**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

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| In the matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
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To: The Commission

# REPLY COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS


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**SUMMARY**

The Rural Cellular Association ("RCA") and the Alliance of Rural CMRS Carriers ("ARC") (collectively, "RCA-ARC"), provide comments herein seeking a level playing field and fair rules that permit competitive ETCs ("CETCs") to drive infrastructure development, advance universal service, and bring the benefits of *facilities-based* competition to rural areas.

We encourage the Commission to continue implementing the 1996 Act as it was written, and encourage efficient carriers to enter rural markets to bring consumers the same kinds of choices in services that are available in urban areas. As detailed below, RCA-ARC members are using support in areas where they are designated to do just that.

The Commission must look closely at requiring ILECs to disaggregate support, at least to the wire center level, to more accurately target support to high-cost areas. Disaggregation will prevent CETCs from receiving excess subsidies for serving low-cost areas while increasing the support available to CETCs who properly target higher-cost areas that by and large have the fewest choices in services.

Some rural ILECs have sponsored a litany of suggestions that mirror their strategies at the state level – attempting to impose as many barriers to entry and other proposals designed solely to discourage competitor by raising the cost of doing business so high that none would consider entering. The Commission ruled many years ago in its *First Report and Order* that a carrier does not need to be regulated like an ILEC to be an ETC. ILECs face substantial regulation not because they get ETC support, but because they are monopoly carriers and the public requires protection from monopoly business practices. Now, attempts to regulate carriers that operate in a fiercely competitive market, must be rejected in favor of a model under which

carriers compete for customers *and* support so that regulatory burdens on ILECs can be lowered when they no longer exert monopoly control over their markets.

Likewise, a suggestion to create a multi-tiered support scheme for wireless carriers based on their size is a complete non-starter. Sponsored by ILECs and their wireless affiliates, the proposal is not a “compromise” at all. It is not competitively neutral, completely insulates ILECs from competition, and disqualifies otherwise qualified carriers for support solely based on their size. In short, it is bad policy. Rather than impose higher barriers to entry, the Commission should encourage states to accelerate the designation of qualified carriers.

Suggestions to provide support to competitors based on the competitors’ costs should also be rejected. With no incentives for wise or efficient investments, such a scheme would balloon the size of the fund and have no countervailing benefits for rural consumers. Only through portable per-line support can the Commission encourage efficient carriers to enter and provide sufficient support to ensure that rural consumers have choices in telecommunications services that are reasonably comparable to those in urban areas.

RCA-ARC urges the Commission to measure its actions by the yardstick of competitive neutrality, to use per-line support and disaggregation of ILEC support to provide sufficient support to consumers, and to encourage states to designate qualified ETCs promptly.

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The Rural Cellular Association [1] ("RCA") and the Alliance of Rural CMRS Carriers [2] ("ARC") (collectively, "RCA-ARC"), by counsel, hereby provide the following reply comments in response to the Commission's Notice of Proposed Rulemaking, FCC 04-127 (released June 8, 2004) requesting comment on the recent *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board").[3]

[1] RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its approximately 100 member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside.

[2] ARC is a group of CMRS carriers who are licensed to serve rural areas in Colorado, Nebraska, Guam, Virginia, West Virginia, Alaska, Michigan, Minnesota, Wisconsin, Iowa, Maine, Vermont, New Hampshire, Washington, Alabama, Mississippi, South Dakota, Kansas, Oklahoma, and Oregon. ARC's membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., Highland Cellular, Inc., Midwest Wireless Communications, LLC, N.E. Colorado Cellular, Inc., Rural Cellular Corporation, RFB Cellular, Inc., and Virginia Cellular, Inc.

[3] *Federal-State Joint Board on Universal Service, Recommended Decision*, 19 FCC Rcd 4257 (Jt. Bd. 2004) ("*2004 Recommended Decision*").

## I. ADVANCING UNIVERSAL SERVICE WHILE ENCOURAGING COMPETITION MUST DRIVE EVERY FCC DECISION IN THIS PROCEEDING.

Predictably, comments from industry participants fall into four broad categories, incumbents, competitors, those whose views are driven by a concern about the contribution mechanism, and regulators. Competitors without close ties to the incumbent local exchange carrier ("ILEC") industry have uniformly urged policies that are consistent with the 1996 Act and the FCC's consistent implementation of the Act over the past eight years.

To date, the FCC has attempted to harmonize the twin goals of advancing universal service while promoting competition – the central tenet of the 1996 Act.[4] Competitive carriers providing comment in this proceeding have advanced positions consistent with these twin goals, and have offered several means of constraining fund growth that do not involve changing the system dramatically or thwarting the will of Congress.

On the other hand, the 1300+ rural ILECs have, in some instances, individually and through their trade organizations, put forth a plethora of comments that, if adopted, would cement their monopoly positions and lock competition out of rural areas. Some of those commenters recommend the Commission take disturbingly improper actions and obviously seek a guarantee of market outcomes in their favor. Others recommend literally dozens of small changes that individually would not be significant, but taken together would make it unlikely that any competitor would enter rural markets.

Sprint's perspective deserves attention because the company is in all three markets central to the universal service debate, local exchange, long distance, and wireless. Sprint pays

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[4] "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, preamble, 110 Stat. 56.

substantial amounts into the system through its long distance and wireless businesses, yet supports fair policies because of its core belief that the Commission must follow the law that Congress wrote, and its inherent understanding that wireless is the future for all Americans and universal service policy must ensure that advanced technologies are available in rural areas.

Eight years ago, this Commission set the proper course, and it must continue to do so. Every decision must be measured by whether it meets the twin goals of advancing universal service and promoting competition, so that rural consumers who pay into the fund have a legitimate opportunity to enjoy the benefit of those services for which they contribute.

## II. THE CURRENT SYSTEM, THAT IS JUST BEGINNING TO DELIVER BENEFITS TO RURAL CONSUMERS, DOES NOT REQUIRE MAJOR CHANGES.

