



Advisors to the Rural Communications Industry

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November 27, 2006

Via Federal Express Overnight Delivery

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Idaho Public Utilities Commission
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Boise, ID 83720-0074

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IDAHO PUBLIC
UTILITIES COMMISSION

Re: Case No. INC-T-06-02

Dear Ms. Jewel:

Enclosed please find the original and seven copies of the Comments of the Potlatch Telephone Company, Inc. for filing in the referenced matter,

If you have questions concerning these filings, please contact me at (303) 550-4772.
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry L. Hjort", is written over the typed name.

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PETITION)
OF INLAND CELLULAR FOR)
DESIGNATION AS ELIGIBLE)
TELECOMMUNICATIONS CARRIERS)
UNDER 47 U.S.C. SECTION 214(e)(2))

Case No. INC-T-06-02

COMMENTS OF THE POTLATCH TELEPHONE COMPANY, INC.

Potlatch Telephone Company Inc., ("Potlatch") through its undersigned counsel, pursuant to Idaho Public Utility Commission ("IPUC") Order No. 30152 issued in this matter, submits its Comments in opposition to the Petition and the two supplements thereto of Inland Cellular Telephone Company ("ICTC") seeking designation as an Eligible Telecommunications Carrier and in support thereof states as follows:

INTRODUCTION

On June 27, 2006 ICTC filed its Petition for Designation as an Eligible Telecommunications Carrier. Potlatch filed a timely Petition to Intervene. By Commission Order No. 30144, dated October 4, 2006, the Potlatch petition was granted. Subsequent to its initial filing, ICTC filed a Supplemental Petition with attachments on September 27, 2006 and a second Supplement with attachments on October 12, 2006.

As this Commission is aware, Potlatch is an independent local exchange carrier ("ILEC") which provides local exchange and other telecommunications services to customers in rural areas of the state. It is and has been certified by the Idaho Public Utilities Commission ("IPUC") to receive federal universal service support for the basic service it provides to its customers. Both the company and its customers will be potentially affected by the IPUC decision in this case.

As the ICTC Petition indicates in Exhibit C, the applicant seeks ETC designation in the Potlatch wire centers of Julietta, Kendrick and Troy. ICTC is the first wireless carrier to file a petition seeking ETC designation in the referenced Potlatch wire centers.

Potlatch opposes the ICTC petition and urges its rejection by this Commission. As is outlined in more detail below, Potlatch argues that the ICTC Petition is procedurally deficient in that it fails to comply both with certain of the applicable Federal Communications Commission ("FCC") certification requirements, as well as with several of the IPUC rule requirements concerning ETC certification applications. In addition, the Petition, its Supplements and the associated attachments provide insufficient factual information for this Commission to reach an informed, substantive conclusion that the

grant of ETC designation to ICTC would be in the public interest. The Petition and its supplements contain a variety of generalized assertions pertaining to the requirements that must be met by an ETC designee, but taken as a whole, lack both the specificity and concrete commitments that are required of an applicant that seeks ETC designation.

BACKGROUND

On March 17, 2005, the FCC adopted new rules for designating eligible telecommunications carriers ("ETC's"). *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 20 F.C.C.R. 637. The referenced FCC Order is appended to these comments as Attachment A. In its decision, the FCC urged state commissions to adopt similar requirements to be applied when considering the designation of new ETC's pursuant to 47 U.S.C. Section 214(e).

Subsequently, in Case No. WST-T-05-1 this Commission sought comments from interested parties concerning the new FCC rules. After considering those comments, the IPUC adopted new ETC eligibility and reporting requirements in Order No. 29841 issued on August 4, 2005. That Order with the new Idaho ETC certification rules appended are attached as Attachment B. Those rules are applicable to and govern the review of the instant ICTC Petition and its supplements.

In addition to the referenced federal and state rules, because the ICTC Petition seeks ETC designation in areas served by rural telephone companies, including three wire centers served by Potlatch, this Commission is required pursuant to 47 U.S.C. Section 214(e)(2) to find that the designation is in the public interest. In analyzing that federal law requirement in the appended Order adopting new ETC certification rules, this Commission

specifically enumerated the public interest factors that it would consider that are specifically applicable to those applications seeking ETC designation in rural telephone company service areas.

(T)he value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding the quality of the telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame.

Citing the *Clear Talk Order* at p. 6 (quoting *Virginia Cellular*, 19 F.C.C.R. at 1574)

ARGUMENT

1. **Provision of Supported Services.** The first requirement of the IPUC rules concerning additional eligibility requirements for ETC certification indicates that an ETC Applicant must certify that it will:

(a) provide service on a timely basis to reporting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network

coverage, if service can be provided at reasonable cost by (i) modifying or replacing the requesting customer's equipment; (ii) deploying roof-mounted antenna or other equipment; (iii) adjusting the nearest cell tower; (iv) adjusting network or customer facilities; (v) reselling services from another carrier's facilities to provide service; or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

A review of the ICTC petition and its supplements will reveal that no such mandatory certification is contained within the filing papers. In the initial petition at paragraph 25, which purports to address this rule requirement, the Applicant simply describes its company history. No commitment or certification of compliance with the specifics of the applicable IPUC rule is found. Additionally, while the relevant rule is referenced at II., p. 2 of the Applicant's second supplement filed on October 12, 2006, again there appears no promise, commitment or certification by the Applicant to the rule's requirements. Instead, the Applicant both skirts the certification commitment and qualifies any potential compliance: "...Inland Cellular must have the flexibility to redirect investment to those areas requiring additional facilities. This flexibility is also important in order to be in compliance with the requirement...."

The commitment to provide the required supported services is central to qualification as an ETC under both the federal and state rules. Further, as this Commission noted in its Order adopting its ETC certification rules, the ETC applicant must demonstrate an ability to provide the supported services throughout its proposed designated service area within a reasonable time frame.

The Applicant's failure to provide the required certification, whether by oversight or by design, coupled with an absolute absence of any commitment to provide the required supported services throughout its designated service area must be adjudged fatal to its Application.

2. **Network Improvement Plan.** Associated with this Commission's rule requirement to provide supported services is the additional requirement to "...submit a two-year network improvement plan that describes with specificity proposed improvement or upgrades to the applicant's network on a wire center by wire center basis throughout its proposed designated service area." Again the Applicant's petition and supplements fail to provide any information that approximates even rough compliance with this requirement.

At paragraph 26 of the initial Petition, Applicant states: "Its two-year plan, 2006 and 2007, involves an estimated investment of \$2,100,000 in Idaho; budgeted sites or site improvements at Genesee, Kamiah, Nuxall (near Kooskie), Troy, Track (outside of Moscow), Highway 95 North and Highway 95 Summit." There is no indication in the pleading whether this "two year plan" budget estimating a \$2M-plus investment is Applicant's ordinary course of business budget planning number; or is intended as additional investment which the company contemplates based upon securing ETC designation. Thus no conclusion can be reached as to whether the company's representation constitutes an actual proposal for "network improvement" or is simply a description of the "ordinary course of business" infrastructure investments that wireless carriers routinely make. Obviously an Applicant commitment on this requirement is very important to this Commission as the tenor of its ETC certification rules plainly indicates

that it expects network improvements and upgrades as a condition of granting ETC designation.

At section VI., p. 6, paragraph 13 – 18 of the Applicant's first supplement, filed on September 27, 2006 there is an expanded explanation of the company's two-year plan. In paragraph 15, Applicant represents that "...although budgeted for 2006, the Troy, Track, Highway 95 North and Highway 95 Summit sites will not be built until 2007." (There is no indication as to whether this decision to delay upgrades and network improvements will have an effect upon the company's investment plans or investment numbers for 2006 or 2007.) In paragraph 16, it is noted that: "The Genesee site should be able to cover Genesee, Kendrick and Julietta and Inland Cellular's Orofino site would also over-lap Julietta." And finally, in the second Supplement of October 12, 2006, Applicant states:

Although in the Supplement, estimated investment figures were provided for proposed sites, we re-iterate that Inland Cellular is in a highly competitive business and in order to answer customer demand, Inland Cellular must have the flexibility to redirect investment to those areas requiring additional facilities.

Nowhere in the Applicant pleadings is there a reference to its investment intentions or a network improvement plan, laid out on a wire center-by-wire center basis that addresses each of the wire centers in its proposed designated service area. Indeed it is impossible on the face of the pleadings to ascertain whether the two year plan referenced by the Applicant relates to "proposed improvements or upgrades" at all or is simply a recounting of ordinary course of business investment planning. And finally, given the careful qualification of the wording contained in the second supplement, it appears that

ICTC, in a desire to preserve its “flexibility”, reserves to itself the ultimate decision as to whether the investments it has noted that constitute elements of its two year plan will ever be made at all.

For the affected Potlatch wire centers of Julietta, Kendrick and Troy the only conclusions that can be drawn about the Applicant’s “network improvement plan” is that the building of a Troy site will be delayed into 2007; and that the Genesee site, when built, “should be able to cover” Juliaetta and Kendrick.

Potlatch submits that the bare assertions of the Applicant’s petition and supplements do not, in any respect, satisfy the IPUC rules requiring “specificity” concerning “proposed improvements or upgrades” on a “wire center-by-wire center basis”, particularly in light of the Applicant’s careful qualification concerning any potential investment commitments.

3. **Signal Quality, Coverage and Capacity.** Also associated with the Applicant commitment to provide supported services is the IPUC rule requirement that:

“Each applicant must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements.”

Applicant makes no pretense of attempting to comply with this requirement. A careful reading of the Petition and its supplements will disclose no mention of how the receipt of high cost support will cause an improvement in ICTC’s signal quality, coverage or capacity . The only reference in the pleadings that even tangentially touches this

requirement with respect to the Potlatch wire centers is the assertion, noted above, that the Genesee site, when built, “should be able to cover” Julietta and Kendrick.

Potlatch submits that this section of the IPUC certification rules requires more than a single sentence expression of hope from an ETC applicant. Critical factual information, and concrete commitments, both central to compliance with this Commission’s rules are simply not provided in Applicant’s pleadings.

It must be noted that this application, its supplements and attachments are singular in their lack of supporting detail. The maps of the Applicant’s licensed service areas are of little use in any analysis because there are no geographic reference points except county boundaries. Because existing cell site locations are not identified, terrain obstacles noted, or proposed new site locations identified on the maps and because no propagation studies are affixed to provide corroboration of the pleading assertions – it is impossible for this Commission, or indeed for any interested party, to determine whether any of the proposed Applicant investments will result in any improvement in the company’s signal quality, coverage or capacity as required by the rule.

An associated rule requirement here requires Applicant information concerning the projected start date and completion date for each improvement and the estimated amount of investment for each project, as well as the specific geographic areas where the improvements will be made and the estimated population that will be served. Again the pleadings provide no meaningful insights. For the Potlatch wire centers, the pleadings only reveal as has been noted above, that the building of a Troy site will be delayed into 2007 and that the Genesee site, when built, “should be able to cover” Julietta and

Kendrick. The pleadings contain no commitment to build, no project by project information concerning projected cost or start or completion date, and beyond the Genesee reference – no geographic specifics. In the second supplemental, a minimal effort at providing “population served” information is supplied, but again no effort is made to identify “population served” estimates by wire center or geographic location.

4. **Remaining Functional in Emergencies.** The applicable Commission rule requires a demonstration that the Applicant has reasonable back-up power to ensure operability without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes. Concerning this rule requirement, Applicant indicates at paragraph 22, p. 8 of its September 27, 2006 Supplemental that if a cell site becomes nonfunctional, that “...the wireless customer could receive service from any of Inland Cellular’s roaming partners should their service remain in tact (sic) and a signal can be obtained.” This representation is repeated at paragraph 8, p.4 of the October 12 Applicant Supplement.

Potlatch recognizes that wireless providers have the ability to program their cellular handsets to default to their own channel. If the handset cannot be connected to the primary provider’s channel, it can also be programmed to then automatically search for another channel or signal. This default and search process is the same regardless if the call is initiated within the wireless provider's own serving area or outside its own serving area. It is not clear from the application how the Applicant programs its handsets.

In some circumstances such as in an urban location with a relatively flat landscape and a variety of competing wireless providers this back-up strategy may be a viable one.

However, in the mountainous terrain of the rural Potlatch service area, for wireless customers to rely upon overlapping roaming partner signals for communications back-up is a dubious proposition at best.

5. **Local Usage.** The federal and the IPUC requirements concerning local usage plans differ. In 47 C.F.R. Section 54.202(a), an ETC Applicant is required to offer a local usage plan “comparable to that of the incumbent local exchange carrier.” The relevant IPUC rule simply requires that an Applicant describe its local usage plans and those of the competing ILEC. The IPUC decision adopting its new certification rules notes that Applicant information concerning local usage plans “...is essential to the public interest analysis.”

The ICTC Petition contains information concerning local usage and its plan descriptions at paragraphs 14 and 29 as well as at paragraphs 28 and 29, pp. 10-11 of the September 27, 2006 Supplement. Applicant represents that it will comply with “...any and all minimum local usage requirements adopted by the FCC or the IPUC.” It identifies two of its existing calling plans as options to meet local usage requirements. The first is a \$29.95 per month post-pay plan for unlimited minutes of in-network calling and the second is a post-pay plan of \$19.95 for 150 minutes of non-toll usage.

