

**Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	WC Docket No. 09-197
Universal Service	)	
	)	CC Docket No. 96-45
Cordova Wireless Communications, LLC	)	
Petition for FCC Agreement to	)	
Redefine the Study Area of a Rural	)	
Telephone Company in Alaska	)	

To: Wireline Competition Bureau

**PETITION FOR FCC AGREEMENT TO REDEFINE  
THE STUDY AREA OF A RURAL TELEPHONE COMPANY IN ALASKA**

Cordova Wireless Communications, LLC (“CWC LLC”), by its attorneys, pursuant to Section 214(e)(5) of the Communications Act of 1934, as amended, (“Act”) and Section 54.207 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby submits this Petition for FCC Agreement to Redefine the Study Area of a Rural Telephone Company in Alaska (“Petition”). Specifically, CWC LLC seeks FCC agreement with the Regulatory Commission of Alaska (“RCA”) redefinition of a certain wire center as a separate service area of Sitka study area of ACS of the Northland, Inc. d/b/a Alaska Communications Systems, ACS Long Distance and ACS (“ACS-N”).<sup>1</sup>

**I. INTRODUCTION**

On October 1, 2012, CWC LLC filed a petition with the RCA for designation as an eligible telecommunications carrier (“ETC”) for the provision of wireless commercial mobile radio service (“CMRS”) in a proposed Yakutat ETC service area. The proposed Yakutat ETC service area is served

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<sup>1</sup> See *In the Matter of the Petition Filed by Cordova Wireless Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Provision of Wireless Commercial Mobile Radio Service in the Yakutat Exchange of the Sitka Study Area Served by ACS OF THE NORTHLAND, INC. d/b/a ALASKA COMMUNICATIONS SYSTEMS, ACS LOCAL SERVICE, and ACS*, Docket No. U-12-135, Order Granting Petition for Designation as an Eligible Telecommunications Carrier in Redefined Service Area in Yakutat, Alaska, Order No. 13, Regulatory Commission of Alaska (November 22, 2013) (“Order”). The Order is attached hereto as Exhibit A.

by incumbent local exchange carrier (“ILEC”) ACS-N, and is part of the ACS-N Sitka study area. The Sitka study area consists of 52 non-contiguous exchanges with a total population of approximately 9,000.<sup>2</sup> In its petition, CWC LLC requested redefinition of the Yakutat ETC service area to separate it from the remaining 51 exchanges in the ACS-N Sitka study area. According to CWC LLC, a redefinition of the ACS-N Sitka study area is needed because Yakutat is the only area within the study area where CWC LLC is licensed to provide wireless service. The RCA opened a docket to consider CWC LLC’s petition for ETC designation and redefinition of the Yakutat ETC service area and on October 5, 2012 released CWC LLC’s petition on Public Notice.

The Act dictates that an ETC will be designated in a service area determined by the appropriate state commission.<sup>3</sup> The term “service area” means a geographic area established by a state commission.<sup>4</sup> In the case of an area served by a rural telephone company, service area means “study area” unless and until the FCC and the state commission, after taking into consideration recommendations of the Federal-State Joint Board (“Joint Board”), establish a different definition of service area for such company.<sup>5</sup>

The Act requires that the state commission take into consideration the Joint Board’s recommendations when redefining a rural telephone company’s study area.<sup>6</sup> In its *Recommended Decision*, the Joint Board outlined its concerns for redefining a rural telephone company’s service area.<sup>7</sup> These concerns include: (1) minimizing rural “cream skimming;” (2) recognizing that the Act places rural telephone companies on a different competitive footing from other carriers; and (3)

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<sup>2</sup> *Order* at 2.

<sup>3</sup> 47 U.S.C. § 214(e)(2).

<sup>4</sup> 47 U.S.C. § 214(e)(5).

<sup>5</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

<sup>6</sup> 47 U.S.C. § 214(e)(5).

<sup>7</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, ¶¶ 172- 174 (1996) (“*Recommended Decision*”); see also *In the Matter of Federal- State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 ¶ 38 (January 22, 2004) (“*Virginia Cellular Order*”).

recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>8</sup> As discussed below, the regulatory and competitive climate has changed considerably since the Joint Board first developed these standards.

On November 22, 2013, the RCA adopted its *Order* granting CWC LLC's ETC petition. Specifically, the RCA redefined the service area of ACS-N, a rural telephone company, to exclude the balance of the ACS-N Sitka study area locations.<sup>9</sup> As a result of this redefinition, which is subject to FCC agreement, the Yakutat wire center that CWC LLC serves in its entirety is a separate service area of ACS-N. In its *Order*, the RCA addressed the Joint Board's study area redefinition concerns enumerated above.<sup>10</sup> Pursuant to the FCC's rules, a state commission or other party seeking FCC agreement in redefining a service area served by a rural telephone company shall submit a petition to the FCC.<sup>11</sup>

## II. DISCUSSION

In its *Order*, the RCA concluded that CWC LLC complies with the RCA's ETC rules and the FCC's guidelines established for consideration of requests for ETC designation. RCA also concluded that CWC LLC meets the public interest requirements of the Act and the Alaska Administrative Code for designation as an ETC in the Yakutat ETC service area. As an ETC, CWC LLCC is subject to the RCA's strict provisions for service quality and must submit annual compliance reports for Commission review.<sup>12</sup> The RCA granted CCW LLC's petition after thorough analyses and serious deliberations,

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<sup>8</sup> See generally *Recommended Decision*; see also *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532 (2002) ("*RCC Holdings*").

<sup>9</sup> *Order* at 34. See also *Order* at 2 (noting that CWC LLC requested redefinition of the Yakutat ETC service area to separate it from the remaining 51 exchanges in the ACS-N Sitka study area).

<sup>10</sup> See *Order* at 21.

<sup>11</sup> 47 C.F.R. § 54.207.

<sup>12</sup> See 3 AAC 53.450, 53.460. In its annual report, CWC LLC is required to file an annual update to its deployment plan and an explanation of how universal service support was used to improve quality, coverage, or capacity in the Yakutat ETC service area. The annual report will allow the RCA to investigate whether CWC LLC has properly used of universal service funds. *Order* at 13.

based on a sound record developed through the submission of prefiled testimony and an evidentiary hearing at which the RCA Commissioners had the opportunity to question CWC LLC's witnesses. The RCA *Order* establishes a positive precedent for other carriers to follow, and sends a clear signal that the RCA does not take lightly either its responsibilities or the responsibilities of CWC LLC.

The RCA's *Order* affirms that it is good public policy to designate CCW LLC as an ETC within the area requested. The RCA decision will result in the deployment of cellular services in one of the most remote areas in the large rural State of Alaska. It will provide consumers in this rural frontier area with access, for the first time, to telecommunications services comparable to those provided in more populated cities in Alaska. This is consistent with the FCC's universal service goals and the goals of the Telecommunications Act of 1996.

In its *Order*, the RCA designated CCW LLC as an ETC in the Yakutat service area and granted CCW LLC's request to redefine ACS-N's Sitka study area. CWC LLC respectfully requests FCC agreement with the RCA's redefinition of ACS-N's rural study area to exclude the balance of the ACS-N Sitka study area locations. Pursuant to Section 54.207(c)(1) of the FCC's rules, this petition includes: (1) the definition proposed by the state commission,<sup>13</sup> and (2) the state commission's ruling or other official statement presenting the state commission's reasons for adopting its definition including an analysis that takes into consideration the Joint Board's recommendations.<sup>14</sup> Among other factors, the RCA considered: (1) whether CCW LLC is attempting to "cream skim" by only proposing to serve the lowest cost exchanges; (2) the rural carrier's special status under the Act; and (3) the administrative

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<sup>13</sup> The RCA's *Order* designates CWC LLC as an ETC within a redefined study area that excludes the balance of the ACS-N Sitka study area locations. *Order* at 34. *See also Order* at 2 (noting that CWC LLC requested redefinition of the Yakutat ETC service area to separate it from the remaining 51 exchanges in the ACS-N Sitka study area). Yakutat wire center information is provided in Exhibit B.

<sup>14</sup> 47 C.F.R. § 54.207(c).

burden the LEC would face by calculating their costs on a basis other than their entire study area.<sup>15</sup>

The RCA's analysis is discussed below.

#### **A. CCW LLC is Not Attempting to Cream Skim**

Rural "cream skimming" occurs when competitors serve only the low-cost, highest revenue customers in a rural telephone company's study area.<sup>16</sup> CWC LLC based its requested ETC area on its licensed service area and requested redefinition at the wire center level in accordance with the FCC's *Highland Cellular Order*.<sup>17</sup> Pursuant to that Order, the FCC analyzes several factors to determine whether a competitive ETC is attempting to cream skim, including the service area in which the ETC applicant requests designation, whether the incumbents have taken advantage of disaggregation, and population density.

To support its ETC Petition, CCW LLC conducted an updated population density analysis of the entire ACS-N Sitka study area using 2010 Census data. A copy of the analysis is attached as Exhibit C. The analysis demonstrates that CCW LLC will not primarily serve customers in low-cost, high-density portions of the ACS-N Sitka study area. Specifically, CWC LLC's population density analysis of the ACS-N Sitka study area shows that the average population density for all exchanges within the study area is 30.84 people per square mile.<sup>18</sup> In contrast, the Yakutat ETC service area has a population density of 9.37 people per square mile.<sup>19</sup>

The RCA reviewed CWC LLC's population density analysis and determined that the calculations accurately reflect the population densities for the ACS-N Sitka study area and the Yakutat ETC service area. The RCA concluded that "the Yakutat ETC service area has a lower population

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<sup>15</sup> *Order* at 21.

<sup>16</sup> See *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438, ¶ 26 ("*Highland Cellular Order*") (2004).

<sup>17</sup> See generally *Highland Cellular Order*.

<sup>18</sup> *Order* at 25-26.

<sup>19</sup> *Order* at 26.

density than approximately 36 other exchanges in the ACS-N Sitka study area.”<sup>20</sup> Accordingly, the RCA found that CCW LLC’s redefinition of ACS-N’s study area will not result in cream skimming.<sup>21</sup>

Traditionally, a cream skimming analysis contains an examination of whether an ILEC has disaggregated its support below the study area level. Disaggregation allows ILEC’s to depart from service area averaging and target per-line support into geographic areas below the study area level. It can result in reduced support for high density areas which may lessen the incentive for an ETC to enter those areas. The RCA did not discuss disaggregation because ACS-N has not disaggregated support in the Sitka Study area. Additionally, RCA stated it was unnecessary to discuss disaggregation because it found there was no opportunity for CWC LLC to cream skim.<sup>22</sup>

#### **B. The RCA Considered ACS-N’s Special Status Under the Act**

In its *Order*, the RCA recognized the special status of ACS-N as a rural carrier.<sup>23</sup> It did so by addressing the FCC and Joint Board’s cream skimming concerns, discussed *supra*, and by making a determination that CWC LLC’s ETC designation is in the public interest. The RCA also acknowledged that the Act places rural telephone companies on a different competitive footing when it analyzed whether CWC LLC’s redefinition request should be granted. The RCA examined CWC LLC’s proposal, and approved the redefinition request after determining it is in the public interest. Ultimately, the RCA concluded that the proposed redefinition does not raise concerns about ACS-N’s ability to continue to serve its study area.<sup>24</sup>

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<sup>20</sup> *Order* at 27-28.

