identical support confers unsubstantiated windfalls on the CETCs. Also, $200 million of the support that CETCs receive is unintended, involving access charge reform for ILECs and not CETCs.

Mr. Feiss said the PSC should consider the effect that granting CW's petition will have on the size of the FUSF. While CW asserts the FCC rejected the idea of assessing the impact of one designation on the FUSF, as it may be inconclusive, Mr. Feiss said that hardly constitutes a specific rejection of the effects of designating additional ETCs. He adds that in the FCC order that CW cites the FCC declined to adopt a *specific test*, but did not reject consideration of the effect of additional ETC designations. The FCC said a state may justifiably limit the number of ETCs so as to limit the strain on the FUSF. The $1 billion FUSF growth is entirely attributable to wireless CETCs as support to ILEC ETCs has decreased.

Mr. Feiss said CW's ownership structure is relevant to this proceeding. CW is an asset of the investment portfolio of Alta Communications (Alta) who is a Boston-based private equity firm that focuses on the media and telecommunications industries. Alta has 20 years of experience, a successful track record and manages about $1.5 billion of capital. Alta's wireless portfolio includes CW. Thus, any discussion of the potential benefits of venture capital and private equity aside it is not the PSC's responsibility to authorize the use of FUSFs to augment the value of a Boston-based private equity firm's investment portfolio. The purpose of the '96 Act is not to enhance shareholder value. The PSC should deny CW's application.

Chinook Wireless Rebuttal Testimony: Foxman, Peterson, Monroe

Mr. Jonathan Foxman Mr. Foxman's September 25, 2007 testimony rebuts the testimony filed by Mr. Feiss and Mr. Buckalew. He agrees with Mr. Buckalew that CW can meet the minimum standards of service. As for whether CW's designation is in the public interest, he disagrees with the MCC's suggestion that the main public interest issue is whether CW has made some purported cost/benefit analysis.

Mr. Foxman asserts CW has addressed how it satisfied each of the public interest considerations set forth in the PSC's rules, none of which reference a cost/benefit analysis.

Nor is a cost/benefit analysis necessarily relevant. The FCC in its Virginia Cellular and Highland Cellular cases enunciated a framework of several factors to consider the public interest.[28] While the PSC may conduct a cost/benefit analysis, such an analysis is not required by PSC rules or orders. Since such an analysis is not required it could not possibly be the main question as Mr. Buckalew asserts it is. As for how CW would fare if the PSC were to undertake the FCC's cost/benefit analysis Mr. Foxman said there is little doubt that CW would satisfy the factors, as the same benefits and costs are present here as were present in those (FCC) cases. CW does not, however, seek designation for any partial study area, such as the Highland Cellular case involved.

Mr. Foxman disagrees with Mr. Buckalew that CW supplied insufficient information to allow the PSC to conduct the review required under its rules or to perform the FCC's cost/benefit analysis. While a cost/benefit analysis is not required in Montana, CW presented sufficient evidence to demonstrate it satisfies the public interest analysis set forth in the PSC's rules. Its application and supporting testimony contain the information the PSC needs to determine that CW met the FCC's cost/benefit analysis. Because CW's Application and supporting testimony satisfies the PSC's test and the FCC's public interest factors its ETC petition should be granted.

As for information that CW asserts to satisfy the factors in the FCC's cost/benefit analysis, CW lists the following nine points:

1. Competitive Choice: Mr. Peterson described the benefits of increased competition (See p. 16, direct) when he stated CW's use of a different technology platform provides consumers with choices in telecommunications services that would not

[28] Those cost/benefit factors include: 1) the benefits of increased competitive choice, 2) the impact on the FUSF, 3) the unique advantages and disadvantages of competitive service offerings, 4) commitments made regarding quality of service, 5) the CETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame, 6) the benefits to customers without wireline telephone access, 7) mobility insofar as it assists customers in rural areas who have significant commuting distances, 8) access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities and 9) larger local calling areas in which customers are subject to fewer toll charges (Virginia Cellular Order, ¶¶ 28-29 and Highland Cellular Order, ¶¶ 40-57).

otherwise be available. Because of CW's build out into new areas, consumers in those areas will experience competitive offerings, the ability to choose their service provider and the option to choose various rate plans with different mixes of rates, local calling areas and vertical features. The potential competitive benefits that CW's application addressed include:

a. providing consumers with competitive offerings and the ability to choose their service provider (¶ 43);

b. CW's designation will promote competition and facilitate the provision of advanced communications services to the residents of rural Montana. The FCC said: "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies." (para. 46) and,

c. CW's designation as an ETC will spur a competitive response from affected ILECs as they seek to retain and attract customers. Assuming there are 700,000 wireless customers in Montana and 2% growth in wireless penetration per year, CW expects a majority of its customers to come from other wireless carriers. DR PSC -040(b) Mr. Foxman explained that while he could not project how CW's competitors (Alltel and Verizon) may respond, market theory indicates that price competition will increase. DR PSC -039 Such a response could include improved service quality and customer service, new investments in telecommunications, more rapid deployment of high-speed data (DSL) service, wider local calling areas, bundled service offerings and lower prices overall. This competitive response is already occurring as a result of Alltel's designation in various Qwest wire centers. CW's designation will likely spark competitive responses from the affected ILECs and the beneficiaries of such competition will be Montana consumers. In contrast to Mr. Buckalew's testimony, CW's application and testimony demonstrates the benefits of competitive choice associated with CW's ETC status and is both substantive and sufficient.

2. Impact on fund: CW's application (See pp. 23-24) and Mr. Peterson's direct testimony (See pp. 14-15) addressed the impact on the FUSF. CW's potential draw from the FUSF is very small. Even if every single telecommunications customer in the service areas subject to CW's application subscribed to CW's service, CW would be distributed

six-tenths of 1% of the FUSF, however unlikely this outcome is.[29] CW takes seriously the principles of universal service and the viability of the FUSF. Intervenor testimony that predicts CW's designation will lead to the demise of the FUSF or threaten its viability is not credible. As the PSC observed, the FCC's own actions have created a much larger impact on the fund than any PSC decision may have created. The PSC has granted a small number of applications and in 2006 the impact has also been small, amounting to about $7.2 million, compared to the $69.7 million that wireline ILECs receive. (re FSJB 2006 Monitoring report, Table 7.2). As the PSC also observed, if the FCC is to have a balanced approach, it must not ignore universal service benefits to the exclusive focus on fund size. (re PSC's June 6, 2007 comments, CC 96-45, WC 05-337). Dire predictions of the FUSF's demise, first made by IXCs, have been made continuously for 15 years. The FUSF exceeds $6 billion and few experts honestly expect that it is near extinction.

