BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Docket No. 11A-938T

IN THE MATTER OF THE APPLICATION OF NUCLA-NATURITA TELEPHONE COMPANY AND NNTC WIRELESS, LLC FOR REDEFINITION OF SERVICE AREA PURSUANT TO COMMISSION DECISION NO. C11-0551.

STIPULATION AND SETTLEMENT AGREEMENT

Nucla-Naturita Telephone Company, Inc. ("Nucla") and NNTC Wireless, LLC ("NNTC") (together, the "Companies"), the Colorado Office of Consumer Counsel ("OCC"), and Trial Staff of the Public Utilities Commission of the State of Colorado ("Staff") (collectively the "Stipulating Parties" or the "Parties"), through their undersigned counsel, enter into this Stipulation and Settlement Agreement ("Stipulation") regarding redefinition and the Path Two Disaggregation Plan for approval by the Colorado Public Utilities Commission ("Commission" or "PUC") in the instant docket. The Parties submit this Stipulation for approval by the Commission pursuant to the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations ("CCR") 723-1-1407 and 1408.

PRELIMINARY STATEMENT

1. Under the provisions of Title 47 of the Code of Federal Regulations ("CFR"), Part 54, Section 54.315, all rural incumbent local exchange carriers for which high cost universal support is provided pursuant to CFR Sections 54.301, 54.303 and/or 54.305 of subpart B and subpart K of Part 54, and/or subpart F of Part 36, of Chapter 1 of

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the CFR, must select a path for the disaggregation and targeting of support received by such rural incumbent local exchange carriers. Three alternative disaggregation path choices are described in Section 54.315: Path One,[1] Path Two,[2] and Path Three[3].

2. Commission Rule 4 CCR 723-2-2190 requires that a rural incumbent local exchange carrier that selects a disaggregation path pursuant to FCC regulations to file its disaggregation path selection with the Commission as required by paragraphs (a), (b), or (c) of that rule.

3. Commission Rule 4 CCR 723-2-2848(b) requires that the disaggregation and targeting of Colorado High Cost Support Mechanism by rural incumbent local exchange carriers shall be the same plan as the provider selected under Rule 2190.

4. The Commission designated NNTC as an Eligible Telecommunications Carrier ("ETC") and an Eligible Provider ("EP") in the Norwood exchange in Docket No. 08A-508T. The matter was assigned to an Administrative Law Judge ("ALJ") who, in Decision No. R11-0218, conditioned NNTC's ETC/EP designation on both the disaggregation and redefinition of the Naturita, Nucla, and Paradox exchanges. However, the Commission's order on exceptions, Decision No. C11-0551, deferred resolution of the issue of disaggregation until a subsequent proceeding. The relevant paragraphs of Decision No. C11-0551 state:

> 19. We agree with NNTC that a disaggregation condition would not be appropriate in this docket. It is true that no party presented evidence or arguments on this issue. Regardless of whether

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[1] Path One, a rural ILEC chooses not to disaggregate.

[2] Path Two, a rural ILEC elects to disaggregate based on a plan for which the carrier obtains prior approval from the appropriate regulatory authority.

[3] Path Three, a rural ILEC elects to disaggregate and to self-certify the disaggregation and targeting plan which the carrier has adopted. The plan becomes effective on the date the carrier self-certifies its plan to the state regulatory commission.

> NNTC, as the applicant, should have done so, there is little, if any record in this case on whether disaggregation or redefinition is appropriate. Regardless of whether, in the abstract, this issue is better addressed at the ETC/EP designation stage or in a subsequent proceeding, we will defer resolution of this issue until a subsequent proceeding because of the state of the record in this docket. We therefore grant the exceptions filed by NNTC…
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> 20. We note that, when NNTC applies for actual receipt of high cost support, NNTC and/or Nucla-Naturita should file supporting testimony and exhibits addressing both redefinition and disaggregation options. We express no opinion, at this time, on whether either or both are warranted. Rather, the Commission will comprehensively examine this issue when NNTC files for actual receipt of support. The Commission will consider the unique circumstances of this case, specifically the parent-subsidiary relationship between the competitive wireless carrier and the underlying ILEC, in rendering its decision.