### A. The Commission Must Promote Entry by Carriers Who Can Deliver Universal Service Efficiently.

Some have cast this debate as how to constrain fund growth caused by new eligible telecommunications carriers ("ETCs") entering the market. Constraining growth in the fund must be a secondary concern to the Commission's first goal – to provide sufficient support for consumers living in high-cost areas *to achieve the benefits of comparable choices in advanced services and technologies.*[5] That is what the Act requires.[6]

If a smaller, or more stable, fund is desirable, then one simple question should be addressed: What public policy favors supporting the less-efficient provider of universal service in any given area? As Centennial correctly observes:

> [I]t would be profoundly unfair to simply take at face value that the rural ILEC in an area is "entitled" to $30 or $50 or $100 or more per line per month based on

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[5] 47 U.S.C. Section 254(b)(3).

[6] 47 U.S.C. Section 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.").

> little more than its say-so, and yet engage in extended regulatory soul-searching over whether the "public interest" is served by permitting a second ETC in the area to receive the same amount per line.[7]

One cannot properly address the issue of whether the designation of an additional ETC would unduly burden the fund without first asking whether the rural ILEC in that area is incurring costs in an efficient manner. Indeed, if wireless is a lower-cost alternative for many rural areas, then the Commission should be aggressively promoting its introduction so that overall support provided to such areas can be reduced. The current mechanism does not require the Commission to ferret out efficiencies – but provides market incentives for the carrier to provide services efficiently to the benefit of consumers.[8]

Some have commented that because wireless is more efficient, it receives a "windfall" under the current mechanism. This is simply not true. The entire purpose of a per-line support methodology is to encourage carriers that are more efficient than the incumbent to enter the market. If it is more efficient, then it will enter. However, a competitor will not receive more support in total than the incumbent, simply because at the outset it will have far fewer lines in service than the incumbent. During the time that line counts grow, competitive ETCs ("CETCs") are required to spend all support on facilities and services for the benefit of consumers in its ETC service area. Thus, even a very efficient competitor will need every dollar of support to construct, improve and maintain new networks to compete with the incumbent and respond to all

[7] Comments of Centennial Communications Corp. at p. 10.

[8] In his 2003 letter to shareholders, Chairman of the Board Warren E. Buffett discussed the benefits that the U.K. achieved through denationalization of its electric industry. Although prices and earnings continue to be regulated by the government, Mr. Buffet noted that under the free enterprise system, "profit-motivated managers, even though they recognize that the benefits will largely flow to customers, will find efficiencies that government never will." See Berkshire Hathaway, Inc. Annual Report at http://www.berkshirehathaway.com/letters/2003ltr.pdf at p. 14. Surely a competitive telecommunications market will deliver similar benefits to U.S. consumers in rural areas.

reasonable requests for service.[9] Likewise, there is little doubt that efficient competition provides a parallel incentive for rural ILECs to reduce their costs as well, easing the long-term burden on the fund.

If everyone agrees that constraining fund growth is an appropriate goal, then there should be a consensus that we shouldn't constrain users or shock incumbents. Indeed that was the FCC's precise approach in the 2001 *Fourteenth Report and Order*, when it encouraged competitors to enter, protected ILECs from competitive shocks by installing the modified embedded cost system for five years, and implemented rules for disaggregating high-cost support in rural areas.[10] Since 2001, rural ILECs have been on notice that competition is coming and that they must use the transition period provided by the modified embedded cost system to become more efficient and prepare for the day when they must compete on a level playing field with other carriers seeking to enter their markets.

### B. More Accurately Targeting Support to High-Cost Areas is Critical to Stabilizing Fund Size.

As competition is now beginning to come in the form of new ETCs being designated, it is becoming clear that more precisely directing support to high-cost areas is a critical component of universal service that has not been fully implemented. Some rural ILECs, who argued in the Rural Task Force ("RTF") process that disaggregation was critical to protecting them from subsidized competitive entry in low-cost areas, have used the FCC's rules in litigation to shield

[9] Claims that high-cost support is "all margin" or "goes straight to the bottom line" are very misleading and reflect a fundamental misunderstanding of basic accounting principles. *See, e.g.*, Comments of South Dakota Telecommunications Association and Townes Telecommunications, Inc. ("SDTA") at pp. 3-4. The Commission should ignore irresponsible and unsupported statements alleging inappropriate conduct by competitive carriers. *See, e.g.*, Comments of Montana Independent Telecommunications Systems ("MITS") at pp. 13-14 (implicitly equating alleged "windfall" by wireless CETCs to the "malfeasance among entities involved with the schools and libraries program".)

[10] *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*").

them from competitive entry. Their arguments to the states have been uniformly rejected and it appears that the FCC is the only regulatory body that has even remotely accepted their flawed thesis that disaggregation does not adequately protect incumbents.[11]

The importance of more accurately targeting support increases with each new CETC designation. As more new CETCs are designated in areas served by rural ILECs that have chosen Path 1 disaggregation, the problem of over- and under-compensation are exacerbated. For example, Virginia Cellular was designated in a very high-cost area where the support levels are inordinately low due to Path 1 disaggregation by the rural ILEC. At the same time, Virginia Cellular was denied ETC status in a lower-cost wire center of another Path 1 ILEC because the FCC concluded the averaged per-line support would be excessive.[12]

The RTF took this issue up five years ago and concluded, with a consensus of wireless and wireline carriers, that disaggregation is needed to more accurately target support and protect rural ILECs from subsidized competitive entry in low-cost areas. Without any supporting evidence whatsoever, the FCC speculated in its *Highland Cellular* decision that disaggregation may not always protect ILECs,[13] and the Joint Board regurgitated the same statement in its recent recommendation.[14] States that have carefully considered this matter have properly rejected this unwise and unsupported policy shift.[15]

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[11] *See, e.g., Virginia Cellular, LLC,* 19 FCC Rcd 1563 (2004) (petitions for recon. pending) ("*Virginia Cellular*").

[12] *See id.* at 1579-81. For a more detailed discussion of this portion of the order, *see* Virginia Cellular, LLC, Petition for Reconsideration (filed Feb. 23, 2004).

[13] *Highland Cellular, Inc.,* 19 FCC Rcd 6422, 6437-38 (2004) ("*Highland Cellular*").

[14] *See 2004 Recommended Decision, supra,* 19 FCC Rcd at 4279.

