Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Choice Communications LLC	)	CC Docket No. 96-45
	)	
Petition for Designation as an Eligible Telecommunications Carrier in the United States Virgin Islands	)	

OPPOSITION OF VERIZON TO CHOICE COMMUNICATIONS' PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE UNITED STATES VIRGIN ISLANDS[1]

I. Introduction and Summary

Verizon opposes the instant petition because Choice Communications LLC ("Choice") fails to show that it meets the Commission's requirements for eligible telecommunications carrier ("ETC") status and has not demonstrated that granting it ETC status would be in the public interest. At the very least, the Commission should require Choice to comply with requirements for ETC petitions adopted in the pending Portability Proceeding.

Choice has not shown that it meets the substantive requirements for designation as an ETC. In particular, from the information in its petition, it is not clear that Choice's current network is capable of providing the voice services that the Commission requires an ETC to provide. While Choice claims that it will also resell the services from the incumbent local exchange carrier, a carrier is not eligible for high-cost support to the extent that it serves customers on a resale basis.

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[1] The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

In an apparent attempt to remedy the inadequacies of its existing network, Choice points to an undefined "next generation" broadband network as somehow enabling it to meet the Commission's ETC requirements. However, Choice has not shown how it plans to use that network to offer traditional voice services, as required for ETC status. It is not eligible for support if it proposes to use it only to offer broadband and other advanced services or to deploy Voice over Internet Protocol ("VoIP") technology. In addition, Choice utterly fails to make the requisite public interest showing that the Commission requires for ETC petitions.

II. Choice Has Failed to Show That It Meets the Substantive Requirements For ETC Status.

Choice claims that it will offer voice services initially through its existing fixed wireless network and through resale. *See* Choice Communications LLC Petition for Designation as an Eligible Telecommunications Carrier ("Petition") at 11. That network, however, consists primarily of paging, Specialized Mobile Radio ("SMR"), and Multichannel Multipoint Distribution Services ("MMDS"). *See id.* at 3-4. Choice does not attempt to show how those primarily data services can support the local voice capabilities that the Commission's rules require ETCs to offer throughout their operating area.[2] Choice makes no attempt either to show how its current network is capable of providing supported services or how it will modify its network to meet ETC requirements. For example, while it points to a T1 radio link that it has installed to Little St. James Island as an example of how it is serving remote areas, Choice does not show how that high-speed data link enables it to provide local telephone service there. *See id.* at 11.

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[2] *See* 47 C.F.R. §54.101(a); *Federal-State Joint Board on Universal Service,* Report and Order, 12 FCC Rcd 8776, ¶¶ 56-87 (1997) ("*First Universal Service Order*").

To the extent that Choice plans to serve customers by reselling the services of Innovative Telephone, the incumbent local exchange carrier, the Commission has made clear that it is ineligible to receive high-cost support. In *The First Universal Service Order* (at ¶ 179) the Commission determined that "it is neither in the public interest nor would it promote competitive market conditions to allow resellers" to be designated as ETCs. The Commission reasoned that, if both the reseller and the provider from whom it was purchasing services were eligible to receive universal service support, this would lead to a "double recovery" of universal service funds. *Id.* It also found that such a double recovery system would favor resellers over other carriers, which would not be competitively neutral, would send the wrong economic signals, and "would *not* promote competitive market conditions." *Id.* (emphasis added).

In its recent order denying reconsideration of this finding, the Commission reiterated "the statute expressly mandates that, in order to be eligible for universal service subsidies, a carrier must use its 'own facilities' or a combination of its own facilities and another carrier's services in the provision of supported services." *Federal-State Joint Board on Universal Service*, Order on Reconsideration, 19 FCC Rcd 23824, ¶ 9 (2004). It further found that "pure resellers cannot receive support consistent with this statutory requirement." *Id.*

Apparently recognizing the inadequacies of its existing network, Choice points to a vaguely-defined "next generation wireless broadband network (currently in the early stages of deployment)" that it plans to use to meet the requirements for ETC status. Petition at 14. However, the statute permits universal service support "*only* for the provision, maintenance, and upgrading of facilities and services *for which the support is intended*." 47 U.S.C. § 254(e) (emphasis added). Broadband service is not within the Commission's definition of services supported by universal service. *First Universal Service Order*, ¶ 22. Other programs exist to

encourage broadband deployment in rural America.[3] Universal service funds in high cost areas are not designed to subsidize such investments, and the Commission should deny Choice ETC status unless it demonstrates how it will to use its broadband network to offer traditional voice services.

