

Before The
Kentucky
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

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PUBLIC SERVICE
COMMISSION

In the Matter of the Petition of)
East Kentucky Network, LLC) Docket No. 2005-00045
d/b/a Appalachian Wireless)
For Designation as an Eligible) **PETITION OF EAST KENTUCKY**
Telecommunications Carrier) **NETWORK, LLC d/b/a**
Under 47 U.S.C. § 214(e)(2)) **APPALACHIAN WIRELESS**
) **FOR DESIGNATION AS AN ELIGIBLE**
) **TELECOMMUNICATIONS CARRIER**
)

East Kentucky Network, LLC d/b/a Appalachian Wireless (“AW”), by its counsel, submits this Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission’s (“FCC”) rules, 47 C.F.R. § 54.201. AW requests that it be designated as eligible to receive all available support from the federal Universal Service Fund (“USF”) including, but not limited to, support for rural, insular and high-cost areas and low-income customers. In support of this Petition, the following is respectfully shown:

I. Name and Address of Petitioner.

1. The name and address of Petitioner is East Kentucky Network, LLC, 355 Village Drive, Prestonsburg, KY 41653.

II. Applicable Statutes and Rules.

2. The statutes and rules implicated by the instant Petition area as follows: 47 U.S.C. §§ 153(27), 153(44), 153(46), 214(e), 253(b), 254(e), 332(c)(3); 47 C.F.R. §§ 51.5, 54.5, 54.101, 54.201, 54.207, 54.313 and 54.314.

III. Authorization and Service Area.

3. AW is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and for the purposes of Part 54 of the FCC's rules.¹ AW is therefore considered a common carrier under the Act.

4. AW is authorized by the FCC as a Cellular Radiotelephone Service provider in the Kentucky Rural Service Area 9 – Elliot, Kentucky and in the Kentucky Rural Service Area 10 – Powell, Kentucky. A map of AW's proposed service area is attached hereto as Exhibit A. AW is a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). AW provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5.

5. A telecommunications carrier may be designated as an ETC and receive universal service support throughout its designated service area if it agrees, throughout the proposed ETC service area to: (i) offer services that are supported by federal universal service support mechanisms, and (ii) advertise the availability of such services.² In its *First Report and Order* implementing Sections 214(e) and 254 of the Act, the FCC set forth the services a carrier must provide to be designated as an ETC in order to receive federal universal service support.³

6. Section 214(e)(2) of the Act provides that ETC designations shall be made for a "service area" designated by the state commission. In areas served by a non-rural company, the

¹ 47 U.S.C. § 54.1 *et seq.*

² *See* 47 U.S.C. § 214(e)(1).

³ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8809-25 (1997) ("*First Report and Order*").

state commission may establish an ETC service area for a competitor without federal concurrence.⁴ Accordingly, subject to the limited exceptions discussed *infra*,⁵ AW requests designation for its ETC service area in the portions of the study areas of BellSouth and Kentucky ALLTEL that are found within AW's licensed service area in Kentucky.

7. In areas served by a rural telephone company, "service area" means the incumbent local exchange carrier ("ILEC") study area unless and until the FCC and the states, taking into account recommendations of the Federal-State Joint Board on Universal Service, establish a different definition of service area for such company.⁶ Thus, where AW's proposed ETC service area covers an entire rural ILEC study area, the Kentucky Public Service Commission ("KYPSC") may designate AW as an ETC without the need to redefine the LEC service areas.

8. In some cases, AW's licensed service area does not cover a rural ILEC's service area in its entirety, solely because AW is not licensed by the FCC strictly along ILEC boundaries.⁷ In order to accommodate CMRS carriers who have authorized service areas that do not match ILEC wire centers, a state commission and the FCC may redefine the competitive ETC's service area along boundaries that are not identical with ILEC wire center boundaries.⁸ To do otherwise would effectively exclude wireless carriers as a class from receiving universal service support and, as discussed in Section VI, *infra*, would be contrary to the pro-competition

⁴ See 47 U.S.C. § 214(e)(5).

⁵ AW's proposed ETC service area differs from its FCC-licensed service area in limited instances to eliminate partially-covered rural LEC wire centers consistent with the FCC policy announced in *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular*").

⁶ See 47 C.F.R. § 54.207(b).

⁷ Upon information and belief, these carriers are Mountain Rural Tel. Coop. Corp., Leslie County Tel. Co. dba TDS, and Kentucky ALLTEL, Inc. - London.

⁸ See *First Report and Order, supra*, 12 FCC Rcd at 8879-80 (We. . .agree with the Joint Board that, if a state adopts a service area that is simply structured to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area, giving the incumbent an advantage.")

policies articulated by the FCC and other states. This process is known as “service area redefinition” and is governed by Section 54.207(c) of the FCC’s rules. Pursuant to this process, the KYPSC would include in its designation order a decision to redefine the affected rural ILECs’ service areas so that each wire center constitutes a separate service area. AW’s designation as an ETC in these areas would be conditional pending FCC concurrence with the proposed redefinition. Upon an order designating AW as an ETC the KYPSC, or AW at the KYPSCs direction, may file the petition for FCC concurrence. Once this concurrence is granted, AW’s ETC designation would immediately take effect in the partially covered rural ILEC service areas. Accordingly, for the rural ILEC service areas that are only partially covered by AW’s proposed ETC service area, AW hereby requests that the KYPSC (1) conditionally grant ETC status to AW in the portion of the ILEC service area found within AW’s proposed ETC service area; and (2) redefine the affected rural ILECs’ service areas so that each wire center constitutes a separate service area..