As for the MTA's comments on FUSF impacts, Mr. Foxman cites Chairman Martin's May 14, 2007 letter to Edward J. Markey stating that 75% of the increase associated with the present 11.7% contribution rate, an increase of 2% in 2007, is due to true ups in the FUSF caused by prior period adjustments from AT&T and Verizon for under-reported revenues and changes made in the bad debt reserve.[30] See p. 8. Only a small part of the increase in the contribution rate is due to increases in high cost support.

Whereas Mr. Feiss seems to argue, based on FCC Chairman Martin's statements, that the designation of CETCs was an unforeseen policy accident, Chairman Martin does not speak on behalf of the FCC. The FCC has granted numerous CETC designations including multiple designations within a single support area.[31] CW adds that neither the

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[29] Of the $5.8 million in annual support, CW would receive about $5.2 million in 3RTC's area, $376 thousand in Qwest's service area and $217 thousand in BTC's service area. DR PSC -047 In 2007, CW served roughly 3,339 mobiles in 3RTC's service area, 566 in BTC's service area and 14,800 in Qwest's service area. DR PSC -048(d)

[30] Of the 2% increase 1.5% is for the second quarter of 2007 and the remaining .5% is due to reductions in the funding base, increases in program demand, including for high-cost support. DR PSC -040(d)

[31] CW explained the benefit of designating two wireless ETCs in Qwest exchanges and adds that the impact on the financial health of an existing wireless carrier is not a factor in

MCC nor MTA has documented the costs of designating multiple CETCs in an area. Based on studies CW conducted there are instances when there are 5, 6 or 10 CETCs in the same ILEC study area in a state yet the support those carriers receive is below that paid to the wireline ILEC for the same area. DR PSC -044(b) CW said it is inconsistent with Section §254 to allow multiple designations of ETCs in other states but allow only one ETC designation in study areas in Montana. DR PSC -045(d) Mr. Feiss' opposition to designating multiple ETCs in the same area is discriminatory because it treats similarly situated CETCs differently. It is not competitively neutral as it would result in the availability of support and the application of rules that advantage ILECs and CETCs that are already designated. DR PSC -045(d).

CETCs have been designated across the country pursuant in the '96 Act. The '96 Act was designed to introduce new entrants into the formerly closed system for universal service but has increased the FUSF's size, as Congress recognized it would, in order to open local markets to competition and to bring the consumers the benefits of competition. As long as the law, the FCC rules and policy and Montana's laws and PSC rules are intact, they should continue to be applied in a consistent, nondiscriminatory and competitively neutral manner. Congress made clear that breaking open the existing local service monopolies and the exclusive availability of FUSFs to those companies would far outweigh the costs of additional funding.

Mr. Foxman adds that investments by new CETCs in rural America and by ETC ILECs bring forth new and improved services and technologies. Services offered in Montana by CATV and wireless providers impact ILEC businesses such that rural carriers must offer significantly improved pricing, bundled services, fast broadband via DSL and cable modem service, all to the benefit of the rural consumer.[32] Likewise, CW's plans to improve its existing services and expand coverage should incent ILECs to improve and expand their service offerings. CW's offerings will bring added health and safety benefits

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deciding whether to designate CW as an ETC. DR PSC -008(b), DR PSC -012(b)

[32] Depending on the distance an ILEC's customer is from the central office vis-à-vis the 18,000 foot constraint, a wireless carrier's internet speed may not be slower than DSL speeds. Depending on distance DSL may not even be available in some ILEC central offices. DR PSC -040(a)

as well as new economic development opportunities. Thus, to deny CW ETC designation is not in the best interests of Montana consumers.

3. and 4. Unique Service Offerings and Quality Telephone Service: What makes CW's offerings unique "is their reliability and commitment to service quality." CW's application and testimony described CW's unique advantages. CW is the only comprehensive and commercially available GSM/EDGE based wireless provider in Montana, although another carrier offers it for roaming purposes. Some consumers find significant that CW provides the world's dominant technology standard and appreciate the benefits, including other competitive benefits. DR PSC -039(a),(b). That Montana's second largest economic sector is tourism makes this distinction critical as CW's network is technologically compatible with all of the AT&T wireless customers that visit Montana and GSM is the principal technology used internationally by tourists. CW also focused on network reliability and customer service, as Mr. Peterson has described (See pp. 2-3). CW witness Mr. Monroe (See direct, p. 10) also states that CW offers a high level of service quality by emphasizing network reliability and by ensuring its ability to operate in emergencies. Mr. Monroe said CW will adhere to CTIA's Consumer Code for wireless Service and CW commits to service quality as evident from CW's 24-hour network monitoring that reduced outage response times to less than an hour. Mr. Monroe discussed CW's redundant transport routing that is designed to meet a voice channel availability objective above 99.9%.[33] Mr. Monroe also discussed CW's multiple signaling transport points and its intensive network monitoring and call completion rate of 98%. CW is committed to customer service and service quality.

5. Coverage Within a Reasonable Time: CW commits to build out its network within five years, as required by PSC rule, to meet the 98% coverage requirement.

6. Availability of Access Where Wireline Access Does Not Exist: CW's expanded network will provide functionality in places where wireline service is not available. With FUSF support, CW commits to improve and expand its coverage to

[33] CW said that its special access transport of leased facilities is to provide traffic between IXC hubs and cell sites. DR PSC -041

unserved and underserved areas, as reflected in the build out plans in its application.

7. Mobility: Wireless services are particularly critical in Montana's rural areas and CW will provide access to mobile service in rural areas at a high quality and with reliability that is not available today.

8. Emergency Services. Mobile wireless universal service provides access to emergency services that can mitigate the unique risks of geographic location that is associated with living in rural communities.

9. Local Calling Area: CW's major trading area covers an area larger than the State of Montana, provides a larger toll-free calling area and its nationwide calling plans obviate the need to pay toll or per-minute charges for any calls.

Mr. Foxman disagrees with Mr. Buckalew's assertion that CW has engaged in a form of cream skimming. The FCC defines cream skimming as a competitor's request to serve only the low-cost, high revenue customers in a rural telephone company's study area. (citing Highland Cellular, ¶ 26; Virginia Cellular, ¶32 and ETC Report and Order ¶49). Cream skimming is an issue if CW sought designation for part of a rural carrier's service area.[34] Mr. Buckalew's novel theory is without precedent or citation. The FCC's concerns for when less than an entire study area is to be served do not exist as CW seeks ETC designation for the entire study areas at issue. Mr. Buckalew's theory, if adopted, could force CETCs to expand into areas where no business case or economic case can be made to serve. Such a requirement makes no sense and seems inconsistent with the MCC's express concern with the FUSF's size. If his theory was adopted, it could deprive unserved and underserved areas, where CW sought support, of universal service.