[15] *See* Supplemental Comments of the Minnesota Public Utilities Commission in CC Docket 96-45, filed May 14, 2004; Supplement to Petition by the Colorado Public Utilities Commission in CC Docket 96-45, filed May 14, 2004; Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) at pp. 10-12 ("Dakota Cellular Order"); AT&T Wireless PCS of Cleveland,

It is widely accepted that disaggregating support to the wire center level is not an onerous task, even for small rural ILECs. The Commission should modify its rules to require all ILECs to immediately disaggregate support under Path 2, at least to the wire center level.[16] This one action will greatly improve the transparency of the system so that competitors can make a more reasoned choice as to whether to enter some areas. If support is moved out of low-cost areas, some carriers will likely decline to enter. Alternatively, the Commission should require such disaggregation immediately upon designation of a competitive ETC in any portion of an ILEC study area.[17]

In state ETC designation cases where RCA-ARC members have applied, some opponents have argued unsuccessfully that areas where competitors would receive high-cost support are in fact low-cost areas for the competitor.[18] What these commenters ignore is the critical need for disaggregation – to ensure that competitors do not receive uneconomic levels of high-cost support in areas that are low-cost for the incumbent. In any particular area, support needed by a competitor may be higher or lower than that needed by an ILEC. The focus must be to ensure accurate targeting of support so that the ILEC is not treated unfairly.

For example, in a very low-cost area, the ILEC may disaggregate so that no support ($0.00) is available. At that level, if a competitor's costs are lower, then any market advantage it

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LLC, Docket No. UT-043011 (Wash. Util. & Transp. Comm'n, 2004) at p. 9 ("AT&T Washington Order"); Easterbrooke Cellular Corp., Recommended Decision, Case No. 03-0935-T-PC (W.V. PSC, May 14, 2004) at p. 55 ("Easterbrooke Cellular").

[16] *See* Comments of General Communication, Inc. ("GCI") at p. 24.

[17] This is similar to, and would be properly implemented together with, Centennial's well-reasoned proposal to amend the FCC's rules to make *service area redefinition* automatic upon designation of a CETC in a portion of its service area. *See* Centennial Comments at p. 16.

[18] *See, e.g.*, RCC Minnesota, Inc., Docket 1083 (Oregon PUC, 2004); United States Cellular Corp., Docket 1084 (Oregon PUC 2004).

enjoys as a result is entirely appropriate and it is likely that competitors have entered there already without having the benefit of high-cost support. On the other hand, in a very high-cost area, the ILEC may have an insurmountable advantage by virtue of having an embedded network and the fact that there may be very few available customers or difficult topography to overcome. It is in these areas where accurate and portable support is critical.

The Commission long ago figured out that leveling the playing field requires, (1) per-line support to competitors, (2) more accurately targeting support so that ILECs are protected, and (3) requiring competitors to respond to all reasonable requests for service throughout the ETC service area.[19] With these three keys in place, it matters little where a competitor is designated. If it is designated only in low-cost areas, then it will receive little or no support. If it is designated only in high-cost areas, then it will receive higher levels of support needed to construct facilities in those areas.

The Commission need look no farther than its Model Support states, where support has been disaggregated for four years, where the geography is sometimes very rural, and where new CETCs have entered. RCA-ARC members have entered in Mississippi, Alabama, Maine, Vermont, and West Virginia and are providing service in Model Support areas. To date, no party has alleged that competitive entry has harmed consumers or is unfair, while each state has seen significant new investment in wireless facilities that have delivered significant benefits to consumers.

[19] *See generally Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997) ("*First Report and Order*")*; Fourteenth Report and Order, supra; 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,* 15 FCC Rcd 15168 (2000) ("*South Dakota Preemption Order*").

## III. RESPONSES TO OTHER COMMENTS.

### A. In Many Rural Areas, CETCs Do Not Effectively Compete With ILECs in the Local Exchange Marketplace.

Some commenters continue to perpetuate the myth that wireless carriers are already competing in rural America and therefore support is not "necessary." The simple facts are as follows:

1. Consumers in many rural areas are frustrated that the service quality offered by wireless carriers is not commensurate with that enjoyed by urban consumers; and

2. Some wireless carriers who focus on rural America, such as RCA-ARC members, are very anxious to extend service out to requesting customers but have been frustrated in that goal to date because wireline companies have all the customers in a locale and all the support.

Recently, the FCC released its latest CMRS competition report in which it declared that 96.8% of counties in the U.S. have at least three wireless communications providers.[20] Unfortunately, this statistic does not convey any sense of whether there is effective competition in any area, nor does it provide any data concerning whether any particular county has high-quality robust networks that can compete with ILECs outside of major population centers.[21] In Rural Cellular Corporation's ("RCC's") recent petition for ETC status in Kansas, its expert witness testified that although RCC has a better network than most of its wireless competitors, it does not yet have network quality that is competitive with the ILECs:

> [t]he ability to offer *some* service to *some* customers in *some* portion of an RLEC [rural incumbent local exchange carrier] study area today is fundamentally

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[20] Report to Congress, Ninth Annual CMRS Competition Report, Wireless Telecommunications Bureau (Sept. 9, 2004), which can be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-251984A1.pdf .

[21] Commissioner Copps properly noted that "The central question of the legislation that requires this Report is whether the market is characterized by "effective competition." Yet again this year the Report does not provide a useful definition of this term. Without an well-articulated "effective competition" standard, the Report will always have trouble providing an analytically solid foundation for Commission or Congressional action."

> different than the ability to offer a competitive alternative to local exchange service to customers throughout the service area in question. The [wireline] companies can make such a service offering because they have received federal USF funding in order to build out the networks necessary to do so.[22]

To cite just one example of how the CMRS Competition Report falls short in illustrating effective competition throughout rural America, we have gathered from the Internet web sites of AT&T Wireless, Cingular Wireless, T-Mobile, and Westlink, each of whom serves western Kansas, illustrations of their advertised coverage areas. These maps, attached hereto as Exhibit 1, demonstrate how limited the coverage is for these five carriers. In the vast majority of the western half of Kansas, they cannot compete with rural ILECs because they do not have coverage beyond the highways and main roads. Moreover, the maps make apparent that these carriers are sharing networks in Kansas. That is, there may be many carriers selling service but perhaps as few as one that is providing facilities-based service. Thus, at least in Kansas, it is far from clear that effective facilities-based competition is present in large portions of the state beyond the main towns and highways.

For consumers in rural western Kansas, competitively neutral and portable universal service support offers the possibility of having wireless service that is commensurate in quality to that available in Kansas City and other urban areas in the eastern half of the state. That is exactly what the 1996 Act intended.