IV. AW Offers the Supported Services to Qualify for Federal USF Support.

9. Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier's services, and (2) advertise the availability of such services and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). The services which are supported by the federal USF are:

- 1) voice grade access to the public switched network;
- 2) local usage;
- 3) dual tone multi-frequency signaling or its functional equivalent;
- 4) single-party service or its functional equivalent;
- 5) access to emergency services;
- 6) access to operator services;
- 7) access to interexchange service;
- 8) access to directory assistance; and
- 9) toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a).

10. AW is a full-service wireless carrier which now offers all of these services, as described in detail below. AW therefore satisfies the requirements of Section 214(e)(1) of the Act.

11. Voice Grade Access. AW provides voice grade access to the public switched network through interconnection arrangements with local telephone companies. AW offers its subscribers this service at bandwidth between 300 and 3,000 hertz as required by 47 C.F.R. 54.101(a)(1), thereby providing voice grade access.

12. Local Usage. AW has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide.⁹ On July 2003, after considering public comments and the recommendations of the Joint Board, the FCC released an order declining to impose a specific amount of local usage as a condition for ETC status.¹⁰ Instead, the FCC has determined that when a carrier offers a variety of rate plans containing varying amounts of local usage, it meets that local usage requirement.¹¹ Other states have similarly declined to impose a specific minimum quantity of local usage.¹²

⁹ See *First Report and Order*, 12 FCC Rcd at 8813.

¹⁰ See *Federal-State Joint Board on Universal Service, Order and Order on Reconsideration*, FCC 03-170 at ¶ 14 (rel. July 14, 2003).

¹¹ See, e.g., *Farmers Cellular, Inc.*, 18 FCC Rcd 3848, 3852 (2003) (“*Farmers Cellular*”); *RCC Holdings, Inc.*, 17 FCC Rcd 23532, 23539 (2002), *review pending* (“*RCC Alabama Order*”) (holding that “ETCs should provide some minimum amount of local usage as part of their ‘basic service’ package of supported services.” and that RCC meets “the local usage requirement by including a variety of local usage plans . . .”) (emphasis added); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd. 9589, 9593 (2002) (“*Pine Belt Order*”) (holding that Pine Belt met the local usage requirement by offering “several service options including varying amounts of local usage. . . .”); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 52 (2000) (“*WWC Wyoming Order*”), *recon. denied*, 16 FCC Rcd 19144 (2001) (“*WWC Wyoming Recon. Order*”) (“although the Commission has not set a minimum local usage requirement, Western Wireless currently offers varying amounts of local usage in its monthly service plans.”).

¹² See, e.g., *United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004)* (“U.S. Cellular Oregon Order”) (“USCC has committed to complying with any local usage requirements as may be established by the FCC in the future. . . This commitment has satisfied other jurisdictions. . . and we also find it satisfactory.”); RCC

13. AW offers dozens of rate plans which provide customers with a variety of local usage included within the flat monthly rate, ranging from a set number of minutes to unlimited local calling. Any minimum local usage requirement established by the FCC will be applicable to all designated ETCs, and AW will comply with any and all minimum local usage requirements adopted by the FCC.

14. DTMF Signaling. AW provides dual tone multi-frequency (“DTMF”) signaling to facilitate the transportation of signaling throughout its network. AW currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling.

15. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.¹³ AW provides single party service, as that term is defined in Section 54.101 of the FCC’s rules. *See* 47 C.F.R. § 54.101.

16. Access to Emergency Services. AW currently provides 911 access to emergency services throughout its service area.

17. Access to Operator Services. AW provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing “0”.

18. Access to Interexchange Services. AW has signed interconnection agreements with interexchange carriers. These arrangements enable AW to provide its customers access to

Minnesota, Inc., Docket No. UT-023033 at pp. 14-15 (WUTC Aug. 14, 2002) (“RCC Washington Order”) (“We have declined to make a determination of a particular amount of local usage that is acceptable. Customers can choose for themselves if the amount of local usage is worth the price.”); Alaska DigiTel, LLC, Docket U-02-39, Order No. 10 at pp. 1-2 (Reg. Comm’n of Alaska, Aug. 28, 2003) (“ADT Alaska Order”); Smith Bagley, Inc., Docket No. T-02556A-99-0207 at p. 12 (Ariz. Corp. Comm’n Dec. 15, 2000) (“SBI Arizona Order”); NPCR, Inc. d/b/a Nextel Partners, Inc., Docket No. U-27289 (La. PSC, June 29, 2004) (“Nextel Louisiana Order”); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation at 21 (Aug. 14, 2001) *aff’d*, Final Order (N.M. Pub. Reg. Comm. Feb. 19, 2002) (“SBI N.M. Order”); RCC Minnesota, Inc. et al., Docket No. 2002-344 at p. 9 (Maine PUC May 13, 2003) (“RCC Maine Order”); *RCC Atlantic, Inc.*, Order, Docket No. 5918 (Vt. Pub. Serv. Bd., Nov. 14, 2003) (“RCC Vermont Nonrural Order”); Highland Cellular, Inc., Case No. 01-1604-T-PC (W.V. PSC May 10, 2002) (“Highland W.V. Order”); NCPR, Inc. d/b/a Nextel Partners, Docket No. 8081-T1-101 (Wisc. PSC, Sept. 30, 2003) (“Nextel Wisconsin Order”).

