

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Federal-State Joint Board)
On Universal Service) CC Docket No. 96-45
)
Corr Wireless Communications, LLC)
)
Petition for Designation as an)
Eligible Telecommunications Carrier)
In the State of Alabama)

**COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS
TO THE SUPPLEMENT OF CORR WIRELESS COMMUNICATIONS, LLC**

To: The Commission

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Castleberry Telephone Company, Inc.
Graceba Total Communications, Inc.
GTC, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

May 28, 2004

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SUMMARY

A ruling on *Corr's Petition* for ETC designation should be deferred until the Commission has resolved outstanding ETC designation issues – including critical issues affecting the Universal Service Fund, raised in the pending *Recommended Decision* of the Federal-State Joint Board on Universal Service.

Consistent with its announced intent to use the more stringent public interest analysis set forth in *Virginia Cellular* until the ETC designation issues raised in the *Recommended Decision* could be resolved, the Commission issued its ruling in *Highland Cellular*. Both rulings, however, failed to consider the most critical issue articulated by the Alabama Rural LECs in its filings in this proceeding: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area. Thus, the Commission should not grant the *Corr Petition* until it has developed a framework for analyzing the overall impact on the Fund from increasing support payments to competitive ETCs.

If, however, the Commission should address the merits of the *Corr Petition* in light of *Virginia Cellular*, *Corr* fails to meet its more rigorous requirements, even as supplemented. Additionally, *Corr's* ETC designation request does not encompass the entire territory of all of the rural carriers involved. Certain highly rural wire centers of Peoples Telephone Company have been excluded, as well Tennessee wire centers of Ardmore Telephone Company.

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COMMENTS

The Alabama Rural Local Exchange Carriers (“Alabama Rural LECs”) submit these Comments in response to the Supplement to Petition for Designation as an Eligible Telecommunications Carrier (“*Supplement*”) filed by Corr Wireless Communications, LLC (“Corr”) in response to the Commission’s *Virginia Cellular*¹ decision.

The *Supplement* does not provide sufficient justification for granting the *Corr Petition*,² which must be deferred until the Commission has resolved the outstanding ETC designation issues raised in the pending Recommended Decision of the Federal-State Joint Board on

¹ *In re Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

² *In re Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (May 13, 2003) (“*Corr Petition*”) as supplemented (May 14, 2004).

Universal Service (“Joint Board”).³ As previously articulated by the Alabama Rural LECs, these proceedings will have a significant overall impact on the Universal Service Fund (“USF” or the “Fund”).⁴ Until the broader issues affecting the USF are resolved, Corr’s petition for ETC designation should not be granted. If, however, the Commission should address the merits of the underlying petition in light of *Virginia Cellular*, Corr fails to meet its heightened requirements.

I. IMPORTANT ETC DESIGNATION ISSUES REMAIN UNRESOLVED

In their *Initial Comments*, the Alabama Rural LECs argued that “important policy considerations relating to the funding of multiple ETCs and multiple lines have been referred to the Joint Board”⁵ and that pending full Commission review, further action on ETC petitions would be premature.⁶ Following the issuance of the Commission’s *Joint Board Referral*,⁷ the Joint Board sought comments on the rules relating to high-cost universal service support and the ETC designation process.⁸ As a result, interested parties submitted comments to the Joint Board that raise issues and concerns for the Commission to review when evaluating petitions for ETC designation, particularly in rural areas. While the Joint Board has since issued its *Recommended*

³ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“*Recommended Decision*”).

⁴ Comments of Alabama Rural LECs, *Corr Petition* (July 28, 2003) at p. 7 - 16 (“*Initial Comments*”).

⁵ *Initial Comments* at p. 18.

⁶ *Initial Comments* at p. 20.

⁷ *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642 (2002) (“*Joint Board Referral*”).

⁸ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (Jt. Bd. 2003) (“*High Cost/ETC Public Notice*”).

Decision in the matter – noting that ETC designations in areas served by rural carriers are entitled to “rigorous review”,⁹ the Commission has not yet acted on the Joint Board’s recommendations. Hence, important ETC designation issues remain unresolved.

