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February 22, 2005

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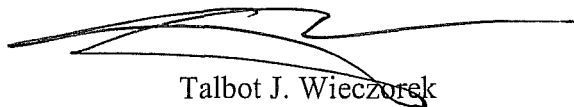
RE: RCC Minnesota, Inc. and Wireless Alliance, L.L.C., d/b/a Unicel for Designation
as an ETC - Docket TC 03-193 GPGN File No. 7401.040099

Dear Ms. Bonrud:

Enclosed please find Petitioners' Closing Brief in the above-entitled matter. I have also emailed the brief to all counsel. The hard copy and ten copies will be sent by Next Day delivery to you and by U.S. Mail, postage paid, to all counsel.

If you have any questions, please let me know.

Sincerely,



Talbot J. Wieczorek

TJW:klw

Enclosures

c: Via Email and US Mail to:

Darla Pollman Rogers
Richard Coit
James Cremer
Meredith Moore
Clients
John Smith

**Before the
South Dakota Public Utility Commission
500 East Capital Avenue
Pierre, South Dakota 57501-5070**

In the Matter of the Petition of)
RCC Minnesota, Inc.)
Wireless Alliance, LLC)
For Designation as an Eligible)
Telecommunications Carrier)
Under 47 U.S.C. Section 214(e)(2))

Docket No. TC03-193

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FEB 23 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

To: The Commission

CLOSING BRIEF OF RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, LLC

I. INTRODUCTION.

“Shame on you if you try to wire it . . . It’s just the wrong way to do it.” Remarks of FCC Chairman Powell, February 10, 2004.¹ The thrust of Chairman Powell’s comments reflects a major goal of the Federal Telecommunications Act and the FCC’s orders implementing it: to prompt, or at least allow, the most efficient providers and technology to flourish throughout this country and incent less efficient providers to improve their efficiency or offer better services for the good of consumers. Universal service laws and regulations, such as those at issue in this docket, are an important tool in achieving that goal.

While it is unlikely that a grant of the application of RCC Minnesota, Inc. and Western Alliance, LLC. (“RCC”) for ETC status will lead to a wholesale “unwiring” of rural South Dakota, there is no question that it will lead to significant public interest benefits. The Commission’s staff agrees it is in the public interest to grant RCC’s application. Moreover, RCC has demonstrated its basic qualifications to be an ETC, which no party has challenged.

¹ As reported in TR Daily, February 10, 2004.

There being no serious controversy over whether RCC is qualified to be an ETC, there remain two principal issues: (1) whether a grant will serve the public interest, and (2) how to define RCC's ETC service area and redefine the service area of affected rural ILECs pursuant to 47 C.F.R. Section 54.207.

Before analyzing these issues, we are constrained to note that Intervenors' view that RCC's showing does not meet the "more rigorous" standards set forth in *Virginia Cellular* and *Highland Cellular* cases is materially inaccurate. Generally, RCC approves of the framework for designating an ETC set forth in *Virginia Cellular* because this Commission should not approve petitions from carriers who simply recite public interest benefits and hold their hand out for a support check. Without question, RCC's comprehensive showing made in this proceeding is more extensive than that made by Virginia Cellular.

Moreover, what the FCC *did not say* in *Virginia Cellular* is at least as important as what it did. For example, although the FCC stated that they intend to apply a more stringent analysis to ETC petitions, the FCC granted Virginia Cellular's petition without a hearing. The federal statute does not require a hearing. No discovery was conducted and no testimony was taken, despite opposition of the Virginia rural ILEC association. Virginia Cellular submitted a petition, additional information in support of its petition, and met with Commission staff on several occasions to make its case in the course of a "permit but disclose" proceeding. Interested parties filed comments.

It is fair to say that this Commission's conduct of a full hearing, with all of the traditional due process protections for rural ILECs, provides a much fuller record and more stringent examination of RCC's qualifications than that conducted by the FCC. The FCC did not impose an affordability test or rate regulation in any form. Other than requiring a commitment to abide

by the CTIA Consumer Code and submitting consumer complaint data, the FCC did not require Virginia Cellular to submit to ILEC-style regulation that is properly applied to ILECs to protect consumers from monopoly business practices.

In sum, even though RCC disagrees with some of the FCC's conclusions that depart without explanation from its prior precedent, *Virginia Cellular* and FCC cases following it affirm the FCC's pro-competitive policy for designating ETCs throughout the country.² *Virginia Cellular* is a win for wireless carriers seeking ETC status and those who can benefit from their service. It affirms that serious companies such as RCC, who focus on rural America, are entitled to be ETCs if they make a legitimate case, as envisioned in the federal statute. Most important, it is an even bigger win for rural consumers, who pay into the fund and are entitled to the benefits that Congress promised.

II. RCC HAS DEMONSTRATED THAT A GRANT OF ITS PETITION WILL SERVE THE PUBLIC INTEREST AND INTERVENORS HAVE NOT PRESENTED ANY SIGNIFICANT RECORD EVIDENCE TO REFUTE RCC'S SHOWING.

A. There Is Ample Record Evidence To Demonstrate That A Grant Of RCC's Petition Will Serve The Public Interest.

As summarized in RCC's opening brief, RCC has placed into the record more than sufficient evidence to demonstrate that a grant will serve the public interest. In terms of specific showings, serious commitments and sheer volume, the evidence far exceeds what was submitted

² See, e.g., *Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, DA 05-259 (rel. Jan. 31, 2005); *Sprint Corp.*, DA 04-3617 (rel. Nov. 18, 2004) (designating wireless carrier as an ETC in Alabama, Florida, Georgia, New York, North Carolina, Tennessee, and Virginia); *Advantage Cellular Systems*, 19 FCC Rcd 20985 (2004) (Tennessee); *ALLTEL Communications, Inc.*, 19 FCC Rcd 20496 (2004) (Alabama, Florida, Georgia, North Carolina, Virginia); *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530 (2004) ("*Nextel Partners*") (Alabama, Florida, Georgia, New York, Pennsylvania, Tennessee); *Guam Cellular and Paging, Inc. d/b/a Saipancell*, 19 FCC Rcd 13872 (2004).

in *Virginia Cellular* and is consonant with what RCC has submitted to other state commissions that have conducted full evidentiary hearings before granting RCC's applications.