¹³ *See First Report and Order*, 12 FCC Rcd at 8810.

interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.

19. Access to Directory Assistance. Subscribers to AW’s services are able to dial “411” or “555-1212” to reach directory assistance from their mobile phones.

20. Toll Limitation. AW provides toll limitation by utilizing its toll blocking capabilities, enabling AW to provide toll blocking service for Lifeline customers once AW is designated an ETC.

21. Pursuant to Section 54.201 of the FCC’s rules, 47 C.F.R. § 54.201, AW will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. In addition, AW will advertise the availability of Lifeline and Linkup benefits throughout its service area by including mention of such benefits in advertising and reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Linkup benefits.

V. Grant of AW’s Application Would Serve the Public Interest.

22. In areas served by a rural telephone company, the Commission must find that a grant of ETC status would serve the public interest.¹⁴ In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative.¹⁵ In areas served by non-rural LECs,

¹⁴ See 47 U.S.C. § 214(e)(2).

¹⁵ See, e.g., *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”); *Highland Cellular*, *supra*; *Guam Cellular and Paging, Inc. d/b/a Saipancell*, 19 FCC Rcd 13872 (2004) (“*Saipancell*”); *Cellular South License, Inc.*, 17 FCC Rcd 24393 (2002), *recon. pending* (“*Cellular South*”); *RCC Alabama Order*, *supra*; *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530 (2004) (designating wireless carrier as an ETC in both rural and non-rural areas of Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee and Virginia) (“*Nextel Partners*”); *WWC Wyoming Order*, *supra*; *ADT Alaska Order*, *supra*; *RCC Minnesota, Inc.*, Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503 (Minn. PUC, June 30, 2003) (“*RCC Minnesota Order*”); *Midwest Wireless Communications, LLC*, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (March 19, 2003) (“*Midwest Minnesota Order*”); *RCC Minnesota, Inc.*, Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm’n, Sept. 30, 2004) (“*RCC Kansas Order*”); *GCC License Corporation*, Docket No. 99-GCCZ-156-ETC (Kansas Corp. Comm’n Oct. 15, 2001) (“*GCC Kansas ETC Order*”), *recon. denied* (Nov. 30, 2001); *SBI N.M. Order*, *supra*; *SBI Arizona Order*, *supra*; *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util.

the Act does not require a separate public interest finding. The FCC has previously held that designating a competitor as an ETC in non-rural areas is per se in the public interest.¹⁶ Although the FCC has clarified that designating a competitive ETC in non-rural areas will not necessarily be in the public interest in every case,¹⁷ AW clearly has demonstrated that its designation in nonrural areas will be in the public interest based on its strong showing pertaining to rural areas set forth below.¹⁸

23. The public interest is to be determined by following guidance provided by Congress in adopting the Telecommunications Act of 1996 (“1996 Act”) and the FCC in its

Bd. July 12, 2002) (“Midwest Iowa Order”); United States Cellular Corp. et al., Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. Jan. 15, 2002) (“U.S. Cellular Iowa Order”); ALLTEL Communications, Inc., Case No. U-13765 (Mich. P.S.C. Sept. 11, 2003) (“ALLTEL Michigan Order”); RFB Cellular, Inc., Case No. U-13145 (Mich. PSC Nov. 20, 2001) (“RFB Michigan Order”); N.E. Colorado Cellular, Inc., Docket No. 00A-315T (Colo. PUC Dec. 21, 2001) (“NECC Colorado Order”); Western Wireless Holding Co., Decision on Exceptions, Docket No. 00A-174T (Colo. PUC May 4, 2001) (“Western Colorado Order”); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC, May 13, 2003) (“RCC Maine Order”); Centennial Cellular Tri-State Operating Partnership et al., Docket No. 2003-UA-0234 (Miss. PSC, Aug. 10, 2004) (“Centennial Mississippi Order”); GCC License Corp., App. No. C-1889 (Neb. PSC Nov. 21, 2000) (“GCC Nebraska Order”), *aff’d*, 264 Neb. 167 (2002); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (“Verizon Wireless N. D. Order”); Western Wireless Corp., Case No. PU-1564-98-428, Order on Remand (N.D. PSC Oct. 3, 2001) (Western N.D. Order”); RCC Atlantic, Inc., Docket No. 6394 (Vt. Pub. Serv. Bd., Sept. 29, 2004) (“RCC Vermont Rural Order”); GCC License Corp., Docket No. TC98-146 (S.D. PUC Oct. 18, 2001) (“GCC S.D. Order”), *aff’d*, 623 N.W.2d 474 (2001); Easterbrooke Cellular Corp., Docket No. 03-0935-T-PC (W. Va. PSC, May 14, 2004) (“Easterbrooke W.V. Rural Order”); Highland W.V. Order, *supra*; Centennial Lafayette Communications, LLC et al., Order on Reconsideration, Docket No. U-27174 (La. PSC May 26, 2004) (“Centennial Louisiana Order”); Nextel Louisiana Order, *supra*; RCC Minnesota, Inc., Docket No. 1084 (Oregon PUC, June 24, 2004) (“RCC Oregon Order”); U.S. Cellular Oregon Order, *supra*; United States Cellular Corp., et al., Docket No. UT-970345, Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carriers (Wash. Util. & Transp. Comm’n Jan. 27, 2000) (“U.S. Cellular Washington Order”), *aff’d sub nom. Wash. Indep. Tel. Assn. v. WUTC*, 65P.3d, 319 (2003); RCC Washington Order, *supra*; Nextel Wisconsin Order, *supra*; U.S. Cellular Wisconsin Order, *supra*.