While awaiting the *Recommended Decision*, the Commission granted a pending application for ETC designation in *Virginia Cellular* and stated that “the framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.”¹⁰ This standard was intended to provide a more stringent public interest analysis while “await[ing] a recommended decision from the Joint Board”.¹¹

In keeping with its announced intent to apply *Virginia Cellular* until resolution of the ETC designation issues raised in the *Recommended Decision*, the Commission issued *Highland Cellular*.¹² However, in neither *Virginia Cellular* nor *Highland Cellular* did the Commission reach a pivotal issue articulated by the Alabama Rural LECs in their *Initial Comments*: the sustainability of the USF – and its underlying goals – where multiple providers, with overlapping territories, apply for ETC status in a rural area.¹³

Finding “that grant of *this ETC designation* will not dramatically burden the universal service fund,” the Commission did not address this issue of “overall impact” of ETC

⁹See *Recommended Decision* at ¶ 17.

¹⁰See *Virginia Cellular* at ¶ 4.

¹¹*Id.*

¹²*Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”).

¹³See *Initial Comments* at p. 9 – 17 (noting that “[t]here are very real costs associated with introducing multiple carriers in sparsely populated rural areas.”).

designations on the Fund in *Virginia Cellular*.¹⁴ Instead, the Commission in *Virginia Cellular* expressed its “hope that the Commission’s pending rulemaking proceeding also will provide a framework for assessing the *overall impact* of competitive ETC designations on the universal service mechanisms.”¹⁵ Correctly, neither the full Joint Board nor the federal Commissioners on the Joint Board have ignored the potential explosion in the USF.¹⁶

The Alabama Rural LECs agree with the Comments of TDS Telecom on the pending Alabama ETC Petition of NPCR, Inc. d/b/a Nextel Partners:¹⁷ “Given the issue[s] left open in *Virginia Cellular* and *Highland Cellular*, it is not appropriate for the Commission to evaluate *all* pending ETC petitions under the public interest standard set forth in *Virginia Cellular*.”¹⁸ The *Corr Petition* implicates issues quite unlike those addressed by the Commission in *Virginia Cellular* and *Highland Cellular*. The *Corr Petition* is only one of many proceedings for ETC designation in Alabama (the “Alabama Petitions”).¹⁹ If these Alabama Petitions were all granted

¹⁴ See *Virginia Cellular* at ¶ 31 (emphasis added).

¹⁵ *Id.* (emphasis added).

¹⁶ See *Recommended Decision* at ¶ 67 (noting in footnote numbered 53 that the Joint Board’s “examination of the record reveals a potential for uncontrolled growth [of the USF] as more and more competitive ETCs are designated in rural and high-cost areas.”); Separate Statement of Commissioner Kathleen Q. Abernathy (“[I]t seems clear that the universal service fund can no longer subsidize an unlimited number of connections provided by an unlimited number of carriers.”); Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I concur in the Joint Board’s recommendation to seek alternative means of limiting fund growth.”); Joint Separate Statement of Commissioners Jonathan S. Adelstein, et al. (“There are other better means to control fund growth” than the primary line proposal.).

¹⁷ *NPCR, Inc. d/b/a Nextel Partners* (“Nextel”) *Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (April 4, 2003) (“*Nextel Petition*”) as supplemented (March 24, 2004) (“*Nextel Supplement*”).

¹⁸ Comments of TDS Telecom in response to the *Nextel Supplement* at p. 4 (filed May 7, 2004) (“TDS Comments”).

¹⁹ *Corr Petition; Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*CellSouth Petition*”), CC Docket No. 96-45, Memorandum Opinion and
(continued...)

after being reviewed in isolation from each other, multiple rural carriers in Alabama would face two competitive ETCs (“CETC”s) operating in their service areas, several others three.²⁰ This would clearly be unsustainable in areas where the economies of scale may not support any competition at all. Accordingly, the Commission cannot properly assess whether the public interest would be served by granting the *Corr Petition* (or the other pending Alabama Petitions – including the *RCC* and *CellSouth Orders*) until the Commission has finalized “a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.”²¹ The *Corr Petition* must be denied, or at least delayed, pending resolution of outstanding ETC designation issues.

II. GRANTING ETC DESIGNATION TO CORR WOULD HAVE A SIGNIFICANT OVERALL IMPACT ON THE UNIVERSAL SERVICE FUND

As stated, Corr is not the only CMRS provider seeking ETC designation in rural Alabama. There are four other ETC designation proceedings pending with the Commission, all affecting Alabama Rural LECs.²² Two ETC designation petitions involve large CMRS providers

(continued...)