Mr. Buckalew's assertion that CW's primary driver is financial and not universal service is not true. The two drivers are not mutually exclusive as CW must be financially successful in order to provide universal service. Mr. Buckalew mischaracterized the business plan that CW prepared for potential investors. That plan was prepared for

[34] CW said the FCC has never found cream skimming to exist when a carrier proposes to serve an entire ILEC study area but not other ILEC study areas. The MCC's cream skimming theory is a Catch-22 that prevents any carrier licensed throughout the state from meeting the requirement for ETC designation. CW doubts it could meet the 98% requirement throughout the state within the 5 year constraint. Like CW, Alltel also has a

potential investors when CW was proposing to acquire the assets of 3RTC and BTC; that is, to purchase portions of CW's current network and to operate as a going concern. CW's statement about selling to a larger company was identified as an exit strategy option, not CW's ultimate business objective, to address the occasion when CW does not perform according to expectations or its business strategies fail.

Mr. Foxman disagrees with Mr. Buckalew's claim that CW does not understand its obligation to serve. As explained in its application, CW is well aware of its obligation to meet all reasonable requests for service in the study areas at issue. Mr. Monroe also addressed how CW satisfies this requirement. While CW has made clear that it will use its own facilities whenever possible to serve reasonable requests for service Mr. Monroe said CW may on occasions employ resale and roaming agreements to meet reasonable service requests.

Mr. Foxman disagrees with Mr. Buckalew that CW must have a plan and capacity, demonstrated and, or, planned, to handle COLR obligations in order to be designated an ETC. He disagrees, as no COLR requirement exists in Montana law, the PSC rule or prior PSC orders.

Mr. Foxman disagrees with Mr. Buckalew that CW has provided no evidence to demonstrate that its application is in the public interest. CW has thoroughly addressed and satisfied each of the public interest considerations in the PSC's rules.

Mr. Foxman understands that Mr. Feiss manages a trade association made up of small landline LECs, two of which are parties to this docket. He expressed concern with the procedural advantages that the MTA's two members have as they can influence Mr. Feiss' testimony while remaining insulated from CW's discovery. Thus, CW is impeded in its ability to rebut fully the MTA's assertions.

Mr. Foxman disagrees with the MTA request to reject CW's application because its designation will provide no tangible benefit to Montana consumers and it threatens the viability of the FUSF. The MTA that Mr. Feiss represents does not represent the interests of Montana's consumers. Mr. Foxman has addressed concerns over the alleged threat to the FUSF. Whereas Mr. Feiss claims CW's designation will jeopardize the FUSF's existence, he knows that the FUSF has grown by more than 1,000% and is still operating

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license to serve most all of Montana. DR PSC -042 whereas CW's designation will add at most 1% to the FUSF's size. The MTA and the MCC would prefer to deny rural consumers the possibility of more and better cellular coverage because of an almost infinitesimal increase in the FUSF's size, the vast majority of which would not show up in the bills of Montana's consumers. Neither the MTA nor the MCC explained why the PSC should deny Montana consumers the opportunity to have access to universal service that wireless carriers can provide while the FCC and other states continue to approve of such ETC petitions. Montana's consumers stand to lose the most if CW is not designated an ETC. FUSF matters such as its size and growth are a federal and not a state matter.

Mr. Foxman disagrees with the MTA that CW's designation should be denied as there is no need to support multiple ETCs. The claim that multiple ETC designations will not enhance phone service is contrary to the evidence CW has presented and it is contrary to prior FCC rulings as well as prior designations made by this PSC. There is no FCC rule or order limiting the number of designated wireless ETCs as it would be contrary to the competitive model adopted by Congress in the '96 Act. Nor did Congress envision making funds available only to the ILEC. Affording competitive access to FUSFs will allow beneficial competition to take place on a competitively neutral basis. He adds that no other CETCs are in the 3RTC and BTC areas. CW intends to use FUSFs to improve the service available in underserved areas and expand service into unserved areas. There is no dispute that no "underlying carrier" serves the unserved areas and service to areas where none exists would not be in the public interest.

In response to CW's discovery and in citing to FSJB statements regarding differing regulatory treatment and regulatory disparities, Mr. Feiss claims "his proposal" is competitively neutral. See p. 21. Whereas Mr. Feiss cites the expanded local calling area available to wireless carriers, an apparent advantage the FCC considers as a favorable public interest attribute, Mr. Feiss seeks to turn this factor on its head. His use of the factor to deny ETC status is clearly contrary to FCC orders.[35]

Although the FCC granted waivers to manufactures to produce compliance

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[35] The advantage Mr. Feiss alleged contends a wireless is advantaged because its local calling area includes the entire major trading area and it pays reciprocal compensation and

equipment, Mr. Feiss claims that wireless carriers enjoy holidays from 911 and hearing aid compatibility federal regulations. Mr. Feiss' claim of regulatory arbitrage is not correct as no basis exists to treat CW differently from ILECs or other prior ETC applicants. Mr. Feiss' proposal to allow ETCs to retain their status but deny future ETC applicants access to FUSFs is discriminatory and is not competitively neutral.

Mr. Foxman also finds incorrect Mr. Feiss' claim that current universal service rules provide no incentive for CW to build network facilities. Mr. Monroe has addressed the technical flaws in this assertion as handsets are of little value if there is insufficient network capacity and infrastructure. Montana rules require CW to achieve 98% coverage within five years of designation in a study area and the PSC will carefully monitor CW's build out as CW reports its progress. In addition, CW must certify that it uses FUSFs to provide, maintain and upgrade facilities and services for which the support is intended. Thus, Mr. Feiss' claim that CW can simply increase handsets is not correct.

