability and commitment to provide universal service without the actual provision of the proposed service." *See Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission,* Declaratory Ruling, 15 FCC Rcd 15168, 15178 (2000).

[58] Alabama LEC Comments at 6.

[59] *See e.g., RCC Holdings*, 17 FCC Rcd at 23532; *Cellular South*, 17 FCC Rcd at 24393; *Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 18 FCC Rcd 3848 (2003); *Corr Wireless*; *see also Sharron*, 633 F.2d at 1117 (*quoting*

Data provided by the Alabama LECs in an effort to demonstrate that an ETC designation for ALLTEL will result in a loss of network efficiencies also fails to support their case.[60] The Alabama LECs provided similar information in the *RCC Holdings* proceeding, which the Bureau found was not "persuasive evidence" and "is typical of most rural areas and does not, in and of itself, demonstrate that designation of RCC Holdings as an ETC will harm the affected rural telephone companies or undermine the Commission's policy of promoting competition in all areas, including high-cost areas."[61] The Bureau continued:

> [t]he federal universal service support mechanisms support all lines served by ETCs in rural and high-cost areas. Under the Commission's rules, RCC Holdings' receipt of high-cost support will not affect the per-line support amount that the incumbent carrier receives. Therefore, to the extent that RCC Holdings provides new lines to currently unserved customers or second lines to existing wireline customers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.[62]

Accordingly, the Alabama LECs' assertion that they or their subscribers will suffer great harm as a consequence of designating ALLTEL as an ETC is baseless and should be rejected by the Bureau.

Mary Carter, 333 F.2d at 660 (Brown, J., concurring) ("There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case.")).

[60] Alabama LEC Comments at 10-12. The Alabama LECs provide data concerning households per square mile compared to the cost of providing telecommunications services, the number of loops per study area, and the high cost nature of providing services in rural and low-density areas.

[61] *RCC Holdings*, 17 FCC Rcd at 23542.

[62] *Id.*

2. The Mobility Of Wireless Phones Does Not Undermine The Universal Service Fund.

The Alabama LECs' argument that use of wireless phones likely will occur away from a customer's home or billing address, and, thus, universal service funds will go to support services used outside rural areas,[63] is utterly baseless, and the Bureau has granted other wireless companies' ETC petitions notwithstanding the same argument.[64] As previously discussed, Congress specifically envisioned the deployment of new technologies and services, such as wireless services, to compete in local markets. In addition to competitive benefits, the mobility of wireless services greatly benefits consumers in high-cost and rural areas by allowing consumers to access the public switched telephone network in areas in which wireline telephones are not available. Moreover, universal service support for high-cost areas must be spent on providing, maintaining and improving facilities that service an ETC's service area.[65] The fact that customers may use their wireless telephones away from their homes or billing addresses does not change this obligation, nor does it mean that service will not be provided in that rural area.[66] ALLTEL also remains subject to the Commission's enforcement mechanisms, which will

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[63] Alabama LEC Comments at 14-16.

[64] The Alabama LECs raised this argument when they opposed the ETC designation of RCC Holdings and Cellular South. In both cases, the Commission granted the carriers ETC status. *Compare* Comments of the Alabama Rural Local Exchange Carriers at 17-18, *RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA No. 02-746 (May 23, 2002) *and* Comments of the Alabama Rural Local Exchange Carriers at 15-16, *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout Its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA No. 02-1465 (July 3, 2002), *with RCC Holdings and Cellular South*.

[65] 47 C.F.R. § 54.7.

[66] ALLTEL specifically committed to providing universal service throughout its service area for which it seeks ETC status. *See* Alabama Petition at 3-6. The Alabama LECs also urge the Commission to not grant ETC status to *any* wireless carrier until wireless carriers are required to monitor subscriber usage and termination for USF purposes. Alabama LEC Comments at 14. Such a request is outside the scope of this proceeding and should therefore be disregarded.

ensure that the high-cost support it receives is properly utilized. The Alabama LECs fail to provide any factual basis for their conclusion that the mobility of ALLTEL's wireless services will undermine the high-cost fund. The Bureau should reject this argument.

