Gary Hanson, Chair
Bob Sahr, Vice-Chair
Dustin Johnson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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November 18, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Karen Majcher
Vice President of the High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, NW – Suite 200
Washington, D.C. 20036

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Designation and Certification of Eligible Telecommunications Carriers

Dear Ms. Dortch and Ms. Majcher:

By letter dated August 2, 2005, the South Dakota Public Utilities Commission ("SDPUC") informed the FCC and USAC that the SDPUC designated RCC Minnesota, Inc. ("RCC") and Wireless Alliance, L.L.C. ("WALLC") as eligible telecommunications carriers ("ETCs") for certain service areas in South Dakota.[1] For some of the rural service areas, the ETC designations were made contingent upon the FCC's concurrence in redefinition of the service areas.

On August 3, 2005, the SDPUC submitted a Petition to the FCC requesting that it agree with the SDPUC's redefinition of the service areas of certain rural telephone companies in South Dakota. In its notice seeking comments on the Petition, the Wireline Competition Bureau stated that if the FCC did not initiate a proceeding to consider the Petition by November 14, 2005, the "definition proposed by the SDPUC will be deemed approved by the Commission and shall take effect in accordance with state procedures." No such proceeding was initiated by the FCC, thus the redefinitions as proposed by the SDPUC have been approved by the FCC.

In its order designating RCC and WALLC as ETCs, the SDPUC stated that the designation of RCC and WALLC in any service areas that require redefinition would not be effective until the FCC concurs in such redefinitions. Given that the FCC has now concurred with the redefinitions, the SDPUC is submitting this letter for designation and certification for RCC and WALLC in the service areas as listed below.

[1] For your convenience, we have included a copy of that letter.

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For RCC, the ETC designations are for the following rural service areas:

a. Interstate Telecommunications Cooperative, Inc.: Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake;

b. James Valley Cooperative Telephone Company: Andover and Bristol;

c. Venture Communications Cooperative: Britton, Langford, Pierpont, Roslyn, and Sisseton; Rosholt.

For WALLC, the ETC designations are for the following rural service areas:

a. Alliance Communications Cooperative, Inc. (Baltic)[2]: Baltic and Crooks; Hudson;

b. Alliance Communications Cooperative, Inc. (Splitrock): Brandon and Garretson;

c. PrairieWave Community Telephone, Inc.: Worthing and Lennox;

d. Sioux Valley Telephone Company: Colton, Dell Rapids, and Humboldt; Valley Springs.

For the service areas as listed above, the SDPUC hereby states that RCC and WALLC have been certified to receive support pursuant to 47 C.F.R. §§ 54.301, 54.305, 54.307, and/or 54.309, and/or part 36, subpart F. RCC and WALLC have shown to the SDPUC that they will use all federal high-cost support provided to them only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Act.

Enclosed is the SDPUC's Order granting ETC designation and certification to RCC and WALLC. If you have any questions, please do not hesitate to contact us for further information.

Sincerely,

Rolayne Ailts Wiest

ROLAYNE AILTS WIEST
SDPUC Attorney

Enclosures

cc: Mr. Talbot J. Wieczorek
Mr. David A. LaFuria
Ms. Darla Pollman Rogers
Mr. Richard Coit
Mr. James Cremer
Ms. Meredith Moore

[2] Alliance has two study areas, Baltic and Splitrock.

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August 2, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Irene Flannery
Universal Service Administrative Company
2000 L Street, NW - Suite 200
Washington, DC 20036

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Designation and Certification of Eligible Telecommunications Carriers

Dear Ms. Dortch and Ms. Flannery:

Pursuant to section 214(e)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. section 54.201, the South Dakota Public Utilities Commission (SDPUC) has designated RCC Minnesota, Inc. (RCC) and Wireless Alliance, L.L.C (WALLC) as Eligible Telecommunications Carriers (ETCs). RCC was designated as a competitive ETC in South Dakota for the following rural telephone companies' entire service areas located in South Dakota: Stockholm-Strandburg Telephone Company, Roberts County Telephone Cooperative Association, RC Communications, Inc., and Valley Telephone Company - Minnesota. RCC was also designated as a competitive ETC for the following non-rural service areas of Qwest Corporation: Milbank, Big Stone City, and Watertown wire centers. WALLC was designated as a competitive ETC in South Dakota for the following rural telephone company's entire service area: Union Telephone Company. WALLC was also designated as a competitive ETC for the following non-rural service areas of Qwest Corporation: Tea, Canton, Harrisburg, and the three Sioux Falls wire centers.

In addition, RCC and WALLC were designated as ETCs in additional rural service areas, *contingent upon the FCC's concurrence in redefinition of those ETCs service areas.* For RCC, the conditional ETC designations are for the following rural service areas:

a. ITC: Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake;

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b. James Valley: Andover and Bristol;

c. Venture: Britton, Langford, Pierpont, Roslyn, and Sisseton; Rosholt.

For WALLC, the conditional ETC designations are for the following rural service areas:

a. Alliance (Baltic): Baltic and Crooks; Hudson;

b. PrairieWave: Worthing and Lennox;

c. Sioux Valley: Colton, Dell Rapids, and Humboldt; Valley Springs;

d. Alliance (Splitrock): Brandon and Garretson.

For the conditional ETC designation, the SDPUC is submitting a request to the FCC to concur in its redefinitions. If the FCC concurs in the redefinitions, the SDPUC will submit an additional letter regarding certification for these rural service areas.

For the ETC designations listed in the first paragraph that are not subject to redefinition, the SDPUC hereby states that RCC and WALLC have been certified to receive support pursuant to 47 C.F.R. §§ 54.301, 54.305, 54.307, and/or 54.309, and/or part 36, subpart F. RCC and WALLC have shown to the SDPUC that they will use all federal high-cost support provided to them only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Act.

Enclosed is the SDPUC's Order granting ETC designation and certification to RCC and WALLC. If you have any questions, please do not hesitate to contact us for further information.