Mr. Foxman has trouble understanding Mr. Feiss' assertion that CW is an asset of a private equity firm's investment portfolio and his speculation that CW intends to use FUSFs to prop up the value of assets for its shareholders' ultimate financial gain. Mr. Feiss produced no evidence to support this testimony nor did he explain its relevance. That a private equity firm has some investment interest in CW, along with employee owners, has no impact on CW's qualification for and use of FUSFs. Mr. Foxman does not understand how CW differs from Mr. Feiss' own clients who are shareholders, or member owned. Does the fact that MTA's members are shareholders or member owned suggest that their FUSFs are used to augment the value of their investment in the MTA member companies? When asked to explain the relevance of this testimony, Mr. Feiss only recited his initial testimony. See p. 23. As CW has satisfied the public interest requirements in PSC rules and the FCC's cost/benefit factors, the PSC should grant CW its ETC designation petition.

Mr. Ernie Peterson Mr. Peterson's September 25, 2007 testimony rebuts the testimony of Mr. Buckalew and Mr. Feiss. He disagrees with Mr. Buckalew that CW could not quantify a single rural or non-rural benefit that would result from obtaining ETC

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not access charges for calls completed in that area. DR PSC -045(b) status. CW's application and testimony thoroughly detailed the benefits of its designation. CW attached letters of support from a variety of governmental agencies and businesses attesting to the need for quality communications services and confirming the benefits that CW would bring to their areas as an ETC. As an ETC, CW will increase access to mobile services by way of newly constructed cell sites to improve coverage. Consumers will have competitive offerings, the ability to choose among service providers and a variety of rate plan options. Positive economic development benefits will also accrue to consumers in areas where CW deploys its services as businesses consider the availability of such services when deciding where to locate. Such decisions can benefit rural areas in terms of employment and tax base as well as enabling rural communities to compete with other rural communities, in part, by use of wireless phones. Mobile service will also benefit consumers needing to make emergency 911 calls as well as law enforcement because of mobility and the security that cellular service provides. As an ETC, CW would at a minimum bring the foregoing benefits to a greater number of consumers. CW has identified numerous benefits associated with its receiving ETC designation.

Mr. Peterson disagrees with Mr. Feiss' claim that CW will merely exacerbate an already critical threat to the viability of the FUSF which is vital to the advancement of essential telecommunications services as opposed to redundant and complementary services.[36] Non-rural carriers, such as Qwest, receive support for all lines, not just the primary line. DR PSC -037(d). Although Mr. Foxman addressed this claim, Mr. Peterson does not agree that MTA's members provide essential services while CW's services are redundant. Supported services provided by any CETC are just as essential as services that MTA's members provide. For example, a customer suffering a heart attack on a road would find CW's service essential, whether or not landline service exists.

Mr. Peterson finds a misperception in the arguments of both Mr. Feiss and Mr. Buckalew that since landline ETCs completely cover the service areas, wireless service is not necessary. There is a misperception as ILECs completely color their exchange maps when in fact their coverage is limited by the location of their existing fixed networks.

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[36] CW said wireless service in Montana is a complement not a substitute for wireline service. DR PSC -008(d)

Wireless carriers are able to fill in the coverage gaps where a landline carrier's network does not reach. ILECs cover only a tiny fraction of the service area made up pinpoint locations where a fixed-line network connects to a telephone at a home or a business. Cordless phones limit calls to within a few hundred feet of the base station. None of the space in between is covered at all by wireline services. Conversely, a wireless carrier's coverage map shows clearly where coverage is available. Thus, the coverage area differences between a wireless and wireline network are vast.

Mr. Peterson said consumers want wireless service. Wireless providers and their customers have paid into the FUSF for many years. Wireless contributions, as of the first quarter of 2006, were 32.3% of the total FUSF contributions and largely support landline facilities. Funding only landline technology is fundamentally unfair where both technologies contribute to the FUSF. It is legally unsound as consumers derive benefits from funding of new technologies. Lawmakers have indicated that funding of advanced technologies is in the public interest. Thus, wireless services are not redundant as such service offers the ability to use voice and data services in a mobile environment where landlines do not. Although mobility is not a supported service identified by the FCC, it is in the public interest as the PSC concluded (Order 6723a) to make mobility available.[37] Both the PSC and the FCC consider the benefits of mobility in assessing whether a mobile provider should be designated an ETC as part of the public interest determination.

While Mr. Buckalew asserts CW's commitment to provide service to unserved and underserved areas is hypothetical, Mr. Peterson said CW's application and testimony explained its plans to increase coverage, if designated an ETC. One case involved Highway 200 between Missoula and Great Falls, where CW's coverage would overlay the Augusta and Fort Shaw exchanges of 3RTC. Another involves the Ovando and Potomac exchanges of BTC. CW's expansion will also add service to mountainous areas not served by ILECs. Other examples include Highway 89 south of Livingston where CW has begun to build some coverage and with USF funding will be able to add new service

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[37] Although broadband is not per se a supported service, rural and non-rural ILEC ETCs provide for broadband by way of joint products. CW said its network costs in Montana are representative of both incremental and accounting costs and its "actual" costs are not the same as accounting costs. DR PSC -046

which would benefit Qwest's Livingston and Gardiner exchanges. CW will also build additional facilities between Billings and Great Falls as well as in Qwest's West Glacier exchange where it would tie into 3RTC's Browning exchange. Although FUSFs are not available in the Billings exchange, the northern end of that exchange is an unserved/underserved area that CW will build to serve. CW will obtain per line support based on the ILEC's cost for its entire study/service area. Low-income consumers in the Billings exchange will have access to Lifeline and Link-up benefits. DR PSC -035(b). CW has begun building in BTC's Seeley Lake exchange and FUSFs would allow it to continue construction north along Highway 83 into 3RTC's Condon exchange (sic). If designated an ETC, CW also intends to build out in 3RTC's Lima, Power and Highwood exchanges. CW believes many of these areas are vastly underserved.

As for whether the provision of advanced service is in the public interest and Mr. Buckalew's testimony that advanced services are not supported services, Mr. Peterson disagrees, See p. 8. The '96 Act, the FCC's rules and orders and the PSC all consider the provision of advanced services as relevant to ETC designations. One universal service principle is to ensure access to advanced services in all regions of the nation. The PSC has included in its ETC rules, as part of the public interest analysis, a requirement that an applicant demonstrate its technology platform is compatible with the provision of advanced services. People want access to e-mail and other Internet-based information (e.g., stock quotes, commodity prices etc.,) in areas not within the reach of landline phones. The only affordable access that benefits the public is via a carrier's wireless service that can provide mobile data throughout, such as roadside medical care and improved business operations.

As evidence of the utility of mobile services in rural areas Mr. Peterson reports on the preferences rural youth have for telecommunications. A 2006 survey by the National Telecommunications Cooperative Association and the Foundation for Rural Service indicates rural youth are abandoning traditional wireline services in favor of wireless service. Two-thirds of the respondents said they have and use the features of a cellular phone. About three-quarters of the respondents said they only use a wireline phone to make calls when at home. One-tenth said they never use a wireline phone. Based on an updated survey, 90% of the young people living in rural areas have cell phones.

