Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
Revision of the Commission=s Rules	)	
To Ensure Compatibility with Enhanced	)	
911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Missouri RSA No. 7 Limited Partnership	)	
dba Mid-Missouri Cellular	)	
Petition For Waiver of Section 20.18(g)	)	
of the Commission=s Rules	)	

To: The Wireless Telecommunications Bureau

PETITION OF MISSOURI RSA No. 7 LIMITED PARTNERSHIP DBA MID-MISSOURI CELLULAR FOR WAIVER OF SECTION 20.18 OF THE COMMISSION=S RULES

Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular (AMMC@), by its attorney and pursuant to Sections 1.3 and 1.925 of the Commission=s Rules, 47 C.F.R. ' '1.3, 1.925, hereby petitions the Commission for waiver of its November 30, 2004 deadline to ensure that 100% of all new handset sales and activations be made with location-capable handsets.[1/] On October 10,

[1/] The subject deadline was codified in Sections 20.18(g)(i)-(ii) of the Commission=s Rules, 47 C.F.R. ' '20.18(g)(i)-(ii), which was modified by Commission Order. *See* Revision Of The Commission=s Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (Order To Stay), 17 FCC Rcd 14841 (2002), (hereinafter A*Stay Order*@).

2003, the Commission granted MMC interim relief pending action on its waiver and the pending *Petition for Forbearance* filed by the Tier III Coalition, on November 19, 2002.[2/] [3/]

MMC had previously filed a waiver and supplement advising the Commission that MMC had definitive plans to proceed to overlay its entire TDMA network with a CDMA network; the only technology for which ALI-capable handsets are presently available. MMC sought waivers of previous deadlines with respect to the percentage of activations of ALI-capable handsets.[4/] MMC advised that upon implementation of the CDMA network, MMC would begin selling ALI-capable CDMA handsets and, assuming the availability of sufficient quantities of such handsets, believed that it would be able to meet the requirements for new-sale activations with ALI-capable handsets at the time when the CDMA network was placed in commercial service on a going-forward basis.

As the Commission is aware, MMC is a small, rural carrier with licenses only in Missouri RSA No. 7 and a portion of Ray County, MO which was a rural, Unserved Area from the Kansas City MSA. To date, MMC has deployed 27 cell sites to serve this area, significantly more cell sites than its market competitors. All of the MMC cell sites were converted to TDMA digital to remain compatible with its primary roaming partners. With the abandonment of the TDMA protocol by Cingular and AT&T Wireless, the only major carriers that had been utilizing the TDMA protocol,

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[2/] Revision of the Commission=s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, FCC 03-241, released October 10, 2003; *caption amended to add* E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, WT Docket No. 02-377, *Errata* DA 03-3600, released November 7, 2003. (A*Order To Stay*@).

[3/] As the Commission is aware, MMC was a member of the Tier III Coalition.

[4/] *See, Petition of Missouri RSA No. 7 Limited Partnership for Waiver of Section 20.18 of the Commission's Rules*, filed August 25, 2003, and *Supplement to Petition of Missouri RSA No. 7 Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, filed* November 10, 2003.

and the resultant abandonment of the technology by all major equipment vendors, MMC has been faced with the prospect of again overbuilding its entire network with a new digital protocol. Changes in the competitive environment as well as the lack of ALI-capable handsets for any technology other than CDMA, led MMC to conclude that a CDMA migration was its best alternative.

Having spent years expanding its coverage to include many of the rural-most portions of its market, and having already overbuilt all of those cell sites with TDMA, MMC realized that it would not be in a financial position to overlay its entire network yet again with a third technology. Accordingly, MMC sought designation as an Eligible Telecommunications Carrier ("ETC") to allow access to Universal Service Funds ("USF") to assist with the cost of the digital migration and to support the expansion and ongoing operations of enhanced service offerings, including E911 services throughout some of the most-rural portions of its FCC-licensed service area. MMC began this process nearly two years ago.[5/] Because the state of Missouri had not been previously presented with a wireless ETC request, the processing of the MMC application was delayed as the Missouri Public Service Commission ("MPSC") decided whether to assert jurisdiction over wireless ETC applications. Ultimately, the MPSC asserted jurisdiction. Pursuant to established MPSC procedures, a hearing date was set and MMC, and three opposing LEC intervenors filed written direct testimony on October 29, 2003. Rebuttal testimony was filed on December 5, 2003 and surrebuttal testimony was filed on January 14, 2004. Because this was a case of first impression before the MPSC, the

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[5/] The MMC Application was originally filed on February 13, 2003 but that application, for reasons not relevant here, was "deemed" to have been voluntarily withdrawn. The June 2, 2003, MMC ETC application was identical to the previously filed application in all material respects.

MMC application and direct case testimony were fashioned to meet the requirements for ETC designation based upon established FCC precedent. The actual hearing was set for January 28 and 29, 2004.

On the eve of the hearing, the FCC issued its *Virginia Cellular Order* [6/] which substantially modified the position the FCC had previously taken in designating wireless ETCs. MMC was forced to provide extensive oral testimony to bring its proposal into compliance with the holding in that Order. The record closed, briefs were filed in March and *Proposed Findings of Fact and Conclusions of Law* ("*Proposed Findings*") were filed on April 5, 2004. On April 12, 2004, after the close of the record, the briefing of the case, and the submission of *Proposed Findings*, the FCC issued its *Highland Cellular Order*.[7/] In that order, for the first time, the FCC announced that it would no longer designate ETC service areas to below the wire center level to correspond with wireless license boundaries. MMC sought to modify its proposal to delete requests for ETC designation in portions of rural wire centers, which the FCC had previously allowed.

Ultimately, on August 5 of this year, the MPSC denied MMC's requested ETC designation. MMC believes that the MPSC erred in its interpretation of the *Virginia Cellular Order* and *Highland Cellular Order* and as a matter of law. Incredibly, the MPSC chastised MMC for not having made Virginia Cellular type showings "in writing," notwithstanding the fact that the *Virginia Cellular*

[6/] *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), (Exhibit No. 10), ("*Virginia Cellular Order*").

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

Order post-dated *all* deadlines for pre-filed testimony and the fact that MMC had made the requisite showings in its oral testimony. A copy of the MPSC Order denying the MMC ETC designation is appended hereto as Appendix A.

MMC, pursuant to established MPSC procedures, sought rehearing of the case as a pre-requisite to seeking judicial review of this MPSC action. A copy of the public version of the MMC Petition for Rehearing, filed on August 13, 2004, is appended hereto as Appendix B.[8/] Once again, just after the filing of the rehearing petition, the FCC released its *Nextel Order*.[9/] In that Order, the Bureau interpreted the FCC's *Virginia Cellular Order* and *Highland Cellular Order* wholly consistent with the position advanced by MMC before the MPSC. On August 26, 2004, MMC submitted an addendum to its petition for rehearing to submit the *Nextel Order* to the MPSC. Appendix C hereto is a copy of that submittal. As MMC advised the MPSC, the *Nextel Order* made it clear that the MMC interpretation of the *Virginia Cellular Order* and the *Highland Cellular Order* were correct and the MPSC's interpretation used in denying the MMC ETC designation was in error.

MMC understands that the multiple changes in the FCC position unfortunately timed to correspond with the close of each phase of the MMC proceeding, contributed and perhaps caused much of the error in the MPSC denial of the requested ETC status. MMC also understands that the

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[8/] The MMC hearing included written and oral testimony deemed "highly confidential." Accordingly, the portions of the filing that dealt with those confidential matters was restricted to parties and not made a part of the public record. MMC can make a copy of the confidential portions of that filing available for *in camera* inspection, should the FCC so request.

[9/] *In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. dba Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier In the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and the Commonwealth of Virginia, Memorandum Opinion and Order,* CC Docket No. 96-45, DA 04-2667 (rel. August 25, 2004), ("*Nextel Order*").

subsequent *Nextel Order* speaks strongly for the rehearing of the relevant portions of this case to afford the MPSC the opportunity to reverse its original denial. However, the MMC petition has been pending for more than two months. Until such time as the MPSC acts on that petition, the error in the original MPSC denial of ETC designation cannot be reversed. Moreover, MMC cannot seek judicial review of the denial of its ETC designation.

Relevant to the instant waiver, MMC provided oral testimony before the MPSC that the ETC designation was essential to enabling MMC to extend its CDMA overbuild to include the rural-most existing cell sites. MMC expressly advised the MPSC of the impact that not being able to complete its CDMA build-out would have on MMC's ability to meet its E911 obligations.[10/] Nevertheless, the MPSC found that public interest considerations associated with MMC's inability to complete its CDMA build out, coupled with the uncontroverted testimony that the inability to do so would result in MMC being unable to meet its E911 Phase II obligations, insufficient for the MPSC to find that designation of MMC as an ETC would be in the public interest. MMC has proceeded with the overlay of 18 of its 27 cell sites with CDMA equipment. However, MMC cannot, without ETC designation, and the resulting USF support, complete the build out of the remainder of its cell sites.

The FCC record in its E911 proceeding clearly establishes that the handset-based solution offers the only economically feasible solution for the provision of E911 Phase II service in rural areas that meets the FCC accuracy requirements. MMC had sought and was denied forbearance of

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[10/] The specific testimony related to this issue was provided confidentially before the MPSC and the Parties. Accordingly, the arguments related to this issue are contained in the redacted portion of the MMC Petition for Rehearing provided in Appendix B. Again, MMC can make this entire document, as well as a copy of the relevant portion of the confidential hearing transcript, available for *in camera* inspection, should the FCC so request.

those accuracy requirements where the best-available network-based solution was deployed at all existing cell sites. Accordingly, MMC had no alternative but to proceed with a network overbuild of CDMA to enable it to utilize a handset-based solution. Significantly, as of this date, there is no E911 Phase II deployment clock running for MMC in any portion of its market. Accordingly, the grant of the requested waiver will do nothing to delay the implementation of actual E911 Phase II service. Rather, it would only afford MMC the ability to continue activating subscribers who want service in the rural-most portions of the MMC market, with phones that can access the only available digital service in those areas. Absent the limited waiver sought herein, MMC will only be able to offer new subscribers seeking service in these areas analog-only service.[11/] Given the importance of wireless service in rural areas, especially in an emergency situation, MMC respectfully submits that the public interest would clearly be furthered by allowing the continued sale of a limited percentage of non-ALI handsets for use in this unique circumstance.

The vast majority of new MMC activations (between 75% and 80%) occur in the most heavily traveled and populated portions of MMC's licensed service areas. These new subscriber activations are already being made with ALI-capable handsets. It is only with respect to the remaining 20-25% of new activations in the areas of the MMC market where the CDMA overlay has not been deployed, that MMC needs to be able to continue activating non ALI-capable handsets. Accordingly, MMC respectfully requests a waiver from the requirement that 100% of all new subscriber activations be with ALI-capable handsets beginning November 30, 2004.

[11/] There are ALI-capable CDMA handsets available that can operate in the analog mode. Accordingly, those phones could be sold without the grant of the waiver sought herein. However, operation of those phones in the analog mode results in extremely limited battery life and a significant reduction in features and quality of service.

Arguably, this waiver might not truly be needed. While carriers utilizing handset solutions are required to meet this activation benchmark, there is no requirement that a carrier implement a single E911 Phase II solution throughout its licensed service area(s). Where a carrier has not elected to deploy a handset-based solution in some or all of its market, the subject provision would not apply. Here, since MMC cannot utilize a handset solution for areas served by its TDMA/AMPS cell sites, were MMC to receive a valid E911 Phase II request for service in those areas, MMC would have no choice but to utilize some alternative solution if MMC was not yet in a position to proceed with a CDMA overbuild of the relevant area at that time. However, as the Commission is aware, any other solution would, as of this point in time, require MMC to seek a waiver of the accuracy requirements in the areas where CDMA was not yet deployed.[12/] Even if granted, MMC envisions that it would eventually migrate its E911 service offering in that area to a handset-based solution. Accordingly, MMC is seeking the instant waiver to preserve that option throughout its market area.

MMC has testified before the MPSC and has represented in its Petition for Rehearing that MMC would be in a position to proceed immediately with the overlay of the remainder of its network with CDMA once ETC designation is awarded. Upon commercial launch of those additional CDMA cell sites, MMC would immediately cease activation of new subscribers with non-

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[12/] MMC wishes to make it abundantly clear that it is seeking a very limited waiver of the rules to allow up to 25% of its new activations to be made with handsets that are not ALI-capable. Those activations would be limited to new subscribers seeking coverage in the portions of the MMC network where CDMA is not presently available. MMC is not seeking a waiver of any six month deployment deadline for the actual provision of E911 service. To the extent that MMC were to require any waivers associated with a specific service trigger, MMC would submit a separate request at that time. MMC expressly acknowledges that grant of the limited waiver sought herein would have no bearing on the ultimate disposition of any such future waiver request.

ALI capable handsets. Accordingly, the path to full compliance is clear and readily achievable once the requisite ETC designation is granted.

The *Nextel Order* makes it abundantly clear that the FCC disagrees with the MPSC position that emergency communications are not of paramount public interest, especially in the rural-most areas. The FCC has made it clear that those public interest concerns are significant considerations in the processing of ETC applications.[13/] While MMC believes that the MPSC will ultimately agree with that position once it can include the analysis in the *Nextel Order* in its evaluation of the merits of this case, unless and until the MMC Petition for Rehearing is acted upon, there will be no reversal of the MPSC holding, either by the MPSC or upon appeal. Accordingly, in the interim, MMC seeks the limited waiver sought herein and submits that the public interest fully supports the grant of the limited waiver sought herein.

Respectfully submitted,

Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular

By: _____*/s/ Michael K. Kurtis* _____

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Dated: November 5, 2004

[13/] "…Access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities" (*Nextel Order* at ¶ 18) is a major public interest benefit deriving from the grant of ETC designation.

DECLARATION

I, Kevin Dawson, hereby declare and state as follows:

1. I am the General Manager of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular.

2. I am familiar with the facts as set forth in the foregoing Petition of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular for Waiver of Section 20.18 of the Commission's Rules.

3. That the statements set forth therein are true, complete and correct of my own knowledge except such statements made on information and belief, and as to such statements, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

11/05/04
Date

Kevin Dawson
Kevin Dawson

Appendix A

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996.	))))))	**Case No. TO-2003-0531**

REPORT AND ORDER

Issue Date: **August 5, 2004**

Effective Date: **August 15, 2004**

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996.	))))))	**Case No. TO-2003-0531**

Table of Contents

Appearances **1**

Procedural History **2**

Findings of Fact **4**
Mid-Missouri Cellular 4
Service Offerings of MMC 6
Commitments to Quality of Service 9
Proposed Upgrade 10
Proposed Service Area 11
Public Interest 15

Conclusions of Law **17**
Requirements of 47 U.S.C. Section 214(e)(1) 18
Public Interest Determination 19
A. Benefits of Increased Competition 22
B. Impact on the Universal Service Fund 23
C. Unique Advantages and Disadvantages of the Service Offering 24
D. Commitments to Quality of Service 25
E. Ability to Serve 26

Conclusion **26**

Ordered Paragraphs **27**

APPEARANCES

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Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102-2230, for the Office of the Public Counsel and the public.

Marc D. Poston, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior Regulatory Law Judge.

REPORT AND ORDER

Syllabus: This order finds that Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular should not be granted status as an eligible telecommunications carrier for federal universal service fund purposes.

Procedural History

On June 2, 2003, MMC filed an application for designation as an eligible telecommunications carrier for federal universal service fund purposes under Section 254 of the Telecommunications Act of 1996. MMC is the first wireless service provider to apply for ETC designation with the Commission. MMC sought ETC designation throughout its FCC-licensed service area[1] with respect to all local exchange carrier wire centers where

[1] Also known as a Cellular Geographic Service Area.

MMC's FCC-licensed service area encompasses at least one complete wire center of that LEC.[2]

MMC seeks ETC designation in areas served by the rural telephone companies Mid-Missouri Telephone Company, Alma Communications Company d/b/a Alma Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Spectra Communications Group, LLC d/b/a CenturyTel,[3] and Sprint Missouri, Inc.[4] MMC also seeks designation in non-rural telephone company areas served by CenturyTel of Missouri, LLC,[5] and SBC Missouri, Inc., with respect to their wire centers that lie wholly or partially within MMC's FCC-licensed service area.[6]

With respect to the areas served by rural telephone companies, the proposed MMC ETC service area includes the entire study area for Alma and Citizens, and a portion of the study areas of Spectra, Mid-Missouri Telephone Company and Sprint. MMC initially requested ETC status throughout Spectra's entire Concordia exchange and for portions of Spectra's Lawson, Braymer, and Kingston exchanges. In its Initial Brief, however, MMC amended its request with respect to Spectra's existing service area to include only Spectra's Concordia exchange.[7] The Commission finds MMC's Application to be amended accordingly.

