

**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
)	
Petition by N.E. Colorado Cellular, Inc.)	
Pursuant to 47 C.F.R. Section)	
54.207(c), for Commission)	
Agreement in Redefining the Service)	
Areas of Rural Telephone Companies)	
In the State of Colorado)	

**PETITION OF N.E. COLORADO CELLULAR, INC., FOR REDEFINITION
OF RURAL TELEPHONE COMPANY SERVICE AREAS**

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Summary

N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (“NECC”) requests the Commission’s concurrence with the proposal by the Colorado Public Utilities Commission (“COPUC”) to redefine rural local exchange carrier (“ILEC”) service areas pursuant to the process set forth in Section 54.207(c) of the Commission’s rules. In December 2001, COPUC designated NECC, a wireless carrier providing service in primarily rural areas of Colorado, as an eligible telecommunications carrier for purposes of receiving federal high-cost support. Because NECC’s FCC-licensed service territory does not correlate with rural ILEC service areas, COPUC granted NECC’s request to redefine each partially-covered rural ILEC service such that each wire center is a separate service area. With respect to CenturyTel of Eagle, Inc., the FCC has already granted its concurrence with COPUC’s proposed redefinition along wire-center boundaries. A petition for FCC agreement with the redefinition of Wiggins Telephone Association’s service area is currently pending. NECC now seeks such concurrence with respect to the remaining rural incumbent local exchange carriers (“ILECs”) within its service area.

The proposed redefinition is warranted under the Act and the Commission’s competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant ILEC service areas are redefined, NECC will be unable to use high-cost support to improve and expand its service to consumers in many areas of its licensed service territory. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service. NECC’s proposal also satisfies the FCC’s analysis set forth in *Virginia Cellular* and subsequent decisions, in that NECC is not proposing to serve primarily densely-populated areas or portions of rural ILEC wire centers.

The redefinition proposed herein satisfies *Virginia Cellular* and its progeny, is well-supported by the record at the state level, and is the product of a proceeding in which all affected parties were provided ample opportunity to ensure that the Joint Board's recommendations were taken into account. Accordingly, NECC requests that the Commission grant this Petition expeditiously.

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N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“NECC”), a wireless carrier recently designated as an eligible telecommunications carrier (“ETC”) in Colorado, hereby submits this Petition seeking the FCC’s agreement with the decision of the Colorado Public Utilities Commission (“COPUC”) to redefine the service areas of Eastern Slope Rural Telephone Association, Inc. (“Eastern Slope”), Plains Cooperative Telephone Association, Inc. (“Plains Coop”), and Sunflower Telephone Company, Inc. (“Sunflower”) (collectively referred to as the “Rural Companies”). The wire centers for which redefinition is requested are set forth in Exhibit C hereto. As set forth below, classifying each individual wire center of the Rural Companies as a separate service area will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural Colorado consumers.

I. BACKGROUND

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the “Act”), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.¹ In rural areas, service areas are generally defined as study area of the incumbent local exchange carrier (“ILEC”). However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC. Specifically, Section 214(e) of the Act provides:

... “service area” means such company’s “study area” unless and until the 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.²

The FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural ILEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.³ In order to address this barrier to competitive entry, the FCC and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to

¹ 47 U.S.C. § 214(e).

² *Id.* See also 47 C.F.R. § 54.207(b).

³ See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support. Memorandum Opinion and Order*, 15 FCC Rcd 9924, 9927 n. 40 (1999) (“*Washington Redefinition Order*”), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

redefine the ILEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.⁴

In mid-2000, NECC applied to COPUC for designation as an ETC for the purpose of receiving federal universal service support, and for designation as an eligible provider (“EP”), which would entitle the company to receive state universal service funding. Because, as a wireless carrier, NECC is licensed to serve an area that does not match the service areas of the affected incumbent local exchange carriers (“ILECs”), NECC requested that its ETC/EP service area be defined to be coterminous with its FCC cellular geographic service area (“CGSA”).

