

APPENDIX B

ORDER DESIGNATING RCC MINNESOTA, INC. AS AN ETC

THE STATE CORPORATION COMMISSIONS
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel
Michael C. Moffet

In the Matter of Petition of RCC)
Minnesota, Inc. for Designation as an) Docket No. 04-RCCT-338-ETC
Eligible Telecommunications Carrier)
Under 47 U.S.C. §214(e)(2).)

ORDER NO. 14
ORDER GRANTING ETC DESIGNATION
AND ADDRESSING ADDITIONAL ISSUES

NOW COMES the above-captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On October 10, 2003, RCC Minnesota, Inc. (RCC) filed its petition seeking designation as an Eligible Telecommunications Carrier (ETC) for all available support from the Federal Universal Service Fund (FUSF) including, but not limited to, support for rural, insular and high-cost areas and low-income customers. The application included a request for redefinition of the service area of some rural carriers and Southwestern Bell Telephone Company (SWBT).

2. SWBT, Independent Telecommunications Group, Columbus et al. (ITG), the State Independent Alliance (SIA) and WWC License, LLC d/b/a Western Wireless (Western Wireless) intervened in the docket.

3. On December 17, 2003, the Commission issued an order setting out a procedural schedule to, among other things, establish dates by which testimony was due to be filed. These testimony filing dates were modified by further order of the Commission.

4. Staff, ITG, SIA and Western Wireless filed rebuttal testimony on January 22, 2004. Surrebuttal testimony was filed by RCC and cross-answering testimony was filed by Staff, ITG and Western Wireless on March 4, 2004.¹ In addition, Staff filed supplemental testimony on March 23, 2004 and RCC filed additional testimony on April 12, 2004.

5. An evidentiary hearing was held on April 27-28, 2004. Mark P. Johnson, James Kirkland and David A. LaFuria appeared for RCC. James P. Zakoura appeared for Western Wireless. Bruce Ney appeared for SWBT. Thomas E. Gleason, Jr., appeared for ITG. James M. Caplinger and Mark E. Caplinger appeared for SIA. Robert E. Lehr appeared for Staff and the public generally.

6. Staff and Western Wireless filed initial post-hearing briefs on June 4, 2004. ITG, SIA and RCC filed initial post-hearing briefs on June 7, 2004. Staff, SIA and ITG filed reply briefs on June 21, 2004. RCC filed its reply brief and a compendium of state and Federal decisions on wireless ETC issues on June 22, 2004.

II. FEDERAL ETC REQUIREMENTS

7. Section 214(e) of the Federal Telecommunications Act of 1996 (Federal Act) discusses the requirements that a company must meet in order to be designated an ETC and the role of this Commission in making the determination. Section 214(e)(1)-(2) states:

(e) Provision of Universal Service.

(1) Eligible telecommunications carrier. A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be

¹ The surrebuttal testimony of Don Wood on behalf of RCC was late-filed on March 5, 2004, by order of the Commission.

eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received;

- (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 carriers' services (including the services offered by another eligible telecommunications carrier); and
 - (B) advertise the availability of such services and the charges therefore using media of general distribution.
- (2) 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 requirement 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. 47 U.S.C. §214(e)(1)-(2).

Therefore, before designating RCC as an ETC in the requested service areas, the Commission must determine:

- a) whether RCC is offering or will be able to offer the supported services using its own facilities or a combination of its own facilities and resale;
- b) whether RCC will offer those services throughout the requested service areas;
- c) whether RCC will advertise the services through media of general distribution; and,
- d) whether designating RCC as an ETC in a service area served by a rural carrier is in the public interest.

8. Section 214(e)(5) of the Federal Act defines "service area" as:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [Federal Communications] Commission and the

States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

“Service areas” or “operating areas” are defined by the state act in K.S.A. 66-1,187(k). K.S.A.

66-1,187(k) provides that:

- (1) In the case of a rural telephone company, operating area or service area means such company’s study area or areas as approved by the federal communications commission;
- (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier’s local exchange service area or areas as approved by the commission.

Thus, a carrier must offer its services throughout a rural telephone company’s entire study area, unless this Commission and the Federal Communications Commission (FCC) approve a different service area. Wire centers are the service area currently designated by the Commission for universal service support for areas served by non-rural telephone companies.² A company may request redefinition of a service area if it cannot provide service throughout the entire service area using its own facilities or through resale. RCC has requested redefinition of some service areas.

III. RCC’S ABILITY TO MEET FEDERAL ETC REQUIREMENTS

A. Services or Functionalities

9. In its Petition for ETC Designation,³ RCC indicates that it will provide service using its own facilities that include wireless antennas, towers and mobile switching offices.⁴

² In the Matter of an Investigation Into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-Based Fund, Docket No 99-GIMT-326-GIT, Order No. 10, issued September 30, 1999, ¶56.

³ Verified Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier (Petition for ETC Designation), October 10, 2003.

⁴ *Id.* at ¶14.

RCC indicates that the company is a common carrier licensed by the FCC as the “A” side provider of cellular telecommunications services in several Rural Service Areas (RSAs).⁵

10. Based on the Federal-State Joint Board recommendations under Section 254(c), the FCC has defined “universal service” in 47 C.F.R. §54.101(a). “Universal service” is defined as including the following services or functionalities: (1) voice-grade access to the public switched network; (2) local usage; (3) dual-tone multi-frequency (DTMF); (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. Based on Section 214(e)(1)(A) of the Federal Act and 47 C.F.R. §54.201(d)(1), a carrier must provide these services or functionalities to receive designation as an ETC, which then makes the carrier eligible to receive FUSF. Each service or functionality is discussed more fully below.

11. 47 C.F.R. §54.101(a)(1) provides that voice grade access to the public switched network is a universal service that should be supported through the Federal universal service mechanism.⁶ Therefore, RCC must provide this service in order to be designated as an ETC. RCC states it meets this requirement by providing voice-grade access to the public switched network. All customers of RCC are able to make and receive calls with a bandwidth of approximately 2700 Hertz.⁷ The KCC finds RCC provides voice grade access to the public switched network and is in compliance with 47 C.F.R. §54.101(a)(1).

⁵ *Id.* at Exhibit E, ¶¶ 3 and 5.

⁶ Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. Voice grade access shall occur, at a minimum, within the frequency range between 300 Hertz and 3,000 Hertz.

⁷ *Gruis Direct*, p. 2, lines 25-26.

12. 47 C.F.R. §54.101(a)(2) provides that local usage shall be supported by Federal universal service support.⁸ RCC states that it will comply with any and all minimum local usage requirements adopted by the FCC. RCC states that it will meet the local usage requirements by including substantial local usage in all of its rate plans.⁹ The FCC initiated a proceeding to identify a minimum amount of local usage required to be included in a universal service offering.¹⁰ The FCC has not rendered a decision in that proceeding. When the FCC renders its decision, all ETCs will be required to comply with any minimum local usage requirements adopted by the FCC. In addition, the Fifth Circuit Court of Appeals determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive Federal universal service support.¹¹ Therefore, if the KCC, independent of an FCC decision, later requires a minimum amount of local usage, all ETCs will be required to comply with any minimum local usage requirements. The KCC finds that RCC will offer local usage in compliance with current FCC requirements. The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(2).

13. 47 C.F.R. §54.101(a)(3) provides that dual tone multi-frequency (DTMF) signaling or its functional equivalent shall be supported by FUSF.¹² RCC states that it currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally

⁸ Local usage means that a carrier provides an amount of minutes of use of local exchange service, prescribed by the Federal Communications Commission (FCC), without a usage charge to end-users. 47 C.F.R. §54.101(a)(2).