[22] Surrebuttal Testimony of Don J. Wood on behalf of RCC Minnesota, Inc. on March 4, 2004, Docket No. 04 RCCT-338-ETC (Kansas Corp. Comm'n).

### B. Many of the ILECs' Proposed "Minimum Requirements" and the FCC's Acquiescence to TOPUC Will Lead to State-Imposed Hurdles That Contravene the Statutory Scheme by Improperly Disfavoring Competitors.

Perhaps emboldened by the Commission's recent acquiescence to the TOPUC decision in the *Virginia Cellular* case,[23] wireline LEC commenters offer up a number of misguided proposals for increasing the criteria for designation of new ETCs.[24] Collectively, the commenters seek to discourage competitive entry and regulate competitors as if they were monopoly wireline carriers.[25] However, imposing additional criteria on new entrants is not only bad public policy, it is contrary to the Act's "pro-competitive, de-regulatory" purposes.[26] We refer the Commission to our initial comments in this proceeding, wherein we set forth in detail why the errant *TOPUC* decision is not binding on the Commission and why the recently announced and unexplained

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[23] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*TOPUC*").

[24] To cite just two examples, the National Telecommunications Cooperative Association ("NTCA") claims that a Proposal for Decision ("PFD") issued by a hearing officer of the Vermont Public Service Board ("PSB") in March 2003 required an ETC applicant to demonstrate that capital spending was greater than universal service support plus a reasonable base level of spending. NTCA Comments at p. 21 n.41. ATA claims that the PFD required the applicant to provide "universal coverage". ATA Comments at p. 5. However, the PFD was subsequently overruled on both counts in a November 2003 PSB decision, holding that:

> While the Board believes that investment in capital construction is a useful indicator of an ETC's progress toward ubiquity of coverage, we do not believe that it is critical to demonstrating compliance with ETC certification. The Board agrees with RCC that it is also important that support be used to expand the volume of calls that the company can manage as customers access the network from their homes, cars or work places. An ETC's investments in service quality and service overall for existing customers are as necessary to serving the public interest as investments in the geographic expansion of coverage. Therefore . . . RCC only will be required to provide evidence that it uses universal service support for the provision, maintenance, and upgrading of facilities and services for which the support was intended, in the same manner as wireline ETCs."

RCC Atlantic, Inc. d/b/a Unicel, Docket No. 5918 (Vt. Pub. Serv. Bd., Nov. 14, 2003) at p. 48.

[25] For example, the recurring theme in the criteria proposed by TDS Telecommunications is "comparable to the wireline LEC". *See* TDS Comments at pp. 8-9.

[26] *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the goal of the 1996 Telecommunications Act is "to provide for a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening all telecommunications markets to competition....").

flip-flop on the matter (by the Commission in *Virginia Cellular* and the Joint Board in its *2004 Recommended Decision*) must be reversed.[27]

Congress intended to introduce competition throughout the land, but never imposed ILEC-style regulatory requirements on new entrants seeking ETC status.[28] With respect to wireless competitors, Congress passed Section 332(c)(3) of the Act, which prohibits states from regulating wireless rates and entry and "express[es] an unambiguous congressional intent to foreclose state regulation in the first instance."[29] The danger presented by the wireline industry's proposals is that the national deregulatory framework for what is obviously an interstate service will be frustrated by individual state commissions, who will impose local requirements that ignore the realities of wireless carriers. RBOCs who operate in many states face this hurdle today, and RCA-ARC supports deregulation when their monopoly control of the local exchange marketplace is removed through the introduction of effective competition.

The FCC's improper acquiescence to the Fifth Circuit's *TOPUC* decision has significant consequences for CETCs. For example, some RCA-ARC members are being required to file tariffs as a condition of obtaining ETC status.[30] CETCs must amend these filings whenever they wish to change terms, and in some cases state approval is required. Oklahoma has required

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[27] *See* RCA-ARC Comments at pp. 30-38.

[28] *First Report and Order, supra*, 12 FCC Rcd at 8858 ("section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.")

[29] *Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order,* 10 FCC Rcd 7025, 7030 (1995), *aff'd, Connecticut Dept. of Pub. Util. Control v. FCC*, 78 F.3d 842 (2nd Cir. 1996).

[30] Mississippi, Arizona, and Colorado require tariffs or tariff-like filings.

specialized and detailed service quality reports, including requiring the creation of a table of complaint codes which must be meticulously logged and reported.[31]

What is the effect of having individual state requirements on a business that is essentially interstate from a regulatory perspective and most often multi-state from an operational one? Most important, these requirements artificially and significantly raises competitors' costs. When a wireless carrier that operates in more than one state must change how it logs complaints for one state, the cost of training its staff is enormous. Wireless carriers often operate on a larger scale than most rural ILECs, with call centers staffed 24/7 and storefront operations open six or even seven days per week. For N.E. Colorado Cellular, having two regulatory regimes in Colorado and Nebraska is very challenging. For Rural Cellular Corporation, which operates in 14 states, it is an administrative nightmare.

States also improperly discriminate between CMRS carriers who are ETCs and those who are not. The Joint Board's advice that states should not regulate for new entrants to achieve "parity for parity's sake"[32] does not go far enough. The Commission should advise state commissions that any proposed regulations on prospective ETCs must be considered in rulemakings of general applicability and NOT in an ad hoc fashion in the course of an ETC designation proceeding.[33] In such cases, individual carriers have often acquiesced to commission pressure and the enormous cost of continuing litigation to accept conditions that are otherwise

[31] An Oklahoma ALJ recently proposed to require 1000 minutes of use be included on all wireless rate plans, although that decision has been reversed by the full commission.

[32] *2004 Recommended Decision*, *supra*, 19 FCC Rcd at 4271.

[33] *See, e.g.*, General Investigation, Case No. 03-1199-T-GI (West Virginia PSC).

unlawful.[34] In a rulemaking proceeding, all parties have an opportunity to participate without such coercion.

Professor James Ming Chen foretells the mischief that the FCC will create by acquiescing to the Fifth Circuit's erroneous *TOPUC* decision, permitting individual states to add conditions to CETCs:

> When implemented locally, telecommunications law systematically favors local incumbents. To retain any hope of true competition, federal telecommunications law must exert deregulatory discipline from above.[35]

It is not appropriate to have some CMRS carriers subject to state regulation while others remain unregulated. Calls for higher barriers to entry and regulatory parity ignore that ILECs did not receive a highly regulated status as a quid pro quo for ETC status. Rather, ILECs are regulated because consumers must be protected from monopoly business practices. Regulations must distinguish between monopolies and competitors. They should not discriminate among competitive carriers.