On December 21, 2001, Administrative Law Judge William J. Fritzel issued a decision (“*2001 Recommended Decision*”) concluding that a grant of NECC’s request for designation as an ETC and as an EP would serve the public interest. Specifically, NECC’s designation was to become effective immediately in non-rural areas served by Qwest and in rural areas where NECC’s service area covered the affected ILECs’ service areas completely. Regarding the rural areas only partially covered by NECC’s licensed service territory, the ALJ found that NECC should be immediately designated “pending the resolution of [COPUC’s then ongoing] proceeding on disaggregation . . . and pending any necessary FCC approval of initial disaggregation of service areas for those wire centers set forth on Attachment 3[.]”⁵ No party filed exceptions, and the *2001 Recommended Decision* became a final decision of COPUC.

In mid-2002, COPUC took steps to effectuate NECC’s designation in partially covered rural ILEC service areas, starting with the service area of CenturyTel of Eagle, Inc.

⁴ See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28.

⁵ *2001 Recommended Decision*, Exh. 1 at pp. 6-7.

("CenturyTel"). In its disaggregation rulemaking, COPUC had determined that when a rural ILEC has disaggregated its support along wire-center boundaries, no further findings were necessary to redefine the ILEC's service area in the same manner. CenturyTel had disaggregated its support along wire-center boundaries, and COPUC petitioned the FCC for concurrence with its proposal to redefine CenturyTel's service area such that each wire center constituted a separate service area. Pursuant to the procedures set forth in Section 54.207 of the FCC's rules, a notice-and-comment period was provided, and the FCC declined to open a proceeding, allowing the proposed redefinition to take effect. A similar petition was filed by COPUC in May 2003 with respect to the service area of Wiggins Telephone Association, following its approval of Wiggins' Path 2 disaggregation plan. The FCC opened a proceeding under Section 54.207 of its rules and the petition remains pending.

The remaining rural ILECs partially covered by NECC's ETC service area all declined to disaggregate support, choosing Path 1 under the FCC's disaggregation rules. Therefore, under COPUC's rules, a finding regarding service area redefinition could only be made after a proceeding involving all affected parties was held. On August 21, 2002, NECC petitioned COPUC to redefine the service areas of the Rural Companies along wire-center boundaries, as it had done previously with CenturyTel. After a full administrative proceeding including extensive discovery, pre-filed testimony, an evidentiary hearing, and multiple rounds of legal briefing by numerous parties and intervenors, ALJ Mana L. Jennings-Fader issued a *Recommended Decision* ("*2003 Recommended Decision*") urging a grant of NECC's Application.⁶ The Colorado Telecommunications Association ("CTA"), an ILEC trade association, filed exceptions,

⁶ A copy of the *2003 Recommended Decision* is attached as Exhibit A for the Commission's reference.

including a “Motion to Reopen the Record” based on the notice-and-comment proceeding then underway before the FCC.

In a decision released October 2, 2003 (“*Decision on Exceptions*”), COPUC denied CTA’s exceptions and declined to reopen the record, finding that “Granting NECC’s Application to redefine the carriers’ service areas will promote competition and its attendant benefits.”⁷ *Decision on Exceptions* at p. 21. Moreover, in response to CTA’s request to reopen the record to consider policy debates occurring before the FCC, COPUC stated: “There are no new rules adopted by the FCC that would affect this proceeding since the [2003] Recommended Decision was issued.” *Id.* at p. 9. COPUC further stated that “NECC is directed to file a petition with the FCC for its concurrence in redefining the rural carriers’ service areas.” NECC now seeks such concurrence.

II. DISCUSSION

COPUC’s decision to redefine rural ILEC service areas is consistent with FCC orders, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Specifically, the redefinition requested in this proceeding will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.⁸ The proceeding provided all affected parties with an opportunity to comment on the proposed redefinition, and the COPUC Order fully considered and addressed the parties’ arguments on this subject. Accordingly, the redefinition proposed herein is well-supported by the record at the state

⁷ A copy of the Decision on Exceptions is attached as Exhibit B for the Commission’s reference.

