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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
IAT COMMUNICATIONS, INC., d.b.a.
NTCH-IDAHO, INC. OR CLEAR TALK
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

Case No. GNR-T-03-08

IN THE MATTER OF THE APPLICATION
OF NPCR, INC. d.b.a. NEXTEL PARTNERS
SEEKING DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER

Case No. GNR-T-03-16

**THIRD JOINT MOTION TO TAKE
OFFICIAL NOTICE**

The Idaho Telephone Association (“ITA”) and Citizens Telecommunications
Company of Idaho (“Citizens”) request that the Commission take official notice of the attached
Recommended Decision issued by the Federal-State Joint Board on Universal Service

("FSJBUS") in Case No. 96-45, "In the Matter of Federal-State Joint Board on Universal Service". In support of this Motion, Petitioners state as follows:

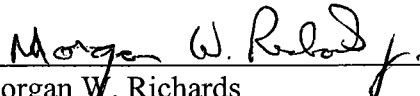
1. Rule 263.01(a)(2) of the Commission's Rules of Procedure provides that the Commission may take official notice of the orders of "any other regulatory agency, state or federal."
2. Evidentiary hearings in this matter concluded on December 11, 2003, and the parties' Briefs were submitted on January 23, 2004. The Joint Board did not release its recommendations until February 27, 2004, too late to be included in the parties' Briefs.
3. The Joint Board Recommendation is very relevant to the Commission's deliberations because it addresses issues relating to the applications by Nextel Partners and Clear Talk for ETC status.
4. No party will be prejudiced by the granting of this Motion.

WHEREFORE, ITA and Citizens respectfully request that the Commission enter its order:

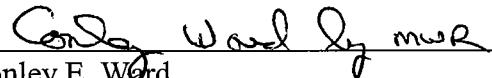
1. Taking official notice of the FSJBUS Recommended Decision; and
2. Directing that the FSJBUS Recommended Decision be marked as an exhibit and included in the record as a late-file exhibit.

Oral argument is not requested on this Motion.

Respectfully submitted this 6th day of April, 2004.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April, 2004, I caused a true and correct copy of the foregoing **THIRD JOINT MOTION TO TAKE OFFICIAL NOTICE** to be served by the method indicated below, and addressed to the following:

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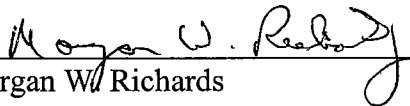
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Morgan W. Richards

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

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

RECOMMENDED DECISION

Adopted: February 27, 2004

Released: February 27, 2004

By the Federal-State Joint Board on Universal Service: Commissioners Abernathy, Jaber, and Dunleavy, and Consumer Advocate Gregg, issuing separate statements; Commissioner Martin dissenting in part, concurring in part, and issuing a separate statement; Commissioners Adelstein, Thompson, and Rowe approving in part, dissenting in part, and issuing a joint separate statement.

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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 |) | CC Docket No. 96-45 |
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Appendix A – Parties Filing Comments and Reply Comments

I. INTRODUCTION

1. In this Recommended Decision, the Federal-State Joint Board on Universal Service (“Joint Board”) provides its recommendations concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission’s rules regarding high-cost universal service support. Citing changes in the marketplace since the Commission’s rules were first adopted in 1997, the Commission requested 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.”¹ Consistent with the Commission’s directive in the *Referral Order*, we sought comment and held a public forum to address concerns regarding the designation and funding of ETCs in high-cost areas.² We provide our recommendations based on our review and consideration of the record developed in this proceeding. Overall, we believe that our recommendations will preserve and advance universal service, maintain competitive neutrality, and ensure long-term sustainability of the universal service fund.

2. Specifically, we recommend that the Commission adopt permissive federal guidelines for states to consider in proceedings to designate ETCs under section 214 of the Communications Act of 1934, as amended (“Act”).³ We believe that permissive federal guidelines for minimum ETC qualifications would allow for a more predictable application process among states. We also believe that our recommended guidelines would assist states in determining whether or not the public interest would be served by a carrier’s designation as an ETC. In so doing, we believe that guidelines should improve the long-term sustainability of the universal service fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive support. We recognize that there are instances where carriers are not subject to the jurisdiction of a state commission and that the Commission has explicit authority to designate carriers in these circumstances. Specifically, while section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs, section 214(e)(6) directs the Commission to designate the carriers when those carriers are not subject to the jurisdiction of the state commission. In these cases, we believe that the Commission should apply the proposed guidelines.