RCC demonstrated that even without support, its network already reaches deep into rural South Dakota. With support, it will be able to raise its network quality closer to that enjoyed in places like Sioux Falls and respond to requests from consumers in areas where signal strength is weak or nonexistent. RCC testified that it provides excellent customer service and no party introduced any evidence to the contrary.³ Its network is reliable and as technology advances and coverage improves, RCC will bring improved service and advanced technologies to rural communities.

Intervenors' attempt to have it both ways is transparent. On the one hand, they argue that "RCC and a number of other wireless service providers are already competing in these areas today."⁴ On the other hand, they argue that RCC is only serving low-cost areas and have failed to enter into substantial portions of rural South Dakota, and that RCC's service is not a substitute for wireline service.⁵ It scarcely bears mention that at this time, without having the benefit of high-cost support, RCC has commenced building its network out from the lowest-cost portions of its licensed service area, exactly as ILECs did decades ago. In low-cost areas where its network is strong, RCC is competing with ILECs for local exchange business and its service is a substitute for landline service. It is in the higher-cost areas that, despite its inroads in recent years, RCC requires high-cost support to increase the reach and quality of its network to a level at which it can be truly competitive. RCC has demonstrated what it plans to do with the first year's projected support to expand its service to high-cost areas.

³ TR. Vol. 1 p. 107 lines 24-25. RCC willingly agrees to the SDPUC consumer complaint jurisdiction.

⁴ Intervenors' Reply Brief at p. 21.

⁵ Id. at pp. 21-23.

Intervenors are critical about RCC's service quality commitments, for example noting that RCC's retail establishments in South Dakota are located in Sioux Falls and Watertown.⁶ This fact demonstrates why RCC's petition should be granted. To date, without support, its construction, sales and marketing efforts have been limited to low-cost areas such as these two towns. It is evidence that RCC is not able to devote resources to areas where it does not get support and where its business plan does not support retail locations. If RCC builds new sites and expands footprint, it will have every incentive to reach out to customers in areas where its signal improves. When its network in remote areas is strong enough, it is likely that it will establish a sales force to attract customer revenue and "per-line" support. This new competitive force is exactly what the high-cost fund is intended to deliver to rural consumers.

This case is about whether RCC will have an opportunity to extend facilities to the higher-cost portions of its service area. Looking at RCC's propagation map,⁷ it is obvious that there are significant areas within its FCC-licensed area that receive little or no coverage. RCC lacks signal in those areas primarily because it has not had access to the same high-cost subsidies the ILECs have had. Without high-cost support, it is unlikely that RCC will build facilities in many rural areas any time soon, if ever. In areas where RCC's network is not of sufficient quality to give consumers the kinds of choices that they have in larger cities, or the low-cost areas where RCC now serves, it cannot and never will compete for local exchange business or materially advance universal service.

⁶ Id. at p. 24.

⁷ RCC Hearing Exh. 3.

B. RCC Has Demonstrated both Its Capability And Commitment To Serve Consumers Throughout Its Requested ETC Service Area.

RCC's commitment to respond to all reasonable requests for service throughout its proposed ETC service area was unequivocal and fully in compliance with the federal requirement for all ETCs.⁸ Under 47 C.F.R. 54.201(d)(1), an ETC may meet this requirement purely through its facilities, or through a combination of facilities-based service and resale. Based upon an estimate of high-cost support that it expects to receive in the first year, RCC has committed to construct additional facilities within its proposed ETC service area to enhance its coverage, and has identified four areas it is presently targeting for new cell site construction with the use of high-cost support. The company's commitment is continuing, and will evolve over time as support levels increase (or decrease).

Over time, RCC has every incentive to improve its service because it can obtain neither customer revenue nor high-cost support unless it has a customer. The current system for providing support to competitors limits their funding to the "per-line" amount received by the ILEC without the guaranteed return on investment that is available to ILECs. So in order to increase support, RCC must get customers. To expand its customer base, RCC must construct new facilities. And it must do so prudently because there is no safety net of a "revenue requirement" that RCC can rely on to increase its support if poor investments are made.

Since this Commission must certify to the FCC each year that RCC is using its high-cost support as required by law, RCC will annually report on its use of high-cost support. This Commission may review and investigate RCC's use of funds to ensure that the investments are being made lawfully.

⁸ Kohler prefiled direct at p. 10 lines 7-9; Gruis prefiled direct at p. 8-10; TR. Vol. 2 at pp. 63-64.

Without citing any authority, Intervenors claim that “this Commission must assure itself that the new ETC will actually build sufficient facilities within a reasonable period of time *to serve throughout the entire study area.*”⁹ This statement is inaccurate. The proper legal requirement for all ETCs is to respond to requests from consumers, not to build out to a geographic area.¹⁰ A geographic coverage requirement envisioned by Intervenors is anti-competitive in that it would apparently require a newcomer to build facilities into areas where nobody lives, works or plays, to achieve “complete coverage.” This has never been the standard for ILECs anywhere in the country, who do not string wires into rural areas where there are no homes or businesses. Moreover, it would be a huge waste of universal service dollars, which are to be invested wisely for the public good, not to construct unnecessary or useless facilities.

In *Virginia Cellular*, the FCC accepted a build-out plan from the petitioner that falls far short of providing complete geographic coverage in the rural mountainous regions of the state. The FCC specifically required the petitioner to return to the FCC each year to report on its use of funds in the designated area. It noted that petitioners’ plans could change depending on circumstances in the market and that it would expect a report explaining such changes each year.¹¹

Not only is Intervenors’ position contrary to applicable law, but if adopted, it could not possibly be competitively neutral. ILECs have constructed networks in rural South Dakota for

⁹ Intervenors’ Reply Brief at p. 18.