If new entrants are successful in providing effective competition, RCA-ARC fully supports substantial deregulation of incumbent carriers so that all have relatively low regulatory burdens. To date, no party has introduced no record evidence of a single consumer harm that has resulted from a CETC having been designated, even in states such as Washington, Virginia, Alaska, Wisconsin, and Iowa that have declined to impose additional regulations on new ETCs.[36]

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[34] *See, e.g.,* the dissent of Colorado PUC Chairman Greg Sopkin in *WWC Holding Co., Inc.,* Docket No. 03A-061T Decision No. C040545 (2004), appeal pending, *WWC Holding Co., Inc. v. Sopkin,* Civ. Act. 04-1682, D. Ct., Colo., 2004).

[35] Subsidized Rural Telephony and the Public Interest: A Case Study in Cooperative Federalism and Its Pitfalls, Journal on Telecommunications & High Technology Law, Volume 2, Issue 1 at p. 373.

[36] In the Joint Board proceeding in this docket, we provided to the Commission the work of Professor James Ming Chen, who is the James L. Krusemark Professor of Law at the University of Minnesota. Professor Chen is an expert on the public interest standard in administrative law. A copy of Professor Chen's is attached hereto as Exhibit 2 for the record.

### C. A Tiered Proposal to Limit Support Paid to Competitive ETCs Is A Complete Non-Starter for the Wireless Industry.

A proposal presented to the Commission by OPASTCO, RICA, and the Rural Telecommunications Group ("RTG") was thinly disguised as an industry "compromise" between wireline and wireless carriers but in fact is an ILEC-sponsored plan structured so as to divide their wireless opposition and arbitrarily cut down on the number of competitors that enter into their markets.[37] As we understand it, OPASTCO represents rural wireline carriers, RICA represents CLECs owned by rural ILECs, and RTG represents almost exclusively wireless carriers who are controlled by rural ILECs…..most of whom are also OPASTCO members. This hardly qualifies as a consensus of rural telecommunications providers.

We note here that some RCA members, as well as some ARC members, have significant ILEC ownership. RCA attempted to participate in discussions with the other associations early on, however it quickly became apparent that, (1) the proposals put on the table by the other groups were not consistent with the 1996 Act and, (2) if implemented, would guarantee market outcomes in favor of ILECs, which the *Alenco* court has already ruled to be anathema to the Act.[38] Neither RCA nor any ARC member was willing to sign on to a proposal that would fundamentally thwart the will of Congress.

The RTA proposal to disqualify Tier 1 wireless carriers from receiving high cost support cannot possibly pass the test of competitive neutrality. Although no RCA-ARC member would be affected, the proposal is a complete non-starter because it discriminates against otherwise qualified carriers that must by law have an opportunity to demonstrate the capability and

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[37] Comments of Rural Telecommunications Associations ("RTA").
[38] *Alenco Communications, Inc. v. FCC,* 201 F.3d 608 (5th Cir. 2000).

commitment to extend service to rural areas. This cannot possibly comply with Section 214, which does not permit the FCC or any state to restrict entry by any class of carrier.

The RTA proposal to limit per-line support on a graduated scale to Tier 2, Tier 3 and a new "Tier 4" group of wireless carriers fares no better. The graduated reductions according to the number of customers a wireless carrier has *in other areas* are arbitrary and lacking in any support whatsoever from the proponents of the plan. At the same time their plan contemplates not a single dollar of support lost by ILECs. That is, ILECs would be guaranteed support and economic security, no matter what their performance, while competitors would continue to take business risk with less support when attempting to enter rural areas. The FCC has ruled that all support must be explicit and portable for the benefit of consumers and that is all RCA-ARC is asking for.[39] What RTA seeks to achieve "is not merely predictable funding mechanisms, but predictable market outcomes. Indeed, what they wish is protection from competition, the very antithesis of the Act."[40]

This proposal must also be rejected because RTA fundamentally misunderstands "a primary purpose of the Communications Act--to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service. They therefore confuse the requirement of sufficient support for universal service within a market in which telephone service providers compete for customers, which federal law

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[39] 47 U.S.C. § 254(b)(5); *First Report and Order, supra,* 12 FCC Rcd at 8783-4 ("[T]he Joint Explanatory Statement of the Committee of the Conference, Congress intended that, to the extent possible, "any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today.").

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

mandates, with a guarantee of economic success for all providers, a guarantee that conflicts with competition."[41]

GVNW goes so far as to claim, without citation to any authority, that "rate of return carriers are entitled, as a matter of law, to a full recovery of their costs in providing interstate services."[42] We beg to differ. That model, if it ever existed, went out with the 1996 Act. The FCC's clear policy direction since has been to advance competition and universal service, fulfilling the Act's mandate that all support must be made explicit[43] and rural consumers must have choices in services and service providers that are comparable to those in urban areas.[44] Once support is explicit and fully portable, all carriers can compete for consumers and for support on a level playing field to the consumers' benefit. The idea that one class of carrier is guaranteed to succeed in the market while all others are locked out because support levels are skewed in favor of the incumbent died eight years ago.

As Professor Chen so eloquently writes:

> The public interest in subsidizing rural telephony rests in aggressive measures to roll out advanced telecommunications infrastructure and services to the geographic and economic limits of the republic. This aspect of universal service depends on two overarching factors. The public interest rests squarely on *competitive neutrality* (including neutrality as between carriers and technological neutrality) and on the *portability* of subsidies among eligible carriers. The failure to honor either principle, let alone both, betrays Congress's vision that rural Americans should attain technological and economic parity with their urban counterparts. The "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies." Portability, for its part, converts USF support into a catalyst of technological innovation by enabling competitive ETCs to exert pressure on ILECs. In concert with competitive neutrality, portability

[41] *Id.* at 625.

[42] GVNW Comments at p. 9.

[43] 47 U.S.C. § 254(b)(5); *First Report and Order, supra*.

[44] 47 U.S.C. § 254(b)(3).

> helps ensure that "the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers.[45]

Congress commanded the FCC to lead in this area by encouraging competition and advancing universal service and until Virginia Cellular the Commission has done exactly that. Now is not the time to go back to 1995, but to lead the country forward by driving new infrastructure development in rural America.