Sincerely,

Rolayne Ailts Wiest

ROLAYNE AILTS WIEST
Commission Attorney

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, L.L.C. D/B/A UNICEL FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)	**ORDER DESIGNATING RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, L.L.C. D/B/A UNICEL AS ELIGIBLE TELECOMMUNICATIONS CARRIERS; FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND NOTICE OF ENTRY OF ORDER TC03-193**

On November 18, 2003, the Public Utilities Commission (Commission) received a petition (Petition) from RCC Minnesota, Inc. and Wireless Alliance, L.L.C. d/b/a Unicel (collectively Petitioners) requesting designation as an eligible telecommunications carrier (ETC) for service areas in northeastern and southeastern South Dakota. The service areas originally proposed by the Petitioners for designation encompass all or portions of certain non-rural Qwest wire centers, as set forth on Exhibit B to the Petition, and all or portions of certain rural telephone companies' study areas, as set forth on Exhibits C and D to the Petition. On November 20, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of December 5, 2003, to interested individuals and entities. On December 16, 2003, the Commission granted intervention to James Valley Cooperative Telephone Company (James Valley), Union Telephone Company (Union), Stockholm-Strandburg Telephone Company (Stockholm-Strandburg), Venture Communications Cooperative (Venture), Interstate Telecommunications Cooperative, Inc. (ITC), Sioux Valley Telephone Company (Sioux Valley), PrairieWave Community Telephone, Inc. (PrairieWave), South Dakota Telecommunications Association (SDTA), Roberts County Telephone Cooperative Association (Roberts County), RC Communications, Inc. (RC Communications), and Alliance Communications Cooperative, Inc. (Alliance).[1]

A hearing was held beginning on October 13, 2004. The issue at the hearing was whether the Petitioners should be designated as eligible telecommunications carriers in the service areas consisting of the whole and partial non-rural and rural wire centers set forth on Exhibits B, C, and D to the Petition. Following the hearing, the parties submitted briefs. At its March 29, 2005, meeting, the Commission granted the Motion by Intervenors to Submit a Supplemental Brief regarding the Federal Communications Commission's recently released order regarding ETC designations. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005). The parties submitted supplemental briefs and the Commission heard oral argument on this docket at its April 12, 2005, meeting. At its May 10, 2005, meeting the Commission voted to designate the Petitioners for certain areas, imposed conditions on the designations, and determined that certain service areas should be redefined.

Having reviewed the evidence of record, the briefs of the parties, and applicable law, the Commission makes the following Findings of Fact and Conclusions of Law:

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[1] Alliance has two study areas, Splitrock and Baltic. Int. Exh. 11. Therefore, the Commission will refer to Alliance (Splitrock) and Alliance (Baltic).

FINDINGS OF FACT

1. On November 18, 2003, the Commission received a Petition from RCC Minnesota, Inc. (RCC) and Wireless Alliance, L.L.C. (WALLC) d/b/a Unicel requesting designation as an ETC for service areas in northeastern and southeastern South Dakota. The service areas as originally proposed by the Petitioners for designation encompass all or portions of certain non-rural Qwest wire centers, as set forth on Exhibit B to the Petition, and all or portions of certain rural telephone companies' study areas, as set forth on Exhibits C and D to the Petition. Pet. Exh. 9.

2. The Commission granted intervention to James Valley, Union, Stockholm-Strandburg, Venture, ITC, Sioux Valley, PrairieWave, SDTA, Roberts County, RC Communications, and Alliance.

3. Rural Cellular Corporation owns or has a controlling interest in both RCC and WALLC. Tr. Vol. I at 45. RCC holds the license for the northeastern part of the licensed service area, using cellular mobile radio spectrum (CMRS). *Id.* at 45, 46. WALLC holds the license in the southeast portion, using personal communications services (PCS). *Id.* Each entity independently operates and maintains its network, but they do not have separate employees. *Id.* at 99, 100. RCC and WALLC requested that they be designated jointly for both the northeastern and southeastern licensed areas.

4. The statute provides that a carrier designated as an ETC shall offer the supported services "throughout the service area for which the designation is received. . . ." 47 U.S.C. § 214(e)(1). The Commission finds that it would not be appropriate to designate RCC and WALLC as joint ETCs for both areas for the simple reason that RCC is not serving the southeastern portion and WALLC is not serving the northeastern portion of the state. Moreover, the two companies are providing cellular services with two different technologies -- one is using CMRS spectrum while the other is using PCS spectrum. Thus, although the Commission will generally refer to RCC and WALLC as the Petitioners, the Commission will designate each carrier only for the service areas that it will actually serve.

ABILITY TO OFFER SUPPORTED SERVICES

5. In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

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." 47 C.F.R. § 54.101(a)(1). The FCC has defined the minimum bandwidth for voice grade access at 300 to 3,000 Hertz. *Id.* The Petitioners' customers will be able to make and receive calls on the public switched network with a bandwidth of approximately 2700 hertz. Pet. Exh. 5 at 2. The Commission finds that the Petitioners will provide voice grade access to the public switched network.

7. Local usage is defined as "an amount of minutes of use of exchange service, prescribed by the [FCC], provided free of charge to end users[.]" 47 C.F.R. § 54.101(a)(2). The Petitioners "offer a large number of rate plans that include a variety of local calling areas and varying numbers of local calling minutes." Pet. Exh. 5 at 3. The Commission finds the Petitioners will provide local usage.

8. DTMF is defined as "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). The Petitioners will provide the functional equivalent to DTMF by using out-of-band digital signaling and in-band multi-frequency signaling. Pet. Exh. 5 at 3. The Commission finds the Petitioners will provide the functional equivalent of dual tone multi-frequency signaling.

9. Single party service provided by wireless carriers is defined as a service which uses "spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission[.]" 47 C.F.R. § 54.101(a)(4). The Petitioners will provide a dedicated path for each customer's calls. Pet. Exh. 5 at 3. The Commission finds that the Petitioners will provide single party service or its functional equivalent.

10. Access to emergency services is defined as "access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations." 47 C.F.R. § 54.101(a)(5). Access to these services are required "to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911[.]" *Id.* Petitioners provide their customers with access to 911 and have completed Phase I deployment in some areas of the state. Pet. Exh. 5 at 4; Tr. Vol. II at 7. The Commission finds the Petitioners will provide access to emergency services.

11. 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). Petitioners will meet this requirement by providing their customers with access to operator services by the customers dialing "0" or "611." Pet. Exh. 5 at 4. The Commission finds the Petitioners will provide access to operator services.