¹⁰ *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15175 (2000) (“*South Dakota Preemption Order*”) (“A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request.”); Indeed, if the geographic standard advocated by wireline carriers were the law, they could never meet it, as their facilities only offer service at the end points of their wires.

¹¹ *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1571 (2004) (“*Virginia Cellular*”).

three quarters of a century with implicit subsidies, which continue to this day. In addition to that support, ILECs receive explicit federal high-cost support. The idea that ILECs have no deadline to construct networks¹² but competitors, who (1) are not guaranteed a return on their investments in rural areas *even with federal high-cost support*, (2) receive far less high-cost support than ILECs in absolute terms, and (3) are attempting to compete for local exchange consumers against carriers that have all of the “technical, economic, and marketing advantages of incumbency,”¹³ , must construct a so-called ‘ubiquitous’ network throughout the state within some specified period of time, borders on the absurd. To RCC’s knowledge, such a scheme has been rejected in every state where it has been considered, including Alaska, Minnesota, Maine, Arizona, New Mexico, Colorado, West Virginia, Louisiana, Kansas, and by the FCC in *Virginia Cellular* and subsequent decisions.¹⁴

¹² That ILEC network build-out is still a work in progress was highlighted recently when wireline service was recently made available for the first time to the residents of Mink, Louisiana. See “Governor Blanco Will Place First Call to Mink, Louisiana,” Press Release, Office of the Governor (1/31/2005), available at http://www.gov.state.la.us/Press_Release_detail.asp?id=768.

¹³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 15506-07, para. 5 (1996) (“*Local Competition Order*”).

¹⁴ Alaska DigiTel, Docket U-02-39, Order No. 10, Order Granting Eligible Telecommunications Carrier Status and Requiring Filings (August 28, 2003) at pp. 8-9 (“ADT Alaska Order”); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm’n Dec. 15, 2000) (“SBI Arizona Order”); N.E. Colorado Cellular, Inc., Docket No. 00A-315T (Colo. PUC Dec. 21, 2001) (“NECC Colorado Order”); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm’n, Sept. 30, 2004) (“RCC Kansas Order”); NPCR, Inc. d/b/a Nextel Partners, Inc., Docket No. U-27289 (La. PSC, June 29, 2004) (“Nextel Louisiana Order”); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (“RCC Maine Order”); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (Aug. 14, 2001) *aff’d*, Final Order (N.M. Pub. Reg. Comm. Feb. 19, 2002) (“SBI N.M. Order”); RCC Minnesota, Inc., Docket No. 1084 (Oregon PUC, June 24, 2004) (“RCC Oregon Order”); RCC Atlantic, Docket No. 6394 (Vt. Pub. Serv. Bd., Sept. 29, 2004) (“RCC Vermont Rural Order”); Easterbrooke Cellular Corp., Docket No. 03-0935-T-PC (W. Va. PSC, May 14, 2004) (“Easterbrooke W.V. Order”). See also *Nextel Partners, supra*, 19 FCC Rcd at 16538-39, para. 19 (“We reject the arguments of certain commenters that Nextel does not offer service throughout the study areas where it seeks designation and therefore should not be designated in these areas. Specifically, these commenters allege that service is not offered in many of the zip codes within the study areas where Nextel seeks ETC designation. The Commission has already determined that a telecommunications carrier’s inability to demonstrate that it can provide ubiquitous service at the time of

C. Carrier Of Last Resort Obligations Are Not Required Of Federal CETCs.

Intervenors complain that RCC is not willing to be a carrier of last resort (“COLR”) in South Dakota as a condition of its ETC status. As an ETC, eligible for federal high-cost support, RCC is not required to be a COLR. In adopting rules for federal ETCs, the FCC specifically considered and rejected imposing COLR obligations on competitors:

Similarly, we agree with the Joint Board's analysis and conclusion that exit barriers comparable to those imposed on ILECs are unnecessary because section 214(e)(4) already imposes exit barriers similar to the protections imposed by traditional state COLR regulation. We conclude that additional exit barriers are not only incompatible with the requirements of section 214(e)(1), but also that they are not warranted: parties have neither demonstrated that the exit barriers set forth in section 214(e)(4) are significantly different from the restrictions contained in traditional state COLR requirements, nor have they demonstrated that the section 214(e) requirements are insufficient to protect subscribers. Moreover, we are reluctant to impose additional exit barriers or other additional requirements on carriers seeking to offer local service based on our finding that such additional requirements would raise potential competitors' expected costs of entry and thus discourage competition.¹⁵

Before any carrier can relinquish its ETC status, the statute directs a state commission to “require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.”¹⁶ These provisions are the law. They are not separate statements from FCC commissioners expressing their concern, or who may not agree with the law as written. Intervenors’ reliance on such statements is misplaced.

its request for designation as an ETC should not preclude its designation as an ETC. Moreover, Nextel has committed to improve its network and reach out to areas that it does not currently serve.”).

¹⁵ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8856-57, para. 143 (1997) (“*First Report and Order*”) (footnotes omitted).

¹⁶ 47 U.S.C. Section 214(e)(4).

There is also a very important reason why traditional state COLR obligations are not appropriate for CETCs. ILECs submit costs to USAC in accordance with their revenue requirements and, based on a formula, they receive support that varies with their investment without regard to whether such investments are necessary, rational, or efficient. Competitive ETCs only receive support for getting and keeping a customer. If a CETC's investments are anything but efficient, the universal service system does not make up any of the difference. Thus, the COLR obligation more properly attaches to the carrier that is guaranteed sufficient support, not the one that must take 100% business risk.