### D. The Per-Line Support Methodology is Working and Must be Retained.

Some commenters recycle the false notions that competing carriers receive the same support as ILECs, and should be paid on their own costs. A short explanation of the current per-line methodology reveals why it is working and must be retained. By paying a competitor only when it has a customer, the competitor must get and keep customers in order to support. To get customers, a competitor must first construct facilities, market its services, and then keep customers happy once they sign up for service.

The per-line support methodology sets a benchmark for all potential competitors to determine whether to enter as an ETC. At the outset, a competitor must determine whether, (1) it believes it to be a more efficient carrier than the ILEC in the proposed ETC service area; (2) there is sufficient customer revenue and support available to permit the company to make ETC commitments; and (3) whether competing carriers have a head start such that new construction would not be profitable, even with per-line support were available. In short, if a potential competitive ETC does not believe it will get enough customers, then it will conclude that it cannot make commitments to be an ETC. The system requires competitors to take business risk to enter, as there is no guarantee that support will be sufficient to construct network facilities.

[45] *See* Subsidized Rural Telephony and the Public Interest, *supra*, at p. 371 (emphasis in original).

In virtually all instances, competitors must begin as new ETCs with far less support than the incumbent is receiving, simply because wireline carriers have far more customers in rural areas than do new CETCs. Moreover, as the area becomes more rural, the disparity in line counts grows simply because competitors do not have high-quality networks to attract a substantial percentage of consumers. Yet, even if the per-line methodology delivers more support because a carrier is successful in getting customers, the competitor must use all available support to provide the facilities and services. It may not, as alleged by some, use the funds for any other purpose. In that situation, the public receives accelerated network investment.[46]

The current system marries the advancement of universal service in rural areas while promoting competition. Competitive carriers must first construct new facilities in high-cost areas and compete for customers. Their efforts advance new services and choices to consumers as envisioned by the Act. Those who claim that CETCs receive support for their existing customers who were obtained under business plans that did not contemplate high-cost support ignore one critical fact: Carriers that are not ETCs have largely constructed in low-cost areas, and have most of their customers in such areas. But if they are truly low-cost areas, then it is likely that support levels should be low, or even zero, if ILECs have targeted their own high-cost support appropriately. When support is properly targeted, competitors will not seek ETC status if they intend to remain only in low-cost areas.

As shown above, the FCC has rules in place whereby ILECs are fully empowered to disaggregate support so that ILECs are not subject to subsidized competition in low-cost areas.

[46] In the Joint Board proceeding in this docket, we provided to the Commission the work of Don J. Wood, who has served as an expert witness in numerous ETC designation proceedings and has testified before the Senate Commerce Committee on these issues. Mr. Wood is an expert on wireline network costs and his thesis on universal service provides the Commission with valuable insight into the policy considerations in this proceeding. A copy is attached hereto as Exhibit 3 for the record.

Disaggregation enhances universal service by forcing competitors to construct facilities in high-cost areas in order to generate support – precisely where consumers are today complaining that they have substandard wireless facilities and no choice in telecommunications service providers.

To be clear, no RCA-ARC member advocates receiving uneconomic levels of support in an area that is low-cost for the ILEC. Yet, even if this occurs, competitors still must use the support to respond to all requests for service throughout the ETC service area.[47] The FCC provided wireline carriers with the tools to solve the "existing customer" problem, however abusing the regulatory process by using the FCC's disaggregation rules to prevent competition is use of a weapon, not a tool.

### E. Paying Carriers on Their Own Costs Will Balloon the High-Cost Fund.

Now let's look at what is likely to occur if CETCs are paid on their "own costs." Presumably, if the newcomer constructed additional network facilities to "compete", any method for paying high-cost support based on network costs would ensure that the competitor could earn a sufficient return or investment. In such a case, it is possible, if not likely, that inefficient investments would be made based on the ability to get high-cost support, irrespective of whether a business case can be made for competitive entry.

In RCA-ARC's view, this is exactly the wrong result. Unfortunately for ILECs, if wireless carriers receive support based on a wireless cost model, the relative youth of wireless networks may lead to a gold-rush mentality as carriers sweep into rural areas on the promise of high-cost funding sustaining bad business decisions. On the other hand, if support is portable and

[47] This issue is prominent in the *Virginia Cellular* case where the FCC postulated that Virginia Cellular would receive uneconomic support in one wire center. Given that such support would have to be spent constructing facilities and responding to customer requests in very remote areas of Virginia, and given the FCC's annual oversight of Virginia Cellular's use of funds, it is appears the FCC is providing a solution to a problem that does not exist under the current system, and only harming Virginia Cellular and wireless consumers in high-cost areas of its ETC service area as a result.

is dependent upon having a customer, then all carriers become customer-centric, which is exactly the appropriate incentive to place upon service providers. It serves the public by enabling competitors to drive innovation and quality of service, rather than having it imposed by regulators.

As we discussed in our initial comments, paying each competing carrier on its own costs will ensure that unneeded network construction is undertaken without concern for efficiency. If limiting growth of the fund is a goal, while being fair to market participants, and providing consumers in as many areas as possible the benefit of sustainable competition, then this proposal goes in exactly the wrong direction on all counts.

## IV. WIRELESS ETCS ARE DELIVERING SUBSTANTIAL BENEFITS TO CONSUMERS IN RURAL AREAS BY INVESTING HIGH-COST SUPPORT INTO NEW FACILITIES.

NTCA and OPASTCO launched their assault on competitive entry two years ago, fortuitous timing given the fact that most CETCs have been eligible to receive support for a relatively short period of time. Thus, it is much too early to fairly assess market shifts as a result of competitive entry. However, there is evidence that CETCs are aggressively investing in new construction projects and upgrading existing infrastructure to deliver benefits to rural consumers. Over the past two years, more CETCs have been designated and are beginning the process of constructing new networks. Some have had ETC status long enough to now be able to provide the Commission with evidence that high-cost support is being used to expand services and choices available to rural consumers.