3. We also recommend that the Commission limit the scope of high-cost support to a single connection that provides access to the public telephone network. We believe that supporting a single connection is more consistent with the goals of section 254 of the Act than the present system, and is

¹ *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (*Referral Order*).

² On 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 (Jt. Bd. 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 (Wir. Comp. Bur. 2003) (providing notice of Joint Board *en banc* hearing).

³ See 47 U.S.C. § 214. The Communications Act of 1934 was amended by the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

necessary to preserve the sustainability of the universal service fund. We also believe that it would send more appropriate entry signals in rural and high-cost areas, and would be competitively neutral. To minimize the potential impact of restricting the scope of support in areas served by rural carriers, we recommend that the Commission seek comment on restating the total high-cost support flowing to a rural carrier in terms of first connections, and on other possible measures.⁴ As discussed below, we also recommend that the Commission seek comment on whether to restate support for non-rural carriers.⁵ In conjunction with these measures, we also recommend that high-cost support in areas served by rural carriers be capped on a per-line basis where a competitive carrier is designated as an ETC, and adjusted annually by an index factor.⁶

4. At this time, we decline to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs. Instead, we recommend that the Joint Board and Commission consider possible modifications to the basis of support as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.⁷ We believe that examining the basis of support for all ETCs under the rural and non-rural federal support mechanisms simultaneously would allow the Joint Board and the Commission to craft a more comprehensive approach and avoid the perils of piecemeal decision-making. If the Commission adopts our recommendations to limit the scope of support and to ensure that ETC designations are appropriately rigorous, such steps should slow fund growth due to competitive entry in the meantime.

II. ETC DESIGNATION PROCESS

5. We recommend a variety of measures below that relate to state proceedings involving designation of ETCs. To increase the opportunities for state commissions to conduct rigorous proceedings, we recommend that the Commission adopt permissive guidelines for minimum ETC qualifications. We also offer some guidance for state commissions in interpreting the public interest test found in section 214(e). In addition, we address the annual certification requirements under section 254(e) and recommend that the Commission encourage states to use that process to ensure that all ETCs use federal universal service support to provide the supported services and for associated infrastructure costs. Finally, we offer some observations regarding the service area redefinition process and disaggregation of support by rural carriers. We note here that in instances where carriers are not subject to the jurisdiction of a state commission, we urge the Commission to apply these same measures.

⁴ The term “rural carriers” refers to incumbent local exchange carriers (LECs) that meet the statutory definition of rural telephone company in section 153(37) of the Act. *See* 47 U.S.C. § 153(37). Under this definition, rural telephone companies are incumbent LECs that either serve study areas with fewer than 100,000 access lines or meet one of three alternative criteria. *Id.* The term “non-rural carriers” refers to incumbent LECs that do not meet the statutory definition of a rural telephone company.

⁵ *See supra* para. 76.

⁶ We note that, if the Commission were to adopt the “hold harmless” approach discussed below, per-line support would not be capped for incumbent carriers. *See infra* at para. 75. For purposes of this Recommended Decision, references to “line” or “per-line” are generally synonymous with “connection” or “per-connection.” The use of the term “line” is intended to relate to services provisioned over either wireline or wireless technology.

⁷ *See 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, Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11310, para. 169 (2001) (*Rural Task Force Order*); *see also Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-249 (rel. Oct. 27, 2003) at para. 25 (*Tenth Circuit Remand Order*).

