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ETC SURVEY FINAL REPORT

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THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

1101 Vermont Avenue, N.W.
Washington, D.C. 20005

Chairman Greg Jergeson
Montana Public Service Commission

Commissioner Philip Jones
Washington Utilities and Transportation Commission

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ETC Task Force

On May 5, 2005, NARUC Telecommunications Committee Chairman Bob Nelson announced the formation of a Committee task force designed to facilitate State commission compliance with the FCC's recent decision to adopt additional mandatory requirements for eligible telecommunications carriers (ETCs) pursuant to 47 U.S.C. § 214(e).

As part of this project, the ETC Task Force submitted a survey to NARUC's member Commissions to get a gauge on individual State Commission policy with respect to ETC designations. Twenty-seven Commissions responded to the survey, giving us a wealth of information on the development of State policies on ETC designations. That information has now been compiled into the attached document. Recently, we sought updated information from those that had responded previously.

We would both like to thank each State that took the time to respond for their input. Thanks again for your assistance!

*Greg Jergeson, Chair, ETC Task Force.
Phil Jones, Vice Chair, ETC Task Force*

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(2) Does your state have a functioning universal service fund?

	State	Total
Yes	AK, AZ, AR, KS, MD, ME, MO ¹ , NE, NV, OR, TX, UT, WI, WY, ID, MA, NH	17
No	AL, DE, FL, IA, HI, IN ² , MA, MI, MS, MT, NC, NM, ND, SD, TN, WA	16

¹ Low-income/disabled fund only

² The Indiana Commission has approved the establishment of a state fund in Cause No. 42144, but the decision was appealed and we are waiting on a final determination from the Court. In the meantime, the Commission has begun to move forward with some administrative tasks in the event the decision is favorable to us.

(3) Does your commission administer your fund internally?

	State	Total
Yes	NE, UT, WY	3
No	AK, AL, AZ, AR, ID, KS, MD, MO, NV, NM, OR, TX, WI	13
Not applicable	DE, FL, HI, IA, IN, MA, ME, MI, MS, MT, NC, ND, SD, TN, WA	15

(4) If your state commission does not administer your fund internally, administrator of state fund:

State	Administrator	Comments
AK	Alaska Universal Service Administrative Company (AUSAC)	
AL	Unfunded Program	The carriers are required to provide \$3.50 for the lifeline support
AZ	NECA	
AR	Rhoades & Sinon Group LLC	Contact: David Rolka
ID	Alyson Anderson	alyson anderson@msn.com
KS	NECA	
MD	State of Maryland Office of Human Resources	
ME	NECA	
MO	QSI Consulting, Inc.	The Missouri Universal Service Fund is administered by the Missouri Universal Service Board, consisting of the five commissioners of the Missouri Public Service Commission and a representative from the Office of Public Counsel. The administrative work related to the MO USF is contracted out to a fund administrator who is then responsible for the day-to-day operations of the MO USF
MT		Although not invoked, if and when Montana has a state universal service fund, the Montana PSC must select a fiscal agent and administrator that will receive and distribute funds (MTA 69-3.843)

NV	NECA	
NM		RFP will be released this summer to hire an administrator
OR	NECA	
TX	NECA	
WI	Wipfli, LLP	The commission determines the programs within the USF. It sets rules and guidelines but contracts out the administration of the fund (assessing the providers, dispersing USF monies to qualified companies and individuals, and related accounting functions.

(5) Has your commission chosen not to assert jurisdiction over any ETC designations necessary for a carrier to access federal universal service?

	State	Total
Yes	AL, DE, FL, NC, TN	5
No	AK, AZ, AR, HI, IA, ID, IN ³ , KS, MD, MA, ME, MI, MO, MS, MT, NE, NV, NM, ND, OR, SD, TX, UT, WA, WI, WY	26

(6-9) If "yes" to question 5, have you disclaimed jurisdiction over wireless applicants, wireline applicants, or both? If you disclaimed jurisdiction, was it because of state statutes or commission rules? Web address for the letter/order(s) disclaiming jurisdiction?

Technology	Yes or No	State	State Statute	Commission Rule	Total
Wireless	Yes	AL DE FL NC ⁴ TN	Yes Yes ⁵ Yes ⁶ Yes Yes ⁷		2, state statute
	No				
Wireline	Yes	NC	Yes ⁸		
	No				
	Not applicable	DE	FL		

³ The Indiana Commission does assert full jurisdiction over all ETC designations within the State of Indiana for Federal Universal Service, including wireless applicants (except over rates and charges).

⁴ The NCUC does not have jurisdiction over telephone membership cooperatives for these purposes, TMCs are regulated by the state REA.

⁵ Cellco Partnership d/b/a Bell Atlantic Mobile was granted ETC status in Delaware by the FCC on Dec. 22, 2000. Cellco has never operated as an ETC in Delaware and has never received any federal USF in Delaware.

⁶ <http://www.floridapsc.com/library//FILINGS/03/09112-03/09112.03.pdf>

⁷ T.C.A. 65-4-101(6)(F)

⁸ With respect to TMCs only. www.ncuc.net Docket Search: P-100 Sub 133c

Both wireless and wireline	Yes				
	No				
Not applicable		AK, AZ, AR, HI, IA, ID, IN, KS, MA, MD, ME, MI, MO, MS, MT, NE, NM, ND, OR, SD, UT, WA, WY	AK, AZ, AR, HI, IA, ID, IN, KS, MA, MD, ME, MI, MO, MS, MT, NE, NM, NM, ND, OR, SD, UT, WA, WY	AK, AZ, AR, HI, IA, ID, IN, KS, MA, MD, ME, MI, MO, MS, MT, NE, NM, ND, OR, SD, UT, WA, WY	
No response		NV, TX, WI	NV, TX, WI	NV, TX, WI	

(10) If you have disclaimed jurisdiction over any proposed ETC, have you also “failed to act” with respect to annual certifications to the FCC with respect to such carriers?

“Failed to Act”?	State	Total
Yes	AL, NC	2
No	FL, TN ⁹	2

(11-13) Did your commission take any action to respond to the FCC’s subsequent March 17, 2005, generic order on ETC designations? If yes, web address for either the final orders or the orders instituting proceedings for your commission? If no, is your commission considering taking action to respond to the March order?

Action?	State	Web Site	Total
Yes	ID	http://www.puc.state.id.us/orders/99999.ord/final%20order%20no%2029841.pdf	11
	IN ¹⁰ KS ¹¹ ME	www.state.me.us/mpuc ; see order 2000-246, dated June 24, 2005 at www.state.me.us/mpuc/orders/ordtb12005.htm	
	MI ¹²	http://www.cis.state.mi.us/mpsc/orders/comm/2005/u-14530_05-17-2005.pdf	

⁹ Because wireless carriers do not fall within the jurisdiction of the TRA, the FCC provides designation to wireless carriers U.S.C. 214(e)(6).

¹⁰ The Indiana Commission has formally adopted the new Federal ETC guidelines effective October 1, 2006. Notice was given to all ETCs under an existing case- Cause No. 42067

¹¹ The Kansas Commission opened Docket Number 06-GIMT-446-GIT on October 25, 2005 in order to investigate issues related to ETC designations, including an examination of the recommendations in the FCC's March 17th order. The Commission received initial comments on December 16th, 2005 and reply comments on January 13, 2006.