Potlatch has two concerns with the Applicant’s representations. First, it proposes no specific basic universal service plan tailored to meet customer needs that is associated with its proposed receipt of ETC designation by this Commission. The Applicant simply describes its existing plans and by employing a “round peg in a square hole” analysis,

seeks to cram the terms and conditions of two of its existing plans into the local usage requirement.

Second, the Applicant makes no effort to demonstrate that its plan offerings which are touted as responsive to the local usage requirement meet the federal rule requirement concerning comparability with the basic service offering of the incumbent – either as to price or as to minutes of use. Notwithstanding the provisions of the IPUC’s rule requirement concerning local usage, any Applicant proposal for local usage that does not meet the federal rule requirement of “comparability” fails to meet the required public interest test.

It is the Potlatch contention that any Idaho applicant for ETC certification should be required to establish a specific basic universal service offering with local usage deemed adequate by the IPUC Staff which is comparable to that of the competing incumbent ILEC in order to meet the applicable public interest standard for certification in the service area of a rural ILEC. Such a basic universal service plan offering should not only be proposed, but should be required to be separately identified in marketing materials, and should be offered, advertised and posted along with all other service offerings on the Applicant’s Website. In its ETC rulemaking decision attached which referenced the federal “comparability requirement”, this Commission noted: “The Commission Staff supported this requirement explaining that the local usage plan need not be a fully flat-rated plan but should allow sufficient minutes of use to meet customer needs.”

Potlatch contends that by any calculus, 150 minutes of local usage per month for a rate of \$19.95 cannot be deemed adequate to meet either “customer needs” or the IPUC

or the FCC local usage rule requirements. It also urges this Commission to require a specific basic universal service offering with adequate local usage as a condition of the receipt of ETC designation.

6. Impact on Universal Service Fund. The new FCC certification rules, upon which the IPUC rules build, include a public interest standard that applies to all competitive ETC applicants. See, 47 C.F.R. Section 54.202(c). The public interest standard requires a cost-benefit analysis that considers several factors. Included among these factors is the requirement to examine “the impact of the designation on the universal service fund.” This Commission has adopted the public interest analysis contained in the FCC rules. In its attached Order No. 29841 at page 15 the Commission stated: “Noting that all of the commenters support the FCC’s proposed public interest analysis, the Commission adopts this analysis.”

The ICTC Petition and its associated Supplements contain no reference to or information concerning the impact of its proposed ETC certification upon the federal universal service fund. The Application is silent concerning this requirement. In the absence of relevant data, this Commission simply cannot perform and complete the public interest “cost-benefit” analysis required both by applicable federal rules and its own requirements. This omission constitutes an additional ground upon which the Applicant’s Petition must be rejected.

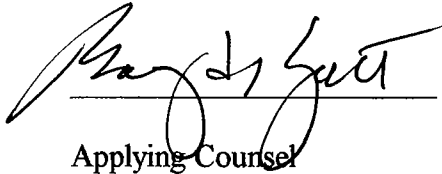
7. Summary. To meet its obligation to perform a public interest analysis concerning an application for ETC certification, this Commission requires certain specific information and positive, unqualified commitments from an Applicant. There are clear procedural

requirements embodied in the Commission's rules that must be met by any Applicant in order to permit the Commission to reach substantive conclusions. The deficiencies of the ICTC Petition and its Supplements have been outlined above. Those deficiencies are of such a magnitude that adequate analysis cannot be performed nor substantive conclusions reached.

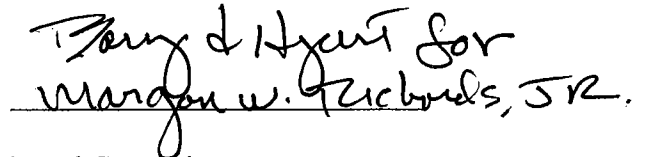
Perhaps some of the shortcomings of the instant application could be considered technical in nature. But there are certain bedrock assurances that this Commission must have in order to complete its required public interest analysis and to approve Applicant ETC status. These include: (a) specific information about where infrastructure and network improvement investments will be made; (b) the projects that those investments will be directed toward; (c) the dollar amount of those investments; (d) a positive, unqualified commitment to make those investments if ETC status is granted; and (e) the assurance that the investments proposed will be made because of the receipt of ETC designation, not simply in the ordinary course of business. In short, the Commission needs to be assured that the citizens of Idaho will realize an improvement in communications service in the state in exchange for the Applicant's receipt of federal support. None of these bedrock assurances are contained in the ICTC application. The Application fails the public interest test. It should be rejected.

WHEREFORE, having fully set forth its Comments, Potlatch respectfully requests that the Commission deny the Application of ICTC for ETC status.

DATED this 27th day of November, 2006.



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CERTIFICATE OF SERVICE

I, Barry L. Hjort, hereby certify that I have, on this 27th day of November, 2006, served the foregoing **COMMENTS OF THE POTLATCH TELEPHONE COMPANY, INC.** upon all parties listed in the Certificate provided with the Inland Cellular Application. A copy of the foregoing **COMMENTS OF THE POTLATCH TELEPHONE COMPANY, INC.** filed today was placed in the United States mail, first class postage pre-paid, addressed to the following:

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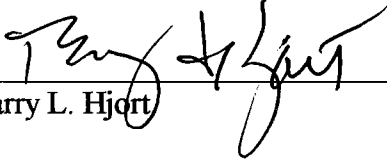
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Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | |
| Universal Service |) | CC Docket No. 96-45 |
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REPORT AND ORDER

Adopted: February 25, 2005

Released: March 17, 2005

By the Commission: Commissioners Abernathy, Copps, and Adelstein issuing separate statements;
Commissioner Martin approving in part, and dissenting in part.

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Appendix A - Final Rules

Appendix B - Parties Filing Comments and Reply Comments

Appendix C - Final Regulatory Flexibility Analysis

I. INTRODUCTION

1. This Report and Order addresses the minimum requirements for a telecommunications carrier to be designated as an “eligible telecommunications carrier” or “ETC,” and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In addition, as recommended by the Joint Board, we encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC.² We believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.³

2. We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund.⁴ Specifically, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, we require that the applicant: (1) provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. In addition, we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the Commission, and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006, at the

¹47 U.S.C. § 214(e)(6). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission.

²47 U.S.C. § 214(e)(2). Section 214(e)(2) of the Act provides state commissions with the primary responsibility for designating ETCs.

³See *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 19 FCC Rcd 4257, 4258, para. 2 (2004) (*Recommended Decision*).

⁴See *id.*

same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board's recommendation to evaluate separately whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this Report and Order.

3. In this Report and Order, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. Although the outcome of the Commission's section 214(e)(6) analysis may vary depending on whether the area is served by a rural or non-rural carrier, we clarify that the Commission's public interest examination for ETC designations will review many of the same factors for ETC designations in areas served by non-rural and rural incumbent LECs. In addition, as part of our public interest analysis, we will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC.

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual basis: (1) progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.

5. As explained below, we do not adopt the recommendation of the Joint Board to limit high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation.⁵ Nevertheless, we believe the rigorous ETC designation requirements adopted above will ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund.

6. We also agree with the Joint Board's recommendation that changes are not warranted in our rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this Report and Order, we grant several petitions for redefinition of rural incumbent LEC service areas. Moreover, we direct the Universal Service Administrative Company (USAC), in

⁵Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 634, 118 Stat 2809 (2004) (*2005 Consolidated Appropriations Act*). The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. *See id.*

accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. We also modify the Commission's annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date. This will allow high-cost support to be distributed as of the date of ETC designation. In addition, to enable price cap LECs and/or competitive ETCs that miss the June 30 annual interstate access support (IAS) certification deadline to receive IAS support, we modify the quarterly certification schedule for the receipt of IAS support. These carriers may file their certification after June 30 in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, we decline to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

II. BACKGROUND

A. The Act

7. Section 254(e) of the Communications Act of 1934, as amended (the Act),⁶ provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁷ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC), and must advertise these services throughout the designated service area.⁸

8. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁹ Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."¹¹ Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that is not

⁶See 47 U.S.C. § 254(e). The Communications Act of 1934 was amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁷47 U.S.C. § 254(e).

⁸47 U.S.C. § 214(e)(1).

⁹47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹⁰47 U.S.C. § 214(e)(1).

¹¹47 U.S.C. § 214(e)(2).

subject to the jurisdiction of a State commission, the Commission shall upon request” perform the relevant ETC designation.¹²

B. Joint Board Recommended Decision

9. On June 28, 2002, the Commission released the *ETC Referral Order* requesting that the Joint Board “review certain of the Commission’s rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.”¹³ Specifically, the Commission requested that the Joint Board make recommendations regarding two issues: (1) a long-term universal service plan that ensures that support is “specific, predictable, and sufficient to preserve and advance universal service,” and (2) the manner in which support can be “effectively targeted to rural carriers serving the highest cost areas, while protecting against excessive fund growth.”¹⁴ Consistent with these directives, the Joint Board sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas.¹⁵ On February 27, 2004, based on its review and consideration of the record developed in response to the *ETC Referral Order*, the Joint Board released the *Recommended Decision*, which made several recommendations to the Commission regarding the ETC designation process and the Commission’s rules regarding high-cost support.¹⁶

¹²47 U.S.C. § 214(e)(6). See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice). The Commission requires that an ETC petition filed with the Commission contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution” and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission. In addition, similar to section 214(e)(2), section 214(e)(6) of the Act directs the Commission to determine whether designation of an ETC is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(6).

¹³See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*). See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for “rules of agency organization, procedure, or practice.”

¹⁴See *Referral Order*, 17 FCC Rcd at 22642, at para. 1.

¹⁵On February 7, 2003, the Joint Board issued a Public Notice inviting public comment on whether the Commission’s rules concerning high-cost support and the ETC designation process continue to fulfill their intended purposes. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 1941 (2003) (*Joint Board Portability-ETC Public Notice*). On July 31, 2003, the Joint Board held an *en banc* hearing on the Commission’s rules on designation and funding of ETCs in high-cost areas. See http://www.fcc.gov/wcb/universal_service/documents/030731.pdf. See also *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on the Portability of High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 14486 (2003) (providing notice of Joint Board *en banc* hearing).

¹⁶*Recommended Decision*, 19 FCC Rcd at 4258-4260, paras. 1-4,

10. The Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214(e)(5) of the Act.¹⁷ The Joint Board concluded that permissive federal guidelines for minimum ETC qualifications would allow for a more predictable application process in the states. In doing so, the Joint Board concluded that permissive guidelines would also assist states in determining whether the public interest would be served by a carrier's designation as an ETC.¹⁸ The Joint Board further stated that permissive guidelines would improve the long-term sustainability of the universal service fund, ensuring that only fully qualified carriers that are capable of and committed to providing universal service would be able to receive support.¹⁹ The Joint Board further recommended that the Commission apply the guidelines as mandatory requirements to those proceedings in which the Commission acts under section 214(e)(6).²⁰

11. In order to curb growth of the fund due to the increasing number of ETC designations and the increased costs of rural incumbent LECs, the Joint Board also recommended that the Commission limit the scope of high-cost support to a single connection per household that provides access to the public telephone network in high-cost areas throughout the nation.²¹ The Joint Board determined that supporting a single connection would be more consistent with the goals of section 254 of the Act than the present system, which in some cases provides support for multiple connections to the public switched telephone network. The Joint Board determined that limiting the scope of support is necessary to preserve the sustainability of the universal service fund.²² The Joint Board also concluded that supporting a single connection would send more appropriate entry signals to carriers in rural and high-cost areas, and would be competitively neutral.²³ In conjunction with its proposal to limit high-cost support to a primary line, the Joint Board recommended that high-cost support be capped on a per-line basis and adjusted annually by an index factor in areas that are served by rural carriers and where a competitive carrier is designated as an ETC.²⁴ On December 8, 2004, however, Congress passed the 2005 Consolidated Appropriations Act, which prohibits the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service payments."²⁵

12. The Joint Board declined to recommend that the Commission modify the basis of support (*i.e.*, the methodology used to calculate support) in study areas with multiple ETCs.²⁶ Instead, the Joint Board recommended that the Joint Board and the Commission consider possible modifications to the

¹⁷See 47 U.S.C. § 214.

¹⁸See *Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

¹⁹See *Recommended Decision*, 19 FCC Rcd at 4261, para. 9.

²⁰See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

²¹See *Recommended Decision*, 19 FCC Rcd at 4258-4259, para. 3.

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵2005 *Consolidated Appropriations Act* at § 634.

²⁶See *Recommended Decision*, 19 FCC Rcd at 4259, para. 4.

basis of support as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.²⁷

13. On June 8, 2004, the Commission released a Notice of Proposed Rulemaking seeking comment on the proposals outlined in the Joint Board's *Recommended Decision* concerning the ETC designation process and the Commission's rules regarding high-cost universal service support.²⁸ In addition, the Commission sought comment on whether to modify its rules governing the filing of annual certifications and data submissions by ETCs.²⁹

C. Commission Decisions Pending the Commission's Action on the Joint Board's Recommendations

14. As the Commission and the Joint Board contemplated changes to the ETC designation process, the Commission acknowledged the need for a more thorough ETC designation framework. Specifically, on January 22, 2004, the Commission released the *Virginia Cellular ETC Designation Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.³⁰ In that order, the Commission imposed reporting and other requirements on Virginia Cellular as conditions of Virginia Cellular obtaining an ETC designation. These conditions required Virginia Cellular: (1) to report annually on its progress toward achieving its build-out plans, the total number of unfulfilled service requests, and the total number of complaints per 1,000 households; (2) to comply with consumer protection and quality of service standards; (3) to provision service to requesting customers in the area for which Virginia Cellular is designated, including those areas outside existing network coverage; and (4) to construct new cell sites in areas outside Virginia Cellular's network coverage.³¹ The Commission also conducted a more thorough public interest analysis, which analyzed the advantages and disadvantages of designating Virginia Cellular as an ETC and the potential for "creamskimming" that could result from Virginia Cellular's ETC designation.³² The Commission further stated that the

²⁷*Id.* On August 16, 2004, the Joint Board issued a Public Notice that sought comment on issues related to the high-cost universal support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*. See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 04J-2, (rel. Aug. 16, 2004). Specifically, the Joint Board sought comment on three main issues: (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges. *Id.*

²⁸*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (2004) (*ETC Designation NPRM*).