5. In response to the OCC's Request for Rehearing Reargument, and Reconsideration ("RRR") of Decision No. C11-0551, the Commission denied the OCC's RRR, but made the following clarification in Decision No. C11-0757:

> [We] agree with the OCC that a clarification is needed in the language of Decision No. C11-0551 regarding the process of granting ETC status to NNTC. Specifically, a clarification is needed regarding the condition of ETC designation based on the redefinition of Nucla-Naturita's study area to the wire center (or exchange level and the concurrence of the Federal Communications Commission (FCC) in that redefinition.
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> We find that, in order to address the possibility of creamskimming, Nucla-Naturita must redefine its study area for NNTC to provide service to fewer than all of Nucla-Naturita's wire centers, Nucla-Naturita must make a verified filing with the Commission, as the affected rural ILEC. The filing is necessary: (a) to obtain Commission permission to target federal high-cost support (Rules Regulation Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2-2190(d); and (b) to obtain a Commission decision that addresses, *inter alia*, any federal-State Joint Board recommendations concerning redefinition of a rural ILEC's service area (47 *Code of Federal Regulations* (CFR) § 54.207(c)(1)(II). Nucla-Naturita may make its filing

> under Rule 4 CCR 723-2-2190(b) (Path 2) or Rule 4 CCR 723-2-2190(c) (Path 3). The filing must include information that provides an evidentiary basis for a Commission decision or an explanation that satisfies the requirements of 47 CFR § 54.207(c)(1).
>
> Nucla-Naturita is not a party to this proceeding. Thus, while the redefinition of Nucla-Naturita's study area is a condition on NNTC's ETC designation in Nucla-Naturita's service area in this proceeding, the Commission cannot order Nucla-Naturita to make a filing to redefine is study area as well as well as address the sub-issue of whether disaggregation of its service/study area is appropriate. Despite this fact, NNTC's designation as an ETC in Nucla-Naturita's wire centers will be subject to the condition that Nucla-Naturita's study area must be redefined pursuant to 47 CFR § 54.207.
>
> We condition NNTC's ETC designation of the redefinition of Nucla-Naturita's study area to the wire center (or exchange) level and the FCC's concurrence in that redefinition. In addition, NNTC must provide, as a compliance filing, a copy of the FCC's decision that concurs with the Commission's redefinition of Nucla-Naturita's service area. If all other requirements have been met and Nucla-Naturita's study area is redefined to the wire center level,[4] NNTC's ETC designation in the redefined Nucla-Naturita service areas will become effective immediately upon the filing of the compliance filing.
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> If the Commission decides to redefine (with or without disaggregation) Nucla-Naturita's study area, the Commission (or another party) must file with the FCC for the FCC's agreement to the redefinition of the study area.

6. On November 17, 2011, the Companies filed with the Commission an application to redefine Nucla's service area to the wire center level, arguing that disaggregation was unnecessary.

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[4] The original Decision No. C11-0757 stated, "If all other requirements have been met and Nucla-Naturita's study area is *disaggregated and* redefined to the wire center level…" (emphasis added). However, on July 14, 2011, the Commission issued and errata, Decision No. C11-0757-E, which removed the words "disaggregated and…" to this sentence.

7. On November 18, 2011, the Federal Communications Commission ("FCC") released the ICC/USF Reform Order that reforms the universal service support system and transitions the system to the Connect America Fund ("CAF").[5] This ICC/USF Reform Order (a/k/a CAF Order) eliminated the identical support rule contained in 47 CFR § 54.307(a)(1) and froze each competitive ETC's support received as of December 31, 2011, but did allow for legacy identical support to continue over a certain period, decreasing the legacy amounts recoverable by 20 percent per year. The ICC/USF Reform Order concluded that the legacy high-cost support received by competitive eligible telecommunications carriers ("CETCs") for 2011 or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower, should be used to set their baseline level of support for the phase-down transition, starting in 2012. On December 29, 2011, T-Mobile USA, Inc. ("T-Mobile") filed a Petition for Reconsideration or Clarification (the "T-Mobile PFR") asking the Commission to clarify the level of high-cost universal service fund ("USF") support CETS are to receive during the phase-down of high-cost support for CETCs established in the ICC/USF Reform Order. The T-Mobile PFR asks for the following relief:

> In the case of a carrier granted ETC status in 2011 that received support for part of 2011, the total amount of support received for 2011 should be divided by the number of months for which it received support in 2011, rather than by 12, in order to calculate the "monthly baseline support amount." In the case of a carrier that filed an ETC application prior to adoption of the *CAF Order* that is

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[5] See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rate for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket 10-90, GN Docket No. 09-51, WC Docket No. 0-7-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011)* ("ICC/USF Reform Order" or "CAF Order").

> granted too late to receive support for 2011, the "monthly baseline support amount" should be equal to the average monthly amount of high-cost support that the carrier would have received for 2011 if it had been designated an ETC and received support for 2011 under the prior rules.