<sup>21</sup> *Order* at 28.

<sup>22</sup> *Order* at 28.

<sup>23</sup> The Act accords rural telephone companies a special status. “For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c)...Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.” *Recommended Decision* at ¶173.

<sup>24</sup> *Order* at 30.

### C. Redefining the Rural LEC Service Areas Will Not Be Administratively Burdensome on ACS-N

A concern that must be considered when redefining a rural telephone company's service area is whether the redefinition will impose an administrative burden by requiring the incumbent telephone company to determine costs on a basis other than study areas. The Commission initially designated ACS-N as a party to the proceeding to consider CWC LLC's petition.<sup>25</sup> ACS-N, however, affirmatively chose not to participate in the proceeding,<sup>26</sup> which indicates that ACS-N did not believe that the requested redefinition would either threaten its ability to provide service throughout its Sitka Study Area or impose undue administrative burdens.<sup>27</sup> Thus, the RCA did not directly address this concern in its *Order*, but implied that it is not an issue by stating that the proposed redefinition does not raise concerns about ACS-N's ability to continue to serve its study area. Additionally, by not directly addressing the issue, the RCA did not disagree with CWC LLC's position that with the elimination of the identical support rule, any universal service support that CWC LCC might receive in the Yakutat ETC service area will be completely divorced from ACS-N's costs, and thus ACS-N will not be burdened with having to calculate costs below the study area level.<sup>28</sup>

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<sup>25</sup> *Order* at 4.

<sup>26</sup> *Id.*

<sup>27</sup> If the creamskimming analysis indicates that the applicant seeks to serve high-cost areas, disaggregation of support is not required to mitigate creamskimming concerns. *Recommended Decision*, ¶¶ 172-74. Therefore, the ILEC is still able to calculate costs at the study area level. As the FCC has noted, "redefinition does not in and of itself increase the administrative burdens of rural incumbents." *In the Matter of Cellular Properties Petition for Commission Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc. in the State of Illinois Pursuant to 47 C.F.R. Section 54.207(c)*, WC Docket No. 09-197, WC Docket No. 96-45, DA 11-44, rel. Mar. 17, 2011, ¶ 6.

<sup>28</sup> *Verified Petition of Cordova Wireless Communications, Inc., for Designation as an Eligible Telecommunications Carrier in a Redefined Service Area at Yakutat, Alaska*, U-12-135, at 34 (filed October 1, 2012).

### III. THE FCC'S NEW UNIVERSAL SERVICE RULES ELIMINATE MOST SERVICE AREA REDEFINITION CONCERNS

In November 2011, the FCC adopted the USF/ICC Transformation Order which fundamentally altered the universal service system for mobile ETCs by establishing a Mobility Fund to promote mobile broadband and provide ongoing high-cost support where needed.<sup>29</sup> By establishing a separate Mobility Fund, the FCC removed mobile carriers from the legacy universal service regime. Accordingly, most concerns about redefining the service areas of rural telephone companies have been effectively mooted. With competitive ETC high-cost support being phased down in Alaska – to be replaced eventually by Mobility Fund support – cream skimming concerns addressed by the Joint Board in the last century have become less applicable to modern day regulatory and competitive concerns in Alaska. Of course, as discussed *supra*, CWC LLC's redefinition request certainly overcomes these legacy cream skimming concerns.

The FCC's decision to eliminate the identical support rule<sup>30</sup> and its disaggregation rule<sup>31</sup> lessens, if not moots, the need to address creamskimming concerns in the application of Section 54.207 of the FCC's rules. Unlike Section 54.315, Section 54.207 relates to a specific and direct statutory mandate, and therefore the FCC likely cannot eliminate the rule. However, the FCC can and should de-emphasize the need under Section 54.207 for a rigorous creamskimming analysis based on the new universal service policies and rules established in the *USF/ICC Transformation Order*.<sup>32</sup>

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<sup>29</sup> See *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶301, 493 (Nov. 18, 2011).

<sup>30</sup> *Id.* at ¶498.

<sup>31</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-147 at ¶ 19, (February 3, 2012) (“*Clarification Order*”).

<sup>32</sup> Although only applicable in the pending Auction 902, the FCC recently determined that blanket forbearance from Section 54.207 was justified in the context of its Mobility Fund rules. See *in re Petition of NTUA WIRELESS LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended*, WC Docket No. 09-197, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Order, DA 13-2318 at ¶¶ 11-12, (December 4, 2013).

Additionally, the FCC's recognition of wireless service as a complement<sup>33</sup> to wireline broadband service and the Commission's proposed use of competitive bidding to determine wireless ETC support levels<sup>34</sup> have effectively mooted concerns that redefining the service areas of rural telephone companies might have a harmful impact on the universal service fund or negative effect on rural telephone companies. The FCC is operating under a new universal service regime and most redefinition concerns are, like the disaggregation rule,<sup>35</sup> a relic of the past.

#### IV. CONCLUSION

For the foregoing reasons, CWC LLC respectfully requests FCC agreement with the RCA's redefinition of ACS-N's rural Sitka study area to designate the Yakutat wire center as a separate service area of the rural study area of ACS-N.

Respectfully submitted,

**CORDOVA WIRELESS COMMUNICATIONS, LLC**

By: */s/ Kenneth C. Johnson*

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Its Attorney

Dated: December 5, 2013

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<sup>33</sup>*Id.* at ¶53. *See* also fn. 826.

<sup>34</sup>*Id.* at ¶ 1121, *et. seq.*

<sup>35</sup> By eliminating its disaggregation rule – specifically used in the past by the FCC to provide a remedy to creamskimming, the FCC has already implicitly acknowledged and set precedent that creamskimming is no longer an acute policy concern. *See in re Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Cellular Properties Petition for Commission Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc. in the State of Illinois Pursuant to 47 C.F.R. Section 54.207(c)*, Order, DA 11-441 (March 7, 2011) (promoting the use of disaggregation to assuage creamskimming concerns).

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

T.W. Patch, Chairman  
Paul F. Lisankie  
Robert M. Pickett  
Norman Rokeberg  
Janis W. Wilson

In the Matter of the Petition Filed by Cordova )  
Wireless Communications, Inc. for Designation as )  
an Eligible Telecommunications Carrier for )  
Provision of Wireless Commercial Mobile Radio )  
Service in the Yakutat Exchange of the Sitka )  
Study Area Served by ACS OF THE )  
NORTHLAND, INC. d/b/a ALASKA )  
COMMUNICATIONS SYSTEMS, ACS LOCAL )  
SERVICE, and ACS )

U-12-135

ORDER NO. 13

**ORDER GRANTING PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER IN REDEFINED  
SERVICE AREA IN YAKUTAT, ALASKA**

BY THE COMMISSION:

Summary

We grant the petition filed by Cordova Wireless Communications, LLC (CWC LLC).<sup>1</sup> We designate CWC LLC as an eligible telecommunications carrier (ETC) for the provision of wireless commercial mobile radio service (CMRS) in a redefined Yakutat, Alaska ETC service area (Yakutat ETC service area). That service area is a

<sup>1</sup>After filing its initiating petition in this docket Cordova Wireless Communications, Inc. (CWCI) converted from an Alaska corporation to an Alaska limited liability company, Cordova Wireless Communications, LLC. (*Notice of Name Change*, filed April 8, 2013). We transferred CWCI's existing ETC status to CWC LLC and designated CWC LLC as an ETC, replacing CWCI. (*Order U-13-048(2), Order Granting Petition to Transfer Eligible Telecommunications Carrier Status, Subject to Condition, and Closing Docket*, dated September 30, 2013).

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1 portion of the Sitka study area of ACS of the Northland, Inc. d/b/a Alaska  
2 Communications Systems, ACS Long Distance and ACS (ACS-N).

3 Background

4 CWC LLC filed a petition for designation as an ETC for the provision of  
5 wireless CMRS in a proposed Yakutat ETC service area.<sup>2</sup> The proposed Yakutat ETC  
6 service area is served by incumbent local exchange carrier (ILEC) ACS-N and is part of  
7 the ACS-N Sitka study area. The Sitka study area consists of 52 non-contiguous  
8 exchanges with a total population of approximately 9,000.<sup>3</sup>

9 In its petition, CWC LLC requested redefinition of the Yakutat ETC service  
10 area to separate it from the remaining 51 exchanges in the ACS-N Sitka study area.<sup>4</sup>  
11 According to CWC LLC, a redefinition of the ACS-N Sitka study area is needed because  
12 Yakutat is the only area within the study area where CWC LLC is licensed to provide  
13 wireless service.<sup>5</sup> In conjunction with its request for ETC designation and redefinition,  
14 CWC LLC also filed a petition for confidential treatment of its network deployment plan  
15 and detailed forward-looking financial projections.<sup>6</sup> CWC LLC's petition for confidential  
16 treatment was subsequently approved.<sup>7</sup>

20 <sup>2</sup>*Verified Petition of Cordova Wireless Communications, Inc., for Designation as  
an Eligible Telecommunications Carrier in a Redefined Service Area at Yakutat, Alaska,*  
21 filed October 1, 2012, admitted at hearing as H-1 (H-1 (Petition)).

22 <sup>3</sup>H-1 (Petition) at 31.

23 <sup>4</sup>H-1 (Petition) at 2.

24 <sup>5</sup>H-1 (Petition) at 30 n.46.

25 <sup>6</sup>*Petition for Confidential Treatment*, filed October 1, 2012.

26 <sup>7</sup>Order U-12-135(9), *Order Granting Petition for Confidential Treatment*, dated  
February 11, 2013.

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We opened this docket to consider CWC LLC's petition for ETC designation and redefinition of the Yakutat ETC service area.<sup>8</sup> On October 5, 2012, we issued public notice of CWC LLC's petition. We received comments from GCI Communication Corp. d/b/a General Communication, Inc. and GCI (GCI),<sup>9</sup> ACS Wireless, Inc. (ACSW),<sup>10</sup> and Yakutat resident Larry Powell.<sup>11</sup> In its comments, GCI asserted that CWC LLC's petition was premature, CWC LLC's discussion of federal universal service fund (USF) law was inaccurate and potentially misleading, and CWC LLC's discussion of ETC service area redefinition and creamskimming was inadequate.<sup>12</sup> GCI urged us to either deny the petition outright or schedule a hearing.<sup>13</sup>

The comments provided by ACSW focused on the difficult challenges confronting all Alaska ETCs due to the reduction of federal USF support. ACSW stated that redefining an ILEC study area by carving out a particular exchange or exchanges for ETC designation would (if the FCC approves) be one way of allowing a carrier to possibly receive additional federal USF support without the obligation to build out an entire ILEC study area.<sup>14</sup> Moreover, ACSW encouraged us to evaluate CWC LLC's petition with the expectation that any revised policies adopted may need to extend to other ETCs in similar circumstances.<sup>15</sup>

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<sup>8</sup>Order U-12-135(1), *Order Extending Time, Designating Commission Panel, Appointing Administrative Law Judge, and Addressing Timeline for Decision*, dated October 10, 2012.