²⁹See *ETC Designation NPRM*, 19 FCC Rcd at 10802, para. 5.

³⁰See *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC 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 1563, para. 1 (2004) (*Virginia Cellular ETC Designation Order*).

³¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

³²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1585-86, paras. 26-33. Creamskimming occurs when ETCs serve a disproportionate share of the low-cost, high revenue customers in a rural telephone company's study area. See *id.* at 19 FCC Rcd at 1585, para. 32.

framework it established in the *Virginia Cellular ETC Designation Order* henceforth would apply to all ETC designations pending completion of this Report and Order.³³

15. Following the framework established in the *Virginia Cellular ETC Designation Order*, on April 12, 2004, the Commission released the *Highland Cellular ETC Designation Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.³⁴ In the *Highland Cellular ETC Designation Order*, the Commission concluded, among other things, that an ETC may not be designated below the wire center level served by a rural incumbent LEC.³⁵ The Wireline Competition Bureau and Wireless Telecommunications Bureau subsequently issued several ETC designation orders that follow the framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*.³⁶

III. SCOPE OF SUPPORT

16. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to “modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.”³⁷ Accordingly, in this Report and Order, we do not consider the portion of the Joint Board’s *Recommended Decision* related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

³³See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

³⁴See *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438, para. 33 (2004) (*Highland Cellular ETC Designation Order*).

³⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

³⁶See *Federal-State Joint Board on Universal Service; Guam Cellular and Paging Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands*, Order, CC Docket No. 96-45, 19 FCC Rcd 13872 (2004) (*Guam Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, North Carolina and Virginia*, Order, CC Docket No. 96-45, DA 04-3046 (2004) (*ALLTEL ETC Designation Order*); *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners Petitions for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia*, Order, CC Docket No. 96-45, 19 FCC Rcd 16530, (2004) (*Nextel Partners ETC Designation Order*); *Federal-State Joint Board on Universal Service; Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Order, CC Docket No. 96-45, 19 FCC Rcd 20985 (2004) (*Advantage Cellular ETC Designation Order*); *Federal-State Joint Board on Universal Service; Sprint Corporation Applications for Designation as an Eligible Telecommunications Carrier in Alabama, Florida, Georgia, New York, North Carolina, Tennessee, and Virginia*, Order, CC Docket No. 96-45, DA 04-3617 (2004) (*Sprint ETC Designation Order*); *Federal-State Joint Board on Universal Service; Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Georgia and Alabama*, Order, CC Docket No. 96-45, DA 05-259 (2005) (*PSC ETC Designation Order*).

³⁷See *2005 Consolidated Appropriations Act* at § 634. The prohibition against using any appropriated funds for adopting a primary line restriction expires September, 30, 2005. See *id.*

IV. ETC DESIGNATION PROCESS

17. State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act.³⁸ A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.³⁹ The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services.⁴⁰ The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution.⁴¹ In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.⁴² In this Report and Order, we adopt additional requirements consistent with section 214 of the Act that all ETC applicants must meet to be designated an ETC by this Commission.⁴³ Further, although specific requirements set forth in this Report and Order may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the Commission under section 214(e)(6) of the Act.⁴⁴

18. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of our public interest analysis, we also will examine the potential for creamskimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.

³⁸ See 47 U.S.C. § 214(e)(1).

³⁹ 47 U.S.C. § 214(e)(1)(A). The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. See 47 C.F.R. § 54.101. While section 214(e)(1) requires an ETC to "offer" the services supported by the federal universal service support mechanisms, the Commission has determined that this does not require a competitive carrier to actually provide the supported services throughout the designated service area before designation as an ETC. *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15172-75, paras. 10-18 (2000), recon. pending (*Section 214(e) Declaratory Ruling*).

⁴⁰ 47 U.S.C. § 214(e)(1)(A). An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.101(a)(5).

⁴¹ See 47 U.S.C. § 214(e)(1)(B).

⁴² 47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415.

⁴³ See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

⁴⁴ 47 U.S.C. § 214(e)(6). Specifically, portions of this order discuss the ETC framework as it relates to wireless carriers because those are the common carriers that most frequently seek to be designated as ETCs before the Commission. See *infra* para. 37.

19. We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this Report and Order. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.⁴⁵

A. Eligibility Requirements

20. As described above, ETC applicants must meet statutorily prescribed requirements before we can approve their designation as an ETC.⁴⁶ Based on the record before us, we find that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁴⁷ As noted above, these requirements are mandatory for all ETCs designated by the Commission. ETCs designated by the Commission prior to this Report and Order will be required to make such showings when they submit their annual certification filing on October 1, 2006. We also encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction. We do not believe that different ETCs should be subject to different obligations, going forward, because of when they happened to first obtain ETC designation from the Commission or the state. These are responsibilities associated with receiving universal service support that apply to all ETCs, regardless of the date of initial designation.

1. Commitment and Ability to Provide the Supported Services

21. We adopt the requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) by providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. We encourage states to adopt these requirements and, as recommended by the Joint Board, to do so in a manner that is flexible with applicable state laws and policies. For example, states that adopt these requirements should determine, pursuant to state law, what constitutes a "reasonable request" for service.⁴⁸ In addition, we encourage states to follow the Joint Board's proposal that any build-out out

⁴⁵See 47 U.S.C. §§ 254(b)(3), (5). In addition to the universal service principles specified in the 1996 Act, Congress directed the Joint Board and the Commission to be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. See 47 U.S.C. § 254(b)(7). As recommended by the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. See *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-04, paras. 45-52 (1997) (*First Universal Service Report and Order*). The Commission defines competitive neutrality as "universal service support mechanisms and rules that neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." See *id.*

⁴⁶See 47 U.S.C. § 214.

⁴⁷See *Recommended Decision*, 19 FCC Rcd at 4259, para. 5.

⁴⁸See *Recommended Decision*, 19 FCC Rcd at 4268, para. 27.

commitments adopted by states “be harmonized with any existing policies regarding line extensions and carrier of last resort obligations.”⁴⁹

22. First, we agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service.⁵⁰ We conclude that this requirement, which we adopted in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, is appropriate as a general rule to ensure that all ETCs serve requesting customers in their designated service area. Therefore, consistent with these orders, we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC.⁵¹ If the ETC’s network already passes or covers the potential customer’s premises, the ETC should provide service immediately.⁵² In those instances where a request comes from a potential customer within the applicant’s licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer’s equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier’s facilities to provide service;⁵³ or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.⁵⁴ We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.⁵⁵

23. Second, we require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation.⁵⁶ Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its designated service area.⁵⁷ The five-year plan must demonstrate

⁴⁹See *id.*

⁵⁰See *Recommended Decision*, 19 FCC Rcd at 4266, para. 23. The Commission and state commissions will need to determine whether a particular request for service is “reasonable.” We believe that requiring an ETC applicant to demonstrate its willingness and capability to provide service to all customers within the designated service area upon request will help determine whether a request is reasonable.

⁵¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1570-1571, para. 15; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6429-6430, para. 16.

⁵²*Id.*

⁵³*Id.*

⁵⁴See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1571, para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6430, para. 17.

⁵⁵See *infra* para. 69.

⁵⁶See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 1565, at para. 17.

⁵⁷Universal service support is not distributed for lines provided through resale of another carrier’s services. In addition, it should be noted that lines provided by an ETC through resale of another carrier’s services will not (continued....)

in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;⁵⁸ (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received.⁵⁹ In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

24. Some commenters assert that an applicant should submit more detailed build-out plans than discussed above,⁶⁰ while other commenters request that the build-out plans include a specific timeline, including start and completion dates.⁶¹ Our approach incorporates many commenters' suggestions; however, mandatory completion dates established by the Commission would not account for unique circumstances that may affect build-out, including the amount of universal service support or customer demand. On balance, we find that our approach allows consideration of fact-specific circumstances of the carrier and the designated service area, while ensuring that high-cost support will be used to improve service.

2. Ability to Remain Functional in Emergency Situations

25. We adopt the Joint Board's recommendation that we require an ETC applicant to demonstrate its ability to remain functional in emergency situations.⁶² Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged

(Continued from previous page)

impact the universal service fund, since high-cost support is not disbursed to ETC lines provided in this manner. 47 C.F.R. § 54.307. *See also First Universal Service Report and Order*, FCC Rcd at 8933-8934, para. 290. Therefore, carriers who improve their networks through resale will have little or no impact on the universal service fund.

⁵⁸See *infra* para. 69. Carriers can achieve this improvement through several different methods, such as the construction of cell towers, leasing space on existing towers, or resale of other carriers' services.

⁵⁹See *infra* para. 69.

⁶⁰See Dobson Comments at 8, Iowa Board Reply Comments at 3, OPASTCO Comments at 33; NTCA Comments at 17, State and Rural Coalition Comments at 8, and State and Rural Coalition Reply Comments at 13-14.

⁶¹See Nebraska RICs Reply Comments at 9; NTCA Comments at 17.

⁶²See *Recommended Decision*, 19 FCC Rcd at 4269, para. 30; NTCA Comments at 8, State and Rural Coalition Comments at 10, Iowa Board Reply Comments at 3.

facilities, and is capable of managing traffic spikes resulting from emergency situations.⁶³ We believe that functionality during emergency situations is an important consideration for the public interest. Moreover, to ensure that ETCs continue to comply with this requirement, as discussed *infra*, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations.⁶⁴ Because most emergency situations are local in nature, we anticipate that state commissions that choose to adopt an emergency functionality requirement may also identify other geographically-specific factors that are relevant for consideration. If states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.⁶⁵

26. We also disagree with commenters that propose that the Commission adopt a specific benchmark requiring an ETC to maintain eight hours of back-up power and ability to reroute traffic to other cell sites in emergency situations.⁶⁶ We believe that such a benchmark is inappropriate because, although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic. Furthermore, we reject suggestions that ETCs should be required to publish signal strength for their primary digital technology because signal coverage, quality, or capacity will already be reported on an annual basis to the Commission as part of the five-year network improvement plan.⁶⁷

27. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit data concerning outages in its designated service areas on an annual basis.⁶⁸ In addition, to minimize the administrative burdens that may be associated with such reports, these reporting requirements are modeled after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*.⁶⁹

3. Consumer Protection

28. As recommended by the Joint Board, we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission.⁷⁰ We find that an ETC applicant must make a specific commitment

⁶³See NTCA Comments at 18, and OPASTCO Comments at 35.

⁶⁴See *infra* para. 69.

⁶⁵See *supra* para. 19; Dobson Comments at 11.

⁶⁶Commenters also contend that specific enforceable requirements should be adopted that require ETCs to provide an affidavit stating that they will remain functional in an emergency. We believe that an affidavit is unnecessary and redundant because as part of its application, an ETC must already demonstrate the ability to function in emergency situations. See OPASTCO Comments at 35.

⁶⁷See CenturyTel Comments at 9. See also *Recommended Decision*, 19 FCC Rcd 4281-82, para. 61.

⁶⁸See *infra* para. 69.

⁶⁹See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 04-35, 19 FCC Rcd 16830 (2004) (*Outage Reporting Order*).

⁷⁰See *Recommended Decision*, 19 FCC Rcd at 4270, para. 31; NTCA Comments at 20, Oregon Commission Comments at 5 and Iowa Board Reply Comments at 3.

to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission.⁷¹ We will consider the sufficiency of other commitments on a case-by-case basis.⁷² We believe that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements is consistent with section 254 of the Act, and with related Commission orders that require policies that universal service serve "the public interest, convenience and necessity"⁷³ and ensure that consumers are able to receive an evolving level of universal service that "tak[es] into account advances in telecommunications, and information technologies and services."⁷⁴ In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.⁷⁵

29. We also believe that adopting state specific requirements as part of our ETC designation process might require the Commission to interpret state statutes and rules. An ETC applicant must commit to serve the entire service area and must provide five-year network improvement plans addressing each wire center for which it expects to receive support.⁷⁶ We therefore conclude, given the consumer protection measures and other requirements adopted above and the provision in section 214(e)(4) of the Act that protects customers in the event that another ETC relinquishes designation, that it is unnecessary to impose additional obligations as a condition of granting ETC status to a competitive carrier.

30. As with the other requirements adopted in this Report and Order, state commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. Several commenters argue that an ETC should be required to submit to the same state laws concerning consumer protection that the incumbent LEC must follow.⁷⁷ These include, for example, billing, collection, and mediation obligations. In determining whether any additional

⁷¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576-77, para. 30; *Highland Cellular ETC Designation Order* FCC Rcd at 6433, para. 24. See also Dobson Comments at 12, and Dobson Reply Comments at 7-8. CTIA, Consumer Code for Wireless Service, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

⁷²For example, to the extent a wireline or wireless ETC applicant is subject to consumer protection obligations under state law, compliance with such laws may meet our requirement.