¹⁶ *Cellco Partnership d/b/a Bell Atlantic Mobile*, 16 FCC Rcd 39, 45 (2000).

¹⁷ *Virginia Cellular*, *supra*, 19 FCC Rcd at 1575.

¹⁸ See NPCR, Inc. d/b/a Nextel Partners, Inc., Case No. 2003-00143 (KYPSC Dec. 16, 2004) (“Nextel Kentucky Order”) at p. 7. See also Smith Bagley, Inc., Docket No. 04-000289, Recommended Decision at p. 12 (N.M. Nov. 24, 2004) (“SBI Gallup Decision”), *aff’d* by state commission Dec. 7, 2004.

enabling orders.¹⁹ The overarching principles embodied in the 1996 Act are to “promote competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies.”²⁰ In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.²¹

24. The KYPSC must determine whether designation of AW as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”²²

25. In designating Virginia Cellular as an ETC, the FCC enunciated an expanded public interest framework for its consideration of future ETC designations. Although the *Virginia Cellular* order is under review, we address the FCC’s analysis in the event this

¹⁹ Pub. L. No. 104-104, 110 Stat. 56 (1996). See also *First Report and Order, supra*; *Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20480 (1999) (“*Ninth Report and Order*”); *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*, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”). See also *NAACP v. FCC*, 425 U.S. 662, 669 (1976); accord, e.g., *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

²⁰ See 1996 Act (preamble).

²¹ *First Report and Order, supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order, supra*, 14 FCC Rcd at 20480.

²² See 47 U.S.C. § 254(b)(3).

Commission applies all or part of it to AW's petition. In determining the public interest, the FCC considered:

- The benefits of increased competitive choice;
- The impact of designation on the universal service fund;
- The unique advantages and disadvantages of the competitor's service offering;
- Any commitments made regarding the quality of telephone service; and
- The competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.²³

AW sets forth below specific facts demonstrating how its designation as an ETC in rural areas of Kentucky will advance the public interest under these five factors.

26. As an initial matter, AW believes strongly that any public costs likely to be incurred as a result of AW's designation are negligible compared to the benefits specifically articulated below. AW notes that it is *public* costs that matter, not the cost to individual companies, as the 5th Circuit made clear in *Alenco Communications v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000). Moreover, AW believes that the impact of its designation as an ETC in Kentucky on the size of the USF would be negligible.²⁴ This minimal cost is by far outweighed by numerous public interest benefits which will accrue to Kentucky consumers as a result of AW's designation, as follows:

A. Increased Consumer Choice and Service Quality.

27. Designation of AW will advance universal service, promote competition and facilitate the provision of advanced communications services to the residents of rural Kentucky.

²³ *Virginia Cellular, supra*, 19 FCC Red at 1575-76.

²⁴ See Section D, *infra*, for discussion of impacts on the USF.

Residents in many rural areas have long trailed urban areas in receiving competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

28. To date, a number of wireless carriers have been designated as ETCs in various states.²⁵ In its orders granting ETC status to wireless carriers in rural areas, the FCC has emphasized the advantages wireless carriers can bring to the universal service program. For example, in its order designating Western Wireless as an ETC in the State of Wyoming, the FCC observed: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”²⁶ Recognizing these unique advantages, the FCC has found that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.”²⁷

29. In addition, with ETC designation, AW will implement its Lifeline and Link-up programs which will offer service to low-income consumers who have not previously had the opportunity to afford any choice in telephone service. Universal Service support will enable AW

²⁵ See, e.g., *Nextel Partners*, *supra*; *Cellular South*, *supra*; *WWC Wyoming Order*, *supra*; *SBI Arizona Order*, *supra*; *Nextel Louisiana Order*, *supra*; *SBI N.M. Order*, *supra*; *U.S. Cellular Washington Order*, *supra*; *Midwest Wireless Wisconsin, LLC*, 8203-TI-100 (mailed Sept. 30, 2003) (“*Midwest Wisconsin Order*”); *RCC Kansas Order*, *supra*; *Centennial Mississippi Order*, *supra*; *U.S. Cellular Iowa Order*, *supra*; *USCC Oregon Order*, *supra*; *Midwest Minnesota Order*, *supra*; *NECC Colorado Order*, *supra*; *ALLTEL Michigan Order*, *supra*; *Midwest Iowa Order*, *supra*; *SBI Arizona Order*, *supra*; *SBI N.M. Order*, *supra*; and *Alaska Digital Order*, *supra*; *Easterbrooke W.V. Rural Order*, *supra*; *RCC Vermont Rural Order*, *supra*.

²⁶ *WWC Wyoming Order*, *supra*, 16 FCC Rcd at 55.

²⁷ *First Report and Order*, *supra*, 12 FCC Rcd at 8882-83.

to reach out to those counties in Kentucky that have no choice of service and provide them with quality telephone service.