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[2] Tr. p. 134.

[3] Hereinafter referred to as "Spectra."

[4] Ex. 4, pp. 5-9.

[5] Hereinafter referred to as "CenturyTel."

[6] Application for Designation as an Eligible Telecommunications Carrier Pursuant to § 254 of the Telecommunications Act of 1996, Case No. TO-2003-0531, June 2, 2003 (hereinafter referred to as "Application"), at pp. 8-10 and Appendices D and E.

[7] Initial Brief of Mid-Missouri Cellular, filed March 15, 2004, p. 23.

Sprint and Sprint Spectrum L.P., d/b/a Sprint PCS, intervened in this proceeding in support of MMC's request for ETC designation. Alma, Citizens, CenturyTel and Spectra intervened in opposition to MMC's request for ETC designation. The Office of Public Counsel withheld judgment on the MMC application until after all evidence was presented. In its Initial Brief, Public Counsel supported the designation as an ETC.

An evidentiary hearing was held on January 28-29, 2004. Neither Sprint nor Sprint PCS participated in the hearing. The parties, with the exception of Sprint and Sprint PCS, later filed Initial Briefs. In addition, all the parties, except Sprint, Sprint PCS, and Public Counsel, filed Reply Briefs and Proposed Findings of Fact and Conclusions of Law. Spectra and CenturyTel filed a motion to file their Proposed Findings of Fact and Conclusions of Law one day out of time. There was no objection to that motion and it will be granted.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Mid-Missouri Cellular

MMC is licensed by the Federal Communications Commission to provide commercial mobile radio service to seven rural counties wholly within the state of Missouri,

under Federal Communications Commission Call Signs KNKN595 and KNKR207.[8] MMC is not certificated to provide telecommunications services in Missouri by this Commission.

In its verified application, MMC lists the services that it provides that qualify for universal service fund support.[9] The Commission finds that MMC is providing all the services required to qualify for universal service fund support.

MMC also states in its verified application that it advertises the availability of its services and the charges for such through media of general distribution within its service territory.[10] The Commission finds that MMC advertises its services through the media of general distribution.

MMC has been providing competitive wireless service since at least 1991. MMC's current service plans, or similar service plans, have been offered within a competitive environment for many years. Six other wireless carriers currently compete with MMC, in addition to the incumbent LECs. MMC provides service to the lower cost portions of its licensed coverage area similar to the nationwide wireless carriers, such as near the interstate highways and larger population centers. MMC also provides service to the more rural areas including population centers like Miami, Gilliam and Pilot Grove, Missouri. MMC will receive approximately $1.75 million in universal service fund support annually if MMC's request as originally filed is granted.[11]

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[8] Application, p. 1 and Appendix D.

[9] Application, para. 4.

[10] Application, para. 5.

[11] Ex. 8, p. 17; Tr. p. 49.

Service Offerings of MMC

MMC has provided the Commission with details of two Lifeline-only plans, known as Lifeline and Link-Up, that it will offer throughout its designated ETC service area. In addition, the Lifeline discount will be available on any of MMC's current service plans.[12] MMC suggests that without ETC status, MMC will not be able to offer Lifeline discounts. If granted, MMC will advertise the availability of the supported services and the availability of Lifeline and Linkup services to qualifying customers.

The Lifeline-only plan is intended to provide a low-cost service option comparable in price to that offered by the ILEC.[13] Lifeline offers unlimited calling and mobility in the area served by the subscriber's home cell site at a fixed monthly price of $6.25.[14] The subscriber's outbound local calling area would correspond to its traditional local exchange calling area for that subscriber's address. With limited mobility of the wireless service, calls could be originated by the MMC Lifeline subscriber to any numbers within that exchange from any location within the subscriber's home cell site serving area, not just from within the subscriber's home. Similarly, the Lifeline customer would receive inbound calls, wherever they originate from, so long as the customer remains within the geographic area served by its home cell site. The area served by a home cell site typically extends to a 10- to 18-mile radius of the home cell site.[15]

The second MMC Lifeline-only plan, Link-Up, would allow for local calling and mobility throughout the entire service area for which MMC is designated as an ETC, for a

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[12] Tr. p. 81.

[13] Tr. pp. 59 and 157.

[14] Tr. p. 59.

[15] Tr. pp. 59 and157.

flat $10.00 per month charge.[16] Since this would be the MMC subscriber's local calling area, even toll-restricted subscribers would have a seven-county mobility and local calling area with the Link-Up plan.

Neither Lifeline nor Link-Up would allow roaming into other cellular networks to place and receive routine calls; however, both plans would allow access to 911 even in a roaming situation.[17]

MMC's current rate plans now range from $19.95 to $64.95 per month. MMC has not indicated that it will reduce rates if it does become eligible to receive USF, other than to offer the two additional plans and a Lifeline discount as described above.[18] Mr. Dawson testified on behalf of MMC that MMC's Lifeline plan would give qualifying consumers a $1.75 monthly discount.[19] Mr. Dawson also testified, however, that to initiate service a new Lifeline customer would have to pay a $30 activation fee except for the most restricted Lifeline plan and would need to purchase a $45 to $199 wireless handset.[20] So, to benefit from a $1.75 discount, a low-income customer would need to pay at least $45, and perhaps $75 or more just to initiate service.[21]

While the MMC rates appear to be costlier than those charged by Citizens, Alma, and Spectra, the subject level of services are not identical. Each of the current MMC plans includes voice mail, call waiting, call forwarding, three-way calling, and caller ID. Adding

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[16] Tr. p. 157.

[17] Ex. 5, p. 7.

[18] Ex. 10, p.15.

[19] Tr. pp. 59 and 90.

[20] Tr. pp. 85-87.

[21] *Id.*

the tariff rates for those features to the rates charged by the Intervenors results in monthly rates of $29.85 for Citizens, $21.95 for Alma and $39.06 for Spectra. In addition, the local calling area for those LEC subscribers is limited to the subscriber's local exchange. All calls beyond that limited local calling area result in additional per minute toll charges.

By comparison, the MMC local calling area includes all of the exchanges of not only the Intervenors but also of the other LECs in a seven-county area. Within those calling areas, however, there may be dead spots[22] and the possibility of dropped calls.[23] The Intervenors' subscribers receive unlimited local calling compared to a number of "bundled" minutes with which an MMC subscriber can place local or toll calls without incurring charges.

MMC also suggests that it may be able to provide service to some areas at a lower cost than a landline provider. MMC presented evidence that it has already helped Mid-Missouri Telephone Company serve one customer where the landline would have been cost-prohibitive.[24] The witnesses testified that MMC is willing to accept carrier-of-last-resort status and there was no evidence that suggested MMC was currently unable to serve the areas where ETC designation is requested. In addition, the MMC witnesses testified that the company would go to whatever lengths were necessary to make certain it could serve, at least within the customer's home, any customer within its wireless service area. MMC is also ready, willing and able to offer equal access to toll carriers should a customer want to choose such a plan.[25]

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[22] Tr. p. 70.

[23] Tr. p. 127.

[24] Tr. pp. 97-99.

[25] Ex. 5, pp. 8-9.

Commitments to Quality of Service

MMC is a member of the Cellular Telecommunications and Internet Association and has committed to complying with the CTIA's current Consumer Code for Wireless Service.[26] Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.[27]

In addition to the Consumer Code, Mr. Kurtis testified on behalf of MMC that if a potential customer requests service where the existing service area does not immediately allow MMC to provide service, MMC will take the same steps to provide service as those committed to by Virginia Cellular before the FCC.[28] Those steps are as follows: (1) modify or replace the requesting customer's equipment to provide service; (2) install a roof-mounted antenna or other equipment to provide service; (3) adjust the nearest cell site to provide service; (4) identify and make any other adjustments that can reasonably be made to the network or customer facilities to provide service; and (5) determine the

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[26] Tr. pp. 128-9.

[27] Ex. 12.

[28] *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) (Virginia Cellular Order).

feasibility of installing an additional cell site, cell extender, or repeater to provide service where all other options fail. If, after following these steps, MMC still cannot provide the requested service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.[29]

Mr. Kurtis also testified that MMC would be willing to meet the other conditions agreed to by Virginia Cellular.[30]

Proposed Upgrade

The MMC network was originally deployed utilizing then state-of-the-art time division multiple access (TDMA) technology. However, that technology is no longer being supported and MMC needs to overlay its entire network with a code division multiple access (CDMA) technology. The specifics regarding the costs associated with that overbuild were provided in highly confidential testimony at the hearing.[31]

The CDMA overbuild, will allow for enhanced voice and data services throughout MMC's market and is also necessary for MMC to meet the FCC accuracy requirements with respect to E-911 Phase II locational services.[32] MMC has admitted that it is required by federal law to implement E-911 system improvements regardless of whether this Commission grants MMC's requested ETC status.

MMC provided no specific written plans to the Commission regarding the use of the universal service funds. MMC has failed to provide written documentation of any

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[29] Tr. pp. 142-143.

[30] *Id.*

[31] Tr. pp. 186-187.

[32] Tr. pp. 173-175.

specific system build-out plans and improvements other than the technology upgrade and has not provided any timetable for implementation of the upgrade.

MMC has admitted that it already provides service throughout its entire licensed service area and that MMC already has an extensive network in place. According to MMC, its existing network is the most extensive wireless network in its licensed service area.

Proposed Service Areas

MMC has requested that it be designated an ETC in rural study areas where Alma, Citizens, Mid-Missouri Telephone Company, Sprint, and Spectra operate. MMC has requested that it be designated an ETC in the non-rural study areas where CenturyTel and SBC Missouri operate. A study area is used to calculate the costs of providing service to a high-cost area for the dispersal of USF funds. In this application, the study areas are the same as the service areas of the rural companies, and the service areas encompass all the exchanges in which the rural companies operate. In addition, each exchange in this case is equal to one wire center.

Each of the intervenor companies are incumbent local exchange companies that provide basic local and other telecommunications services in their respective service areas, as certificated by the Commission and pursuant to Commission approved tariffs. Each is a carrier of last resort and is an ETC providing service to the public throughout its respective service areas. No evidence was presented to show that any residents in the service areas of the incumbents are being denied access to the public switched network or service in the incumbents' service areas.[33]

[33] Tr. p. 281.

MMC requests ETC status throughout the entire rural LEC study areas of Alma and Citizens thus no redefinition of those study areas is requested.[34] In addition to MMC, six other commercial mobile radio service carriers currently provide cellular phone service in the service areas of Alma and Citizens.[35] The other commercial mobile radio service providers charge rates that are similar to those charged by MMC.[36] In the Citizens study area MMC already has a number of lines equal to 22% of what the ILEC has and in the Alma study area that number is equal to 76%.[37]

Alma's local tariffed rate for residential service is $6.50. When combined with the $6.50 federal subscriber line charge, the rate is $13.00 for basic service.[38] Citizens' local tariffed rate for residential service is $8.40. When combined with the $6.50 subscriber line charge, a Citizens customer pays $14.90 for local service.[39]

MMC requests ETC designation in the entire Concordia wire center. This wire center is a noncontiguous portion of a larger study area.[40] The MMC licensed service area also encompasses portions of the Braymer, Kingston, and Lawson wire centers.[41] No evidence was presented indicating that any member of the public currently was being denied basic local telecommunications service in Spectra's service area.

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[34] Application, para. 6.
[35] Ex. 10, p. 21.
[36] Tr. p. 262.
[37] Ex. 8, p. 20; Tr. p. 377.
[38] Ex. 10, p. 14.
[39] Ex. 10, p.14.
[40] Tr. p. 134.
[41] Application at Appendix D.

Spectra does not disaggregate, keep, or report ETC-related records or line counts below the exchange level. Spectra has disaggregated its study area down to the wire center level.[42] MMC's request as originally filed would require the incumbent LECs to begin to keep records for partial wire centers and thus would create added administrative burdens and costs to the incumbents where this was to occur. MMC's request for an ETC service area with respect to the area served by Spectra has now been limited to only the Concordia wire center. With this deletion of the partial wire centers from its proposed ETC service area, MMC proposes to serve the entire contiguous portion of the study area within its licensed service area.

By seeking ETC status in only Spectra's Concordia exchange, and not in the remaining portions of Spectra's existing ETC study area, MMC's Application raises the issue of potential cream-skimming. In order to determine whether MMC is engaging in prohibited cream-skimming with respect to Spectra's Concordia exchange, the Commission must look to the factual record before it. The record, however, is silent with respect to existing Spectra universal service fund support levels in the Concordia exchange, the specifics of Spectra's disaggregation plan, and the population density in Spectra's exchanges.

The evidentiary record does, however, indicate that the Concordia exchange is much larger than the other partial Spectra exchanges within MMC's licensed coverage area and that it is located in an already highly competitive area along a major interstate highway, where, according to Mr. Kurtis, other wireless carriers target their marketing and engage in cream-skimming. Accordingly, on this record the Commission is unable to find that no

[42] Ex. 9, p. 13.

cream-skimming would occur with respect to Spectra's Concordia exchange if MMC's request is granted.

Mid-Missouri Telephone Company is an affiliate of MMC. Mid-Missouri Telephone Company's study area is comprised of three noncontiguous geographic areas. Two of those noncontiguous areas, encompassing nine[43] of the twelve Mid-Missouri Telephone Company wire centers, lie wholly within MMC's licensed service area and were included in the proposed MMC ETC service area.[44] The remainder of the study area is comprised of the Fortuna, Latham and High Point wire centers and is a noncontiguous geographic area that lies wholly beyond MMC's licensed service area.[45]

MMC requests redefinition of Mid-Missouri Telephone Company's service area to include only the nine contiguous wire centers. Mid-Missouri Telephone Company does not object to this redefinition.

MMC has also sought ETC designation coterminous with the following Sprint wire center boundaries: Blackburn, Centerview, Green Ridge, Henrietta, Holden, Houstonia, Lexington, Malta Bend, Odessa, Otterville, Smithton, Sweet Springs, and Warrensburg.[46] MMC has sought ETC designation for those portions of the following Sprint wire center boundaries that lie within MMC's licensed service area: Blairstown, Calhoun, California, Chilhowee, Clarksburg, Cole Camp, Hardin, Ionia, Kingsville, Leeton, Lone Jack, Norborne, Oak Grove, Strasburg, Syracuse, Tipton, Urich, Waiverly, Wellington and Winsor.[47] MMC

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[43] The Gilliam, Bunceton, Speed, Pilot Grove, Marshall Junction, Nelson, Blackwater, Arrow Rock, and Miami wire centers. Application at Appendix D and F.

[44] Application, p. 13, and Appendix D.

[45] Application at Appendix D.

[46] Application at Appendix E.

[47] Application at Appendix E.

requests that the Commission redefine the service area along the licensed service area boundaries for MMC's system. Sprint has not objected to the redefinition of its service area.

Public Interest

MMC suggests in its Application that granting ETC status to MMC "will enhance consumer welfare by bringing service choices, innovation, quality differentiation and rate competition to the local market."[48] MMC fails to explain in sufficient detail how these public interest benefits will occur. The only mention of a forward-looking plan is MMC's assertion that it will use universal service fund support to finance construction, maintenance and upgrading of facilities, which would allow MMC to serve remote locations.[49] However, MMC provided no supporting documentation to substantiate that such remote locations exist, or that these locations are substantial enough to make the ETC grant in the public interest.

MMC claims an ETC grant will bring the benefits of advanced technologies to the remote areas of MMC's service area.[50] The only advancement in technology discussed in any detail concerned the industry-wide change in platforms from a TDMA platform to a CDMA platform. Mr. Dawson testified for MMC that it would upgrade platforms with or without USF support.[51] Thus, the new technology deployment appears to be inevitable with or without USF support, and does little to support a finding that the ETC designation is in the public interest.

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[48] Application, p. 14-16.

[49] Application, p. 16.

[50] Tr., p. 36.

[51] Tr. pp. 86-87.