⁸ See 47 U.S.C. § 254(b)(3).

level, and COPUC's reasoned Order provides the FCC with ample justification to issue a prompt concurrence.

A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.

Congress, in passing the 1996 amendments to the Act, declared its intent to "promote competition and reduce regulation" and to "encourage the rapid deployment of new telecommunications technologies."⁹ As part of its effort to further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.¹⁰ In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.¹¹ Consistent with this policy, the FCC and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.¹²

⁹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

¹⁰ See 47 U.S.C. § 214(e)(2).

¹¹ See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality was not among the issues opened up to comment in the Joint Board proceeding conducted last summer, but was instead a firm standard against which the Joint Board's recommendations were to be measured. See *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, 19 FCC Rcd 10800 (2004) ("We seek comment on whether the Joint Board's recommendations should be adopted, in whole or in part, in order to preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund.").

¹² See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at 8882-83; *Washington Disaggregation Order*, *supra*, 15 FCC Rcd at 9927-28; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at p. 4 (filed with the FCC Aug. 1, 2002) ("CPUC Petition"). The CenturyTel Petition may be found on the FCC's Electronic Comment Filing System at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi. Please note that the document is listed on the system as received on August 6, 2002.

Recently, for example, the FCC granted COPUC's petition for concurrence with a service area redefinition that was substantially similar to that proposed in this proceeding.¹³ In support of redefining CenturyTel's service area along wire center boundaries, the CPUC emphasized that "in CenturyTel's service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry."¹⁴ The FCC agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.¹⁵ The FCC similarly approved a petition by the Washington Utilities and Transportation Commission ("WUTC") and about 20 rural ILECs for the redefinition of the ILECs' service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.¹⁶

Since that time, several competitive ETCs have been designated in various portions of rural ILEC service areas in Washington without any apparent adverse consequences to date.¹⁷

¹³ See CPUC Petition at p. 5 ("Petitioner requests agreement to redefine CenturyTel's service area to the wire center level").

¹⁴ CPUC Petition at p. 4.

¹⁵ CenturyTel has requested the FCC to reconsider its decision. However, as of this date CenturyTel's service area redefinition is effective.

¹⁶ *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

¹⁷ Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. & Transp. Commn., Jan. 13, 2005) (stating that the WUTC's designation of multiple competitive ETCs, "if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, the Minnesota Public Utilities Commission (“MPUC”) approved the proposal by WWC Holding Co., Inc. d/b/a CellularOne to redefine certain rural ILEC service areas to the wire center level.¹⁸ Addressing the concerns expressed by ILEC commenters, the MPUC concluded that the proposed redefinition would neither harm the affected rural ILECs nor create significant cream-skimming opportunities.¹⁹ Similar conclusions were reached in decisions granting ETC status to wireless carriers in Arizona, New Mexico, Kansas, Maine, Michigan, North Dakota, Oregon, Wisconsin, and West Virginia.²⁰

As in those cases, the redefinition requested in the instant proceeding will benefit Colorado consumers in all reaches of NECC’s licensed service territory, who will begin to see a

by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non-rural*, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.”).

¹⁸ WWC Holding Co., Inc. d/b/a CellularOne, MPUC Docket No. P-5695/M-04-226, Order Approving ETC Designation (Minn. PUC, Aug. 19, 2004) (FCC concurrence granted Dec. 28, 2004).

¹⁹ *Id.* at p. 9.

