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

Petitions of NEP Cellcorp., Inc.	)	
For designation as an	)	
Eligible Telecommunications Carrier	)	
In the Commonwealth of Pennsylvania	)	CC Docket No. 96-45
	)	
and	)	
	)	DA 07-3602
CORR Wireless Communications, LLC for	)	
Designation as an	)	
Eligible Telecommunications Carrier	)	
In the State of Alabama	)	

REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Introduction

The Pennsylvania Public Utility Commission (PaPUC) appreciates this opportunity to file Reply Comments with the Federal Communications Commission (FCC). These Reply Comments address the FCC Notice on the Petitions of NEP Cellcorp, Inc. (NEP) and Corr Wireless Communications, LLC (Corr) (collectively, the Petitioners) for designation as an Eligible Telecommunications Carrier (ETC). The Petitioners seek ETC designation and support under Section 214(e)(6) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (TA-96) at Docket CC 96-45 (the ETC Petitions). The FCC sought comment in DA 07-3602.

As an initial matter, the PaPUC Reply Comments should not be construed as binding on the PaPUC in any proceeding or the specific views of an individual Commissioner, unless indicated otherwise. The positions taken in these Reply Comments also could change in response to later developments, including those at the state and federal level.

Executive Summary

The PaPUC opposes the ETC Petitions. The PaPUC did not relinquish jurisdiction over ETC petitions. The Petitioners do not identify what wireless services are already provided by incumbent carriers, some of whom are also USF recipients. The ETC Petitions do not address the impact that CETC designation will have on the rural incumbents' ability to meet their broadband and advanced services (including wireless) obligations. The NEP claim that it complies with E-911 is contradicted by rural wireless carrier claims that E-911 is not feasible in PS Docket No. 07-114. Additional ETCs

should not be made because they increase Pennsylvania's USF costs. There should be no more ETC designations until the FCC addresses intercarrier compensation and the burgeoning USF costs. Subsequent ETC designations may result in the PaPUC taking a more active role on ETC designations in Pennsylvania.

Extended Discussion

The PaPUC Reply Comments reject the claim in the NEP Petition that the PaPUC relinquished jurisdiction over ETC designations for wireless providers under state and federal law. The PaPUC Reply Comments stress that the February 6, 2007 letter appended to the NEP Petition stands, at best, for the proposition that the PaPUC was not going to act on that distinct ETC request at that time. Developments on intercarrier compensation, including a proposed cap on CETC designations pending this docket, were already underway at the time that NEP filed the NEP Petition.

Those pending matters reinforce the need to deny the ETC Petitions until the FCC addresses intercarrier compensation and the burgeoning universal service fund costs, including CETC designations like that sought in the NEP Petition. If the FCC grants the NEP Petition, the PaPUC anticipates a more active role on ETC designations in Pennsylvania because the PaPUC has not relinquished jurisdiction. Several considerations support denial of the ETC Petitions, most particularly this NEP Petition.

First, the PaPUC letter does not state, as the NEP Petition would have it, that the PaPUC has "clearly stated that it does not have jurisdiction over

NEP and, therefore, cannot designate it as an ETC."[1] The PaPUC refrained from acting on the NEP Petition "at this time" (January-February 2007). The PaPUC did so in light of pending intercarrier compensation and federal universal service reforms under active consideration. That includes the subsequent solicitation of comments on the Joint Board's recommendation to cap high-cost support, including support provided to wireless CETCs like NEP.

The ETC Petitions provide the FCC with an ideal opportunity to impose a cap on all high-cost support, including support provided to wireless carriers that get ETC designations. The PaPUC's comments in this docket support an interim cap imposed on all ETC recipients, not just rural wireless CETCs.[2]

Moreover, the FCC was already considering a recommended cap on high-cost support for CETCs at the very time that these carriers filed the Petitions.[3] Consequently, the FCC should dispose of these ETC Petitions in a manner that is entirely consistent with the PaPUC's position on the Joint Board recommendation.

Second, a cap on high-cost support is consistent with the PaPUC's support for deployment of wireless and advanced services in rural Pennsylvania. Pennsylvania law at 66 Pa.C.S. § 3001 et seq. (Chapter 30)

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[1] *NEP Petition,* CC Docket No. 96-45, p. 3.

[2] Reply Comments of the PaPUC (June 21, 2007), pp. 3-4. *In the Matter of High-Cost Universal Service Support,* WC Docket No. 05-337, CC Docket No. 96-45 (June 12, 2007).