Mr. Kurtis testified that a wireless ETC's provisioning of additional lines to existing ILEC subscribers will expand the availability of innovative, high-quality and reliable telecommunications services.[52] No evidence was presented, however, indicating how this ETC grant will increase the lines provisioned to existing ILEC subscribers.

MMC's next argument in favor of the ETC grant is that it will bring the benefits of wireless service to the current Lifeline subscribers of the various ILECs.[53] MMC suggests that without ETC status, MMC will not be able to offer Lifeline discounts. Mr. Dawson testified that MMC's Lifeline plan would give qualifying consumers a $1.75 monthly discount.[54] However, Mr. Dawson also testified that to benefit from a $1.75 discount, a low-income customer seeking only the Lifeline plan would need to pay for a handset costing at least $45, and a low-income customer seeking the Link-Up plan would need to pay for a handset and pay an activation fee of up to $30.[55] The Commission finds that for low-income customers, the cost of initiating service will erase any benefit that a Lifeline customer would receive through a $1.75 Lifeline discount.

The Commission finds that MMC has not shown that the benefits to the public of granting MMC ETC status will outweigh the potential detriments. The Commission also agrees with the Office of the Public Counsel that if MMC's request were granted it would be important for the Commission to place reasonable limits on MMC so that the Commission can monitor and ensure that essential telecommunications services are provided in a manner consistent with the protections currently afforded to wireline customers. While

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[52] Ex. 5, p. 6.

[53] Tr. p. 36.

[54] Tr. p. 59.

[55] Ex. 1, Attachment 1; Tr. pp. 59 and 85-86.

MMC has verbally made general system improvement and customer service commitments the record is unclear as to the extent of the Commission's legal authority and practical ability to enforce such commitments if MMC's request is granted.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

SBC Missouri, CenturyTel, Sprint, Mid-Missouri Telephone Company, Spectra, Alma, and Citizens are each a "telecommunications company" and a "public utility" as those terms are defined in Section 386.020, RSMo 2000, and are therefore fully subject to the regulatory jurisdiction of the Commission. Each of the companies is an incumbent local exchange carrier and has been designated as an ETC for purposes of receiving federal USF support.

Spectra, Mid-Missouri Telephone Company, Alma, Citizens, and Sprint are each rural telephone companies as defined by the Federal Telecommunications Act of 1996.

CenturyTel and SBC Missouri are non-rural telephone companies. While not a rural telephone company as defined by the Act, at least two of CenturyTel's four statewide ETC study areas are rural.

The commercial mobile radio service provided by MMC is specifically excluded from the statutory definition of "telecommunications service."[56] Thus, MMC is not subject to the general regulatory jurisdiction of the Commission. Under the authority granted to the Commission by the FCC, MMC has requested that the Commission designate it as an

[56] Section 386.020(53)(c), RSMo.

eligible telecommunications carrier for purposes of receiving federal universal service support.

The purpose of the Universal Service Fund is to provide financial support to carriers that use the support to advance universal service principles. Before a carrier can receive support from the USF, the carrier must be designated as an ETC by the state commission with jurisdiction over the service area where the carrier seeks to apply its USF support.[57]

The state commission must first confirm that the petitioning carrier offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act.[58] Second, the state commission must confirm that the petitioning carrier advertises the availability of such services and charges using media of general distribution.[59] After making those determinations, the Commission must determine if the request is in the public interest.[60]

Requirements of 47 U.S.C. Section 214(e)(1)

Paragraph (1) of Section 214(e) of the Act requires that an eligible telecommunications carrier:

> (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including services offered by another eligible telecommunications carrier); and
>
> (B) advertise the availability of such services and the charges therefore using media of general distribution.

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[57] 47 U.S.C. § 214(e).

[58] 47 C.F.R. § 54.101.

[59] 47 U.S.C. § 214(e).

[60] 47 U.S.C. § 214(e)(2).

The Commission has previously found that MMC offers the services that are supported by federal universal service support. The Commission has also found that MMC advertises the availability of those services using media of general distribution. No party contests that MMC meets the requirements for provision of service found in Section 214(e)(1). The Staff and Intervenors only argue that MMC has not proven that the designation would be in the public interest, particularly in the rural service areas. Thus, the Commission concludes that MMC has met the requirements set out in Section 214(e)(1)(A) and (B).

Public Interest Determination

Section 214(e)(2)[61] of the Act, as well as the Federal Communications Commission regulations,[62] govern the designation of ETC status. Section 214(e)(2) of the Act states, in relevant part:

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

Thus, the Commission must determine if the designation of an additional ETC is in the public interest.

This case represents a case of first impression before the Commission with respect to the designation of wireless ETC. This is not, however, a case of first impression

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[61] 47 U.S.C. § 214(e)(2).

[62] 47 C.F.R. § 54.201, *et seq.*

with respect to this Commission's grant of ETC status to non-LEC carriers in areas served by rural telephone companies.[63]

At the time the MMC application was originally filed, and during the period of time that written testimony was prepared and filed, the FCC had consistently held that the public interest benefits related to the introduction of competition in rural areas satisfied the public interest mandate of Section 214. As of that point in time, the FCC had never denied or conditioned a wireless ETC application. In the *Green Hills Order*, applying the same statutory provisions at issue in the instant case, the Commission approved a stipulation that found, without testimony or further support that the grant of the requested ETC status in an area served by a rural telephone company was in the public interest.

On the eve of the hearing in this proceeding, the FCC issued an order setting forth additional guidance to be used in conjunction with a public interest finding for competitive ETC designations in areas served by rural telephone companies.[64] In addition, the FCC has issued an order in the *Highland* case[65] that helps define the public interest standard. Thus, the current case may be distinguished from the Commission's previous *Green Hills Order* because the FCC has given this additional guidance and specifically "acknowledge[d] the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas."[66]

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[63] *See, e.g., Application of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services*, Case No. CO-2003-0162, Order Approving Stipulation and Agreement (adopted March 4, 2003) (Green Hills Order).

[64] *Virginia Cellular*.

[65] *In the Matter of 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, FCC 03-338 (rel. April 12, 2004).

[66] *Id*. at para. 4.

"With regard to the rural LEC service areas, the FCC found that the benefit of increased competition, while an important objective of the telecommunications policy, might not alone be sufficient to meet the public interest standard."[67] The FCC states that "[I]n determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant."[68]

In *Virginia Cellular*, the FCC stated that to make the public interest determination, the specific facts should be analyzed to determine

> whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, [by weighing] . . . 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.[69]

The FCC recognized that its "Common Carrier Bureau previously found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act."[70] However, in *Virginia Cellular* and *Highland*, the FCC said that an additional ETC was not in the public interest in every instance even in non-rural areas. The FCC did not set out a new standard

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[67] Initial Brief of MMC, p. 8.

[68] *In the Matter of 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, FCC 03-338 (rel. April 12, 2004); See also, *Virginia Cellular Order*, at para. 26.

[69] *Virginia Cellular*, p. 13, para. 28.

[70] *Highland*, p. 10, para. 21.

to follow for non-rural areas, but said that because the company had met the more rigorous test for the rural areas, it must also necessarily meet the test for the non-rural areas.

Thus, the Commission will first examine whether MMC has shown that it is in the public interest for it to be designated as an ETC in the rural areas. To determine if the designation is in the public interest, the Commission looks to the factors set out by the FCC.

A. Benefits of Increased Competition

The FCC takes for granted that an increase in competition is in the public interest. This is based on the fact that one of the main goals of the Telecommunications Act of 1996 was to increase competition. Thus, under the FCC's analysis, having MMC designated as an ETC will have some benefit of increasing competitive choice. In the current case, however, the only evidence MMC presented regarding how competition will increase was two new service offerings for Lifeline.

The Commission has found that in the Citizens study area MMC already has a number of lines equal to 22% of what the ILEC has and in the Alma study area that number is equal to 76%.[71] In addition, six other wireless carriers offer services in those same areas. The Commission concludes, based on the record before it, that the benefits to competition of designating MMC an ETC will not be very significant. MMC already has a significant presence in these service territories and the only additional offering MMC has presented to the Commission is its Lifeline programs. The other improvements made by MMC will take place regardless of the designation.

[71] Ex. 8, p. 20; Tr. p. 377.

B. Impact on the Universal Service Fund

The second factor that the FCC considered is the impact on the Universal Service Fund. In the *Virginia Cellular* case the impact on the fund was 0.105% of the total high-cost support available to all ETCs.[72] The impact on the fund of MMC of $1,751,721 per year[73] is higher at about 0.20%.[74] The FCC acknowledged that there were concerns about the overall impact of designating multiple carriers, including wireless, as ETCs but left those concerns to be determined in its pending rulemaking.[75]

The Intervenors believe a stricter analysis should be done. The Intervenors suggest that the Commission must look to the Universal Service Principles in Section 254(b) to determine the impact on the USF.[76] The Intervenors suggest that because the wireless carrier does not have to show that the amount it receives in Universal Service Funds is equal to its costs, like the ILECs must, that the USF principle regarding competitive neutrality is violated.[77] The Intervenors also believe that the USF will grow too rapidly with the addition of wireless companies.

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[72] 19 FCC Rcd 1563, note 96.

[73] Ex. 8, p. 17.

[74] *See* Universal Service Administration Company Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003, Appendix HC 1 (Universal Service Administrative Company, August 1, 2003) demonstrating that the total amount of high-cost universal service support is $857,903,276 in the Fourth Quarter of 2003.

[75] *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 Process*, CC Docket No. 96-45, 18 FCC Rcd 1941, Public Notice (rel. Feb. 7, 2003).

[76] *Alma and Citizens Initial Brief*, pp. 7-9.

[77] Ex. 8, p. 25.

The Commission is also concerned with the rapid growth of the Universal Service Fund, and eagerly awaits final guidance from the FCC on improvements to the system. The FCC has stated that the state commissions should undergo a stricter public interest analysis before designating a carrier as eligible in the rural areas. Thus, the Commission cannot just ignore the potential harm to the universal service fund of designating a this wireless carrier as an additional ETC in rural areas. Especially, where that carrier already has a significant competitive presence and proposes only an upgrade to its service that will take place regardless of the designation.

C. Unique Advantages and Disadvantages of the Service Offering

The Commission has found that the advantages that MMC will provide include mobility, access to emergency services, and an increased local calling scope. Disadvantages include such things as dead spots and dropped calls.

One distinction between this case and the *Virginia Cellular* and *Highland* cases is that in those cases the companies each presented some specific build-out plans for adding additional towers and being able to service areas where currently no landline service exists and to improve dead spots. MMC presented evidence that it has already helped Mid-Missouri Telephone Company serve one customer where the landline would have been cost prohibitive.[78] However, no evidence was presented that any other ILEC has not been able or would not be able to meet its carrier of last resort options. Also, MMC has only generally said that it would increase its network capabilities. It has not presented any specific plans for how to upgrade its network, except for the technology upgrade.

[78] Tr. pp. 97-99.

Without specific plans for upgrades before it, the Commission cannot determine that MMC will offer any advantages over its current service offering.

D. Commitments to Quality of Service

Another disadvantage of wireless service is that the company is not subject to the mandatory quality of service standards with which the landline companies must comply. MMC has committed to complying with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service and to reporting the number of complaints it receives and the number of customers it cannot serve.

The Intervenors argue, however, that the Commission will have no tool to actually insure compliance since the cellular company does not have its rates and services regulated by the Commission. All of the parties agree that the only power the state Commission has once the designation is made is to revoke the ETC designation. Thus, the Commission's ability to guarantee the quality of service is limited.

Another concern is that the Consumer Code is not nearly as rigorous regarding quality of service as the requirements on the landline companies. The Intervenors suggest that if ETC status is granted, that it should be conditioned on the same quality of service standards that the landline companies must provide. MMC argues that by doing so, the Commission would be posing an unreasonable barrier to entry for the cellular company.

At least one court has ruled that Section 214(e)(2) does not prohibit the states from imposing additional eligibility requirement on ETCs.[79] However, the states may be limited in their ability to enforce the additional requirements. The Commission concludes

[79] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

that if ETC status were granted to MMC, it would be necessary to place sufficient requirements regarding quality of service to insure that customers would be protected.

E. Ability to Serve

One of the recommendations by the Joint Board is that state commissions may choose to require a formal build-out plan. Since MMC has not proposed any specific written plan for insuring it is capable of providing service, the Intervenors suggest that MMC has not proven it is capable of providing service.

MMC has committed that it is willing to accept carrier-of-last-resort status and there was no evidence that suggested MMC was currently unable to serve the areas where ETC designation is requested. In addition, the MMC witnesses testified that the company would go to whatever lengths were necessary to make certain it could serve any customer, at least within that customer's home. Thus, the Commission concludes that MMC has the ability to serve the area.

Conclusion

The Commission determines that the grant of ETC status to MMC is not in the public interest because MMC has not provided competent and substantial evidence to show that the public will benefit from designating MMC an eligible telecommunications carrier for universal service fund purposes.

MMC has not agreed to abide by the same quality of service standards as landline companies and will not be required to do so by law. The Commission will have no jurisdiction over rates or service plans of MMC, and MMC has not agreed to provide plans with lower rates if it is allowed to become an ETC except for the Lifeline service required under the law. MMC has told the Commission that the funds will be used for an upgrade of

its system, but it has not presented the Commission with any construction or financial plans or any timelines for these upgrades.

Additionally, MMC has not shown that the customers in the rural service areas will see any increased competition or benefits from the grant of ETC status to MMC. MMC has made no showing that it intends to expand its coverage area or fix dead spots. Although cellular service does offer mobility that the landline carriers cannot provide, that service is already available throughout MMC's service area to those customers who have a need for that service. MMC states that it intends to update its TDMA platform to a CDMA with the funds, but it also admits that it will make the upgrade regardless of whether it is granted ETC status.[80]

MMC has not met its burden to show that a grant of ETC status in the rural areas is in the public interest. Furthermore, MMC has not shown that a grant of ETC status in the non-rural areas would be "consistent with the public interest, convenience, and necessity."[81] Therefore, the Commission will deny MMC's request.

IT IS THEREFORE ORDERED:

1. That the application of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular to be granted status as an eligible telecommunications carrier for federal universal service fund purposes is denied.

2. That Spectra Communications Group, LLC d/b/a CenturyTel, and CenturyTel of Missouri, LLC's Motion to Accept Proposed Findings of Fact and Conclusions of Law One Day Out of Time is granted.

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[80] Tr. pp. 55 and 64.

[81] 47 U.S.C. § 214(e)(2).

3. That all objections not ruled on are overruled and all motions not granted are denied.

4. That this Report and Order shall become effective on August 15, 2004.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Gaw, Ch., Clayton, Davis, and
Appling, CC., concur;
Murray C., dissents, with separate
dissenting opinion attached;
and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of August, 2004.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996.	))))))	**Case No. TO-2003-0531**

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I would grant ETC status to applicant in the non-rural areas, in accordance with Section 214(e)(2) of the Federal Telecommunications Act. I conclude, with the majority, that Mid-Missouri Cellular has met the requirements set out in Section 214(e)(1)(A) and (B) of the Act. Therefore, I interpret the act to direct this Commission to designate the applicant as an eligible telecommunications carrier for the non-rural service areas.

For that reason, I respectfully dissent.

Respectfully submitted,

Connie Murray

Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 5th day of August, 2004.