Mr. Peterson disagrees with Mr. Feiss' claim that Alltel has not improved its wireless service since it was designated an ETC, implying that the same can be expected from CW if it receives ETC designation. While not intimately familiar with Alltel's network or service quality, as an competitor he said Alltel has aggressively built out in Montana and at an increased pace since receiving ETC designation.

As for the allegations of both Mr. Feiss and Mr. Buckalew that since other companies have not followed the rules CW will not follow the rules, Mr. Peterson disagrees. Their assertions are pure speculation. He is not aware of any CETC in Montana that has failed to follow the PSC's rules, but if there is, the PSC can rectify the situation. It does not follow that CW will not follow the rules just because another CETC failed to do so. He finds their allegations unsubstantiated and no basis upon which to reject CW's application. CETCs are independent and CW has a corporate culture of complying with all legal matters. CW commits to follow the PSC's rules and requirements if designated an ETC.

Mr. Peterson disagrees with Mr. Feiss' claim that the review of ETC applications has not been rigorous. The PSC uses a contested case procedure with every ETC application, conducts hearings and it considers evidence in granting each application. The PSC has carefully and rigorously reviewed each ETC application to ensure they satisfy the rules.

Mr. Peterson finds incorrect Mr. Feiss' claim that CW's investors just want a subsidy because they invested in CW. CW's investors have poured millions of dollars into Montana, including rural areas of the state, in order to provide new infrastructure, to support CW's operations, to pay its employees and to pay for services that other Montana companies provide. CW's investors did so without seeking subsidies. FUSFs will enable CW to add coverage to underserved and unserved areas where a business case to do so could not otherwise justify. CW wants to expand its coverage and to keep its rates affordable.

As for Mr. Feiss' contention that CW intends to use FUSFs to lower prices, Mr. Peterson said CW intends to use FUSFs to build out coverage to the underserved and unserved areas at issue. Absent FUSFs, the price for these services would not be affordable as the cost of the facilities compared to the return would not justify construction. CW seeks FUSFs to ensure that it can offer services in rural areas that are comparable to those offered in urban areas and at comparable rates. This is a basic universal service principle set forth in the '96 Act.

Mr. Patrick Monroe Mr. Monroe's September 25, 2007 testimony rebuts the testimony of Mr. Buckalew and of Mr. Feiss. As for Mr. Buckalew's testimony that CW could not quantify a single rural or non-rural benefit that would result from designating CW as an ETC, Mr. Monroe said CW will provide the supported services and high-quality and reliable services. CW will comply with the CTIA's Consumer Code for Wireless Service and the PSC's service quality requirements. FUSFs will allow CW to construct facilities to improve its signal strength and to expand service in underserved and unserved areas. Thus, he cannot see how Mr. Buckalew could possibly interpret CW's testimony to not quantify any public benefits.

As for Mr. Buckalew's claim that CW does not understand its obligation to serve "all" customers in the study area, not just where the ETC has facilities, Mr. Monroe said CW is not confused about its service obligations. In prefiled testimony, CW stated to be aware of its obligation to meet all reasonable requests for service and it commits to meet such requests in the study areas and wire centers at issue in this proceeding.

Mr. Monroe finds inaccurate Mr. Buckalew's assertion that CW will not serve every customer and that it has no plans to use other carriers' local facilities to satisfy customer requests. Mr. Monroe restates his initial testimony that CW will enter into resale and roaming agreements to provide the supported services that its customers have requested. CW has consistently stated its intent to use its own facilities to meet reasonable service requests. When it cannot do so using its own facilities it will enter into resale and roaming agreements.

As for Mr. Feiss' allegation that CW has no incentive to invest in new infrastructure but rather seeks to distribute as many handsets as possible, Mr. Monroe said just as CW is in the business of selling communications channels so are the members of the MTA that Mr. Feiss manages. However, without adequate network capacity and infrastructure, handsets have little value. Thus, as with the case of twisted copper pairs there are limits on the channels available within a given transmission medium and the number of handsets that can be "turned up" without increasing radio capacity. Since customers will not tolerate blocked calls very long, CW has every incentive to invest to expand its network in ways that Mr. Feiss says CW lacks the incentive to pursue.

Briefing

The briefs that are summarized below include CW's initial, MTA's response, the MCC's response and CW's reply brief.

Chinook's Initial Brief

CW's December 7, 2007 opening brief contains an executive summary, background, a summary of applicable law and an argument, all of which is summarized below.

CW's executive summary addresses the concerns of the MCC and the MTA. CW asserts to have satisfied all requirements to be designated an ETC. CW notes the MCC agreement that CW has met the technical requirements but does not agree that CW has met the public interest requirements. CW disagrees with the MCC's claim that while it failed to do so, it needs to quantify the benefits of designation. CW disagrees with the MCC and the MTA that the fund will be burdened by its designation. There is no dispute that to meet 98% coverage CW will serve unserved and underserved areas that it would not absent $5 million dollars in FUSF. CW will provide service by way of both leasing towers and constructing build-to-suit towers such as the one in Avon. CW disagrees that its designation will threaten the FUSF. CW disagrees with the MCC that CW's designation is a form of improper cream skimming. CW also disagrees with the MTA that multiple ETCs should not be designated. CW commits to provide equal access and meet COLR obligations should they arise. CW's designation will not harm ILECs as most customers continue to view wireless and wireline as complementary services and the ILEC will receive the same FUSF support even when it loses a customer to a CETC.

In summary of the applicable law, CW cites to Sections §254 and §214 of the '96 Act, and the FCC's Local Competition Order. CW illuminates the requirements in the ARM §§ 38.5.3209, 3210 and 3213 that must be satisfied. CW next mentions the FCC's minimum requirements that the FCC encouraged state Commissions to follow, adding that the PSC considered these requirements in its Triangle decision (D2004.1.6).

CW's argument is extensive and begins with the assertion that its application satisfied the requirements including public interest criteria of the federal and state laws and rules. CW's designation will not significantly burden the FUSF. First, CW asserts to have complied with the PSC's minimum filing (ARM §38.5.3209(2)) and public interest (ARM §38.5.3210) requirements.