¹² Case U-14530, issued at the May 17, 2005, Michigan Public Service Commission meeting, gave interested parties 60 days to file comments/reply comments. Comment period ends July 17, 2005. A final order has not been issued and so all following questions are answered based on the existing ETC program in Michigan.

	MO ¹³ NE ND ¹⁴ UT WA WY ¹⁵	www.psc.state.ne.us (Docket C-3415, rule and regulation 165) http://www.rules.utah.gov/publicat/code/r746/r746-360.htm#T6 Automatic Adoption of FCC Standards by Rule http://www.wutc.wa.gov/webimage.nsf/bf58cb1298ea3d2088256efc00506bc2/21a4fb51f8ce669	
No	AZ ¹⁶ , DE, MA, MD, MT ¹⁷ , NC, NV, TN		8
No, but considering	AL AR AK ¹⁸ FL IA HI MS NM ¹⁹ OR SD TX	AR: Arkansas has an ongoing docket to consider the FCC's changes to ETC qualifications. http://170.94.29.3/PDF/05/05-038-u_1_1.pdf http://floridapsc.com/library/FILINGS/05/05532-05/05532-05.PDF	11
Yes, considering	WI ²⁰		1

(14) FCC Order at ¶¶11, 16 Single connection:

- a. Can Federal ETCs designated by your commission receive support for all connections based on expenditures or on access lines served, including support for multiline business and residential customers?

¹³ Order finding necessity for rulemaking in Case No. TX-2006-0169 was issued 10-13-05. The rulemaking has yet to be completed.

¹⁴ In November 2005 the NDPSC began a rulemaking to consider the FCC additional requirements for ETC designation recommended in the FCC's Report and Order released March 17, 2005, in CC Docket 96-45. The rulemaking is pending (Case No PU-05-575).

¹⁵ The order initiating the rule making proceeding has not yet been issued. The WY PSC is drafting formal rules for designation and annual certification of ETCs with much of the substance based on the FCC ETC Order.

¹⁶ The Commission has not issued any orders on ETC designation since the FCC March 17, 2005 generic Order. Staff has determined that it would recommend the requirements from the FCC March 15, 2005 Order to pending and new ETC applicants.

¹⁷ No action per se, but the Montana PSC was acutely aware of the FCC decision

¹⁸ The Commission determined it would begin applying requirements from the FCC March 17, 2005 Order to new ETC applicants but has not yet issued an order implementing these requirements in a docket addressing an ETC application.

¹⁹ New Mexico is in the process of examining the eligibility of ETCs in an access reform docket and will consider the FCC's new criteria in that docket (05-00211-UT).

²⁰ We are considering it as part of our redraft of our USF administrative rules (still in drafting form).

Yes	AK, AZ, AR, DE, FL, HI, IA, ID, KS, ME, MI ²¹ , MO, MS, MT, NE, NM, NV, ND, OR, SD, TN, TX, UT, WA, WY	25
No	MD	1
NA	AL, IN, NC, WI	4
Other		0

- b. Has your commission limited or attempted to limit through the Federal ETC designation process the number of access lines per-customer for which an ETC receives support?

Yes	MD, WI	2
No	AL, AK, AZ, AR, DE, FL, HI, ID, IN, IA, KS, ME, MI, MO, MS, MT, NE, NM, NV, ND, OR, SD, TN, TX, UT, WY	26
NA	NC, WA	2

- c. Has your commission limited through the Federal ETC designation process the type of customer (i.e., business or residential) for which an ETC receives support?

Yes	MD, WI	2
No	AK, AL, AZ, AR, DE, FL, HI, IN, IA, ID, KS, ME, MI, MS, MO, MT, NE, NM, NV, ND, OR, SD, TN, TX, UT, WA, WY	27
NA	NC	1

- d. If you answered yes to any of the foregoing part (13) questions, please type in a web address for the relevant order if readily available:

MD: http://mlis.state.md.us/cgi-win/web_statutes.exe

MT: The MPSC does not have a URL for just ETC docket orders, a search is required at this address to retrieve ETC designation orders: <http://psc.mt.gov/eDocs/DocketsAndOrders/>
The dockets involving CETCs, that can be researched at the above URL include the following: 2002.8.105, 2002.6.71, 2002.6.72, 2002.6.73, 2001.9.129, 2001.5.50, 2001.5.52, 99.11.250, 2003.8.105, 2003.1.114 and 2003.2.23. The last three dockets contain much more policy substance.

WI: <http://www.legis.state.wi.us/rsb/code/psc/psc160.pdf>

²¹ If USF is provided for this purpose, the ETC is eligible to receive it from USAC. To date, Michigan does not place additional restrictions or conditions on ETCs that would prohibit them from receiving USF monies for supported activities.

This is our USF administrative rule s. 160.13.

(15) FCC Order at ¶ 19 Technological Neutrality:

- a. Does your commission expressly rely on principles of competitive and technological neutrality in analysis of ETC designation decisions.

Yes	AK, AZ, FL ²² , ID, IN, IA, KS, MI, NE, NM, NV, ND, OR, TN, TX, WA, WI, WY	18
No	AR, DE, HI, MD, MS, SD	6
Other	AL ²³ , ME, MO, MT ²⁴ , NC, UT ²⁵	6

- b. Has your commission found practical or other limits to the principles of competitive and technological neutrality in the context of ETC designations?

Explain:

Yes	NE, WI ²⁶	2
No	AK, AL, AZ, AR, DE, FL, HI, IA, ID, KS, MA, MD, MI, MO, MS, MT ²⁷ , NM, NV, ND, OR, SD, TN, UT, WY	24
Other	IN ²⁸ , TX, WA	3
NA	ME, NC	2

(16) FCC Order at ¶22 Service Area:

- a. The FCC has determined that it will “require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC.” Does the FCC’s new requirement differ from your state’s current requirements with respect to designation of service areas?

If you answered Yes or Other to 15a, briefly explain how:

Yes	AK, AZ, AR, IA, ID ²⁹ ,	7
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²² The FPSC noted in its first order designating a competitive carrier as an ETC that the provision of telecommunications through a new medium, in this instance cable telephony, is just what Congress had hoped for when it passed the Telecommunications Act of 1996. The FPSC found that granting the petitioner ETC status furthers the goal that all providers of telecommunications services be treated fairly, and ensures the availability of basic local telecommunications services to all consumers in the state at reasonable and affordable prices.
<http://www.floridapsc.com/library/filings/05/02744-05/02744-05.PDF>

²³ The Alabama Commission by state statute has no authority over wireless carriers. The wireless carriers declared ETCs and receiving USF funds in Alabama have been approved by the FCC. The ETCs that the Commission has approved are mainly the original incumbent Telephone Companies that were operating in the state when the 1996 Telecommunications Act was instituted. The Commission has approved one additional wireline ETC.

²⁴ Reliance has been more implicit.

²⁵ The Commission Uses the Guidelines in 47 U.S.C. Section 214(e)(2) and Docket CC-96-45 Issued 3/17/2005 to assess ETC designation.

²⁶ The Commission identified some technological difficulties for wireless carriers to meet some of the state requirements for ETC designation.

²⁷ A “yes” is warranted given the recent Mid-Rivers Cellular case (D2003.8.105) decision.