Appendix B

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA No. 7 Limited Partnership, d/b/a Mid-Missouri Cellular, for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996.	))))))	**Case No. TO-2003-0531**

PETITION FOR RECONSIDERATION AND APPLICATION FOR REHEARING OF MID-MISSOURI CELLULAR

Comes now Missouri RSA No. 7 Limited Partnership d/b/a/ Mid-Missouri Cellular ("MMC") and requests that the Missouri Public Service Commission ("PSC") reconsider its August 5, 2004 Report and Order ("Order") in the above-captioned proceeding or grant a rehearing with respect to the issue of whether the designation of MMC as an eligible telecommunications carrier ("ETC") is in the public interest. The conclusions and findings in the Order are inconsistent with the record evidence in this matter and rely upon serious errors of law. In support of this application, the following is respectfully shown:

Overview

The Federal Communications Commission ("FCC") has recognized that the principle of competitive neutrality controls in the designation of competitive eligible telecommunications carriers ("CETC"), holding that

> Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanism rules neither unfairly advantage nor disadvantage one

> provider over another and neither unfairly favor nor disfavor one technology over another.[1]

Congress, through the Telecommunications Act of 1996, established the procedure whereby ***competitive*** ETCs should be designated. Yet, throughout the *Order*, the PSC appears to be applying a standard of requiring a new market entrant to demonstrate that the existing ETC is not providing adequate service or is somehow unable to provide service throughout its designated service area. By definition, the designation of a ***competitive*** ETC, acknowledges that there would be ***more than one*** such ETC designated. There is no requirement that an applicant seeking ETC designation demonstrate that there is not currently service available nor is that position supported by the Communications Act of 1934, as amended, to include the provisions of the Telecommunications Act of 1996 ("Act"), or any precedent. To the contrary, until just recently, the FCC had uniformly held that the introduction of competition alone was sufficient to find public interest in designating CETCs even in areas served by rural telephone companies. The ability or inability of the incumbent ETC to provide service is not a criterion for judging the entry of a CETC into the marketplace and represents a clear favor for the incumbent local exchange carrier ("ILEC") over any new market entrant. The PSC did not apply this "lack of LEC service" test when it designated a CLEC as an ETC in an existing rural telephone company service area.[2]

The PSC found that MMC provides all services required to qualify for designation as an ETC. Yet, having made that finding, the PSC denied MMC's application for ETC designation in areas served by both rural and non-rural local exchange carriers ("LECs").

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[1] Report and Order, CC Docket No. 96-45, FCC 97-157 (May 8, 1997) (¶ 47).

[2] *See, Application of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services*, Case No. CO-2003-0162, Order Approving Stipulation and Agreement (adopted March 4, 2003) ("*Green Hills Order*").

The basis for the denial was that MMC had failed to "prove" that grant of its application would be in the public interest. The PSC admits that MMC's application is wholly consistent with the evidentiary requirements that it applied in granting ETC designation in the *Green Hills Order* (which designation is governed by the exact statutory provisions applicable to the MMC designation), but attempts to distinguish this case because of further guidance that was issued by the FCC in two cases. The first such case[3] was released by the FCC months after the filing of the MMC application, after the filing of direct, rebuttal and surrebuttal testimony, and literally days before the oral testimony in late January. The second case[4] was not released by the FCC until April 12, 2004; after the close of the record, the filing of briefs, reply briefs and proposed findings of fact and conclusions of law in the instant case. Neither of these two cases added as a condition of ETC designation the requirement that there be a demonstration that the existing LEC could not provide service throughout its existing service area.

The PSC finds that MMC offered oral testimony at hearing that it would comply with each and every obligation and commitment set forth in the FCC's *Virginia Cellular Order*. MMC submits that the record is replete with specific, detailed explanations of exactly how MMC would use ETC funds and demonstrating that the grant of its application would serve the public interest.

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[3] *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), (Exhibit No. 10), ("*Virginia Cellular Order*").

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

Indeed, the *Order* does not appear to truly turn on a lack of such demonstration in MMC's testimony, but rather the *Order* denies the MMC application because those commitments were not in *writing* and therefore lacked sufficient specificity. MMC submits that such a ruling is wholly inappropriate, where, as here, the PSC is seeking to decide a long-pending case on the basis of a new or modified standards announced after the close of all written testimony. However, to the extent that the PSC decides that it requires further written submissions on which to make a finding consistent with the newly-released FCC orders, the case for rehearing on this single issue is clear.

Particularly relevant here is the fact that PSC action denying the MMC application serves only to deny access to readily available federal funds for use to the benefit of the citizens of rural Missouri. Chairman Gaw and Commissioner Murray have written to the Chairmen of the United States Senate Committee on Commerce, Science and Transportation and the United States House Committee on Energy and Commerce expressing the urgent need for additional funding for rural telecommunications services and decrying the fundamental unfairness of funds being made available to only selected states, citing such disparities as evidence that "something is very wrong."[5] Clearly, Commissioners Gaw and Murray believe there is a strong public need for access to additional funds for expanding telecommunications offerings in rural Missouri. Ironically, the *Order* denies MMC for failing to prove "in writing" that which the majority of the Commission at the time of the MMC hearing (and when the letter was written on February 25, 2004) already knew; that the access to funds to enhance rural Missouri telecommunications services ***is*** in the public interest. For the PSC to then take a position that only further exacerbates Missouri's lack of

[5] See Mid-Missouri Reply Brief pages 3-4 and Attachment A thereto.

access to readily available federal funds for the sole benefit of the citizens of rural Missouri is most ironic. Rehearing on the limited issue of allowing MMC to submit written documentation to further support and add greater "specificity" to the oral testimony submitted at hearing would clearly be the most expedient means of resolving this matter, should the PSC continue to maintain that such written documentation is required. This is without prejudice to MMC's position that there is ample evidence in the record, as it presently stands, that clearly demonstrates that designation of MMC as an ETC would be in the public interest.

Summary of Errors

1. The PSC Erred in Not Designating MMC as an ETC in the Areas Served by Non-Rural Carriers.

2. The PSC Erred in Not Designating MMC as an ETC in the Areas Served by Rural Carriers.

3. The PSC Erred in Finding That Redefinition of the Spectra Service Area Could Result in Cream-Skimming.

4. The PSC Erred in Finding That Grant of the MMC ETC Designation Would Unduly Burden the USF.

5. The PSC Erred in Finding MMC's Commitments to Quality of Service Inadequate.

Argument

I. The PSC Erred in Not Designating MMC as an ETC in the Areas Served by Non-Rural Carriers.

The PSC expressly found that MMC provides all of the services required for ETC designation and that MMC advertises such services. Section 214(e)(2) of the Communications Act of 1934, as amended ("Act") states, in relevant part:

> Upon request and consistent with the public interest, convenience and necessity, the State commission may, in the case of an area served by a rural telephone company, and ***shall, in the case of all other areas***, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). (emphasis added).

The *Order* is silent as to the statutory requirement to designate MMC as an ETC in the areas served by the non-rural carriers but the Dissenting Opinion of Commissioner Connie Murray acknowledges this statutory provision and its applicability where, as here, the PSC has found that the requesting carrier has been found to have met these statutory requirements. The public interest finding upon which the *Order* denies the MMC application is only applicable with respect to areas served by rural telephone companies.[6] Accordingly, the PSC erred in not designating MMC as an ETC in the areas served by Southwestern Bell and CenturyTel of Missouri, LLC.

Without prejudice to the foregoing clear, unambiguous statutory language, the *Order* references a portion of the *Virginia Cellular Order* holding, inferring that some unspecified additional public interest considerations ***might*** apply in non-rural areas but since the more stringent finding of public interest in the rural service areas was met, any less stringent requirement applicable in the non-rural areas had, by necessity, also been met. However, the PSC *Order* misstates that in both the *Virginia Cellular Order* and *Highland Cellular Order* "…the FCC said that an additional ETC ***was not*** in the public interest in every instance even in non-rural areas." (Order at pp. 21-22). Neither FCC case made such a holding. Rather, in both cases, the FCC allowed for the possibility that even in an area served by a non-rural LEC, designation might not "necessarily be consistent with the public interest in every

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[6] "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest." Act at Section 214(e)(2).

case."[7] Assuming that to be a proper interpretation of law,[8] neither case went on to establish any criteria whereby such a grant would not be consistent with the public interest holding, instead, no such analysis or determination was necessary in either case because the FCC found that the grant, being in the public interest in the rural areas by necessity had to be in the public interest in the non-rural areas where, if there was a public interest requirement, it had to be far less stringent. Accordingly, neither FCC order reaches the question as to whether any other criteria is applicable in the case of non-rural LEC service areas and, if so, what such standard should be.[9]

The PSC *Order* attempted to follow the FCC thought process in these cases. Indeed, the PSC expressly states that it "…will ***first*** examine whether MMC has shown that it is in the public interest for it to be designated as an ETC in the rural areas" (Order at p. 22). Presumably, had the PSC found that MMC had met the requirements for demonstrating public interest in the rural LEC service areas, it would have obviated the need to reach what it acknowledges as a lower standard in areas served by non-rural LECs. However, failing to find that MMC satisfied the PSC's rural requirements, the PSC must then make a finding in the non-rural LEC areas both as to what the appropriate lower standard should be, (assuming, *arguendo*, that the expressed, unambiguous statutory language would actually allow the denial of an ETC designation in the area served by a non-rural LEC after finding that the

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[7] *Highland Cellular Order* at ¶ 21, *Virginia Cellular Order* at ¶ 27.

[8] Both orders acknowledge that prior to these cases, the Commission had consistently found grants to be per se in the public interest in the areas served by non-rural telephone companies. *Id.*

[9] It should be noted that while these FCC orders are helpful in providing guidance as to the types of showing that would demonstrate that an ETC designation would be in the public interest, these cases, which expressly acknowledge that they are at odds with previous FCC precedent, are both under reconsideration and neither has become a final order of the FCC.

expressed statutory requirements for such designation had been met), and then whether MMC had met that lower standard. The *Order* does neither. Even assuming that the PSC could legally implement a lower, non-specified public interest standard applicable in non-rural LEC service areas, the PSC erred in providing no analysis or making any such finding but still denying the requested ETC designation in the non-rural areas, a fact that Commissioner Murray acknowledges in her dissent.

II. <u>The PSC Erred in Not Designating MMC as an ETC in the Areas Served by Rural Carriers.</u>

The *Order* holds that MMC failed to demonstrate that its designation as an ETC would be in the public interest. This determination is clearly not supported by the record and is inconsistent with the law. There is no issue that MMC met all requirements as established under the only-applicable PSC precedent, the *Green Hills Order*. The PSC seeks to distinguish that case because of the *Virginia Cellular Order*. However, the PSC correctly finds that MMC has made all of the commitments and agreed to all conditions placed on the ETC applicant in the *Virginia Cellular Order*. Having held that the commitments and conditions of the *Virginia Cellular Order* should control in the finding of whether the grant of an ETC application in rural LEC service areas is in the public interest, and having found that MMC has made the same commitments as the ETC applicant did in that case, the PSC cannot support a determination that MMC had failed to demonstrate that its grant would be in the public interest. To do so, the PSC fails to consider and/or misinterprets ample evidence in the record, at odds with the factual findings in the *Order,* and uses those findings to reach inappropriate conclusions of law to find MMC's showings inadequate because they are not in "writing."

A. **The PSC Erred in Finding that There is no Evidence that MMC was Currently Unable to serve areas where ETC Designation is Requested.**

The Commission, when looking to downplay the significance of low income citizens in rural Missouri being able to obtain mobility at a rate comparable to the current limited LEC service, finds that there are areas within the MMC coverage area where there are "dead spots and dropped calls". Indeed, the PSC finds these to be "disadvantages" of MMC. (*Order* at pp. 8, 24). Yet, the *Order* then turns around and finds that there is "no evidence" that MMC cannot provide coverage throughout its entire proposed ETC service area. (*Order* at. pp. 8, 24-25). The PSC cannot rely on contradictory findings when they are needed to make each point.

In finding that MMC's ETC designation would not serve the public interest, the PSC attempts to distinguish MMC from the *Virginia Cellular Order* and *Highland Cellular Order* because those carriers offered plans to fill-on dead spots and to provide service where landline service was lacking. As the *Order* recognizes, MMC made the same commitments as those by the carrier in the *Virginia Cellular Order*. The testimony is clear that MMC intends to use Universal Service Fund ("USF") support to fill in dead spots and enhance its coverage within its proposed ETC-designated service area.[10] While the applicant in the *Virginia Cellular Order* did indicate that it intended to expand service into areas where the existing LEC did not provide service, the lack of service by the existing LEC was not determinate as to whether or not the grant of the ***competitive*** ETC application was in the

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[10] [Mr. Dawson] "We would continue to look at opportunities to -- to build out additional sites to provide even better coverage than we currently do.

Q. [Commissioner Clayton] When you say build out sites, is that within that –

A. [Mr. Dawson] Correct. The seven-county area, yes, sir.

Q. [Commissioner Clayton] Would that be to eliminate dead spots?

A. [Mr. Dawson] Correct. Correct." Tr. p. 70.

public interest. Indeed, not only was this fact not dispositive in the *Virginia Cellular Order*, the FCC expressly acknowledged that the alleged unavailability of LEC service was disputed.[11] The *Order* states that MMC has not shown that it would serve any areas not served by LECs and, while not relevant to any finding that grant of a ***competitive*** (i.e. more than one) ETC would be in the public interest, it should be noted that the testimony in the record acknowledges that which the PSC is well aware of, that LECs continue to build out their networks to provide new service[12]; a fact absolutely indicative that, to the extent the PSC finds it relevant, the ILECs are not offering ubiquitous service.

While MMC has committed to use USF support to assist in filling in dead spots, the PSC has improperly used the existence of "dead spots" as an argument against granting the requested ETC designation. However, the FCC has made it clear that, contrary to the finding of the PSC, the existence of dead spots are not a basis upon which ETC designation should be denied.

> The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC. [footnote omitted]. Moreover, as stated above, Virginia Cellular has committed to improve its network [footnote omitted]. In addition, the Commission's rules acknowledge the existence of dead spots [footnote omitted]. "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service." [footnote omitted]. Section 22.99 of the Commission's rules states that '[s]ervice within dead spots is presumed' [footnote omitted]. Additionally,

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[11] "According to Virginia Cellular, 11 out of 12 of its proposed cell sites contain some area that is unserved by Virginia Cellular's facilities and/or wireline networks. [citation omitted] *but see* Virginia Rural telephone Companies Comments at 3 (stating that there is an incumbent ETC in all the areas where Virginia Cellular seeks ETC designation)." Virginia Cellular Order at footnote 88. (emphasis original).

[12] *See* Tr. at p. 402-403 where Mr. Martinez testified that there are indeed areas where CenturyTel (collectively referring to CenturyTel and Spectra Communications) was not providing service within its ETC designated service areas.

> the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots… [footnote omitted]" Because "dead spots" are acknowledged by the Commission's rules, we are not persuaded by the Virginia Rural LECs that the possibility of dead spots demonstrates that Virginia Cellular is not willing or capable of providing acceptable levels of service throughout its service area."[13]

Indeed, analogizing MMC's service offering to the ILEC, the ILEC service offering is limited to those areas within the reach of the telephone cord to the phone jack. All other areas in the ILEC service are "dead spots." Clearly, unless and until such time as there are ubiquitous phone jacks throughout the ILEC service territory, by definition, a wireless carrier is affording service to an area where the ILEC currently is not. The benefits of this mobility, with "dead spots" far less than those created by the tether to the ILEC phone jack, are clearly of significant public benefit, especially in the context of emergency communications given that, as the PSC is aware, in many of the most rural portions of MMC's proposed ETC service area the landline customer does not even have access to true basic 911 service (see *infra* at p. 16).

Moreover, while Virginia Cellular committed, on a prospective basis, to provide service to residents "to the extent that they do not have access to the public switched network,"[14] MMC, in addition to making that very commitment, submitted detailed specific testimony of where it has already used its network to do so. The *Order*, while finding the prospective-only promise of Virginia Cellular compelling, finds the very same commitment

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[13] *Virginia Cellular Order* at ¶ 23.

[14] *Virginia Cellular Order* at ¶ 29.

by MMC, ***coupled with actual testimony of where MMC had already done so,*** unconvincing.[15]

B. The PSC Erred in Finding that the Availability of Competitive and Emergency Services Would Not be Materially Adversely Affected by the Denial of MMC's ETC Designation.

Pivotal to the PSC's holding is the conclusion that MMC already provides service throughout its proposed ETC service area, that MMC will proceed with the upgrade to its network to CDMA regardless of whether or not it was designated as an ETC, and that MMC was obligated to provide E911 service with or without ETC designation so that there was no public benefit from an emergency standpoint from affording MMC the requested designation. These findings are contrary to the record evidence.

MMC expressly represented that it would use the USF funds for the construction and operation of its network only as allowed. As previously shown, MMC expressly stated that it would use USF funds to fill in dead spots and enhance its service offerings in its ETC designated area. MMC provided detailed testimony on how the funds would be used to upgrade its network to CDMA and, in highly confidential testimony, provided specific information as to the number of cell sites that would be upgraded to CDMA and a detailed cost estimate breakdown for that upgrade. The financial cost information provided showed that the proposed CDMA upgrade alone would greatly exceed the amount of support MMC would receive. What MMC did not testify to was that the conversion to CDMA would proceed throughout its network without USF support.