A. Background

6. 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.”⁸ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another ETC).⁹

7. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.¹⁰ 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). 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

8. A state commission must allow an ETC to relinquish its designation in any area served by more than one ETC pursuant to section 214(e)(4) of the Act.¹² The relinquishing ETC must provide advance notice of such relinquishment to the state commission.¹³ Prior to allowing the relinquishing carrier to cease providing universal service, the state commission must require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served. The state commission also must require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities.¹⁴ The state commission must establish a time, not to exceed one year after the state commission approves the relinquishment, within which such purchase or construction by the remaining ETC or ETCs must be completed.¹⁵ The same ETC relinquishment procedure is also required of the Commission in instances where a carrier is not subject to the jurisdiction of a state commission.

⁸ 47 U.S.C. § 254(e).

⁹ 47 U.S.C. § 214(e)(1). The “service area” is the geographic area established by the state commission for the purposes of determining universal service support obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the case of an area served by a rural carrier, “service area” means such company’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. *Id.*; *see infra* paras. 49-53.

¹⁰ 47 U.S.C. § 214(e)(2). We note that the Commission has authority for performing ETC designations for carriers that are not “subject to the jurisdiction of a State commission” pursuant to 214(e)(6). 47 U.S.C. § 214(e)(6). The Commission’s requirements for ETC designations in section 214(e)(6) parallel the states’ requirements for ETC designations in section 214(e)(2). *Id.*

¹¹ 47 U.S.C. § 214(e)(2).

¹² *See* 47 U.S.C. § 214(e)(4).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

B. Discussion**1. Federal Guidelines for ETC Designations**

9. We recommend that the Commission adopt permissive federal guidelines for states to use when determining whether applicants are qualified to be designated as ETCs under section 214. We believe that guidelines are appropriate because the ETC application and designation process should be one that is rigorous. A rigorous ETC designation process should ensure that only fully qualified applicants receive designation as ETCs and that ETC designees are prepared to serve all customers within the designated service area. Additionally, a core set of minimum qualifications would allow for a more predictable application process among the states. We believe that our recommended guidelines would assist states in determining whether or not the public interest would be served by a carrier's designation as an ETC. We also believe that guidelines should improve the long-term sustainability of the fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive support.

10. We believe that federal guidelines concerning ETC qualifications should be flexible and non-binding on the states. Under our recommendation, state commissions would retain their rights to determine eligibility requirements for designating ETCs. Each state commission will be uniquely qualified to determine its own ETC eligibility requirements as the entity most familiar with the service area for which ETC designation is sought. Because these guidelines would be permissive, we reject the parties' arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations.¹⁶ We also believe that federal guidelines are consistent with the United States Court of Appeals for the Fifth Circuit holding that nothing in section 214(e) of the Act prohibits the states from imposing their own eligibility requirements beyond the statutory requirements described in section 214(e)(1).¹⁷ Even with the advent of permissive federal guidelines for ETC designations, states will continue to have the flexibility to impose additional eligibility requirements.

11. Federal guidelines concerning minimum qualifications should encourage state commissions to conduct rigorous reviews of ETC applications, including fact-intensive analyses. Because an ETC must be prepared to serve all customers within a designated service area, and must be willing to be the sole ETC should other ETCs withdraw from the market, states may appropriately establish minimum qualifications focused on the carrier's ability to provide the supported services to all consumers in the designated area upon reasonable request.¹⁸ Guidelines encouraging a rigorous application process are appropriate because section 214(e)(2) requires that designation of an additional ETC serve the public interest. Consistent with Section 254(b)(3) of the Act, we believe that a rigorous application process ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas.¹⁹

¹⁶ See, e.g., 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.

¹⁷ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (*TOPUC v. FCC*). The Fifth Circuit addressed the question of whether states may subject carriers designated as ETCs to eligibility requirements above and beyond the eligibility requirements of section 214(e)(1) of the Act. *Id.* See also Washington Indep. Tel. Ass'n Comments at 17.

¹⁸ See 47 U.S.C. § 214(e)(4).

¹⁹ 47 U.S.C. § 254(b)(3).