Finally, it appears that Intervenors equate COLR with an obligation to construct facilities without regard to either cost or return on investment. This is not the law for ILECs, who are permitted to assess a line extension charge if need be. Given the maturity of wireline networks, the need for line extension charges is likely to be substantially less today than it was some decades ago. Not so for newer wireless networks that have much work to do to extend new services out to rural areas. The combination of immature networks and the limitations of the "per-line" support methodology make plain why traditional state COLR obligations cannot always be applied to competitive carriers. Even so, RCC acknowledged at the hearing that should it become necessary due to other companies relinquishing their ETC designation, it stands ready to assume COLR obligations.¹⁷

In sum, all federal ETCs have a legal obligation to respond to all reasonable requests for service. Intervenors are asking the Commission to impose a COLR obligation that does not exist in the law. They have described no consumer benefit that will flow from it, or why it is not duplicative of 47 U.S.C. Section 214(e)(4).

¹⁷ TR. Vol. 1 at p. 58 line 17 – p. 59 line 6.

D. The Benefits Of RCC's Proposed Designation Far Outweigh The Public Burdens.

RCC has made a *prima facie* case as to how rural consumers will benefit from the expansion of its footprint in rural South Dakota. Intervenors have offered nothing to indicate that the *public* burdens would outweigh the proposed benefits. Intervenors admit in their own witness testimony, that of individuals who are employed by and work directly for rural ILECs, that designation of RCC as an ETC would more likely have a negative impact and impair the availability and quality *of their telecommunications services*.¹⁸

Intervenors claim that “[a]ctions taken by other state commissions simply are not relevant to the analysis this Commission must conduct[.]”¹⁹ This is no accident; Intervenors would be hard pressed to find support for their protectionist position in the large body of state ETC case law that has been amassed in the years since the Act was passed. RCC does not believe that negative impact on an ILEC has ever been cited as a legitimate criterion for consideration in determining the public interest. That said, no witness for the Intervenors could cogently explain how RCC’s designation could negatively impact their business. Indeed, since ILECs do not lose funding under the current high-cost support mechanism *even if they lose* subscribers, it is difficult to understand how they could be harmed. If their concern is that they will lose subscribers as a result of competition, then that simply means consumers have chosen a service that they prefer.

We are also constrained to note that the one party who does stand to lose support as a result of RCC’s entry, Western Wireless, did not intervene in this proceeding to oppose RCC’s designation. Although ILECs do not lose support when they lose customers, if RCC captures a customer from Western Wireless, it will lower Western Wireless’s support level (and vice versa).

¹⁸ Intervenors Reply Brief at p. 25.

¹⁹ *Id.* at p. 34.

It appears that Western is prepared to compete in the marketplace for consumers and support, as the Act intended, which will benefit consumers. To the contrary, incumbents have come to the Commission seeking to thwart competitive entry with speculative horror stories that are focused more on their business interests than the interests of consumers.

Intervenors' concern about increasing the size of the federal high-cost fund is misplaced, and somewhat disingenuous. When the FCC last attempted to cap fund growth to ILECs, dozens of rural ILECs unsuccessfully sued the Commission in federal court to remove such caps, and indeed funding to ILECs has expanded substantially over the past several years.²⁰ In response to Intervenors' statement that RCC has not addressed the public costs of designating multiple ETCs, RCC notes that the effect on the federal fund does not increase with the designation of multiple ETCs. Under the "per-line support system, the effect on the fund is identical, whether one carrier captures all the lines, or multiple carriers share the same number of lines. For competitors, the fund does not support multiple networks, it only supports lines in service. The benefit to the public from multiple designations is that consumers have multiple carriers from which to choose service – something they do not have today.

Substantively, Intervenors' concern that RCC will request funding for its pre-existing lines is not a problem.²¹ If it is a problem, it is the ILECs' own making and they hold the keys to its solution. In its FCC advocacy, RCC has always agreed that competitors should be prevented from receiving high-cost support in areas that are low-cost to the ILEC.²² But as Don Wood properly explained in his testimony and at the hearing, it is impossible for competitors to know

²⁰ See, *Alenco, et al. v. FCC*, 201 F3d 608 (5th Cir. 2000). We note that Western Telephone Company-South Dakota, which is listed as an SDTA member on its web site (<http://www.sdtaonline.com/Default.asp?navid=1>) was a plaintiff in the case.

²¹ See Intervenors' Reply Brief at p. 26.

²² See Comments of Rural Cellular Association and the Alliance of Rural CMRS Carriers in CC Docket No. 96-45, filed on Aug. 6, 2004, at pp. 20-23.

which areas are high-cost to the ILEC and which are low-cost, because only the ILEC has that information.²³ Moreover, Section 54.207 of the FCC's rules provides ILECs with a mechanism to "disaggregate" support down to an unlimited number of zones to target high-cost support only to high-cost areas. The entire purpose of disaggregation is to permit ILECs to protect their low-cost areas from subsidized competition. ILECs may submit a plan of disaggregation to the Commission at any time for consideration. If any carrier believes support to 'existing' customers is an issue, they may file a plan of disaggregation with the state.²⁴

Several carriers, including Split Rock, Sioux Valley and Venture, have already disaggregated support.²⁵ These carriers have effectively removed or lowered federal support available in their low-cost areas. New ETCs cannot get high-cost support in those low-cost areas, and, therefore, they cannot gain any advantage by becoming an ETC. Moreover, support is more properly targeted to higher-cost areas to provide incentive for competitors to construct facilities where they are needed most.

Intervenors have also downplayed RCC's commitment to deliver high-quality mobile service to rural South Dakotans, speculating that RCC intends to limit its offering to "high-powered customer premise equipment and roof-top antennas as a means of meeting minimum funding qualifications, and its existing customers experience no tangible improvement in their service."²⁶ To be sure, if a consumer lives in a remote area that has weak signal strength, and they wish to have improved service at their business or residence, RCC has testified that it may

²³ TR. Vol. 2 at p. 94 line 14.

²⁴ See 47 C.F.R. Section 54.315(b)(4).

²⁵ See RCC's Hearing exhibits 16 and 17; Houdek prefiled direct testimony at p. 3 lines 3-5.