²⁸ With regard to any CETC applicant, including wireless carriers, the Indiana Commission carefully examines issues relating to creamskimming. Additionally, issues relating to service quality capabilities are often examined in the context of the carriers’ ability to serve in the same or functionally similar manner as the incumbent carrier. From a customer’s perspective, they should expect to see no differences in service whether they are selecting a CETC/Wireless carrier or an incumbent wireline carrier, particularly if the carrier is receiving the same or similar amount of USF as the incumbent to remedy any network infirmities that may exist.

	MT ³⁰ , WI ³¹	
No	AL, FL, HI, MD, MI ³² , MS, NE, NM, NV, OR, SD, TN, TX, VT, WA, WY	16
Other	DE, IN, KS ³³ , ME, MO ³⁴ , NC, ND ³⁵	7

- b. The FCC order specifies six methods for an ETC to extend service to a customer in its designated service area that it cannot reach with current facilities. If an ETC finds it cannot serve the customer using one of these methods, then the ETC must report the unfulfilled request to the FCC within 30 days after making such determination. Has your commission specified methods for reaching customers in an ETC's designated service area currently outside the reach of the ETC's existing infrastructure?

Yes	AK ³⁶ , AL ³⁷ , IA, KS, MS, MT ³⁸ , NM, OR, SD, TX	10
No	AR, DE, FL, IN ³⁹ , MD, MI, NE, NV, ND, TN, UT, WA, WI, WY	14
Other	AZ ⁴⁰ , HI ⁴¹ , ID ⁴² , ME, MO ⁴³ , NC	6

²⁹ Order No. 29841 (Link in answer to Question #11) imposed similar, but not identical requirements. 1) Applicants are to submit a 2 year, rather than 5 year, build out plan; 2) Applicants are to describe their local service plans, which are not required to provide identical usage to the ILEC. The Commission will review each on a case by case basis. 3) Applicants are not required to certify that they may be required to provide equal access.

³⁰ Ans: the MPSC's current requirements are both in orders and in rules that were recently codified. The MPSC in its orders has required competitive ETCs to strive to achieve a 98% coverage goal in two years for one CETC and 5 years for another CETC. The rules seek 98% coverage within 5 years; the MPSC has found that an ETC must by means of its own resources serve all reasonable requests for wireless service at residences and businesses in a CETC's study areas so long as there is no conflict with other licensed wireless carriers.

³¹ At this point we do not require a list of specific commitments although we do require that a general commitment be made.

³² ETC applicants must certify to the Michigan Public Service Commission (MPSC) that they will provide the nine services mandated by the FCC; namely: provide voice-grade access to a public switched network, local usage, dual tone multi-frequency signaling, single party, access to emergency services, operator services, interexchange services, directory services and toll limitation for low-income customers. The MPSC operates under the guideline that additional ETCs promote competition and thus is beneficial for the consumer.

³³ The Kansas Commission has followed the FCC's guidance in its Virginia Cellular Order. In the ETC filings reviewed by the Commission following the FCC's Virginia Cellular Order, the Commission has required the carriers to follow the 6 or 7 step process for evaluating requests for service as highlighted by the FCC. Additionally, on a quarterly basis, the carriers are required to report all instances in which the company refuses to serve a customer, including information regarding the specific location of the customer, the company's rationale for reaching the final step of the process for each customer, and the company's progress with establishing interconnection arrangements which permit resale of either wireless or ILEC services in the location of the customer the company refused to serve. The Commission has also required the carriers to provide a projection of the amount of support the carrier expects to receive from the federal USF for the following year, a capital expenditure budget for Kansas for the following year, and a verified statement regarding the use of support as is currently required of all ETCs.

³⁴ The MoPSC is currently undergoing a rulemaking proceeding on ETC designation.

³⁵ In November 2005 the NDPSC began a rulemaking to consider the FCC additional requirements for ETC designation recommended in the FCC's Report and Order released March 17, 2005, in CC Docket 96-45. The rulemaking is pending (Case No PU-05-575).

³⁶ The six methods adopted by the FCC were similar to the methods proposed by Alaska Digital, Inc. (and accepted by the RCA) in its application for ETC designation. See Order No. 10 in Docket U-02-039 at <http://rca.alaska.gov/data/index.html>

³⁷ The Commission on September 25, 2002 in Docket 25980 required BellSouth to utilize up to \$600,000 of the \$16.3 Million dollars of the 2003 federal-high-cost support it proposed to expend during 2003 to deploy loop fiber and next generation digital loop carrier to implement CSA design on the provision of basic local service exchange service to end users who have made application for services but have been unable to obtain service due to economic inefficiency and/or prohibitive aid to construction amounts.

³⁸ See our citation above to the Western Wireless order in docket 2003.1.114 and the allowance to use "wireless access units" as an example.

³⁹ The Indiana Commission does not require any additional methods outside of the established criteria set forth by the FCC Order. In our CETC designations for wireless carriers, we have required the carriers to report the number and location of unfulfilled service requests per year and the final disposition of the request as a condition of their designation.

⁴⁰ Staff has recommended the six methods in pending ETC applications.

⁴¹ In its latest ETC designation order, granting Nextel Partners' request for an ETC designation (Order No. 21089 in Docket No. 03-0104 filed on June 25, 2004), the Hawaii PUC adopted voluntary commitments made by Nextel Partners, which included the company's implementation of generally the same six steps to ensure that it meets its obligation to respond to reasonable requests for service.

⁴² Order 29841 requires ETCs to report unfulfilled requests and to detail how it has attempted to provide service.

(17) FCC Order at ¶23 Five Year Plan (Build out proposal):

- a. The FCC now requires “that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its designated service area.” The FCC has stated that an ETC’s five-year plan “must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements.” Does your commission include any similar requirements [a build out plan?] in its ETC designation process?
- b. If you answered yes, please indicate the area where similarities between your commission’s requirement for buildout/implementation plan and the FCC’s criteria overlap. Otherwise, skip to the next question.

	Question A	Total #	Question B
Yes	AK ⁴⁴ HI ID IN ⁴⁵ KS ⁴⁶ ME MS	13	AK: Similar to item (3). The RCA Commission required ETCs to file plans and maps showing the areas of expansion and/or upgrade. See Orders referenced above. HI: The Hawaii PUC's build-out plan requirement with respect to Nextel Partners (Order No. 21089 in Docket No. 03-0104 filed on June 25, 2004) specifies that the build-out plan describe in detail the company's plan to expand and enhance its network infrastructure and facilities with the use of federal USF monies. Separately, Nextel Partners must also annually file a summary description of all capital projects that exceed \$500,000 and a description of network upgrade and expansion projects that were completed in the prior year. ID: 2 year plan, updated annually. Other than timeframe, the requirements are similar. IN: The Indiana Commission tracks buildout plans, rather than requires specific buildout/capital infrastructure improvements. KS: See responses to 16a and 17a. ME: Similar but different in years. Considering increasing the number of years. MS: The Mississippi PSC requires each rural CETC to file an initial build-out plan for areas where facilities do not yet exist and submission of maps showing existing facilities, coverage area, and planned sites of new facilities upon designation and updated annually. Additionally, the PSC requires each ETC to file a yearly USF plan on June 1 st of each year for the PSC's use in complying with the October certification deadline set forth by the FCC. The

⁴³ The MoPSC is currently undergoing a rulemaking proceeding on ETC designation.