12. In recommending federal guidelines, we reject the arguments of some commenters that the current ETC criteria should not be expanded.²⁰ Instead, we believe that a specific, fact-intensive inquiry is the appropriate way to analyze the public interest when evaluating an ETC application for a rural area. For example, some commissions have cited generalized benefits of competition when evaluating ETC applications. While this may be appropriate, we do not believe that such an analysis is sufficient by itself. Section 214(e)(2) requires states to undertake a fact-intensive analysis to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act in the affected area. We discuss below some of the factors states may choose to consider in conducting this fact-intensive inquiry.

13. We believe that adopting a core set of minimum qualifications will promote a predictable application process across states and provide certainty for states in terms of what guidelines may be appropriate to consider in the public interest analysis. Many commenters, including incumbent LECs and their competitors, support this goal and achieving this goal should benefit incumbent LECs and competitors alike.²¹ Permissive guidelines will enable state commissions, when evaluating ETC designation requests, to evaluate section 214(e)(2) petitions in light of at least a minimum set of criteria. We agree with the commenters that permissive guidelines could improve consistency in the treatment of requests for ETC status.²² However, the goal of predictability will be promoted if states and the Commission both apply similar guidelines. Thus, we strongly encourage the adoption of the proposed guidelines. Guidelines should also help address arguments about what is appropriate for states to consider as part of the public interest analysis.

a. Applicability of Guidelines

14. We recommend that state commissions apply these permissive federal guidelines in all ETC proceedings. An ETC petition presented to a state commission can affect an area served by a non-rural carrier,²³ an area served by one or more rural carriers,²⁴ or both.²⁵ 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 wireline incumbent carrier.²⁶

15. Permissive federal guidelines for all ETC cases would be consistent with section 214(e)(2). That section prescribes that all state certification decisions must be consistent with the public interest,

²⁰ See, e.g., GCI Reply Comments at 27-28; Western Wireless Reply Comments at 42; Rural Cellular Ass'n/Alliance of Rural CMRS Carriers Reply Comments at 16-17.

²¹ See, e.g., Alaska Tel. Ass'n Comments at 3-5; BellSouth Reply Comments at 2-4; Dobson Comments at 15; MCI Comments at 7. See also NASUCA Comments at 9.

²² See, e.g., Dobson Comments at 15 (stating that uniform applications and procedures for analyzing the statutory ETC designation criteria might make the ETC designation process easier and more predictable for states and carriers).

²³ 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*).

²⁴ 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*).

²⁵ See, e.g., *Wisconsin U.S. Cellular ETC Order*.

²⁶ Although we intend the guidelines to apply in areas served by both rural carriers and non-rural carriers, we believe that states and the Commission should apply a higher level of scrutiny when evaluating ETC applications for designations in areas served by rural carriers. See *infra* paras. 17-18.

convenience, and necessity. We believe this statutory requirement demonstrates Congress's intention that state commissions evaluate local factual situations in ETC cases and exercise broad discretion in reaching their ultimate conclusion regarding the public interest, convenience and necessity. This view is also consistent with the ruling of the Fifth Circuit in *TOPUC v. FCC*, which held that states may impose their own eligibility requirements beyond those listed in section 254(b)(1).²⁷

16. We also believe that applying the permissive federal guidelines to all state ETC proceedings will best promote federal universal service goals found in section 254(b). While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications. They affect not only the dynamics of competition in the areas subject to the proceedings, but also the national strategies of new entrants. They also affect the overall size of the federal fund. We anticipate that the adoption of recommended federal guidelines would facilitate results that are fully consistent with the goals of section 254. In addition, broadly applied recommended federal guidelines would be most likely 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, able to be the sole ETC in a service area if all other ETCs relinquish their designations, and able to provide consumers an evolving level of universal service.

17. Rigorous review of ETC applications assumes added importance in areas served by rural carriers. The Act contains added requirements in these cases. Although Congress provided that states *shall* designate more than one ETC in areas served by non-rural carriers (provided such designation is consistent with the public interest, convenience, and necessity), the Act provides that states *may* designate multiple ETCs in areas served by rural carriers — thereby suggesting that states have greater discretion when evaluating applications for designation in rural carrier service areas.²⁸ In addition, before a state may designate an additional ETC in an area served by a rural carrier, the state must affirmatively find the designation to be in the public interest.²⁹ In establishing these additional statutory protections, we believe that Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas.³⁰ Permissive federal guidelines for minimum eligibility should assist states in effectuating that higher level of scrutiny in areas served by rural carriers.