Order, 17 FCC Rcd 24393 (“*CellSouth Order*”); *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* (“*RCC Petition*”), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (“*RCC Order*”); *AT&T Wireless Services, Inc. (“AT&T Wireless”) Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (Dec. 31, 2003) (“*AT&T Wireless Petition*”) as supplemented (May 11, 2004); *Nextel Petition* as supplemented (March 24, 2004). Compare *ALLTEL Communications, Inc. (“ALLTEL”), Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (April 14, 2003) (“*ALLTEL Petition*”), which was very recently withdrawn. See Letter from C. Tritt, counsel to Alltel, to M. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, DA Nos. 03-1881, 03-1882, 03-3824, 03-3825 and 04-999 (May 21, 2004), recognizing uncertainty in rural ETC designations.

²⁰ See *infra* at p. 6-8 (discussing ETC Petition overlap in Alabama).

²¹ See *Virginia Cellular* at ¶ 31.

²² *AT&T Wireless Petition; CellSouth Order; Nextel Petition; RCC Order.*

–AT&T Wireless and Nextel. If, in addition to the *CellSouth* and *RCC Orders*, each of those petitions (along with the *Corr Petition*) were granted, the resulting CETCs in Alabama could draw millions of dollars annually from the USF.²³ When viewed in this context, a ruling on the *Corr Petition* must be suspended, pending resolution of the issues outlined in the *Recommended Decision*.

If the *Corr Petition* is granted, the Commission will be signaling its approval for an endless number of wireless ETC applications – and ultimately designations, to issue in overlapping rural service territories without first resolving the significant impact that such multiple designations will have on the Fund and on the underlying goals of the Fund. In *Virginia* and *Highland Cellular* the Commission could determine with some degree of confidence that the grant of ETC status in *those specific instances* would not dramatically burden the Fund. That is not the case in Alabama.

Simply put, the existence of five ETC proceedings – two granted and three pending, in Alabama deserves considerable attention. Each one should not be viewed in isolation. The Commission should defer decision on all pending Alabama ETC Petitions (and set aside the *CellSouth Order* and *RCC Order*) until it issues a final rule establishing a framework for

²³ Corr estimates that it will receive \$.5M annually in high-cost support if granted ETC status in Alabama. *Supplement* at p. 8. CellSouth projects that it will receive approximately \$110,000 per year in support for Alabama. *Supplement to CellSouth Petition* at p. 4 (May 14, 2004). RCC indicates that in a little over a year of ETC designation in Alabama it has received \$3.4M in high-cost support. *Supplement to RCC Petition* at Exhibit A (May 14, 2004); Nextel expects to draw approximately \$700,000 annually from the USF based on its Alabama petition. Nextel's Alabama *Supplement to Nextel Petition* at p. 5, footnote numbered 14 (Mar. 24, 2004). AT&T Wireless estimates that it will receive \$1M annually in high-cost support in its requested Alabama ETC designation areas. *Supplement to AT&T Wireless Petition* at p. 5 (May 10, 2004). Using solely these supplied figures, annual draws of several million dollars from the Fund for the state of Alabama alone would be virtually assured.

determining the “overall impact” on the Fund that overlapping ETC petitions will have on its sustainability and purpose. If the Commission evaluates pending petitions in isolation before resolving the issue of whether the number of competitive CETCs in each rural area should be capped, this could accelerate the growth of (and ultimately destabilize) the Fund. Significantly, it could also undermine the paramount goal of the Fund – supporting and promoting truly “universal service” – in the name of promoting competition in areas where the economies of scale may not support or justify competitive entry.²⁴

As previously stated, there are five ETC proceedings (two granted and three pending) in Alabama. Of the Alabama Rural LECs, the following have at least two potential CETCs in some or all of their service areas: Castleberry Telephone Company, Inc., Gulf Telephone Company, Hayneville Telephone Company, Inc. and Moundville Telephone Company, Inc.²⁵ These carriers all have three: Butler Telephone Company, Inc.,²⁶ Millry Telephone Company and Mon-Cre Telephone Cooperative, Inc.²⁷ The *Corr Petition* must be examined in the context of all pending ETC requests for the state of Alabama. “Where the economies of scale in a study area do not support multiple competitive entrants, a petitioner for ETC designation should face a particularly

²⁴ See *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin, Dissenting in Part, Concurring in Part (“I have concerns with policies that use universal service support as a means of creating ‘competition’ in high cost areas. ... I remain hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier”).