⁴⁴ The RCA has required applicants to file buildout plans to show how they intend to provide service throughout their designated ETC area. See Order No. 2 in Docket No. U-03-16 and Order No. 10 in Docket U-02-39 at <http://rca.alaska.gov/data/index.html>

⁴⁵ As stated above, the Indiana Commission has tracked this and similar information for its CETC/Wireless designations in an effort to review service quality issues that is required of all other incumbent wireline ETCs.

⁴⁶ As described in response to 16a, the Commission has required the newly certified ETCs to file a capital expenditure budget. Additionally, the Commission has a docket open (Docket No. 05-GIMT-112-GIT) to investigate a new process for certifying compliance with Section 254(e) of the Federal Act. Commission Staff has proposed a detailed budget filing that would require a detailed description of all investments/projects. The Commission has not made a finding in that docket yet.

⁴⁷ Annually, the ETC must provide a construction plan that lists the projects completed in the previous year with a detailed statement explaining how much of the service area the company serves due to the completed construction along with a plan and timeline for using universal service support to build out new towers and facilities to expand and upgrade coverage and services in the coming year.

	MT NE NM ⁴⁷ OR SD UT		<p>plan includes the amount of universal service funds the company expects to receive the following year and the company's proposed use of the funds. The PSC works with each company individually and approves their use of the funds prior to submitting the October 1st certification. Plans to build-out infrastructure is highly emphasized. The company is required to file quarterly reports of the amount of universal funds received for the quarter and updates of the projects previously approved by the Commission.</p> <p>MT: The MPSC's orders have imposed signal strength and geographic and population coverage goals.</p> <p>NE: The commissions new requirement mittors that found in the FCC order.</p> <p>NM: -</p> <p>OR: In 2004 cases, a one-year build-out plan was requested. After the FCC's 2005 order, recent applicants have submitted information consistent with all FCC criteria at Staff's request, although the Commission has not yet formally adopted such requirements.</p> <p>SD: In its latest ETC order, the SDPUC imposed the following conditions regarding implementation plans:⁴⁸</p> <p>UT: http://www.rules.utah.gov/publicat/code/r746/r746-360.htm#T6 the state of Utah uses the FCC guidelines.</p>
No	AR, DE, IA, MI, NV, ND, TN, TX, WA, WI	10	
Other	AL ⁴⁹ , AZ ⁵⁰ ,	7	AL: The Alabama PSC reviews the company's plan for just one year at a time as opposed to the five year plan the

⁴⁸ 1. The Petitioners have been designated as ETCs in portions of some rural telephone company wire centers that lie outside the boundaries of the areas in which Petitioners have been licensed by the FCC to provide wireless service. The Petitioners shall provide service to requesting customers in such areas by extension, resale, or other arrangements with other carriers, consistent with section 214(e)(1)(A). The service shall be provided at prices and upon terms and conditions that are comparable to what is provided within the Petitioners' licensed areas.

2. Consistent with their obligations pursuant to section 214(e)(1), the Petitioners shall continue to build out facilities and extend service to meet the statutory objective of offering service "throughout the service area for which the designation is received. . . ."

3. In conjunction with, but separate from and in addition to their annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, the Petitioners shall submit records and documentation on an annual basis detailing their progress towards meeting the statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by the Petitioners within the State of South Dakota during the preceding annual period and shall include their proposed capital budgets for the State of South Dakota for the ensuing year. The Petitioners shall work with Commission Staff to determine what constitutes material expenditures. If the Petitioners and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

4. The Petitioners shall annually submit proposed plans for the upcoming calendar year which set forth the Petitioners' proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, the Petitioners' subsequent annual filings shall also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, the Petitioners shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

5. The Petitioners shall construct the four additional cell sites within one year of their receipt of high-cost support. The year shall begin from the date the Petitioners first begin to receive high-cost support for the entirety of their designated areas. If the Petitioners are unable to construct all four cell sites during this time frame, they shall submit a report detailing the reasons why they were unable to do so and shall thereafter submit monthly reports detailing their progress toward meeting this goal. The initial report shall be due at the end of the year end time frame.

6. By March 1st of each year, the Petitioners shall provide annual reports detailing the consumer complaints that they have received during the previous one year period. This report shall include the nature and location of the complaints.

7. By March 1st of each year, the Petitioners shall provide a report itemizing the number of unfulfilled requests the Petitioners received to provide service to a current customer's residence during the previous year and requests for service from potential customers within the Petitioners' service areas that went unfulfilled during the previous year, including the steps the Petitioners took to provide service and the reasons why such requests went unfulfilled. Following the submission of this report, the Petitioners shall meet with Commission Staff to discuss the report.

⁴⁹ The Alabama PSC requires BellSouth to provide a quarterly report that delineates the status of the current year universal service plan. The report provides the year-to-date financial information and accomplishments. BellSouth is required to report the status of each high cost project and the level of funding expended on each project.

⁵⁰ Staff has recommended a five year plan requirement in pending ETC applications.

⁵¹ The FPSC has not established formal rules requiring additional criteria for the designation of ETCs in Florida. The only wireline CLEC that has been granted ETC status in Florida has volunteered to provide a five-year plan demonstrating how high-cost universal service support will be

FL ⁵¹ , MD ⁵² , MO ⁵³ , NC, WY ⁵⁴	FCC has adopted. The FCC's plan requires a much high level of detailed information.
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- c. Does your approach examine:
- (i) How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation;
 - (ii) The specific geographic areas where the improvements will be made;
 - (iii) Estimated population that will be served as a result of the improvements.

Yes	AK ID IN KS ME MS MT NE NM NV OR SD UT	iii I, ii, iii, iv i, ii, iii iii iii i, ii, iii i, iii, iv i iii, iv ii i i, ii, iii, iv i, iii i ii, iii, iv
NA	AZ ⁵⁵ , AR, DE, FL, HI, IA, MD, MI, MO, NC, ND, TX, WA, WI, WY	

- d. If you answered yes to part a., please indicate if your Commission includes factors beyond these in its analysis of your build out plan?

Yes	AK, MS, MT	3
No	ID, IN, KS, ME, NE, NM, OR, UT	8
NA	AZ, AR, DE, FL, HI, IA, MD, MI, MO, NV, NC, ND, SD, TX, WA, WI, WY	17

- e. The FCC Order at ¶ 24 rejects suggestions that build-out plans include a specific timeline. Do your commission's rules require inclusion of specific timelines?

Explain:

Yes	ID ⁵⁶ , NM, UT	3
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used to improve its coverage, service quality or capacity throughout the service area. The FPSC is considering adopting new high-cost annual certification and reporting requirements which, if adopted, would require a five-year service quality improvement plan. The issue will be addressed at the July 19th Agenda Conference. <http://www.floridapsc.com/library/FILINGS/05/05532-05/010977.RCM.DOC>

⁵² The Commission has not considered this issue yet.

⁵³ The MoPSC is currently undergoing a rulemaking proceeding on ETC designation

⁵⁴ The pending rule making proceeding by the WY PSC addresses these specific issues and other important elements of the FCC's ETC

⁵⁵ Staff has recommended utilizing the FCC criteria.

⁵⁶ The Commission recognizes timelines will change.