⁷³See 47 U.S.C. § 254(b)(7).

⁷⁴See 47 U.S.C. § 254(c).

⁷⁵*Id.*

⁷⁶See *supra* para. 23.

⁷⁷See CenturyTel Comments at 11, NASCUA Comments at 39, SBC Comments at 7, and USTA Comments at 10-11.

consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state – *i.e.*, where such a requirement would not otherwise apply to the ETC applicant – we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC. We agree with the Joint Board’s assertion that “states should not require regulatory parity for parity’s sake.”⁷⁸ We therefore encourage states that impose requirements on an ETC to do so only to the extent necessary to further universal service goals.

31. We also reject commenters’ arguments that consumer protection requirements imposed on wireless carriers as a condition for ETC designation are necessarily inconsistent with section 332 of the Act.⁷⁹ While Section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services.⁸⁰ Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.⁸¹

4. Local Usage

32. We adopt the Joint Board’s recommendation that we establish a local usage requirement as a condition of receiving ETC designation.⁸² Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.

33. The Commission requires an ETC to provide local usage in order to receive universal service high-cost support.⁸³ In the *First Report and Order*, the Commission determined that an ETC should provide some minimum amount of local usage as part of its “basic service” package of supported services, but declined to specify the exact amount of local usage required.⁸⁴ We believe the Commission should review an ETC applicant’s local usage plans on a case-by-case basis.⁸⁵ For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area.⁸⁶ We also can envision

⁷⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 34.

⁷⁹See Nextel Comments at 18.

⁸⁰See 47 U.S.C. § 332(c)(3).

⁸¹See 47 U.S.C. §§ 214, 254.

⁸²See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

⁸³See 47 C.F.R. § 54.101(a)(2).

⁸⁴See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8812-14 (1997) (*First Universal Service Report and Order*). See 47 C.F.R. § 54.101(a)(2).

⁸⁵See *Recommended Decision*, 19 FCC Rcd at 4271-4272, para. 35-36; F. Williamson Comments at 31 (maintaining that wireless ETCs should be required to provide at least the average local usage utilized by the customers of the incumbent LEC in the designated service area).

circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers.⁸⁷ Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.

34. We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC.⁸⁸ In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.⁸⁹

5. Equal Access

35. The Joint Board recommended that the Commission adopt guidelines that would encourage states to require an ETC be prepared to provide equal access⁹⁰ if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(4) of the Act.⁹¹ Although we do not impose a general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.⁹² Specifically, we find that if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement under the Act.⁹³ Accordingly, we will decide whether to impose any equal access requirements on a case-by-case basis.

36. Under section 214(e)(4) of the Act, if an ETC relinquishes its ETC designation, the Commission must examine whether the customers that are being served by the relinquishing carrier will be served by the remaining ETC or ETCs.⁹⁴ As part of that process, the Commission might also examine

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⁸⁶In the *Highland Cellular ETC Designation Order* and the *Virginia Cellular ETC Designation Order*, the Commission found that Highland Cellular and Virginia Cellular customers were subjected to fewer toll charges than the customers using the incumbent's plan and that customers had a choice of a variety of local usage plans, many of which included a large volume of minutes. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 29.

⁸⁷See *Recommended Decision*, 19 FCC Rcd at 4272, para. 36.

⁸⁸See *Recommended Decision*, 19 FCC Rcd at 4271, para. 35.

⁸⁹See *Id.*

⁹⁰Equal access includes, among other things, the ability to access the presubscribed long distance carrier of the customer's choice by dialing 1+ the phone number. See *Definitions Order*, 18 FCC Rcd at 15092, para. 6.

⁹¹See *Recommended Decision*, 19 FCC Rcd at 4268, para. 28.

⁹²See *id.*

⁹³See, e.g., 47 U.S.C. §§ 214(e)(4), 332(c)(8), 252(h)(2).

⁹⁴47 U.S.C. § 214(e)(4). The statutory provision states that a state commission or, in the case of a common carrier not subject to state commission jurisdiction, the Commission "shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." *Id.* The carrier seeking to relinquish its designation must give advance notice to the state commission or (continued....)

whether it is necessary to require the remaining ETC to provide equal access. Furthermore, under section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity.⁹⁵ One obligation imposed on incumbent LECs is the requirement to offer equal access in connection with their wireline services.⁹⁶

6. Adequate Financial Resources

37. We decline to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area.⁹⁷ We believe that compliance with the existing requirements for ETC designation, along with the criteria adopted above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported services in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request.⁹⁸ And in its annual certification and reporting requirements, an ETC must demonstrate that it has used universal service support to provide quality service throughout the designated area. In addition, most wireless carriers, the largest group of competitive ETCs that the Commission designates, are already operating systems within their licensed market areas, thereby demonstrating in practice their ability to provide such services. Since 1994, moreover, wireless licensees have purchased their licenses at auction, which evinces that they have sufficient resources to provide service.⁹⁹ After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service.¹⁰⁰ Therefore, we find additional financial requirements are

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the Commission. *Id.* Prior to allowing the carrier to cease providing universal service in the area, the remaining ETC or ETCs will be required to ensure that all customers served by the relinquishing carrier will continue to be served. The remaining ETC or ETCs will be permitted up to one year from the approval of the request to relinquish ETC status to purchase facilities or equipment and complete construction to be able to serve the relinquishing carrier's customers. *Id.*

⁹⁵See 47 U.S.C. § 251(h)(2).

⁹⁶See 47 U.S.C. § 251(g) (preserving equal access obligations applicable to local exchange carriers prior to the 1996 Act). See also 47 U.S.C. §§ 3(26), 251(b)(3). Section 3(26) of the Act excludes CMRS providers from the definition of "local exchange carrier," "except to the extent that the Commission finds that such service should be included in the definition of such term." If the Commission were to make such a finding, section 251(b)(3) requires provision of dialing parity, which is a major component of equal access. 47 U.S.C. § 251(b)(3).

⁹⁷See *Recommended Decision*, 19 FCC Rcd at 4266, para. 22.

⁹⁸See *infra* paras. 21-23.

⁹⁹See Dobson Comments at 7-8.

¹⁰⁰The specific requirements vary according to service. For example, 30 MHz broadband PCS licensees must provide adequate service to 1/3 of the population within five years of being licensed and 2/3 of the population within 10 years of licensing. See 47 C.F.R. § 24.203(a). In the cellular service, any areas not built out within five years of licensing become "unserved areas" that may be licensed to another applicant. See 47 C.F.R. §§ 22.911, 22.947, 22.949. In other services, licensees may satisfy construction requirements by offering "substantial service" in their licensed area. See, e.g., 47 C.F.R. §§ 24.203(b) (substantial service as alternative to specific build-out requirements for 10 MHz broadband PCS licensees), 90.685 (substantial service as alternative to specific build-out requirements for Economic Area Specialized Mobile Radio licensees); 27.14(a) (substantial service requirement for (continued....))

unwarranted to demonstrate that an ETC applicant is capable of sustaining operations and supported services.¹⁰¹

38. We further disagree with commenters that argue that an ETC should be required to demonstrate that it has the financial capability to sustain operations and supported services if an incumbent LEC relinquishes its designation.¹⁰² As discussed *infra*, section 214(e)(4) of the Act already contemplates safeguards for protecting customers served by an ETC that relinquishes its designation.¹⁰³

39. In sum, we do not believe that additional requirements concerning financial qualifications are necessary when determining whether to designate an ETC applicant. We believe that existing ETC obligations adequately ensure financial stability. In the event that state commissions do consider financial qualification factors in their ETC designations, we encourage them to do so in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.¹⁰⁴

B. Public Interest Determinations

40. Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity.¹⁰⁵ The Commission also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act.¹⁰⁶ Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254.¹⁰⁷ The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental

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Wireless Communications Services licensees). Substantial service was established for circumstances where the Commission has determined that more flexible construction requirements rather than fixed benchmarks would more likely result in the efficient use of spectrum and the provision of service to rural, remote, and insular areas. See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10843, at para. 111 (1997) (*WCS Report and Order*). In addition, the Commission considers whether a licensee offers substantial service in determining whether to grant a renewal expectancy. See, e.g., 47 C.F.R. §§ 22.940(a)(1) (cellular), 24.16 (PCS). The Commission has defined "substantial service" as "service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal." *Id.*

¹⁰¹See NTCA Comments at 16, and SBC Comments at 6-7. See also, WTA Comments, at 14 (WTA argues that prospective carriers seeking regulatory authorization have often employed "creative" methods for bolstering their financial representation).

¹⁰²See California Comments at 4, and USTA Comments at 8.

¹⁰³47 U.S.C. § 214(e)(4). See *infra* para. 36.

¹⁰⁴See *First Universal Service Report and Order*, 12 FCC Rcd at 8801-04, paras. 45-52.

¹⁰⁵47 U.S.C. § 214(e)(2).

¹⁰⁶47 U.S.C. § 254(b)(7). Section 254 requires that support be distributed in a manner that is specific and predictable, and also requires that the Commission, in conjunction with the Joint Board, consider principles it determines "are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with this Act." 47 U.S.C. §§ 254(b)(1), (7).

¹⁰⁷"Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest." 47 U.S.C. § 214(e)(2).

goals of preserving and advancing universal service;¹⁰⁸ ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates,¹⁰⁹ and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.¹¹⁰ Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether the designation of an additional ETC is in the public interest.¹¹¹

41. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact-specific public interest analysis it has developed in prior orders.¹¹² First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.¹¹³ Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.¹¹⁴ Based on this analysis, the Commission will deny designation if it concludes that the potential for creamskimming is contrary to the public interest.¹¹⁵ The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews.

42. We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.¹¹⁶ In the *Virginia Cellular ETC Designation Order*, the

¹⁰⁸47 U.S.C. § 254(b).

¹⁰⁹47 U.S.C. § 254(b)(1).

¹¹⁰47 U.S.C. § 254(b)(3). See, e.g., Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418, PUC Docket No. 22289, SOAH Docket No. 473-00-1167, Order at 25 (Tex. Pub. Util. Comm'n Oct. 30, 2000).

¹¹¹For instance, the Alaska Commission considers the availability of new choices for customers; affordability; quality of service; service to unserved customers; comparison of benefits to public cost; and considerations of material harm. *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003).

¹¹²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574-81, paras. 26-39; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-38, paras. 20-35.

¹¹³See e.g., *Advantage Cellular ETC Designation Order*, at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, para. 22; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575-76, para. 28.

¹¹⁴See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹¹⁵See *Advantage Cellular ETC Designation Order* at 24; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1580, para. 35.

¹¹⁶While the *Virginia Cellular ETC Designation Order* analysis did not require that the ETC applicant meet the same public interest standard for both rural and non-rural study areas, it found that if the applicant met the public interest standard for the rural study areas, that would be sufficient to satisfy the public interest test for non-rural designations. It deferred to this proceeding the broader question of whether applicants must always satisfy the same public interest requirements for rural and non-rural study areas. *Virginia Cellular ETC Designation Order*, 19 (continued....)

Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.¹¹⁷ We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

43. We note that section 214 of the statute provides that, for areas served by a rural incumbent LEC, more than one ETC *may* be designated if doing so would serve the public interest.¹¹⁸ In addition, “[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest.”¹¹⁹ In contrast, section 214 provides that additional ETCs *shall* be designated in an area served by a non-rural incumbent LEC. Therefore, although we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.

1. Cost-Benefit Analysis

44. We conclude that we will continue to consider and balance the factors listed below as part of our overall analysis regarding whether the designation of an ETC will serve the public interest. In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.¹²⁰

- (1) Consumer Choice: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis.¹²¹ In

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FCC Rcd at 1575, para. 27. *See also Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21.

¹¹⁷*See Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1575, para. 27. *See also Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-32, para. 21. Prior to these orders, the Wireline Competition Bureau found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complied with the statutory eligibility obligations of section 214(e)(1) of the Act. *See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

¹¹⁸47 U.S.C. §§ 214(e)(2), (6).

¹¹⁹*Id.*

¹²⁰*See Advantage Cellular ETC Designation Order* at para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431, para. 20; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574, para. 26.

¹²¹*See Advantage Cellular ETC Designation Order* at para. 18; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas.¹²² The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.¹²³

- (2) *Advantages and Disadvantages of Particular Service Offering:* The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas,¹²⁴ the possibility that an ETC designation will allow customers to be subject to fewer toll charges,¹²⁵ and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services.¹²⁶ The Commission also examines disadvantages such as dropped call rates and poor coverage.¹²⁷

45. In addition, we believe that the requirements we have established in this Report and Order for becoming an ETC will help ensure that each ETC designation will serve the public interest. For example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.¹²⁸

46. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations.¹²⁹ While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed.¹³⁰ The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

¹²²See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²³See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6424, para. 4; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1565, para. 4.

¹²⁴See *Advantage Cellular ETC Designation Order* at para. 19; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1569, para. 12.

¹²⁵See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432-33, para. 23.

¹²⁶See *Advantage Cellular ETC Designation Order* at para. 19.

¹²⁷See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6433, para. 24; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1576, para. 30.

¹²⁸See *supra* paras. 21-23.

¹²⁹See *CenturyTel Comments* at 11-12, *GVNW Comments* at 13, *F. Williamson Comments* at 18-20, *ITTA Comments* at 21-27, *NASUCA Comments* at 33-34.