### A. Cellular South Licenses, Inc.

Since being designated as an ETC in December of 2001 in “non-rural” areas of Mississippi and its service area in Alabama in 2002, ARC member Cellular South has invested nearly $73 million in its facilities, or roughly 27% more than it has received to date in high-cost support.[48] The centerpiece of Cellular South's investment plan was deploying a CDMA-1X digital network and expanding wireless coverage to serve new areas. By constructing a CDMA-1X network, Cellular South is providing consumers in thinly populated areas and small towns with the latest in digital technology thereby enabling higher-quality and higher-capacity voice service, while laying the foundation for future upgrades that will be capable of providing consumers access to future wireless technology applications.

To date, Cellular South estimates that **high-quality** wireless coverage has expanded by 9,300 square miles in Mississippi and 300 square miles in Alabama. The company has added 141 new sites (either new towers or co-location sites) in rural areas in Mississippi served by BellSouth. CDMA-1X technology enables Cellular South to use its spectrum more efficiently and thereby handle the increasing usage and capacity requirements of wireless customers. Cellular South has upgraded 171 Mississippi sites and all of its Alabama sites in rural areas with CDMA-1X technology. Cellular South has also utilized support to purchase cell site equipment such as generators and back up facilities.

Cellular South has reached out to rural communities by expanding the offering and advertising of its services. For example, in just the past year, the company has opened new sales outlets in the following locations.

December 2, 2003 – new store in Pontotoc, MS
December 3, 2003 – new kiosk inside Dodge's Chicken Store in Booneville, MS
December 15, 2003 –new store in Grenada, MS
June 10, 2004 - relocated and expanded store in Batesville, MS
July 1, 2004 – relocated to a new larger store in Lucedale, MS
July 6, 2004 – new store in Wiggins, MS
July 13, 2004 – new kiosk in E.W. James & Sons Grocery in Ripley, MS
July 15, 2004 - new store in Olive Branch, MS

[48] The "non-rural" area of Mississippi is area where BellSouth provides local exchange service. The vast majority of such area is rural in character – it is simply the area where rural ILECs in the state do not currently provide service.

August 30, 2004 – new store in New Albany, MS
September 7, 2004 – new store in South Hattiesburg, MS

For 2005, Cellular South anticipates new expenditures exceeding $30.2 million in its existing ETC service area. Of that amount, $7.6 is earmarked for continuing expansion of capacity and network efficiencies to build and maintain service quality in high-cost areas. Network operating expenses will be approximately $12.6 million. And $10 million is projected for enhancement of existing networks. Pursuant to its grant of ETC status in Mississippi, the company submits quarterly reports to the Mississippi Public Service Commission detailing its expenditures and plans.[49]

Cellular South seeks to compete with all carriers for all consumers of telecommunications services. For example, the company offers a flat rate plan of $49.99, which provides unlimited calling throughout the state of Mississippi, and includes Memphis, coastal Alabama, and the Florida panhandle. For consumers in rural areas accustomed to small local calling areas, these plans are very attractive and the company has had tremendous uptake in areas where it has improved its service.

We have attached hereto as Exhibit 4 a file of press clippings that provide record evidence of Cellular South's commitment to its rural customer base. A litany of articles describes Cellular South's system expansion and the opening of new facilities to serve small Mississippi communities. These areas now have critical health and safety tools, as well as economic development opportunities that did not exist just a few years ago, principally because of the availability of high-cost support to Cellular South.

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[49] Periodic reporting provides Cellular South an opportunity to update the Public Service commission when plans change. For example, Cellular South's current internal planning indicates that its projected 2005 capital expenditures may well be above those previously reported to the Public Service Commission and in this submission.

### B. Rural Cellular Corporation.

ARC member Rural Cellular Corporation ("RCC") has been designated as an ETC in seven states, Washington (2002), Alabama (2002), Mississippi (2002), Minnesota (2003), Maine (2003), Vermont (2003) and most recently in Oregon (2004). In each state, RCC is aggressively deploying new facilities with high-cost support. To summarize just the capital expenditure portion of RCC's use of high-cost support:

In Washington, where RCC has received roughly $3.3 million in support through the first quarter of 2004, the company has expanded its coverage in eleven communities and accelerated the upgrading of its network to the latest digital technology to increase capacity, voice quality, and lay the foundation for the future delivery of advanced services. Upgrades to all of its existing 61 cell sites are expected to be completed this year as a result of high-cost support being available.

In Alabama, RCC has received $3.4 million in USF support through the first quarter of 2004. By the end of this year RCC will have built 13 new cell sites and is purchasing three other sites from another carrier, all to expand its footprint in its ETC serve area. RCC has recently purchased a new switch so that it can begin upgrading its Alabama network to the latest generation of digital technology.

In Mississippi, RCC has received approximately $3.8 million in federal support through the first quarter of 2004. By the end of this year, RCC will have added 13 new cell sites in its ETC service area to improve its service quality and availability. It has also sectorized four other cell sites and upgraded its microwave backhaul facilities to improve network capacity, reliability and redundancy. The recently purchased next generation switch located in Enterprise, AL will also serve RCC's Mississippi customers.

In Minnesota, RCC has received approximately $4.2 Million in federal support through the first quarter of 2004. Since its designation, RCC has spent $6.8 million in network capital improvements, including beginning to deploy a CDMA-1X network in the state. The company has installed a new CDMA switch near its headquarters in Alexandria, MN and has upgraded over 70% of its cell sites to the CDMA-1X platform. RCC plans to complete the upgrading of its remaining cell sites by the end of the year. In addition, RCC's 2004 project schedule includes the addition of 11 new cell sites in its ETC service area and add backup generators at needed cell sites to improve reliability.

In Maine, RCC has received $1.6 million in federal support through the first quarter of 2004. For that same time period, RCC has spent $4.7 million in network capital improvements in its ETC designated areas. By the end of 2004, RCC expects to have a total of seven new sites available in its ETC service area. The company has also added channel capacity to its network to improve service quality. RCC has used support to accelerate the deployment of a next-generation GSM digital platform. To date, RCC has upgraded 20 cell sites.

In Vermont, RCC has received $1.7 million in federal support through the first quarter of 2004. During that time period, RCC has spent $3.2 million in network capital improvements in the ETC service area, including the installation of the next generation GSM digital platform in approximately 70% of the existing cell sites. The company has installed a new switch in Colchester, Vermont to serve the ETC service area. In addition, by year end, RCC will complete construction of eight new cell sites to improve coverage and service quality. To reduce blocked calls and improve coverage and capacity, RCC also sectorized 19 cell sites and added new channel capacity to other sites as needed.