18. The characteristics of many rural carrier service areas also support a more rigorous standard of eligibility. Rural carrier service areas often have low customer densities and high per-customer costs. Subsidies flowing from federal and state universal service funds are often substantial. The Rural Task Force in White Paper #2 documented these effects and explained that rural carriers serve areas with lower population and line density and serve a smaller proportion of business customers.³¹ These circumstances support our belief that state commissions should apply a particularly rigorous standard to the minimum

²⁷ See *TOPUC v. FCC*, 183 F.3d at 418.

²⁸ 47 U.S.C. § 214(e)(2). See also *TOPUC v. FCC*, 183 F.3d at 418. We note that the Arkansas Telecommunications Regulatory Reform Act of 1997 states that for purposes of the Arkansas state universal service fund and the federal universal service fund, there “shall be only one. . . [ETC] which shall be the incumbent [LEC] that is a rural telephone company. . .” See Act 77 of 1997, Senate Bill 54, 81st General Assembly, Regular Session, codified at Ark. Code. Ann. § 23-17-405(d)(1).

²⁹ 47 U.S.C. § 214(e)(2).

³⁰ In its comments, OPASTCO argues that Congress recognized in section 214(e)(2) of the Act that supporting competition would not always serve the public interest in areas served by rural telephone companies. See OPASTCO Comments at 40-41.

³¹ The Rural Difference, Rural Task Force, White Paper 2, January 2000, at 9-11 (*RTF White Paper*).

qualifications of applicants seeking ETC designation in rural carrier service areas.³²

b. Existing Minimum Eligibility Requirements

19. Before suggesting new minimum eligibility requirements, we begin with a review of the requirements for designation of ETCs as specified by section 214(e)(1) of the Act. First, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.³³ The ETC must offer such services either using its own facilities or a combination of its own facilities and resale of another carrier's services.³⁴ The services that are supported by the federal universal service support mechanisms are defined as: (1) voice grade access to the public switched network;³⁵ (2) local usage;³⁶ (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent;³⁷ (4) single-party service or its functional equivalent;³⁸ (5) access to emergency services, including 911 and enhanced 911;³⁹ (6) access to operator services;⁴⁰ (7) access to interexchange services;⁴¹ (8) access to directory assistance;⁴² and (9) toll limitation for qualifying low-

³² We also recognize that there are rural communities that are served by non-rural carriers. See *RTF White Paper* at 8 (stating that both rural and non-rural carriers service rural communities).

³³ 47 U.S.C. § 214(e)(1)(A).

³⁴ *Id.* An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.201(i).

³⁵ "Voice grade access" is defined as a "functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." For the purposes of Part 54, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz. 47 C.F.R. § 54.101(a)(1).

³⁶ "Local usage" means an "amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 C.F.R. § 54.101(a)(2).

³⁷ "Dual tone multi-frequency" (DTMF) is defined as a "method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time." 47 C.F.R. § 54.101(a)(3).

³⁸ "Single-party service" is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission." 47 C.F.R. § 54.101(a)(4).

³⁹ "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. "911" is defined as a "service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government." "Enhanced 911" is defined as "911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party." "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. 47 C.F.R. § 54.101(a)(5).

⁴⁰ "Access to operator services" is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." 47 C.F.R. § 54.101(a)(6).

⁴¹ "Access to interexchange service" is defined as the "use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network." 47 C.F.R. § 54.101(a)(7).