⁹ Petition for ETC Designation at Exhibit E, pp. 2-3.

¹⁰ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997), ¶ 67 (“Universal Service Order”); *Universal Service Further Notice of Proposed Rulemaking*, FCC 98-278 (October 26, 1998) (“NPRM”).

¹¹ *Texas Office of Pub Util. Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

¹² Dual tone multi-frequency signaling is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time. 47 C.F.R. §54.101(a)(3).

equivalent to DTMF signaling.¹³ The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(3).

14. 47 C.F.R. §54.101(a)(4) provides that single-party service or its functional equivalent shall be supported by FUSF.¹⁴ RCC states that it meets this requirement by providing a dedicated path for the length of all customer calls. All of its “loops” are single party connections.¹⁵ The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(4).

15. 47 C.F.R. §54.101(a)(5) provides that access to emergency services including access to 911 and enhanced 911 shall be supported by FUSF.¹⁶ RCC states that it currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement.¹⁷ The FCC has stated that wireless companies are not required to provide all of the E911 services until a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers and establishes a cost recovery mechanism.¹⁸ RCC indicates that it has not yet received either a Phase I or a Phase II request for E911 services from a Kansas local emergency service provider, and RCC does not know whether any PSAP has established a cost recovery system. The KCC finds that RCC provides access to emergency services as currently defined by the FCC rules. The KCC concludes RCC is in compliance with 47 C.F.R.

¹³ Gruis Direct, p. 3, lines 8-9

¹⁴ Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission

¹⁵ Gruis Direct, p. 3, lines 13-14.

¹⁶ Access to emergency services includes access to 911 and enhanced 911 (E911) services provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code (911), to call emergency services through a Public Service Access Point (PSAP) operated by the local government. E911 is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 service to the extent the local government in an eligible carrier’s service area has implemented 911 or E911 systems. 47 C.F.R. §54.101(a)(5).

¹⁷ Petition for ETC Designation at Exhibit E, p. 4.

¹⁸ Universal Service Order at ¶73.

§54.101(a)(5). RCC will be required to provide all of the E911 services when a local emergency service provider makes arrangements for the delivery of ALI and ANI from carriers.

16. 47 C.F.R. §54.101(a)(6) provides that access to operator services shall be supported by FUSF.¹⁹ RCC states that it meets this requirement by providing all of its customers with access to operator services provided by either the company or other entities [*e.g.*, local exchange carriers (LECs), interexchange carriers (IXCs), etc.] by dialing “0”.²⁰ The KCC finds that RCC provides access to operator services. The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(6).

17. 47 C.F.R. §54.101(a)(7) provides that access to interexchange services shall be supported by FUSF.²¹ RCC states that it currently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the company has with several IXCs. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.²² The KCC finds that RCC provides access to interexchange service. The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(7).

18. 47 C.F.R. §54.101(a)(8) provides that access to directory assistance shall be supported by FUSF.²³ RCC states that it meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”²⁴ The KCC finds that RCC

¹⁹ Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. 47 C.F.R. §54.101(a)(6).

²⁰ Petition for ETC Designation at Exhibit E, p. 4

²¹ Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier’s network. 47 C.F.R. §54.101(a)(7).

²² Petition for ETC Designation at Exhibit E, p. 4.

²³ Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. 47 C.F.R. §54.101(a)(8)

²⁴ Petition for ETC Designation at Exhibit E, p. 4.

provides access to directory assistance. The KCC concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(8).

19. 47 C.F.R. §54.101(a)(9) provides that toll limitation for qualifying low-income consumers shall be supported by FUSF.²⁵ An ETC must offer either “toll control”²⁶ or “toll blocking”²⁷ services to qualifying Lifeline customers at no additional charge. RCC states that it currently has no Lifeline customers because only carriers designated as ETCs can participate in the Federal Lifeline program. Once designated as an ETC, RCC will participate in Lifeline as required, and will provide toll blocking capability to its Lifeline customers, at no charge, as part of its universal service offerings.²⁸ If the Commission subsequently requires per minute blocking for Lifeline customers, RCC will be required to comply. Until such time, the Commission concludes that RCC is in compliance with 47 C.F.R. §54.101(a)(9).

20. The KCC concludes that RCC is in compliance with 47 C.F.R. §54.201(d)(1) because it offers each of the services or functions supported by Federal universal service support mechanisms in 47 C.F.R. § 54.101(a).

B. Provision of Service Throughout the Service Area

21. RCC indicates that the company will offer service throughout the service areas in which it is designated as an ETC using its own facilities.²⁹ However, the Direct Testimony of RCC witness Gruis indicates that RCC has developed a six-step process it intends to use to

²⁵Toll limitation is denoted by either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, toll limitation denotes both toll blocking and toll control.

²⁶“Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. §54.400(c).

²⁷“Toll blocking” is a service provided by carriers that lets consumers elect to not allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. §54.400(b).

²⁸Petition for ETC Designation at Exhibit E, p. 5.

²⁹*Id.* at ¶14.

evaluate whether it can commit to serving a remotely located customer.³⁰ Staff expressed concern regarding RCC's commitment to serving customers throughout the designated service area.³¹ Specifically, Staff questioned the reasonableness of the fifth step in which RCC indicates that it will "explore" the possibility of using resale to meet its ETC obligations.³² Staff recommended that RCC be required to file reports with the Commission detailing the geographic area covered by RCC's current infrastructure in service areas where it is designated as an ETC, detailing the manner in which it will provide service in areas its current infrastructure does not serve, detailing the ability of a resold service of a wireless carrier to meet the Federal ETC requirements and detailing its plan, if any, to utilize the resold services of an ILEC.³³ ITG shared this concern, suggesting that: "RCC offers nothing to insure that customers will, in fact, be provided service upon request, and nothing to demonstrate that it is, or will be, able to provide the supported services through the designated service area within a reasonable time."³⁴

22. RCC does not believe the company must respond to all requests for service.³⁵ The company believes its six-step process is sufficient to address all "reasonable" requests for service.³⁶ With regard to the fifth step that addresses the potential use of resale, RCC witness Kohler, at the hearing, did acknowledge that the company does not have resale arrangements currently in place with ILECs and that negotiating those arrangements might take considerable time.³⁷ RCC argues that Staff's suggestion that it provide specific service coverage information, including specific street addresses, is unreasonable and a barrier to entry in violation of Section

³⁰ Gruis Direct, p. 8, line 5 through p. 9, line 20.

³¹ Aarnes Direct, p. 12, line 1 through p. 16, line 9

³² Staff Initial Brief at ¶9.

³³ Aarnes Direct, p. 15, line 12 through p. 16, line 9.

³⁴ Cooper Cross Answering, p. 19, line 16.

³⁵ RCC Initial Brief at ¶12.

³⁶ Kohler Surrebuttal, p. 2, line 20 through p. 3, line 18.