30. AW commits to use high-cost support to improve service in areas it would not otherwise invest in. As AW constructs additional cell sites in high-cost areas to improve the quality of its radio frequency (“RF”) signal, its customers will have a greater choice among service providers and will receive more reliable service. Some will have the option to receive AW’s service for the first time. Others will see service quality and reliability improvement such that they may choose AW’s service instead of ILECs, as opposed to confining their use of AW’s service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer.

32. As an ETC, AW will have the obligation to provide service to consumers upon reasonable request.²⁸ Specifically, the company commits to undertake the following steps in response to consumer requests for service:

1. If a request comes from a customer within its existing network, AW will provide service immediately using its standard customer equipment.
2. If a request comes from a customer residing in any area where AW does not provide service, AW will take a series of steps to provide service.
 - First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.
 - Second, it will determine whether a roof-mounted antenna or other

²⁸ *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*, 15 FCC Rcd 15168, 15174-75 (2000) (“*South Dakota Preemption Order*”) (“A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request.”); *Virginia Cellular, supra*, Separate Statement of Chairman Michael K. Powell, 19 FCC Rcd at 1590 (“This decision remains true to the requirement that ETCs must be prepared to serve all customers upon reasonable request. . .”)

network equipment can be deployed at the premises to provide service.

- Third, it will determine whether adjustments at the nearest cell site can be made to provide service.
- Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.
- Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.
- Sixth, AW will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, AW will notify the customer and provide the Commission with an annual report of how many requests for service could not be filled. The Commission will retain authority to resolve any customer complaints that AW has refused to respond to a reasonable request for service.

AW believes these service provisioning commitments – which have been accepted by the FCC, the KYPSC, and other state commissions²⁹ – will ensure that the company is responsive to consumers’ needs while acting as a proper steward of available high-cost support funds.

31. The FCC and the KYPSC have held that an ETC cannot be required to provide service in every portion of its service area immediately upon designation.³⁰ Once designated, however, AW commits to use universal service support to expand and improve its network coverage in areas where wireless coverage is poor or nonexistent. Specifically, within the first year of receiving high-cost support, AW intends to use a portion of its high-cost support to construct seven new cell sites that will provide service to the following communities:

²⁹ See, e.g., USCC Oregon Order, *supra*, at p. 10; ADT Alaska Order, *supra*, at pp. 8-9; Nextel Louisiana Order, *supra*, at pp. 7-8; SBI Gallup Decision, *supra*, at p. 14; RCC Vermont Rural Order, *supra*, at pp. 28-29; Easterbrooke W.V. Rural Order, *supra*, at p. 19.

³⁰ See *South Dakota Preemption Order*, *supra*, 15 FCC Rcd at 15174-75; Nextel Kentucky Order, *supra*, at p. 5.

Salyersville (Magoffin County), Blaine (Lawrence County), Johnson Fork (Magoffin County), Greene (Elliott County), Sandy Hook (Breathitt County), Canoe (Breathitt County), and Rt. 30 (Breathitt County).

Without high-cost universal service support, AW will not be able to construct facilities that serve these areas in the foreseeable future, if ever. Consistent with the build-out plan accepted by the FCC in *Virginia Cellular*, AW notes that the exact parameters of its construction plan may change as a result of shifts in consumer demand, tower siting review, and other factors that affect cell site placement.³¹ However, the proposed construction plan represents AW's firm commitment to build facilities out to rural areas of Kentucky with its high-cost support.

32. AW also commits to undertake several commitments to ensure high-quality service, responsiveness to customer concerns, and access to relevant information by the KYPSC. In recent decisions, both the FCC and the KYPSC have credited a wireless ETC applicant's commitments to alleviate dropped calls by using universal support to build new towers and facilities to offer better coverage, comply with the "Cellular Telecommunications Industry Association Consumer Code for Wireless Service," which sets out certain principles, disclosures, and practices for the provision of wireless service," and file data concerning the number of consumer complaints per 1,000 handsets on an annual basis.³² AW hereby commits to use high-cost support in its service area to improve coverage and channel capacity to improve system performance when needed, and to report annually to the KPSC on its progress towards achieving

³¹ *Virginia Cellular, supra*, 19 FCC Rcd at 15171.

³² *Id.* at 1584-85; Nextel Kentucky Order, *supra*, at pp. 8-10.

its build-out plans. AW also commits to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service.³³

B. Health and Safety Benefits.

33. As the FCC recently emphasized, mobile wireless telecommunications service is invaluable to “consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations” and provides “access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”³⁴ Similarly, in designating the cellular carrier Smith Bagley, Inc., as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to “health and safety risks associated with geographic isolation.”³⁵ Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. It is self-evident that every time AW adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that AW constructs, the reliability and performance of AW’s E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure.

C. Competitive Response.

³³ The CTIA Code is available on the Web at http://files.ctia.org/pdf/The_Code.pdf.

³⁴ *Virginia Cellular, supra*, 19 FCC Rcd at 1576.

³⁵ SBI Arizona Order, *supra*, at p. 12.

34. One of the principal goals of the 1996 Act was to “promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”³⁶ Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer’s business.

35. AW submits that, if it is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs as they seek to retain and attract customers.³⁷ Such a response could include: improved service quality and customer service; new investments in telecommunications plant; more rapid deployment of high-speed data (DSL) service; wider local calling areas; bundled service offerings; and lower prices overall.