[3] Compare *Recommended Decision of the Federal-State Joint board on Universal Service,* adopted April 26, 2007, released May 1, 2007 with *Petition of NEP Cellcorp, Inc., June 7, 2007, pp. 1 and 25.*

encourages the deployment of new services and networks by providing carriers, and rural incumbent carriers in particular, with an opportunity to accelerate their broadband deployment commitments. Landline carriers who commit to an expanded broadband deployment program receive, in exchange for that commitment, a reduction in the productivity offset governing their respective intrastate rate cap regulatory structures. The revenue stream from the significant reduction in the productivity offset is expected to facilitate the deployment of new services like wireless and broadband.

The PaPUC supports those deployments that are cost-effective and will not impose unnecessary burdens which undermine these statutory goals for rural Pennsylvania. The NEP Petition does not present that situation.

Denial of the NEP Petition is appropriate because the NEP Petition does not address what impact their CETC designation will have on the ability of the rural carriers already operating in NEP's proposed study area to meet their deployment commitments.[4] The PaPUC is concerned that, in addition to increasing costs on the federal USF, this CETC designation could undermine the rural carriers' ability to attain their broadband deployment commitments if customer revenues migrate from the rural carriers' services to NEP's. NEP is a rural wireless affiliate of a rural incumbent carrier in rural Pennsylvania. NEP most certainly understands the impact that multiple ETC designations in rural Pennsylvania will have on rural carriers.

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[4] *NEP Petition*, p. 18. NEP seeks ETC designation to provide wireless service in the study area of its wireline affiliate, NE PAT, as well as Hancock and Deposit (rural ILECs). NEP also seeks wireless ETC designation for some, but not all, of the wire centers in the study areas of Verizon, Verizon North, and Frontier. NEP does not explain what, if any, wireless services CETC recipients like Hancock, Deposit, and Frontier are already providing in NEP's proposed study areas nor does NEP identify what other wireless services are available in any of these territories.

In fact, the rural carriers own comments in the pending E-911 proceeding share this concern.

The rural carriers' comments in the pending PS 07-114 on E-911 support denial of the NEP Petition. NEP's claim in the NEP Petition that they can meet the FCC's 911 obligations in this docket. This claim is inconsistent with claims made by rural carriers' about their inability to meet the FCC's E-911 obligations in PS Docket No. 07-114. This is a critical consideration because the ability to provide 911, including wireless 911, is a prerequisite for ETC designation.

In the PS 07-114 proceeding, the rural carriers seek modification of the E-911 rule for their study areas because of the devastating impact (bankruptcy) that an E-911 obligation will have given their deployment practices and the vastly different population densities and geographic expanses in rural study areas.[5] That stands in marked contrast to NEP's claim that they can meet the FCC 911 obligations in this docket.

The rural carriers apparently share the PaPUC view that the economic circumstances and challenges in rural areas justify a different approach. But, in that docket, they seek a modified rule governing compliance with wireless E-911 obligations compared to this rural carrier's claim that they can meet their 911 obligation.

NEP is a rural wireless affiliate of a rural incumbent company. The NEP claim that NEP can and will provide E911 in a manner that meets the

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[5] Comments of the Rural Telecommunications Group, Inc., *In the Matter of E911 Location Accuracy Requirements,* PS Docket No. 07-114, pp. 4-5.

FCC's universal service requirements to provide access to emergency services.[6]

However, NEP's representative in this ETC Petition claims that NEP can meet its federal 911 obligation in this docket. The same representative claims in the PS Docket 07-114, in which the FCC is examining E-911 requirements, that the current accuracy standard is not technically achievable and that there is little or no test data in the record demonstrating what is technically achievable.[7]

A claim of impossibility or prohibitive cost sufficient to justify modification of the current E-911 rules for rural wireless carriers constitutes a credible basis for denying ETC designation premised, as it is, on a claimed ability to comply with already applicable federal 911 requirements. The claimed ability to provide 911 in this docket is inconsistent with claims in another docket that rural wireless carriers cannot meet their 911 obligation without substantial capital costs for multiple cell sites.

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[6] Compare *NEP Petition,* p. 9 with Comments of the Rural Telecommunications Group, Inc., *In the Matter of E911 Location Accuracy Requirements,* PS Docket No. 07-114, CC Docket No. 94-102, and WC Docket No. 05-196, (August 20, 2007), p. 10.