No	AK, AL, AZ, DE, HI, IA, KS, MI, MT, NE, NV, ND, OR, TN, WA	15
Other	AR, FL, IN, ME, MD ⁵⁷ , MO ⁵⁸ , MS ⁵⁹ , NC, SD ⁶⁰ , TX, WI, WY ⁶¹	12

(18) FCC Order at ¶ 23 (“Auditing” Function/Reporting)

- a. The FCC now requires supported improvements have actually been made through particular report elements. It requires “an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received. In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.” Does your commission have a similar reporting requirement that assists the Commission in its annual certification process? explain:

Yes	AK, ID, KS, MS, MT, UT, WY	7
No	AL, AR, HI, IN, IA, MI, MO, NE, NM ⁶² , NV, TX, WA, WI	13
Other	AZ ⁶³ , DE, FL, ME ⁶⁴ , MD, TN ⁶⁵ , NC, ND ⁶⁶ , OR ⁶⁷ , SD	10

- b. Does your commission approve other investments or expenditures as satisfactory to meet the requirement to use federal support only for intended purposes?

Yes	KS ⁶⁸ , OR, MS, TN, UT	5
No	AK, AL, AZ, AR, FL, HI, IA, ID, MD, MI, MO, NE, NM, NV, ND, TX, WA,	19

⁵⁷ The Commission has not considered this issue yet.

⁵⁸ The MoSPC is considering a draft proposed rulemaking.

⁵⁹ On an annual basis, the Mississippi PSC approves each ETC’s USF plan. Each ETC submits quarterly reports and at the end of the year, we review the progress of the projects that had been approved.

⁶⁰ As stated above, the SDPUC had a specific timeline for the initial building of certain cell towers but no timeline beyond that.

⁶¹ The final WY PSC rules resulting from the rule making proceeding may incorporate some of the language at ¶ 24.

⁶² Annually, the ETC must provide a construction plan that lists the projects complete in the previous year with a detailed statement explaining how much of the service area the company serves due to the complete construction along with a plan and timeline for using universal service support to build out new towers and facilities to expand and upgrade coverage and services in the coming year.

⁶³ Staff has recommended such reporting in pending ETC applications.

⁶⁴ We may in the future, particularly requiring maps.

⁶⁵ The TRA has notified carriers of the reporting requirements adopted by the FCC.

⁶⁶ North Dakota has not yet adopted such requirements. The NDPSC forwards ETC affidavits to the FCC, but does not audit them or attest to their sufficiency.

⁶⁷ Wireless CETC’s designated in 2004 had some reporting requirements for 2005, but not as detailed as those in the FCC’s new rules.

⁶⁸ The Commission’s current 254(e) certification filing consists of a self-certification form that is verified by the company representative. See response to 17a for more information regarding new requirements the Commission is considering imposing, for additional information on the commission’s investigation, see Docket No. 05-GIMT-112-GIT on the Commission’s website <http://kcc.state.ks.us/docket/cal.cgi>.

	WI, WY	
Other	DE, IN, ME, MT, NC, SD,	6

- c. Please include a brief description of any auditing function performed by your commission prior to its certification to the FCC on the use of federal USF funds.

AK: For this year, the RCA required the regulated ETC's operating in Alaska to file a completed Data response and Affidavit Form based on self-certification of proper use of funds.

AZ: None have been initiated.

ID: The Idaho Commission has historically required companies to self-certify to the Idaho Commission on the use of federal USF funds. Order 29841 will require more detailed reporting.

ME: No audit; self certification.

MI: No USF audits are performed by the MPSC. An affidavit, signed by an officer of the ETC is submitted prior to the October 1 deadline. This document certifies USF support is being used appropriately and is forwarded to the FCC and USAC. However a final order is pending in Case U-14530 and changes may be made to Michigan's current process.

MO: The MoPSC currently requires ETC's to submit an affidavit that they are using all federal USF monies in the proper manner in which they were intended. The MoPSC also requires carriers to submit various forms of documentation, copies of which are attached. Furthermore, the MoPSC chooses a select number of carriers every year for a detailed audit as to their usage of federal USF monies.

MS: See 17(b)

NM: Carriers self-certify with an affidavit of an officer of the company and a listing of yearly USF funding utilization in certain basic categories of expenditures.

SD: We do not perform any audits.

WY: Commission Staff reviews and examines the supporting documentation, accounting data and schedules provided by the carriers in response to written inquiries issued by the Wyoming Commission in advance of the October 1 filing date. Staff conducts any necessary follow-up to verify the carrier's responses and certifications.

(19) FCC Order at II 25 Emergency Communications/Reliability

- a. Does your Commission impose any specific requirements on ETCs to remain functional in emergency situations and/or "demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations," and /or reporting any outages?
- b. If you answered Yes to the previous question please provide a cite to the applicable orders or rules, otherwise skip to (18):

Yes	NE TN	2	NE: Docket #: C-3415 TN: T.C.A. 1220-4-2-23 requires emergency power availability within a reasonable amount of time.
No	AK ⁶⁹ , AR, IA, KS,	14	

⁶⁹ Although no order has been issued at this time, the RCA determined that the requirements stated above shall be required of new ETC applicants and documentation will be required from current ETCs in the annual certification process. In addition, procedures for wireline service

	MD, MI, MS, NM, NV, ND, TX, UT, WA, WI		
Other	AZ, DE, FL ⁷⁰ , HI ⁷¹ , ID ⁷² , IN, ME, MO, MT ⁷³ , NC, OR ⁷⁴ , SD ⁷⁵ , WY ⁷⁶	13	

- c. Do your rules – with respect to the ETC:
- (i) Specify a time frame, e.g., eight hours, for back-up power capability?
 - (ii) If yes, please specify the time frame: _____
 - (iii) Require the ability to reroute traffic to other cell sites in emergencies?
 - (iv) Require the ability to re-route traffic from the line-side of a switch?
 - (v) Require reporting on an annual basis of ETC outages?
 - (vi) [] Other, explain:

Yes		
NA	AK, AZ, AR, DE, FL, HI, IN, IA, KS, ME, MD, MI, MO, MS, MT, NE, NM, NV, NC, ND, OR, SD, TX, UT, WA, WI, WY	27
Other	TN ⁷⁷	1

(20) FCC Order at ¶28 Consumer Protection/Non-Emergency Service Standards

- a. The FCC will require a carrier seeking “ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards” by making “a specific commitment to objective measures to protect consumers.” The

interruptions, including an 8-hr reserve power requirement, can be found in the RCA regulations at 3 ACC 52.270. See <http://www.state.ak.us/rca/Regulations>

⁷⁰ The FPSC has not established formal rules requiring additional criteria for the designation of the ETCs in Florida. The only wireline CLEC that has been granted ETC status in Florida has volunteered to demonstrate its ability to remain functional in emergency situations. The FPSC is considering adopting new high-cost annual certification and reporting requirements which, if adopted, would require ETCs to demonstrate how it is able to function in emergency situations. The issue will be addressed at the July 19th Agenda Conference.

⁷¹ Pursuant to General Order No.8 Section 5.6 relating to Emergency Operation, all authorized telecommunications

Order No 29841 uses the same language as in this question. No specific standards are identified.

⁷² MPSC's rules have considered but have not specified requirements.

⁷⁴ Strict requirements have not yet been adopted, but applicants have included emergency functionality factors in their applications that meet FCC requirements.