²⁶ Intervenors' Reply Brief at pp. 14-15. Intervenors also cite the testimony of a Western Wireless witness in claiming that an ETC should offer more than a "signal booster" or "high-powered antenna." Id. at p. 22. RCC does not know what Western Wireless' plans are for South Dakota; however, RCC has never limited its offering to what the Intervenors see as essentially a fixed service.

employ a signal booster or high-gain antenna to improve service quality.²⁷ But make no mistake: RCC believes its service can be a substitute for wireline service only if consumers receive mobility, and it has made clear that mobility is a major public benefit that forms one basis for granting this petition.²⁸

Intervenors would have the Commission believe that the federal high-cost support mechanism contemplates the public supporting multiple competitive high-cost networks in “a less efficient manner than a single provider could serve. These higher costs could lead to significant harm to consumers if finite universal service support resources are spread so thinly that no carrier (wireline or wireless) can justify the investment to viably function as a carrier of last resort.”²⁹ Intervenors are really expressing dissatisfaction with how the FCC is distributing federal high-cost support. That concern is properly before the FCC, not this Commission.³⁰ Indeed rural ILECs and their business lobbyists are amply pleading their case at the FCC in CC Docket 96-45. This is a federal program, created by Congress and administered by a federal agency. States were never given authority to change the way in which the federal system provides support, nor to constrict support to new ETCs on the basis of how the federal government allocates support.

Intervenors’ complaints also ignore completely the fact that they receive no less support as a result of a CETC’s entry. CETCs must compete with one another for consumers and support,

²⁷ Gruis prefiled direct at pp. 8-10; TR. Vol. 2 pp. 63-64.

²⁸ Kohler prefiled direct at p. 17 line 22 – p. 18 line 8; Kohler prefiled rebuttal at p. 6 lines 9-22.

²⁹ Intervenors’ Reply Brief at p. 27.

³⁰ See *Public Notice*, “Federal-State Joint Board On Universal Service Seeks Comment On Certain Of The Commission’s Rules Relating To High-Cost Universal Service Support,” FCC 04J-2 (rel. Aug. 16, 2004) (seeking comment on whether to pay carriers in rural areas based on forward-looking costs instead of current methodology basing support on ILEC’s historical embedded costs).

but unless the system is changed, ILECs will continue unharmed. ILEC calls to limit competitive entry because the rules may one day change in such a way as to require them to compete must be rejected out of hand. Moreover, the fact that the federal system only provides “per-line” support prevents multiple competitive networks from being constructed in extremely sparse areas. If one CETC constructs facilities in an area that will not support a second carrier’s entry, then the second carrier must either forgo applying for ETC status or meet its ETC obligations through resale in that area. If a second ETC misjudges the market and constructs in a sparse area and fails to attract enough customers, the bad investment is borne by the carrier, not the high-cost system. Thus, the market properly drives the number of competitive entrants in an area, not regulators.

III. RCC’S PROPOSED DEFINITION OF ITS ETC SERVICE AREA AND ITS PROPOSED REDEFINITION OF SOME ILEC SERVICE AREAS WILL BEST SERVE CONSUMERS.

A. A Restatement Of RCC’s Proposal And Responses To Intervenor’s Concerns.

Given that, (1) this is a case of first impression here in South Dakota, and (2) other states have defined CETC service areas in two different ways, RCC has proposed two alternatives for the Commission to consider in defining RCC’s ETC service area:

1. RCC requests that its ETC service area be defined as an area that is coterminous with the boundaries of its FCC-licensed service area.³¹
2. If the Commission rules that a competitive ETC must, at a minimum, serve an entire rural ILEC wire center, then RCC has designated on its Exhibit D those rural ILEC wire centers that it would include in its ETC service area and those that it would exclude.³²

³¹ See Exh. RCC/5 at p. 1; Tr. Vol. 1 at p. 90 lines 15-17. RCC is not authorized by the FCC to provide facilities-based service throughout the entirety of some rural ILEC wire centers.

³² See RCC’s Brief at pp. 18-23. In addition, RCC cited case law supporting its proposal to be designated in the South Dakota portions of wire centers that straddle state lines.

In addition to choosing how to define RCC's service area, the Commission must consider whether to redefine the service areas of those rural ILECs listed on RCC's Exhibit D pursuant to 47 C.F.R. Section 54.207.³³ Upon such a determination, RCC or this Commission will petition the FCC for concurrence with the proposed redefinition,³⁴ and an FCC grant will allow RCC's conditional designation in the redefined areas to take effect. For each such rural ILEC, RCC requests the Commission to redefine the service area so that each wire center is a separate service area. RCC notes that under Section 54.207, service area redefinition only applies to rural ILECs – it does not apply in areas served by non-rural carriers such as Qwest. In Qwest areas, the Commission may define a competitor's ETC service area in any portion of the carrier's study area without redefining Qwest's service area.³⁵

If the Commission adopts the first alternative, defining RCC's ETC service area to be coterminous with its FCC-licensed area, RCC would be designated as an ETC in parts of some rural ILEC wire centers. RCC demonstrated in its Brief why this proposal would best serve the public and cited cases from other states which have designated carriers in this fashion, including for example, Minnesota, Maine, and Washington.³⁶

If the Commission adopts the second alternative, RCC would be designated in wire centers where it is licensed to serve most of the area, as specified in its Exhibit D. RCC explained that it can extend its wireless signal or resell service in limited areas near its existing network, so that it effectively covers the remainder of those wire centers.³⁷ However, RCC is not willing to resell over wide areas, or in non-contiguous wire centers located across the state where

³³ Id. at pp. 23-34.

³⁴ See A.R.S.D. 20:10:32:45.

³⁵ See *First Report and Order*, *supra*, 12 FCC Rcd at 8879-80, paras. 184-85.

³⁶ See RCC's Brief at pp. 19-20.

³⁷ Kohler prefiled direct at p. 22 lines 5-20.

it has neither a license, facilities, or a customer service team able to provide consumers with a high-quality service – nor has the FCC or any other state, to our knowledge, imposed such a requirement.