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[15] While acknowledging the testimony, the *Order* merely mentions the fact, minimizes it as a single incident, and then disregards it in its holding. (*Order* at p. 24).

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C. The PSC Erred in its Findings and Conclusions That MMC's Lifeline and Link-up Services Were Not of Public Benefit.

The *Order* acknowledges that MMC proposes to offer two special calling plans to Lifeline subscribers at rates comparable to their existing LEC Lifeline rate (*Order* at p. 6-7). The *Order* then continues to discuss the fact that all of MMC's existing price plans would also be subject to a Lifeline discount. MMC expects that virtually all Lifeline subscribers would opt for one of the two Lifeline-only plans; plans tailored to the needs of the Lifeline subscriber as opposed to its more standard wireless service plans.

While the MMC Lifeline-only plans are comparable to the LEC offerings in price, the *Order* acknowledges that the MMC Lifeline plans include in their pricing vertical features not included in the LEC pricing. (*Order* at p. 7-8). However, having made these findings, the *Order* then goes on to focus only on the discount off of the regular MMC price plans and not the special Lifeline-only plans. The *Order* also incorrectly compares the MMC regular pricing plans and their bundled minutes with the LEC "unlimited local calling plans" (*Order* at p. 8). However, as MMC made clear, both of its Lifeline-only plans offer unlimited local calling (Tr. at pp. 59, 157). The $6.95 Lifeline plan offers the same local calling area as the LEC service area while the $10.00 plan offers a local calling area throughout MMC's entire proposed ETC-designated service area. The PSC did acknowledge that the MMC calling plans (including the lifeline-only plans that are priced comparable to the LEC plans), are actually significantly cheaper when you factor in the tariff price for features such as voicemail, call waiting, call forwarding, three way calling and caller ID. (Order at pp. 7-8).

Attached hereto as Exhibit 4 is a detailed comparison of the relative costs and features of the MMC Lifeline plans as compared to the Intervenor Lifeline offerings. Instead of focusing on the vastly expanded local calling area, the additional benefits of mobility and enhanced 911 calling, the *Order* summarily dismisses these significant public interest benefits by finding that "…for low-income customers, the cost of initiating service will erase any benefit that a Lifeline customer would receive through a $1.75 discount." (*Order* at p. 16). This holding ignores the substantial further discounts and savings associated with the two MMC Lifeline-only plans and the fact that these low-income subscribers can, for the first time, have a local calling area encompassing nearly all of seven counties.

In addition, in considering the MMC "start-up costs", the PSC ignores the fact that all of the LEC tariffs include activation fees and require the purchase of a LEC telephone that is limited in use to the length of the telephone wire attached to it. No such comparison of LEC and MMC costs was included in the PSC's summarial dismissal of these benefits. Any meaningful analysis of the benefit of MMC's Lifeline plans could only conclude that designation of MMC as an ETC would be of substantial benefit to the lower income members of the rural communities where MMC seeks ETC designation.

Finally, the PSC ignored the fact that MMC, as an ETC, would also comply with the FCC's Link-up requirements. The Link Up program offers substantial relief from the burden associated with the service start-up costs, in addition to the lower activation cost.[22]

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[22] 47 CFR 54.411 (b)(2) provides Link Up subscribers with the following option:

> "A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to $200.00 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements."

Accordingly, the PSC erred in this finding and that the MMC Lifeline and Link Up programs would not be of substantial public benefit.

D. **The PSC Erred in Ignoring the Fact that Denial of MMC's ETC Designation Would Preclude Low Income Subscribers From Participating in Local Number Portability.**

The PSC also chose to totally ignore the impact of denying ETC status would have on a low income Lifeline eligible subscriber's ability to participate in local number portability. On November 10, 2003, the FCC issued a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in the matter of Telephone Number Portability, CC Docket No. 95-116 (Released November 10, 2003) ("*Intermodal Porting Order*"). In that Order, the FCC recognized that each type of service (wireless and wireline) offers advantages and disadvantages. In recognizing that the wireless carrier might have greater opportunities to port wireline customers than vice versa, the FCC made it abundantly clear that competitive neutrality did not require identical regulatory schemes. In fact, the FCC expressly recognized the greater state regulatory burdens placed on LECs and found that that was not a basis upon which to alleviate a wireline porting obligation.

> "In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to wireline service providers…To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules." (*Intermodal Porting Order* at ¶12).

The *Intermodal Porting Order* stands for the proposition that absent a technical engineering reason, there can be no artificial barriers established to block the ability of a wireline customer to port their number to a wireless carrier.

MMC has served local number portability requests on Alma, Citizens, CenturyTel, MMTC and Spectra. (Kurtis Amended Surrebuttal, Ex. 5 p. 18). Denial of ETC status to MMC would deny the LEC Lifeline customer the right to port its number and still qualify for Lifeline support; in effect establishing a minimum income level which a wireline subscriber must have in order to be able to port its LEC number since only an ETC provides Lifeline and Link-up support services. If MMC were granted ETC status, existing ILEC Lifeline and Link-up customers could port their numbers to MMC and still be eligible for such support. Denial of the MMC ETC Application categorizes the Lifeline and Link-up customer in MMC's service area as a separate class of citizen that would be artificially precluded from porting its number to a wireless service provider. Aside from being violative of the FCC porting rules and *Intermodal Porting Order,* any Commission action on the MMC ETC Application that has the effect of discriminating against the rights of low-income ILEC customers is contrary to public policy. These customers have the right to port their numbers to a wireless service provider and enjoy the benefits of mobility, expanded local calling area and unlimited access to 911 services. The Commission must avoid taking action on the MMC Application that has the effect of disenfranchising an entire class of citizens based solely on the level of their income. (Kurtis Amended Surrebuttal Ex. 5 p.19, lines 2-14).

In light of the foregoing, it is clear that the PSC erred in failing to find significant public interest benefits accruing to low-income rural subscribers by designating MMC as an ETC.

III. <u>The PSC Erred in Finding That Redefinition of the Spectra Service Area Could Result in Cream-Skimming.</u>

The level of support received by an ETC is based upon the level of support received by the ILEC in each part of the designated ETC service area. Where the rural carrier ILEC

study areas used in determining the level of high cost support and the proposed ETC service area is not wholly encompassed within the proposed ETC designated service area, a potential "cream skimming" issue arises. Cream skimming occurs when a CETC serves only the lower cost portions of the LEC study area but receives support based upon costs that have been averaged and include those associated with providing service to the higher-cost portions of the LEC study area. In the *Virginia Cellular Order*, the FCC used a comparison of relative population densities of the portion of the ILEC study area that was within the proposed ETC designated service area as compared to the population density of the ILEC study area that was outside of the proposed ETC service area. In its *Order,* the PSC holds that the record is silent with respect to "… specifics of Spectra's disaggregation plan, and the population density in Spectra's exchanges…[leaving the PSC] unable to find that no cream skimming would occur with respect to Spectra's Concordia exchange…" (*Order* at pp. 13-14). The PSC conclusion is inconsistent with its finding of fact and in err.

The record clearly indicates that Spectra has disaggregated its cost down to the wire center level (*Order* at p. 13). Accordingly, any level of USF received by Spectra with respect to the Concordia wire center, would be based upon the costs expressly limited to that wire center. This fact obviates any possibility of cream-skimming since MMC's level of support in that wire center would be tied directly to the level of support Spectra receives ***for that wire center alone*** based upon its costs of service in that wire center alone.

The PSC therefore erred in concluding that there was any potential for cream-skimming or in concluding that absent population density information, it could not make the requisite finding. Since the level of support is based solely upon the costs of that wire center,

and that wire center only, it is irrelevant that population density comparisons are not in the record. The FCC has made this abundantly clear.

> [A]s the Commission concluded in *Universal Service Order*, the primary objective in retaining the rural telephone company's study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier's ability to provide service to the high-cost customers. Rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. ***Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.***[23]

Finally, the PSC found that by proposing to serve the Concordia wire center, MMC had committed to serve that entire non-contiguous portion of the Spectra study area which is geographically separated from the balance of the Spectra study area scattered throughout the state. The FCC has found that these facts, in and of themselves, provide an additional basis supporting service area redefinition.

> In the *Universal Service Order*, the [FCC] concluded that requiring a carrier to serve non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers [footnote omitted]. The [FCC] further concluded that 'imposing additional burdens on wireless entrants would be particularly harmful in rural areas…' [footnote omitted]. Accordingly, we find that denying Virginia Cellular ETC status for the [relevant portion of the study area that lies within its CMRS license area] simply because Virginia Cellular is not licensed to serve the eight remaining [noncontiguous wire centers that lie outside of its CMRS licensed service area] would be inappropriate.[24]

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23 *Petitions for Reconsideration of Western Wireless Corporation's Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* 16 FCC Rcd 19144, 19149 (2001) (emphasis added, footnotes omitted). *See also Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18136, 18141 (2001), where the FCC used identical language in designating Western Wireless as an ETC for an area that is less than the ILEC's entire study area.

24 *Virginia Cellular Order* at ¶ 38.

In light of the foregoing, the PSC clearly erred in not finding that MMC's designation as an ETC for the Spectra Concordia wire center would not result in cream skimming.

IV. The PSC Erred in Finding That Grant of the MMC ETC Designation Would Unduly Burden the USF.

The PSC found that the total USF support for MMC would be $1.75 million annually (*Order* at p. 5) which amounts to ***one twentieth of one percent*** (0.20%) of the high-cost universal support. (*Order* at p. 23). To put this in perspective, the total amount of USF support which MMC would receive is ***less*** than the amount of USF support that one of the Intervenors receives. Specifically, Citizens ***alone*** receives annual USF high-cost support in excess of $1.96 million or nearly 0.23% of the high cost fund.[25]

The FCC made it clear in the *Virginia Cellular Order* and *Highland Cellular Order,* that

> As discussed above, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines. [footnote omitted] We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future. It is our 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.[26]

Accordingly, while there is concern as to the long-term sustainability of the USF, the context of the MMC application is clearly not the forum for that issue to be decided. The broad

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[25] See First quarter 2004 support numbers by carrier, Universal Service Administrative Company, at: http://www.universalservice.org/overview/filings/2004/Q1/HC01-%20High%20Cost%20Support%20Projected%20by%20State%20by%20Study%20Area%201Q04.xls

[26] *Highland Cellular Order* at ¶ 25.

underlying issue is before the FCC in the context of a pending rulemaking which will ultimately dictate the appropriate level of support for all ETCs.

The impact on the USF by designating MMC as an ETC would be *de minimis*, at best, and well below the level of support received by just one of the Intervenors. The FCC and other states continue to designate wireless carriers as ETCs and PSC action denying the designation to MMC does nothing to restrict the access of wireless carriers to ETC funds ***in virtually all other states*** where the issue has been decided. Instead, PSC action denying the MMC application merely ensures that the citizens of rural Missouri are denied access to the readily available federal funds for enhancing telecommunications service in the rural areas. Accordingly, since the designation of MMC as an ETC will, in and of itself place no significant burden on the USF, the PSC erred in denying MMC's application on that basis.

V. The PSC Erred in Finding MMC's Commitments to Quality of Service Inadequate.

Where the PSC can interpret the *Virginia Cellular Order* as supporting denial of the MMC application, the *Order* freely cites that case. Indeed, as previously discussed, the PSC uses the *Virginia Cellular Order* as the reason for departing from its own *Green Hills Order.* Yet, consistently, where the *Virginia Cellular Order* makes it clear that MMC's showing is sufficient to satisfy the public interest requirement, the PSC ignores the *Virginia Cellular Order*.

In both the *Virginia Cellular Order* and the *Highland Cellular Order,* the FCC expressly found that adoption of the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service, coupled with the reporting of consumer complaints per 1,000 handsets on an annual basis, and the other commitments made by those

carriers and MMC alike, adequately addressed "…any concerns about the quality of its wireless service."[27]

MMC made expressed, specific commitments in its application and sworn testimony; commitments that mirrored each and every commitment which the FCC found in the *Virginia Cellular Order* to be sufficient to make the public interest showing required for designation of an ETC in an area served by a rural LEC, including adoption of the reporting requirements and the CTIA Consumer Code. Accordingly, the PSC erred in finding that MMC had not met its obligations with respect to quality of service.

CONCLUSION

The citizens of rural Missouri are entitled to the same wireless telecommunications service as rural citizens in other states. MMC has presented a detailed application for ETC designation that would allow ready access to federal USF funds. The use of those funds is restricted, by law, to the construction and operation of qualified services in the designated ETC service area. MMC has shown how its designation would be in the public interest. Accordingly the PSC should reconsider its order denying the MMC application. In the alternative, should the PSC feel that additional written public interest documentation is required, the PSC should re-open the record and accept such additional written evidence on this issue.

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[27] *Virginia Cellular Order* at ¶ 30; *See also, Highland Cellular Order* at ¶ 24.

Respectfully submitted,

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Attorneys for Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 13th day of August, 2004, to:

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/s/ Paul S. DeFord
Attorney

EXHIBIT I: Mid-Missouri Cellular Phase II CDMA Coverage

[redacted]

EXHIBIT II: MID-MISSOURI CELLULAR AREAS REQUIRING CDMA ENHANCEMENT AFTER PHASE I AND II - 10 ADDITIONAL PROPOSED SITES ARE IDENTIFIED

[redacted]

EXHIBIT III: AREAS THAT WOULD BENEFIT FROM ENHANCED CDMA COVERAGE OVER CURRENT MID-MISSOURI CELLULAR CDMA SERVICE AND UNDERLYING WIRE CENTER BOUNDARIES

[redacted]

Exhibit 4

RATE COMPARISON FOR LIFELINE CUSTOMERS

Basic Cost	Citizens	Alma	Spectra Concordia	Mid-Missouri Telephone	Mid-Missouri Cellular Option 1	Mid-Missouri Cellular Option 2
Basic Local Service	$ 6.65	$ 4.75	$ 6.76	$ 6.75	$ 6.95	$ 10.00
Relay Missouri Surcharge	$ 0.10	$ 0.10	$ 0.10	$ 0.10	$ -	$ -
FCC Line Charge	$ 6.50	$ 1.50	$ 6.50	$ -	$ -	$ -
E911 Service Tax	$ 0.82	$ 0.97	$ -	$ -	$ -	$ -
Total Single Line Monthly Charge	$ 14.07	$ 7.32	$ 13.36	$ 6.85	$ 6.95	$ 10.00
Included Features						
Local Calling Area in the MMC Seven County Service Area	No	No	No	No	No	Yes
Mobility within Calling Area	No	No	No	No	Yes	Yes
Voice Mail (1)	No	No	No	No	Yes	Yes
Call Waiting (1)	No	No	No	No	Yes	Yes
Call Forwarding (1)	No	No	No	No	Yes	Yes
Three Way Calling (1)	No	No	No	No	Yes	Yes
Caller ID (1)	No	No	No	No	Yes	Yes

(1) These features are offered by each LEC for additional charges. (see Order at pp. 7-9).

Appendix C

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August 26, 2004

Missouri Public Service Commission
Attn: Dale Hardy Roberts, Secretary of the Commission
PO Box 360
Jefferson City, MO 65102-0360

Re: Case No. TO-2003-0531
Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular

Dear Mr. Roberts:

On August 25, 2004, The Wireline Competition Bureau of the Federal Communications Commission ("FCC") issued an order *In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. dba Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier In the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 04-2667 (rel. August 25, 2004), ("*Nextel Order*"). That supplemental authority was not available at the time when Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular ("MMC") filed its *Petition for Reconsideration and Application for Rehearing*. While consistent with the holdings in the FCC's *Virginia Cellular Order,*[1] and *Highland Cellular Order*[2], in the *Nextel Order* the FCC addressed issues upon which the Missouri Public Service Commission ("MPSC") decided the subject case. The MPSC decision in the instant case is at odds with this latest FCC holding, further supporting MMC's request for reconsideration and rehearing.

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[1] *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Application for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004), (Exhibit No. 10), ("*Virginia Cellular Order*").

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

Specifically, the FCC has made it clear that commitments, comparable to those made by MMC, are sufficient to meet the more stringent public interest requirements of the applicable statute with respect to service in areas served by rural exchange carriers. Moreover, the FCC expressly dismissed arguments, such as those advanced in the MMC case by the intervenors, that there would be no competitive or other public interest benefit from designating an existing CMRS carrier as an ETC because that carrier was already offering service.