<sup>9</sup>*Comments of GCI*, filed November 5, 2012 (GCI Comments).

<sup>10</sup>*Comments of ACSW on Cordova Wireless Communications' Study Area Redefinition Request*, filed November 5, 2012, admitted at hearing as H-3.

<sup>11</sup>Comments from L. Powell, filed November 19, 2012 (Powell Comments).

<sup>12</sup>GCI Comments at 6-9.

<sup>13</sup>GCI Comments at 11.

<sup>14</sup>H-3 at 3.

<sup>15</sup>H-3 at 3-4.

1 Powell filed comments in support of CWC LLC's petition. Specifically,  
2 Powell stated the service provided by CWC LLC was important for public safety and  
3 would undoubtedly save many lives over the coming years. Powell encouraged us to  
4 appreciate the effort CWC LLC put forth in extending wireless service to Yakutat and  
5 grant CWC LLC's request for ETC designation and redefinition.<sup>16</sup>

6 CWC LLC responded to the comments submitted by GCI and ACSW.<sup>17</sup>  
7 CWC LLC stated that GCI's and ACSW's comments were not a basis for dismissing the  
8 petition or for deviating from existing procedures for evaluating requests for ETC  
9 designation in redefined ETC service areas.<sup>18</sup>

10 We designated ACS-N, ACSW, and GCI as parties to the proceeding,  
11 subject to filing a notice of non-participation; invited participation by the Attorney  
12 General (AG); and invited petitions for intervention.<sup>19</sup> ACS-N and ACSW filed a notice  
13 of non-participation.<sup>20</sup> The AG filed a notice of election to participate.<sup>21</sup>

14 We held a prehearing conference on January 18, 2013, during which we  
15 adopted the procedural schedule proposed by the parties. We extended the statutory

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<sup>16</sup>Powell Comments.  
<sup>17</sup>*Response of Cordova Wireless Communications, Inc., to Comments*, filed November 27, 2012 (CWC LLC Reply Comments).  
<sup>18</sup>CWC LLC Reply Comments at 21.  
<sup>19</sup>Order U-12-135(3), *Order Designating Parties, Inviting Participation by the Attorney General and Petitions for Intervention, Scheduling Prehearing Conference, and Changing Administrative Law Judge*, dated December 21, 2012.  
<sup>20</sup>*ACS' Notice of Non-Participation*, filed January 9, 2013, admitted at hearing as H-4.  
<sup>21</sup>*Notice of Election to Participate*, filed January 10, 2013; *Entry of Appearance*, filed January 10, 2013.

1 deadline by consent of the parties to accommodate their proposed procedural  
2 schedule.<sup>22</sup>

3 CWC LLC filed the prefiled direct testimony of Paul K. Kelly and Michael  
4 C. Burke.<sup>23</sup> GCI submitted prefiled responsive testimony from Fredrick W. Hitz, III and  
5 Gene Strid.<sup>24</sup> CWC LLC filed prefiled reply testimony.<sup>25</sup> CWC LLC filed a petition for  
6 confidential treatment of certain sections of Burke's reply testimony.<sup>26</sup> We granted  
7 confidential treatment of those documents.<sup>27</sup>

8 CWC LLC, GCI, and the AG submitted simultaneous prehearing legal  
9 briefing addressing CWC LLC's petition and request to redefine the Yakutat ETC  
10 service area.<sup>28</sup> We held a hearing on July 22-23, 2013. At the conclusion of the  
11 hearing we required the parties to submit simultaneous written closing statements.<sup>29</sup>  
12 CWC LLC, GCI, and the AG submitted closing statements.<sup>30</sup>

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15 <sup>22</sup>Order U-12-135(6), *Order Adopting Procedural Schedule and Extending  
Statutory Timeline with Consent of Parties*, dated January 29, 2013.

16 <sup>23</sup>T-1 (Kelly Direct); T-3 (Burke Direct).

17 <sup>24</sup>T-6 (Hitz Testimony); T-5 (Strid Testimony).

18 <sup>25</sup>T-2 (Kelly Reply); T-4 (Burke Reply).

19 <sup>26</sup>*Notice of Filing Confidential Reply Testimony Under Seal*, filed June 10, 2013.

20 <sup>27</sup>Order U-12-135(11), *Order Granting Petition for Confidential Treatment*, dated  
21 July 1, 2013.

22 <sup>28</sup>*Legal Brief in Support of Cordova Wireless Communications, LLC's Application  
for Designation as an Eligible Telecommunications Carrier in a Redefined Yakutat  
Service Area*, filed July 11, 2013 (CWC LLC Legal Brief); *GCI's Legal Brief*, filed  
23 July 11, 2013 (GCI Legal Brief); *Attorney General's Legal Brief*, filed July 11, 2013 (AG  
24 Legal Brief).

25 <sup>29</sup>Tr. 385.

26 <sup>30</sup>*Closing Argument of Cordova Wireless Communications, LLC*, filed August 9,  
2013 (CWC LLC Closing Statement); *GCI's Closing Statement*, filed August 9, 2013  
(GCI Closing Statement); *Attorney General's Closing Argument*, filed August 9, 2013  
(AG Closing Statement).

1 CWC LLC FCC Waiver Request

2 Simultaneous with its petition for ETC designation and request for  
3 redefinition, CWC LLC filed a petition with the Federal Communication Commission  
4 (FCC). The petition sought a waiver of Section 54.307(e)(3)(iv)(B)-(E) of the FCC's  
5 rules relating to the phase down of high-cost universal service support for certain ETCs  
6 serving remote parts of Alaska.<sup>31</sup> Specifically, CWC LLC requested that it be allowed to  
7 maintain at least eighty percent of its baseline level of high-cost support in order to  
8 expand its network and continue providing mobile voice and data service to its current  
9 customers.<sup>32</sup>

10 The FCC received four comments in response to CWC LLC's petition.  
11 Alaska Communications Systems and Alexicon Telecommunications Consulting  
12 supported CWC LLC's request.<sup>33</sup> Copper Valley Wireless, Inc. (CVW) and GCI  
13 objected to the waiver request on the grounds that the filing was premature and that  
14 CWC LLC was not the sole provider of wireless service in a significant portion of its

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16 <sup>31</sup>*Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for*  
17 *Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local*  
18 *Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC  
19 *Docket No. 05-337*, *Developing an Unified Intercarrier Compensation Regime*, CC  
20 *Docket No. 01-92*, *Federal-State Joint Board on Universal Service*, CC Docket No.  
21 *96-45*, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform --*  
22 *Mobility Fund*, WT Docket No. 10-208, *Petition for Waiver of Cordova Wireless*  
23 *Communications, Inc.* (filed Oct. 1, 2012).

24 <sup>32</sup>*Connect America Fund*, WC Docket No. 10-90, *Cordova Wireless*  
25 *Communications, Inc. Petition for Waiver of Certain High-Cost Universal Service Rules*,  
26 WT Docket No. 10-208, Order, DA 13-48, 28 FCC Rcd 186 (2013) (CWC LLC Waiver  
Order) at 187-188, para. 5.

<sup>33</sup>*Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform --*  
*Mobility Fund*, WT Docket No. 10-208, *Petition for Waiver of Cordova Wireless*  
*Communications, Inc.*, DA 12-1627, Comments of Alaska Communications Systems,  
(filed Nov. 13, 2012); *Connect America Fund*, WC Docket No. 10-90, *Universal Service*  
*Reform – Mobility Fund*, WT Docket No. 10-208, *Petition for Waiver of Cordova*  
*Wireless Communications, Inc.* Comments of Alexicon Telecommunications Consulting  
(filed Nov. 13, 2012).

1 service area.<sup>34</sup> CVW further stated that it would also seek a waiver of the FCC's  
2 universal service rules if CWC LLC's petition was granted.<sup>35</sup>

3 Ultimately the FCC denied CWC LLC's request. The FCC's Order stated  
4 that CWC LLC had not demonstrated good cause for the waiver and the request was  
5 premature since CWC LLC admitted it was currently financially sound and did not claim  
6 additional funding was needed to continue providing wireless service to its customers.<sup>36</sup>  
7 However, the FCC stated that CWC LLC could submit another petition in the future  
8 once CWC LLC was better able to demonstrate good cause.<sup>37</sup>

#### 9 Discussion

10 The Telecommunications Act of 1996 (Act) requires a state commission to  
11 rule on a common carrier's request for designation as an ETC for a service area  
12 established by the state commission.<sup>38</sup> ETC status allows a carrier to receive support

13 <sup>34</sup>*Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for*  
14 *Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local*  
15 *Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC  
16 *Docket No. 05-337*, *Developing an Unified Intercarrier Compensation Regime*, CC  
17 *Docket No. 01-92*, *Federal-State Joint Board on Universal Service*, CC Docket No.  
18 *96-45*, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform --*  
19 *Mobility Fund*, WT Docket No. 10-208, Initial Comments of Copper Valley Wireless on  
20 *Cordova Wireless Petition for Waiver Request* (filed Nov. 13, 2012); *Connect America*  
21 *Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket  
22 *No. 09-51*, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC  
23 *Docket No. 07-135*, *High-Cost Universal Service Support*, WC Docket No. 05-337,  
24 *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92,  
25 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and*  
26 *Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket  
No. 10-208, Reply Comments of Copper Valley Wireless on *Cordova Wireless Petition*  
for Waiver Request (filed Nov. 26, 2012) (CVW Reply Comments); *Connect America*  
*Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No.  
10-208, *Petition for Waiver of Cordova Wireless Communications, Inc.*, Opposition of  
General Communication, Inc. (filed Nov. 13, 2012).

<sup>35</sup>CVW Reply Comments at 8.

<sup>36</sup>CWC LLC Waiver Order at 190-191, paras. 14-15.

<sup>37</sup>CWC LLC Waiver Order at 190, para. 14.

<sup>38</sup>47 U.S.C. § 214(e)(2).

1 from federal and state universal service funding to provide, maintain, and upgrade  
2 facilities and services for which the support is intended.<sup>39</sup> An ETC must offer and  
3 advertise the availability of supported services throughout its designated service area  
4 upon reasonable request. Supported services may be provided using the ETC's own  
5 facilities or a combination of its own facilities and the resale of another carrier's  
6 services.<sup>40</sup> These supported services are described in 47 C.F.R. § 54.101(a).<sup>41</sup>

7 ETC Designation

8 We apply our regulations at 3 AAC 53.400 - 3 AAC 53.499 when asked to  
9 make an ETC designation. Those regulations include federally-mandated ETC  
10 requirements<sup>42</sup> and also specify the information that must be filed by a carrier seeking  
11 ETC designation. There are twenty sections that a carrier must complete, including a  
12 demonstration that its designation as an ETC is in the public interest.<sup>43</sup> CWC LLC  
13 provided the information required for each section, as described below.<sup>44</sup>

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<sup>39</sup>47 U.S.C. § 254(e).