²⁰ See NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) (“NPI-Omnipoint Michigan Order”); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003) (FCC concurrence granted Jan. 24, 2005) (“Highland W.V. Order”); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004); RCC Minnesota, Inc., Docket No. 1083 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm’n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm’n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm’n, Sept. 30, 2004); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence pending); ALLTEL Communications, Inc. et al., Docket No. 7131-T1-101 (Wisc. PSC, Sept. 30, 2003) (FCC concurrence pending); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending).

variety in pricing packages and service options on par with those available in urban and suburban areas.²¹ COPUC summarized the benefits of redefinition as follows:

Redefining the service areas of the affected rural ILECs will advance the goals of universal service, will promote competition, and will implement the principle of competitive neutrality, including technology neutrality. Competitive entry, or the possibility of competitive entry, will bring benefits to consumers. Consumers may see a lower cost for services. Carriers will be more likely to make additional services, innovative service offerings and packages, and advanced services available to consumers within the redefined service areas. Carriers, both incumbents and new entrants, will be more likely to make investment in infrastructure and to deploy new technologies. . . . In sum, redefining the service areas will create incentives for competitive entry and, thus, will help to ensure that quality telecommunications services will be available to consumers within the service areas of the affected rural ILECs at reasonable, affordable, and just rates.²²

CMRS carriers, whose service areas are determined by their FCC licenses, cannot hope to cover the entirety of each of the affected ILEC study areas. Therefore, unless their service areas fortuitously cover an entire study area, CMRS carriers wishing to compete on a level playing field will be forced to compete without receiving the types of subsidies the ILECs have had access to for years. The proposed redefinition will give full effect to COPUC's finding that the public interest will be served by NECC's designation as an ETC throughout its licensed service area – a finding that has been only half-realized because of the arbitrary mismatch of service area boundaries of differing technologies.

In sum, the requested redefinition is consistent with the pro-competitive policies of Congress and the FCC, and should therefore be granted.

²¹ See 47 U.S.C. § 254(b)(3).

²² 2003 Recommended Decision at pp. 17-18

B. The Proposed Redefinition Satisfies the Three Joint Board Factors Under Section 214(e)(5) of the Act.

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."²³ In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine an ILEC's service area.²⁴

First, the Joint Board advised the FCC and the States to consider whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest-cost exchanges.²⁵ As a wireless carrier, NECC is restricted to providing service in those areas where it is licensed by the FCC. NECC is not picking and choosing the lowest-cost exchanges; on the contrary, NECC has based its requested ETC service area on its licensed service area and is committed to serve customers upon reasonable request throughout its designated ETC service area.²⁶

Moreover, as of May 2002, rural ILECs have been required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level.²⁷ In adopting its disaggregation rules, the FCC concluded that "as a general matter, support should be disaggregated and targeted below the

²³ 47 C.F.R. § 54.207(c)(1).

²⁴ *Joint Board Recommended Decision, supra*.

²⁵ *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

²⁶ *See Decision on Exceptions* at p. 20.

²⁷ *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) ("*Fourteenth Report and Order*")

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.”²⁸ To encourage ILECs to disaggregate, the FCC established an administratively simple process whereby support could be disaggregated to the wire center or up to two zones per wire center upon self-certification. For limited instances “where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational”, the FCC created a Path One “no-disaggregation” option.²⁹ Furthermore, any ILECs that failed to disaggregate support effectively may modify their disaggregation filings subject to state approval, or such further disaggregation may be imposed by order of the state commission.³⁰

Each of the ILECs here at issue opted for Path One. At the time of their Path One filings, NECC was already competing in each of their service areas – and had been conditionally designated as an ETC in portions of their service areas – so they cannot have been unaware of the prospect of a supported competitor in their service areas.³¹ Thus, each may be presumed to believe that the apportionment of support corresponded with costs and there were no significant cream-skimming opportunities that needed to be addressed. Indeed, COPUC noted that “[b]y electing Path One, each of the affected rural ILECs indicated that it was satisfied that its universal service support was already targeted in a manner which minimized ‘cream-skimming.’”³² Furthermore, COPUC emphasized that, should cream-skimming opportunities

²⁸ *Id.* at 11302.

²⁹ *Id.* at 11303.

³⁰ See 47 C.F.R. §§ 54.315(b)(4); 54.315(c)(5), 54.315(d)(5).

³¹ See *Decision on Exceptions* at p. 20.