Intervenors have misunderstood RCC's request, stating, "where RCC's licensed service area includes only part of a wire center, RCC requests that the LEC's service area be redefined to something smaller than the wire center."³⁸ In fact, RCC has never requested an ILEC service area to be redefined in this manner. To be clear, RCC requests each affected rural ILEC to have its service area redefined so that each wire center is a separate service area. This is consistent with every other proposal RCC has had approved by other states, and it is consistent with redefinitions approved by the FCC.³⁹

Intervenors express concern that if a rural ILEC service area is redefined to the wire center level, then all future competitors will be able to enter at the wire center level rather than at the study area level.⁴⁰ While it is true that redefinition opens the door to competitors, the simple

³⁸ Intervenors Reply Brief at p. 30.

³⁹ See, e.g., NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003) (FCC concurrence granted Jan. 24, 2005); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004); RCC Oregon Order, *supra*; United States Cellular Corp., Docket No. 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004); Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 CFR § 207(c) at p. 4 (filed Aug. 1, 2002, FCC concurrence granted Oct. 30, 2002) (*review pending*) ("COPUC Petition"); SBI Arizona Order, *supra* (FCC concurrence granted May 16 and July 1, 2001); SBI N.M. Order, *supra* (FCC concurrence granted June 11, 2002); *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, 15 FCC Rcd 9924 (1999) ("*Washington Redefinition Order*"); RCC Maine Order, *supra* (FCC concurrence pending); ALLTEL Communications, Inc. et al., Docket No. 7131-T1-101 (Wisc. PSC, Sept. 30, 2003) (FCC concurrence pending); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending); RCC Kansas Order, *supra* (FCC concurrence pending).

⁴⁰ Intervenors Reply Brief at p. 31.

fact is any new entrant will still have to convince the Commission that its proposed entry will serve the public interest. Moreover, Intervenor's concern that a new competitor might only select low-cost wire centers ignores that such a strategy can easily be thwarted by the ILEC disaggregating its support. Once a rural ILEC removes most or all support from a low-cost wire center, then if a new entrant seeks ETC status there, it will not be rewarded with high-cost support for doing so.⁴¹

Disaggregation of support also solves the rural ILEC concern about newcomers having appropriate 'motivation' to enter high-cost areas and construct facilities there.⁴² If an ILEC disaggregates so that most or all of its support is moved out to high-cost areas, then any newcomer must build in high-cost areas and get customers there in order to capture any significant federal high-cost support.

Intervenor's concern that Western Wireless, who has already been designated throughout its licensed area in South Dakota, might seek to only serve some of its ETC service area makes no sense.⁴³ In the first place, Western Wireless could only have a motivation to relinquish ETC status in the higher-cost areas if there is substantial support available in low-cost areas. If rural ILECs truly have this concern, they may disaggregate support, which will provide Western Wireless with increased support in those high-cost areas and increase its incentive to build facilities there, while preventing Western Wireless from receiving substantial subsidies in low-cost wire centers.

⁴¹ The FCC discussed this extensively in its *RTF Order*. See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11302-09 (2001) ("*RTF Order*").

⁴² Intervenor Reply Brief at p. 31.

⁴³ *Id.* at p. 32.

Intervenors claim that RCC has not submitted evidence as to why it cannot provide service throughout all of the ILEC study areas.⁴⁴ The only salient fact, which RCC has proven, is that it does not have a license to serve throughout some rural ILEC study areas. This is precisely why the FCC developed the redefinition process, to try to level the playing field for competitors, who were not licensed along rural ILEC study area boundaries. The FCC has concluded that it is unfair to require a competitor to serve throughout a rural ILEC study area where it is not licensed to serve, and it has affirmed that decision in recent ETC designation cases.⁴⁵

In proposing the second alternative, RCC decided which wire centers should be in the ETC service area based on whether it serves most of the wire center. Generally, a wireless carrier can get small contour extensions from its neighbors or resell in an area near its existing facilities to respond to customer requests. However, committing to resell throughout large areas where a carrier does not have a license is a non-starter. Inside the licensed area, if a consumer is being served by resale, the carrier has every incentive to migrate them to a facilities-based service whenever possible, because a competitor receives no support for resold service. In areas half way across the state, where a competitive carrier has no license or facilities, resale provides no consumer benefit, and the carrier has no way to either migrate customers to its own network or control the service quality being provided by the carrier actually providing the service. These are some of the reasons why most every state and the FCC have not required competitors to serve throughout an ILEC study area.⁴⁶

⁴⁴ Id. at p. 34.

⁴⁵ See *First Report and Order, supra*, 12 FCC Rcd at 8879-80 (“We . . . agree with the Joint Board that, if a state adopts a service area that is simply structured to fit the contours of an incumbent’s facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent’s area, giving the incumbent an advantage.”).

⁴⁶ See *supra* n.39.

Intervenors mischaracterize the Colorado case as inapposite – yet it is precisely on point.⁴⁷ The case stands for the proposition that where an ILEC has non-contiguous areas in a state, or it has multiple study areas in a state, a competitor should not be required to provide service throughout those areas.⁴⁸ Moreover, since that time, the Colorado commission has approved multiple requests for service area redefinition similar to that which RCC requests here.⁴⁹

As for the Washington case, it is the best possible example of a state understanding as far back as 1997 that redefining ILEC service areas and disaggregating support was critical to controlling growth of the federal fund and facilitating competitive entry in the highest-cost portions of the state. Washington’s rural ILECs also understood that disaggregation is critical to preventing subsidized competition from arising in low-cost wire centers. Since then, the Washington commission has designated several new ETCs and recently noted that:

The Commission’s experience is that this approach, if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non-rural*, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs.⁵⁰

⁴⁷ See COPUC Petition, *supra*.

⁴⁸ See COPUC Petition, *supra*, at p. 4.

⁴⁹ See In The Matter Of The Application Of N.E. Colorado Cellular, Inc., To Redefine The Service Area Of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; And Sunflower Telephone Co., Inc., Docket No. 02A-444T (Colo. ALJ, May 23, 2003), *aff’d*, Decision Denying Exceptions and Motion to Reopen Record (PUC Oct. 2, 2003); Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, Inc., a Rural Telephone Company (filed May 30, 2003); Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of Delta Tele-Comm, Inc., a Rural Telephone Company (filed Aug. 12, 2002).