¹³⁰See *Recommended Decision*, 19 FCC Rcd. at 4274, para. 42.

47. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest.¹³¹ These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation.¹³² We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this Report and Order, allow for an appropriate public interest determination.

2. Potential for Creamskimming Effects

48. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*.¹³³ As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.¹³⁴

49. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.¹³⁵ The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service

¹³¹CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³²CC Communications Comments at 3-6, Coalition Comments at 4-13, F. Williamson Comments at 12-25, GVNW Consulting, Inc. Comments at 12-13, ITTA Comments at 20-27, NASUCA Comments at 36, SBC Comments at 8, TCA Comments at 9-11.

¹³³In this Order, the term "service area" is used in reference to both study and service areas. The 1996 Act provided that the term "service area" means the company's "study area" in areas served by a rural telephone company. See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8791-92, para. 25 (1997).

¹³⁴47 U.S.C. § 214(e)(5). Section 54.207 of the Commission's rules, which implements section 214(e)(5) of the Communications Act of 1934, as amended, provides that a rural telephone company's service area will be its 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 company." 47 C.F.R. § 54.207(b). Among other things, the Joint Board recommended that the state commissions and the Commission consider and protect against the potential for creamskimming when contemplating a request to redefine a service area. See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 97, 179-80 para. 172 (1996) (1996 Recommended Decision). In *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, the Commission applied to certain service area redefinition petitions the creamskimming analysis the Commission uses to decide ETC applications. *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

¹³⁵See *Advantage Cellular ETC Designation Order* at para. 20; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 32.

area.¹³⁶ By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.¹³⁷ Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC'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 incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas.¹³⁸ In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (*e.g.*, at the wire center level).¹³⁹

50. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.¹⁴⁰ For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve.¹⁴¹ Even if a carrier seeks to serve both high and low density wire

¹³⁶See *1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172. The Commission recognizes that the type of service provided by a competitive ETC may force it to seek designation in a service area that is smaller than or different from the rural incumbent LEC's service area. For example, the Commission has recognized that the lowest cost portion of a rural service area may be the only portion of the service area that a wireless carrier is licensed to serve. See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578, para. 33; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6435, para. 27. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural service may have the same effects on the universal service fund and the rural incumbent LEC as creamskimming. Accordingly, the analysis should consider not whether the competitive ETC intends to creamskim, but whether the ETC applicant's proposed service area has the effect of creamskimming.

¹³⁷See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9454-55, para. 196, App. J (1997).

¹³⁸See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 9399, para. 82 (1997).

¹³⁹See 47 C.F.R. § 54.315. As discussed *infra*, a rural incumbent LEC's wire center is the minimum geographic area for ETC designation. See *infra*, paras. 77-78.

¹⁴⁰See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1578-79, para. 34.

¹⁴¹See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35. In that case, the highest-density study area had a population density of 273 persons per square mile, while the average population density of the remaining wire centers in the study area was about 33 persons per square mile. *Id.*

centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.¹⁴²

51. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area.¹⁴³ Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level.¹⁴⁴ By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area.¹⁴⁵ By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas.¹⁴⁶ Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.¹⁴⁷ This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially.¹⁴⁸ Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.¹⁴⁹

52. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount.¹⁵⁰ Therefore, under the non-rural methodology, high-density, low-

¹⁴²See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6436-37, para. 31.

¹⁴³See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁴See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11300, para. 137 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), recon. pending; 47 C.F.R. § 54.315.

¹⁴⁵See *id.*

¹⁴⁶*Virginia Cellular ETC Designation Order*, FCC Rcd at 1580, para. 35. See also TDS Comments at 12.

¹⁴⁷See *Recommended Decision*, 19 FCC Rcd at 4278-79, para. 54; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁸*Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6437, para. 32.

¹⁴⁹See *id.*

¹⁵⁰See 47 C.F.R. §§ 54.309; 36.611 to 36.641. We note that rural incumbent LECs may also disaggregate support to the wire center level. See 47 C.F.R. § 54.315.

cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.¹⁵¹

53. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present.¹⁵² As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis.¹⁵³ We believe that the factors indicated above provide states adequate guidance in determining whether an ETC application presents creamskimming concerns.

3. Impact on the Fund

54. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive.¹⁵⁴ Indeed, given the size of the total high-cost fund — approximately \$3.8 billion a year — it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.¹⁵⁵ In addition, the Commission is considering in other proceedings, such as the *Rural Referral Proceeding*, how support is

¹⁵¹The non-rural mechanism determines the amount of federal support to be provided to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission's cost model, to a nationwide cost benchmark that is two standard deviations above the national average cost per line. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 18 FCC Rcd 22559, 22589, para. 49 (2003) (*Ninth Report and Order Remand Order*), appeal pending sub nom. *Qwest Communications International Inc. v. FCC & USA*, Tenth Cir. No. 03-9617; *Vermont Public Service Board v. FCC & USA*, D.C. Cir. No. 04-1015; and *SBC Communications Inc. v. FCC & USA*, D.C. Cir. No. 04-1018. Even in a non-rural study area where an incumbent LEC receives high-cost support, creamskimming concerns would not be present because support is targeted at the wire-center level based on relative cost, thereby calculating high-cost support on a more granular basis and significantly reducing the possibility that carriers would receive a windfall from support for that wire center. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20471, para. 70 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (*Qwest*).

¹⁵²State and Rural Coalition Comments at 9 (recommending a bright-line test for creamskimming when an applicant seeks to serve only the highest-density wire centers in a rural study area).

¹⁵³See *Highland Cellular ETC Designation Order*, at 19 FCC Rcd 6436-37, para. 31; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1579-80, para. 35.

¹⁵⁴See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6432, n. 73; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1577, n. 96.

¹⁵⁵See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2005, Appendix HC 1 (Universal Service Administrative Company, November 2, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, August 2, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, April 30, 2004); Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, January 30, 2004).

calculated for both rural incumbent LECs and ETCs.¹⁵⁶ We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission orders.

55. We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.

56. We decline, however, based on the record before us to adopt a specific national per-line support benchmark for designating ETCs. As the Joint Board noted, “[m]any factors mentioned by commenters as relevant to the public interest determination—such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment—may all affect the level of high-cost support received in an individual service area.”¹⁶² Many commenters have argued that a per-line benchmark that denies entry to competitive ETCs in high-cost areas may prevent consumers in high-cost areas from receiving the benefit of competitive service offerings.¹⁶⁵ Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality.¹⁶³ In addition, as a practical matter, we do not believe we currently have an adequate record to determine what specific benchmark or benchmark should be set.

57. For similar reasons, we also decline to adopt a proposal that would allow only one wireline ETC and one wireless ETC in each service area.¹⁵⁷ Such a proposal that limits the number of ETCs in each service area creates a practical problem of determining which wireless and wireline provider would be selected. We also reject the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area.¹⁵⁸ We believe that a more comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent. We also reject arguments that we should treat smaller wireless rural carriers differently than larger carriers.¹⁵⁹ We do not believe that subjecting smaller wireless carriers to

¹⁵⁶See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538, para. 1 (2004) (*Rural Referral Order*).

¹⁶²*Recommended Decision*, 19 FCC Rcd at 4274-75, para. 43.

¹⁶⁵CTIA Comments at 13, Sprint Comments at 33, WTA Comments at 1, Oregon Commission Comments at 5.

¹⁶³See *First Universal Service Report and Order*, 12 FCC Rcd at 8801-02, paras. 46-48 (pursuant to section 254(b)(7), adopting the principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies).

¹⁵⁷F. Williamson Comments at 10-11.

¹⁵⁸Verizon Comments at 9-14.

¹⁵⁹See *Rural Telecommunications Associations Comments* at 30-31.

an expedited ETC application process or a lower level of scrutiny would serve the public interest,¹⁶⁰ and we further believe that it may be contrary to the principle of competitive neutrality.

C. Permissive Guidelines for State ETC Designation Proceedings

58. We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

59. As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this Report and Order when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier,¹⁶¹ an area served by one or more rural carriers,¹⁶² or both.¹⁶³ A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

60. We also find that states that exercise jurisdiction over ETC proceedings should apply these requirements in a manner that will best promote the universal service goals found in section 254(b).¹⁶⁴ While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund. In addition, these guidelines are

¹⁶⁰ See Rural Telecommunications Associations Comments at 30-33, Attach. A.

¹⁶¹ See, e.g., *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996*, RCC Atlantic, Inc. d/b/a UniceL, Docket No. 5918 (Vt. Pub. Serv. Bd. June 26, 2003) (*Vermont UniceL ETC Order*).

¹⁶² See, e.g., *Request by Alaska Digitel, LLC for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (Reg. Comm'n of Ala. Aug. 28, 2003) (*Alaska Digitel ETC Order*).

¹⁶³ See 47 U.S.C. 214(e)(2) (noting that state commissions can designate both rural and non-rural carriers providing the carriers meet the requirements of the Act).

¹⁶⁴ 47 U.S.C. § 254(b).

designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.¹⁶⁵

61. We decline to mandate that state commissions adopt our requirements for ETC designations.¹⁶⁶ Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.¹⁶⁷ We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law.¹⁶⁸ States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements.¹⁶⁹ Because the guidelines we establish in this Report and Order are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.¹⁷⁰ We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1).¹⁷¹ Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.

62. We reject the argument that mandatory requirements are necessary to prevent waste, fraud, and abuse in the distribution of high-cost support.¹⁷² We note that safeguards already exist to protect against the misuse of high-cost support. For example, if a state commission believes that high-cost support is being used by an ETC in a manner that is inconsistent with section 254 of the Act, the state

¹⁶⁵See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

¹⁶⁶See *Recommended Decision*, 19 FCC Rcd at 4261, para. 10. See also ALLTEL Comments at 5, Bell South Comments at 4, Iowa Board Comments at 2, Nebraska Companies Comments at 2, Iowa Board Reply Comments at 2.

¹⁶⁷47 U.S.C. § 214(e)(2).

¹⁶⁸See 47 U.S.C. § 214(e)(2).

¹⁶⁹See *Recommended Decision*, 19 FCC Rcd at 4261, at para. 10.

¹⁷⁰See *id.* (citing CTIA Comments at 10, Idaho Tel. Ass'n Comments at 12, Montana Telecomms. Ass'n Comments at 10, Nebraska Rural Indep. Cos. Comments at 27).

¹⁷¹See *TOPUC v. FCC*, 183 F. 3d at 418. The Fifth Circuit Court determined that states may subject carriers designated as ETCs to eligibility requirements in addition to the eligibility requirements detailed in section 214(e)(1) of the Act. *Id.*

¹⁷²See ITTA Comments at 18. Because section 214(e)(2) of the Act gives primary responsibility to the states to designate ETCs, we reject comments that support guidelines that are binding on state commissions to counteract an alleged state bias in designating ETCs. See NASCUA Comments at 36, WTA Comments at 9, USTA Comments at 5-6.

commission may decline to file an annual certification or may withdraw an ETC's designation, which would ensure that funds are no longer distributed to the ETC.¹⁷³

63. We also note that the Commission may institute an inquiry on its own motion to ensure that high-cost support is used "only for the provision, maintenance, and upgrading of facilities and services" for the areas in which ETCs are designated.¹⁷⁴ In addition, if an ETC designated by the Commission fails to fulfill the requirements of sections 214 and 254 of the Act, the Commission has the authority to revoke a carrier's ETC designation.¹⁷⁵ The Commission also may assess forfeitures for violations of Commission rules and orders.¹⁷⁶ Consequently, we find that adequate measures exist to prevent waste, fraud and abuse of high-cost support by ETCs. Nevertheless, the Commission will continue to monitor use of universal service funds by ETCs and develop rules as necessary to continue to ensure that funds are used in a manner consistent with section 254 of the Act.

64. Commenters further argue that mandatory requirements are necessary to prevent growth of the universal service fund.¹⁷⁷ As discussed above, the Joint Board is currently contemplating in the *Rural Referral Proceeding* how universal service support can be effectively targeted to rural incumbent LECs and ETCs serving high-cost areas, while protecting against excessive fund growth.¹⁷⁸ We believe that proceeding is a more appropriate forum for determining ways to limit fund growth.

D. Administrative Requirements for ETC Designation Proceedings

65. Consistent with USAC's request, we note that all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code.¹⁷⁹ In addition, in instances where follow-up filings or other conditions have been imposed before the ETC designation is final, the Commission will notify USAC when the conditions have been fulfilled.¹⁸⁰ We also encourage state commissions to follow these procedures in ETC orders they adopt. USAC contends, and we agree, that inclusion of this information in ETC designation orders will greatly facilitate USAC's

¹⁷³See 47 C.F.R. §§ 54.313, 54.314.

¹⁷⁴47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁷⁵See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, at 14174, para. 15 (2000) (*Declaratory Ruling*), recon. pending. See also 47 U.S.C. § 254(e).

¹⁷⁶See 47 U.S.C. § 503(b).

¹⁷⁷See Alaska Telephone Comments at 3, ITTA Comments at 18, TDS Comments at 6, Montana ITS Reply Comments at 6.

¹⁷⁸See *Rural Referral Order*, 19 FCC Rcd at 11538, para. 1.

¹⁷⁹USAC Comments at 21.