> Other commenters argue that the Commission should not designate Nextel as an ETC because such designation will not increase competition. They argue that Nextel is not a new entrant in the various markets and other CMRS operators are currently offering service in the designated service areas. [footnote omitted] We disagree. Quality service available at just, reasonable, and affordable rates is a fundamental principle of the Commission's universal service policies. [footnote omitted] Although Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission's universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation. (*Nextel Order* at ¶20).

The MPSC holding in its Order in the instant case is inconsistent with this FCC determination. (MPSC Order at p.22)

The FCC also considered specific showings, comparable to those made by MMC in the instant case, and found that grant of the requested ETC designation would serve the public interest. Specifically, the FCC looked at the proposed network enhancement and service offerings, coupled with the much larger local calling area being offered by the CMRS carrier and the benefits of mobility, especially in the context of "…access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities" (*Nextel Order* at ¶ 18) and found that such a showing satisfied the more stringent statutory public interest requirements for ETC designation in areas served by rural local exchange carriers.

Lastly, in considering the impact that designation of MMC as an ETC would have on the Universal Service Fund, the MPSC compared the burden placed on the USF by grant of MMC's ETC designation (0.20% of the total high cost support) as compared to the burden placed on the USF by the grant of ETC designation in the *Virginia Cellular Order* (0.105%) (MPSC Order at p. 23). In Nextel, the FCC looked at the potential impact on the USF and found that even "…assuming that Nextel captures ***each and every*** customer located in the

affected study areas, the overall size of the high-cost support mechanism would not be significantly increased" (*Nextel Order* at ¶ 21) (emphasis added, footnote omitted) because the total amount of high cost support that could be received ***(in only one of the states in which the FCC granted Nextel ETC status)*** would be "…approximately 1.88% of the total high-cost support available to all ETCs." (*Nextel Order* at footnote 69). Accordingly, the FCC has unambiguously held that a potential burden on the USF ***94 times greater*** than that which the MMC designation would place on the fund, is not a significant burden on the USF.

In light of the foregoing, MMC submits that the latest FCC Order, is wholly consistent with the arguments set forth in MMC's *Petition for Reconsideration and Application for Rehearing,* and provides precedent showing specific error on the part of the MPSC, consistent with that argued by MMC.

Very truly yours,

LATHROP & GAGE L.C.

- *Paul DeFord* - (by dl)

By:
Paul S. DeFord

PSD/dl
Enclosure

cc: Counsel for all parties of record

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
NPCR, Inc. d/b/a Nextel Partners	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the state of Alabama	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the state of Florida	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the state of Georgia	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the state of New York	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia	)	

ORDER

Adopted: August 25, 2004 **Released: August 25, 2004**

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petitions of NPCR, Inc. d/b/a Nextel Partners (Nextel) to be designated as an eligible telecommunications carrier (ETC) for the requested service areas in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia, pursuant to section 214(e)(6) of the

Communications Act of 1934, as amended (the Act).[1] In so doing, we conclude that Nextel, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated as an ETC.[2]

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[3] Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.[4]

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[1] *See* NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed Apr. 4, 2003 (AL Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed July 16, 2003 (AL Amendment); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed Mar. 24, 2004 (AL March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, filed Sept. 16, 2003 (FL Petition); Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, filed Sept. 23, 2003 (FL Sept. 23 Supplement); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (FL March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, filed July 10, 2003 (GA Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia, filed Oct. 28, 2003 (GA Amendment I); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (GA March 24 Supplement); NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of New York, filed Apr. 3, 2003 (NY Petition); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed Apr. 9, 2003 (NY Erratum); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed May 28, 2003 (NY Amendment I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, filed July 16, 2003 (NY Amendment II); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (NY March 24 Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, filed Apr. 3, 2003 (PA Petition); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (PA Supplement); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed June 12, 2003 (TN Petition); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed July 1, 2003 (TN Erratum I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed July 16, 2003 (TN Amendment); Affidavit of NPCR, Inc. from Donald Manning, NPCR, Inc., filed Oct. 1, 2003 (TN Affidavit I); Affidavit of NPCR, Inc. from Donald Manning, NPCR, Inc., filed Oct. 1, 2003 (TN Affidavit II); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (TN March 24 Supplement); Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed Apr. 19, 2004 (TN Erratum II); Second Erratum to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed June 29, 2004 (TN June 29 Erratum); NPCR, Inc. d/b/a Nextel Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Apr. 23, 2003 (VA Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed June 10, 2003 (VA Amendment I); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Nov. 24, 2003 (VA November 24 Amendment); Letter from Catalano & Plache, PLLC, Counsel for Nextel to Marlene H. Dortch, FCC, filed March 24, 2004 (VA March 24 Supplement). *See also* 47 U.S.C. § 214(e)(6).

[2] 47 U.S.C. § 214(e)(1).

[3] 47 U.S.C. § 254(e).

[4] 47 U.S.C. § 214(e)(1).

3. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.[5] Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[6] Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).[7] Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.[8] The Wireline Competition Bureau (Bureau) has delegated authority to perform ETC designations.[9]

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" pursuant to section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.[10]

5. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.[11] Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an "affirmative statement" from the state commission or a court of competent jurisdiction that the carrier is not subject to

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[5] 47 U.S.C. § 214(e)(2). *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order*, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

[6] 47 U.S.C. § 214(e)(6). *See, e.g., Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

[7] 47 U.S.C. § 214(e)(6).

[8] *Id.*

[9] *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*ETC Procedures PN*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

[10] *See ETC Procedures PN*, 12 FCC Rcd at 22948-49; 47 U.S.C. § 3(37). *See also 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, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), *recon. pending*.

[11] *See Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

the state commission's jurisdiction.[12] The requirement to provide an "affirmative statement" ensures that the state commission has had "a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers."[13]

6. On January 22, 2004, the Commission released the *Virginia Cellular Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.[14] In that Order, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular.[15] The Commission further stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the Commission.[16] Following the framework established in the *Virginia Cellular Order*, on April 12, 2004, the Commission released the *Highland Cellular Order*, which granted in part and denied in part the petition of Highland Cellular, Inc., to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.[17] In the *Highland Cellular Order*, the Commission concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.[18]

C. Nextel Petitions

7. Pursuant to section 214(e)(6), Nextel filed with this Commission seven petitions and amendments thereto, seeking designation as an ETC in study areas served by both rural and non-rural incumbent local exchange carriers (LECs) in the states of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia.[19] The Bureau released public notices seeking comment on these petitions.[20] Several commenters filed pleadings opposing the petitions.[21] In light of the new ETC

[12] *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

[13] *Id.*

[14] *See Virginia Cellular Order*, 19 FCC Rcd at 1564, para. 1.

[15] *See id.*, 19 FCC Rcd at 1565, 1575, 1575-76, 1584-85, paras. 4, 27, 28, 46.

[16] *See id.*, 19 FCC Rcd at 1565, para. 4.

[17] *See Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

[18] *See id.*, 19 FCC Rcd at 6438, para. 33.

[19] *See supra* note 1. Nextel's initial petitions for ETC designation in the states of Tennessee and Virginia requested redefinition of certain study areas. *See* TN Petition at 9-10 and VA Petition at 10-11; *see also* 47 U.S.C § 214(e)(5) and 47 C.F.R. § 54.207(c)(1). Nextel subsequently requested that the Commission disregard its redefinition requests. *See* TN Erratum and VA Amendment.

[20] *See Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14593 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida*, Public Notice, CC Docket No. 96-45, DA 03-4113 (rel. Dec. 30, 2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 16370 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14590 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 11530 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 20244 (2003); *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 11792 (2003).

designation framework established in the *Virginia Cellular Order*, on March 9, 2004, Nextel filed supplements to its ETC petitions.[22] On April 2, 2004, the Bureau released a public notice seeking comment concerning all supplemented ETC petitions, including the petitions filed by Nextel.[23]

III. DISCUSSION

8. After careful review of the record before us, we find that Nextel has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for its licensed service areas described herein.

A. Commission Authority to Perform the ETC Designation

9. We find that Nextel has demonstrated that the Commission has authority to consider its seven petitions under section 214(e)(6) of the Act.[24] Nextel's petitions each include an affirmative statement from the relevant state commissions stating that requests for designation as eligible telecommunications carriers should be sought from the Commission.

10. We note that the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed reply comments stating that although it submitted a letter stating its intent to refrain from exercising jurisdiction over Nextel for ETC designation purposes, it has not relinquished its jurisdiction altogether for all CMRS carriers.[25] Specifically, the Pennsylvania Commission expresses concern that it did not intend its letter to operate as a pronouncement of its position on jurisdiction for future ETC designations for all wireless carriers.[26] We further note that subsequently, the Pennsylvania Commission filed a letter stating that it does not object to the Commission's consideration of Nextel's petition as long as the effect of its letter is limited solely to Nextel's ETC designation request.[27] We therefore find it is appropriate to consider Nextel's request for ETC designation in Pennsylvania. Moreover, as requested by the Pennsylvania Commission, the effect of the Pennsylvania Commission's letter indicating that it lacks jurisdiction in this proceeding is limited solely to Nextel's ETC petition.

(...continued from previous page)

[21] *See* Appendix A for a list of entities filing comments and reply comments associated with the seven petitions for ETC designation.

[22] *See* AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement.

[23] *See Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, 19 FCC Rcd 6405 (2004).

[24] AL Petition at Attachment 2; FL Petition at Attachment 2; GA Petition at Attachment 2; NY Petition at Attachment 2; PA Petition at Attachment 2; TN Petition at Attachment 2; VA Petition at Attachment 2.

[25] Pennsylvania Commission Reply Comments at 3.

[26] Pennsylvania Commission Supplement Comments at 2-3. The Pennsylvania Commission further urges the Commission to delay action on Nextel's ETC petition until the conclusion of two proceedings concerning this matter. *See Petition of Cellco Partnership d/b/a Verizon Wireless to Terminate Section 251(f)(1)(B) Rural Exemptions of Bentleyville Communication Corporation, et al.*, Docket Nos. P-00021995 through P-00022015 (Verizon Wireless seeking termination of rural exemption for 21 rural incumbent ILECs) and *In Re: Petition for Declaratory Order of AT&T Wireless Services Inc.*, Docket No. P-00042087 (AT&T requesting Pennsylvania Commission declaratory order that it does not regulate wireless carriers for purposes of ETC designation).

[27] Letter from Elizabeth Lion Januzzi, Pennsylvania Public Utility Commission, to Marlene H. Dortch, FCC, filed June 29, 2004.

B. Offering and Advertising the Supported Services

11. Offering the Services Designated for Support. Nextel has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Nextel is authorized to provide cellular radiotelephone service in the 800 MHz band.[28] Nextel certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission's rules.[29] Nextel has also certified that, in compliance with rule section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.[30] Furthermore, Nextel has committed to commitments that closely track those set forth in the *Virginia Cellular Order* and *Highland Cellular Order*, including: (1) annual reporting of progress towards build-out plans, unfulfilled service requests, and complaints per 1,000 handsets; (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage; and (3) specific commitments to construct new cell sites in areas outside its network coverage.[31]

12. We reject the claims of certain commenters that Nextel does not provide the required services and functionalities supported by the universal service mechanism. First, commenters argue that Nextel fails to offer supported services, such as the Lifeline and Link-Up programs, and suggest that the participation rate in Lifeline/Link-Up will not increase even if Nextel was to offer the associated discounts.[32] We note, however, that Nextel states that it will participate in the Lifeline and Link-Up programs and will otherwise comply with all Commission rules governing universal service programs.[33] Second, notwithstanding commenters' allegations,[34] Nextel makes clear that it does and will continue to implement E911 requirements consistent with Commission rules and orders and local Public Safety Answering Point (PSAP) requests.[35] In addition, other commenters assert that Nextel should be required

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[28] AL Amendment; FL Petition at 1; NY Amendment II; PA Petition at 1; TN Amendment; VA Petition at 1.

[29] AL Petition at 2-4; FL Petition at 2-4; GA Petition at 2-4; NY Petition at 2-4; PA Petition at 2-4; TN Petition at 2-4; VA Petition at 2-4.

[30] AL Petition at 7; FL Petition at 8; GA Petition at 7-8; NY Petition at 7-8; PA Petition at 7; TN Petition at 8; VA Petition at 8. 47 C.F.R. § 54.405. We note that ETCs must comply with state requirements in states that have Lifeline programs. *See Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8320 at para. 29 (2003).

[31] Nextel has provided detailed information on how it will use universal service support to construct cell sites throughout the states in which it is designated as an ETC. AL March 24 Supplement at Exhibit 2; FL March 24 Supplement at Exhibit 2; GA March 24 Supplement at Exhibit 2; NY March 24 Supplement at Exhibit 2; PA March 24 Supplement at Exhibit 2; TN March 24 Supplement at Exhibit 2; VA March 24 Supplement at Exhibit 2; *see also* Letter from Catalano & Plache, PLLC, Counsel for NCPR, Inc. d/b/a Nextel, to Marlene H. Dortch, FCC (filed June 2, 2004). Specifically, Nextel provides the location by study area of new cell sites, timeframe for commencement and completion of build-out plans, populations served by new cell sites, and cost of build-out plans. *See id.* In 2004, Nextel will use universal service support to construct 13 cell sites in Alabama, 12 cell sites in Florida, 13 cell sites in Georgia, 19 cell sites in New York, 10 cell sites in Pennsylvania, 3 cell sites in Tennessee, and 16 cell sites in Virginia. *Id.* We recognize that these plans may change over time depending on consumer demand, fluctuation in universal service support, and related factors. *See, e.g.*, *Virginia Cellular Order*, 19 FCC Rcd at 1571, para. 16.

[32] *See, e.g.*, NY State Telecom Comments at 8.

[33] AL Petition at 7; FL Petition at 8; GA Petition at 7-8; NY Petition at 7-8; PA Petition at 7; TN Petition at 8; VA Petition at 8.

[34] *See, e.g.*, FW&A Comments at 9; TDS Supplement Comments at 8.

[35] AL Petition at 3, FL Petition at 3-4, GA Petition at 3, NY Petition at 3-4, PA Petition at 3-4, TN Petition at 3, VA Petition at 3-4. A valid PSAP request triggers a wireless carrier's obligation to provide enhanced 911 (E911) service to that PSAP. *See City of Richardson*, Order, CC Docket No. 94-102, 16 FCC Rcd 18982 (2001). In addition,

(continued....)

to offer unlimited local calling to mirror the services offered by wireline carriers or to limit the number of minutes a customer may use to coincide with the number of minutes allocated to the plan selected so that customers do not incur higher charges.[36] Such requirements are unnecessary because the Commission has not established a minimum local usage requirement and Nextel has pledged compliance with any and all minimum usage requirements required by applicable law.[37] Nextel also states that local usage is included in all of its calling plans.[38] Lastly, some commenters argue that Nextel does not provide equal access to interexchange service.[39] Section 54.101(a)(7) of the Commission's rules states that one of the supported services is access to interexchange services, not equal access to those services.[40] Accordingly, we find sufficient Nextel's showing that it will offer access to interexchange services.

13. Offering the Supported Services Using a Carrier's Own Facilities. Nextel has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.[41] Nextel states that it intends to provide the supported services using its existing network infrastructure."[42]

14. Advertising Supported Services. Nextel has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.[43] One commenter, however, contends that Nextel does not identify media to be used to advertise the supported services.[44] We disagree. In its petitions, Nextel states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with section 54.201(d)(2) of the Commission's rules.[45] Moreover, Nextel has committed to specific methods to publicize the

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(...continued from previous page)
Nextel must meet certain company-specific handset deployment benchmarks. *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced E911 Emergency Calling Systems, Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.*, Order, CC Docket No. 94-102, 16 FCC Rcd 18277 (2001).

[36] *See, e.g.*, CenturyTel Supplement Comments at 4; FW&A Comments at 9, 13; NASUCA Comments at 2.

[37] *See* AL Petition at 3; FL Petition at 3; GA Petition at 3; NY Petition at 3; PA Petition at 3; TN Petition at 3; VA Petition at 3.

[38] *See* AL Petition at 3; FL Petition at 3; GA Petition at 3; NY Petition at 3; PA Petition at 3; TN Petition at 3; VA Petition at 3.

[39] *See, e.g.*, NASUCA Comments at 2; NY State Telecom Comments at 9; PA Telephone Assn. Comments at 8.