RCC has not yet received any funding in Oregon.

To summarize, none of the investments set forth above include expenditures on operations, maintenance, or other uses eligible under the high-cost rules. In every state where it has been designated, RCC has accelerated its network construction and improved its service quality in ways that would not be possible without federal high-cost support. In each rural area where RCC has invested, consumers are today seeing better coverage, improved capacity, new digital service, better 911 coverage, and the possibility for economic development that would not have been possible without support.

### C. Virginia Cellular, LLC

Virginia Cellular was designated in early 2004 and began receiving funding in the third quarter of this year. Although funding has just commenced, the company is already accelerating its investments in its ETC service area, including commencement of construction of three new cell sites and beginning the site location and acquisition process on several more. In addition, Virginia Cellular has commenced upgrades to CDMA-1X digital technology at seven sites and begun digital capacity upgrades at twelve sites. The company has also installed microwave backhaul facilities at eleven sites. All of these investments far exceed funding the company has received to date. The grant of ETC status and commencement of high-cost support has enabled the company to accelerate these projects in ways it would not otherwise be able to. Consumers in rural Virginia will soon see significant improvements in their service quality and availability as a result of investments Virginia Cellular is making with high-cost support.

### D. The Cellcom Entities

The Cellcom companies are members of RCA and are among the wireless carriers designated as CETCs that receive high-cost support from the USF. Each Cellcom entity that is an

ETC has used federal support to improve service and enlarge its service footprint in its respective ETC service area. For example:

- *Brown County MSA Cellular Limited Partnership* received $37,648. These funds contributed to, *but did not fully cover,* the cost of upgrading the company's Dyckesville, Wisconsin cell site to digital service. Digital service allows customers served by this site to receive higher quality voice service and capacity.
- *Metro Southwest PCS, LLC* received $3,142. These funds contributed to, *but did not fully cover*, the cost of adding a new cell site in the rural area of Forest Junction, which previously had *no* coverage.
- *Nsighttel Wireless, LLC* received $4,553. These funds contributed to, *but did not fully cover*, the cost of adding a new cell site in the rural areas between Wausau and Stevens Point, where Nsighttel Wireless previously had *no* coverage.
- *Wisconsin RSA #4 Limited Partnership* received $136,726. These funds are being used to add CDMA-1X digital service to the network, which provides more capacity and higher call quality. More calls can be handled and there will be a reduction in blocked calls in rural areas of this market. The company expects that the service improvement will be completed September of 2004.
- *Wisconsin RSA #10 Limited Partnership* received $89,868. These funds were used to add digital cellular service to the Kiel cell site and to the west Kewaunee cell site. These two sites had previously been analog only. Digital service provides improved coverage and better service to customers in these rural communities.

## V. USE OF HIGH-COST SUPPORT IN RURAL AREAS HAS SIGNFICANT HEALTH AND SAFETY BENEFITS FOR RURAL CONSUMERS.

Just last week, Hurricane Ivan swept through the Gulf Coast area. Cellular South provides service in these areas, reports the following:

Well in advance of the hurricane, Cellular South began preparing its network to bear the brunt of the storm and helping residents of the communities it serves to prepare. Cellular South's Customer Care Center was staffed 24-hours a day for several days during the height of the storm. Employees traveled from the company's home state of Mississippi to assist co-workers and customers on the Alabama Gulf Coast and the Florida Panhandle. Technicians began repairing Cellular South's network the very morning Hurricane Ivan made landfall and the company's network in the storm-ravaged areas was never completely down. Portable generators were used to continue service in areas without electricity.

Within 36 hours, network capacity was significantly restored with only a few sites in outlying areas, areas under mandatory evacuations, or those sites suffering severe structural damage still inactive. Cellular South deployed portable cells sites known as COWS (Cellular on Wheels) into the hardest hit areas to facilitate customers' and emergency officials' communication needs.

Cellular South provided equipment and service to key emergency management, disaster relief, and law enforcement agencies before, during and after the hurricane. To keep its customers abreast of the latest information about network capacity, store closings, and disaster relief efforts, Cellular South initiated #IVAN -- a free call for Cellular South customers or accessible by landline at 1.888.790.7211. This communication was updated frequently throughout the storm and as disaster relief efforts came together.

Once the location of emergency shelters was determined, Cellular South provided portable phone kiosks allowing victims of Hurricane Ivan to make free local and long distance calls to family and friends. Free phone calls and bottled water were offered at several Cellular South stores in Florida. Employees in Alabama hosted cookouts and provided hot dogs, soft drinks and bottled water to hurricane victims and relief workers. Additional food was donated to the American Red Cross, Salvation Army and municipal relief workers. All of which had to be brought in from outside the disaster areas.

In sum, there is little question but that having a robust wireless network in rural areas is critical to the health and safety of our nation's rural consumers. The high-cost support that Cellular South receives in Mississippi and Alabama have, and will continue to, improve the quality of the wireless network infrastructure in areas that have traditionally lagged behind. Moreover, the company's efforts to deliver services at critical times is powerful evidence of the public interest in designating new ETCs in areas that do not have robust networks that are today available in urban areas.

## VI. CONCLUSION

Soon, the number of wireless phones in use is going to surpass that of wireline.[50] This shift is accelerating in urban areas because of the availability of high-quality networks. Federal policy must keep up with market reality, to ensure that the technology consumers want and need is made available in rural areas.

Those who continue to argue that the Commission should go back to pre-1996 and cement market outcomes for one class of carrier need to move forward into the present and prepare to compete for consumers. RCA-ARC members expect that if competition comes to rural

[50] *See* Centennial Comments at pp. 1-2 and n.7; Comments of Western Wireless Corporation at pp. 14-15.

areas, consumers will benefit and eventually rural ILECs will be significantly deregulated. Deregulation will unleash additional market efficiencies that will bring more consumer benefits.

As long as support levels are sufficient for rural consumers to get the supported services and have the kinds of choices that are available in urban areas, it matters not which carrier delivers them. If the FCC's current policy succeeds in driving the development of high-quality wireless networks in rural areas, then consumers will benefit by having choices among wireline, wireless, and perhaps new platforms that can efficiently deliver the supported services.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION AND
THE ALLIANCE OF RURAL CMRS CARRIERS

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September 21, 2004

## CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 21st day of September, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *REPLY COMMENTS* filed today to the following:

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