See T-Mobile PFR at p.13. If the T-Mobile PFR is granted, NNTC would continue to be eligible for legacy USF funding even though it did not receive funding in 2011. For those carriers that seek ETC status for support other than legacy USF funding, the FCC recently ruled that disaggregation is no longer a requirement. *See* CAF Docket, *Report and Order and Further Notice of Proposed Rulemaking,* FCC 12-147 at ¶ 16 (rel. Feb. 3, 2012), which provides:

> *Elimination of Section 54.315 (Disaggregation).* Section 54.315 of the Commission's rules permits incumbent local exchange carriers to target the high-cost universal service support they receive to specific areas within their study areas based on the relative costs of serving those areas. This disaggregation of support was intended to ensure that competitive ETCs receive an appropriate per-line support amount for the various areas within the incumbent study area, rather than a single, undifferentiated per-line support amount for the entire study area. Because the Commission eliminated the identical support rule in the *USF/ICC Transformation Order* and competitive ETCs therefore no longer receive support based on incumbent support amounts, the Commission's disaggregation rule is now obsolete. Because this rule is obsolete, we find good cause to delete it without notice and comment.

8. On December 21, 2011, the OCC intervened in this docket.

9. On January 3, 2012, Staff intervened in this docket.

10. On January 13, 2012 the ALJ to whom this docket was assigned issued Decision No. R12-0051-I, which established a procedural schedule for this docket.

11. On February 8, 2012, the Parties filed a Joint Motion to vacate the procedural schedule because the Parties have reached settlement in principle.

12. The Companies, the OCC, and Staff have now reached agreement on the issues raised in this docket, as is set forth herein. This Stipulation and Settlement Agreement is entered into for the purpose of avoiding the costs and risks of litigation. The Parties to this Agreement agree this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

13. Nucla is a Rural Incumbent Local Exchange Carrier ("RLEC"), as defined in 47 CFR § 54.5; is an Incumbent Local Exchange Carrier ("ILEC") as defined in Commission's Rules Regulating Telecommunications Providers, Services, and Products, 4 CCR 723-2-2001(ss); and is a Rural Telecommunications Provider, as defined in Rule 4 CCR 723-2-2001(gggg). Nucla provides telecommunications and other services in Study Area Code 462193.

14. NNTC is a subsidiary of Nucla and is licensed to provide cellular mobile telecommunications and Personal Communications Services in portions of Colorado by the FCC.

15. The Parties agree that, pursuant to the terms of this Stipulation, Nucla's Study Area should be redefined at the exchange level. The exchange levels are: Nucla, Naturita, Paradox, Arrowhead and Gateway.

16. The Parties understand that the FCC's ICC/USF Reform Order froze USF support to competitive ETCs receiving support as of December 31, 2011, and that

competitive ETCs designated after that date will not be eligible for identical support unless the T-Mobile PFR is granted. While disaggregation is no longer required by the FCC for carriers seeking non-legacy support from the USF, NNTC will go forward with disaggregation in the hope that the T-Mobile PFR is granted and it may thereby seek legacy USF funding.

17. The Parties agree that, pursuant to the terms of this Stipulation, disaggregation will occur. The Parties agree to use the Path Two Disaggregation Plan, as contained in Exhibit A, on an exchange basis. The Parties agree to use Staff's method of direct assigned investment for Plant In Service, Central Office, Transmission and Cable and Wire Facilities. The Parties agree to use Staff's methodology for calculation of accumulated depreciation.

18. To determine the intrastate disaggregated high cost funding, the net plant by exchange was used to allocate the high cost funds to each exchange.

19. The methodology is incorporated in Exhibit A.

20. The agreed upon Path Two Disaggregation Plan consists of the following elements: 1) redefinition of Nucla's study area into 5 exchanges, 2) direct assignment of investment for each exchange, and 3) Staff's methodology to calculate accumulated depreciation reserve in each exchange. The result provides a percentage that is used to allocate appropriate amounts of support per line in each exchange based upon the Parties' agreed upon methodology. Exhibit A outlines the total amount of Colorado High Cost Support Mechanism ("CHCSM") support provided by the agreed upon Path Two Disaggregation Plan. The CHCSM support amount equates to the approved support amount in Commission Decision No. R10-1281, Docket No. 10M-487T. However,

should Nucla's eligibility change, the new HCSM support amount will be allocated using the percentages contained in Exhibit A.

21. The agreed upon Path Two Disaggregation Plan and the associated calculation methodology meet the requirements of 47 CFR Section 54.315(c) and (e) as well as Commission Rule 4 CCR 723-2-2190(b), as outlined below.

22. Upon Commission approval of this Settlement Agreement and NNTC's filing of line counts with the Commission, the Parties agree that, pursuant to the Commission's Rules Regulating Telecommunications Carriers, NNTC will be immediately eligible for funding from the state CHCSM without any further applications or petitions to the Commission.