Second, CW asserts to comply with the PSC's requirements in ARM §38.5.3213 by attaining a minimum of 98% coverage within five years, and with annual reports of its progress. See p. 16. CW emphasized that absent FUSFs it will not undertake certain investments in its noted build-out plans, including in "white areas" targeted for build out in the next year. With FUSFs, CW plans on 13 additional cell sites in 2008.[38] Once designated, CW will provide the PSC its remaining build out plans. See p. 17. Thus, CW refutes the MCC's claims that its commitments are hypothetical. See p. 20. CW also refutes the MCC's allegation that CW cannot quantify how many and which unserved areas will be added using FUSFs. The MTA claims that CW is simply interested in adding handsets and not in building out its network is flawed as handsets, without a network, have little value. See p. 21 As for the apparent confusion over CW's placing transmitters on leased cell towers, CW said it is not the case that it is simply extending service into areas already served.

Third, CW has demonstrated that its designation will benefit consumers and is in the public interest consistent with factors contained in ARM §38.5.3210. See pp. 24-46. CW recites Section §254(b) of the '96 Act and the FCC's enabling orders for guidance on achieving the public interest. FUSFs will enable CW to make its GSM/EDGE network available in rural areas, especially those of BTC and 3RTC that Verizon and Alltel do not reach. CW's network will also provide service to others who visit Montana. Numerous letters of support were submitted to the PSC. Its services will produce economic development, health and safety benefits. As for the MCC's view that CW did not quantify the benefits and costs associated with its designation, CW said no such requirement exists

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[38] By "cell site", CW means the placement of its transmitters on towers and other structures. See Brief, p. 17.

in federal or state law. In its Virginia Cellular order, the FCC said that it weighs the benefits of increased competitive choice, the impact on the FUSF and the uniqueness of the competitor's service offering, service quality and the CETC's ability to serve within a reasonable time frame. See p. 30.

In regard to the public interest, CW asserts to have satisfied numerous requirements. First, contrary to the testimony of the MCC and the MTA, its designation allowing it to serve unserved areas will have a de minimis (*a fraction of 1 %*) impact on the FUSF. In contrast, just one of the seven states in the FCC's Nextel Order caused a 1.88% increase in the high-cost fund. Further, from 1999 to 2006 LECs have caused a larger increase in the FUSF than have CETCs. The MTA, however, attributes the FUSF's growth to CETCs. See pp. 34, 36. And, whereas most rural areas are about three years behind urban areas in terms of wireless deployment, the MTA and the MCC prefer to deny rural Montana consumers better cellular coverage and 911 service. Making FUSFs available to CW will bring competitive benefits to consumers. Second, CW demonstrated that it is able to provide the supported services in the manner required.

Third, CW has demonstrated its willingness and ability to comply with all laws governing ETCs. CW understands that its designation can be revoked. CW will comply with the PSC's requirements to: 1) describe and file build-out plan descriptions semi-annually; 2) provide a coverage map within 60 days and semi-annually for the duration of the build-out plan; 3) provide quarterly reports on service quality; 4) report quarterly on FUSF receipts (high cost and low-income) and 5) file copies of current plans. In addition, CW will cooperate with annual certifications and any PSC audit investigation pursuant to ARM §38.5.3216. In contrast, the MTA and the MCC make unsupported claims that CW will not follow the rules.

Fourth, evidence demonstrates that the service areas at issue can support an additional ETC. The only ETC in each of the BTC and 3RTC study areas is the ILEC itself. Fifth, CW's designation as an ETC will not aversely effect existing ETCs as the ILEC will not generally lose support when a competitive ETC is designated. See p. 41. Sixth, CW's GSM/EDGE technology (GSMT) is compatible with broadband and other advanced service offerings and will facilitate the availability of advanced telecommunication and information services. Seventh, CW commits to provide equal access if no other ETC will do so. As for the MCC's claim that CW has not submitted a plan or demonstrated it can handle COLR obligations, CW replied that there is no PSC rule or order that requires such a demonstration, although it commits to meet its COLR obligation if required to do so. Eighth, as CW has the ability to provide service to customers throughout the service area using its own network and will attempt to use resale and roaming if needed, the MTA's assertion lacks support. See p. 43. Ninth, CW's designation as an ETC advances the principles of universal service and CW's designation promotes competitive neutrality. Tenth, CW demonstrated that its designation positively advances the public convenience as customers will have increased access to wireless service, including for emergencies. Eleventh, CW's designation positively serves the public necessity by providing consumers in rural areas with the ability to make calls on highways and away from their homes. Also, CW will implement Lifeline and Link-Up programs for low income consumers.

CW next addressed five additional matters regarding its ETC petition, including the benefits to competition, cream skimming, multiple ETC designations, its financial motives and that wireless service is redundant. Each is summarized in turn. First, CW said competition is not a principle contained in § 254 of the '96 Act but fostering competition is a critical component of the '96 Act. Nor is the need for competition antithetical to the need for universal service. CW cites to an FCC order wherein it defended its decision to designate Nextel as an ETC despite the fact that other CMRS operators may serve the same market. CW also cites to a PSC order that referenced the FCC's statement on the relative importance of achieving universal service vis-a-vis the promotion of competition. See Triangle Communications Inc., Order 6323b, ¶¶ 27-28. The PSC should reject the MCC's view that CW's application should be denied because it does not constitute legitimate competition. Because its entry into markets sparks entry and expansion by other carriers, CW adds that its provision of service will benefit from such competition.

Second, since CW seeks to serve each rural telephone company's study area, not just low-cost high-revenue customers, it cannot be accused of cream skimming. CW adds that the MCC's novel theory of cream skimming has no legal precedent and is contrary to the FCC's definition. The MCC theory is a Catch-22 that prevents any carrier from being designated an ETC.

Third, CW asserts that the presence of other ETCs in the service area is not, as the MTA claims, reason to reject its application. The MTA could not support any wireless ETC designation. Section §214 explicitly allows multiple ETCs in both rural and non-rural service areas. Nor has the FCC limited the number of wireless carriers that can be designated. The FCC did find that different ETCs should not be subject to different obligations depending on the timing of their request. Thus, the MTA's view violates Section §214, is discriminatory and is not competitively neutral, aside from the fact the CW will be the only CETC.

Fourth, whereas the MCC questions CW's financial motives and suggests an ETC is driven by either financial performance or universal service goals, CW observes that the two are not mutually exclusive. The MCC also mischaracterized a statement by CW in its business plan. That statement served to obtain financing to, in turn, purchase portions of BTC's and 3RTC's networks. As for selling to a larger company, that is not CW's objective but it is one of several exit strategies.