12. 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). Petitioners will meet this requirement by providing all of their customers with the ability to make and receive interexchange or toll calls through interconnection arrangements that the Petitioners have with interexchange carriers. Pet. Exh. 5 at 4. The Commission finds that the Petitioners will provide access to interexchange service.

13. 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). Petitioners provide access to directory assistance by dialing "411" or "555-1212." Pet. Exh. 5 at 4. The Commission finds that Petitioners will provide access to directory assistance.

14. Each company designated as an ETC must offer toll limitation through toll blocking, toll control, or both, to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.400(a)(b)(c)(d). Toll blocking is defined as "a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel." 47 C.F.R. § 54.400(b). Petitioners will provide toll blocking. Pet. Exh. 5 at 4. Petitioners currently provide toll blocking for international calls, "900" calls, and other calls. *Id.* The Petitioners will use this technology to provide toll blocking

to their Lifeline customers once designated as an ETC. *Id.* at 4-5. The Commission finds the Petitioners will provide toll limitation for qualifying low-income consumers.

15. A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services. . . ." 47 U.S.C. § 214(e)(1)(A). The Petitioners will provide the supported services using their existing network infrastructure and spectrum as well as using resale, roaming arrangements, and boundary extensions for areas outside of their licensed areas. Pet. Exh. 1 at 23; Pet. Exh. 5 at 5; Tr. Vol. I at 147. The Commission finds the Petitioners meet this requirement.

16. With respect to the advertising of its universal service offering, the Petitioners state that they will advertise the availability of each of the supported services by media of general distribution, which may include "newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising." Pet. Exh. 9 at 7. The Commission finds the Petitioners meet the advertising requirement.

PUBLIC INTEREST -- RURAL AREAS

17. Section 214(e)(2) provides, in part, as follows:

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

18. In a previous decision, the Commission adopted the following public interest test for areas served by rural telephone companies:

> The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part of the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part of the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning of universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, Findings of Fact and Conclusions of Law, Docket TC98-146 at 3.

19. Last year the FCC adopted a more stringent public interest analysis than it had used in the past for ETCs seeking designation in a rural telephone company's service area. *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

and Order, FCC 03-338 (rel. January 22, 2004) (*Virginia Cellular*). First the FCC determined that "the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." *Id.* at para. 4. To determine the public interest, the FCC stated that it "would 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 areas within a reasonable time frame." *Virginia Cellular* at para. 28. As part of its analysis, the FCC also evaluated whether the designation raises creamskimming concerns. *Id.* at para. 32. In addition, the FCC adopted the commitments made by Virginia Cellular as conditions of the FCC's approval of Virginia Cellular's ETC designation. *Id.* at para. 46. These commitments included: the submission of records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the requested service area; a commitment to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service; a commitment to provide the number of consumer complaints per 1,000 mobile handsets on an annual basis; and information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year. *Id.*

20. In a recent ETC decision, the Commission used its prior definition of public interest and also adopted the FCC's public interest analysis. *See In the Matter of the Filing by WWC License, LLC D/B/A CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas*, Amended Order Designating Western Wireless as an Eligible Telecommunications Carrier; Findings of Fact and Conclusions of Law; and Notice of Entry of Order, Docket TC03-191(dated Jan. 3, 2005) at paras. 17-19.

21. After briefing had been completed in this case, the FCC released its order regarding the recommendations of the Federal-State Joint Board on Universal Service. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (rel. March 17, 2005) (*FCC ETC Order*). The Intervenors filed a motion requesting supplemental briefing to address the FCC's order. The Commission granted the motion and the parties submitted briefs. The Commission heard oral arguments at its April 12, 2005 meeting. The Intervenors requested that the Commission adopt the new FCC requirements. The Petitioners objected to the adoption of the new requirements given that the hearing had already been held and the briefing had been completed prior to the issuance of the *FCC ETC Order*.

22. In its order, the FCC set specific eligibility requirements for ETC applicants. For example, one of the new requirements would require an ETC applicant to "submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area." *FCC ETC Order* at para. 23. This plan "must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support." *Id.* Another requirement requires the ETC applicant to "demonstrate its ability to remain functional in emergency situations." *Id.* at para 25. These, as well as all of the other requirements adopted by the FCC are not required to be followed by the state commissions, although the FCC did encourage state commissions to voluntarily adopt these requirements. *Id.* at paras. 58-61.

23. The Commission finds that adoption of these most recent FCC requirements by the Commission after the hearing and briefing of the issues had been completed by the parties raises fairness issues. The adoption of these requirements could require the reopening of the record. At the very least it would most likely require the Petitioners to supplement the record in order to attempt to meet the

requirements. The Commission notes that it is under no obligation to adopt these requirements and that it is not fair to the Petitioners to require that the Petitioners put in additional evidence to address these requirements after briefing had been completed. The Commission further point out that although the *FCC ETC Order* has been released, it is not yet effective. The Commission may consider these requirements in future ETC proceedings or may address them in a rulemaking, or both.

24. Therefore, the Commission finds that it will again rely on its definition of the public interest it has used in prior cases and the FCC's public interest analysis contained in its *Virginia Cellular* order.

25. The Commission will first consider whether consumers will realize increased benefits from competition. The Petitioners stated that "[i]n areas where we extend new service as a result of constructing new facilities, our customers will have new choices in local calling area, number of minutes of local calling within that calling area and varying options to use their phone when traveling outside the local calling areas." Pet. Exh. 1 at 5. Petitioners also stated that their customers "will be able to take advantage of our service offerings that are competitive with ILEC prices, and offer mobility." *Id.* With respect to competitive service offerings, the Petitioners cited to one of their plans which costs $32.95 and "provides a local calling area that we believe to be similar to or greater than our competition's, unlimited local calling for all calls placed from anywhere within the local calling area, and some additional features that consumers typically pay extra for, such as call waiting, call forwarding, and three-way conference calling." *Id.* at 5. In addition, Petitioners noted that their customers can receive service on a month-to month basis or pursuant to a service contract for a specific term and receive a special offer or discounted phone. *Id.* at 3. The Petitioners stated that increased competition "will provide a greater choice of services, force all carriers to improve their service offerings, and ultimately lower prices or increase value to customers." *Id.* at 4. For low income customers, the Petitioners stated that they engage "in some creative outreach efforts" in order to make customers aware of the Lifeline and Link-Up benefits. Pet. Exh. 2 at 8. The Petitioners noted that "[m]any businesses consider the quality of telecommunications networks when deciding whether to locate, or remain, in a rural area." Pet. Exh. 2 at 7. So every time they "build a new site, the benefits we offer will be available on a wider scale, improving opportunities for economic development." *Id.* The Petitioners also contended that "[c]ompetition among wireless carriers for second lines has consistently resulted in lowered prices and led to new and improved services offered by all of the carriers." Pet. Exh. 1 at 7.