³⁷ T. Vol. I at 80, lines 16-23

253(a) of the Federal Act.³⁸ Additionally, RCC states that such a requirement would violate Section 253(b) of the Federal Act by imposing a requirement on RCC that is not competitively neutral.³⁹ RCC states that such an onerous requirement would deter carriers from seeking ETC status and delay deployment of facilities to rural areas.⁴⁰ RCC also claims that demonstration of actual coverage, down to the street level, does not improve communications opportunities for rural customers or advance universal service.⁴¹

23. Section 214(e)(1)(A) requires an ETC to provide the services for which Federal support is made available “throughout the service area for which the designation is received.” The language is clear. The Commission has concerns with RCC’s commitment to provide service throughout the designated service area. Therefore, the Commission will place two requirements on RCC. The Commission believes it has jurisdiction to place requirements on an ETC consistent with the Fifth Circuit Court of Appeals decision which determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive FUSE.⁴² First, the Commission requires RCC to file a map, within 60 days of the effective date of this order, indicating the extent of its existing infrastructure and the approximate geographic area for which service coverage is available from such facilities. Specifically, the Commission requires RCC to indicate the location of cell towers by section, township, range and distance from the quarter section lines. RCC should also indicate the radius for which reception is available using a conventional hand-held phone and for a more powerful phone such as a bag phone. Thereafter, the map should be updated on a yearly basis and provided to the Commission by December 31 of each year. The Commission does not believe this requirement is unreasonable or in violation of

³⁸ RCC Reply Brief at ¶18

³⁹ RCC Reply Brief at ¶19.

⁴⁰ *Id.*

⁴¹ *Id.* at ¶22

⁴² *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999)

Section 253(a). This is a type of business record that the company can reasonably be expected to possess and maintain for its own business purposes. This cannot be reasonably construed as a barrier to entry. Rather, it is a reasonable means for the Commission to determine where coverage is available for a requesting customer and monitor RCC's progress toward meeting the requests of customers for service. Imposition of this requirement does not mean the Commission believes that RCC must have the immediate ability to serve every customer in the service areas where it receives ETC designation. The Commission is cognizant that it will take time for RCC to expand its network. This requirement should not be viewed as a Commission requirement to replicate wireline service.⁴³ While the Commission believes that one of the purposes of designating additional ETCs is to provide consumers who might not otherwise have competitive alternatives with competitive choices, this does not mean that one competitive ETC must replicate the entire wireline network. However, the ETC must be willing to provide service throughout the service area for which it is designated an ETC with either its own facilities or through resale. Again, the map is an aid for the Commission to use in evaluating the progress made by RCC in meeting this requirement. Contrary to RCC's assertion, the requirement is competitively neutral. Currently, any public utility owning or operating one or more telecommunication supply lines must file annually a map or maps showing routes of all existing telecommunications supply lines. K.A.R. 82-12-7(b). Additionally, RCC is required to report all instances in which the company refuses to serve a customer, after following its six-step process, on a quarterly basis (January 1, April 1, July 1 and October 1). RCC will be required to provide information regarding the specific location of the customer (street address), the company's rationale for reaching the sixth step of the process for a customer and the company's progress with establishing interconnection arrangements which permit resale of either wireless or

⁴³ RCC Reply Brief at ¶22.

ILEC services in the location of the customer the company refused to serve. As Ms. Kohler acknowledged at the hearing, the Commission should determine whether a request for service is reasonable.⁴⁴ This information will aid the Commission in that determination. The Commission also believes that the advertising requirement it will impose later in this Order will serve to create customer awareness of RCC's obligation to serve. Customers will then be able to file complaints with the Commission if they choose. The information will also assist the Commission in determining the reasonableness of any such complaints.

C. Advertising

24. RCC indicates that upon designation as an ETC, it shall advertise the availability of its service offerings throughout the proposed service area. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts and telephone directory advertising. RCC states it will use the same media of general distribution to advertise its universal service offerings and charges and will comply with any advertising requirement adopted by the KCC or the FCC.⁴⁵

25. Staff recommended the Commission further examine the imposition of more specific advertising requirements on all ETCs. Staff suggested that advertising emphasize an ETC's universal service obligation including the offering of service to all consumers in the service area.⁴⁶ While Staff did not specifically recommend placing this requirement on RCC in this docket, the Commission believes it is a reasonable requirement to impose at this time. Again, the Fifth Circuit Court of Appeals determined that states may impose additional eligibility requirements on carriers otherwise eligible to receive Federal universal service support. The Commission directs Staff and RCC to develop language to be used in all advertising for areas in

⁴⁴ T. Vol. I at 80.

⁴⁵ Petition for ETC Designation at ¶24.

⁴⁶ Aarnes Cross Answering, p. 7, lines 18-20 through p. 8, lines 12-16.

which RCC is designated as an ETC. The language developed should include information directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. Staff and RCC shall file a status report with the Commission within 90 days of the effective date of this order informing the Commission of progress in meeting this requirement.

IV. DESIGNATION OF RCC AS AN ETC IN NON-RURAL SERVICE AREAS

26. The Federal Act, at Section 214(e)(2), states that:

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 requirement of paragraph (1). (Emphasis added.)

The language of the Federal Act states that a commission "shall" designate additional ETCs in non-rural service areas if the applicant will provide the required services. The Commission has concluded that RCC is capable of providing the nine supported services and will advertise the availability of its service throughout the designated service area. In prior cases, the Commission has interpreted the use of the word "shall" as leaving the Commission no discretion in designating an ETC in non-rural areas if all supported services were offered and advertised throughout the service area. However, the FCC has indicated in the *Virginia Cellular* proceeding that a public interest finding must also be made.⁴⁷ Below, the Commission will address the public interest analysis for RCC's designation as an ETC in rural areas. As will be detailed below, the Commission finds it is in the public interest to designate RCC as an additional ETC in rural areas so long as it meets the additional requirements imposed by this Order. Thus, the

⁴⁷ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order (rel. January 22, 2004) ("*Virginia Cellular Order*"), ¶27.

Commission finds that RCC satisfies the requirements to be designated as an ETC in the non-rural service areas as designated by this Commission and it is in the public interest to designate RCC as an ETC in non-rural areas so long as it agrees to the additional requirements imposed by this Order.

27. The only non-rural service areas at issue in this proceeding are the service areas of SWBT. Currently, non-rural service areas are defined by this Commission as the wire centers served by non-rural ILECs. In its Petition for ETC Designation, RCC states that for non-rural ILECs, it “requests ETC designation in that portion of the wire center where it does provide service.”⁴⁸ RCC acknowledged that in non-rural areas the Commission can “define service areas as it sees fit” and “may establish an ETC service area for a competitor without Federal concurrence.”⁴⁹ However, in RCC’s Initial Brief, the company seems to imply that the Commission must accept its proposal to have a service area defined by its operating footprint. RCC states that it “is not aware of an FCC or state case that places the rural telephone protections, contained in Section 214 of the Act or Section 54.207 of the FCC’s rules, on carriers serving non-rural areas.”⁵⁰

28. Section 214(e)(5) of the Federal Act defines “service area” as “a geographic area *established by a State commission for the purpose of determining universal service obligations and support mechanisms.*” (Emphasis added.) The Commission has previously determined that non-rural service areas are to be the wire centers in the service territories of non-rural ILECs. Federal support is provided to non-rural ILECs on a wire center basis. Contrary to RCC’s position in its Initial Brief, the Commission does need to make a determination regarding whether to define a new geographic area as a service area in territory served by SWBT. The

⁴⁸ Petition for ETC Designation at ¶8.

⁴⁹ Petition for ETC Designation at ¶8.

⁵⁰ RCC Initial Brief at ¶53.