⁷⁵ Under our analysis regarding quality of service we look at back-up power. For example, in our most recent ETC order we made the following finding:

1. Another criteria to consider is whether the Petitioners have made any commitments regarding quality of telephone service. The Petitioners state that their current customers "enjoy a very high level of service quality" and that they have a call completion rate of around 98%. Pet. Exh. 5 at 6. The Petitioners further noted that their "network experiences almost no down time" and that they "have never had a switch outage due to a failure." *Id.* The Petitioner's customer service representative can be reached at any time, 24 hours a day, seven days a week. *Id.* at 7. The Petitioners stated that their response time to an outage report is usually less than one hour. *Id.* at 5. The Petitioners also stated that their system is "reinforced by the presence of battery backups installed at its cell sites, accompanied by generators at more remote and key communications sites, along with a pair of diesel generators at its switch, which are capable of running indefinitely in the event of a major electrical outage." *Id.* In addition, the Petitioners have "portable generators on stand-by that can be moved to individual cell sites to supplement back-up batteries." *Id.* Further, the Petitioners have "committed to report the number of consumer complaints filed per 1,000 handsets each year" and their "customer service agreement includes important protections for consumers, including service complaint resolution procedures and provisions for customer-initiated termination of service." Pet. Exh. 1 at 18. Thus, the Commission finds that the Petitioners have made commitments regarding their quality of telephone service.

⁷⁶ Not at this time but maybe after the rule making proceeding is concluded

⁷⁷ No time is set. Rerouting is not addressed but outage records are to be maintained and made available to the TRA upon request.

FCC did not adopt standards; it permits an ETC to propose standards to which the ETC will adhere. Other than the emergency/reliability standards reference in the preceding question, does your commission have specific service quality standards that apply to ETCs (and other LECs)? explain:

Yes	AL ⁷⁸ , AZ ⁷⁹ , AR ⁸⁰ , DE, FL ⁸¹ , HI, KS ⁸² , MT, NE, OR, UT ⁸³ , WY	12
No	IA, ME, MD, MI, MO ⁸⁴ , NM, NV, ND, TN ⁸⁵ , TX, WA	11
Other	AK ⁸⁶ , ID ⁸⁷ , IN, MS ⁸⁸ , NC, SD ⁸⁹ , WI ⁹⁰	7

b. Does your ETC Designation procedure include any requirement for the applicant to make a showing like one described by the FCC in part a, supra?

Yes	ID, KS, NE, OR, MS, TN, WY	7
No	AK, AL, AZ, AR, DE, HI, MD, MI, NM, NV, ND, TX, UT, WA	14
Other	FL, IN, IA, ME, MO, MT, NC, SD, WI	9

c. The FCC will require an ETC to “demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which

⁷⁸ Specific service quality standards apply to all ETC's.

⁷⁹ Certain rules (see A.A.C. R14-2-5XX) and Qwest' Service Quality Plan Tariff which, except for the penalties section, is applicable to all CLECs

⁸⁰ The service quality standards apply to the ILECs and CLECs and would therefore apply to those that have been designated ETCs. These standards would not apply to wireless companies that have been designated as ETCs.

⁸¹ The FPSC has not established formal rules requiring additional criteria for the designation of ETCs in Florida. The only wireline CLEC that has been granted ETC status in Florida has volunteered to demonstrate that it will satisfy consumer protection and service quality standards. The FPSC is considering adopting new high-cost annual certification and reporting requirements which, if adopted, would require ETCs report the number of complains per 1,000 handsets or lines and adhere to service quality standards and consumer protection rules. The issue will be addressed at the July 19th Agenda Conference.

⁸² The Commission has required recent ETC applicants (after Virginia Cellular Order) to commit to comply with the CTIA's Code for Wireless Service and to report the number of complaints per 1000 handsets for the preceeding year on January 31 of each year. In addition, the Commission is currently reviewing its quality of service standards that are applicable to all facilities-based CLECs and ILECs. (Docket No. 05-GIMT- 187-GIT). The Commission is considering, among other things, extending its quality of service requirements to ETCs. The Commission has received comments and held several workshops. The Commission has not made a decision on this case yet, and may require more testimony or comments prior to making its decision.

⁸³ <http://www.rules.utah.gov/publicat/code/r746/r746-340.htm> Utah has service quality standards that apply to all telecommunications carriers. The applicable rule is R-746-340.

⁸⁴ Chapter 32 of the Commission rules include quality of service standards for ILECs and CLECs. Please see: <http://www.sos.state.mo.us/adrules/csr/current/4csr/4c240-32.pdf>

⁸⁵ Rulemaking currently in process to address this issue. Docket 00-00873

⁸⁶ The RCA has service standards and reporting regulations in place for LECS but these standards have not specifically been applied to all ETCs. See 3 AAC 52.260. <http://www.state.ak.us/rca/Regulations>

⁸⁷ Order 29841 indicates ETCs will be required to meet service quality standards appropriate for the technology..ie wireless carriers must meet the CTIA standards.

⁸⁸ The Mississippi PSC currently has service quality standards that apply to BellSouth only. Rural CETC's are required to comply with the CTIA Consumer Code for Wireless Service, submit to the Commission the number of consumer complaints per 1000 handsets on a quarterly basis, and provide a designated representative for addressing customer service or quality of service complaints received by the Commission.

⁸⁹ In its most recent ETC order, the SDPUC required the applicant to abide by the CTIA consumer code and our service quality rules.

⁹⁰ Not for wireless carriers carriers, but for all others.

the applicant seeks designation.” The FCC itself declined to adopt a specific local usage threshold, but will review local usage offerings on a case-by-case basis. The FCC intends to “ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.” The FCC encourages states to determine whether the ETC “provides adequate local usage.” Does your state require ETCs to offer a specific local usage plan? Explain:

- d. If you answered yes to c. supra, are requirements for wireless equivalent to requirements for wireline?

Yes	FL ⁹¹ IA MD MT ⁹² NE UT ⁹³	6	NO YES N/A NO N/A ⁹⁴ NO
No	AZ, AR, DE, HI, ID ⁹⁵ , KS, MI, NM, NV, ND, OR, TN, TX, WA	14	
Other	AK ⁹⁶ , AL, IN, ME ⁹⁷ , MO ⁹⁸ , MS ⁹⁹ , NC, SD ¹⁰⁰ , WI ¹⁰¹ , WY ¹⁰²	10	

⁹¹ In accordance with Rule 54.201(d)(1), the following services or functionalities shall be supported by federal universal support mechanisms as defined by Rule 54.101 (a): (1) Voice grade access to the public switched network 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; (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users

Eligibility Requirements - In satisfying its burden of proof necessary to obtain ETC designation, an ETC applicant must now: 1) provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity throughout the service area for which it seeks designation; 2) demonstrate its ability to remain functional in emergency situations; 3) demonstrate that it will satisfy consumer protection and service quality standards; 4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and 5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations. In addition, these requirements are made applicable on a prospective basis to all ETCs previously designated by the Commission, and such ETCs are required to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006.

<http://www.floridapsc.com/library/filings/05/02744-05/02744-05.PDF>

Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas is required.

<http://www.floridapsc.com/library/filings/05/02744-05/02744-05>.