<sup>40</sup>47 U.S.C. § 214(e)(1).

<sup>41</sup>The supported services include: voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an ETC's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers.

<sup>42</sup>The Commission's regulations include the expanded federal ETC requirements adopted by the FCC. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2005) (2005 ETC Order).

<sup>43</sup>3 AAC 53.410; 3 AAC 53.420.

<sup>44</sup>3 AAC 53.410(a)(1) and 3 AAC 53.410(a)(2) are not discussed in detail above since they require the name of the carrier seeking ETC designation and the name and contact information of the carrier's representative.

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Designated ETC Service Area

A carrier seeking designation as an ETC must provide a legal description, as well as a map of its proposed ETC service area.<sup>45</sup> The service area map must include the carrier's current coverage area, its proposed coverage area by technology and the coverage area of any carrier whose services will be resold.<sup>46</sup>

CWC LLC proposes to serve only the Yakutat ETC service area portion of the ACS-N Sitka study area.<sup>47</sup> Therefore, granting its requested ETC designation is dependent upon the successful redefinition of the Yakutat ETC service area to exclude the balance of the ACS-N Sitka study area locations.

Yakutat is located approximately 220 miles southeast of Cordova and 225 miles northwest of Juneau. It is bordered on the east by glaciers and the Canadian Rockies and on the west by the Gulf of Alaska and Pacific Ocean. Yakutat has no road access, is reachable only by air or boat, and is largely dependent on the fishing industry<sup>48</sup> as an economic driver.

In support of its petition, CWC LLC provided a legal description by township and range of its proposed Yakutat ETC service area, as well as service area maps.<sup>49</sup> CWC LLC also provided maps that demonstrate the expected propagation of its wireless signal over the Yakutat service area.<sup>50</sup>

In addition, CWC LLC asserts that its wireless coverage will be provided through its own facilities using global system for mobile communications (GSM)

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<sup>45</sup>3 AAC 53.410(a)(3); 3 AAC 53.410(a)(4).

<sup>46</sup>3 AAC 53.410(a)(4)(C); 3 AAC 53.410(a)(4)(D); 3 AAC 53.410(a)(4)(E).

<sup>47</sup>H-1 at 1-2.

<sup>48</sup>H-1 (Petition) at 28.

<sup>49</sup>H-1 (Petition), Exhibit 1 at 1.

<sup>50</sup>H-1 (Petition), Exhibit 1 at 1-2.

1 technology, without relying on the resale of services of other carriers.<sup>51</sup> CWC LLC also  
2 has roaming arrangements that allow customers of other carriers visiting Yakutat to use  
3 their own phones.<sup>52</sup> Thus, additional carrier services will not be resold by CWC LLC in  
4 its requested ETC service area.

5 Capability and Commitment to Providing Supported Services

6 3 AAC 53.410(a)(5) through 53.410(a)(9) require a common carrier  
7 seeking ETC designation to certify that it is capable of providing the supported services  
8 and is committed to providing those services in a timely manner throughout the  
9 designated ETC service area. The petitioner must file a description of the facilities,  
10 authorizations, licenses, and agreements that will enable the carrier to provide the  
11 supported services, as well as its network deployment plan.<sup>53</sup>

12 CWC LLC is authorized by the FCC to operate and provide CMRS  
13 wireless service in the Copper River/Prince William Sound region<sup>54</sup> and currently offers  
14 CMRS service over GSM wireless facilities in Cordova and Yakutat.<sup>55</sup> CWC LLC  
15 asserts that it will rely on its own wireless facilities to provide CMRS wireless service in  
16 its proposed designated ETC service area.<sup>56</sup> CWC LLC has an interconnection  
17 agreement with ACS-N in order to provide voice grade access to the public switched  
18 network.<sup>57</sup>

19 <sup>51</sup>H-1 (Petition) at 9.

20 <sup>52</sup>H-1 (Petition) at 28.

21 <sup>53</sup>3 AAC 53.420.

22 <sup>54</sup>H-1 (Petition) at 2. CWC LLC's license to provide wireless service in Yakutat  
included a location build out requirement of July 26, 2012. CWC LLC commenced  
providing wireless service in Yakutat on July 23, 2012. H-1 (Petition) at 4.

23 <sup>55</sup>H-1 (Petition) at 2-4.

24 <sup>56</sup>H-1 (Petition), Exhibit 2 at 4.

25 <sup>57</sup>H-1 (Petition) at 13; Order U-12-050(2), *Order Approving Interconnection  
Agreement and Closing Docket*, dated July 5, 2012.

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According to its petition, CWC LLC is licensed to provide wireless telecommunications service in the 800 MHz spectrum band and deployed GSM wireless service to Yakutat on July 23, 2012.<sup>58</sup> CWC LLC broadcasts from leased space on a 190 foot tower and uses Tecore switching equipment.<sup>59</sup> In addition, CWC LLC operations include two base stations, one which broadcasts over an omni-directional antenna and the other over a directional antenna.<sup>60</sup> CWC LLC's facilities include several days of back up battery power.<sup>61</sup>

In his reply testimony, CWC LLC witness Paul Kelly stated that the company had recently installed boosters, one of which was installed at the airport to improve wireless coverage. In addition, Kelly stated that CWC LLC had received permission to place an antenna on a U.S. Coast Guard tower in Yakutat, which would also lead to increased wireless coverage in and around its proposed Yakutat ETC service area.<sup>62</sup> CWC LLC states that it does not currently have the back-haul capability to provide 3G data service in Yakutat.<sup>63</sup>

CWC LLC certified that it is capable of providing the supported services in its proposed Yakutat ETC service area upon designation as an ETC.<sup>64</sup> CWC LLC

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<sup>58</sup>H-1 (Petition) at 16.  
<sup>59</sup>H-1 (Petition) at 15.  
<sup>60</sup>T-2 at 5.  
<sup>61</sup>H-1 (Petition) at 15.  
<sup>62</sup>T-2 at 5.  
<sup>63</sup>Tr. 95.

<sup>64</sup>H-1 (Petition), Affidavit of Paul Kelly at 1. At hearing, Kelly clarified that CWC LLC would continue to provide the supported services defined in 3 AAC 53.499(13)(A)-(I). Tr. 131-132.

1 states that it has approximately 200 customers in Yakutat that utilize approximately 235  
2 wireless handsets.<sup>65</sup>

3 Furthermore, CWC LLC committed to following a seven step plan in  
4 evaluating customer requests for service. If CWC LLC can serve a customer over its  
5 own wireless facilities it will immediately offer service. However, if the customer is in a  
6 location where CWC LLC cannot immediately offer service over its own wireless  
7 facilities it will follow its seven step plan to determine how it can provide the requested  
8 service.<sup>66</sup> CWC LLC also committed to filing with the Commission a report of any  
9 instance in which it is unable to provide service to fulfill a customer request.<sup>67</sup>

10 Universal Service Support

11 A common carrier that is designated as an ETC in Alaska is eligible to  
12 receive both federal and state universal service funding. Consequently, a petition for  
13 ETC designation must include a detailed description of how universal service support  
14 will be utilized<sup>68</sup> and a commitment from the carrier that high-cost universal service  
15 support will be used in the area from which the support is derived.<sup>69</sup> CWC LLC

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17 <sup>65</sup>H-1 (Petition), Affidavit of Paul Kelly at 4.

18 <sup>66</sup>Specifically, CWC LLC will (1) determine whether the customer's equipment  
19 can be modified or replaced to provide acceptable service; (2) determine whether a  
20 roof-mounted antenna or other network equipment can be deployed at the premises to  
21 provide service; (3) determine whether adjustments at the nearest site can be made to  
22 provide service; (4) determine whether a cell-extender or repeater can be employed to  
23 provide service; (5) determine whether there are any other adjustments to the network  
24 or customer facilities that can be made to provide service; (6) explore the possibility of  
25 offering the resold services of carriers with facilities available to that location; and (7)  
26 determine whether an additional cell site can be constructed to provide service, and  
evaluate the costs and benefits of using high-cost support to serve the number of  
customers requesting service. H-1 (Petition) at 10-11.

<sup>67</sup>H-1 (Petition), Affidavit of Paul Kelly at 2.

<sup>68</sup>3 AAC 53.410(a)(10).

<sup>69</sup>3 AAC 53.410(a)(17).

1 provided a detailed description of how universal service support will be utilized in its  
2 confidential network deployment plan. CWC LLC made a written commitment to use  
3 high-cost universal support for the provision, maintenance, and upgrading of facilities  
4 and services in its proposed Yakutat ETC service area.<sup>70</sup>

5 Based on estimates provided by CWC LLC, it appears that CWC LLC will  
6 recover only a portion of the annual expenses in the Yakutat ETC service area from  
7 USF receipts. CWC LLC will be required to file an annual update to its deployment plan  
8 and an explanation of how universal service support was used to improve quality,  
9 coverage, or capacity in the Yakutat ETC service area.<sup>71</sup> This annual report will provide  
10 an opportunity to further investigate CWC LLC's proper use of universal service funds,  
11 including any cross subsidization between service locations.

12 Consumer Protection and Service Quality Standards

13 In its petition, CWC LLC certified that it would comply with the consumer  
14 protection and service quality standards set out in 3 AAC 53.450.<sup>72</sup> This includes  
15 maintaining at least one business office, staffed during Commission business hours, to  
16 provide customers with access to personnel who can timely provide information on  
17 services and rates and can generally represent CWC LLC. The standards also include  
18 maintaining information describing CWC LLC's consumer complaint procedures on its  
19 website. We reviewed CWC LLC's online contact information and consumer complaint  
20 process and believe they meet the requirements of 3 AAC 53.450(c). In addition, the  
21 consumer complaint procedures will be reviewed on an annual basis as part of CWC  
22 LLC's ETC reporting requirements, in accordance with 3 AAC 53.460(a)(5).

23 <sup>70</sup>H-1 (Petition), Affidavit of Paul Kelly at 3-4.

24 <sup>71</sup>3 AAC 53.460(a)(1).

25 <sup>72</sup>The certification is required under 3 AAC 53.410(a)(13). H-1(Petition), Affidavit  
of Paul Kelly at 2-3.

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Lifeline and Link Up Programs

The USF subsidizes four programs, one of which is the Low Income Support program. This program is more commonly known as lifeline and link up. Under this program, eligible customers apply for free or discounted phone or wireless services. Reimbursement of these discounts is paid directly to ETCs. Pursuant to 3 AAC 53.410(a)(15), a common carrier seeking ETC designation must submit information on how it will administer the lifeline and link up programs, including a description of how eligibility for the programs will be determined<sup>73</sup> and examples of how lifeline discounts will be applied to service offerings.<sup>74</sup>

In compliance with 3 AAC 53.410(a)(15), CWC LLC states that it will offer a single standard calling plan to qualifying lifeline customers, which includes 500 free minutes of local usage per month, 2500 local airtime minutes and free nationwide texting for \$1 per month.<sup>75</sup> Moreover, CWC LLC asserts that its standard wireless activation fee is \$35, which is eligible for link up support reimbursement for eligible lifeline customers.<sup>76</sup>

In addition, CWC LLC states that it will use the eligibility requirements established by the Commission and set forth in 3 AAC 53.390, as well as Federal rules when enrolling customers into the lifeline program.<sup>77</sup> We reviewed CWC LLC's current

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<sup>73</sup>3 AAC 53.410(a)(15)(C).