26. The Intervenors admitted that increased cellular signal coverage "could bring some benefit in the form of greater cellular signal coverage" but they contended that the Petitioners have only made a limited commitment to expand their facilities and have refused to submit a build out plan. Int. Exh. 1 at 32-33; Intervenors' Reply Brief at 21.

27. The Commission finds that the Petitioners' service offerings will bring benefits, including increased choices, expanded local calling areas, and mobility. Further, the Petitioners will provide cellular coverage in areas that are not currently served or are underserved. The Commission finds that although the Intervenors have questioned the Petitioners' commitment to expand their facilities, the Commission is imposing conditions that will ensure that the Petitioners use high-cost support to improve and expand the Petitioners' coverage in the designated areas. For example, condition six requires the following:

> In conjunction with, but separate from and in addition to their annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, the Petitioners shall submit records and documentation on an annual basis detailing their progress towards meeting the

statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by the Petitioners within the State of South Dakota during the preceding annual period and shall include their proposed capital budgets for the State of South Dakota for the ensuing year. The Petitioners shall work with Commission Staff to determine what constitutes material expenditures. If the Petitioners and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

In addition, condition seven requires the Petitioners to "annually submit proposed plans for the upcoming calendar year which sets forth the Petitioners' proposed plans for construction of new facilities and service enhancements to existing facilities" as well as subsequent reports "stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations."

28. The Commission will next look at the impact of multiple designations on the universal service fund. In *Virginia Cellular*, the FCC found that the granting of ETC designation for that particular carrier would not dramatically burden the universal service fund. *Virginia Cellular* at para. 31. However, the FCC also noted that "in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive." *Id.* The Petitioners stated that "the amount of high-cost support the Applicants expect to receive in its first year as an ETC is a very small percentage of the amount of projected support for all carriers in South Dakota." Pet. Exh. 1 at 17. The Commission finds that designation of the Petitioners as ETCs will not dramatically burden the universal service fund.

29. With respect to the issue of any unique advantages or disadvantages of the Petitioners' service offerings, the Petitioners cited mobility, large local calling areas, varying amounts of minutes, and safety features. Pet. Exh. 1 at 17. Regarding the safety benefit, the Petitioners pointed out that with their expanded coverage, a customer will be able to dial 911 in more areas, enabling "farmers in the field, travelers in their vehicles, mobile workers, utility company employees, and others to call police, ambulance and fire professionals in the event of an emergency." *Id.* at 6. In addition, the expanded coverage areas will allow customers to make non-emergency calls when away from their home or business that promote safety such as calls to a service station if customers experience trouble with their vehicles. *Id.*

30. Although, as the Intervenors point out, there is another wireless carrier already designated as an ETC in these areas, that wireless carrier does not yet provide complete coverage of the area. Thus, through the use of its existing network and with additional support from the high-cost fund, the Petitioners will be able to improve on the wireless coverage of the areas in question. Further, the Commission points out that for rural telephone company service areas, the high-cost fund provides per-line support for competitive ETCs. Thus, if one of the competitive ETCs builds out in a service area in a sparsely populated area and captures most of the customers, the other competitive ETC will receive little if any support. If that competitive ETC is then unable or unwilling to also provide service throughout the service area within a reasonable time frame, the Commission will revoke that carrier's ETC status.

31. Another criteria to consider is whether the Petitioners have made any commitments regarding quality of telephone service. The Petitioners state that their current customers "enjoy a very high level of service quality" and that they have a call completion rate of around 98%. Pet. Exh. 5 at 6. The Petitioners further noted that their "network experiences almost no down time" and that they

"have never had a switch outage due to a failure." *Id.* The Petitioner's customer service representative can be reached at any time, 24 hours a day, seven days a week. *Id.* at 7. The Petitioners stated that their response time to an outage report is usually less than one hour. *Id.* at 5. The Petitioners also stated that their system is "reinforced by the presence of battery backups installed at its cell sites, accompanied by generators at more remote and key communications sites, along with a pair of diesel generators at its switch, which are capable of running indefinitely in the event of a major electrical outage." *Id.* In addition, the Petitioners have "portable generators on stand-by that can be moved to individual cell sites to supplement back-up batteries." *Id.* Further, the Petitioners have "committed to report the number of consumer complaints filed per 1,000 handsets each year" and their "customer service agreement includes important protections for consumers, including service complaint resolution procedures and provisions for customer-initiated termination of service." Pet. Exh. 1 at 18. Thus, the Commission finds that the Petitioners have made commitments regarding their quality of telephone service.

32. Another requirement regards the Petitioners' ability to provide the supported services throughout the designated service areas within a reasonable time frame. The Petitioners committed to serving every customer within their proposed ETC service areas upon reasonable request. Pet. Exh. 1 at 10. If the customer resides in an area where the Petitioners do not provide service, the Petitioners will use a six step process for provisioning service. Pet. Exh. 5 at 9-10. The six steps are: 1) determining whether the customer's equipment can be modified or replaced to provide acceptable service; 2) determining whether a roof-mounted antenna or other network equipment can be deployed to provide service; 3) determining whether adjustments at the nearest cell site will provide service; 4) determining whether any other adjustments to the network or customer facilities can be made to provide service; 5) exploring the possibility of offering resold service of other carriers that serve the location; and 6) determining whether an additional cell site, a cell-extender, or repeater can be employed or constructed to provide service. *Id.* The Petitioners also stated that they would provide to the Commission "a periodic report of the number of consumers who have requested service but for which service could not be provisioned." *Id.* at 10. The Petitioners further stated that, upon request, they would also include "the proposed cost of construction and why the request for service could not be filled." *Id.*