As an initial matter, the Commission has not determined whether VOIP services are eligible to receive universal service support. The Commission is currently considering the regulatory status of VOIP in an ongoing rulemaking proceeding and Choice cannot claim to be eligible to receive universal service support until the Commission resolves that and other issues in the ongoing rulemakings. In addition, when determining whether a designation of a service for support is in the public interest, the Commission must look to the purposes of the support. In high-cost areas, for example, support is designed to subsidize the high cost of the networks and other infrastructure necessary to provide *designated* supported services in those areas. *See 47 U.S.C.* § 254(e) (requiring carriers that receive universal service support to "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended"). While it appears that Choice is using its wireless broadband network to provide voice service using VoIP technology, the primary purpose of the network is to offer broadband services. Petition at 12 ("Choice currently can provide DTMF-equivalent signaling *to its wireless broadband subscribers* through voice-over-Internet-protocol ('VOIP') technology.") (Emphasis added). It can reasonably be assumed that Choice likewise intends to use its expanded broadband network primarily to provide broadband services, and possibly VoIP as well. As shown above, however, broadband services are not eligible for support.

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[3] *See, e.g.*, United States Department of Agriculture, Rural Utilities Service Broadband Loan and Loan Guarantee Program, information *available at* http://www.usda.gov/rus/telecom/broadband.htm.

III. Choice Has Not Met the Public Interest Test For ETC Designation.

The only "public interest" showing that Choice makes consists of conclusory statements that the incumbent local exchange carrier, Innovative Telephone, provides "sub-par" or otherwise inadequate service, *see* Petition at 16-17, and that increased competition will reduce costs to consumers. *Id.* at 18-20. The first contention is "supported" by footnoted references to a few local newspaper articles, which are not attached, and a vague reference to a commission hearing transcript. *See* Petition at nn. 8, 38, 40 and 49. The second claim consists of an argument that wireless technology is inherently less expensive in rural areas than wireline, with no attempt to show what savings customers might experience. These fall far short of the factual showing the Commission has stated is the burden for ETC applicants to meet.[4] In the absence of a documented showing that residents of rural insular areas such as the United States Virgin Islands are underserved, granting additional ETC designations in such areas only risks increasing the size of the universal service fund or diluting support from its intended purpose.

IV. If The Petition Is Not Rejected Outright, Choice Should Be Required to Comply With ETC Criteria Established In the Commission's Forthcoming Order.

If the Commission does not reject Choice's petition outright for the reasons shown above, it should at least require Choice to update its petition and comply with whatever new criteria for

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[4] *See, e.g.*, *Federal-State Joint Board on Universal Service; Virginia Cellular Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563, ¶¶ 26-28 (2004); *Federal-State Joint Board on Universal Service*; *Highland Cellular Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422, ¶¶ 20-22 (2004).

ETCs that the Commission adopts in its pending *Portability Proceeding*.[5] As Verizon has pointed out in previous filings, the cumulative effect of granting this and similar ETC petitions threatens to increase the high cost fund by hundreds of millions of dollars per year. *See* Comments of Verizon CC Docket No. 96-45 (filed June 21, 2004) at 3-8. In fact, this is already happening. The Chief Wireline Competition Bureau, recently found that the $650 million size of the Interstate Access Support ("IAS") mechanism adopted in the CALLS order and codified in 47 C.F.R. § 54.801(a) is a target, not a ceiling, and that IAS support may exceed that level without further Commission action. *See* Letter dated January 26, 2005 to Irene Flannery, Universal Service Administrative Company ("USAC"), from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau ("The Commission's Rules do not limit the amount of universal service fund monies distributed pursuant to the IAS mechanism to $650 million"). Based on the current USAC projections, the 2005 IAS is estimated to be about $746 million, or nearly $100 million above the CALLS target.[6] This finding makes it even more critical that the Commission take steps to reduce the number of ETCs approved in an area in order to prevent the size of the fund from skyrocketing further and to apply the new measures to all ETCs petitions the Commission has adopted during the pendency of the *Portability Proceeding*.

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[5] *See Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*, 19 FCC Rcd 10800 (2004) ("*Portability Proceeding*") (requesting comment on various proposals for controlling the size of the high cost fund). Although the Bureau has been granting ETC applications pending the portability proceeding, the Commission should reverse this process and should require all existing ETCs to show how it complies with the criteria it adopts in this proceeding. *See* Reply Comments of Verizon in Support of Application For Review Filed by the Rural Local Exchange Carriers, CC Docket No. 96-45 (filed Oct. 12, 2004).

[6] *See* USAC Administrative Filings (projecting fund size for the first quarter of 2005), *available at* http://www.universalservice.org/overview/filings/.

V. Conclusion

The Commission should reject Choice's petition for failure to show that it complies with the Commission's ETC requirements or, in the alternative, require Choice to amend its petition to demonstrate that it complies with the ETC standards that the Commission adopts in the pending Portability Proceeding.

Respectfully submitted,

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Attachment A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.