⁹² Ans: see MPSC NEW RULE V (38.5.3209)(e)

⁹³ In the State of Utah ETCs must provide a service that will be similar to the services offered by the ILEC.

⁹⁴ The requirement is that it must be *comparable*. The Commission has not yet defined what that means.

⁹⁵ Case by case analysis

⁹⁶ The RCA requires ETC applicants as part of the review process to identify local usage plans comparable to those offered by the incumbent LECs. See Order No. 2 in Docket U-03-16 on the RCA website at <http://rca.alaska.gov/data/index.html>

⁹⁷ Agree by one, under consideration by another.

⁹⁸ The MoPSC is considering a draft proposal reulmaking.

⁹⁹ Usage plans are reviewed on a case-by-case basis.

¹⁰⁰ We require the offering of local usage but not a specific amount.

¹⁰¹ Not a specific plan, but they are required to provide a reasonably adequate number of calls within a reasonably adequate calling area as defined by the Commission.

¹⁰² Not at this time, but this issue is part of the rule making proceeding

- e. The FCC did not impose an equal access requirement on all ETCs, it stated that ETC applicants should acknowledge that the FCC may require equal access in the event that no other ETC is providing equal access within the same service area. Has your commission imposed an equal access requirement on all ETCs?

Yes	MD, MT, UT	3
No	AK, AL, AZ, AR, DE, HI, IN, IA, KS, MI, NE, NM, NV, ND, OR, SD, TN, TX, WA, WY	20
Other	FL ¹⁰³ , ME, MO ¹⁰⁴ , MS ¹⁰⁵ , NC, WI ¹⁰⁶	6

- f. The FCC did not adopt a requirement for ETC applicants to demonstrate the financial capability to provide quality services throughout the designated service area. Does your commission require an ETC applicant to demonstrate the financial capability to sustain supported services?

Yes	NV, MS, TN,	3
No	AK, AL, AR, DE, FL, HI, KS, MD, MI, MT, NE, NM, ND, OR, SD, TX, WA, WY	18
Other	AZ ¹⁰⁷ , IN ¹⁰⁸ , IA, ID ¹⁰⁹ , ME, MO ¹¹⁰ , NC, UT ¹¹¹ , WI ¹¹²	9

(21) FCC Order at ¶40-43 Public Interest Determinations - The FCC states that in making a public interest determination, the “public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.” In your State’s public interest determination, check the following listed items that are included in the balancing test:

¹⁰³ The FPSC has not established formal rules requiring additional criteria for the designation of ETCs in Florida. The only wireline CLEC that has been granted ETC status in Florida has volunteered to provide equal access if it becomes the only remaining ETC to provide service in its service area. The FPSC is considering adopting new high-cost annual certification and reporting requirements which, if adopted, would require ETCs to acknowledge that the FPSC may require it to provide equal access if no other ETC is providing it within the service area. The issue will be addressed at the July 19th Agenda Conference.

¹⁰⁴ The MoPSC is considering a draft proposed rulemaking.

¹⁰⁵ ETC providers have been informed that equal access may be required in the event a incumbent LEC relinquishes its own ETC designation.

¹⁰⁶ Except for wireless carriers because our Commission approved different qualifying requirements on our existing wireless ETCs (on a case by case basis). None of those are required to provide equal access.

¹⁰⁷ Not a specific showing unless Staff questions the ability and asks for specific information. Technical, financial and managerial ability is considered when examining an application for a Certificate of Convenience and Necessity (not applicable to wireless providers).

¹⁰⁸ Financial capabilities are a condition of receiving a CTA to do business in Indiana so that condition would have already been met prior to a designation being sought by a carrier.

¹⁰⁹ financial capability is an issue the Commission considers in granting certification and in its public interest analysis. The Commission did not find additional specific requirements necessary.

¹¹⁰ The MoPSC is considering a draft proposed rulemaking.

¹¹¹ To serve in the State all Telecommunications Carriers must certify in the state. To be certificated, financial strength is one of the criteria analyzed. All ETCs must be certificated telecommunications companies to serve in the State.

¹¹² Not a specific showing unless staff of the Commission questions the ability and ask for specific information, but technical, financial and managerial ability is considered when examining an application for certification as a provider.

- (i) The value of increased competition (which the FCC has found, by itself, is unlikely to satisfy the public interest test.”
- (ii) The advantages and disadvantages of particular service offerings
- (iii) The price of a service offering.
- (iv) The quality of a service offering
- (v) If the ETC designation of a carrier will confer a public benefit.
- (vi) The likelihood of “cream skimming.”
- (vii) The impact of designation on the size/sustainability of the high-cost fund.
- (viii) The level of per-line support provided to the area.
- (ix) Whether a non-incumbent will serve a location without support.
- (x) The number of other ETCs approved for service in a particular area.
- (xi) The size and economies of scale and scope of the applicant.

	YES	N/A
i	ID, TN, TX, UT, WY, WI, WA, SD, OR, AK, KS, AZ, AR, HI, IN, IA, MI, MS, MT, NE, NM, NV	ND ¹¹³ , NC, DE, FL, MD, MO
ii	ID, TN, TX, UT, WY, SD, OR, AK, KS, AZ, IA, MS, NE, NM, NV	WI, WA, ND, NC, AR, DE, FL, HI, IN, MD, MI, MO, MT
iii	ID, TN, UT, WY, SD, AK, AZ, HI, IN, MS, MT, NE, NM, NV	TX, WI, WA, OR, ND, NC, KS, AR, DE, FL, IA, MD, MI, MO
iv	ID, TN, TX, UT, WY, SD, OR, AK, KS, AZ, HI, MS, MT, NE, NV	WI, WA, ND, NC, AR, DE, FL, IN, IA, MD, MI, MO, NM
v	ID, TN, TX, UT, WY, WI, SD, OR, AK, KS, AZ, AR, HI, MS, MT, NE, NM, NV	WA, ND, NC, DE, FL, IN, IA, MD, MI, MO
vi	ID, TN, WY, WI, WA, SD, OR, AK, KS, AZ, HI, IN, IA, MI, MS, MT, NE, NV	TX, UT, ND, NC, AR, DE, FL, MD, MO, NM
vii	ID, UT, WY, SD, KS, AZ, IN, MS, MT, NE, NV	TX, WI, WA, OR, ND, NC, AK, AR, DE, FL, HI, IA, MD, MI, MO, NM
viii	ID, UT, WY, IN, MT, NE, NM, NV	TX, WI, WA, SD, OR, ND, NC, AK, KS, AZ, AR, DE, FL, HI, IA, MD, MI, MO
ix	ID, UT, AK, IN, NE, NV	TX, WY, WI, WA, SD, OR, ND, NC, KS, AZ, AR, DE, FL, HI, IA, MD, MI, MO, MT, NM
x	ID, TN, UT, SD, AZ, IN, NE, NV	TX, WY, WI, WA, OR, ND, NC, AK, KS, AR, DE,

¹¹³ There is no ND law specifying items that must be considered in the public interest determination.

		FL, HI, IA, MD, MI, MO, MT, NM
xi	ID, UT, WY, NE, NV	TX, WI, WA, SD, OR, ND, NC, AK, KS, AZ, AR, DE, FL, IN, IA, MD, MI, MO, MT, NM

(22) Is your State Commission required to follow any State-specific laws or rules when designating ETCs for federal USF purposes?