<sup>74</sup>3 AAC 53.410(a)(15)(D).

<sup>75</sup>H-1 (Petition) at 19. According to CWC LLC, the company's standard lifeline calling plan retails for \$34.99 per month; however, CWC LLC will apply \$33.99 per month in lifeline support to reduce the cost of the plan to \$1 per month. CWC LLC states that there is \$30.49 of federal lifeline support available per month from the USF and an additional \$3.50 of state lifeline support available per month from the Alaska Universal Service Fund (AUSF). H-1 (Petition) at 20.

<sup>76</sup>H-1 (Petition) at 20.

<sup>77</sup>H-1 (Petition) at 19.

1 lifeline application and believe that the form meets the requirements of 3 AAC 53.390 by  
2 including a description of the program and a list of the current lifeline eligibility  
3 requirements.

4 Additional Certifications and Information

5 A common carrier seeking ETC designation must certify to a number of  
6 additional requirements, as provided in 3 AAC 53.410(a). These requirements include:

- 7 • Certification that the carrier will within 90 days after designation and annually  
8 thereafter, advertise the availability of and charges for supported services  
9 throughout the ETC service area;<sup>78</sup>
- 10 • Certification that the carrier has and will continue to take steps to remain  
11 functional in emergency situations, by maintaining at least eight hours of backup  
12 power, having the ability to reroute traffic around damaged facilities, and  
13 establishing procedures for employees to follow in an emergency;<sup>79</sup>
- 14 • Certification that the carrier will offer a calling plan with at least 500 free minutes  
15 of local use per month;<sup>80</sup> and
- 16 • Certification that the carrier acknowledges that it may be required to provide  
17 equal access to long distance carriers if no other ETC provides equal access  
18 within the ETC service area.<sup>81</sup>

19 CWC LLC provided certification of its compliance with each of the  
20 requirements described above.<sup>82</sup> In the instant filing, CWC LLC is requesting to  
21 redefine the Yakutat ETC service area; therefore, 3 AAC 53.410(a)(18) requires CWC  
22 LLC to file the information specified by 3 AAC 53.430, which it did.

23 <sup>78</sup>47 U.S.C. § 214(e)(1)(B). This requirement is reiterated in 3 AAC  
24 53.410(a)(11).

25 <sup>79</sup>3 AAC 53.410(a)(12).

26 <sup>80</sup>3 AAC 53.410(a)(14)(A). This requirement is reiterated in 3 AAC  
53.410(a)(15)(A) for lifeline eligible customers.

<sup>81</sup>3 AAC 53.410(a)(16).

<sup>82</sup>H-1 (Petition), Affidavit of Paul Kelly at 2-3.

1                   Public Interest for ETC Designation

2                   47 U.S.C. § 214(e)(2) requires a state commission to find that designation  
3 of a common carrier as an ETC is in the public interest. Pursuant to 3 AAC 53.410(b), a  
4 carrier requesting ETC designation in Alaska must file information explaining (1) how  
5 designation would benefit customers, (2) the advantages and disadvantages of its  
6 service offerings compared to the offerings of other carriers in the area, and (3) whether  
7 its plan for providing service upon request through the designated ETC service area is  
8 in the public interest.<sup>83</sup>

9                   CWC LLC states that ETC designation will provide customers in the  
10 Yakutat ETC service area with increased flexibility, access to public services in remote  
11 areas, and greater service options. CWC LLC adds that customers in the designated  
12 ETC service area have access to numerous different calling plans and will eventually be  
13 able to obtain data services. CWC LLC believes that its services will benefit customers  
14 in Yakutat by providing them with the mobility and ubiquity of service that is not currently  
15 offered by ACS-N.<sup>84</sup> In support of its position, CWC LLC cites to a news article about  
16 two men whose lives were saved due to the availability of CWC LLC wireless service  
17 when their boat capsized a few miles outside of Yakutat.<sup>85</sup>

18                   Moreover, CWC LLC asserts that Yakutat residents asked CWC LLC to  
19 consider providing service because no other carrier appeared likely to do so in the near  
20 future. CWC LLC claims that nearly all residents in Yakutat have good wireless  
21 coverage, with few complaints regarding the quality of service.<sup>86</sup> CWC LLC also states

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23                   <sup>83</sup>3 AAC 53.410(b)(1)-(3).

24                   <sup>84</sup>H-1 (Petition) at 27.

25                   <sup>85</sup>T-2 at 7.

26                   <sup>86</sup>T-2 (Kelly Reply) at 6.

1 it is able to remain functional in emergency situations<sup>87</sup> and provide basic 911 service in  
2 the proposed ETC service area.<sup>88</sup> Additionally, CWC LLC addressed the requirements  
3 of 3 AAC 53.410(a)(19) and 53.410(a)(20) in its public interest discussion, addressed  
4 later in this order.

5 GCI disputes CWC LLC's wireless signal strength and coverage.  
6 Specifically, GCI stated that a drive test of the Yakutat ETC service area indicated that  
7 CWC LLC's actual outdoor signal strength is significantly poorer than represented by  
8 CWC LLC.<sup>89</sup> GCI witness Gene Strid provided written testimony in which he asserted  
9 that GCI's road test showed that CWC LLC's actual coverage, which CWC LLC  
10 categorized as excellent, was really limited to a quarter mile or less from its tower and  
11 that the signal strength which CWC LLC characterized as very good was really limited  
12 to less than 1.25 miles from its tower.<sup>90</sup> However, under cross examination Strid stated  
13 that he did not have any reason to believe that CWC LLC's service was not adequate to  
14 fulfill its obligations as an ETC.<sup>91</sup> Strid also testified that GCI was constructing a GSM  
15 system in Yakutat this summer and fall, with a projected ready-for-service date in  
16 December 2013.<sup>92</sup>

17 We believe that the primary public interest benefit provided by CWC LLC  
18 being designated as an ETC in the Yakutat ETC service area is the ability of customers  
19 to access wireless service in an area where there was previously no access. Since  
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21 <sup>87</sup>H-1 (Petition), Affidavit of Paul Kelly at 2.

22 <sup>88</sup>H-1 (Petition) at 14.

23 <sup>89</sup>T-5 (Strid Testimony) at 5.

24 <sup>90</sup>T-5 (Strid Testimony) at 7.

25 <sup>91</sup>Tr. 258. Strid later testified that he didn't know if CWC LLC's service was good  
26 enough to meet ETC requirements. Tr. 260.

<sup>92</sup>T-5 (Strid Testimony) at 2.

1 CWC LLC is already providing wireless service in Yakutat, ETC designation will not  
2 provide customers with increased choice in terms of calling plans and  
3 telecommunication service providers; however, customers will benefit from the mobility  
4 and ubiquity of wireless service.<sup>93</sup>

5 Further, we believe that the quality and coverage of the wireless service  
6 provided by CWC LLC is adequate and meets our requirements. Therefore, we find  
7 that CWC LLC has met the public interest requirements of 47 U.S.C. § 214(e)(2) and  
8 3 AAC 53.410(b) for designation as an ETC in the Yakutat ETC service area. We  
9 believe that CWC LLC has provided all of the necessary information required in  
10 3 AAC 53.410(a), including its network deployment plan. However, because the  
11 request for designation as an ETC depends on redefinition of the Yakutat ETC service  
12 area, we must first address the redefinition request before ruling on the petition for  
13 designation as an ETC.

14 Redefinition of the Yakutat ETC Service area

15 CWC LLC requested a redefined service area, as provided for in  
16 3 AAC 53.430. CWC LLC complied with the requirements of that regulation.

17 GCI asserts that ongoing USF reform at the federal level argues against  
18 this commission evaluating CWC LLC's request for ETC service area redefinition using  
19 our existing regulation and precedent. In its closing statement, GCI claims that to do so  
20 will "squander [our] credibility in the continuing national debate on future USF reform."<sup>94</sup>

21 <sup>93</sup>The FCC has acknowledged the benefits of mobility that wireless carriers  
22 provide in geographically isolated areas, such as Yakutat. See *Federal-State Joint*  
23 *Board on Universal Service Highland Cellular, Inc.*, Memorandum Opinion and Order,  
24 CC Docket No. 96-45, FCC 04-37, 19 FCC Rcd 6422 (2004) (Highland Cellular Order)  
at 6432-6433, para. 23; *Federal-State Joint Board on Universal Service Virginia*  
*Cellular, LLC*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338,  
19 FCC Rcd 1563 (2004) (Virginia Cellular Order).

25 <sup>94</sup>GCI Closing at 9.

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1 However, the FCC reiterated its requirements for ETC service area redefinitions by  
2 stating that the existing ETC relinquishment and redefinition procedures should continue  
3 to be used during the transition of legacy universal service support.<sup>95</sup> At hearing, CWC  
4 LLC witness Burke and GCI witness Hitz both stated that ETC service area redefinition  
5 considerations would not be any different before or after the FCC's Transformation  
6 Order.<sup>96</sup> Therefore, we evaluate CWC LLC's redefinition request under our existing  
7 framework.

8 ACS-N is the ILEC for the proposed Yakutat ETC service area, which is  
9 located in the ACS-N Sitka study area. The Sitka study area includes 52 non-  
10 contiguous exchanges with a total population of approximately 9,000.<sup>97</sup> ACS-N and  
11 GCI are currently designated as ETCs for the ACS-N Sitka study area,<sup>98</sup> including the  
12 Yakutat ETC service area.

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16 <sup>95</sup>*Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for*  
17 *Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local*  
18 *Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC  
19 *Docket No. 05-337*, *Developing an Unified Intercarrier Compensation Regime*, CC  
20 *Docket No. 01-92*, *Federal-State Joint Board on Universal Service*, CC Docket No.  
21 *96-45*, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform --*  
22 *Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of  
23 Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (Transformation Order)  
24 at 18064, para. 1097.

25 <sup>96</sup>Tr. 222-223 (Burke); Tr. 376-377 (Hitz).

26 <sup>97</sup>H-1 (Petition) at 31.

<sup>98</sup>Order U-97-175(1), *Order Granting Eligible Carrier Status; Granting Limited*  
*Waiver; and Setting Toll-Control and Advertising Requirements*, dated December 19,  
1997 (ACS-N); Order U-10-083(2), *Order Designating Eligible Telecommunications*  
*Carrier for the Provision of Wireless Service, Subject to Conditions; and Closing Docket*,  
dated April 11, 2011.