²⁵ These numbers have been compiled by reviewing the *CellSouth Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *RCC Petition*. The *ALLTEL Petition* has been removed.

²⁶ But for the recent removal of Butler Telephone Company, Inc. from the *Corr Petition* and the withdrawal of the *ALLTEL Petition*, this carrier would have five potential CETCs. See *Supplement* at footnote numbered 2; *supra* at footnote numbered 19.

²⁷ See *CellSouth Petition*, *AT&T Wireless Petition*, *Corr Petition*, *Nextel Petition* and *RCC Petition*.

high public interest hurdle before the Commission can grant an additional CETC designation.”²⁸

Simply, the *Corr Petition* should not be granted until the Commission resolves the “overall impact” issue. The remaining Alabama Petitions highlight this need.

III. CORR DOES NOT MEET THE PUBLIC INTEREST CRITERIA SET FORTH IN *VIRGINIA CELLULAR*

Corr’s ETC designation request must be reviewed under the public interest framework enunciated in *Virginia Cellular*. This framework requires the Commission to “weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”²⁹

The claims made in Corr’s filings simply do not survive the more stringent public interest analysis now embraced by the Commission. While Corr repeatedly relies on the presumptive benefits of promoting competition and/or increased competition³⁰ to support its contention that the public interest would be served by its ETC designation in certain rural service areas in Alabama, it has not, however, provided the kinds of firm commitments required under *Virginia Cellular* and *Highland Cellular*. Instead, Corr offers “*proposed* construction plans”, names sites “*projected* to be constructed” and states that the build-out is “*tentative* and subject to change”.³¹ Corr makes no build-out or quality of services assurances in the nature of those made by Virginia

²⁸ TDS Comments at p. 10.

²⁹ *Virginia Cellular* at ¶ 28; see also *Highland Cellular* at ¶ 22.

³⁰ *Supplement* at p. 10 and 13.

³¹ *Supplement* at p. 6 (emphasis added).

Cellular or Highland Cellular. Moreover, Corr is competing for and winning customer lines without the benefit of high-cost support. Thus, efficiency gains inspired by long-term competition are happening without the costs associated with the designation of additional ETCs.

Corr states that it will provide “its customers with a local calling area that is significant larger than the incumbent local exchange carriers.”³² Unlike Virginia Cellular, however, Corr does not assert that it has “many plans [that] include a large volume of minutes.”³³

Corr fails to meet the more stringent public interest analysis in other areas. While Corr asserts that it will use USF High Cost support for rural Alabama,³⁴ Corr does not provide a firm commitment to serve sparsely populated areas. It provides no assurance of quality service to all portions of the designated study area. Moreover, Corr does not provide concrete evidence that it will provision service to all requesting residential customers in rural Alabama or that it will be offering service to any previously unserved rural areas in Alabama.³⁵ The *Corr Petition* as supplemented remains deficient.

In addition, while Corr stated in its Petition that it “currently offers, or intends to offer, access to emergency service”³⁶ and in its *Supplement* that it “will provide ‘access to emergency services’”³⁷ it has not made the commitment required under *Virginia Cellular*.³⁸ In sum, Corr

³² *Supplement* at p. 9.

³³ *Virginia Cellular* at ¶ 20.

³⁴ *Supplement* at p. 5.

³⁵ *Id.* at p. 6.

³⁶ *Corr Petition* at p. 6.

³⁷ *Id.* at p. 9.

³⁸ *Virginia Cellular* at ¶ 19.

fails to concretely identify how it intends to alter its current construction, service or marketing plans to enable it to provide “universal service” in the rural service area[s] in which it seeks ETC designation.

“[T]he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”³⁹ Instead, the Commission balances the benefits and costs of ETC designation in a fact-specific exercise.⁴⁰ To date, Corr has not addressed the impact of the multiplicity of pending ETC Petitions in Alabama on the USF, a specific component of the more stringent public interest analysis.⁴¹ The purported benefits of Corr’s ETC request must be weighed against very real costs associated with introducing multiple carriers in sparsely populated areas such as the ones affected by the *Corr Petition*.

Many of the rural studies areas for which Corr seeks ETC status the population density is very low.⁴² The Commission has recognized that low population density typically indicates high-cost.⁴³ Similarly, the Alabama Rural LECs have previously stated that the cost of building and maintaining a public telephone network is extremely sensitive to the density of the serving area, establishing that costs increase gradually with decreasing population density until around

³⁹ See *Virginia Cellular* at ¶ 4.