³² *2003 Recommended Decision* at p. 15.

arise as the result of future competitive ETC designations, a proceeding may be initiated to change the rural ILECs' disaggregation filings by motion of any interested party or by COPUC's own motion.³³

An application of the FCC's population density analysis, employed in *Virginia Cellular* and other recent decisions, confirms COPUC's and NECC's view that no danger of cream-skimming is present here. In *Virginia Cellular*, the FCC used population density (persons per square mile) as a proxy for estimating the relative cost of providing service in various wire centers to determine whether a competitive ETC has the opportunity to target low-cost portions of a rural ILEC's study area.³⁴ Based on that analysis, the FCC denied ETC designation in areas served by a NTELOS, Inc., where the wire center covered by the competitor's proposed ETC service area had a population density of 273 persons per square mile and the remaining wire centers had an average population density of 33 persons per square mile.³⁵ The FCC approved ETC status, however, in areas where the wire centers within the proposed ETC service area had a lower population density than those outside,³⁶ and in areas where the relative population densities inside and outside the proposed ETC area were not disparate enough to raise significant concerns.³⁷

³³ See *Decision on Exceptions* at pp. 20-21 (citing 47 C.F.R. §§ 54.315(b)(4)).

³⁴ See *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1578-79 (2004) ("*Virginia Cellular*").

³⁵ See *id.* at 1579-80.

³⁶ Virginia Cellular's request for ETC status was approved in Shenandoah Telephone Company's study area where the wire centers within the requested ETC service area had an average population density of 4.64 persons per square mile and the average of those outside was 53.62 persons per square mile. See *id.* at 1579.

³⁷ Virginia Cellular's request was approved in MGW's study area where the wire centers within the requested ETC service area had an average population density of 2.30 persons per square mile and the average population density of the remaining wire centers was 2.18 persons per square mile. See *id.*

As the chart attached as Exhibit C shows, NECC is not proposing to serve primarily high-density portions of the affected rural ILECs' service areas. In Eastern Slope's service area, NECC proposes to cover the three lowest-density wire centers, and the highest-density wire center it proposes to cover has a population density of only 2.14 persons per square mile. The most densely populated wire center in Eastern Slope's service area has a population density of 16.42 persons per square mile, and it is outside of NECC's proposed ETC service area.

In Plains Cooperative Telephone Associations' service area, NECC proposes to cover all but one wire center. The average population density of the wire centers within NECC's service area is 1.57 persons per square mile, while the population density of the single remaining wire center is 1.14 persons per square mile. This difference is too small to be statistically significant for the purposes of the FCC's cream-skimming analysis.³⁸

In the service area of Sunflower Telephone Association, NECC proposes to serve one wire center whose population density is 0.84 persons per square mile, while the two remaining wire centers have an average population density of 1.72 persons per square mile. Under the FCC's *Virginia Cellular* analysis, therefore, there is no risk of cream-skimming in any of the affected rural ILEC service areas in this case.

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.³⁹ In reviewing NECC's application for ETC status, COPUC weighed numerous factors in ultimately determining that such designation was in the

³⁸ See *id.* at 1579 and n.110 ("The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns.")

³⁹ See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

public interest. Congress mandated this public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.⁴⁰ The proposed redefinition will not affect the requirement that COPUC make a public interest finding before designating additional competitors in the redefined areas.⁴¹ No action in this proceeding will affect or prejudice any future action the COPUC or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish an ILEC's status as such.

Finally, the Joint Board recommended that the FCC and the States consider the administrative burden a rural ILEC would face by calculating its costs on a basis other than its entire study area.⁴² NECC's request to define its service area along boundaries that differ from rural ILEC study area boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way change ILEC study area boundaries or impact the way the affected rural ILECs calculate their costs, but is solely to enable NECC to begin receiving high-cost support in those areas in the same manner as the ILECs.⁴³ Rural ILECs will calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now. Moreover, to the extent any affected rural ILEC will find it necessary to disaggregate support, the benefit of preventing cream skimming and the importance of promoting competitive neutrality will outweigh any administrative burden involved.

⁴⁰ *See id*

⁴¹ *See Decision on Exceptions* at p. 21.