[7] *In the Matter of E911 Location Accuracy Requirements,* PS Docket No. 07-114, CC Docket No. 94-102, and WC Docket No. 05-196, (August 20, 2007), p. 10. On that issue, the rural carriers specifically claim that they design their networks with cell sites having "*the minimal measure of overlap"* needed to permit reliable contiguous coverage, but "*far from sufficient"* to permit the triangulation of a mobile subscriber's geographic position needed to meet federal accuracy standards. *Ibid.* p. 4. Moreover, the rural carrier practice of putting cell sites in a line along highways makes triangulation a "*geometric impossibility*" that is, additionally, such a substantial cost for the construction of additional cell sites that it would likely drive many rural wireless carriers out of the market. *Ibid.,* pp. 4-5. The rural carriers propose, instead, a modified rule requiring "*only what can reasonably and demonstrably be achieved using existing technology." Ibid.,* p. 6, emphasis added.

The PaPUC is very concerned that designating yet another ETC will aggravate costs for the federal USF and still not ensure that wireless ETCs are able to meet already applicable federal 911 requirements. An increase in federal USF support increases the $124,976,000 in USF cost that Pennsylvania's end-users pay in excess of what they receive.[8]

The PaPUC sees no reason to increase this overall net contributor role by granting ETC designation and support to wireless carriers that, apparently, seek modification of the FCC's E-911 obligation. Those rural wireless carriers seek relief because of technical limitations and the rural characteristics of the study areas where they seek ETC support.

A carrier's compliance with 911 is an integral part of ETC designation. Claims made in other proceedings that rural wireless carriers cannot meet their E-911 obligation or that they should have a different E-911 obligation because of network configurations or technical limitations warrants rejection of the NEP Petition for wireless ETC.

The PaPUC opposes an ETC designation that cannot ensure compliance with their E-911 obligation. The FCC should not grant ETC designation based on claims in this docket that compliance is possible when doing so will likely give rise to later claims that compliance is not technically feasible. ETC designations based on contradictory claims are simply inappropriate, particularly when the ETC designation will increase the net contributors' support for the federal USF.

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[8] *2006 USF Report,* Table 1.12, p. 1-37; Letter of Senator Robert P. Casey, Jr. to Chairman Martin, June 29, 2007.

Finally, the PaPUC rejects the NEP claim that ETC designation would have "minimal impact" even if the FCC adopted an interim cap on high-cost support for CETCs. The FCC's adoption of a uniform cap on all USF support, as suggested by the PaPUC, includes all support provided to incumbent and competitive recipients alike.

A cap that allows another "minimal impact" cost in the $203,606 range only increases costs to other Pennsylvania end-users. That net contributor cost is aggravated if this "minimal impact" cost is multiplied by continuing to designate multiple ETCs for study areas throughout the country, including the pending ETC designation in Alabama. That concern is buttressed by record evidence that 97% of the 235% growth in federal USF support received by CETCs (like NEP and Corr) from 1999 through 2005 went to wireless carriers.[9]

The PaPUC has taken the position, most evident in recent filings by the PaPUC with the FCC in this docket as well as the Intercarrier Compensation docket at CC 01-92, supporting a cap on high-cost competitive ETC (CETC) designations for federal USF support. The PaPUC was concerned then and remains concerned in this petition.

Pennsylvania's contributions to the federal USF are invariably, in one form or another, obtained from end-user customers and entities serving those

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[9] Pennsylvania Public Utility Commission, *Missoula Plan Workshop Public Hearing,* Docket No. M-00061972, *Presentation of Mr. Gary Zingaretti,* Rural Telephone Company Coalition, September 11, 2006, p. 187.

end users.[10] Pennsylvania is concerned that this "minimal impact" cost will be imposed on end-users in contributing states. The fact that ETC designation means that Pennsylvania could get back a larger amount than it currently receives is small consolation for an ever growing contribution which supports ETC designations for carriers with suspect claims.

Simply put, ETC designation means more USF costs paid for by other Pennsylvanians. These petitions should come within the proposed cap on CETC designations, a matter that is already the subject of comment in this docket. A cap on all further CETC designations is consistent with the PaPUC's position in Reply Comments filed at this docket on July 2, 2007. The facts in this case and the burgeoning USF fund supports denial of the ETC petitions.

The PaPUC thanks the FCC for providing the PaPUC with an opportunity to file a Reply Comment.

Respectfully submitted,
Pennsylvania Public Utility Commission

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[10] Reply Comments of the PaPUC, *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service,* Docket No. 96-45, Docket No. WC 05-337, June 21, 2007, pp. 3-4.

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