⁴² "Access to directory assistance" is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings." 47 C.F.R. § 54.101(a)(8).

income customers.⁴³ Second, throughout the service area for which designation is received, the ETC must advertise the supported services and the charges therefore using media of general distribution.⁴⁴ Pursuant to section 214(e)(1)(B), an ETC is required to advertise the availability and prices charged for the services that are supported by federal universal service support.⁴⁵ An ETC must also advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.⁴⁶

20. 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.⁴⁷ In the *Section 214(e) Declaratory Ruling*, the Commission concluded that interpreting section 214(e)(1)(A) to require the provision of service throughout a service area before ETC designation prohibits, or has the effect of prohibiting, the ability of competitive carriers to provide telecommunications service, in violation of section 253(a).⁴⁸ The Commission found that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service. In addition, the Commission concluded that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254.⁴⁹ Consequently, the Commission concluded that requiring the provision of service throughout the service area before designation would effectively preclude designation of new entrants as ETCs in violation of the intent of Congress.

c. Additional Minimum Eligibility Requirements

21. For the reasons stated above, we recommend that state commissions consider the additional minimum qualifications listed below when evaluating ETC designation requests.

⁴³ “Toll limitation” means either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, “toll limitation” means both toll blocking and toll control. 47 C.F.R. §§ 54.101(a)(9) and 54.400(d). “Toll blocking” is a service provided by carriers that allows consumers to elect not to allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. § 54.400(b). “Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. § 54.400(c).

⁴⁴ 47 U.S.C. § 214(e)(1)(B).

⁴⁵ *Id.*

⁴⁶ 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. In its *Twelfth Report and Order*, the Commission created a fourth tier (\$25.00 per month) of federal Lifeline support and established additional Link-Up support (\$70.00 per consumer) which is available to ETCs serving qualifying low-income individuals living on tribal lands. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 (2000) (*Twelfth Report and Order*).

⁴⁷ *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, 15172-73 (2000), *recon. pending* (*Section 214(e) Declaratory Ruling*).

⁴⁸ *Id.*

⁴⁹ *Section 214(e) Declaratory Ruling*, 15 FCC Rcd at 15179-81.

(i) Adequate Financial Resources

22. We recommend that the Commission adopt guidelines encouraging states to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area. We believe that it would neither be prudent nor serve the public interest if a financially unsound carrier is designated as an ETC, receives universal service support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations. In order to provide guidance in this area, we recommend that the Commission seek to further develop the record on the ways in which state commissions may determine whether an ETC applicant has adequate financial resources. Long-term viability can be based, for example, on plans that tie investment to customer growth and demands. In this regard, we note that the Commission has held that a new entrant “cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support” and “[i]n fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.”⁵⁰

(ii) Commitment and Ability to Provide the Supported Services

23. We recommend that the Commission adopt a guideline encouraging state commissions to require ETC applicants to demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service. States should require a demonstration of capability and commitment because this will help them ensure that an ETC applicant is willing and able to provide the supported services throughout the designated service area and to be the sole ETC in a service area if the incumbent LEC relinquishes its designation. States should have flexibility in implementing this guideline.

24. State commissions may choose to implement this requirement, for example, by requiring a formal build-out plan for areas where facilities are not yet built out at the time the ETC application is considered. State commissions have examined ETC applicants’ plans to serve new customers and build out their networks in a variety of ways. For example, the Arizona Corporation Commission (Arizona Commission) has evaluated an ETC’s plans to assist potential customers to receive service by employing various technical means.⁵¹ The Arizona Commission noted that the ETC had been operating for nearly ten years and had worked with five Native American tribes to secure adequate cell sites on Native American lands.⁵² In another case, a Minnesota Administrative Law Judge (Minnesota ALJ) examined an ETC’s plans to provide universal service to customers using .6-watt handheld phones or a 3-watt telephone and noted the applicant’s commitment to building 15 specific cell sites in high-cost areas that it would not otherwise include in its network expansion plans because of cost issues.⁵³ In its final order, the Minnesota Public Utilities Commission (Minnesota Commission) found it adequate that the company was able to offer its services through approximately 200 cell sites in and around the state; pledged to build an additional 15 cell sites upon designation as an ETC; pledged to meet customer orders for new service

⁵⁰ *Id.* at 15173, para. 13.

⁵¹ *See Arizona Smith Bagley ETC Order* at 6.

⁵² *Id.*

⁵³ *See Petition of Midwest Wireless Communications, L.L.C., for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT-6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at 6, 11 (Minn. Office of Admin. Hearings Dec. 31, 2002) (*Minnesota ALJ ETC Recommendation*).