(23) If you answered yes to question 22, please provide the web address of the designated rules.

Yes	ID ¹¹⁴ UT WY WI SD AR FL ¹¹⁵ NM	ID: http://www3.state.id.us/cgi-bin/newidst?scid=620060010D.K UT: http://www.rules.utah.gov/publicat/code/r746/r746-360.htm WY: Here is the statutory cite - W.S. § 37-15-104(a)(vi)(B). This statutory language granted the WY PSC authority to designate wireless/cellular carriers as ETCs: "To the extent permitted in accordance with the requirements set forth in federal law, consideration and determination of an application for designation as a federal eligible telecommunications carrier," WI: http://www.legis.state.wi.us/rsb/code/psc/psc160.pdf ETC designation is in § PSC 160.13 SD: http://legis.state.sd.us/rules/rules/2010c.htm#20:10:32 (rules 20:10:32:42 through 20:10:32:49) AR: Attached Ark Code Ann. §23-17-404 FL: http://www.flsenate.gov/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=364.025&URL=CH0364/Sec025.HTM NM: http://www.nmcpr.state.nm.us/nmac/parts/title17/17.011.0010.htm
No	AL, TN, TX, WA, OR, MA, ME, NC, AK, KS, AZ, DE, HI, IN, IA, MD, MI, MO, MS, NE, NV	21
NA	MT ND ¹¹⁶	ND: http://www.state.nd.us/hr/cencode/t49c21.pdf

¹¹⁴ Idaho Code 62-610D mirrors the federal statutes.

¹¹⁵ 364.025(5) Universal service.-- (5) After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.
http://www.flsenate.gov/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=364.025&URL=CH0364/Sec025.HTM

¹¹⁶ North Dakota Century Code section 49-21-01.8 requires that a telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

(24) STATE USF PROGRAMS - If your State has additional or different requirements for accessing the State USF fund other than those listed in question 21 above, please briefly explain them here:

AR: Attached Ark Code Ann. §23-17-404

AZ: To date, eligibility for Arizona USF (AUSF) has been considered only in the context of a traditional rate case. There is an open generic docket that will evaluate if changes to the existing rules are warranted. The existing AUSF rules are in A.A.C. R14-2-12XX.

HI: Hawaii's USF is not established at this time.

ID: Eligibility (and payments) for Idaho's current USF program is based upon a company's actual costs of providing service. No company not already subject to financial regulation by the PUC has requested participation in Idaho's USF program.

KS: If the ETCs network already passes or covers the potential customers premises, the ETC should provide service immediately . . . where a request comes from a potential customer within the applicants licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customers equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carriers facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

MD: See TeLife Statute. Public Utility Companies Article and Related Law, 2003 Edition, §8-201. http://mlis.state.md.us/cgi-win/web_statutes.exe

MO: As currently constructed, wireless carriers cannot draw monies from the Missouri Universal Service Fund.

NE: The NUSF operates differently in several respects. To obtain a designation for state ETC status a carrier must also show that it provides access to white page directory listings and that it provides equal access. There is also a general requirement that ETCs must abide by all Commission rules, regulations and orders.

In addition, in Docket No. NUSF-26, the Commission changed the funding mechanism. NUSF is targeted to fund the least dense areas in the state (as determined by the number of households in a given area). The Commission also adopted a rebuttable presumption it would not serve the public interest to fund multiple networks in those high cost areas. Carriers can receive funding only if they rebut the presumption or demonstrate that they can provide service to all customers in a designated area in a more cost effective manner and assume carrier of last resort obligations.

NM: Not at this time, but they will be considered in an access reform rulemaking.

NV: To receive state USF the carrier must be the provider of last resort.

OR: provision of dialing parity is required for State USF

TN: No state USF at this time.

TX: In Texas, in order to receive state USF support, a carrier must be designated an eligible telecommunications provider (ETP), pursuant to P.U.C. Subst. R. 26.417, which may be accessed at the following link:

<http://www.puc.state.tx.us/rules/subrules/telecom/26.417/26.417.pdf>. A carrier must be designated an ETC before being an ETP, however, Commission practice has been to process both applications simultaneously, as much of the same information is required. The main

difference between the ETP rules and ETC rules is that the ETP rules, unlike the ETC rules, impose certain service quality and customer service requirements on carriers.

WA: See orders in Dockets UT-043011, 023033, and 970333-54 and 56.

WI: We have, generally speaking, the same requirements for any ETC designation. With a limited number of exceptions involving wireless carriers, providers can only be designated as ETC for both state and federal. There is no separate federal ETC designation. The different requirements can be found in the rule referenced in answer 14.d. and 23 in § PSC 160.13 (and § PSC 160.03 as cross-referenced in 160.13).

WY:

1. Only Essential Access Lines (Basic Local Exchange Service – POTS), as defined by the Wyoming Telecommunications Act of 1995, qualify for support from the Wyoming USF. However, all essential lines qualify for support, not just a single access line or single connection per location/customer.
2. A carrier does not have to be an ETC to qualify for support from the Wyoming USF.
3. A carrier qualifies for support from the Wyoming USF if its rates (prices) are greater than 130% of the weighted statewide average local rate.
4. All embedded and incremental federal USF support is accounted for prior to any support payments from the Wyoming USF.
5. Unlimited local calling is a requirement for all carriers, including wireless/cellular, to qualify for support from the Wyoming USF.
6. Support from the Wyoming USF must be shown as a monthly bill credit on the customer's bill.
7. As of today, no wireless/cellular providers have qualified for support from the Wyoming USF.

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

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

Adopted: February 25, 2005

Released: March 17, 2005

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

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I. INTRODUCTION

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

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

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

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

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

⁴See *id.*

2006, at the same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board's recommendation to evaluate separately whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this Report and Order.

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

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

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

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

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

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

II. BACKGROUND

A. The Act

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

8. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁹ Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."¹¹ Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that

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

⁷47 U.S.C. § 254(e).

⁸47 U.S.C. § 214(e)(1).

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

¹⁰47 U.S.C. § 214(e)(1).

¹¹47 U.S.C. § 214(e)(2).

is not subject to the jurisdiction of a State commission, the Commission shall upon request” perform the relevant ETC designation.¹²

B. Joint Board Recommended Decision

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

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

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

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

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

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

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

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

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

¹⁷See 47 U.S.C. § 214.

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

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

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

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

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵2005 *Consolidated Appropriations Act* at § 634.

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

Board recommended that the Joint Board and the 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.²⁷

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

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

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

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

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

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

³⁰See *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, para. 1 (2004) (*Virginia Cellular ETC Designation Order*).

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

“creamskimming” that could result from Virginia Cellular’s ETC designation.³² The Commission further stated that the framework it established in the *Virginia Cellular ETC Designation Order* henceforth would apply to all ETC designations pending completion of this Report and Order.³³

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

III. SCOPE OF SUPPORT

16. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to “modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.”³⁷ Accordingly, in this

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

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

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

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

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

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

Report and Order, we do not consider the portion of the Joint Board's *Recommended Decision* related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

IV. ETC DESIGNATION PROCESS

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

18. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on

³⁸See 47 U.S.C. § 214(e)(1).

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

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

⁴¹See 47 U.S.C. § 214(e)(1)(B).

⁴²47 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.

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

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