36. The public interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless’ ETC designation in Wyoming would have on rural telephone companies, the FCC said:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating

³⁶ See 1996 Act (preamble).

³⁷ See, e.g., ALLTEL Michigan Order, *supra*, at p. 11; Midwest Minnesota Order, *supra*, at p. 8; RCC Oregon Order, *supra*, at p. 13; AT&T Wireless PCS of Cleveland et al., Docket No. UT-043011 at pp. 13-14 (Wash. Util. & Transp. Comm’n, Apr. 13, 2004) (“AT&T Washington Order”); Midwest Wisconsin Order, *supra*, at pp. 8-9.

efficiencies, lower prices, and offer better service to its customers.³⁸

Further, Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.” *See* 47 U.S.C. §253(b). The FCC has stated that “applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.”³⁹ AW will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. By accelerating the deployment of new telecommunications choices to Kentucky’s rural consumers, designation of AW as an ETC will provide incumbent LECs with an incentive to introduce new, innovative, or advanced service offerings.

37. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost support to AW will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of Kentucky.⁴⁰

³⁸ *WWC Wyoming Order, supra*, 16 FCC Rcd at 57. *See also* RCC Washington Order at pp. 16-17.

³⁹ *First Report and Order, supra*, 12 FCC Rcd at 8803.

⁴⁰ *See, e.g.*, Midwest Wireless Communications, LLC ALJ’s Findings of Fact, Conclusions of Law, and Recommendation, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686 (ALJ Dec. 31, 2002) at ¶ 37 (“although Midwest Wireless has been successful in obtaining conventional cellular customers, it does not currently compete for basic local exchange service. Designation of Midwest as an ETC would provide the support necessary to allow Midwest to provide...service and to enhance its network so that it can compete for basic local exchange service...Competition would benefit consumers in southern Minnesota by increasing customer choice (from no choice in most areas to more than one) and providing services made possible by wireless technologies.”)

38. The consumer benefits of designating a competitive ETC are already becoming evident. Competitive carriers in numerous states have earmarked and invested high-cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital.

39. With high-cost support in Kentucky, AW will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

D. Impact on Universal Service Fund.

40. In the recent *Nextel Partners* order, the FCC addressed the question of whether designating NPCR, Inc. d/b/a Nextel Partners (“Nextel”) as an ETC in Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia would cause undue strain on the federal high-cost Fund.⁴¹ In making that determination, the FCC used the unrealistic scenario of Nextel capturing each and every ILEC subscriber in Alabama – the state in which the affected ILECs receive the largest amount of support – which would result in Nextel receiving support equivalent to 1.88 percent of the total high-cost Fund.⁴² Based on that analysis, the FCC concluded that Nextel’s designation in all seven states would not “dramatically burden” the federal high-cost Fund.⁴³

41. Here as well, AW’s designation will not burden the USF. AW estimates that the funds that it will receive annually if it is designated as an ETC in Kentucky will be approximately \$3 million, less than 0.07 percent of the USF. Even in the implausible event AW captures all of the ILEC subscribers in its Kentucky service area, AW estimates its total support

⁴¹ See *Nextel Partners*, *supra*, 19 FCC Rcd at 16540.

⁴² See *id.* at n.69.

⁴³ *Id.* at 16540.

would amount to only 0.41 percent of the fund, a significantly lower percentage than the 1.88 figure corresponding to just one of the seven states approved in *Nextel Partners*. By any measure, therefore, a grant of the instant Petition will not unduly burden the fund.

E. State and Federal Precedent.

42. Designation of AW as an ETC is consistent with ETC decisions across the country. There are now dozens of cases at the state and federal level where designation of a wireless carrier as an ETC in a rural area was found to be in the public interest, including many instances of more than one competitive ETC in a state.⁴⁴ Numerous state commissions and the FCC have found that designating wireless carriers as ETCs will promote competition, advance universal service, and further the deployment of advanced services. For example, in its decision to designate U.S. Cellular as an ETC, the Washington Utilities and Transportation Commission stated: “rural customers will benefit from the increased availability of wireless service. These benefits include increased mobility and increased level of service.”⁴⁵ More recently, in designating Alaska DigiTel, L.L.C. as an ETC in Alaska, the Regulatory Commission of Alaska held that, “Granting the application will also provide customers more choices for meeting their communications needs..... customers will also have a choice in local calling areas, including an option for a wider local calling area than offered by the incumbent...”⁴⁶ Similarly, in its decision designating Western Wireless as an ETC in the State of Wyoming, the FCC held: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”⁴⁷ In a 2003 order

⁴⁴ See *supra* n.16.

⁴⁵ U.S. Cellular Washington Order, *supra*, at ¶ 41.

⁴⁶ *Alaska DigiTel Order*, *supra* at p. 13.

⁴⁷ *WWC Wyoming Order*, *supra* n. 26, 16 FCC Rcd at 55.

granting ETC status to Midwest Wireless Wisconsin, LLC, the Wisconsin Public Service Commission held:

The Commission finds that designating Midwest as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice ... Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin.⁴⁸

43. It is also evident that the deployment of high-quality wireless telecommunications infrastructure is essential to economic development in rural areas. In 2004, the West Virginia Public Service Commission designated two wireless carriers, Highland Cellular and Easterbrooke Cellular Corp., as competitive ETCs for rural areas that overlapped in places. In the order designating Easterbrooke, the PSC concluded that:

The existence of competitive options for telecommunication service, particularly the availability of wireless service, is important for rural economic development. When making decisions on whether or not to locate their facilities in a given area, businesses consider the availability of reliable voice services, data services and wireless services with sufficient coverage. Rural areas require these services in order to be able to compete with urban and suburban areas in attracting investment and jobs.⁴⁹

42. For all of the above reasons, the public interest would be served by the designation of AW as a competitive ETC throughout its requested service area.