⁴² *See Joint Board Recommended Decision*, 12 FCC Rcd at 180.

⁴³ *See 2003 Recommended Decision* at p. 19.

C. NECC's Request for Redefinition Along Wire-Center Boundaries Is Consistent With the FCC's "Minimum Geographic Area" Policy.

In its April 2004 *Highland Cellular* decision, the FCC declared that an entire rural ILEC wire center "is an appropriate minimum geographic area for ETC designation".⁴⁴ In response to the FCC's invitation to supplement pending petitions for ETC status or redefinition in light of the policies and standards articulated in *Highland Cellular* and *Virginia Cellular*, COPUC filed supplements to its pending redefinition petitions addressing, *inter alia*, the FCC's concerns regarding designation below the wire-center level. Specifically, COPUC emphasized that:

COPUC's Petition . . . is consistent with the points made in the [*Virginia Cellular* and *Highland Cellular*] Orders. As explained in the Petition, COPUC is seeking to redefine CenturyTel's study area to the wire center level. The Orders held that this is an appropriate service area for a competitive ETC in a rural area.⁴⁵

By reaffirming that it seeks redefinition only down to the wire center, COPUC clarified that its petitions are consistent with the FCC's policies set forth in *Highland Cellular*. In other words, COPUC, like the FCC, deems the wire center an appropriate minimum geographic area. Consistent with COPUC's previously-filed petitions for FCC concurrence, NECC also seeks redefinition of the Rural Companies along wire-center boundaries. Because NECC requests concurrence with redefinition to the wire-center level, and not below the wire center, NECC's redefinition proposal is fully consistent with that policy.

⁴⁴ *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6438 (2004) ("*Highland Cellular*")

⁴⁵ Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., Supplement to Petition (filed May 14, 2004) at p. 5. Similar statements are made in COPUC's supplements to its petitions for concurrence in redefining the service area of Delta County Tele-Comm, Inc., and Wiggins Telephone Association.

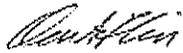
III. CONCLUSION

NECC stands ready to provide reliable, high-quality telecommunications service to Colorado's rural consumers by investing federal high-cost support in building, maintaining and upgrading wireless infrastructure throughout its licensed service area. COPUC has declared that NECC's use of high-cost support to increase the availability of additional services and increase investment in rural Colorado will serve the public interest.⁴⁶ Yet, without the FCC's concurrence, NECC will not be able to bring those benefits to consumers in many areas in which it is authorized by the FCC to provide service. COPUC has properly concluded that wireless competitors that are licensed to serve only portions of rural ILEC study areas face an "artificial barrier to competitive entry into high-cost areas" and that "[r]edefining the service areas will eliminate this artificial barrier."⁴⁷

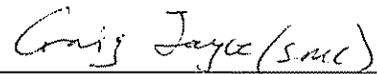
The relief proposed by NECC is exactly the same as the relief granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. NECC submits that the benefits of having the company designated throughout its proposed ETC service area are substantial and those benefits will inure to rural consumers who desire NECC's service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider. Accordingly, NECC requests that the Commission grant its concurrence with COPUC's decision to redefine the service areas of the Rural Companies such that each of the wire centers set forth in Exhibit C constitutes a separate service area.

⁴⁶ See *2001 Recommended Decision* at p. 8.

Respectfully submitted,



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February 8, 2005

⁴⁷ 2003 Recommended Decision at p. 18.

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 8th day of February, 2005, copies of the foregoing **PETITION OF N.E. COLORADO CELLULAR, INC., FOR REDEFINITION OF RURAL TELEPHONE COMPANY SERVICE AREAS** was placed in the United States mail, via first class, postage prepaid to:

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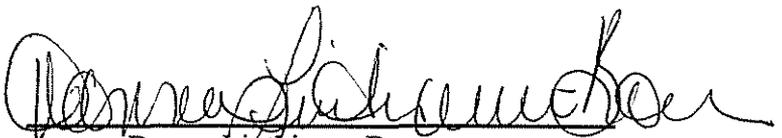
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