BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST OF RCC MINNESOTA, INC. FOR CERTIFICATION REGARDING USE OF FEDERAL UNIVERSAL SERVICE SUPPORT	)))))	TC11-062

ANSWER TO PETITION TO INTERVENE FILED BY SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

Pursuant to A.R.S.D. § 20:10:01:15.04, RCC Minnesota, Inc. ("RCC"), a subsidiary and affiliate of Cellco Partnership d/b/a Verizon Wireless ("Cellco"), hereby answers and objects to the Petition to Intervene in this docket filed by the South Dakota Telecommunications Association ("SDTA"). SDTA's intervention is premised on the basis that this docket is inseparable from Docket TC10-090, but the two dockets are separate proceedings and present different issues. Because SDTA has no cognizable interest in this proceeding, SDTA's petition should be denied.

I. RCC'S CERTIFICATION WAS TIMELY FILED IN ORDER TO PRESERVE ITS ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT

This docket was initiated on May 31, 2011 when RCC filed its Request for Certification of universal service support to be received in 2012, pursuant to A.R.S.D. 20:10:32:52 and A.R.S.D. 20:10:32:54. In the Request for Certification, RCC explained that the South Dakota Public Utilities Commission (the "Commission") designated RCC as an eligible telecommunications carrier ("ETC") in certain non-rural telephone company exchanges and certain rural telephone company study areas in a June 6, 2005 Order in Docket No. TC03-193.[1] RCC certified that "The federal Universal Service high-cost support funds received by RCC will be used only for the provision, maintenance, and upgrading of facilities and services for which

[1] Request for Certification at ¶ 2.

the support is intended, consistent with Section 254(e) of the federal Telecommunications Act of 1996 and 47 C.F.R. §§ 54.313 and 54.314."[2] RCC's Request for Certification included a progress report, service improvement plan, coverage map, outage report, consumer complaints report, Lifeline advertising information, and all of the other required information necessary for compliance with A.R.S.D. 20:10:32:52 and 20:10:32:54.

In South Dakota, each ETC must submit a request for certification, such as the one submitted by RCC, by June 1 of each year. A.R.S.D. 20:10:32:54. After reviewing the ETCs' requests for certification, the Commission has until October 1 of that year to certify each ETC's use of federal universal service support to the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC"). 47 C.F.R. §§ 54.313, 54.314. In past years, the Commission has made this certification to FCC and USAC in late September.[3] In sum, an ETC such as RCC must provide the Request for Certification to the Commission by June 1, or else it would forfeit the opportunity to receive high-cost federal universal service support. In past years, there has not been intervention in the certification dockets, or opposition to certification, by competing telecommunications providers.

Last fall, Cellco, on behalf of its subsidiaries and affiliates (collectively, "Verizon Wireless"), submitted a petition to the Commission seeking the amendment of the RCC ETC designation to reflect the fact that RCC now provides service as an ETC in South Dakota as part of the integrated Verizon Wireless operations. *See* Docket TC10-090. SDTA and others have intervened in that docket. The outcome of Docket TC10-090 will not affect the issue of whether

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[2] *Id.* ¶ 3.

[3] *See, e.g.*, September 24, 2010 letter from the Commission to Marlene H. Dortch, FCC, and Karen Majcher, USAC and attachments thereto.

RCC is an ETC: RCC was an ETC before Docket TC10-090 was initiated, and its status as an ETC will not be affected by that Docket.

II. SDTA HAS NO INTEREST IN THIS DOCKET THAT COULD JUSTIFY ITS ATTEMPTED INTERVENTION

"A petition to intervene shall be granted by the commission if the petitioner shows that [1] the petitioner is specifically deemed to be interested in the matter involved, [2] that the petitioner is specifically declared by statute to be an interested party in the proceeding, or [3] that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general." A.R.S.D. § 20:10:01:15.05. Nothing in SDTA's petition meets these requirements.

A. This Docket and Docket TC10-090 Are Not Inseparable, and SDTA's Suggestion That the Commission Decide Docket TC10-090 First Does Not Create An Interest Sufficient To Support SDTA's Petition for Intervention

SDTA alleges that this docket and docket TC10-090 are "inseparable" and requests that the Commission "hold in abeyance or delay granting certification to RCC...until after it renders a decision in Docket TC10-090." SDTA Petition at 2, 3. SDTA's petition contains no other stated basis for its request to intervene in this docket.

The two dockets are not "inseparable." They are separate proceedings, with different legal standards and requirements. The issue in this docket is quite narrow: whether RCC's Request for Certification meets the requirements of A.R.S.D. 20:10:32:52 and 20:10:32:54. If so, then before October 1, 2011, the Commission should certify to the FCC and USAC that RCC remains eligible to receive high-cost federal universal service support. A decision to certify RCC in this docket does not affect the amount of support that RCC will receive: instead, such a decision would simply preserve RCC's eligibility to continue receiving support.