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CWC LLC began providing wireless service to Yakutat in July 2012.<sup>99</sup> Yakutat is the only exchange within the ACS-N Sitka study area where CWC LLC is authorized to provide wireless service.<sup>100</sup>

CWC LLC's petition for ETC designation is contingent upon our approval of its request for the redefinition of a distinct ETC service area within the ACS-N Sitka study area for purposes of this ETC designation. The establishment of a service area for an ETC that is other than the study area of the ILEC is known as the redefinition of a service area.<sup>101</sup> A proposed redefinition does not take effect until this Commission and the FCC agree upon a new definition.<sup>102</sup>

The Act provides that states may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations and are eligible to receive universal service support. For an area served by a rural ILEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural ILEC's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such a company."<sup>103</sup>

In 2005, the FCC adopted, among other things, the Universal Service Federal-State Joint Board (Joint Board) recommendation to retain previously

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<sup>99</sup>H-1 (Petition) at 4.  
<sup>100</sup>H-1 (Petition) at 30 n.46.  
<sup>101</sup>2005 ETC Order at 6403, para. 73; *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, rel. April 21, 2005.  
<sup>102</sup>47 C.F.R. § 54.207(d)(2).  
<sup>103</sup>47 U.S.C. § 214(e)(5). The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.

1 established procedures for the redefinition of rural service areas.<sup>104</sup> Specifically, the  
2 FCC found that both state commissions and the FCC should employ rigorous and fact-  
3 intensive analyses of requests for service area redefinitions that examine the impact of  
4 any redefinition on the affected rural ILEC's ability to serve the entire study area,  
5 including the potential for creamskimming that may result from a redefinition.<sup>105</sup> The  
6 FCC stated that its creamskimming analysis is based on population density data.<sup>106</sup>

7 State commissions that propose to redefine a rural ILEC service area for  
8 ETC purposes are required to present the FCC with the definition of the proposed ETC  
9 service area and the commission's ruling containing the reasons for adopting the  
10 proposed definition, including any analysis that takes into account the Joint Board's  
11 concerns regarding rural telephone company service areas.<sup>107</sup> The Joint Board's  
12 concerns included (1) minimizing creamskimming, (2) recognizing that the Act places  
13 rural telephone companies on a different competitive footing from other Local Exchange  
14 Carriers (LECs), and (3) recognizing the administrative burden of requiring rural  
15 telephone companies to calculate costs at something other than a study area level.<sup>108</sup>

16 In 2009, we adopted regulations governing the process for designating an  
17 ETC in Alaska.<sup>109</sup> 3 AAC 53.430 lists the information a requesting carrier must provide  
18 when seeking to redefine a service area for ETC purposes. Specifically, a carrier that

19 <sup>104</sup>2005 ETC Order at 6403-6404, para. 74.

20 <sup>105</sup>2005 ETC Order at 6403-6404, para. 74.

21 <sup>106</sup>2005 ETC Order at 6403-6404 n.208.

22 <sup>107</sup>47 C.F.R. § 54.207(c)(1)(i)-(ii).

23 <sup>108</sup>*Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3, 12 FCC Rcd 87 (1996) (1996 Recommended Decision) at 179-180, paras. 172-174.*

24 <sup>109</sup>Order R-06-003(7), *Order Adopting Regulations*, dated June 8, 2009. The  
25 Commission initially adopted the regulations on August 28, 2008. See Order  
R-06-003(6), *Order Adopting Regulations*, dated August 28, 2008.

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1 proposes an ETC service area that differs from the study area of an ILEC must provide  
2 a population density analysis and information about the ILEC's disaggregation plan for  
3 USF support. If the ILEC study area is served by a rural telephone company, the carrier  
4 must also acknowledge that our approval of a proposed rural service area is conditioned  
5 upon approval by the FCC.<sup>110</sup> Finally, the carrier must provide a discussion of  
6 creamskimming and a demonstration that the proposed ETC service area redefinition is  
7 in the public interest.<sup>111</sup>

8 ETC Redefinition Analytical Framework

9 In general, the parties in this docket seem to agree that we should  
10 continue to evaluate redefinition requests under the federal framework and the rules  
11 adopted under 3 AAC 53.430;<sup>112</sup> however, they fail to agree on how the public interest  
12 should be defined and what factors should be considered. The AG asserts that the  
13 regulation governing ETC service area redefinitions for ETC purposes was designed to  
14 ensure that all members of the public (not just the ILEC and the public within the ILEC's  
15 study area) are protected. Moreover, the AG argues that the public interest requires  
16 promotion of universal service and that any study area redefinition request found to be  
17 inconsistent with the goal of promoting universal service cannot be granted.<sup>113</sup>

18 GCI asserts that the main legal issues raised in this docket surround the  
19 public interest and creamskimming issues.<sup>114</sup> GCI argues that a public interest  
20 examination should include the effects of CWC LLC's request on wireless service in

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22 <sup>110</sup>H-1 (Petition) at 25, Affidavit of Paul Kelly at 4.  
23 <sup>111</sup>3 AAC 53.430(1)-(7).  
24 <sup>112</sup>AG Closing Argument at 8; GCI Legal Brief at 11-14; CWC LLC Legal Brief at  
25 14.  
26 <sup>113</sup>AG Legal Brief at 2-3.  
<sup>114</sup>GCI Legal Brief at 12-13.

1 Yakutat, the entire state, and in other unserved areas in the current ACS-N Sitka study  
2 area. GCI states that creamskimming, as it relates to the ILEC, may have been the  
3 traditional concern with the introduction of wireless service, but that it is not really  
4 relevant to this proceeding. GCI argues that CWC LLC's focus on a creamskimming  
5 analysis ignores the changing landscape of the telecommunications industry and that  
6 we should consider the actual cost per population in our evaluation of CWC LLC's  
7 redefinition request.<sup>115</sup>

8 CWC LLC states that in the Transformation Order, the FCC reiterated the  
9 traditional framework for evaluating potential ETC service area redefinitions.<sup>116</sup> In  
10 support of its position, CWC LLC cites to a post Transformation Order redefinition case,  
11 where the FCC concurred with the Pennsylvania Public Utility Commission's  
12 creamskimming analysis, without indicating that any different or additional analysis was  
13 required.<sup>117</sup>

14 Uppermost in our minds, as we decide this case, is the FCC's instruction  
15 to state commissions that they continue to apply existing redefinition procedures.<sup>118</sup>  
16 Our review of other federal decisions and rules regarding proposed ETC service area  
17 redefinitions, as well as our own regulations and precedent, lead us to conclude that, for  
18 the time being, we should continue to evaluate requests for service area redefinition as  
19 we have in the past while acknowledging the changed and rapidly changing landscape  
20 of subsidized telecommunications service. What we decide today may no longer be in  
21 the public interest in the future, even if the next request presents similar facts.

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22 <sup>115</sup>T-6 (Hitz Testimony) at 7-8.

23 <sup>116</sup>CWC LLC Legal Brief at 9.

24 <sup>117</sup>CWC LLC Legal Brief at 12-13.

25 <sup>118</sup>*Supra* note 95.

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Opportunity for Creamskimming

Under our regulations, an ETC applicant seeking designation below the ILEC study area level (i.e., redefinition), must provide a discussion of creamskimming. The creamskimming analysis must demonstrate that the proposed redefinition does not result in an opportunity for creamskimming or, if the opportunity does exist, an explanation of how the public interest would be served by designating the carrier as an ETC and how the disaggregation of the ILEC's USF support would affect any potential creamskimming.<sup>119</sup>

Creamskimming is the practice of targeting customers that are the least expensive or most profitable to serve, thereby undercutting an ILEC's ability to provide service throughout its designated study area.<sup>120</sup> The potential for creamskimming arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an ILEC's study area.<sup>121</sup> A creamskimming analysis focuses on the rural ILEC and considers whether the designation of a carrier as an ETC would negatively impact the ILEC's ability to serve the high-cost locations within its study area.<sup>122</sup>

The creamskimming analysis used by the FCC and this Commission includes a population density comparison and considers other relevant factors, such as

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<sup>119</sup>3 AAC 53.430(6)-(7).

<sup>120</sup>*Federal-State Joint Board on Universal Service Advantage Cellular Systems, Inc.*, Order, CC Docket No. 96-45, DA 04-3357, 19 FCC Rcd 20985 (2004) at 20993 n.62.

<sup>121</sup>2005 ETC Order at 6392, para. 49.

<sup>122</sup>The FCC stated that the effects of creamskimming also would unfairly affect the ILEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural ILECs customers in the lowest cost areas and also receive support for serving the customers in these areas. 2005 ETC Order at 6392, para. 49.

1 disaggregation of ILEC USF support.<sup>123</sup> The population density analysis compares the  
2 population density of each wire center where ETC designation is sought against that of  
3 the wire centers in the ILEC study area where the ETC applicant does not seek  
4 designation.<sup>124</sup> The use of the population density analysis is premised on the  
5 conclusion that population density is a good proxy for relative cost of service in an area,  
6 because, all else being equal, an area with a high population density usually has lower  
7 average costs and an area with a lower population density usually has higher average  
8 costs. Our regulations require a carrier seeking redefinition to file information on  
9 population, square miles, and road miles for the area in which the carrier seeks  
10 designation.<sup>125</sup>

11 Population Density Analysis

12 In its petition, CWC LLC states that the elimination of the federal identical  
13 support rule and the establishment of a separate support mechanism for mobile carriers  
14 alleviates, if not entirely eliminates, the ability of wireless carriers to cream-skim by  
15 targeting areas with high support levels and lower costs.<sup>126</sup> Nonetheless, CWC LLC  
16 presented a population density analysis of the ACS-N Sitka study area, which  
17 demonstrated that the average population density for all exchanges within the study  
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20 <sup>123</sup>2005 ETC Order at 6392, para. 49. This is further reflected in  
21 3 AAC 53.430(1)-(3), which requires a carrier seeking to redefine a service area for ETC  
22 purposes to provide the Commission with (1) the population, square miles and road  
23 miles of each wire center where the carriers seeks ETC designation; (2) the population,  
24 square miles and road miles of each wire center where the carrier does not seek  
25 designation; and (3) the source of the information provided under (1) and (2).

24 <sup>124</sup>2005 ETC Order at 6389, para. 41; 3 AAC 53.430(1)-(3).

25 <sup>125</sup>3 AAC 53.430(1)-(2).

26 <sup>126</sup>H-1 (Petition) at 30.

1 area is 30.84 people per square mile. In contrast, CWC LLC calculated the population  
2 density of 9.37 people per square mile for the Yakutat ETC service area.<sup>127</sup>

3 Based on its analysis, CWC LLC found that the ratio of the population  
4 density of the Yakutat ETC service area to the population density of the rest of the  
5 ACS-N Sitka study area was 0.279. CWC LLC asserts that its population density  
6 analysis (i.e. population per square mile) clearly indicates that the company is not  
7 creamskimming a low cost area of the ACS-N Sitka study area by providing wireless  
8 service in Yakutat and that Yakutat will be more costly to serve than the remainder of  
9 the study area.<sup>128</sup> Further, CWC LLC states that even if a significant number of Yakutat  
10 customers were to abandon wireline service in favor of relying exclusively on the  
11 company's wireless service, the revenue effect of lost local service revenue could not  
12 reasonably impact ACS-N's ability to provide service throughout the study area.<sup>129</sup>

13 Included as part of CWC LLC's population density analysis, is information  
14 demonstrating that the Yakutat service area has the ninth highest population density per  
15 road mile in the ACS-N Sitka study area.<sup>130</sup> While road-mile information is required by  
16 our regulations, it does not appear that the FCC has evaluated population density per  
17 road mile.<sup>131</sup> The AG argues that, although Yakutat is a high-cost community when  
18 compared to Anchorage or the Lower 48, it is less costly in relation to other  
19 communities within the ACS-N Sitka study area, which is highlighted by the minimal  
20 equipment CWC LLC has deployed to garner 260 or more customers from one

21 <sup>127</sup>H-1 (Petition) at 31-32.