VI. AW Requests Redefinition of Certain Rural ILECs' Service Areas.

43. Leslie County Telephone Company, Inc., Mountain Telephone Cooperative, Inc., and Kentucky ALLTEL, Inc. - London have portions of their service areas located outside

⁴⁸ Midwest Wisconsin Order, *supra*, at p. 8.

⁴⁹ Easterbrooke W.V. Rural Order, *supra*, at p. 61.

of AW's FCC-licensed territory. Because each is a rural ILEC according to USAC's filings to the FCC, AW requests redefinition of their respective service areas pursuant to Section 54.207(c) of the FCC's rules. Service area redefinition is necessary in order to facilitate competitive entry and advance universal service for those customers of AW living in areas served by those companies.

44. AW requests that the FCC reclassify each of the wire centers listed on Exhibit D as a separate service area and designate AW as an ETC in each of the wire centers on Exhibit D within its requested ETC service area.⁵⁰ Once the FCC establishes redefined service areas, either the KYPSC or AW may file a petition requesting the FCC to concur with the state's redefinition. Upon a grant of concurrence, AW's designation would take effect in the wire centers within its proposed ETC service area.

45. In considering the redefinition of a rural LEC service area, the FCC must take into account the recommendations of the Joint Board. In the *Recommended Decision*⁵¹ that laid the foundation for the FCC's *First Report and Order*, the Joint Board recommended that the FCC and state commissions consider three issues when redefining a service area.

46. First, the Joint Board noted that redefining ETC service areas below the study area level may create the potential for "cream skimming," which could occur if a competitor proposed to only serve the lowest-cost exchanges.⁵² There is no possibility for cream skimming

⁵⁰ Consistent with the FCC's policy in *Highland Cellular* and its progeny, AW has eliminated from its petition any rural ILEC wire centers that are only partially covered by AW's FCC-licensed service area. See *Highland Cellular, supra*, 19 FCC Rcd at 6438. Specifically, AW has excluded the Cumberland wire center of Kentucky ALLTEL, Inc. – London and the Frenchburg wire center of Mountain Telephone Cooperative, Inc.

⁵¹ *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*").

⁵² *Recommended Decision*, 12 FCC Rcd at 179-80.

in this case because AW is restricted to providing service in those areas where it is licensed by the FCC. AW is not picking and choosing among the rural LECs' exchanges. On the contrary, AW has based its requested ETC area solely on its licensed service area. Moreover, as of May 2002, all rural ILECs, including those referenced above, were required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive to enter into incumbent LEC service territories in an uneconomic manner, minimizing or eliminating even unintentional cream skimming.⁵³

47. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.⁵⁴ In deciding whether to designate AW as an ETC, the FCC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, if the FCC finds that AW's ETC designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether AW's service area designation should be adopted for federal universal service funding purposes. Further, AW notes that no action in this proceeding will affect or prejudice any future action the PSC or FCC may take with respect to the LECs' status as a rural telephone company, or disturb the "rural exemption" contained in Section 251 of the Act.

⁵³ See *WWC Wyoming Recon. Order, supra*, 16 FCC Rcd at 19149 ("[T]he primary objective in retaining the rural telephone company's study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier's ability to provide service to high-cost customers. Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding 'cream-skimming' of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.") (footnotes omitted). See also *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11302.

⁵⁴ See *Recommended Decision*, 12 FCC Rcd at 180.

48. Finally, the Joint Board recommended that the FCC and state commissions consider whether a rural LEC would face an undue administrative burden as a result of service area redefinition.⁵⁵ In the instant case, AW is proposing to redefine rural LEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way the affected rural ILECs calculate their costs, but it is solely to determine the area in which AW is to be designated as an ETC.⁵⁶ Accordingly, redefinition of rural ILEC service areas as proposed in this Petition will not impose any additional burdens on the affected ILECs.

49. Although AW does not agree with the FCC's findings in *Virginia Cellular*,⁵⁷ AW submits that in this instance it meets the FCC's criteria in its analysis of population density as a means of determining the likelihood of AW receiving uneconomic levels of support. Based upon the FCC's assumption in *Virginia Cellular* that "a low population density typically indicates a high-cost area," AW has provided population density figures to demonstrate that no cream skimming will result from designation in the proposed areas.⁵⁸ As indicated in the table attached as Exhibit D, AW is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

- Leslie County Telephone Company, Inc. The average population density of the wire centers within AW's proposed ETC service area is 54.27 persons per square mile ("psm"). The population density for the Leslie County wire centers outside of AW's proposed ETC service area is 32.61 psm. While the average population density is

⁵⁵ *Id.*

⁵⁶ ILECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order*. See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11304 n.377.

⁵⁷ See *Virginia Cellular*, *supra*, 19 FCC Rcd at 1578-79.