By contrast, in Docket TC10-090, the issue is whether Cellco has demonstrated that RCC's ETC designation should be amended and consolidated with that of WWC License, LLC – in other words, the issue is the scope of the ETC designation. The scope of the designation could affect the amount of support that RCC will receive, but is unrelated to RCC's eligibility to receive support. Simply put, there is nothing in common between the two dockets that justifies SDTA's attempted intervention in this docket.

Further, SDTA has failed to explain how its assertion that the dockets are inseparable meets the intervention standard in A.R.S.D. § 20:10:01:15.05. Its petition only says that its members might be affected by decisions in Docket TC10-090. SDTA's petition does not state that SDTA will be bound and affected by anything in this docket. Therefore, the petition should be denied.

SDTA's request that the Commission hold this docket in abeyance or delay RCC's certification until after Docket TC10-090 is resolved is not unreasonable, but cannot be the basis for SDTA's intervention in this docket. There is no reason to expect that the Commission would take action in this docket until late September, by which time Docket TC10-090 will be resolved. And, merely asking the Commission to address cases in a certain order is not a sufficient basis for intervention under A.R.S.D. § 20:10:01:15.05.[4] Because SDTA's petition does not demonstrate the existence of a cognizable interest consistent with A.R.S.D. § 20:10:01:15.05, SDTA's petition fails to meet the required standard and must be denied.

[4] Contrary to SDTA's allegation, RCC's Request for Certification is not "premature," because the Commission's rules specify that a request for certification is due by June 1 of each year. A.R.S.D. 20:10:32:54. RCC cannot wait until the resolution of Docket TC10-090 to file the Request for Certification – if it did so, the Request for Certification would be untimely and the relief requested in Docket TC10-090 would be rendered moot.

B. Any Commission Decision In This Docket Will Not Affect SDTA Or Its Members

It appears that SDTA's petition for intervention may be premised on the idea that the amount of high-cost universal service support received by landline local exchange carriers that are ETCs could somehow be affected by RCC's receipt of support. That is not how disbursement of high-cost universal service support works. The amount of support disbursed to landline local exchange carriers, such as those belonging to SDTA, is wholly independent of the amount of support disbursed to wireless ETCs such as RCC. 47 C.F.R. § 54.307.

The interim cap for high-cost universal service support provided to competitive ETCs does not change this situation.[5] In the *Interim Cap Order*, the FCC determined that the amount of USF support available to competitive ETCs in each state would be capped on an interim basis until the FCC comprehensively reforms the federal high-cost universal service support mechanisms. But, by its terms, the *Interim Cap Order* applies only to competitive ETCs such as RCC, not to landline local exchange carriers.[6] As a result, the Commission's decision in this docket cannot, as a matter of law, affect the amount of universal service support disbursed to SDTA's incumbent landline members.

The Commission should also be aware of the consequences of the FCC's recent "*Corr II Order*."[7] In the *Corr II Order*, the FCC decided that a State's interim cap amount (*i.e.*, the amount of high-cost universal service support available to competitive ETCs for service in that State) will be adjusted if a competitive ETC "is no longer eligible to receive universal service

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[5] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (May 1, 2008) ("*Interim Cap Order*"), *aff'd sub nom. Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

[6] *See, e.g., Interim Cap Order* at ¶ 6 (distinguishing between competitive ETCs and incumbent LECs) and at ¶ 10 ("we limit the interim cap we adopt today to high-cost support provided to competitive ETCs").

[7] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 10-205 (Dec. 30, 2010) ("*Corr II Order*").

support for whatever reason."[8] This means that if the Commission decides to deny the Request for Certification (which may be one goal of SDTA's intervention in this docket), the result will be that the total amount of universal service support available to South Dakota will be significantly reduced, impairing the development of telecommunications facilities and services for South Dakota's rural residents. Such a result does not benefit SDTA members that may also own CETC entities. SDTA's intentions in intervening in this docket are not stated in its Petition, but it would be detrimental to the interests of South Dakota consumers if the effect of SDTA's intervention was to impair or extinguish competitive ETCs' ability to invest in South Dakota.

CONCLUSION

SDTA's Petition should be denied in its entirety, because it fails to identify any interest that SDTA has in this docket, or any way in which SDTA could be affected by the outcome.

Respectfully submitted,

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

Dated: July 5, 2011

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[8] *Id.*, ¶ 5, n. 10.

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT ON THE 5TH DAY OF JULY, 2011, I SERVED A TRUE AND CORRECT COPY OF RCC ANSWER TO PETITION TO INTERVENE FILED BY SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION IN THE ABOVE-ENTITLED MATTER, VIA ELECTRONIC MAIL TO:

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