22 <sup>128</sup>H-1 (Petition) at 32.

23 <sup>129</sup>H-1 (Petition) at 32 n.50.

24 <sup>130</sup>H-1 (Petition) at Exhibit 5.

25 <sup>131</sup>See Virginia Cellular Order at 1578-1579, para. 34; Highland Cellular Order at  
26 6435, para. 28.

1 population cluster.<sup>132</sup> Moreover, the AG asserts that Yakutat has the fifth largest  
2 population in the ACS-N Sitka study area and that out of the population of 656, CWC  
3 LLC is serving 260 cell phones, which represents approximately forty percent of  
4 Yakutat's population. The AG states that there are only thirteen communities within the  
5 ACS-N Sitka study area that have populations exceeding 260, which translates to 39  
6 out of 52 communities within the study area having a lower population than the number  
7 of CWC LLC's cell phone customers in Yakutat.<sup>133</sup>

8 In its legal brief, GCI states that the elimination of the federal identical  
9 support rule has made it impossible for a competitive ETC to take legacy high-cost  
10 support away from an ILEC. GCI argues that as long as ILEC study areas are retained  
11 as USF service areas, the creamskimming rules as they apply to protecting the interests  
12 of the ILEC are moot.<sup>134</sup> GCI asserts that our analysis should examine the effects of  
13 creamskimming on other wireless ETCs, especially those that are actually obligated to  
14 eventually serve entire ILEC study areas.<sup>135</sup> GCI supported its argument at hearing  
15 with Hitz who testified that the creamskimming analysis is irrelevant to this case.<sup>136</sup>

16 We reviewed the population density analysis provided by CWC LLC and  
17 believe that the calculations accurately reflect the population densities for the ACS-N  
18 Sitka study area and the Yakutat ETC service area (i.e. population per square mile and  
19 population per road mile). Based on this review, we believe that the Yakutat ETC  
20 service area has a lower population density than approximately 36 other exchanges in  
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22 <sup>132</sup>AG Legal Brief at 1-2.

23 <sup>133</sup>AG Legal Brief at 8.

24 <sup>134</sup>GCI Legal Brief at 6-7.

25 <sup>135</sup>GCI Legal Brief at 13.

26 <sup>136</sup>Tr. 298.

1 the ACS-N Sitka study area. Although the population density per road mile for the  
2 Yakutat service area is higher than the population density per road mile in other ACS-N  
3 Sitka study area locations, we do not believe that it is significant enough to raise  
4 creamskimming concerns. We find it appropriate to give more weight to population  
5 density per square mile than to population density per road mile, as we have in the past.  
6 Therefore, we believe that CWC LLC has demonstrated that Yakutat is a high-cost area  
7 to serve.

8 We conclude that CWC LLC is not seeking to serve only customers who  
9 are the lowest cost, most profitable to serve. We find that redesignation of the Yakutat  
10 service area would not result in an opportunity for creamskimming. Because we find no  
11 opportunity for creamskimming it is unnecessary to discuss the disaggregation  
12 information required by 3 AAC 53.430(7)(B).

13 Public Interest

14 In requesting redefinition a carrier is required to demonstrate that its  
15 proposed service area is in the public interest.<sup>137</sup> We address the public interest.  
16 Yakutat is a rural community, with no road access, reachable only by air or boat. The  
17 community is heavily dependent on the fishing industry<sup>138</sup> as an economic driver.

18 Yakutat is located in the ACS-N Sitka study area, which includes many  
19 non-contiguous exchanges spread throughout Alaska. CWC LLC states that it does not  
20 have the inclination or the resources to support a commitment to provide facilities-based  
21 service throughout all of the ACS-N Sitka study area.<sup>139</sup> CWC LLC asserts that the  
22 community of Cordova has a relationship with Yakutat through the fishing industry and

23 <sup>137</sup>3 AAC 53.430(b).

24 <sup>138</sup>H-1 (Petition) at 28.

25 <sup>139</sup>Tr. 97-99.

1 daily Alaska Airlines flights that make it efficient to serve Yakutat.<sup>140</sup> CWC LLC states  
2 that it does not have the same relationship with the other exchanges in the ACS-N Sitka  
3 study area as it does with Yakutat and that it does not believe that it is a large enough  
4 company to extend service to other locations within the study area.<sup>141</sup> CWC LLC  
5 witness Kelly stated under cross-examination that CWC LLC had not considered resale  
6 as an option for providing wireless service to the entire ACS-N Sitka study area.<sup>142</sup>

7 While we do not consider it at issue in this proceeding, both GCI and the  
8 AG suggested that there is no used to redefine the service area. They contend that  
9 CWC LLC should simply decide to serve the entire study area.

10 At hearing, GCI addressed CWC LLC's reluctance to serve the entire  
11 ACS-N Sitka study area. Specifically, GCI witness Hitz stated that CWC LLC could  
12 serve all of the exchanges in the Sitka study area with resale or by committing to  
13 roaming.<sup>143</sup> Further, Hitz stated that CWC LLC could fulfill the traditional ETC  
14 requirement to serve an entire ILEC study area by only having facilities in Yakutat and  
15 relying on service from other carriers, either by roaming or resale, for the rest of the  
16 ILEC study area.<sup>144</sup> In addition, Hitz testified that CWC LLC could become a customer  
17 of Alaska Wireless Network (AWN) which would allow CWC LLC to provide wireless  
18 service through resale and roaming.<sup>145</sup>

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21 <sup>140</sup>Tr. 98-99.

22 <sup>141</sup>Tr. 97-99.

23 <sup>142</sup>Tr. 99-100.

24 <sup>143</sup>Tr. 305.

25 <sup>144</sup>Tr. 306.

26 <sup>145</sup>Tr. 306.

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In its legal brief, the AG argues that CWC LLC could provide service throughout the entire ACS-N Sitka study area as an alternative to redefining the Yakutat ETC service area.<sup>146</sup> The AG states that CWC LLC's conclusion that it cannot serve the entire ACS-N Sitka study area is based on insufficient evidence because CWC LLC never considered resale.<sup>147</sup> The AG argues that we should not encourage an intractable position in the face of a reasonable solution that benefits not only the carrier, but more importantly, the public interest.<sup>148</sup>

In response, CWC LLC states that it is not willing and has not applied to serve the entire study area. But, CWC LLC argues, even if it were willing to serve the entire study area, it is not possible for it to provide wireless service through resale or roaming in all other exchanges of the study area. CWC LLC points out that there is no wireless service to resell or roam on in 28 of the exchanges in the study area. Further, CWC LLC argues that we have determined that roaming is not a substitute for providing service through an ETC's own facilities or through its own facilities and resale.<sup>149</sup>

We do not see the point in requiring CWC LLC to provide service through resale in 51 exchanges it intends never to serve with its own facilities. We do not believe GCI's and the AG's suggestion serves the public interest.

CWC LLC's proposed redefinition of service area does not raise concerns about the rural ILEC's ability to continue to serve its study area.

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<sup>146</sup>AG Legal Brief at 15.  
<sup>147</sup>AG Closing Argument at 13.  
<sup>148</sup>AG Closing Argument at 15.  
<sup>149</sup>CWC LLC Closing Statement at 4-8.

1                   However, throughout this proceeding, the AG and GCI have asserted that  
2 we should expand our public interest considerations beyond the impact that redefinition  
3 of the Yakutat ETC service area will have on the rural ILEC. In legal briefing, the AG  
4 states that our rules governing service area redefinition requests were changed before  
5 adoption from a narrow focus of protecting the ILEC to a broader public interest  
6 protection requirement. The AG claims that our rules were designed to ensure all of the  
7 public would be protected, not just the public and the ILEC within a study area.<sup>150</sup>

8                   Moreover, the AG states that because the public interest requires  
9 promotion of universal service, any service area redefinition request found to be  
10 inconsistent with the goal of promoting universal service cannot be granted. The AG  
11 concludes that promoting universal service is realized by having the greatest number of  
12 users<sup>151</sup> and asserts that in the race to obtain the maximum high-cost support available,  
13 other wireless carriers requesting narrow service area redefinitions will become the  
14 norm, leaving many more rural Alaskans without wireless service.<sup>152</sup>

15                   GCI states that the FCC's bifurcation of USF support has totally eliminated  
16 the need to protect the ILEC and rendered the ILEC-centered legacy redefinition  
17 considerations moot. GCI asserts that the FCC has reinforced the need for a broader  
18 public interest examination of the effects of ETC service area redesignation requests on  
19 market issues aside from the ILECs.<sup>153</sup> GCI witness Hitz states that the real issue in  
20 CWC LLC serving only one of the roughly 50 locations in the ACS-N Sitka study area is  
21 that the company is compromising all the others with no service.<sup>154</sup>

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22                   <sup>150</sup>AG Legal Brief at 2-3.  
23                   <sup>151</sup>AG Legal Brief at 3.  
24                   <sup>152</sup>AG Legal Brief at 9.  
25                   <sup>153</sup>GCI Legal Brief at 6-7.  
26                   <sup>154</sup>T-6 (Hitz Testimony) at 7.

1           Furthermore, GCI claims that when the Transformation Order was  
2 adopted the FCC sought comment on how to structure and distribute Mobility Fund  
3 Phase II support, proposing to distribute that support by reverse auction. GCI asserts  
4 that one of the many uncertainties engendered by the lack of a resolution to the auction  
5 details is the effect of the auction results on ETC service obligations (i.e. if federal  
6 support is awarded at the census block level, as opposed to a whole ILEC study  
7 area).<sup>155</sup> GCI states that the uncertainties in the USF transitions, as described above,  
8 require an expansive review of the wireless market and the effects on other wireless  
9 ETCs.<sup>156</sup>

10           In response, CWC LLC states that evaluation of redefinition requests has  
11 always contained a public interest element, of which a creamskimming analysis is part.  
12 CWC LLC argues that, in enacting 3 AAC 48.430(6), we were not adding a new,  
13 broader requirement than that previously used by us or the FCC, as argued by the  
14 AG.<sup>157</sup>

15           CWC LLC pointed to four post-Transformation Order cases in which the  
16 FCC concurred on state redefinition determinations. CWC LLC argued that, in each of  
17 those instances, the state commission evaluated the request under established  
18 standards, including an analysis of population density, and that, in each instance, the  
19 FCC concurred, giving no indication that any new or different analysis should be  
20 employed.<sup>158</sup>

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23           <sup>155</sup>GCI Legal Brief at 7-9.