3. Designating ALLTEL As An ETC In Alabama Will Not Result In Rural "Cream Skimming."

The Bureau has previously recognized that "a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner will be able to creamskim in the rural study area."[67] It has also determined, however, that wireless carriers are often constrained by their FCC licenses as to where they can provide service and has concluded that designating a wireless carrier as an ETC does not raise concerns that the carrier is deliberately seeking to cream skim when the wireless carrier commits to provide universal service throughout the service area for which it is licensed.[68]

ALLTEL has committed to provide service throughout its entire licensed service area, and thus, as in prior cases, its inability to completely serve the study areas of some of the rural telephone companies does not raise cream skimming concerns. ALLTEL will not "pick and choose" which areas to serve, as the Alabama LEC allege. Furthermore, the incumbent rural carriers have the option of filing disaggregation plans so that they can target per-line support below the study area level and prevent wireless carriers from averaging high-cost support across all lines within the rural carriers' study areas.[69] The Bureau has often stated that disaggregating

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[67] *RCC Holdings*, 17 FCC Rcd at 23542-43.

[68] *RCC Holdings*, 17 FCC Rcd at 23542; *Cellular South*, 17 FCC Rcd at 24404; *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 180 (1996) (subsequent history omitted). The Commission recognized in *RCC Holdings* that "the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier is licensed to serve." *RCC Holdings*, 17 FCC Rcd at 23542.

[69] *RTF Order*, 16 FCC Rcd at 11302.

and targeting high-cost support eliminates any incentive on the part of wireless carriers to cream skim.[70]

An analysis of the specific facts in this case confirms that designating ALLTEL as an ETC in Alabama will not result in deliberate or even "inadvertent" rural cream skimming. ALLTEL commits to providing service throughout its licensed area in Alabama. ALLTEL's licensed service area in Alabama covers the full service areas of seven rural LECs and portions of the service areas of six other rural LECs.[71] Those service areas include both low-cost and high-cost areas.

The Bureau has previously determined that a low population density usually represents a high-cost area.[72] A comparison of the population data for the rural wire centers served by the Alabama LECs with the areas for which ALLTEL seeks ETC status reveals that ALLTEL is not serving the high-density, low-cost portions of the affected areas to the exclusion of high-cost areas.[73] In fact, the vast majority of ALLTEL's service area consists of higher cost, lower density wire centers.[74] The same comparison holds true within the six study areas that will be

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[70] *Id.*; *RCC Holdings*, 17 FCC Rcd at 23544; *Cellular South*, 17 FCC Rcd at 24405.

[71] ALLTEL's licensed area covers the full service territories of Castleberry Telephone Co., Inc., Graceba Total Communications, Gulf Telephone Co., GTC Inc., Hayneville Telephone Co., Inc., Mon-Cre Telephone Cooperative, and Union Springs Telephone Co., Inc. The companies whose service areas ALLTEL will only partially serve are its wireline affiliate, ALLTEL Alabama, Inc., as well as Butler Telephone Co., Inc., Frontier Communications of Alabama, Frontier Communications of the South, Millry Telephone Co. and Pine Belt Telephone Company, Inc.

[72] *RCC Holdings*, 17 FCC Rcd at 23543-44.

[73] *See* Exhibit A, attached hereto, which shows the population density in the wire centers for the areas in which ALLTEL seeks ETC status. Information concerning the wire centers for Union Springs Telephone Co., Inc., however, was not available. These maps were prepared by the Alabama LECs in the *RCC Holdings* and *Cellular South* proceedings. *See* Letter from Mark D. Wilkerson, Counsel for the Alabama LECs, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, DA Nos. 02-746, 02-1465 (Sept. 5, 2002).