Commission declines to adopt a new definition of service area at this time. As Staff has stated, the FCC determined that when redefining a service area, the new definition will apply to all future ETCs.⁵¹ The Commission believes the FCC's interpretation of the applicability of service area definitions to future ETC applicants is reasonable. Thus, the Commission finds that it shall retain wire centers as the service area for areas served by non-rural ILECs. The Commission agrees with RCC's position that rural protections need not be extended to non-rural carriers. Therefore, the Commission will not impose the customer density analysis advocated by the FCC for determination of whether a carrier will be designated as an ETC for a particular wire center. To the extent that RCC is capable of providing service throughout an entire SWBT wire center and meets the requirements imposed in this Order, it shall be designated as an ETC in a particular SWBT wire center. Testimony by Staff states there are 27 SWBT wire centers that coincide with RCC's operating footprint.⁵² The Commission has found Staff's mapping process to be accurate and reliable. Attachment A sets out the SWBT wire centers in which the Commission designates RCC as an ETC, if the company agrees to the additional requirements imposed in this Order.

V. PUBLIC INTEREST ANALYSIS

29. As indicated previously, for service areas of rural companies, the Commission must make a finding that designation of an additional ETC is in the public interest. The Commission, in Docket No. 99-GCCZ-156-ETC, established a rebuttable presumption that it is in the public interest to designate additional ETCs in the areas served by rural telephone companies. In its May 19, 2000 Order issued in Docket No. 99-GCCZ-156-ETC, the Commission stated the following:

⁵¹ Aarnes Cross Answering, p. 32, lines 10-26.

⁵² Aarnes Direct, p. 16, line 20.

The Commission must be guided by K.S.A. 1999 Supp. 66-2001 when making determinations that affect telecommunications customers in Kansas. The clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas. Arguments have been made that competition is not in the public interest in any rural telephone company service area because it may jeopardize universal service. However, there had been no basis presented for reaching the broad conclusion that competition and universal service are never able to exist together in rural areas. The Commission does not accept the assertion that designating additional ETCs in rural areas will necessarily threaten universal service. The benefits of competition and customer choice are available to Kansans living in non-rural areas. General concerns and speculation are not sufficient justification for adopting a policy that would result in benefits and services that are available to other Kansans not also being available to rural telephone customers. **The Commission finds, as a general principle, that allowing additional ETCs to be designated in rural telephone company service areas is in the public interest.**

This general public interest finding is a presumption which may be rebutted by individual rural telephone companies. The Commission has the discretion to find that in a particular discrete rural area, competition is not in the public interest. The obligation to establish that additional ETCs are not in the public interest is on the rural telephone company serving that area. Such a determination must be based on the facts shown to exist in a specific study area.⁵³ (Emphasis added.)

30. In its direct testimony, Staff indicated its belief that the Commission had made this decision as a generic policy statement to be applicable to all applications for ETC designation.⁵⁴ Staff stated that, as a general presumption, designation of additional ETCs in rural areas is in the public interest but added that the companies affected by the applications should be given an opportunity to rebut that notion.⁵⁵ In cross-answering testimony, Staff stated that the FCC had recently found that considering only the value of competition is not sufficient in making a public interest finding.⁵⁶ While noting that the Commission is not bound by the FCC's

⁵³ *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, May 19, 2000 Order, pp. 3-4 ("Western Wireless Order").

⁵⁴ Aarnes Direct, p. 35, line 31.

⁵⁵ *Id.* at p. 36, lines 1-9.

⁵⁶ Aarnes Cross-Answering, p. 3, lines 25-27.

determination (discussed later), Staff provided an analysis consistent with the FCC's recommendations.⁵⁷

31. SIA argued in its rebuttal testimony that the Commission has not established specific criteria for evaluating the public interest. SIA witness Barron suggested that the Commission wait for the Federal-State Joint Board to issue its recommendations regarding ETC designations and for the FCC to adopt such recommendations.⁵⁸ Alternatively, Mr. Barron suggested that the Commission evaluate the public interest as outlined by the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO).⁵⁹ Mr. Barron suggests that the following be considered:

- whether consumers will receive access to affordable and quality services, including advanced services;
- whether the universal service support will be used to incent uneconomic entry;
- the impact on the universal service fund;
- whether the benefits of competition outweigh the cost of supporting multiple networks; and,
- the potential for and the impact of market failure.⁶⁰

Mr. Barron then concentrates his testimony on a cost-benefit analysis. Relying on the testimony of ITG witness Cooper, Mr. Barron concludes that there are no new benefits available to consumers through the designation of RCC as an ETC.⁶¹ Mr. Barron suggests that the costs associated with designating RCC as an ETC can be seen through increases in the total Federal universal support program which leads to higher assessments on consumer bills and the decline

⁵⁷ *Id.* at p. 26, line 6 through p. 31, line 26.

⁵⁸ Barron Rebuttal, p. 4, line 19 through p. 5, line 10.

⁵⁹ *Id.* at p. 11, line 26 through p. 12, line 23.

⁶⁰ *Id.* at p. 12, lines 4-19.

⁶¹ *Id.* at p. 14, lines 5-6

in political support for such support programs.⁶² Both of these are believed to lead to higher rates for consumers. Mr. Barron also provides an estimate of the impact on the Federal fund if all wireless companies, not just RCC, in the rural service areas in question were provided with support.⁶³ SIA concludes that it is not in the public interest to designate RCC as an ETC in rural service areas. SIA did not address the FCC's decision in its *Virginia Cellular Order*.

32. ITG also argued that designation of RCC as an ETC is not in the public interest.⁶⁴ Through its witness, Mr. Paul Cooper, ITG suggests that RCC is already providing service and thus the benefits RCC's service brings to the market are already available.⁶⁵ Mr. Cooper suggests several other reasons that designation of RCC as an ETC in rural service areas is not in the public interest. Mr. Cooper asserts that it is not in the public interest to designate RCC as an ETC because: RCC does not have a cost based need for Federal support, RCC's rates are not affordable and do not include a reasonable amount of local usage, RCC has not shown that its service is reliable, RCC's expanded calling scopes are not supported services and RCC is not willing to commit to provide service to requesting customers within a reasonable time period.⁶⁶ In cross-answering testimony, Mr. Cooper addresses the FCC's public interest examination enumerated in the *Virginia Cellular Order*. Mr. Cooper concluded that RCC had not demonstrated that those criteria would be met.⁶⁷

33. RCC suggests that designating the company as an ETC in rural service areas is in the public interest. RCC witnesses Kohler and Wood address the public interest issue. RCC claims that consumers will have additional choices for equipment, modes of service, calling

⁶² *Id.* at p. 15, lines 11-15.

⁶³ *Id.* at Attachment CSB-2

⁶⁴ Cooper Rebuttal, p. 3, lines 13-14.

⁶⁵ *Id.* at p. 3, lines 15-19 and p. 9, line 10 through p. 11, line 5.

⁶⁶ *Id.* at p. 4, lines 1-13 and p. 13 line 9 through page 19, line 17

⁶⁷ Cooper Cross Answering, p. 15, line 12 through p. 20, line 21.

plans and carriers.⁶⁸ In addition to the broader service plans and equipment options, consumers will eventually benefit from carriers becoming more efficient and responsive to their service needs.⁶⁹ Mr. Wood believes that competitive entry is also necessary to promote economic development in rural areas and to address rural health and safety.⁷⁰ Regarding the FCC's *Virginia Cellular Order*, RCC does not believe the Commission is bound by the FCC's order.⁷¹ Additionally, Ms. Kohler advises the Commission that RCC believes the FCC has unlawfully shifted the burden of proof to the petitioner.⁷² Finally, Ms. Kohler suggests that because the *Virginia Cellular* decision is under reconsideration and may be modified, the Commission should not apply this new analysis.⁷³ However, if applied, RCC believes it meets the public interest test introduced in the *Virginia Cellular Order*.⁷⁴

34. As mentioned above, during the course of this proceeding, the FCC adopted other considerations in evaluating public interest findings for rural company service areas in its *Virginia Cellular Order*. In that order, the FCC states:

We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame.⁷⁵

⁶⁸ Kohler Direct, p. 4, line 4 through p. 6, line 2.