⁵⁸ *Id.*

higher inside the proposed ETC service area than outside, the disparity is not nearly as great as the more than eightfold differential that led the FCC to disapprove the designation of Virginia Cellular in a portion of its requested service area (approximately 273 psm inside and 33 psm outside).⁵⁹ Moreover, AW is proposing to cover two of the three lowest-density wire centers in the study area. Additionally, while there is one relatively high-density wire center in the portion of Leslie County's service area AW proposes to cover, that wire center represents only a small percentage of AW's potential subscribers within Leslie County's study area. In the *Highland Cellular* order, the FCC declined to designate a competitive ETC in Verizon South's study area where 94% of Highland's potential customers resided in the highest-density wire centers.⁶⁰ Here, by contrast, the population of the highest-density Leslie County wire center comprises slightly under 22% of AW's potential customers in Leslie County's study area. Therefore, under the applicable FCC analytical framework, AW is not proposing to serve "primarily" the highest-density wire centers in Leslie County's service area.

- Mountain Telephone Cooperative, Inc. The average population density of the Mountain wire centers AW proposes to cover is approximately 31.28 psm, while the population density of the sole wire center outside of AW's proposed ETC service area is 30.56. The difference between these two population densities is so small as to be

⁵⁹ *Id.* at 1579-80.

⁶⁰ *See Highland Cellular, supra*, 19 FCC Rcd at 6436-37.

insignificant for purposes of this analysis.⁶¹ Accordingly, there is no risk of cream skimming in Mountain's study area.

- Kentucky ALLTEL, Inc. – London. The average population density of the two Kentucky ALLTEL – London wire centers AW proposes to cover is approximately 99.69 psm, while the average population density of the remaining wire centers in that study area is 43.88. As with Leslie County's service area, the disparity of roughly 2.3 to 1 is nowhere near the 8 to 1 differential the FCC disapproved of in *Virginia Cellular*. Moreover, only 25.9% of AW's potential customers live in the higher-density wire center within its proposed ETC service area, in contrast to the 94% figure that led to partial denial in the FCC's *Highland Cellular* order.

50. In sum, AW is not proposing to serve the lower-cost, higher-density portions of the affected rural ILECs' service areas

VII. High-Cost Certification.

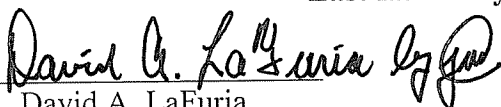
51. Under FCC Rule Sections 54.313 and 54.314, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, self-certify with the FCC and the Universal Service Administrative Corporation ("USAC") their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. AW attaches its high-cost certification letter as Exhibit E hereto. AW respectfully requests that the KYPSC issue a finding that AW has met the high-cost certification requirement and that AW is, therefore, entitled to

⁶¹ See *Virginia Cellular, supra*, 19 FCC Rcd at 1579 and n.110 ("The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns.")

begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.⁶²

WHEREFORE, pursuant to Section 214(e)(2) of the Act, AW respectfully requests that the KPSC: (1) enter an Order designating AW as an ETC for its requested ETC service area as shown on Exhibit A hereto; and (2) certify to the FCC that AW will use the support for its intended purpose.

Respectfully submitted,
East Kentucky Network, LLC

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January 25, 2005

⁶² See, e.g., *Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Petition for Waiver of Section 54.313(d) of the Commission's Rules and Regulations*, 19 FCC Rcd 15587 (2004); *Grande Communications, Inc., Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, 19 FCC Rcd 15580 (2004).

RECEIVED

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

JAN 26 2005

PUBLIC SERVICE
COMMISSION

In the matter of:

EAST KENTUCKY NETWORK, LLC)
D/B/A APPALACHIAN WIRELESS)
PETITION FOR DESIGNATION AS AN ELIGIBLE) Case No. 2005-00045
TELECOMMUNICATIONS CARRIER)

DECLARATION OF LAURA PHIPPS

I, the undersigned Laura Phipps, do hereby declare under penalty of perjury as follows.

1. I am the authorized representative of East Kentucky Network, LLC d/b/a Appalachian Wireless (“AW”).

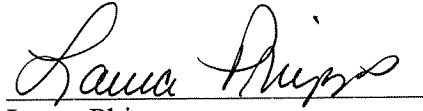
2. AW is a cellular telephone carrier providing digital wireless telecommunications services in the Kentucky Rural Service Area 9 – Elliot, Kentucky and in the Kentucky Rural Service Area 10 – Powell, Kentucky.

3. I declare and certify, as described in AW’s attached petition for eligible telecommunications carrier status, that AW offers, or will offer, all of the services supported by the Universal Service Fund pursuant to 27 U.S.C. § 254(c); that AW offers, or will offer, the supported services using a combination of its own facilities and those of other carriers; and that AW advertises, or will advertise, the availability of supported services, and the charges therefore, using media of general distribution.

4. I further declare that the foregoing, as well as the content of the attached petition for eligible telecommunications carrier status is, to the best of my knowledge and belief, true and correct.

5. I further declare that to the best of my knowledge and belief, AW, including its officers, directors and shareholders, is not subject to denial of federal benefits pursuant to 21

U.S.C. § 862.

A handwritten signature in cursive script, reading "Laura Phipps", is written over a horizontal line.

Laura Phipps
Authorized Representative
East Kentucky Network, LLC
d/b/a Appalachian Wireless

Dated: 1-25-05