¹⁸⁰See *id.*

data validation and other efforts to ensure that all carriers receive high-cost universal service support only in the areas in which they have been deemed eligible.¹⁸¹

66. In addition, for carriers that file ETC petitions with the Commission seeking designation on tribal lands, we establish procedures to ensure that the appropriate tribal governments and tribal regulatory authorities are notified and provided with an opportunity to engage in consultation with the Commission and to comment in the ETC designation proceeding.¹⁸² We find these procedures are consistent with the Commission's *Tribal Policy Statement*, released in June 2000, which commits the Commission "to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources."¹⁸³ Through consultation, the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments.¹⁸⁴

67. Specifically, the Commission requires that any applicant seeking ETC designation on tribal lands before the Commission provide copies of its petition to the affected tribal governments and tribal regulatory authorities at the time of filing.¹⁸⁵ In addition, the Commission will send the relevant public notice seeking comment on those petitions to the affected tribal governments and tribal regulatory authorities by overnight express mail.¹⁸⁶ As with the other guidelines adopted herein, we encourage state commissions to follow these guidelines for ETC designation proceedings affecting tribal lands so that the appropriate tribal governments and tribal regulatory authorities are notified of any tribal ETC petitions, related comment cycles or other opportunities to consult with the state commission and participate in the specific ETC designation proceeding.¹⁸⁷

¹⁸¹*Id.*

¹⁸²See NTTA Comments at 2; NNPC Reply Comments at 2. See also *Twelfth Report and Order*, 15 FCC Rcd at 12265, para. 115 (concluding that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service offered on tribal lands may petition the Commission for designation under section 214(e)(6) without first seeking designation from the state commission).

¹⁸³See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4081 (2000) (*Tribal Policy Statement*).

¹⁸⁴See NTTA Comments at 5-8; See also *Tribal Policy Statement* at 4.

¹⁸⁵See NTTA Comments at 4.

¹⁸⁶See NTTA Comments at 4. See also 47 U.S.C. § 553(b), which provides an exception to the notice and comment requirement for "rules of agency organization, procedure, or practice."

¹⁸⁷Although commenters request that the FCC impose mandatory requirements upon state commissions that exercise jurisdiction over ETC designations on tribal lands, we find state commissions are better suited to determine how to amend their ETC designation proceedings that involve tribal lands, in order to encourage consultation and participation by the affected tribal governments and tribal regulatory authorities.

V. ANNUAL CERTIFICATION AND REPORTING REQUIREMENTS

68. Our rules currently require all ETCs to make an annual certification, on or before October 1, that universal service support will be used for its intended purposes.¹⁸⁸ As recommended by the Joint Board, we maintain and augment this requirement. Specifically, in order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this Report and Order, to submit annually certain information regarding its network and its use of universal service funds.¹⁸⁹ These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.¹⁹⁰ In addition, following the effective date of this Report and Order, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under section 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

69. Every ETC designated by the Commission must submit the following information on an annual basis:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.¹⁹¹ The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).¹⁹² An outage is defined as a significant degradation in the ability of an

¹⁸⁸ 47 C.F.R. §§ 54.313, 54.314.

¹⁸⁹ These reporting requirements go beyond the current certification requirements of sections 54.313 and 54.314 of the Commission's rules. See 47 C.F.R. §§ 54.313, 54.314 (requiring annual certification that carrier is using high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."). See also 47 U.S.C. § 254(e).

¹⁹⁰ See e.g., 47 C.F.R. § 54.313; 54.314.

¹⁹¹ If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

¹⁹² See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.¹⁹³ Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;¹⁹⁴

- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;¹⁹⁵
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;¹⁹⁶
- (6) certification that the ETC is able to function in emergency situations;¹⁹⁷
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

¹⁹³See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

¹⁹⁴We do not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, we believe that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, we instead require that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, we require these reports annually instead of shortly after the outage occurs.

¹⁹⁵See *supra* para. 22 for a description of the steps a carrier must take to provide service upon reasonable request.

¹⁹⁶CTIA, *Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.

¹⁹⁷If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

70. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas.¹⁹⁸ The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.¹⁹⁹

71. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.²⁰⁰ In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

72. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC.²⁰¹ Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.²⁰²

¹⁹⁸In addition, the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

¹⁹⁹See 47 U.S.C. § 254(b)(3).

²⁰⁰See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1584-85, para. 46; *TOPUC v. FCC*, 183 F.3d at 417-18.

²⁰¹Rural Telecommunications Associations Comments at 48-50, US Cellular Comments at 20-23. In addition, carriers must submit their reports on a timely basis. In order to encourage timely filings, if a carrier files its annual reports late, it will not receive the entire amount of funding for the year. Instead, it will lose funding for the quarter of the funding year, consistent with how late it files. For example, if a carrier files its report on December 10, it will lose funding for the first quarter of the next year. If the carrier does not file until the second quarter after the due date, for example, on February 4, it will not receive funding for the first two quarters.

²⁰²See *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, 15174, para. 15 (2000), recon. pending. In addition, state commissions that believe support is not being used for its intended purposes may refrain from certifying a competitive ETC, which in turn will suspend distribution of high-cost support to that ETC.

VI. OTHER ISSUES

A. Service Area Redefinition Process

73. Section 214(e)(5) of 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.²⁰³ For an area served by a rural incumbent LEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC'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 company."²⁰⁴ This process of changing the incumbent LEC's service area — and therefore the competitive ETC's service area — is known as the redefinition of a service area. The Commission adopted section 54.207(c) of its rules to implement this requirement.²⁰⁵

74. In its *Recommended Decision*, the Joint Board recommended that the Commission retain procedures established by the Commission in 1997 for the redefinition of rural service areas.²⁰⁶ We agree with that recommendation, and do not believe that changes are necessary at this time to our procedures for redefining rural service areas. We agree with the Joint Board that in redefining an incumbent LEC's service area so as to conform with the service area of a new ETC, the states and Commission should continue to work in concert to decide whether a different service area definition would better serve the public interest.²⁰⁷ First, under the current redefinition procedures for new ETCs, both state commissions and the Commission employ rigorous and fact-intensive analyses of

²⁰³ See 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.")

²⁰⁴ *Id.*

²⁰⁵ Section 54.207(c) of the Commission's rules provides the mechanism by which a state commission may propose to redefine a rural incumbent LEC's service area for purposes of determining universal service obligations and support. See 47 C.F.R. §§ 54.207(a), (c). The Commission has authority to propose a service area redefinition on its own motion under section 54.207(d) of the Commission's rules, but such redefinition would not go into effect without the agreement of the relevant state commission. See 47 C.F.R. § 54.207(d). Under section 54.207(c)(1), a state may petition the Commission for a redefinition or a party may petition the Commission with the state's proposal to redefine. The petition must contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. See 47 C.F.R. § 54.207(c)(1). Section 54.207(c)(3) provides that the Commission may initiate a proceeding to consider a state commission's proposal to redefine the area served by a rural incumbent LEC within 90 days of the release date of a public notice. See 47 C.F.R. § 54.207(c)(3). If the Commission initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state commission and the Commission agree upon the definition of a rural carrier service area, in accordance with section 214(c)(5) of the Act. If the Commission does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the Commission and takes effect in accordance with state procedures. See 47 C.F.R. § 54.207(c)(3)(ii).

²⁰⁶ See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

²⁰⁷ See *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC's ability to serve the entire study area, including the potential for creamskimming that may result from the redefinition.²⁰⁸ In addition, public comment is invited during every step in the process to ensure that the states and Commission are fully apprised of any impact the redefinition may have on the rural incumbent LEC.²⁰⁹

75. We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are designated in an incumbent LEC's service area.²¹⁰ In particular, we find that this proposal ignores the provision in section 214(e)(5) that allows redefinition to occur.²¹¹ In any event, the process described above adequately protects against harm to the rural incumbent LEC that may result from redefinition. We also reject the argument posed by certain commenters that contend that the Commission should require redefinition of all service areas for which competitive ETCs seek designation or have been designated instead of redefining service areas on a case-by-case basis.²¹² At this time, we believe that the existing case-specific analysis adequately protects the interests of incumbent LECs.

B. Pending Redefinition Petitions

76. The Commission has before it several petitions seeking redefinition of incumbent LEC service areas.²¹³ We grant these petitions as described below. These petitions, which were filed by either

²⁰⁸ See *supra* paras. 48-52. The Commission employs the same creamskimming analysis based on population density data used in the ETC designations for which it possesses jurisdiction for redefinition petitions. See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6440, para. 39; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1582, para. 42. See also *Recommended Decision*, 19 FCC Rcd at 4279, para. 55.

²⁰⁹ See *Recommendation Decision*, 19 FCC Rcd at 4279, para. 55.

²¹⁰ See USTA Comments at 12-13; Nebraska RICs Reply Comments at 13.

²¹¹ 47 U.S.C. §214(e)(5).

²¹² See Dobson Comments at 15; GCI Comments at 24; Rural Telecommunications Associations Comments at 23; US Cellular Comments at 40; Cox Reply Comments at 3-5.

²¹³ See Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan, filed December 17, 2003 (ALLTEL-Michigan Petition); Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Wisconsin, filed November 21, 2003 (ALLTEL-Wisconsin Petition); Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company, filed August 12, 2002 (Colorado PUC-Delta Petition); Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR § 54.207(c), for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, a Rural Telephone Company, filed May 30, 2003 (Colorado PUC-Wiggins Petition); Petition of the Minnesota Public Utilities Commission for FCC Agreement to Redefine the Service Areas of Twelve Minnesota Rural Telephone Companies, filed August 7, 2003 (Minnesota PUC Petition); Petition by RCC Minnesota, Inc., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Maine, filed June 24, 2003 (RCC Minnesota-State of Maine Petition); American Cellular Corporation Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. § 54.207(c), filed July 16, 2004 (American Cellular Petition); Petition of CTC Telecom, Inc. for Redefinition of the Service Area of CenturyTel of the Midwest-Wisconsin, filed June 30, 2004 (CTC Telecom-Wisconsin); Petition by RCC Minnesota, Inc. and Wireless Alliance, LLC., Pursuant to 47 C.F.R. Section 54.207(c), for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Minnesota, filed August 27, 2004 (RCC Minnesota-State of Minnesota Petition).

a competitive ETC or a state commission, fall into three categories. One category involves petitions seeking to redefine a rural incumbent LEC's service area into multiple smaller service areas at the wire center level.²¹⁴ The second category of petitions involves ETCs that were designated for service areas that included portions of the incumbent LEC's wire centers instead of entire wire centers. These petitions seek to redefine the rural incumbent LEC service area for the same areas, including some partial wire centers, such that the ETC's designated service area and the incumbent LEC's redefined service area would be the same.²¹⁵ The third category involves two petitions that seek to redefine the incumbent LEC's service area into multiple smaller service areas at the wire center level.²¹⁶ However, the state commissions had designated these carriers' service areas to include some areas smaller than the incumbent LEC's wire centers. As a result, the designated service areas and the proposed redefined areas are not the same.

77. Since these petitions were filed,²¹⁷ the Commission released the *Highland Cellular ETC Designation Order*, in which the Commission rejected Highland's petition for designation in only a portion of a rural incumbent LEC's service area.²¹⁸ Specifically, Highland requested that it be allowed to serve parts of the rural incumbent LEC's wire centers. We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest.²¹⁹ We also found that the competitive ETC applicant must commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county or town boundary lines.²²⁰ We continue to believe, as we stated in the *Highland Cellular ETC Designation Order*, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.²²¹

78. In this Report and Order, we conclude that the same principles that we apply to ETC designation requests also apply when we are considering whether to grant a petition for redefinition.²²² We recognize, however, that because of the timing of the underlying state ETC designation decisions,

²¹⁴See ALLTEL-Michigan Petition; ALLTEL-Wisconsin Petition; CTC Telecom-Wisconsin; See Colorado PUC-Delta Petition; Colorado PUC-Wiggins Petition.

²¹⁵See American Cellular Petition; Minnesota PUC Petition.

²¹⁶See RCC Minnesota-State of Maine Petition; RCC Minnesota-State of Minnesota Petition.

²¹⁷Three of the pending petitions seeking redefinition were submitted subsequent to the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions. Specifically, the *CTC Telecom-Wisconsin* was filed on June 30, 2004, the *American Cellular Petition* was filed on July 16, 2004, and the *RCC Minnesota-State of Minnesota Petition* was filed on August 27, 2004. We believe that because these proceedings were being conducted as our *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* decisions were being released, it was difficult for the petitioners and their respective state commissions to be fully aware of the requirements of our decisions.

²¹⁸See *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6438, para. 33.

²¹⁹See *id.*

²²⁰See *id.*

²²¹*Id.*

²²²See *supra* para. 74.

many of these pending petitions could not be in full compliance with the factors considered in the *Highland Cellular ETC Designation Order*. For example, some petitions follow the ETC designation and redefinition framework that was applied by the Commission prior to the *Highland Cellular ETC Designation Order*.²²³ Other petitions have not presented a creamskimming analysis that examines population density data to determine whether the ETC is seeking designation only in high-density wire centers of the affected study area, which could undercut the rural incumbent LEC's ability to provide service throughout its entire study area, as detailed in the *Virginia Cellular ETC Designation Order*.²²⁴ As a result, because the Commission had not fully elaborated on its creamskimming analysis based on population density or adopted the policy that competitive LEC service areas should not be defined below the wire center level, these state commissions granting ETC designation and seeking redefinition could not have applied the requirements set forth in the *Highland Cellular ETC Designation Order*.