33. The Petitioners stated that with high-cost support they "will be able to build additional facilities to provide coverage in areas that are currently unserved or improve coverage that are underserved today, and to improve network capacity for calls, all to increase the number of areas within the proposed services areas in which a call can be made." *Id.* The Petitioners estimated that they would receive about 1.5 million per year in high-cost support. Tr. Vol. II at 7. The Petitioners stated that with the high-cost money they would construct four new cell sites within eighteen months following ETC designation. Pet. Exh. 5 at 11. Two of the new cell sites would be located in RCC's licensed area and would be in or near the towns of Willow Lake and Toronto. *Id.* The other two cell sites would be in WALLC's licensed area and would be in or near the towns of Lyons and Baltic. *Id.* A cell site typically costs between $250,000 and $400,000. *Id.*

34. The Intervenors asserted that the Petitioners failed to show that they would provide the supported services throughout the designated service areas within a reasonable time frame. The Intervenors noted that the four additional cell sites as proposed by the Petitioners covered only two of the ten rural service areas. Int. Exh. 1 at 32. The Intervenors also pointed to the testimony of a Petitioners' witness who hesitated to say that the Petitioners will substantially cover the requested area within five years. Tr. Vol. I at 95-96.

35. The Commission finds that the Petitioners have shown that they will provide the supported services throughout the designated service areas within a reasonable time frame. The Commission finds that the Petitioners have shown that they intend to use the high-cost support to improve coverage and will begin with an additional four cell sites. Moreover, the Commission again notes that it will impose conditions that are designed to ensure that the Petitioners will provide the supported services throughout the area within a reasonable time frame. *See* Finding of Fact 27; *see also* Conditions 4-11.

36. The Commission's next consideration under the public interest analysis is whether the designation of the Petitioners as ETCs will have detrimental effects on the provisioning of universal service by the incumbent carriers. The Intervenors point to the Joint Board's Recommended Decision in which the Joint Board recommended the funding of only one primary line to each customer location. *See In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, FCC 04J-1, at para. 56. The Commission will take notice of the recently released *FCC ETC Order* for the limited purpose of noting that the FCC did not put into place a primary line restriction due to a federal Act which currently prohibits the FCC from using its funds to implement a primary line restriction. *FCC ETC Order* at para. 16. Thus, under the current system an incumbent LEC will continue to receive support for its total cost of serving its service area. Tr. Vol. II at 235. By contrast, a competitive ETC's support is "per-line" support. *Id.*

37. The Commission finds that the record does not support a finding that the rural areas in question are not capable of supporting competition. First the Commission notes that wireless services are often used as a second telephone, not as a substitution for the ILECs' wireline services. In fact, the addition of a second wireless ETC into the requested areas is more likely to have a detrimental effect on the other competing wireless ETC given that the two wireless ETCs will be competing with similar services in the same area, and to the extent a wireless ETC serves a customer whose line receives high-cost support. Second, the rural ILECs will continue to receive support for their service areas based on their total cost of serving the areas.

38. The Commission will evaluate creamskimming concerns in the next section when it evaluates whether to redefine any service areas since the Commission first needs to decide where it will designate the Petitioners in order to conduct a creamskimming analysis.

CREAMSKIMMING AND REDEFINITION OF RURAL SERVICE AREAS

39. Section 214(e)(5) defines a service area as follows:

> The term "service area" means a geographic area established by a State commission (or the [FCC] under paragraph (6)) 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 [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

40. With respect to areas served by rural telephone companies, the Petitioners presented two options for the Commission to consider. The first option, which is the option that is preferred by the Petitioners, would allow the Petitioners to serve the area that is covered by their FCC licenses, with some exceptions. Tr. Vol. II at 150. The exceptions are the result of the Petitioners' failure to notify all of the affected rural telephone companies located in their licensed areas, such as Dickey Rural,

Red River Telecom, Citizens of Minnesota, and Fort Randall. Tr. Vol. I at 140-141. For the service areas of the rural companies that the Petitioners will not serve in their entirety, the Petitioners requested that each company's service area, which is currently its study area, be *redefined* so that each wire center is a separate service area. The Petitioners then requested that for the wire centers that are not entirely within the Petitioners' licensed areas, the Commission would *designate* the Petitioners as ETCs only for those areas that are within their licensed areas. Tr. Vol. II at 150. This would mean that, in some instances, the Petitioners would be designated as ETCs for partial wire centers even though the rural telephone companies' service areas would be comprised of entire wire centers.

41. The second option presented by the Petitioners also involved the Commission redefining some of the rural telephone companies current service areas into wire center service areas. Upon redefinition to wire center service areas, the Petitioners would serve most, but not all, of the rural telephone companies' service areas. Pet. Exh. 1 at 23. Petitioners submitted a list of those wire center service areas they would serve. Pet. Exh. 4. For the wire centers they committed to serve in their entirety, even though parts of the wire centers were outside of their licensed territory, the Petitioners stated they would serve those wire centers in their entirety though resale, roaming arrangements, and boundary extensions. Exh. 1 at 23; Pet. Exh. 5 at 5; Tr. Vol. I at 147.

42. The Commission rejects the first option presented by the Petitioners. The Commission finds that a service area, as designated by a state commission, is the area that is required to be served in its entirety by an additional ETC. This finding is consistent with the FCC's recent statements regarding this issue in *Virginia Cellular*. In that decision, the FCC found the following:

> In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act. We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in these redefined 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.

Virginia Cellular at para. 41. The Commission will not redefine an incumbent company's service area to the wire center level and then not require a competitive ETC to serve the entire service area by designating the competitive ETC in only part of newly determined service area. The Commission finds this is inconsistent with the statute that requires the ETC to offer the supported services "throughout the *service area* for which the designation is received. . . ." 47 U.S.C. § 214(e)(1) (emphasis added). In addition, it is inconsistent with ARSD 20:10:32:42 which provides that "[i]n reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission *may not* find it to be in the public interest if the provider requesting such designation *is not offering its services coextensive* with the rural telephone company's service area." (emphasis added).

43. Therefore, the Commission will evaluate the Petitioners' request under the second option. As recognized by the FCC, the Joint Board expressed the following concerns regarding the redefining of rural telephone company service areas: "(1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs

at something other than a study area level." *Virginia Cellular* at para. 41. The Commission will first review any creamskimming concerns.