⁶⁹ Wood Direct, p. 5, line 14 through p. 6, line 7.

⁷⁰ *Id.* at p. 7, line 10 through p. 8, line 11.

⁷¹ Kohler Surrebuttal, p. 12, lines 14-17.

⁷² *Id.* at p. 12, lines 21-23.

⁷³ *Id.* at p. 13, lines 1-7.

⁷⁴ *Id.* at p. 15, line 21 through p. 17, line 9.

⁷⁵ *Virginia Cellular Order* at ¶4.

While the FCC's *Virginia Cellular* decision is not binding on this Commission, the Commission finds that examination of the additional factors enumerated in the FCC's order is reasonable despite the concerns expressed by RCC. Because the designation at issue in this proceeding is for designation as an ETC for access only to FUSF support, the Commission believes following the FCC's lead in this matter is the prudent and appropriate course. Although SIA suggests that the Commission review the public interest through a cost-benefit analysis and ITG suggests other factors for consideration, at this time, the Commission will adopt the analytical framework outlined by the FCC. To the extent the FCC's public interest test incorporates the concerns of SIA and ITG, those issues will be addressed.

A. Benefits of Increased Competitive Choice

35. On behalf of RCC, Ms. Kohler argues that the benefits of increased customer choice are lower prices and new, improved services from both the competitor and the ILEC.⁷⁶ Staff states that one benefit associated with RCC providing new customer service options, aside from those already noted, will be the contribution of new telecommunications infrastructure in the state.⁷⁷ ITG suggests that the services are already being offered, without ETC designation, thus no new benefits will accrue.⁷⁸ SIA did not provide specific testimony regarding the *Virginia Cellular Order*.

36. The Commission concludes that the evidence presented supports a finding that designation of RCC as an ETC in rural service areas will provide benefits flowing from increased customer choice. The motive for moving toward a competitive telecommunications market has been supported by the economic argument that competitive alternatives will result in customers making choices among service providers which will ultimately lead to lower prices

⁷⁶ Kohler Surrebuttal, p. 16, lines 9-12.

⁷⁷ Aarnes Cross Answering, p. 26, lines 20-21.

⁷⁸ Cooper Cross Answering, p. 15, lines 17-22.

and better service for consumers. Nothing in this proceeding persuades the Commission that these general arguments are invalid in the service areas in which ETC designation is requested. Specific testimony has been provided by RCC that it will expand and improve its network leading to additional competitive options in the state. While ITG and SIA point out that RCC is already offering some service options in some rural areas of the state, RCC will be able to expand its service offerings to other rural areas if designated as an ETC. The direct testimony of RCC witness Kohler states that the company will build additional facilities, increase the number of areas in which RCC can provide service, improve service in areas it currently serves and provide new service enhancements.⁷⁹ The Commission believes that this improvement and expansion of the existing network will bring new competitive benefits to both RCC's current customers and those that will be able to utilize RCC's service for the first time. The Commission also concludes that the requirement imposed on RCC to provide the Commission with coverage maps will assist the Commission in monitoring the expansion of coverage to new areas of the state.

B. Impact of Multiple Designations on the Universal Service Fund

37. Staff witness Aarnes testified that based on projections RCC provided the Universal Service Administrative Company (USAC), RCC will be eligible to receive \$591,000 in high-cost support for the second quarter of 2004.⁸⁰ Ms. Aarnes states that this is approximately .07 percent of all high-cost support paid through the fund.⁸¹ RCC states that, according to USAC's projections at the time, the company would be eligible for approximately \$3.1 million in high-cost support during its first year of eligibility or approximately 0.1 percent

⁷⁹ Kohler Direct, p. 3 line 17 through p. 6, line 2

⁸⁰ Aarnes Cross Answering, p. 28, line 1.

⁸¹ *Id.* at p 28, line 2.

of all high-cost support paid through the fund.⁸² ITG argues that RCC has not established a cost-based need for support and therefore it must be presumed that the designation of RCC as an ETC will have a negative impact on the fund.⁸³ SIA indicates that if every wireless subscriber, regardless of whether the customer is served by RCC, receives support, the fund would increase by \$31 million.⁸⁴

38. The *Virginia Cellular* Order does not require a competitive ETC to prove that it has a cost-based need for support. Further, since at this time the FCC ports the ILEC's per-line support to competitive ETCs, it seems unlikely that the FCC intends for need to be considered in conjunction with this public interest criterion. Thus, the Commission does not believe ITG's comments are relevant in this instance. The calculation provided by SIA is not consistent with the requirements of the *Virginia Cellular* Order. The Commission acknowledges that SIA did not have knowledge of the *Virginia Cellular* Order when Mr. Barron filed his rebuttal testimony. Nonetheless, the Commission must address Mr. Barron's calculation in light of that decision. The FCC now indicates that it will consider the impact of the particular ETC applicant receiving funds not the impact of all potential ETC applicants. Unfortunately, the *Virginia Cellular* Order does not provide a specific level of impact on the Federal fund the FCC would consider to be substantial enough to warrant denial of an ETC designation. The Commission concludes that the estimated impact on the fund, that is, approximately 0.1 percent, is unlikely to be viewed as significant.

C. Unique Advantages and Disadvantages of the Competitor's Service

39. RCC argues that some unique advantages to its service offerings are mobility, large local calling areas and the ability to choose among service plans with varied usage

⁸² Kohler Surrebuttal, p. 17, line 22 through p. 18, line 4; RCC Initial Brief at ¶39

⁸³ Cooper Cross Answering, p. 16, lines 8-10.

⁸⁴ Barron Rebuttal, p. 19, lines 1-7.

amounts.⁸⁵ Staff echoes these advantages and acknowledges that RCC's wireless offering may also carry with it some disadvantages. Staff notes that some parties claim that wireless services are provided at a lower level of service quality than landline service.⁸⁶ However, Staff suggests that universal service support could be used to improve service quality and that if the Commission is concerned with service quality, it could develop service standards to be imposed on all ETCs.⁸⁷ Staff pointed out that the existence of "dead spots" is acknowledged by FCC rules and therefore cannot be used as evidence that a company is unwilling or incapable of providing acceptable service.⁸⁸ ITG suggests that the Commission must carefully examine the number of minutes included in a plan before attributing RCC's service offering with a larger calling scope. If the plan does not contain a sufficient number of minutes, the customer may end up paying for additional minutes whether they are for local or toll calls.⁸⁹ ITG claims that the additional costs could render the offerings "unaffordable" as compared to current target local residential rates set by statute.⁹⁰ ITG suggests that the Commission should deem specific rate plans as eligible for universal service fund support.⁹¹ RCC responded that affordability of service is presumed in competitive markets,⁹² and that "the FCC has confirmed on numerous occasions that a competitive ETC receives support on all lines, irrespective of how much a customer pays for service."⁹³

40. The Commission finds that RCC's service offerings do offer unique advantages such as mobility and larger calling scopes. The Commission tempers its finding with the

⁸⁵ Kohler Surrebuttal, p. 16, lines 14-17

⁸⁶ Aarnes Cross Answering, p. 28, lines 13-18.