23. Within 30 days after Commission approval of this Settlement Agreement, the Commission on the Companies' behalf will file with the FCC for the FCC's agreement to the redefinition of the study area. NNTC agrees to offer its assistance to the Commission and its Staff to help draft such filing. Upon the FCC's agreement to the redefinition of the study area (by order or by operation of law), the parties agree that NNTC will be an ETC for all purposes and for all of the exchanges for which it sought ETC status in Docket No. 08A-508T, and will not be required to file any further applications or petitions for such ETC status, unless required the FCC or this Commission.

DISAGGREGATION PLAN RATIONALE

24. The Path Two Disaggregation Plan was developed in accordance with the following assumptions: 1) Nucla's study area consists of approximately 2,581 square miles and 2) Nucla had approximately 1,546 access lines in 2010.

25. The Parties agree to use Nucla's relevant Continuous Property Records and other data to directly assign the central office, transmission and the cable and wire facilities' investment to each exchange.

26. The Parties agree to directly apply the Commission-approved depreciation life percentages to each type of investment for each exchange.

27. The Parties agree to calculate the accumulated depreciation on the direct investment in each exchange.

28. The Parties agree that this Settlement Agreement and the disaggregation plan fully addresses any and all of Staff's "cream-skimming" concerns, and should also satisfy any of the Commission's "cream-skimming" concerns, if any.

GENERAL PROVISIONS

29. Without waiving any of their written positions previously filed in this docket, the Parties desire to end further uncertainty in litigation by entering this Stipulation. Accordingly, the Parties hereby agree to be bound to the terms of this Stipulation. The Parties recognize and agree, however, that should the Commission or the FCC determine that a particular regulatory treatment is applicable to ETC designees different than the requirements which currently apply, in further rulemaking or otherwise, that any such lawful and applicable determinations would apply to Nucla and NNTC.

30. This Stipulation is a settlement of disputed and compromised claims and accordingly, this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning this

Stipulation, shall be attached to any principle or methodology contained in this Stipulation.

31. All witnesses of the Parties will support all aspects of the Stipulation and Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Stipulation. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a Commission order approving this Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

32. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within ten (10) days of the date of the applicable Commission order. In the event a Party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect in this or any other proceedings.

33. In the event this Agreement becomes null and void or in the event the Commission does not approve this Stipulation, this Stipulation, as well as the negotiation undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.

34. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of all issues, which were or could have been contested by the Parties with respect to the San Isabel Petition.

35. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any Party.

36. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement. The Parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 14th day of March 2012.

FOR NUCLA-NATURITA TELEPHONE COMPANY AND NNTC WIRELESS, LLC

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2012 COLORADO HIGH COST SUPPORT MECHANISM

(A)	(B)	(C)	(D)	(E)	(F=B*E)	(G)
Per Year Support	**Per Month**	**Per Line**	**Wire Center**	**Net Investment Percent**	**CHCSM Monthly Distribution**	**CHCSM Per Access Line Distribution**
$ 242,020	$ 20,168	$ 13.05	Arrowhead	3.24%	$ 654	$ 2.97
			Gateway	10.49%	$ 2,116	$ 11.14
			Naturita	11.56%	$ 2,332	$ 3.37
			Nucla	56.57%	$ 11,408	$ 35.32
			Paradox	18.14%	$ 3,658	$ 30.23

INPUTS	DESCRIPTION	SOURCE
$ 1,228,621	**Revenue Requirement**	NECA Submission
	Loops	2010 Annual Report
220	Arrowhead	
190	Gateway	
323	Naturita	
692	Nucla	
121	Paradox	
1,546	Total	
$ 66.23	Monthly Cost Per Loop	
	Percent Investment	Net Investment CPR
3.24%	Arrowhead	
10.49%	Gateway	
11.56%	Naturita	
56.57%	Nucla	
18.14%	Paradox	
$ 242,020	CHCSM 2012	

INPUTS	DESCRIPTION	SOURCE
	Distribution of Revenue Requirement	
$ 39,842	Arrowhead	
$ 128,917	Gateway	
$ 142,068	Naturita	
$ 694,973	Nucla	
$ 222,821	Paradox	
	Cost Per Loop	
$ 181.10	Arrowhead	
$ 678.51	Gateway	
$ 439.84	Naturita	
$ 1,004.30	Nucla	
$ 1,841.50	Paradox	
	Monthly Cost Per Loop	
$ 15.09	Arrowhead	
$ 56.54	Gateway	
$ 36.65	Naturita	
$ 83.69	Nucla	
$ 153.46	Paradox	

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