44. Under the Petitioners' second proposed option, some of the rural telephone companies' service areas, which are currently comprised of study areas, would be redefined so that each wire center is a separate service area. The companies are: James Valley, Venture, ITC, Sioux Valley, PrairieWave, Alliance (Splitrock), and Alliance (Baltic).

45. Three of these companies, Sioux Valley, Alliance (Splitrock), and Venture, have disaggregated support in their study areas. Disaggregation is when a company disaggregates its high-cost support in order to more closely reflect geographic cost differences. Pet. Exh. 7 at 76; 47 C.F.R. § 54.315. Or, in other words, a company which has disaggregated its support has attempted to target the support so that higher per-line support is associated in the areas which are higher cost.

46. The FCC has found that "[r]ural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area." *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45 (rel. Feb. 24 2004) (*Highland Cellular*) at para. 13. The FCC has found that when a rural company disaggregates its support, "[t]here are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area...." *Highland Cellular* at 32, fn 96. However, the FCC has also found that for study areas that include "wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities." *Highland Cellular* at para. 32. For example, the FCC found that an example of a study area with highly variable population densities was when the highest density wire centers had persons per square mile that ranged from 98 to 143 as compared to the lower density wire centers with population densities of 18 to 22 persons per square mile. *Id.* at paras. 31, 32.

47. The Commission finds that when a company disaggregates its support, creamskimming concerns are minimized since any competitor which serves the low-cost customers will receive much less in high-cost support for those customers. For example, for Alliance (Splitrock), the company split its wire centers into two zones with the higher cost areas receiving support of $10.93 per month and the lower cost areas receiving only $2.24 per month. Pet. Exh. 16. Alliance (Splitrock) explained its disaggregation plan as follows:

> We have principally developed a town, Zone 1, and an agricultural or rural area, Zone 2, USF Disaggregation Plan that targets support based only on the cost differentials between the two zones. The Path #3 USF Disaggregation Plan defines the Zone 1 or town costs as being typically lower than the Zone 2 or rural costs. This is due to demographics and the relative cost of delivering service to these respective customers based upon the equivalency of distance and cost.

Id. Disaggregation that is done incorrectly may allow a competitive ETC to receive high-cost support for low-cost areas. However, based on its review of the record, the Commission does not find that the three companies erroneously disaggregated and does not find that these areas present creamskimming concerns.

48. In addition, the Commission notes that many of the wire centers that the Petitioners *are not* proposing to serve are wire centers that are not contiguous to the wire centers that the Petitioners *are* proposing to serve as ETCs. Pet. Exh. 3. The Commission notes that the FCC encouraged

"states to consider disaggregating a rural telephone company's study area into service areas composed of the contiguous portions of that study area." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, para. 129 (1997) (*First Report and Order*). The FCC found that "requiring a carrier to serve a non-contiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers." *Id.* at para. 190; *see also Virginia Cellular* at para. 38.

49. The remaining companies where the Petitioners requested service area redefinitions, James Valley, ITC, PrairieWave, and Alliance (Baltic), have not disaggregated. In order to determine if creamskimming may occur, the FCC has engaged in a "covered" to "uncovered" analysis. Or, in other words, the FCC looks at the average population density for the wire centers that the ETC applicant proposes to serve and then compares that with the average population density of the wire centers that the applicant does not propose to serve. *Highland Cellular* at para. 28. The purpose of this analysis is to not allow a competitive ETC to primarily serve customers located in the low-cost, high-density portions of a rural carrier's service area. *Id.* at para 31.

50. For Alliance (Baltic), the Petitioners propose to serve three of the four wire centers --- Baltic, Crooks, and Hudson. Those wire centers have an average density of 11.3 households per square mile. Pet. Exh. 14 at 1. The Petitioners will not serve the Alcester wire center which has a density of 8.1 households per square mile. *Id.* Thus the ratio of served to unserved is only 1.4 to 1. The Commission finds that this low ratio does not raise creamskimming concerns.

51. For ITC, the Petitioners propose to serve Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake. These wire centers have an average density of 3.5 households per square mile. Id. at 2. The Petitioners will not serve Brookings, Chester, Elkton, Hendricks, Nunda, Sinai, Wentworth, and White. These wire centers have an average density of 5.2 households per square mile. *Id.* Since the Petitioners will be serving the wire centers with the lower density (the ratio of served to unserved is .67 to 1), there are no creamskimming concerns.

52. For James Valley, the Petitioners propose to serve Andover and Bristol. These wire centers have an average density of 1.7 households per square mile. *Id.* at 3. The Petitioners will not serve Claremont, Conde, Groton, Turton, Columbia, Doland, Ferney, Frederick, Houghton, Hecla, and Mellette. These wire centers have an average density of 1.7, resulting in a served to unserved ratio of 1 to 1. Thus there are no creamskimming concerns with James Valley.

53. For PrairieWave, the Petitioners propose to serve Worthing and Lennox. These wire centers have an average density of 10.3 households per square mile. *Id.* at page 4. The Petitioners will not serve the Alsen, Flyger, Gayville, Hurley, Irene, Wakonda, Parker, and rural Beresford wire centers. These wire centers have an average density of 5.8 households per square mile. *Id.* The Commission finds that although the ratio of served to unserved is 1.8 to 1, this ratio is not high enough to deny ETC designation. The Commission notes that the FCC found that a ratio of 8 to 1 did pose creamskimming problems. *Virginia Cellular* at para. 35. Although the Commission declines to set a specific ratio that it will find as creating creamskimming problems, a ratio of 1.8 to 1 is not high enough to deny designation and redefinition.

54. With respect to the Joint Board's concern about recognizing that rural telephone companies are on a different competitive footing from other LECs, the Commission finds that the record does not show that redefinition will reduce the rural carriers' high-cost support since, as previously mentioned, the receipt of high-cost support by the Petitioners will not lessen the support that the rural carriers

receive. *See Virginia Cellular* at 43. And, regarding the concern about any added administrative burdens of requiring rural telephone companies to calculate costs at something other than a study area level, the Commission notes that redefinition does not change how the rural carriers will calculate their costs. *Id.* at 44.