[40] 47 C.F.R. §54.101(a)(7). We note that in July 2002, four members of the Joint Board recommended adding equal access to interexchange service as a supported service. *See Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 17 FCC Rcd 14095, 14124-27, paras. 75-86 (2002). In July 2003, the Commission decided to defer consideration of this issue pending resolution of the Commission's proceeding examining the rules relating to high-cost universal service support in competitive areas. *See Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45, 18 FCC Rcd 15090, 15104, para. 33 (2003). *See also infra* para. 21 and n.66.

[41] 47 C.F.R. § 214(e)(1)(A).

[42] *See* AL Petition at 2; FL Petition at 2; GA Petition at 2; NY Petition at 2; PA Petition at 2; TN Petition at 2; VA Petition at 2.

[43] 47 C.F.R. § 214(e)(1)(B).

[44] TDS Supplement Comments at 8-9.

[45] *See* AL Petition at 5; FL Petition at 5-6; GA Petition at 5; NY Petition at 5; PA Petition at 5; TN Petition at 5; and VA Petition at 5. 47 C.F.R § 54.201(d)(2).

availability of Lifeline and Link-Up services and improved service in unserved or underserved areas.[46]

C. Public Interest Analysis

15. We conclude that it is "consistent with the public interest, convenience, and necessity," as required by section 214(e)(6) of the Act, to designate Nextel as an ETC in the study areas served by certain rural telephone companies and non-rural telephone companies in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia.[47] In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.[48] Nextel has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

16. Non-Rural Study Areas. We conclude, as required by section 214(e)(6) of the Act, that it is "consistent with the public interest, convenience, and necessity" to designate Nextel as an ETC for its requested service area that is served by non-rural telephone companies, as provided in Appendix B.[49] We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act.[50] In the *Virginia Cellular Order* and the *Highland Cellular Order*, however, the Commission determined that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act does not necessarily satisfy the public interest in every instance.[51] Nextel's public interest showing here is sufficient, based on the detailed commitments Nextel has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Nextel has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.[52]

17. Rural Study Areas. We also conclude, as required by section 214(e)(6) of the Act, that it is "consistent with the public interest, convenience, and necessity" to designate Nextel as an ETC for its requested service area that is served by rural telephone companies, as provided in Appendix C.[53] In considering whether designation of Nextel as an ETC in areas served by rural telephone companies will serve the public interest, we have considered whether the benefits of an additional ETC in such study areas outweigh any potential harms. In determining whether designation of a competitive ETC in a rural

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[46] *See* AL March 24 Supplement at 6-7; FL March 24 Supplement at 6-7; GA March 24 Supplement at 6-7; NY March 24 Supplement at 6-7; PA March 24 Supplement at 6-7; TN March 24 Supplement at 6-7; VA March 24 Supplement at 6-7.

[47] 47 U.S.C. § 214(e)(6). *See* Appendices B and C.

[48] *See Highland Cellular Order* 19 FCC Rcd at 6431, para. 20; *Virginia Cellular Order*, 19 FCC Rcd at 1574-75, para. 26.

[49] *See* 47 U.S.C. § 214(e)(6). *See also* Appendix B.

[50] *See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

[51] *See Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21.

[52] *See Virginia Cellular Order*, 19 FCC Rcd at 1572-73, para. 21; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. *See also* AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement; *see also infra* paras. 24-25.

[53] *See* 47 U.S.C.§ 214(e)(6). *See also* Appendix C.

telephone company's service area is in the public interest, we 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.[54]

18. Nextel's universal service offering will provide a variety of benefits to customers. For instance, Nextel has committed to provide customers access to telecommunications and data services where they do not have access to a wireline telephone.[55] In addition, the mobility of Nextel's wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.[56] Moreover, Nextel states that it offers larger local calling areas than those of the incumbent LECs it competes against, which could result in fewer toll charges for Nextel's customers.[57] Further, Nextel has made service quality commitments comparable to those made by petitioners in the *Virginia Cellular Order* and *Highland Cellular Order*, including compliance with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for Wireless Service.[58]

19. We reject the arguments of certain commenters that Nextel does not offer service throughout the study areas where it seeks designation and therefore should not be designated in these areas.[59] Specifically, these commenters allege that service is not offered in many of the zip codes within the study areas where Nextel seeks ETC designation.[60] The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.[61] Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.[62] Another

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[54]*See, e.g.*, *Highland Cellular Order*, 19 FCC Rcd at 6435, para. 28; *Virginia Cellular Order*, 19 FCC Rcd at 1573, para. 22.

[55]*See* AL March 24 Supplement at 3-4; FL March 24 Supplement at 3-4; GA March 24 Supplement at 3-4; NY March 24 Supplement at 3-4; PA March 24 Supplement at 3-4; TN March 24 Supplement at 3-4; VA March 24 Supplement at 3-4.

[56]*See Virginia Cellular Order*, 19 FCC Rcd at 1576, para. 29. *See also Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

[57]*See* AL Petition at 7; FL Petition at 7-8; GA Petition at 7; NY Petition at 7; PN Petition at 7; TN Petition at 7; VA Petition at 7.

[58]*See* AL March 24 Supplement at 2 and Exhibit 1; FL March 24 Supplement at 2 and Exhibit 1; GA March 24 Supplement at 2 and Exhibit 1; NY March 24 Supplement at 2 and Exhibit 1; PA March 24 Supplement at 2 and Exhibit 1; TN March 24 Supplement at 2 and Exhibit 1; VA March 24 Supplement at 2 and Exhibit 1. *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

[59]*See, e.g.*, GA Telephone Assn. Comments at 5; NY State Telecom Supplement Comments at 3, 7-8; TDS Supplement Comments at 7-8; PA Telephone Assn. at 4-8; Commonwealth Telephone at 2-3; NY State Telecom Comments 5-7; FW&A Comments at 10.

[60]*See, e.g.*, PA Telephone Assn. at 6; NY State Telecom Comments at 5-6.

[61]*See Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17.

commenter asserts that Nextel excludes residences from its commitment and intends to serve only business customers.[63] We disagree. Nextel's filing does not distinguish between the types of customers with regard to the commitments to improve its network in the study areas for which it seeks ETC designation.[64]

20. Other commenters argue that the Commission should not designate Nextel as an ETC because such designation will not increase competition. They argue that Nextel is not a new entrant in the various markets and other CMRS operators are currently offering service in the designated service areas.[65] We disagree. Quality service available at just, reasonable, and affordable rates is a fundamental principle of the Commission's universal service policies.[66] Although Nextel and other CMRS operators may already offer service in the subject markets, designating Nextel as an ETC will further the Commission's universal service goals by enabling Nextel to better expand and improve its network to serve a greater population and increase competitive choice for customers within the study areas of its ETC designation.

21. The Commission is seeking comment on the *Recommended Decision* of the Federal Joint-Board on Universal Service (Joint Board) concerning the process for designation of ETCs and the Commission's rules regarding high-cost universal service support.[67] Commenters argue that, in light of the impact that ETC designations have on the universal service fund, the Commission should not rule on any pending ETC petitions until the completion of the rulemaking proceeding.[68] We believe that grant of these ETC designations will not dramatically burden the universal service fund. For example, even assuming that Nextel captures each and every customer located in the affected study areas, the overall

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[62] *See* AL March 24 Supplement; FL March 24 Supplement; GA March 24 Supplement; NY March 24 Supplement; PA March 24 Supplement; TN March 24 Supplement; VA March 24 Supplement; *see also* Virginia Cellular Petition at 2, 17 and Virginia Cellular October 3 Supplement at 2, Virginia Cellular November 12 Supplement at 4-5 and Attachment.

[63] TDS Supplement Comments at 7.

[64] *See* AL March 24 Supplement 4-9; FL March 24 Supplement 4-9; GA March 24 Supplement 4-9; NY March 24 Supplement 4-9; PA March 24 Supplement 4-9; TN March 24 Supplement 4-9;VA March 24 Supplement 4-9.

[65] *See, e.g.,* CenturyTel Comments at 2; CenturyTel Supplement Comments at 3-4; Commonwealth Telephone Comments at 5; Frontier Comments at 5; NY State Telecom at 6.

[66] *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8839, para. 112 (1997) (*First Report and Order*) ("We recognize affordable rates are essential to inducing consumers to subscribe to telephone service, and also that increasing the number of people connected to the network increases the value of the telecommunications network."); 47 U.S.C.§ 254(b).

[67] *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC High-Cost NPRM*); *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Joint Board Recommended Decision*). Among other things, the Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider when designating ETCs under section 214 of the Act. *Joint Board Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

[68] *See, e.g.,* NY State Telecom Comments at 11-14; OPASTCO Comments at 2. Verizon filed an opposition to all pending ETC petitions, including Nextel Partners', arguing that, among other things, pending ETC petitions should not be acted upon until completion of the Commission's proceeding concerning the ETC designation process and the related rules regarding high-cost universal service support. *See* Verizon Supplement Comments at 1-5. If the Commission does not stay the pending petitions, NASUCA asks that the Commission explicitly state that the continuing eligibility of the petitioners for ETC designation is contingent upon any future changes to the rules and the rules would be binding on all existing ETCs and those requesting designation. *See* NASUCA Comments at 2.

size of the high-cost support mechanisms would not significantly increase.[69] Other commenters suggest that the framework articulated in the *Virginia Cellular Order* should be expanded to require competitive ETCs to demonstrate their need for universal service support, to require a cost-benefit analysis based on the overall impact of the USF, and to contain wireless calling plan requirements.[70] Although these are important issues, we decline to delay ruling on pending ETC petitions and to impose additional requirements at this time. Nevertheless, we continue to be mindful of the impact on the universal service fund due to the rapid growth in the number of competitive ETCs. The outcome of the rulemaking proceeding could potentially impact, among other things, continued ETC designations, the amount of support that Nextel and other competitive ETCs receive in the future, and local calling plan benchmarks.

22. We further disagree with Verizon's argument that we should not designate any additional competitive ETCs because it could have a significant impact on the access charge plan established by the Commission's *CALLS Order*.[71] In the voluntarily negotiated CALLS plan, price cap carriers, *inter alia*, agreed to establish a $650 million target for interstate access support. Similar to other types of universal service support, interstate access support is portable to competitive ETCs.[72] Consequently, because interstate access support is targeted to $650 million, when a competitive ETC receives interstate access support, there is a corresponding reduction in support available to incumbent carriers. As the CALLS plan was being considered, portability of support to competitive ETCs and its relation to the $650 million target was contemplated.[73] Accordingly, the CALLS plan is functioning as contemplated by the agreement. We further note that the CALLS plan was designed for a five-year period, which ends in 2005.[74] As part of its consideration of the appropriate regulatory mechanism to replace the CALLS plan, the Commission can examine whether the interstate access support mechanism remains sufficient.[75]

D. Designated Service Areas

23. We designate Nextel as an ETC in the requested service areas in Alabama, Florida, Georgia, Tennessee, and Virginia served by non-rural telephone companies, as listed in Appendix B.[76] In addition, we designate Nextel as an ETC in the requested service areas in Alabama, Florida, Georgia,

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[69]For example, out of the seven states in which Nextel seeks ETC designation, the incumbent carriers in Alabama receive the most high-cost support. The total amount of high-cost support received by such carriers is approximately 1.88% of the total high-cost support available to all ETCs.

[70]*See, e.g.*, CenturyTel Supplement Comments at 3-4; Frontier Comments at 6-9; GA Telephone Assn. Comments at 4-5; FW&A Comments at 9, 11, 14; NASUCA Comments at 2-3; NTELOS Comments at 2; NY State Telecom Comments at 11-14; OPASTCO Comments at 2; PA Telephone Assn. Comments at 8-9; TDS Supplement Comments at 8-10.

[71]*See* Verizon Opposition at 2-3; *Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No 96-45, 15 FCC Rcd 12962 (2000) (subsequent history omitted) (*CALLS Order*).

[72]*See* 47 C.F.R. § 54.307(a).

[73]*See* CTIA Supplement Reply Comments at 4-5 (*quoting* Comments of Coalition for Affordable Local and Long Distance Services (CALLS), CC Docket Nos. 94-1, 96-45,. 96-262, 99-249, filed Nov. 12, 1999.

[74]*See CALLS Order*, 15 FCC Rcd at 12977, 13046, paras. 35-36, 201.

[75]*See id.* at 12977, para. 36 ("[A]s the term of the CALLS Proposal nears its end, we envision that the Commission will conduct a proceeding to determine whether and to what degree it can deregulate price cap LECs to reflect the existence of competition. At that time, the Commission can also examine whether the interstate access universal service support mechanism remains sufficient.").

[76]The designated "service area" for an ETC in an area served by a rural telephone company must be the rural telephone company's study area unless a different definition of the rural telephone company's service area is established by the Commission and the states as provided under the Act. *See* 47 U.S.C. § 214(e)(5).

New York, Pennsylvania, Tennessee, and Virginia served by rural telephone companies, as listed in Appendix C.[77] As explained above, Nextel's service area for each rural telephone company encompasses the entire study area of each rural telephone company.[78]

E. Regulatory Oversight

24. Nextel is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under sections 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement.[79] Nextel has certified that, consistent with sections 54.313 and 54.314 of the Commission's rules, all federal high-cost support will be "used only for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e)" of the Act in the areas for which Nextel is designated as an ETC.[80] In addition, Nextel has certified pursuant to sections 54.809 and 54.904 of the Commission's rules that all interstate access universal service support and all interstate common line support provided will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.[81] Nextel has further requested that the Commission find that Nextel has met the appropriate certification filing deadline in order for it to begin receiving support as of its ETC designation date.[82] Accordingly, we treat Nextel's certifications as timely so that it can begin receiving universal service support as of the date of its ETC designation.[83]

25. Separate and in addition to its annual certification filing under rule sections 54.513 and 54.314, Nextel has committed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year.[84] We require Nextel to submit these additional data to the Commission and USAC on October

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[77] *See* Appendix C.

[78] *See supra* para. 19.

[79] 47 C.F.R. §§ 54.313, 54.314.

[80] *See* AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN Petition at 11; VA Petition at 11-12; *see also* TN Affidavit I and TN Affidavit II.

[81] 47 C.F.R.§§ 54.809, 54.904; *see also* AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN Petition at 11; VA Petition at 11-12.

[82] *See* AL Petition at 8-9; FL Petition at 9-10; GA Petition at 9; NY Petition at 8-9; PA Petition at 8-9; TN June 29 Erratum; VA Petition at 11-12.

[83] Sections 54.313 and 54.314 provide that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. 47 C.F.R. §§ 54.313(d)(3), 54.314(d)(3). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. *See id.* In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e). *See* 47 C.F.R. §§ 54.313(b); 54.314(b). Moreover, although we accept Nextel's certifications as timely so that it can receive support as of its ETC designation date, consistent with the Commission's rules, the relevant state commissions are not precluded from filing future certifications on behalf of Nextel stating that universal service support is being used for its intended purposes. *See* 47 C.F.R. §§ 54.313, 54.314.

[84] *See* AL March 24 Supplement at 3-7; FL March 24 Supplement at 3-7; GA March 24 Supplement at 3-7; NY March 24 Supplement at 3-7; PA March 24 Supplement at 3-7; TN March 24 Supplement at 3-7; VA March 24 Supplement at 3-7. Certain commenters argue that Nextel will not use high-cost support for its intended purpose. *See, e.g.*, CenturyTel Supplement Comments at 5. We find that the above commitments alleviate such concerns.

1 of each year beginning October 1, 2005.[85] We find that reliance on Nextel's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.[86] We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Nextel satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.[87] Nextel will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Nextel fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.[88] The Commission also may assess forfeitures for violations of Commission rules and orders.[89]

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

26. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.[90] This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.[91] Nextel has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.[92] We find that Nextel has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section

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[85] Nextel's initial submission concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from the date ETC designation is granted through June 30, 2005. Future submissions concerning consumer complaints and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

[86] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) In *TOPUC v. FCC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

[87] 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

[88] *See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. *See also* 47 U.S.C. § 254(e).

[89] *See* 47 U.S.C. § 503(b).

[90] 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

[91] *See ETC Procedures PN*, 12 FCC Rcd at 22949. Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

[92] *See* AL Petition at 8 and Attachment 5; FL Petition at and Attachment 4; GA Petition at 8 and Attachment 4; NY Petition at 8 and Attachment 5; PA Petition at 8 and Attachment 5; TN Petition at 11 and Attachment 4; VA Petition at 11 and Attachment 5.