Fifth, the MCC's and the MTA's claims that wireless service is redundant given the presence of landline ETCs and that wireless is simply a complement are incorrect. The PSC already addressed the same arguments in the Triangle case wherein the PSC found that to deny citizens in rural areas of Montana comparable services to those available in urban areas is more than arguable a flagrant inconsistency with a key principle of Section §254 of the '96 Act. Wireless service is not redundant as its coverage exceeds the coverage of a landline company's fixed network. Funding only landline technology is fundamentally unfair given that both technologies contribute to the FUSF and advanced technology, including mobility, is in the public interest.

Response Briefs of BTC, MCC and MTA

BTC On January 9, 2008, BTC filed its response brief. BTC states to support the MTA's testimony and briefs but then raised the issue of disaggregated support. BTC asserts it is imperative that the PSC direct CW to report to the PSC its studies ensuring that any support is targeted to customers in the appropriate disaggregated zones. BTC notes CW's commitment to engage a third-party engineering firm to determine the zones in which customers are located. CW commits to supply the PSC any information it requests and adds that it is reasonable for the PSC to require CW to file (1) the number of subscribers in each disaggregated zone and (2) mapping or other reports of its third party engineering firm's certification of the accuracy of the targeted support. While the MTA demonstrates that CW's application should not be granted, if the PSC grants CW's application, even in part, then the PSC should insure that support is targeted.

MCC The MCC's January 8, 2008 answer brief summarized Mr. Buckalew's testimony and then stated its argument. First, Mr. Buckalew testified that universal service is an evolving set of service standards that Congress mandated. The principal of universal service is to make available to "all" consumers of the nation quality telecommunications services at affordable rates. The FUSF subsidizes the provision of these services in some rural areas of Montana because it costs more to provide these services. The PSC is the guardian of these funds. If a carrier wants to draw a subsidy, it must demonstrate to the PSC its compliance with applicable standards. The MCC listed the nine supported services an ETC agrees to provide.

The PSC must designate a common carrier that meets the §214(e)(1) requirements. The PSC shall also, upon notice, permit an ETC to relinquish its ETC designation. The MCC adds that the PSC has found that wireless services are not substitutes for wireline services. They are not really competitive products in the same product market. The MCC held that the competitiveness of local exchange markets is not significantly improved by including multiple carriers. By permanently adding CW to the FUSF system will not add choices or additional service in Montana and therefore will not achieve the goals of the FUSF. The MCC mentions the FCC's finding that wireless carriers must be considered for ETC status, but granting ETC status depends on the PSC's public interest findings. While CW can meet the minimum service standards the main question is whether the benefits outweigh the costs such that it is in the public interest. CW has not demonstrated that its application is in the public interest.

The MCC said CW's application has little substance and is not complete enough to allow it to receive FUSFs. As for Qwest's non-rural area, the only basis for the claim that the application is in the public interest is that it has a "strong showing" in the rural areas of BTC and 3RTC. See p. 4. CW could not, however, quantify a single rural or non-rural benefit from obtaining ETC status. CW has not shown that it would do anything differently with than without FUSFs.

That the FSJB and the FCC are considering a cap on FUSFs is proof the system is in trouble. Therefore the claims ETCs make must be factually supported. The MCC said CW made unsupported statements such as "There is no question that all service areas in which Chinook seeks designation can support an additional ETC."

If CW had chosen to serve the entire state, it would fulfill the goal of universal service. CW has only applied for ETC status in higher density areas of Montana. The MCC said a broader service area for wireless is needed because the FCC mandated major trading areas for wireless local calling and local compensation purposes. In addition, wireless is not generally a substitute but rather is a complement that requires a different public interest standard. Giving CW ETC status will enable it to spend funds in areas where a large national carrier provides service without FUSFs. If the PSC approves CW's application, it will be difficult to deny requests by large wireless carriers. The MCC adds that CW's motive is not to provide universal service but instead is to build up CW with FUSFs so that it can be sold to a large wireless carrier.

CW must satisfy its obligation to provide universal service over its own facilities or in combination with resale of another carrier's services over the entire service area. CW stated it will not use resale but its application said it would. The MCC said that because CW has no plans to use other carrier facilities to satisfy a customer request, its application is not in the public interest as an ETC must fulfill all reasonable service requests in the study area. CW does not understand this obligation. The MCC adds that if CW does not have facilities, it must use other carriers' facilities. Besides serving all customers, there is the COLR obligation for which CW has no plans. Nor does CW have a plan of how it would continue service if other carriers left the market. A carrier that is not willing to serve every customer is not entitled to FUSFs.

By granting CW ETC status the PSC will face enforcement problems as CW should demonstrate that it is claiming compensation only for "new and captured" lines. See p. 6. Simply adding wireless service does nothing to advance universal service. The MCC adds that because support varies by disaggregated zones another problem is CW never demonstrated that it will accurately determine which zone a customer is in. Thus, CW's ETC petition is not in the public interest.

Second, the MCC argues CW has not sustained its burden of proof. Under both state and federal law the applicant has the burden of proof (citing MCA §§26-1-401 and 26-1-402). See pp. 6-7. The FCC has ruled that the burden is on an ETC applicant. (citing FCC 03-338, Rel. January 22, 2004, ¶26). A final PSC order may be reversed or modified by a reviewing court unless its findings are based on reliable, probative and substantial evidence on the whole record. (citing Section §2-4-704(2) (A)(v), MCA). CW has not sustained its burden to prove its designation is in the public interest. Nor did CW's opening brief clarify the issues before the PSC. CW's assertion that it provides coverage, quality of service and data service for about 100 million U.S. citizens etc., has no support. Nor could CW's witnesses quantify the benefits, vis-a-vis the $5 million in support. Mr. Peterson speculated they could be $100 million per year. Mr. Foxman testified that CW did not have actual cost and benefit data to back up its application.[39] Therefore, CW has not sustained its burden of proof.