55. Another concern that was raised by the Intervenors was the possibility that if the Commission redefined service areas from study areas to wire centers, it would be easier for a competitive ETC to stop providing the supported services in the high-cost, low density wire centers. The Commission notes this concern and finds that one way to alleviate it is to designate the requested rural company areas into groups of wire centers instead of designating each wire center separately. Thus the Commission will recommend to the FCC that the service areas be redefined as follows:

a. For Alliance (Baltic), the service area should be redefined by creating a service area comprised of the contiguous wire centers of Baltic and Crooks, with the noncontiguous wire center of Hudson as a separate service area;.

b. For ITC, the service area should be redefined by creating a service area comprised of Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond,[2] Toronto, Waubay, Webster, and Willow Lake;

c. For James Valley, the service area should be redefined by creating a service area comprised of Andover and Bristol;

d. For PrairieWave, the service area should be redefined by creating a service area comprised of Worthing and Lennox;

e. For Sioux Valley, the service area should be redefined by creating a service area comprised of Colton, Dell Rapids, and Humboldt, with the non-contiguous wire center of Valley Springs as a separate service area;

f. For Alliance (Splitrock), the service area should be redefined by creating a service area comprised of Brandon and Garretson;

g. For Venture, the service area should be redefined by creating a service area comprised of the contiguous wire centers of Britton, Langford, Pierpont, Roslyn, and Sisseton, with the non-contiguous wire center of Rosholt as a separate service area.

56. The designation of the Petitioners in these service areas served by rural companies require FCC approval of the redefinition pursuant to section 214(e)(5). Thus, the Petitioners' ETC designations will become effective only if the FCC approves such redefinition.

57. For the remaining rural telephone companies, Stockholm-Strandburg, Union, Roberts County, RC Communications, and Valley, the Petitioners do not request redefinition and will serve the entire service areas that are located in South Dakota. Thus, no redefinition is required for these companies.

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[2] The record is unclear whether the Raymond wire center still exists or if it has been combined with the Clark wire center.

RURAL DESIGNATIONS

58. The Commission finds it is in the public interest to designate RCC as an ETC for the entire service areas of Stockholm-Strandburg, Roberts County, RC Communications, and Valley.

59. The Commission finds it is in the public interest to designate WALLC as an ETC for the entire service area of Union Telephone Company.

60. The Commission finds it is in the public interest to designate RCC as an ETC for the following redefined service areas, contingent upon FCC concurrence in the redefinitions:

a. ITC: Astoria, Bradley, Brandt, Bryant, Castlewood, Clear Lake, Clark, Estelline, Florence, Gary, Goodwin, Hayti, Lake Norden, Raymond, Toronto, Waubay, Webster, and Willow Lake;

b. James Valley: Andover and Bristol;

c. Venture: Britton, Langford, Pierpont, Roslyn, and Sisseton; Rosholt.

61. The Commission finds it is in the public interest to designate WALLC as an ETC for the following redefined service areas, contingent upon the FCC's concurrence in the redefinitions:

a. Alliance (Baltic): Baltic and Crooks; Hudson;

b. PrairieWave: Worthing and Lennox;

c. Sioux Valley: Colton, Dell Rapids, and Humboldt; Valley Springs;

d. Alliance (Splitrock): Brandon and Garretson.

NON-RURAL SERVICE AREAS

62. Qwest is a non-rural telephone company. The Petitioners originally listed Beloit, Forman, E. Harrisburg, Milbank, Big Stone City, three Sioux Falls' wire centers, Tea and Watertown as the Qwest wire centers where they were seeking ETC designation. Pet. Exh. 9. At the hearing, the Petitioners changed Beloit to Canton and deleted Forman because there is no Forman Qwest exchange. Pet. Exh. 4 at 1; Tr. Vol. I at 33. Small portions of the Tea and Canton exchanges are located outside of WALLC's licensed area. Pet. Exh. 3. After it was noted at the hearing that the Petitioners requested that they be designated within their licensed service areas but had left out some Qwest exchanges that were located partially within their service areas, the Petitioners added the Huron, Iroquois, DeSmet, Lake Preston, Arlington, and Madison wire centers. Tr. Vol. II. at 9-10. Only small portions of these added exchanges are actually located within the Petitioners' licensed areas. Pet. Exh. 3.

63. The Commission has previously designated Qwest's service areas as its individual exchanges. *See In the Matter of the Filing by U S West Communications, Inc. for Designation as an Eligible Telecommunications Carrier*, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order, Docket TC97-163 (dated Dec. 17, 1997). The Petitioners cited to the FCC's Universal Service Order in support of their position that the Commission could designate parts of a carrier's service

area as the designated area for the competitive ETC. Petitioners' Closing Brief at 16. One of the relevant paragraphs provides, in part, as follows:

> We agree with the Joint Board that, if a state commission adopts as a service area for its state the existing study area of a large ILEC, this action would erect significant barriers to entry insofar as study areas usually comprise most of the geographic area of a state, geographically varied terrain, and both urban and rural areas. We concur in the Joint Board's finding that a state's adoption of unreasonably large service areas might even violate several provisions of the Act. We also agree with the Joint Board that, if a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage. We therefore encourage state commissions not to adopt, as service areas, the study areas of large ILECs.

First Report and Order, 12 FCC Rcd at 8880, para. 185. The Commission notes that, consistent with these statements, it did not adopt the entire study area of Qwest as its service area; it adopted Qwest's individual exchanges. It is apparent from the language in the above cited paragraph that the FCC believed that once a state commission designated a non-rural carrier's service areas, those would be the service areas that a competitive ETC would be required to serve.

64. Thus, the Commission declines to designate the Petitioners in the Qwest wire centers of Huron, Iroquois, DeSmet, Lake Preston, Arlington, and Madison since the Petitioners only proposed to serve small portions of these wire centers.

PUBLIC INTEREST - NON-RURAL AREAS

65. With respect to non-rural service areas, the FCC has noted that its Common Carrier Bureau had previously "found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act." *Virginia Cellular* at para. 27. The FCC backed away from this previous finding and found that it did not believe that "designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance." *Id.* The Commission agrees that in order to designate an additional ETC in a non-rural service area, the Commission must find that the designation is in the public interest.

66. Given that the Petitioners have met the public interest test for areas served by rural telephone companies, the Commission finds that the Petitioners have also met the public interest test for the non-rural wire centers. *See* Findings of Fact 25 through 37; *see also Virginia Cellular* at para. 27, "[G]iven our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.")