⁸⁷ *Id.* at p. 28, line 21 through p. 29, line 2.

⁸⁸ *Id.* at p. 29, lines 4-28.

⁸⁹ Cooper Cross Answering, p. 17, line 14 through p. 18, line 15.

⁹⁰ Cooper Rebuttal, p. 14, line 22.

⁹¹ *Id.* at pp. 16-17

⁹² RCC Initial Brief at ¶41.

⁹³ *Id.* at ¶69.

understanding of local calling scopes offered by ITG. The Commission notes that in the *Virginia Cellular Order*, the FCC states:

... the mobility of Virginia Cellular's wireless will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁹⁴

With regard to mobility, the Commission notes that an ETC is not limited to providing only the designated universal services and functionalities, only that the support must be used for its intended purpose. The Commission finds that the advantages of RCC's service are a greater benefit than any harm caused by disadvantages. Consumers are able to decide whether the advantages outweigh the disadvantages of RCC's service offerings. If the advantages are not great enough, consumers will not subscribe to the service and RCC will not receive support.

D. Service Quality Commitments

41. RCC witness Gruis states that the company makes every effort to provide reliable service. He reports that RCC's outage response time is usually less than one hour, that battery backups are installed at cell sites, generators are located at key communications sites and at the switch and all sites are monitored remotely by the switch.⁹⁵ RCC claims to have a call completion rate of approximately 98 percent.⁹⁶ RCC also states that customer service representatives are available 24 hours a day, seven days a week – toll and airtime-free.⁹⁷ Additionally, RCC has committed to follow the Cellular Telecommunications Industry

⁹⁴ *Virginia Cellular Order* at ¶29.

⁹⁵ Gruis Direct, p. 5, line 16 through p. 6, line 6.

⁹⁶ *Id.* at p. 6, line 17.

⁹⁷ *Id.* at p. 6, lines 20-21.

Association (CTIA) customer code for wireless service.⁹⁸ RCC will also report the number of consumer complaints per 1000 handsets each year.⁹⁹ Staff states that it is not opposed to the imposition of quality of service standards for RCC and all other ETCs and suggests that the Commission open a generic proceeding to explore this issue.¹⁰⁰ SIA states that RCC has not demonstrated a commitment to quality service.¹⁰¹

42 The Commission finds that RCC has met the requirements set out in the *Virginia Cellular Order* by committing to comply with CTIA's Code for Wireless Service and to report the number of complaints per 1000 handsets each year. These are the same commitments accepted by the FCC. However, the Commission is interested in exploring additional quality of service standards in a generic proceeding.

E. Ability to Provide the Supported Services Throughout Service Area Within a Reasonable Timeframe

43 RCC states that its six-step process for evaluating requests for service demonstrates its commitment to make service available.¹⁰² RCC commits to providing the Commission with a report regarding how it has used universal service support within the state to expand its network.¹⁰³ Staff reiterated its concern with RCC's commitment to provide service throughout the service area.¹⁰⁴ ITG shares Staff's concern.¹⁰⁵ However, in its Initial Brief, Staff found that the commitments made by RCC in its Additional Testimony and in the hearing demonstrate that RCC is willing to provide service within a reasonable amount of time.¹⁰⁶

⁹⁸ Kohler Additional, p. 7, lines 14-17.

⁹⁹ Kohler Surrebuttal, p. 17, lines 3-4.

¹⁰⁰ Aarnes Cross Answering, p. 31, lines 4-6.

¹⁰¹ Cooper Cross Answering, p. 19, lines 3-4.

¹⁰² Kohler Surrebuttal, p. 17, lines 6-9.

¹⁰³ Kohler Additional, p. 8, lines 5-16.

¹⁰⁴ Aarnes Cross Answering, p. 31, lines 12-18.

¹⁰⁵ Cooper Cross Answering, p. 19, lines 13-16.

¹⁰⁶ Staff Initial Brief at ¶23

44. In paragraphs 7-18 of this Order, the Commission addressed RCC's ability to provide the supported services. The Commission concluded that RCC can or will be able to provide those services. In paragraphs 19-21 of this Order, the Commission addressed RCC's commitment to provide service throughout the designated service area. The Commission concluded that two reporting requirements would be placed on RCC. The Commission requires that maps be provided indicating where RCC has placed facilities and the approximate coverage area associated with those facilities. The Commission also requires RCC to report, quarterly, any denial of requests for service. The Commission believes these requirements will assist in the evaluation of RCC's progress with meeting its obligation to provide the supported services throughout the designated service areas within a reasonable timeframe. The Commission will address RCC's offer to provide evidence regarding its use of USF support in a later discussion regarding recertification.

45. The Commission concludes that it is in the public interest to designate RCC as an additional ETC in service areas of rural ILECs subject to the company's fulfillment of the additional requirements imposed by this Order and to the extent that the company's operating footprint coincides with the service area of a rural ILEC. Attachment B sets out those rural service areas which RCC's operating footprint covers without the need for redefinition. Redefinition will be discussed below.

VI. RURAL SERVICE AREA REDEFINITION

46. Section 214(e)(5) of the Federal Act defines "service area" as:

... a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a

Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

47. In the case of a rural ILEC, the service area is the study area of the rural ILEC.

RCC requests redefinition pursuant to C.F.R. §54.207(c). The regulation requires the state commission or other party seeking redefinition to file a petition with the FCC containing the new definition proposed by the state commission and the state's official ruling which presents the state commission's reasons for supporting redefinition. The FCC then issues a Public Notice within 14 days of receiving the petition. The FCC may initiate a proceeding to consider the petition within 90 days of releasing the Public Notice. If the FCC initiates a proceeding, the proposed redefinition does not take effect until both the state commission and the FCC come to agreement on the redefinition of the service area. If the FCC does not act on the petition within 90 days of the release of the Public Notice, the proposed redefinition will be deemed approved and may take effect.

48. In its Petition for ETC Designation, RCC states that for those rural service areas its operating footprint does not cover entirely, it requests that the service area be redefined consistent with the wire centers of the ILEC.¹⁰⁷ Further, to the extent that RCC's operating footprint does not entirely cover the wire center of a rural ILEC, the company requests that the Commission redefine the service area to that portion of a wire center covered.¹⁰⁸ However, notwithstanding RCC's testimony regarding its concerns with the FCC's analysis in the *Virginia Cellular Order*,¹⁰⁹ RCC witness Kohler states that if the Commission decides to follow the

¹⁰⁷ Petition for ETC Designation at ¶36.

¹⁰⁸ *Id.*

¹⁰⁹ Kohler Additional, p. 2, line 15 through p. 5, line 16.

Virginia Cellular Order, RCC is willing to accept designation as an ETC only for those rural wire centers that it is able to serve in their entirety.¹¹⁰

49. Staff provided the Commission with several options for redefining the service areas of rural ILECs in the direct testimony of Staff witness Aarnes. Staff reviewed the Federal-State Joint Board recommendations regarding redefinition and presented its options giving consideration to the Board's concerns related to cream skimming and administrative burdens placed on rural ILECs by redefinition. Staff suggested the Commission may:

- 1) decline to revise the rural telephone company service areas;
- 2) redefine the service areas so that contiguous rural telephone company exchanges constitute a service area;
- 3) redefine the service areas so that each wire center is a service area; or
- 4) redefine the service areas and allow RCC to receive federal universal service support for any area that it covers, even if it is only a portion of a wire center.¹¹¹

Following the release of the *Virginia Cellular Order*, Staff withdrew its fourth option because Staff believes that once a service area is redefined, that definition will apply to all future ETC designations in that service area. Staff directed the Commission to language in the *Virginia Cellular Order* that supports this belief. Specifically, the FCC states:

We define the affected service areas only to determine the portions of the rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest.¹¹²

Additionally, Staff provided testimony examining the population densities of each wire center for which redefinition had been requested as the FCC had done in the *Virginia Cellular Order*.¹¹³

¹¹⁰ *Id.* at p. 5, line 23 through p. 6, line 2.