Third, the MCC argues that granting CW ETC status is not in the public interest. The deficiencies include, in addition to the above noted lack of cost/benefit information, unsupported statements, its failure to propose to serve the entire state and that CW may want to be an ETC to build up CW's value for acquisition. The PSC should also consider the incompatibility of CW's GSMT with the technology of other wireless carriers serving Montana. In other words, a wireless customer cannot use a CW wireless telephone unless it is in range of a CW tower. Likewise, another carrier's telephone cannot connect to CW's facilities. The MCC said CW's build out will only benefit companies that deploy GSMT i.e., its customers and customers of AT&T, T-Mobile etc., of which CW only serves Montana. This strongly diminishes CW's claim that its expansion enhances health and safety etc., benefits. CW asked the PSC to grant it ETC status so it can collect $6 million per year to build a network that can only be used by its customers and out-of-state

[39] The cross examination was: Q: Do you have any actual cost and benefit data to back up your application? A: If you're asking for mathematical numbers related to cost and benefits, we do not. See TR 118.

travelers with the luck or foresight to be customers of carriers that do not provide retail services in Montana, all of whom would have 911 access. See pp. 8-9. In conclusion, there should be a public benefit if public funds are expended. The MCC believes that the benefits that accrue to CW's customers and the out-of-state travelers are not sufficient.

MTA[40] In its January 8, 2008 response brief, the MTA said CW seeks a $6 million subsidy to do what it has already done by simply filling in some gaps along traffic routes that it already serves. CW can achieve 98% coverage in five years without the aid of universal service subsidy. As CW has provided no cost evidence the MTA does not know if the $6 million is a windfall or not. The PSC is asked to accept the promise that the money will be used as it is intended. No facts justify granting CW $6 million. The MTA asserts it, Criterion and others point out there is no relationship between the universal service subsidy and build out. With CW's designation many un-served areas will remain. CW's network is not interoperable with other widely used carriers. CW's coverage only benefits CW's customers. The PSC should reject CW's application as it is not in the public interest.

While CW represented itself as a Montana based company it is owned by out of state entities, mainly Alta. When a company is owned by experienced private equity investors, its motive is to maximize profits quickly. Mr. Foxman's two prior ventures were acquired and CW is his third wireless venture. As Mr. Foxman said one of his goals is a viable exit strategy, a PSC issue is whether that is an appropriate use of FUSFs.

The MTA said CW serves 77% of Montana using GSMT and therefore no customer of another carrier can roam on CW's network. Thus, 911 will not be available for use by customers of Verizon and Alltel. The MTA adds that the requirements to be designated an ETC are population based and CW already serves a substantial majority of that population in the areas for which it seeks ETC status. There is no relationship between the amount of universal service (sic) CW will receive and service availability. The MTA said CW's services are comparable in quality and price to those available in

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40 In Order No. 6812c, the PSC identified those statements in MTA's brief that were stricken. MTA's effort to supplement the record was disallowed and those statements do

urban areas. The MTA notes that §214 of the '96 Act and §69-3-840(3) MCA govern designations of ETCs in Montana. A carrier must satisfy ARM §38.5.3209 and the PSC must consider the public interest. ARM §38.5.3209.

The MTA's argument includes numerous points. First, contrary to its suggestion that the MTA must persuade the PSC that it has not satisfied the legal standard to grant its application, CW has the burden of proof. While pointing out the deficiencies in CW's application it is CW and not the MTA that has the burden of persuasion. The MTA suggests CW said "data requests" are evidence; however Montana law compels adequate evidence. Thus, the PSC should not consider statements (e.g., the number of tourists that use CW's network) in CW's brief as evidence if not admitted as evidence.

Second, the MTA said CW has urged the PSC to continue feeding at the trough of public subsidies because everyone else is. The MTA adds this does not satisfy public interest standards. While CW argues it is not a state's job to initiate change in the system by denying ETC applications, the MTA said state and federal laws and the FCC direct PSCs to determine if designations are in the public interest. Whereas CW holds that a $6 million increase to the fund is miniscule, the MTA said it is poor policy to ignore the impact when there is no demonstrated offsetting benefit from designating wireless ETCs in Montana. For Montana's rural areas the PSC is justified in limiting the number of ETCs, to avoid threatening the sustainability of the FUSF. Denial of CW's application is consistent with the recommendations the FCC received from the FSJB to address issues with growth in the FUSF, including an interim high-cost support cap. The PSC must consider the effect that designation and maintenance of status will have on the FUSF. (emphasis added). The MTA asserts CW said that its Montana investments are driven by consumer demand, not universal service. The PSC should reject CW's petition.

Third, CW's technology platform does not work with other carriers' networks, but does benefit out-of-state carriers whose customers roam on CW's Montana network. Thus, the PSC must assess whether CW's application meets the public interest criteria at ARM §38.5.3210(3)(e) and (j). The MTA said CW admits its platform is incompatible with other networks in Montana and that its network will not increase emergency service access for customers of other companies, such as Verizon and Alltel. Because CW

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not appear in this summary of MTA's January 8, 2008 Response Brief.

provided no evidence that its network satisfies the public interest the PSC should consider if it is in the public interest to use FUSFs to aid CW's provision of services.

Fourth, the MTA asserts "white areas will remain white" since CW already covers 77% of Montana's population along major traffic routes its proposed build out simply fills in some gaps. Thus, the white areas in Montana will apparently go unserved once CW completes its build out, but the FUSF will increase $6 million. The MTA asserts that CW will achieve 98% population coverage by aggregating Qwest's, BTC's and 3RTC's territories. See p. 16. That is, CW looked at the three study areas in the aggregate to reach 98%, an objective it can reach without any obligation to build out to rural areas such as Glendive, Wibaux and Sidney. CW already practically meets its coverage requirement in Qwest's service area and CW has no plan to build out to serve rural areas of Qwest's service area. While CW will not serve the most rural areas of Montana, 90% of its FUSF support will derive from 3RTC's service area, where it will receive $1,500/customer/year for each handset sold.

Whereas CW has 192 towers in Montana and needs 60 more to reach 98% coverage, it owns less than 10 towers. CW sold the vast majority of the 131 tower sites it acquired, providing considerable capital infusion. The MTA adds that CW counts its leased properties toward the FCC's build-out requirement for licensed spectrum holders. Nor does CW have the capital expense of building towers that it does not own. CW counts its leased properties to meet the FCC's build-out requirement.

Whereas CW said that once it is designated an ETC it will construct facilities to expand its network, the MTA said CW presented no evidence as to what it costs to construct facilities or why FUSFs are needed. CW never indicated that, in the absence of FUSFs, it would not build out as it will with FUSFs. The MTA added this assertion is not based on any evidence, but instead inferences that CW covered with plausible deniability, apparently because CW said it would build out in areas for which it does not seek ETC designation. See pp. 18, 19. While CW said it could report the costs of new facilities, it prefers to not do so as it gets the same support as the ILEC. Whereas CW represents to need FUSFs to build out the claim is not substantiated and cannot support its application. There is no rationale to give CW $6 million to reach a few more people. As no evidence exists that CW needs FUSFs, its application is not in the public interest.