79. Because the states complied with applicable federal rules and guidelines at the time the redefinition petitions were filed, we decline to upset those determinations. We therefore find that granting these redefinition petitions would serve the public interest. Accordingly, we grant these redefinition petitions pursuant to section 214(e)(5) of the Act.²²⁵ On a going forward basis, however, we intend to rigorously apply the standards set forth in the *Highland Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order*.

C. Identification of Wireless Customer Locations

80. *Background.* In the *Rural Task Force Order*, the Commission required wireless competitive ETCs to use the customer's billing address to identify the location of a mobile wireless customer.²²⁶ The Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes.²²⁷ The Commission recognized, however, that the use of a customer's billing address might allow carriers to identify a customer in a high-cost zone when service is primarily taken in a low-cost zone for the purpose of receiving a higher level of per-line support.²²⁸ The Commission stated that it would take appropriate enforcement action if an ETC were to engage in such arbitrage, and that it might revisit the use of a customer's billing address as more mobile wireless carriers become eligible to receive support.²²⁹

81. In the *Rural Task Force Order*, the Commission declined to use the Mobile Telecommunications Sourcing Act (MTSA) definition of "place of primary use" to determine a mobile wireless customer's location.²³⁰ In declining to adopt the MTSA definition to determine wireless

²²³See *RCC Alabama ETC Designation Order*, 17 FCC Rcd at 23547-49, paras. 37-42.

²²⁴See e.g., ALLTEL-Wisconsin Petition; RCC Minnesota-State of Maine Petition. See *supra* paras. 49-51.

²²⁵47 U.S.C. § 214(e)(5).

²²⁶*Rural Task Force Order*, 16 FCC Rcd at 11314, para. 180.

²²⁷*Rural Task Force Order*, 16 FCC Rcd at 11314-15, paras. 180-181.

²²⁸*Rural Task Force Order*, 16 FCC Rcd at 11315-16, para. 183.

²²⁹*Id.*

²³⁰*Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182. The MTSA, which was intended to address the difficulty in identifying the site of a mobile telephone call for transactional tax purposes, sources all wireless calls and mobile telecommunications services to the "place of primary use." Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116-126. In the MTSA, the place of primary use is defined as "the street address representative of (continued....)"

customer location for universal service purposes, the Commission expressed concern that states might not have established databases pursuant to the Act, and that use of the MTSA definition might impose undue administrative burdens on mobile wireless ETCs.²³¹ In its *Recommended Decision*, the Joint Board determined that the Commission should further develop the record on defining mobile wireless customer location in terms of place of primary use, as defined by the MTSA, for universal service purposes.²³² In particular, the Joint Board concluded that the place of primary use represents the preferred definition of wireless customer location for universal service purposes because it reflects whether a customer actually uses mobile wireless phone service in a high-cost area. The Joint Board therefore recommended that the Commission develop the record on: (1) whether the MTSA's place of primary use approach is an efficient method for determining the location of mobile service lines; (2) whether a "place of primary use" definition should be optional or mandatory; (3) whether a definition based on place of primary use would alleviate concerns about fraudulent billing addresses, and; (4) if the place of primary use definition is adopted, how it should work in conjunction with virtual NXX.²³³

82. *Discussion.* We are not convinced that there is a significant difference between our current definition, which relies on a customer's billing address, and the MTSA definition, which relies on the customer's residential street address or primary business street address. In a large percentage of cases, the two will be the same. In both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider.²³⁴ If anything, customers have a greater incentive to provide false or misleading information under the MTSA, which will govern applicable taxes imposed on the customer. Further, as noted in the *Rural Task Force Order*, if a competitive ETC misuses a customer's billing address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the purpose of receiving a higher level of per-line support, the Commission may take appropriate enforcement action.²³⁵ We further note that, to date, we are not aware of any carriers filing petitions before the Commission contending that a wireless ETC is misusing customer billing addresses for arbitrage purposes.

83. As a result, we decline to change our method for identifying the location of mobile wireless customers. We, therefore, do not adopt the place of primary use definition at this time. Moreover, we note that few commenters provided responses to the specific questions from the Joint Board.²³⁶ The Iowa

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where the customer's use of the mobile telecommunications service primarily occurs, which must be - (A) the residential street address or the primary business street address of the customer; and (B) within the licensed service area of the [customer's mobile telecommunications service provider]." *Id.*

²³¹ *Rural Task Force Order*, 16 FCC Rcd at 11315, para. 182.

²³² *See Recommended Decision*, 19 FCC Rcd at 4280, para. 57.

²³³ *Recommended Decision*, 19 FCC Rcd at 4300, para. 103. NXX refers to the first three digits of a seven digit telephone number. Virtual NXX is a service where carriers assign an NXX to a customer who is physically not located in the exchange where the NXX is rate centered.

²³⁴ 4 U.S.C. § 122(a)(1) (service providers may rely on the address provided by the customer).

²³⁵ *See Seventh Report and Order*, 14 FCC Rcd at 8115-16 para. 78 (noting the availability of the formal complaint process under section 208 of the Act if a State or other party believes a carrier has mis-applied its high-cost support in a manner that violates the Communications Act or Commission rules). *See also Ninth Report and Order*, 14 FCC Rcd at 20488, para. 110.

²³⁶ CenturyTel states that the billing address method and primary use standard proposed by the Joint Board are not sufficient for determining wireless ETC lines in a service area. *See CenturyTel Comments* at 10-11. ITTA and (continued....)

Utilities Board, one of the few commenters responding to the Joint Board's questions, submitted an analysis concerning the billing address methodology that found that only a small number of customers have billing addresses in locations other than where service is located.²³⁷ Given the limited data we currently have, we see no reason to modify our method of determining wireless customer locations.²³⁸

D. Accurate, Legible, and Consistent Maps

84. *Background.* Under the Commission's rules, a rural incumbent LEC electing to disaggregate and target high-cost support must submit to USAC "maps which precisely identify the boundaries of the designated disaggregation zones of support within the incumbent LEC's study area."²³⁹ In the *Rural Task Force Order*, the Commission explained that "the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner."²⁴⁰ The Commission further stated that, "in order to ensure portability and predictability in the delivery of support," it would require rural incumbent LECs to "submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified."²⁴¹ USAC was directed to make those maps available for public inspection by competitors and other interested parties.²⁴² Some commenters indicate that the maps filed by rural incumbent LECs pursuant to section 54.315(f)(1) and the information available through USAC are of varying quality and utility.²⁴³ Others suggest that improved quality and reliability of maps submitted by incumbent LECs would allow for better targeting of support.²⁴⁴

85. In response to the concerns raised by commenters, the Joint Board recommended that the Commission direct USAC to develop standards for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules in a uniform, electronic format. The Joint Board contended that the development of such standards would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC

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Sprint support the Joint Board's proposal that wireless customer location should be the place of primary use. See ITTA Comments at 28, Sprint Comments at 35.

²³⁷Iowa Board Comments at 8-9. Centennial also stated that no evidence suggests the current method results in support being distributed improperly. Centennial Comments at 17.

²³⁸For similar reasons, we see no need to adopt CenturyTel's proposal to provide support to wireless ETC customers where usage primarily occurs in high-cost areas. See CenturyTel Comments at 10-11. Specifically, because we do not distribute high-cost support based on an ETC's customer's usage, we do not believe that we should look into wireless ETC customers' usage to determine support levels.

²³⁹47 C.F.R. § 54.315(f)(4).

²⁴⁰*Rural Task Force Order*, 16 FCC Rcd at 11307-08, para. 161.

²⁴¹*Id.*

²⁴²*Id.*

²⁴³See, e.g., US Cellular Comments at 17-18; Rural Indep. Competitive Alliance Comments at 27.

²⁴⁴See *Recommended Decision*, 19 FCC Rcd at 4300, n. 290 ("What will improve the ability to target subscribers is an FCC requirement that incumbent LECs who disaggregate support submit accurate and legible cost zone maps in a consistent electronic format so that competitive ETCs are able to easily determine the appropriate cost zones for customers." (quoting Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Comments at 26)).

and that, as the universal service administrator, USAC is the appropriate entity to develop such standards.²⁴⁵

86. *Discussion.* We agree with the Joint Board and commenters and find that accurate, legible and consistent maps would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC.²⁴⁶ Among other things, accurate and legible maps will assist in the ETC designation process and ensure that high-cost support is targeted to the appropriate service areas. Accordingly, we direct USAC, in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules.

E. Support to Newly Designated ETCs

87. *Background.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."²⁴⁷ Once a carrier is designated as an ETC, additional requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. In particular, section 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."²⁴⁸

88. To implement this statutory provision, the Commission adopted an annual certification requirement. Specifically, sections 54.313 and 54.314 of the Commission's rules provide that state commissions must file an annual certification with USAC and with the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."²⁴⁹ In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and to USAC that federal high-cost support will be used in a manner consistent with section 254(e).²⁵⁰ Sections 54.313 and 54.314 also provide that certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.²⁵¹ If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.²⁵² The Commission established this schedule to allow USAC

²⁴⁵ See *Recommended Decision*, 19 FCC Rcd at 4301, para. 105.

²⁴⁶ Dobson Comments at 31; Iowa Board Comments at 9-10.

²⁴⁷ 47 U.S.C. § 254(e).

²⁴⁸ 47 U.S.C. § 254(e).

²⁴⁹ 47 C.F.R. §§ 54.313, 54.314. The certification requirement for non-rural ETCs is found in section 54.313 of the Commission's rules.

²⁵⁰ See *Rural Task Force Order*, 16 FCC Rcd at 11318, para. 189; 47 C.F.R. § 54.314(b).

²⁵¹ 47 C.F.R. § 54.314(d)(1).

²⁵² See 47 C.F.R. § 54.314(d).

sufficient time to process section 254(e) certifications and to calculate estimated high-cost demand amounts for submission to the Commission.²⁵³

89. Under the Commission's current certification rules, the timing of a carrier's ETC designation may cause it to miss a certification filing deadline. As a result, a recently designated ETC's support may not begin to be disbursed until well after the ETC's designation date. For example, if a carrier is designated as an ETC on December 20, and the state commission with jurisdiction over the carrier files a certification on behalf of the ETC on January 15, that carrier will not begin to receive support until the third quarter of that year — more than six months after the carrier was designated an ETC. Therefore, although the Commission's rules provide a mechanism for certifications to be filed on a quarterly basis, payment of high-cost support for recently designated ETCs under this schedule may be delayed until well after the initial certification is made. Consequently, newly designated ETCs that have missed the Commission's certification filing deadlines due to the timing of their ETC designation date have been granted waivers of the certification filing deadlines.²⁵⁴

90. Under section 54.307(d) of the Commission's rules, as a prerequisite for universal service high-cost support, ETCs serving both rural and non-rural service areas must also file the number of working loops and other related data for the customers they serve in the incumbent's service area.²⁵⁵ To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, the Commission requires that ETCs submit such line count data on a quarterly basis.²⁵⁶ Therefore, under the quarterly schedule established by the Commission, line count data are due on July 31, September 30, December 30, and March 30 of each year.²⁵⁷ Consistent with section

²⁵³See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Two months prior to the beginning of each quarter, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC needs to know no later than October 1 which carriers have been certified under the Commission's rules. See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191.

²⁵⁴See, e.g., *Federal-State Joint Board on Universal Service, West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 (Wireline Compet. Bur. 2002) (granting a waiver of the October 1 certification filing deadline). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Declaratory Ruling, CC Docket No. 96-45, 18 FCC Rcd 14689, 14691, para. 6 (Wireline Compet. Bur., Telecom. Access Policy Div. rel. July 18, 2003) (*Western Wireless Order*).

²⁵⁵47 C.F.R. § 54.307(b).

²⁵⁶47 C.F.R. § 54.307; see *Rural Task Force Order*, 16 FCC Rcd at 11298, para. 134; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Order on Reconsideration, 15 FCC Rcd 12070, 12078, para. 18 (2000) (*Twentieth Order on Reconsideration*).

²⁵⁷47 C.F.R. § 54.307(c). Specifically, section 54.307 states, "(c) [a] competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule. (1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year; (2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year; (3) No later than (continued....)"

54.307(c) of the Commission's rules, under its administration of the high-cost program, USAC bases its quarterly support payments on these quarterly line count data submissions. For ETCs designated in areas served by rural incumbent LECs, line count data submitted on March 30 are used to target support for the third and fourth quarters of each year, line count data filed on September 30 are used to target support for the first quarter of the following year, and line count data filed on December 30 are used to target support for the second quarter of the following year. For ETCs designated in areas served by non-rural incumbent LECs, line counts filed on March 30 are used for third quarter support, line counts filed on July 31 are used for fourth quarter support, line counts filed on September 30 are used for first quarter support, and line counts filed on December 30 are used for second quarter support.²⁵⁸

91. Under the filing schedules described above, carriers that receive a late ETC designation may miss quarterly filing deadlines that could affect USAC's cost estimates for the relevant quarter. Also, an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support. In light of the delay in support that can be caused by ETC designations occurring after line count certification filing deadlines, we sought comment in the *ETC Designation NPRM* on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.²⁵⁹

92. Discussion. We conclude that in order to provide universal service support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.²⁶⁰ As suggested by commenters, including USAC, revising the certification and line count deadline rules will enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date. Additionally, this modification will eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis. At the same time, for administrative efficiency and predictability, we must impose some time limits so that USAC can accurately calculate total high-cost support payments. Therefore, a newly-designated ETC's certification and line-count data must be filed within 60 days of its initial ETC designation from the state commission or Commission. If the newly designated ETC does not file within 60 days of the carrier's ETC designation date, the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis. We note that although USAC supports this revision, it has indicated that such funding should not flow to a newly designated ETC until its line count data are included in USAC's quarterly demand projections.²⁶¹ In order to avoid any administrative burdens associated with processing payments to a newly designated ETC, we agree that USAC shall distribute support only after the required line count data are available in USAC's quarterly demand projections.²⁶²

(Continued from previous page)

December 30th of each year, submit data as of June 30th of the existing calendar year; (4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year."