¹¹¹ Aarnes Direct, p. 27, lines 13-18.

¹¹² *Virginia Cellular Order* at ¶41

¹¹³ Aarnes Cross Answering, p. 35, line 1 through p. 48, line 10; Aarnes Supplemental, p. 2, line 2 through p. 6, line 19.

50. ITG argues that the Commission should deny RCC's request for redefinition. ITG witness Cooper reviewed the Federal-State Joint Board's recommendations regarding redefinition. He asserts that cream skimming is a serious concern in this instance.¹¹⁴ Mr. Cooper believes that the ability of a rural ILEC to disaggregate FUSF support does not resolve the potential for cream skimming.¹¹⁵ Mr. Cooper also asserts that redefinition would place substantial administrative burdens on rural ILECs such as formulating a plan for disaggregation of support.¹¹⁶ Following the release of the *Virginia Cellular Order*, ITG maintained its position regarding the effects of cream skimming due to service area redefinition unless the Commission were to perform population density analysis as did the FCC.¹¹⁷ However, Mr. Cooper states that the Commission should not perform the density analysis thereby providing RCC with an incentive to serve the entire study area of a rural LEC.¹¹⁸ SIA did not provide testimony specifically addressing the redefinition issue.

51. While the FCC's *Virginia Cellular* decision is not binding on this Commission, the Commission finds that examination of the additional factors enumerated in the FCC's order is reasonable despite the concerns expressed by RCC. Because the designation at issue in this proceeding is for designation as an ETC for access only to FUSF support, the Commission believes following the FCC's lead in this matter is the prudent and appropriate course. The Commission finds that redefinition by wire center is in the public interest when the population density analysis introduced in the *Virginia Cellular Order* is utilized to make such a determination. Staff provided a population density analysis and made recommendations for redefinition based on that analysis. RCC did not provide such an analysis. Thus, the

¹¹⁴ Cooper Rebuttal, p. 27, line 19 through p. 30, line 19.

¹¹⁵ *Id.* at p. 29, line 1 through p. 30, line 19.

¹¹⁶ *Id.* at p. 31, line 7-28.

¹¹⁷ Cooper Cross Answering, p. 28, lines 3-14.

¹¹⁸ *Id.* at p. 28, lines 15-18.

Commission will rely on Staff's population density analysis. Attachment C contains those service areas for which the Commission finds redefinition to the wire center to be in the public interest and for which RCC is designated as an ETC subject to meeting the additional requirements imposed by this Order.

VII. RECERTIFICATION PROCESS

52. Section 254(e) of the Federal Act provides that carriers receiving universal service support shall use the support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Each year, the Commission must provide certification to the FCC and USAC that ETCs use Federal support in the manner for which it was intended. The Commission also requires that the support be used only in those areas where the company is designated as an ETC. Currently, the certification consists of a verified statement filed by a company executive stating that the company will use the Federal support as intended. The self-certification is to be provided by a person who is in a position to direct the company's expenditures. The Commission, in turn, sends letters to the FCC and USAC certifying that the companies listed within the letter have submitted certification that support would be used as intended. Additionally, RCC witness Wood testified that competitive ETCs are audited by USAC. He stated that those audits are conducted to monitor both the proper reporting of lines in a service area and to determine whether the funds are properly used.¹¹⁹ The frequency or probability of an audit was not clear, however.

¹¹⁹ T. Vol. II at 305-306.

53. Concern was expressed, during the hearing and in briefs about the Commission's ability to monitor and verify the use of USF support.¹²⁰ In their brief, SIA and ITG argue that the Commission must be able to:

... assure that *all* federal support received as a result of the requested designation is used for authorized purposes, [or] ratepayer funds become subsidies for costs and investment in areas unapproved for the applicant's receipt of USF support, or legally unsupported services and/or for increased shareholder dividends.¹²¹
(Emphasis in the original.)

SIA and ITG do not believe that self-certification is sufficient for carriers that are not subjected to audits.¹²² RCC states that the company commits to an initial build out plan using USF "for the purposes allowed by law."¹²³ RCC also responds that it has no objection to submitting documents to substantiate that it uses USF support for its intended purposes but suggests that all ETCs should be held to the same standard.¹²⁴ RCC witness Wood suggested that the Commission require ETCs to provide information, each year, regarding the use of funds. He indicated that states are becoming more aggressive in the annual certification process with both competitive ETCs and incumbents.¹²⁵

54. Since the filing of briefs in this proceeding, the Commission initiated a proceeding to examine the certification process. That investigation will occur in Docket No. 05-GIMT-112-GIT. In that docket, the Commission intends to consider revising the certification process currently utilized by the Commission. In recent ETC hearings, parties to those proceedings raised numerous concerns with respect to the Commission's self-certification process. In addition, the Federal-State Joint Board on Universal Service issued a Recommended

¹²⁰ T. Vol. I at 36-39, 50-51, 123-127, 136-137, 161-165; T. Vol. II at 247-250, 269-273, 286-287, 297-300, 305-307, 314-316, 319-321, 334-335, 338-340, 465-475; SIA/ITG Initial and Reply Briefs.

¹²¹ SIA/ITG Initial Brief at 4.

¹²² *Id.* at 6, 17.

¹²³ RCC Reply Brief at ¶21.

¹²⁴ *Id.* at ¶6.

¹²⁵ T. Vol. I at 306, 315.

Decision on February 27, 2004, suggesting the FCC encourage states to consider whether a more rigorous review may be needed to ensure that Federal universal service support is used properly.¹²⁶ However, the Commission concludes that it is in the public interest to impose immediate reporting requirements on RCC at this time. An important factor persuading the Commission that it should grant ETC status to RCC is RCC's commitment to share its capital budget information with the Commission.¹²⁷ To that end, the Commission requires RCC to provide the following information to the Commission within 30 days of the effective date of this Order:

- a) a projection of the amount of support RCC will receive from the FUSF in 2005;
- b) a capital expenditure budget for Kansas for 2005; and
- c) a verified statement regarding the use of support as is currently required of all ETCs.

RCC will report the information listed above in 2006 and include data regarding its actual expenditures in Kansas in 2005 if the Commission has not adopted another reporting format. This requirement will continue unless and until the Commission replaces it with other requirements via the generic proceeding.

VIII. OTHER ISSUES

55. While the Commission believes that designating RCC as an ETC is reasonable given the requirements imposed in this order, the Commission believes there are issues that have been raised by the parties that require further discussion and analysis. Therefore, the

¹²⁶ *In the Matter of the Certification of Compliance with Section 254(e) of the Federal Telecommunications Act of 1996, and Non-Rural Carrier Certification of Urban/Rural Rate Comparability*, Docket No. 05-GIMT-112-GIT, Order Opening Docket and Assessing Costs, dated August 13, 2004, ¶3.

¹²⁷ T. Vol. 1 at 28, 186

Commission will open a generic proceeding to discuss the following issues related to ETC designations:

- a) minimum local usage;
- b) quality of service standards;
- c) content, frequency and types of media for advertising;
- d) per-minute blocking for wireless carriers;
- e) billing standards;
- f) build-out plans; and
- g) application of termination fees.