[74] *See id.*

only partially served by ALLTEL. The wire centers in those study areas that ALLTEL will be serving are no more densely populated than the wire centers that will remain outside its service area.[75] The Bureau previously concluded in *RCC Holdings* and *Cellular South* that similar facts demonstrated that there was little danger of intentional or unintentional rural cream skimming.[76]

The risk of cream skimming is further precluded by the disaggregation plans that the Alabama LECs have previously filed. Of the six LECs whose service areas ALLTEL will be only partially serving, all but one (Pine Belt Telephone Company, Inc.) have filed disaggregation and targeting plans with USAC.[77] Accordingly, the opportunity for deliberate or inadvertent rural cream skimming is greatly reduced.[78]

The Alabama LECs' vague claim that the disaggregation options adopted by the Commission do not eliminate cream skimming is conjecture at best, and they have presented no evidence in the record to support such a theory. Given the disaggregation plans filed by five of the six rural LECs whose service territories ALLTEL will partially serve and the relative population densities of the portions of those service areas that ALLTEL will be serving, the Alabama LECs' failure to identify any evidence of harm should be determinative. The Bureau should conclude that ALLTEL's designation as an ETC in Alabama does not raise significant rural cream skimming concerns and is otherwise in the public interest.[79]

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[75] *Compare* Exhibit A hereto *with* First Amendment to Alabama Petition, Exhibit (showing wire centers served and those not served in partially served study areas).

[76] *RCC Holdings*, 17 FCC Rcd at 23543-44; *Cellular South*, 17 FCC Rcd at 24404-05.

[77] Pine Belt chose not to disaggregate its service area. USAC: High Cost Disaggregation - Checklist, *available at* http://www.universalservice.org/hc/disaggregation/checklist.asp.

[78] *See RCC Holdings*, 17 FCC Rcd at 23544, *Cellular South*, 17 FCC Rcd at 24405.

[79] Broad policy arguments concerning how well disaggregation and targeting protects rural telephone companies are best suited to a rulemaking, where parties can provide additional comment and data.

Finally, ALLTEL's request that the study areas of the six Alabama LECs' that ALLTEL will partially serve be redefined on a wire center by wire center basis will not result in cream skimming and is consistent with the public interest.[80] Redefining the affected service areas in this manner will minimize the opportunities and incentives for ALLTEL to engage in rural cream skimming.[81] The Commission recognized in *RCC Holdings* and *Cellular South* that redefining the service areas of rural telephone companies by wire center will not harm the incumbent telephone companies:

> The universal service mechanism supports all lines served by ETCs in rural areas. Therefore, to the extent that RCC Holdings or any future competitive ETC provides new lines to currently unserved customers or second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve. Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.[82]

The Commission also concluded that redefining the service areas of the rural LECs by wire center would not impose additional administrative burdens on the affected carriers.[83] The Commission should therefore similarly grant ALLTEL's request to redefine the six partially served Alabama LEC study areas on a wire center basis.

V. CONCLUSION

Verizon's and the Alabama LECs' procedural, policy and factual arguments against the Petitions are little more than anticompetitive attempts to deny universal service support to

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[80] *See* First Amendment to Alabama Petition at 2-3. ALLTEL similarly requested that the study areas of the rural telephone companies that ALLTEL will be partially serving in Virginia be redefined on a wire center by wire center basis. *See* First Amendment to Virginia Petition at 2-3.

[81] *See RCC Holdings*, 17 FCC Rcd at 23547.

[82] *Id.* at 23548; *see also Cellular South*, 17 FCC Rcd at 24407.

[83] *RCC Holdings,* 17 FCC Rcd at 23548.

carriers that threaten their market dominance. The Bureau should once again reject these recycled arguments and expeditiously grant ALLTEL ETC status in Virginia and Alabama.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Pringleton, do hereby certify that I have on this 14th day of July, 2003, had copies of the foregoing **REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.** delivered to the following via First Class Mail or electronic mail(*), as indicated:

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