²⁵⁸See *Twentieth Order on Reconsideration*, 15 FCC Rcd at 12078, para. 17, n. 25.

²⁵⁹See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5. See also 47 C.F.R. §§ 54.307, 54.313, 54.314.

²⁶⁰See Appendix A for the revised rules.

²⁶¹See USAC Comments at 19.

²⁶²See e.g., *Federal-State Joint Board on Universal Service, Grande Communications, Inc.*, Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15584, para. 9, n.34 (2004) (establishing a process for USAC to disburse funds retroactively to an ETC's designation date).

As a result, unless a carrier has filed its data with USAC in advance of its ETC designation date, a carrier might have to wait an additional quarter before it begins receiving support.

F. Accepting Untimely Filed Certifications For Interstate Access Support.

93. *Background.* Section 54.809(c) of the Commission's rules states that in order for an ETC to receive Interstate Access Support (IAS), the ETC must file an annual certification on the date that it first files line count information and thereafter on June 30 of each year.²⁶³ As a result, the current rule prohibits an otherwise eligible carrier from receiving IAS for as much as a year if it misses the annual certification deadline. In the *MAG Order*, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support (ICLS) would not be eligible for support until the second calendar quarter after the certification is filed.²⁶⁴ For example, if a carrier untimely files its required annual June 30 certification on July 15, it will be eligible to receive ICLS support beginning January 1 of the following year. Therefore, the *MAG Order* establishes a supplemental certified filing process that prevents an ETC from losing ICLS for an entire year if it misses the June 30 certification deadline.²⁶⁵ In the *ETC Designation NPRM*, the Commission proposed adopting a similar supplemental process for accepting untimely certifications for the receipt of IAS.²⁶⁶

94. *Discussion.* We adopt the proposal in the *ETC Designation NPRM* that establishes a procedure for accepting untimely filed certifications for IAS. We conclude that allowing an ETC that misses the June 30 certification deadline to receive IAS support following the filing of the untimely certification will not unduly harm a carrier that files an annual certification late and will eliminate the need for a carrier to seek a waiver of the filing certification deadlines rules.²⁶⁷ At the same time, by not allowing a carrier to receive IAS support for the entire year, the carrier still has the incentive to file the certification on a timely basis in order to not interrupt its receipt of IAS support. We, therefore, adopt a quarterly certification schedule to accommodate late filings. Specifically, a price cap LEC or competitive ETC that misses the June 30 annual IAS certification deadline shall receive support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2) carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

²⁶³ 47 C.F.R. § 54.809(c). IAS helps offset interstate access charges for price-cap carriers. 47 C.F.R. §§ 54.800, *et. seq.* Each competitive ETC that provides supported services within the study area of a price-cap local exchange carrier receives IAS for each line that it serves within that study area. 47 C.F.R. § 54.807(a).

²⁶⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket No. 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613, 19687-88, para. 176 (2001) (MAG Order); 47 C.F.R. § 54.904(d).*

²⁶⁵ *MAG Order*, 16 FCC Rcd at 19687-88, para. 176.

²⁶⁶ See *ETC Designation NPRM*, 19 FCC Rcd at 10801, para. 5.

²⁶⁷ See Appendix A for the revised rule.

VII. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

95. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*, set forth at Appendix C.

B. Congressional Review Act

96. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress pursuant to the Congressional Review Act.²⁶⁸ In addition, the Commission will send a copy of the *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the *Federal Register*.²⁶⁹

C. Paperwork Reduction Act

97. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

D. Filing Procedures

98. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²⁷⁰ interested parties may file comments not later than 60 days after publication of this *Report and Order* in the Federal Register and may file reply comments not later than 90 days after publication of this *Report and Order* in the Federal Register. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁷¹

99. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at www.fcc.gov/e-file/email.html.

²⁶⁸See 5 U.S.C. § 801(a)(1)(A).

²⁶⁹See 5 U.S.C. § 604(b).

²⁷⁰47 C.F.R. §§ 1.415, 1.419.

²⁷¹See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326 (1998).

100. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

101. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

| If you are sending this type of document or using this delivery method... | It should be addressed for delivery to... |
|--|---|
| Hand-delivered or messenger-delivered paper filings for the Commission's Secretary | 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.) |
| Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) | 9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.) |
| United States Postal Service first-class mail, Express Mail, and Priority Mail | 445 12 th Street, SW Washington, DC 20554 |

102. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02-60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger).

103. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

104. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on this *Report and Order*, i.e., on or before 60 days after publication of this *Report and Order* in the Federal Register. Written comments must be submitted by OMB on the

proposed and/or modified information collections on or before 60 days after publication of this *Report and Order* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jbherman@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JThornton@omb.eop.gov.

105. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com.

E. Further Information

106. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This Report and Order can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/universalservice/highcost>.

107. For further information, contact Gina Spade or Thomas Buckley at (202) 418-7400 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VIII. ORDERING CLAUSES

108. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 214, 254, and 403, this *Report and Order* IS ADOPTED.

109. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in the attached Appendix A, effective thirty (30) days after the publication of this *Report and Order* in the Federal Register, except that the requirements subject to the Paperwork Reduction Act are not effective until approved by Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the effective date of the requirements.

110. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

111. IT IS FURTHER ORDERED that the Universal Service Administrative Company shall to develop standards for the submission of any maps that eligible telecommunications carriers are required to submit to the Universal Service Administrative Company under the Commission's rules, to the extent discussed herein.

112. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on August 12, 2002, IS GRANTED, to the extent discussed herein.

113. IT IS FURTHER ORDERED that the petition for redefinition filed by the Colorado Public Utilities Commission, on May 30, 2003, IS GRANTED, to the extent discussed herein.

114. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc, on June 24, 2003, IS GRANTED, to the extent discussed herein.

115. IT IS FURTHER ORDERED that the petition for redefinition filed by the Minnesota Public Utilities Commission, on August 7, 2003, IS GRANTED, to the extent discussed herein.

116. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on November 21, 2003, IS GRANTED, to the extent discussed herein.

117. IT IS FURTHER ORDERED that the petition for redefinition filed by ALLTEL Communications, Inc., on December 17, 2003, IS GRANTED, to the extent discussed herein

118. IT IS FURTHER ORDERED that the petition for redefinition filed by CTC Telecom, Inc., on June 30, 2004, IS GRANTED, to the extent discussed herein.

119. IT IS FURTHER ORDERED that the petition for redefinition filed by American Cellular Corporation, on July 16, 2004, IS GRANTED, to the extent discussed herein.

120. IT IS FURTHER ORDERED that the petition for redefinition filed by RCC Minnesota, Inc. and Wireless Alliance, LLC, on August 27, 2004, IS GRANTED, to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE**Subpart C – Carriers Eligible for Universal Service Support**

1. Section 54.202 is added to subpart C to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) On or after the effective date of these rules, in order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

- (1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and

(B) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.
- (2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- (3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.
- (5) certify that the carrier acknowledges that the Commission may require it to provide equal access to long

distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determine that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

2. Section 54.209 is added to subpart C to read as follows:

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

- (1) a progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;
- (2) detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (3) the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(A);
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that it is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the carrier is able to function in emergency situations as set forth in §54.201(a)(2);
- (7) certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

- (1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.
- (2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.
- (3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

3. Section 54.307 is amended by adding paragraph (d) to subpart D to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a)-(c) * * * [unchanged]

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c).

4. Section 54.313 is amended by adding paragraph (d)(3)(vi) to subpart D to read as follows:

§ 54.313 State certification of support for non-rural carriers.

(a)-(d)(3)(v) * * * [unchanged]

(vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

5. Section 54.314 is amended by adding paragraph (d)(6) to subpart D to read as follows:

§ 54.314 State certification of support for rural carriers.

(a)-(d)(5) * * * [unchanged]

(6) (vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§54.301, 54.305, or 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

6. Section 54.809 is amended by adding the last sentence to paragraph (c) to subpart D to read as follows:

§ 54.809 Carrier certification.

(a)-(b) * * * [unchanged]

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

- (1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.
- (2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.
- (3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

APPENDIX

Requirements for Eligible Telecommunications Carrier (ETC) Designation, Reporting, and Certification.

A. STATUTORY DESIGNATION REQUIREMENTS

All ETC applicants must follow the federal statutory requirements for ETC designation. *See* 47 U.S.C. § 214(e)(1).

1. Common Carrier

The ETC applicant must be a "common carrier" as defined by 47 U.S.C. § 153(10).

2. Provide the Universal Services

The ETC applicant must demonstrate that it is capable of providing and will continuously provide throughout its proposed service area the universal services set forth in 47 C.F.R. § 54.101(a), either by using its own facilities or a combination of its own facilities and resale of another carrier's services. *See* 47 U.S.C. § 214(e)(1)(A). These services include:

- (a) Voice grade access to the public switched network;
- (b) Local calling;
- (c) Touch tone signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to 911 emergency services where available;
- (f) Access to operator services;
- (g) Access to long-distance service;
- (h) Access to directory assistance; and
- (i) Toll limitation service.

See 47 C.F.R. § 54.101(a).

3. Advertising

The ETC applicant must demonstrate that it will advertise the availability of its universal service offering and the charges therefore using media of general distribution. *See* 47 U.S.C. § 214(e)(1)(B).

4. Public Interest

The ETC applicant must demonstrate that ETC designation is consistent with the public interest, convenience, and necessity; and, in the case of an area served by a rural telephone company, demonstrate that the public interest will be met by an additional designation.

5. Tribal Notification

An ETC applicant seeking ETC designation for any part of tribal lands shall provide a copy of its application to the affected tribal government or tribal regulatory authority, as applicable, at the time it files its application with the Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an ETC on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable.

B. ADDITIONAL ELIGIBILITY REQUIREMENTS

All ETC applicants in Idaho must also satisfy the following additional requirements for ETC designation in Idaho. All ETCs previously designated by this Commission pursuant to 47 U.S.C. § 214(e)(2) must provide this information by September 1, 2006.

1. The Commitment and Ability to Provide Supported Services

The ETC applicant ~~must certify that it will:~~ (a) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (i) modifying or replacing the requesting customer's equipment; (ii) deploying roof-mounted antenna or other equipment; (iii) adjusting the nearest cell tower; (iv) adjusting network or customer facilities; (v) reselling services from another carrier's facilities to provide service; or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

The ETC applicant must also submit a two-year network improvement plan that ~~describes, with specificity,~~ proposed improvement or upgrades to the applicant's network ~~on a wire center-by-wire center basis~~ throughout its proposed designated service area. Each applicant ~~must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support;~~ the projected start date and completion date for each improvement and the

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~~estimated amount of investment for each project that is funded by high-cost support, the specific geographic areas where the improvements will be made, and the estimated population that will be served as a result of the improvements.~~ If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

2. The Ability to Remain Functional in Emergencies

The ETC applicant must demonstrate that it has a reasonable amount of back-up power to ensure functionality without an external power source, ~~is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.~~

3. A Commitment to Consumer Protection and Service

The ETC applicant must certify that it will comply with all applicable service quality standards and consumer protection rules. In addition, all wireless carriers seeking ETC designation must agree to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Code").

4. Description of the Local Usage Plans

The ETC applicant must provide ~~a description of its local usage plans and a~~ description of the local usage plan(s) of the incumbent local exchange carrier (ILEC).

C. REPORTING REQUIREMENTS

Beginning on September 1, 2006, and every year thereafter, all carriers requesting high-cost support must submit an annual report to the Commission.

1. Two-Year Network Improvement Plan and Progress Report

The annual report must include a progress report demonstrating what progress has been made in the last year toward goals outlined in the most recent two-year network improvement plan. The progress report must include maps detailing the ETC's progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. This information should be submitted at the wire center level. The annual report must also include a new two-year network

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improvement plan indicating plans for future investment. The two-year network improvement plan must provide the same information required for ETC designation. *See, infra*, Appendix B.1.

2. Outages

The annual report must include detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty (30) minutes in duration for each service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) the steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

3. Unfulfilled Service Requests

The annual report must include the number of requests for service from potential customers within the ETC's service areas that were unfulfilled in the previous year. The carrier shall also detail how it attempted to provide service to those potential customers.

4. Customer Complaints

The annual report must include the number of complaints per 1,000 handsets or lines.

5. Service Quality and Consumer Protection Certification

The annual report must include certification that the ETC is complying with applicable service quality standards and consumer protection rules.

6. Descriptions of the Applicant's local usage plan and that of the ILEC.

The annual report must include a description of the ETC's local usage plan(s) and a description of the ILEC's local usage plan(s).

D. CERTIFICATION REQUIREMENTS

In order to be eligible for federal USF funding in any given year, the carrier must comply with the annual reporting requirements above. In addition, the carrier must certify to the Commission that all federal high-cost support provided to the carrier for service areas in Idaho will be used only for the provision, maintenance, and upgrading of facilities and services for which the support was intended.

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