24           <sup>156</sup>GCI Legal Brief at 13.

25           <sup>157</sup>CWC LLC Closing Argument at 10.

26           <sup>158</sup>CWC LLC Closing Argument at 11.

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CWC LLC argued that GCI and AG had not identified any authority that supports abandonment of the traditional ILEC-centered analytical framework and substitution of a framework requiring reference to the service and costs of another competitive eligible telecommunications carrier (CETC). It further argued that, even if we were to look to the effects of redefinition on the existing CETC, GCI, there was no verifiable evidence of any harm to GCI's ability to serve the Sitka study area as an CETC.<sup>159</sup>

We do not find it appropriate to expand our public interest analysis in this proceeding to include new, novel considerations not previously used by other states or the FCC. Our consideration of ETC designations is governed by our existing regulations which are soundly based on FCC and Joint Board determinations. Fairness requires that a complete change in the considerations used in our public interest analysis be made only prospectively. A proposal to change our regulations would allow all affected parties the opportunity to comment on the legality, practicality, utility, and wisdom of the kind of change proposed by the AG and GCI.

Based on our traditional analysis, redefinition of the ETC service area to encompass only Yakutat is in the public interest. Redefinition will allow CWC LLC to continue to provide and upgrade wireless service where no service previously existed. That benefit to the public outweighs the speculative harm to the public interest alleged by the opponents of redefinition.

Conclusion

CWC LLC's petition includes all of the information required for carriers seeking designation as an ETC in the State, as set forth in 3 AAC 53.410(a).

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<sup>159</sup>CWC LLC Closing Argument at 15.

1 Furthermore, CWC LLC has demonstrated that its designation as an ETC for the  
2 Yakutat ETC service area is in the public interest, pursuant to 3 AAC 53.410(b). Finally,  
3 CWC LLC provided the \$5,000 fee associated with ETC designations, under  
4 3 AAC 53.410(c). CWC LLC provided the information required by 3 AAC 53.430 in  
5 support of its request to redefine the Yakutat ETC service area and has demonstrated  
6 that redefinition of the Yakutat ETC service area is in the public interest and does not  
7 result in an opportunity for creamskimming. Therefore, we grant CWC LLC's petition to  
8 redefine the Yakutat ETC service area subject to the FCC's agreement in redefinition  
9 the service area. We designate CWC LLC as an ETC in the Yakutat ETC service area  
10 subject to the condition that CWC LLC participate in our annual proceeding for  
11 certification to the FCC for appropriate use of USF support.

12 Our designation of CWC LLC as an ETC in the Yakutat ETC service area  
13 is based solely on the unique facts presented in this record and our application of the  
14 law given the guidance from the FCC that existing service area redefinition procedures  
15 should continue to be used. Our decision should not be construed as unconditional  
16 support for future redefinition requests.

17 Final Order

18 This order constitutes the final decision in this proceeding. This decision  
19 may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and  
20 the Alaska Rules of Court, Rules of Appellate Procedure, Rule 602(a)(2). In addition to  
21 the appellate rights afforded by AS 22.10.020(d), a party has the right to file a petition  
22 for reconsideration in accordance with 3 AAC 48.105. If such a petition is filed, the time  
23 period for filing an appeal is then calculated in accordance with Alaska Rules of Court,  
24 Rules of Appellate Procedure, Rule 602(a)(2).

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**ORDER**

THE COMMISSION FURTHER ORDERS that the *Verified Petition of Cordova Wireless Communications, Inc., for Designation as an Eligible Telecommunications Carrier in a Redefined Service Area at Yakutat, Alaska*, filed October 1, 2012, by Cordova Wireless Communications, LLC's predecessor, Cordova Wireless Communications, Inc., is granted subject to the condition that Cordova Wireless Communications, LLC, shall participate in our annual proceeding for certification to the Federal Communication Commission for appropriate use of universal service fund support.

DATED AND EFFECTIVE at Anchorage, Alaska, this 22nd day of November, 2013.

BY DIRECTION OF THE COMMISSION  
(Commissioners T.W. Patch and Norman Rokeberg,  
not participating.)



## APPENDIX A

**Cordova Wireless Communications, LLC  
Designated Service Area**

<b>Wire Center</b>	<b>State</b>	<b>Incumbent Carrier</b>	<b>CLLI Code</b>
Yakutat	Alaska	ACS-N Sitka	YKUTAKXADS1

# EXHIBIT C

## ACS-N SITKA STUDY AREA POPULATION DENSITY STUDY with Road Miles

ACS-N EXCHANGE	POPULATION*	AREA** (Square Miles)***	POP DENSITY PER SQUARE MILE EXCHANGE	POP DENSITY REST OF STUDY AREA	POP DENSITY TO REST OF AREA	ROAD MILES****	NOTES/COMMENTS
Akhiok	82	1	82.00	30.76	2.666	3.10	
Akutau	1040	4.5	231.11	29.36	7.871	0.00	
Angoon	466	5	93.20	30.33	3.073	4.79	GCI Map shows 3 square miles; used CPCN area
Atka	58	2.5	23.20	30.87	0.751	18.50	Lat / Long Description in CPCN; estimate based on GCI map
Border City	24	6	4.00	31.11	0.129	N/A	No Border City in DCRA database; used "Alcan Border" pop from DCRA; no description found in CPCN; Approx 6 square miles based on GCI Map
Chignik	102	3	34.00	30.83	1.103	2.41	
Chignik Lagoon	77	2.25	34.22	30.83	1.110	0.00	
Chignik Lake	69	1	69.00	30.78	2.242	0.00	
Coffman Cove	170	4	42.50	30.77	1.381	22.63	GCI Map shows 1.75 square miles; used CPCN value
Cube Cove	0	0.25	0.00	30.85	0.000	N/A	DCRS Database does not indicate any population in this closed logging camp.
Egegik	113	2	56.50	30.76	1.837	21.00	
Elfin Cove	18	2	9.00	30.91	0.291	N/A	
English Bay	276	1	276.00	30.44	9.066	N/A	Now Nanwalek
False Pass	37	4	9.25	30.98	0.299	3.60	
Gustavus	460	68	6.76	33.85	0.200	30.30	
Halibut Cove	77	2.5	30.80	30.84	0.999	N/A	
Hobart Bay	1	3	0.33	30.99	0.011	N/A	GCI Filing indicates no current service by ACS-N; not in DCRA Database
Hoonah	753	7.5	100.40	29.98	3.349	8.00	GCI Map shows 7.25 square miles; used certificate area
Hughes	78	1	78.00	30.77	2.535	8.25	
Huslia	299	2	149.50	30.45	4.909	18.18	
Ivanof Bay	7	4	1.75	31.03	0.056	N/A	GCI Filing indicates no population and no current service by ACS-N
Kake	579	4	144.75	30.09	4.810	9.82	GCI Map shows 5 square miles; used CPCN value
Kakhonok	179	2	89.50	30.65	2.920	0.00	
Kallag	205	2	102.50	30.61	3.349	8.17	
Karluk	37	4	9.25	30.98	0.299	N/A	
Kasaan	66	1	66.00	30.78	2.144	8.47	
Kazakof Bay	0	0.75	0.00	30.88	0.000	N/A	GCI Filing indicates no current service by ACS-N; not in DCRA Database
Klawock	813	22.5	36.13	30.64	1.179	10.30	Estimate of Actual Size / See Cert. *

\* Population Data From Department of Community and Regional Affairs Community Database, 2011 Estimates

\*\* Area based on TRS descriptions and service area maps included in GCI Sitka Study Area ETC Application filing Docket U-1-083, where indicated

\*\*\* Square miles are approximate based on USGS sections, which are typically one square mile

\*\*\*\* Road mile data provided by the State of Alaska, Department of Transportation and Public Facilities, Transportation Information Group, based on 2011 data provided by the individual communities.

N/A Indicates that the exchange is not represented in the community data provided by the Transportation Information Group

ACS-N SITKA STUDY AREA  
POPULATION DENSITY STUDY  
with Road Miles

	ACS-N EXCHANGE	POPULATION*	AREA** (Square Miles)***	POP DENSITY PER SQUARE MILE EXCHANGE	POP DENSITY REST OF STUDY AREA	POP DENSITY TO REST OF AREA	ROAD MILES****	NOTES/COMMENTS
Larsen Bay	89	4	22.25	30.90	0.720	4.70		
Meshik	101	14.31	7.06	31.41	0.225	27.40	Use data and maps for Port Heiden; used certificate area	
Nelson Lagoon	45	1	45.00	30.82	1.460	N/A		
Nikolski	16	6	2.67	31.12	0.086	N/A		
Nondalton	178	7.81	22.78	30.95	0.736	25.00	GCI Map shows 1.25 square miles; used CPCN value	
Northway	76	133.5	0.57	39.27	0.014	0.00		
Nulato	275	3	91.67	30.54	3.001	13.91		
Old Harbor	208	2	104.00	30.60	3.398	5.02		
Ouzinkie	178	2.5	71.20	30.68	2.321	3.60	Area estimate based on GCI Map	
Pedro Bay	47	5	9.40	31.02	0.303	N/A		
Pelican	83	5.97	13.91	31.01	0.448	1.10		
Perryville	130	1.5	86.67	30.71	2.823	0.00		
Pilot Point	88	1.03	85.34	30.75	2.775	14.00	GCI Map shows 3.0625 square miles; used CPCN value	
Point Baker	14	4	3.50	31.02	0.113	N/A		
Port Alexander	62	1	62.00	30.79	2.014	1.25		
Port Alsworth	156	3	52.00	30.74	1.692	N/A		
Port Graham	169	2.5	67.60	30.69	2.203	1.46		
Port Protection	53	1.5	35.33	30.83	1.146	N/A		
St. George	97	8.5	11.41	31.12	0.367	12.00		
St. Paul	481	62	7.76	33.44	0.232	42.82		
Sitka	8,985	62.13	144.63	18.02	8.028	28.17	GCI Map shows approximately 52.5 square miles; used CPCN value	
Tenakee Springs	145	41.5	3.49	32.83	0.106	1.00	CPCN shows 4 square miles not including town; estimate based on GCI map	
Thorne Bay	496	6.75	73.48	30.37	2.420	25.14		
<b>Yakutat</b>	<b>656</b>	<b>70</b>	<b>9.37</b>	<b>33.61</b>	<b>0.279</b>	<b>12.25</b>		
<b>TOTAL</b>	<b>18914</b>	<b>613.25</b>						
<b>AVERAGE</b>			<b>30.84</b>					

\* Population Data From Department of Community and Regional Affairs Community Database, 2011 Estimates

\*\* Area based on TIRS descriptions and service area maps included in GCI Sitka Study Area ETC Application filing, where indicated

\*\*\* Square miles are approximate based on USGS sections, which are typically one square mile

\*\*\*\* Road mile data provided by the State of Alaska, Department of Transportation and Public Facilities, Transportation Information Group, based on 2011 data provided by the individual communities.

N/A Indicates that the exchange is not represented in the community data provided by the Transportation Information Group