NON-RURAL DESIGNATIONS

67. The Commission finds it is in the public interest to designate RCC as an ETC in the Milbank, Big Stone City, and Watertown wire centers.

68. The Commission further finds it is in the public interest to designate WALLC as an ETC in the Tea, Canton, Harrisburg, and three Sioux Falls wire centers.

CERTIFICATION

69. In addition to designation, the FCC also requires that a state commission certify to the FCC and the Universal Service Administrative Company (USAC) that federal high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 C.F.R. §§ 54.313 and 54.314. In order to provide certification, the Commission generally requires that a carrier estimate the support it expects to receive from USAC as well as its estimated costs for the provision, maintenance, and upgrading of facilities and services.

70. In this case, the Petitioners have estimated that they will receive approximately $1.5 million per year in high-cost support. Tr. Vol. II at 7. The Petitioners stated that with the high-cost money they would construct four new cell sites. Pet. Exh. 5 at 11. Two of the new cell sites would be located in RCC's licensed area and would be in or near the towns of Willow Lake and Toronto. *Id.* The other two cell sites would be in WALLC's licensed area and would be in or near the towns of Lyons and Baltic. *Id.* A cell site typically costs between $250,000 and $400,000. *Id.* As a condition of receiving ETC designation, the Commission is requiring that the Petitioners construct the four cell sites within one year of receiving ETC status. *See* Condition 8. The Commission finds that this requirement is sufficient for the Commission to certify that the Petitioners will use its high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Thus, the Commission will send certification letters to USAC and the FCC for the service ares that are subject to immediate designation and will send certification letters for the other designated service areas if the FCC concurs in the Commission's redefinition of those service areas.

CONDITIONS

71. Based on the foregoing findings of fact the Commission finds it is in the public interest to designate the Petitioners as ETCs in the areas as listed above. The Commission further finds that, based on the evidence of record and the applicable rules and statutes, it is in the public interest to place conditions on the Petitioners' ETC designations. The conditions are as follows:

> 1. On or before August 1, 2005, the Petitioners shall file their advertising plans and materials for South Dakota that they plan to use to inform consumers of their universal service offerings. Included in these advertising plans and materials shall be the Petitioners' advertising plans and materials regarding the Lifeline and Link-up programs and the forms for applying for Lifeline and Link-Up in South Dakota.
>
> 2. On or before August 1, 2005, the Petitioners shall file their service agreements pursuant to which they intend to offer their universal service offerings in South Dakota. The agreements shall be consistent with the Commission's service quality rules and shall also advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and provide basic information on how to apply.
>
> 3. The Petitioners agreed to disputes being resolved by the Commission. The service agreement shall state that any disputes or claims arising under the service

agreement may be subject to the Commission's complaint jurisdiction, at the consumer's option. Thus, the Petitioners' service agreements shall not compel submission of disputes to arbitration which would deprive customers of access to the complaint procedures of SDCL chapter 49-13 and ARSD Chapter 20:10:01.

4. The Petitioners have been designated as ETCs in portions of some rural telephone company wire centers that lie outside the boundaries of the areas in which Petitioners have been licensed by the FCC to provide wireless service. The Petitioners shall provide service to requesting customers in such areas by extension, resale, or other arrangements with other carriers, consistent with section 214(e)(1)(A). The service shall be provided at prices and upon terms and conditions that are comparable to what is provided within the Petitioners' licensed areas.

5. Consistent with their obligations pursuant to section 214(e)(1), the Petitioners shall continue to build out facilities and extend service to meet the statutory objective of offering service "throughout the service area for which the designation is received. . . ."

6. In conjunction with, but separate from and in addition to their annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, the Petitioners shall submit records and documentation on an annual basis detailing their progress towards meeting the statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by the Petitioners within the State of South Dakota during the preceding annual period and shall include their proposed capital budgets for the State of South Dakota for the ensuing year. The Petitioners shall work with Commission Staff to determine what constitutes material expenditures. If the Petitioners and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

7. The Petitioners shall annually submit proposed plans for the upcoming calendar year which set forth the Petitioners' proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, the Petitioners' subsequent annual filings shall also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, the Petitioners shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

8. The Petitioners shall construct the four additional cell sites within one year of their receipt of high-cost support. The year shall begin from the date the Petitioners first begin to receive high-cost support for the entirety of their designated areas. If the Petitioners are unable to construct all four cell sites during this time frame, they shall submit a report detailing the reasons why they were unable to do so and shall thereafter submit monthly reports detailing their progress toward meeting this goal. The initial report shall be due at the end of the year end time frame.

9. The Petitioners shall commit to and abide by the terms of the Cellular Telecommunications Industry Association Consumer Code for Wireless Service as it is amended from time to time.

10. By March 1st of each year, the Petitioners shall provide annual reports detailing the consumer complaints that they have received during the previous one year period. This report shall include the nature and location of the complaints.

11. By March 1st of each year, the Petitioners shall provide a report itemizing the number of unfulfilled requests the Petitioners received to provide service to a current customer's residence during the previous year and requests for service from potential customers within the Petitioners' service areas that went unfulfilled during the previous year, including the steps the Petitioners took to provide service and the reasons why such requests went unfulfilled. Following the submission of this report, the Petitioners shall meet with Commission Staff to discuss the report.

12. In the event that Commission Staff believes that information beyond what the Petitioners have provided is necessary for Staff and the Commission to perform their responsibilities relating to the Petitioners' meeting their obligations under the law and this Order, Staff shall first make a request for such information to the Petitioners. If the Petitioners object to such request, Staff and the Petitioners shall first confer in an effort to resolve the issue. If after such conference, Staff and the Petitioners are unable to reach agreement concerning the need for such information or the reasonableness of such request, Staff may petition the Commission for an order modifying the Conditions herein upon a showing of good cause therefor.

72. If any of the above reports are unable to be completed by the date set forth for such filing or there is other good cause for a different filing date, the Petitioners shall work with Commission Staff to determine when the reports must be filed, and if the parties cannot agree, either party shall bring the issue before the Commission for a decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to section 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. 47 U.S.C. § 214(e)(2). The designation of an additional ETC must be consistent with the public interest, convenience, and necessity. *Id.* The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). *Id.* Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. *Id.*

3. Pursuant to section 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. 47 U.S.C. § 214(e)(1)(A).