214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, NCPR, Inc. d/b/a Nextel Partners IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia to the extent described herein.

28. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Alabama Public Service Commission, Florida Public Service Commission, Georgia Public Service Commission, New York Department of Public Service, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Corporation Commission, and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Acting Chief, Wireline Competition Bureau

Appendix A

Parties Filing Comments, Reply Comments, Oppositions, Supplemental Comments

Petition for Designation as an Eligible Telecommunications Carrier in the state of Alabama

Comments
CenturyTel, Inc. (CenturyTel)
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)

Reply Comments
NPCR, Inc. d/b/a/ Nextel Partners (Nextel Partners)

Opposition
Verizon Communications, Inc. (Verizon)

Supplemental Comments
Verizon
TDS Telecommunications Corp. (TDS)

Petition for Designation as an Eligible Telecommunications Carrier in the state of Florida

Comments
OPASTCO
National Association of State Utility Consumer Advocates (NASUCA)
Fred Williams & Associates, Inc. (FW&A)
TDS

Reply Comments
Nextel Partners

Petition for Designation as an Eligible Telecommunications Carrier in the state of Georgia

Comments
Frontier Communications (Frontier)
Georgia Telephone Association (GA Telephone)
OPASTCO

Reply Comments
Nextel Partners

Opposition
Verizon

Supplemental Comments
Frontier
TDS
Verizon

Petition for Designation as an Eligible Telecommunications Carrier in the state of New York

Comments
Frontier
New York State Telecommunications Association, Inc. (NY Telecom)
OPASTCO

Reply Comments
Nextel Partners

Opposition
Verizon

Supplemental Comments
NY Telcom
TDS
Verizon

Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania

Comments
Commonwealth Telephone Company (Commonwealth Telephone)
Pennsylvania Telephone Association (PA Telephone)

Reply Comments
Nextel Partners
OPASTCO
Pennsylvania Public Utility Commission (Pennsylvania Commission)

Supplemental Comments
TDS
Pennsylvania Commission
Verizon

Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee

Comments
NASUCA
OPASTCO

Reply Comments
Nextel Partners

Opposition
Verizon

Supplemental Comments
Verizon

Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia

Comments
NTELOS, Inc. (NTELOS)
Virginia Rural Southside Telephone Companies

Reply Comments
Nextel Partners
OPASTCO

Supplemental Comments
NTELOS
TDS
Verizon

Appendix B
Non-Rural Wire Centers for Inclusion in Nextel's ETC Service Areas

ALABAMA
VERIZON SACs 250281 and 250293

ABVLALXA	FYTTALXA	RCFRALXA
ACVLALXA	GDBAALXA	RDLVALXA
ANDSALXA	GENVALXA	SCBOALXA
ARITALXA	HDLDALXZ	SLCMALXA
BLBTALXA	HRFRALXA	SMSNALXA
BRNDALXA	IRSEALXA	THRSALXA
CLIOALXA	JMSNALXA	TLLSALXA
CLMAALXA	LNCLALXA	TSVLALXA
DTHNALXA	MLCYALXA	WCBGALXA
ELBAALXA	NTSLALXA	WDLYALXA
ENTRALXA	NWBCALXA	WEDWALXA
FRFNALXA	NWTNALXA	
FRHMALXA	OPPALXA	
FWRVALXA	OZRKALXA	

ALABAMA
BELL SOUTH SAC 255181

ALBSALMA	DDVLALMA	MOBLALBF
ALCYALMT	DORAALMA	MOBLALOS
ALVLALMA	EUFLALMA	MOBLALPR
ANTNALLE	EUTWALMA	MOBLALSA
ANTNALMT	EVRGALMA	MOBLALSE
BLFNALMA	FLRNALMA	MOBLALSF
BOAZALMA	FMTNALMT	MOBLALSH
BRHMALCH	FRHPALMA	MOBLALSK
BRHMALCP	FTDPALMA	MOBLALTH
BRHMALEL	GDSDALHS	MPVLALMA
BRHMALEN	GDSDALMT	MTGMALDA
BRHMALEW	GDSDALRD	MTGMALMB
BRHMALFO	GRDLALNM	MTGMALMT
BRHMALFS	GTVLALNM	MTGMALNO
BRHMALHW	GYVLALNM	MTVRALMA
BRAHMALMT	HLVIALMA	OPLKALMT
BRHMALOM	HNVIALLW	PDMTALMA
BRHMALOX	HNVIALMT	PHCYALFM
BRHMALRC	HNVIALPW	PHCYALMA
BRHMALTA	HNVIALRA	PNSNALMA
BRHMALVA	HNVIALRW	PRVLALMA
BRHMALWE	HNVIALUN	SELMALMT
BRHMALWL	HNVLALNM	SYLCALMT
BRTOALMA	HRBOALOM	THVLALMA
BSMRALBU	HZGRALMA	TLDGALMA
BSMRALHT	JCSNALNM	TROYALMA
BSMRALMA	JCVLALMA	TSCLALDH
BYMNALMA	JSPRALMT	TSCLALMT
CALRALMA	LFYTALRS	TSKGALMA
CHLSALMA	LGRNGAMA	VNCNALMA
CLANALMA	LNDNALMA	WBTNALNM
CLMBALMA	MCINALMA	WRRRALNM
CLMNALMA	MDSNALNM	WTMPALMA
CNTMFLLE	MNTVALNM	YORKALMA
CTRNALNM	MOBLALAP	
DCTRALMT	MOBLALAZ	

FLORIDA
BELL SOUTH SAC 215191

CHPLFLJA	LKCYFLMA	PNSCFLBL
CNTMFLLE	LYHNFLOH	PNSCFLFP
FMTNALMT	MLTNFLRA	PNSCFLHC
GCVLFLMA	MNSNFLMA	PNSCFLPB
GLBRFLMC	PACEFLPV	PNSCFLWA
HAVNFLMA	PCBHFLNT	SYHSFLCC
HLNVFLMA	PNCYFLCA	VERNFLMA
JAYFLMA	PNCYFLMA	FNFNFLMA

GEORGIA
BELL SOUTH SAC 225192

ADAIRSVL	DUBLIN	NEWNAN
ALBANY	EASTMAN	NEWTON
ATHENS	EATONTON	PELHAM
ATLANTA	FLOWEYBRCH	PINE MT
ATLANTA NE	FORSYTH	RICHLAND
ATLANTA NW	FORTVALLEY	ROCKMART
ATLANTA SO	FRANKLIN	ROME
AUGUSTA	GAINESVL	ROYSTON
BAINBRIDGE	GRANTVILLE	SANDERSVL
BARNESVL	GREENSBORO	SAVANNAH
BLACKSHEAR	GREENVILE	SENOIA
BOWDON	GRIFFIN	SMITHVILLE
BRUNSWICK	HAMILTON	SOCIALCRCL
BUFORD	HAZLEHURST	SPARKS
CALHOUN	HOGANSVL	SPARTA
CAMILLA	JACKSON	SWAINSBORO
CARROLLTON	JESUP	SYLVESTER
CATERSVL	LAGRANGE	THOMASVL
COCHRAN	LAKE PARK	TIFTON
COLUMBUS	LEESBURG	VALDOSTA
CONCORD	LUMPKIN	VIDALIA
CORDELE	LUTHERSVL	VILLA RICA
COVINGTON	MACON	WARNERRBNS
CUMMING	MADISON	WRENS
CUSSETA	MONTICELLO	WRIGHTSVL

TENNESSEE
BELL SOUTH SAC 295185

BLGPTNMA	KNVLTNWH	NSVLTNDO
CHTGTNBR	KNVLTNYH	NSVLTNHH
CHTGTNDT	LBNNTNMA	NSVLTNIN
CHTGTNHT	LFLTTNMA	NSVLTNMC
CHTGTNNS	LNCYTNMA	NSVLTNMT
CHTGTNRB	LODNTNMA	NSVLTNST
CHTGTNSM	LYLSTNMA	NSVLTNUN
CLEVTNMA	MAVLTNMA	OKGVKYES
CLTNTNMA	MCKNTNMA	OKRGTNMT
CLVLTNMA	MMPHTNBA	PSVWTNMT
CRVLTNMA	MMPHTNCK	PTLDTNMA
DNRGTNMA	MMPHTNCT	RRVLTNMA
FKLNTNCC	MMPHTNEL	SANGTNMT
FKLNTNMA	MMPHTNGT	SHCPTNXA
FRDNTNMA	MMPHTNMA	SMYRTNMA
FYVLTNMA	MMPHTNMT	SNVLTNMA
GRVLTNXZ	MMPHTNOA	SRVLTNMA
HCRDTNXA	MMPHTNSL	SVVLTNMT
HDVLTNMA	MMPHTNWW	SWTWTNMY
HHNWTNMA	MNCHTNMA	TLLHTNMA
JCSNTNMA	MRBOTNMA	UNCYTNMA
JFCYTNMA	MRTWTNMA	WHBLTNMT
JLLCTNMA	MSCTTNMT	WHHSTNMA
KNVLTNBE	NSVLTNAP	WHPITNMA
KNVLTNFC	NSVLTNBW	
KNVLTNMA	NSVLTNCH	

VIRGINIA
VERIZON S VA (Contel) SAC 190233

AMHRVAXA	GLDSVAXA	NKVLVAXA
APMTVAXA	GRBRVAXA	OCQNVAXA
BRWRVAXA	GRBRVAXB	PMPLVAXA
CALLVAXA	GRTSVAXA	QNTCVAXA
CHNCVAXA	HRBRVAXA	RPHNVAXA
DLCYVAXA	HYMRVAXA	SMFDVAXA
DLLSVAXA	KZTWVAXA	STCKVAXA
DYTNVAXA	LRTNVAXA	STFRVAXZ
EDOMVAXA	MGVLVAXA	WNDSVAXA
EKTNVAXA	MNSSVAXA	WYCVVAXA

VIRGINIA
VERIZON VA, INC. (SAC 195040)

ALSNVAAD	CNCRVACN	LOUSVALU
ALSNVAAX	CNVIVACT	LRTNVAGU
ALSNVABA	CRBGVACB	LSBGVALB
ALSNVABR	CRVIVACV	LVTNVALN
ALSNVACN	CRVLVACV	LVVLVALV
ALSNVAFR	DAVLVADA	LYBGVACH
ALSNVAMV	DAVLVAFP	LYBGVACV
ARTNVAAR	DBLNVADU	LYBGVAMH
ARTNVACK	DCVLVADV	LYBGVANL
ARTNVACY	FIFEVAFI	LYBGVAOF
ARTNVAFC	FLCHVAMF	LYBGVATM
ASBNVAAS	FRBGVAFB	LYBGVAYB
ASKDVAAS	FRBGVALH	MCLNVAVL
BCHNVABH	FRFXVABF	MDBGVAMI
BDRFRVABD	FRFXAFF	MNKNVAMN
BELVLVABV	GNBOVAGA	MNRLVAML
BGISVABI	GNWDVAGW	MRSHVAMA
BLMTVABM	GOVLVAGV	NLFRVANF
BOYCVABY	GVTNVAGR	NRFLVABL
BTHIVABT	HLBOVAHB	NRFLVABS
CCVLVACH	HMPNVAAB	NRFLVAGS
CGVLVACL	HMPNVADC	NRFLVASP
CHESVACR	HMPNVAQN	NRFLVAWC
CHHMVACH	HPWLVAHW	NRTNVANO
CHSKVACD	HRNDVADU	NRWSVANA
CHSKFAGU	HRNDVAHE	NWNWVAHV
CLPPVACU	HRNDVAST	NWNWVAJF
CLPPVAGR	JNVLVAJV	NWNWVAYK
CLVRVACL	LBNNVALB	ORNGVAOR
CMLDVACU	LBNNVARD	PCVLVAPV

VIRGINIA
VERIZON VA, INC. (SAC 195040)

continued

PLSKVAPU	RNGLVARG	STTNVAST
PNGPVAPG	RONKVABK	STTNVAVE
PNRVVAPR	RONKVABS	SWVLVASV
PRBGVAPB	RONKVACS	THPLVATP
PTBGVAPB	RONKVACV	UNVLVAUV
PTMOVAHS	RONKVAGC	UPVLVAUP
RCMDVACG	RONKVALK	VINNVAVN
RCMDVAGK	RSTNVAFM	VRBHVACC
RCMDVAGR	RSTNVALF	VRBHVAGN
RCMDVAGY	SALMVAFL	VRBHVAIL
RCMDVAHL	SALMVAMC	VRBHVAIR
RCMDVAHR	SALMVASA	VRBHVAPT
RCMDVAHS	SFFLVASK	VRBHVARC
RCMDVAIT	SHVLVASW	VRBHVAVB
RCMDVALS	SNMTVASM	WISEVAWI
RCMDVAPE	SNTNVASS	WLBGVAWM
RCMDVAPS	SPFDVASP	WNCHVANM
RCMDVARA	SPTSVASP	WNCHVAWC
RCMDVASN	SRVLVASP	WNTRVAWG
RCMDVASR	STCYVASC	WRTNVAWR
RDFRVARA	STRDVASD	WTFRVAWT

Appendix C

Rural Telephone Study Areas for Inclusion in Nextel's ETC Service Area

ALABAMA
Butler Telephone Co., Inc. (now TDS)
Castleberry Telephone Co., Inc.
Frontier Communications of Alabama
Frontier Communications of the South
Graceba Total Communications, GTC Inc. – AL, Gulf Telephone Company
Hayneville Telephone Co., Inc.
Millry Telephone Company
Mon-Cre Telephone Cooperative
Pine Belt Telephone Company
Union Springs Telephone Co., Inc.

FLORIDA
GTC, Inc. – FL
Frontier Communications – South
AllTel Florida, Inc.
Quincey Telephone Co.

GEORGIA
Quincy Tel Co-GA Div
Bulloch County Rural
Citizens Tel Co.-GA
Glenwood Tel Co
Comsouth Telecomm
Interstate Tel. Co.
Pembroke Tel Co
Pineland Tel Coop
Planters Rural Coop
Plant Tel Co
Progressive Rural
Public Service Tel
Frontier of GA
Waverly Hall LLC
Accucom Telecom

NEW YORK
Armstrong Tel Co-NY
Frontier-Ausable Val
Berkshire Tel Corp
Cassadage Tel Corp
Champlain Tel Co
Chautauqua & Erie
Chazy & Westport
Citizens Hammond NY
Taconic Tel Corp
Crown Point Tel
Corp
Delhi Tel Co

(New York – continued)
Deposit Tel Co
Dunkirk & Fredonia
Edwards Tel Co
Germantown Tel Co
Hancock Tel Co
Margaretville Tel Co
Middleburgh Tel Co
Alltel NY-Fulton
Newport Tel Co
Ogden Tel Co
Oneida County Rural
Ontario Tel Co, Inc.
AllTel NY-Red Jacket
Oriskany Falls Tel
Pattersonville Tel
Port Byron Tel Co
Frontier – Rochester
Frontier – Seneca Gorh
State Tel Co
Frontier – Sylvan Lake
Township Tel Co
Trumansburg Tel Co
Vernon Tel Co
Warwick Valley-NY
Citizens Telecom-NY
Citizens-Red Hook
Citizens-West. Cnty
Verizon New York

PENNSYLVANIA
Bentleyville Communications Company
Frontier Communications of Breezewood
Buffalo Valley Telephone Company
Frontier Communications of Canton
Commonwealth Telephone Company
Conestoga Telephone & Telegraph Company
Denver and Ephrata Telephone & Telegraph Company
Ironton Telephone Company
Lackawaxen Telecommunications Services, Inc.
Laurel Highland Telephone Company
Mahanoy and Mahantongo Telephone Company
Marianna-Scenery Telephone Company
North Eastern PN Telephone Company
North Penn Telephone Company
Armstrong Telephone Company – North
Palmerton Telephone Company
Pennsylvania Telephone Company
Pymatuning Independent Telephone Company
South Canaan Telephone Company
Sugar Valley Telephone Company
Venus Telephone Company
West Side Telecommunications

TENNESSEE
United Inter-MT-TN

VIRGINIA
Amelia Tel Corp
Citizens Tel Coop
Ntelos, Inc.
North River Tel Coop
Pembroke Tel Coop
Peoples Mutual Tel
Roanoke & Botetourt
Shenandoah Tel Co
Virginia Tel Co
Verizon South VA
New Castle Tel Co.