⁵⁰ Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. and Transp. Comm’n, Jan. 13, 2005).

While the rest of the country is going through the disaggregation process in a piecemeal fashion, Washington is done with the process. Competitors know exactly where high-cost areas are and they are rewarded with subsidies only when they construct facilities in those areas. At the same time, incumbents are protected from subsidized entry in low-cost areas. If anything, the Washington case serves as a model for following RCC's proposed service area redefinition.

B. It Is Not Possible For RCC To Cream Skim Rural ILEC Service Areas.

Intervenors claim that cream skimming will be an issue, yet they do not provide any reasoned explanation of how it could be accomplished. As Mr. Wood explained, it is impossible for a competitor to intentionally cream skim because it does not have the proprietary cost data to understand an ILEC's costs.⁵¹ As shown above, cream skimming can only be an issue if rural ILECs permit it to be an issue. For example, Mr. Houdek testified that "If you redefine a study area and they get support based on my cost and they only have to serve a small portion of the lower-cost area, it's cream-skimming."⁵² This statement ignores the fact that if an ILEC removes support from that low-cost area, then there is no support available to a competitor in that area and thus cream skimming is impossible.

Mr. Houdek also testified that "When I start losing my low-cost customers, I'm losing money to spend on the high-cost customers."⁵³ Similarly, Mr. Heaston testified that the RCC proposed service area included the one town in the Lennox exchange "where most of the customers live and work."⁵⁴ These two statements evidence a fundamental misunderstanding about the competitive threat these carriers face and how the rules enable each to protect against

⁵¹ TR. Vol. 2 at pp. 94-96.

⁵² TR Vol. 2 at p. 338, Lines 1-4.

⁵³ TR Vol. 2, at p. 347, Lines 15-17.

⁵⁴ TR Vol. 2 at p. 295, Lines 23-25.

subsidized competitive entry. Competitors are going to enter low-cost areas *especially if they are not ETCs*. Indeed, that is the case in South Dakota today, with multiple competitors serving, for example, downtown Sioux Falls. Mr. Heaston's own testimony confirmed as much when he conceded that PrairieWave, as a CLEC, has already entered several low-cost areas such as Watertown and at least two exchanges in the Fort Randall study area without support.⁵⁵ Thus, ILECs stand to lose customers in low-cost areas even if all ETC petitions are denied.

The entire purpose of the disaggregation rules is to prevent rural ILECs from facing subsidized competition in low-cost areas while promoting competitive entry.⁵⁶ As the FCC stated, "Because there are no constraints on disaggregation and targeting proposals under Path Two, a carrier could disaggregate and target support to multiple levels below a wire center, a disaggregation and targeting method can be tailored with precision, subject to state approval, to the cost and geographic characteristics of the carrier and the competitive and regulatory environment in which it operates."⁵⁷ The FCC's rules distribute high-cost support on a competitive and technologically neutral basis. The FCC has gone so far as to protect rural ILECs from losing support when a competitor captures a customer, ruling:

In addition, as the Commission concluded in *Universal Service Order*, the primary objective in retaining the rural telephone company's study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier's ability to provide service to high-cost customers. Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the

⁵⁵ TR Vol. 2 at p. 297, Line 20 – p. 298, Line 9.

⁵⁶ See *RTF Order, supra*, 16 FCC Rcd at 11302.

⁵⁷ *Id.* at 11304.

rural telephone company has been substantially eliminated.⁵⁸

Intervenors complain that disaggregation studies look to the past, are not accurate once a carrier adds new fiber or switching, and are costly or time consuming.⁵⁹ These concerns go to the structure of the FCC's rules for disaggregation – rules that resulted from a lengthy and comprehensive rulemaking with ample representation from the rural ILEC sector – and are not properly raised in an ETC designation proceeding. They are not part of the administrative burden analysis for redefinition because the FCC's disaggregation rules themselves, which envisioned disaggregation of support save in exceptional circumstances,⁶⁰ imposed this burden. Neither the FCC nor any other state has ever ruled that the burden of preparing a plan of disaggregation is a potential administrative burden to be considered in the analysis of whether to grant service area redefinition.

Staff expressed concerns that RCC's proposed omission of the Rural Beresford wire center from its proposed service area could raise cream skimming concerns, and recommends that such wire center be included in its entirety.⁶¹ RCC believes the analysis provided above should allay Staff's concerns.

⁵⁸ *Western Wireless Corp.*, 16 FCC Rcd 19144, 19149, para. 12 (2001) (“*WWC Wyoming Recon. Order*”). (footnotes omitted). In *Highland Cellular*, *supra*, 19 FCC Rcd at 6437-38, para. 32, the Commission stated, “We therefore reject arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent’s study area.” Highland has appealed that ruling because it appears to depart from prior precedent without explanation and lacks an evidentiary basis.

⁵⁹ Intervenors Reply Brief at p. 40.

⁶⁰ See *RTF Order*, *supra*, 16 FCC Rcd at 11302, 11303 paras 145, 147 (concluding that “as a general matter, support should be disaggregated and targeted below the study area level” and establishing a no-disaggregation option (Path One) for limited instances “where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational”).

⁶¹ Staff Brief at p. 7.

Accordingly, there is absolutely no merit to Intervenor's claims that a CETC can cream skim a rural ILEC service area without the assistance of the affected rural ILEC, who fails to, or refuses to, disaggregate support.