The Commission will request that interested parties provide comments on these issues. The Commission anticipates that any new ETC requirements that are developed in the generic proceeding will become applicable to any ETC wishing to retain its designation. Therefore, the Commission encourages participation by all ETCs.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. RCC's Petition for ETC Designation is hereby granted in the non-rural wire centers listed in Attachment A and the rural study areas listed in Attachment B, so long as the company agrees to comply with the additional requirements imposed by this Order. Such additional requirements are more fully set out in the body of this Order.

B. The Commission declines to adopt a new definition for non-rural service areas at this time. For rural study areas, redefinition by wire center is deemed to be in the public interest when the population density analysis introduced in the *Virginia Cellular* Order is utilized to make such a determination. Attachment C contains those rural service areas for which the Commission finds redefinition to the wire center to be in the public interest. If the FCC concurs

with this decision, RCC is designated as an ETC in those areas set out in Attachment C subject to meeting the additional requirements imposed by this Order.

C. Within 60 days of the effective date of this Order, RCC shall file a map indicating the extent of its existing infrastructure and the approximate geographic area for which service coverage is available from such facilities. Thereafter, a map shall be updated on a yearly basis and provided to the Commission by December 31 of each year.

D. RCC is required to follow the six-step process it outlined for evaluating requests for service. Additionally, on a quarterly basis (January 1, April 1, July 1, and October 1), RCC is required to report all instances in which the company is unable to serve a customer. RCC is required to provide information regarding the specific location of the customer (street address), the company's rationale for reaching the final step of the process for each customer and the company's progress with establishing interconnection arrangements which permit resale of either wireless or ILEC services in the location of the customer the company was unable to serve.

E. The Commission directs Staff and RCC to develop language used in all advertising for areas in which RCC is designated as an ETC. The language, among other things, should include information directing customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. Staff and RCC shall file a status report with the Commission within 90 days of the effective date of this Order informing the Commission of progress in meeting this requirement.

F. RCC shall comply with CTIA's Code for Wireless Service and shall report the number of complaints per 1000 handsets for the preceding year on January 31 of each year.

G. RCC is required to provide the following information related to its capital budget within 30 days of the effective date of this Order:

- a) a projection of the amount of support RCC will receive from the FUSF in 2005;
- b) a capital expenditure budget for Kansas for 2005; and
- c) a verified statement regarding the use of support as is currently required of all ETCs.

RCC will report this information in 2006 and include data regarding its actual expenditures in Kansas in 2005 if the Commission has not adopted another reporting format. This requirement will continue unless and until the Commission replaces it with other requirements via a generic proceeding.

H. The parties have 15 days, plus three days if service of this Order is by mail, from the date this Order is served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2003 Supp. 77-529(a)(1). The Commission directs its Docket Room to serve this Order via facsimile on all parties in order to ensure timely notification of RCC's ETC status.

I. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

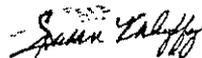
BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: SEP 30 2004

ORDER MAILED

SEP 30 2004

 Executive Director

Susan K. Duffy
Executive Director

SBC
Attachments

Attachment A

SWBT WIRE CENTERS WHERE
RCC MINNESOTA IS DESIGNATED AN ETC

Almena
Bird City
Colby
Dodge City
Garden City
Goodland
Great Bend
Hays
Holcomb
Hoxie
Kinsley
La Crosse
Larned
Liberal
Norton
Oakley
Oberlin
Pawnee Rock
Phillipsburg
Plains
Plainville
Pratt
Scott City
Smith Center
Stafford
Stockton
Sublette

Attachment B

RURAL LEC STUDY AREAS THAT ARE COVERED
IN THEIR ENTIRETY BY RCC MINNESOTA

Elkhart Telephone Company, Inc.
Golden Belt Telephone Association, Inc.
Gorham Telephone Company, Inc.
S&T Telephone Coop Association

WIRE CENTERS WHERE RCC SHOULD BE DESIGNATED AN ETC IF THE FCC
CONCURS WITH THIS COMMISSION'S DECISION TO REDEFINE THESE RLEC
SERVICE AREAS TO THE WIRE CENTER LEVEL

<u>Wire Center</u>	<u>Telephone Company</u>
Leoti	Sunflower Telephone Company, Inc.
Tribune	Sunflower Telephone Company, Inc.
Sharon Springs	Sunflower Telephone Company, Inc.
Jetmore	Sunflower Telephone Company, Inc.
Wallace	Sunflower Telephone Company, Inc.
Marienthal	Sunflower Telephone Company, Inc.
Weskan	Sunflower Telephone Company, Inc.
Dorrance	H&B Communications, Inc.
Sawyer	Haviland Telephone Company, Inc.
Cullison	Haviland Telephone Company, Inc.
Coats	Haviland Telephone Company, Inc.
Isabel	Haviland Telephone Company, Inc.
Satanta	Pioneer Communications
Lakin	Pioneer Communications
Hugoton	Pioneer Communications
Ulysses	Pioneer Communications
Deerfield	Pioneer Communications
Moscow	Pioneer Communications
Rolla	Pioneer Communications
Johnson	Pioneer Communications
Syracuse	Pioneer Communications
Manter	Pioneer Communications
Richfield	Pioneer Communications
Kendall	Pioneer Communications
Bog Bow	Pioneer Communications
Ryus	Pioneer Communications
Victoria	Rural Telephone Service Company, Inc.
Hill City	Rural Telephone Service Company, Inc.
Wakeeney	Rural Telephone Service Company, Inc.
Quinter	Rural Telephone Service Company, Inc.
Palco	Rural Telephone Service Company, Inc.
Prairie View	Rural Telephone Service Company, Inc.
Natoma	Rural Telephone Service Company, Inc.
Olmitz	Rural Telephone Service Company, Inc.
Damar	Rural Telephone Service Company, Inc.
Zurich	Rural Telephone Service Company, Inc.
Grainfield	Rural Telephone Service Company, Inc.

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Lenora	Rural Telephone Service Company, Inc.
Rexford	Rural Telephone Service Company, Inc.
Selden	Rural Telephone Service Company, Inc.
Gaylord	Rural Telephone Service Company, Inc.
Jennings	Rural Telephone Service Company, Inc.
Collyer	Rural Telephone Service Company, Inc.
Woodston	Rural Telephone Service Company, Inc.
Logan	Rural Telephone Service Company, Inc.
Alton	Rural Telephone Service Company, Inc.
Long Island	Rural Telephone Service Company, Inc.
Morland	Rural Telephone Service Company, Inc.
Edmond	Rural Telephone Service Company, Inc.
Gove	Rural Telephone Service Company, Inc.
Galatia	Rural Telephone Service Company, Inc.
Iuka	South Central Telephone Association, Inc.
Sharon	South Central Telephone Association, Inc.
Ellinwood	Sprint/United Telephone Company
Osborne	Sprint/United Telephone Company
Russell	Sprint/United Telephone Company
Downs	Sprint/United Telephone Company
Luray	Sprint/United Telephone Company
Paradise	Sprint/United Telephone Company
Hoisington	Sprint/United Telephone Company- Eastern
Clafin	Sprint/United Telephone Company- Eastern
Hudson	Sprint/United Telephone Company- Eastern
St. John	Sprint/United Telephone Company- Eastern
Preston	Sprint/United Telephone Company- Eastern
Belpre	Sprint/United Telephone Company- Eastern
Macksville	Sprint/United Telephone Company- Eastern