⁴⁰ *Id.* at ¶ 28; see also *Highland Cellular* at ¶ 22.

⁴¹ See *Virginia Cellular* at ¶ 4.

⁴² *Initial Comments* at p. 9-13.

⁴³ *Virginia Cellular* at ¶ 34.

100 households per square mile.⁴⁴ Below this level, costs increase geometrically as subscriber density decreases.⁴⁵

When multiple CETCs serve the same territory, the average subscriber density for each carrier will be less than if a single company served the same territory. This will have the impact of significantly increasing each carrier's average cost of serving all subscribers. The impact of this increase will be more dramatic where a high percentage of lines in the study area are in the two lowest density/highest cost zones.

The overall impact of all the Alabama Petitions (pending and granted) may be the creation of a "great disparity in density"⁴⁶ between the wire centers sought to be served and the ones left unserved by Alabama CETCs. If this is the case, an affected Alabama Rural LEC could be placed at a "sizeable unfair competitive disadvantage."⁴⁷ Multiple CMRS service offerings could have an overall effect of taking funding away from an Alabama Rural LEC if the combined CETCs primarily serve the more highly concentrated population centers within the study area, while more remote areas are still served by the LEC alone. This ultimately leaves the LEC to serve higher cost areas with less USF funding and could also delay the deployment of advanced services throughout the study area.

⁴⁴ *Initial Comments* at p. 10.

⁴⁵ *Id.*

⁴⁶ *Virginia Cellular* at ¶ 35.

⁴⁷ *Id.*

In summary, Corr has not demonstrated that the purported benefits of providing USF support to its competitive CMRS service offering outweighs potential harms.⁴⁸ Grant of the *Corr Petition* could dilute the USF funding available to the affected Alabama Rural LECs and make it more difficult for individual companies to maintain the network necessary to serve their entire service area.

IV. CORR'S PETITION DOES NOT ENCOMPASS THE ENTIRE STUDY AREA OF ALL OF THE AFFECTED ALABAMA RURAL LECS

Contrary to its assertions, Corr does not propose to serve the entire study area of all of the rural carriers listed on Exhibit A to the *Supplement*. Certain wire centers of Peoples Telephone Company – Crossville and Grayson, are excluded.⁴⁹ Thus, the Corr Petition would require a redefinition of certain rural wireline study areas.⁵⁰

CONCLUSION

Because the *Corr Petition*, when viewed in the total context of the ETC picture in Alabama, would have a significant *overall* impact on the Universal Service Fund, the Commission should defer granting ETC status to Corr, until it has developed a framework for analyzing the overall impact on the Fund from increasing support payments to competitive ETCs. Finally, Corr did not make a sufficient showing that the public interest would be served by its designation as an ETC in the state of Alabama. Moreover, Corr's requested ETC

⁴⁸ *Virginia Cellular* at ¶ 28.

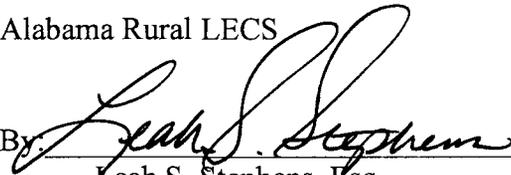
⁴⁹ Similarly, Ardmore Telephone Company, which encompasses area in Alabama and Tennessee, has two wire centers (both located in Tennessee – Minor Hill and McBurg) not covered by the *Corr Petition*. These two wire centers are remotes off the Ardmore wire center.

⁵⁰ Compare Supplement at p. 2 (stating that Corr “does not seek to redefine any rural study area”).

designation is not limited to “those rural study areas entirely encompassed within its licensed service territory”,⁵¹ which would involve a redefinition of certain rural wireline study areas.

Respectfully submitted,

Alabama Rural LECS

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May 28, 2004

⁵¹ *Id.*

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 28th day of May, 2004, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS TO THE SUPPLEMENT OF CORR WIRELESS COMMUNICATIONS, LLC, unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

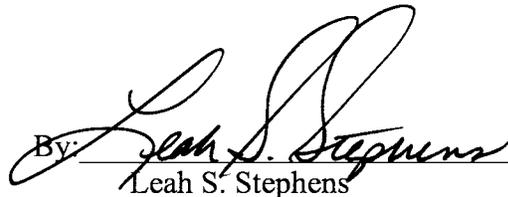
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