In sum, RCC requests the Commission to take following actions regarding its proposed ETC service area and the redefinition of affected rural ILEC service areas:

1. Immediate designation in all Qwest areas within RCC's FCC-licensed service area;
2. Immediate designation throughout the rural ILEC study areas listed on page C of Petitioners' hearing exhibit 4;
3. Immediate designation throughout the study area of Union Telephone Company, conditioned on RCC's commitment to offer the supported services in those areas outside of RCC's FCC-licensed service area;
4. Conditional designation in those remaining areas listed on Petitioners' hearing exhibit 4, page D, to become effective upon a grant of FCC concurrence after either this Commission, or RCC at this Commission's direction, submits a petition for such concurrence to the FCC pursuant to 47 C.F.R. Section 54.207; and⁶²
5. The Commission may prepare, or direct RCC to prepare, a petition to the FCC requesting concurrence with the Commission's decision to redefine the rural ILEC service areas of the remaining companies so that each wire center is a separate service area.⁶³

IV. RESPONSES TO STAFF'S BRIEF.

Staff questions whether a joint designation would be consistent with 47 U.S.C. Section 214(e), SDCL 49-31-78 and ARSD 20:10:32:42 since as of this time, each entity is only authorized to provide service, and hence meet the obligatory universal service requirements, within its licensed territory. As far as the federal statute goes, RCC notes that the Minnesota

⁶² RCC also listed the specific wire centers where it requests designation in its Brief at pp. 22-23.

⁶³ Alliance Comm. Coop, Inc.; Interstate Telecom. Coop., Inc.; James Valley Coop. Telephone Co.; PrairieWave Community Telephone, Inc.; Sioux Valley Telephone Co.; and, Venture Communications (Sully Buttes).

PUC has designated RCC and Wireless Alliance jointly in a similar circumstance.⁶⁴ Although RCC and Wireless Alliance operate networks on different frequencies, RCC controls both entities. Moreover, RCC believes that federal ETC status is properly designated to the FCC licensee, not a parent entity, although there are a few cases where a parent company has been designated.

Staff has concerns about whether the annual certification process will really provide a self-executing process for review of Petitioners' compliance with their commitments and, particularly, progress toward achieving the statutorily mandated objective of service "throughout the service area for which it is designated."⁶⁵ RCC does not object to the Commission developing a process for reviewing compliance by all ETCs with the FCC's requirement that all support be used solely for the provision, upgrading and maintenance of facilities and services in the ETC service area.⁶⁶

RCC respectfully requests that any such process be developed in a rulemaking proceeding so that all carriers can have appropriate reporting obligations that provide the Commission with useful information. It is not competitively neutral or fair for wireless ETCs to be subjected to a detailed level of reporting that ILECs are not subject to. States that are addressing these issues have generally adopted rules for all carriers to demonstrate that support is being used for the benefit of rural subscribers. This approach will provide the Commission with the ability to ensure that the support is being used to accomplish such things as upgrading switches to offer the services to rural consumers that urban consumers already receive and not being misdirected to subsidize entry into unsupported services.

⁶⁴ See RCC Minnesota Order, *supra*.

⁶⁵ Staff Brief at p. 10.

⁶⁶ 47 C.F.R. Section 54.7.

RCC has a few other brief comments on Staff's recommended conditions. First, if annual reporting requirements are to be imposed, they should be produced at least 90 days after the close of the year. It is difficult, if not impossible to produce a prior year report by January 1 of each year as requested in the proposed conditions numbered 7, 8, 9 and 11. Moreover, the first quarter of each year is the time within which RCC prepares its annual report. Most states require annual reports to be filed after the first quarter, so as to provide sufficient time for the state commission to complete any work needed to file the annual certification with the FCC at the end of September.

Staff's condition nine requests the Commission to condition RCC's grant on RCC constructing four cell sites in 2005.⁶⁷ The problem with this condition is that even if RCC is designated in the near future, funding may not commence until the fourth quarter of 2005. In addition, designation in some of RCC's proposed ETC service area is expected to be delayed because it must go through the service area redefinition process at the FCC. A better approach would be to require RCC to report annually how much funding it received in the prior year, what it did with the funds, and what it proposes to do in the coming year. Such a requirement will enable RCC to receive and use funds rationally and provide the Commission with sufficient information to determine whether to recertify RCC in each year. As noted above, these reports should be required of all ETCs.

V. CONCLUSION.

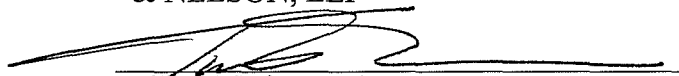
RCC has presented a compelling case for designation as an ETC in South Dakota. Consumers will benefit from RCC's designation, as they are in other states where RCC is using support to expand its network and services. Intervenors seek to erase from universal service the

⁶⁷ Staff Brief at p. 17.

pro-competitive goals of the 1996 Act. While RCC agrees that competition alone is not sufficient to grant ETC to a competitive carrier, it surely is an important consideration. Advancing universal service and promoting competition are twin goals that the FCC and states must advance.⁶⁸ By mandating that all universal service support be removed from ILEC rates and placed in an explicit fund, Congress intended for all carriers to compete for customers and support on a level playing field. We can find nothing in the Act which declares that high-cost areas would remain solely the province of wireline carriers into perpetuity. RCC urges the Commission to grant its petition at the earliest possible date.

Respectfully submitted this 22nd day of February, 2005.

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⁶⁸ See *First Report and Order*, *supra*, 12 FCC Rcd at 8802-03 (“Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. ***We believe these commenters present a false choice between competition and universal service.*** A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.”) (emphasis added, footnote omitted).

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Petition of RCC
Minnesota, Inc., and Wireless Alliance, L.L.C.,
d/b/a Unicel for Designation as an Eligible
Telecommunications Carrier

Docket No. TC 03-193

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22 day of February, 2005, I served a true and correct copy of the RCC Minnesota, Inc., and Wireless Alliance, L.L.C., d/b/a Unicel's Closing Brief by email and U.S. Mail, postage prepaid, to:

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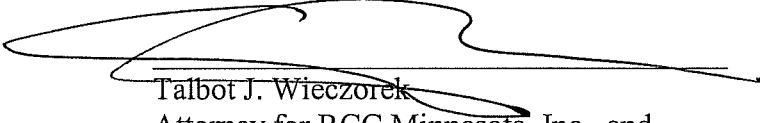
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