

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

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Petition of)	
)	Docket No. _____
RCC Minnesota, Inc.)	
Wireless Alliance, L.L.C.)	PETITION OF RCC MINNESOTA, INC.
)	AND WIRELESS ALLIANCE, L.L.C.
)	FOR DESIGNATION AS AN ELIGIBLE
For Designation as an Eligible)	TELECOMMUNICATIONS CARRIER
Telecommunications Carrier)	
Under 47 U.S.C. § 214(e)(2))	

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

I. Name and Address of Petitioner

1. The names and address of Petitioner are RCC Minnesota, Inc. and Wireless Alliance, L.L.C., 3905 Dakota St. SW, Alexandria, MN 56308.

petitioner
EXHIBIT NO. 9
T.HOLT

II. Applicable Statutes and Rules

2. The statutes and rules implicated by the instant Petition are as follows: 47 U.S.C. §§ 153(27), 153(44), 214(e), 253(b), 254(d) 332(c)(A)(3); 47 C.F.R. §§ 51.5, 54.5, 54.101, 54.201, 54.207, 54.307, 54.313, and 54.314.

III. Authorization and Service Area

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

4. Wireless Alliance, L.L.C. is authorized by the FCC as the Personal Communications Service carrier in the partitioned area of the Minneapolis-St. Paul MTA012 which encompasses Minnehaha and Lincoln Counties, South Dakota, in the Sioux Falls Basic Trading Area (BTA 422). RCC Minnesota, Inc. is authorized by the FCC as the Cellular Radiotelephone Service provider in the South Dakota Rural Service Area 4 – Marshall, South Dakota. A map of Rural Cellular's proposed service area is attached hereto as Exhibit A. Rural Cellular is a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). Rural Cellular provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5.

5. A telecommunications carrier may be designated as an ETC and receive universal service support throughout its designated service area if it agrees, throughout the proposed ETC service area to: (i) offer services that are supported by federal universal service support mechanisms, and (ii) advertise the availability of such services.² In its *First Report and Order*

¹ 47 C.F.R. § 54.1 *et seq.*

² *See* 47 U.S.C. § 214(e)(1).

implementing Sections 214(e) and 254, the FCC set forth the services a carrier must provide to be designated as an ETC in order to receive federal universal service support.³

6. Section 214(e)(2) of the Act provides that ETC designations shall be made for a "service area" designated by the state commission. In areas served by a non-rural company, the state commission may establish an ETC service area for a competitor without federal concurrence.⁴ Accordingly, Rural Cellular requests designation for its ETC service area in the non-rural wire centers listed in Exhibit B, attached hereto. Where Rural Cellular serves only a portion of a wire center listed, it requests that it be designated as an ETC in that portion of the wire center where it is authorized by the FCC to serve.⁵

7. In areas served by a rural telephone company, "service area" means the local exchange carrier ("LEC") study area unless and until the FCC and the states, taking into account recommendations of a Federal-State Joint Board on Universal Service, establish a different definition of service area for such company.⁶ Where Rural Cellular's proposed ETC service area covers an entire rural LEC study area, the South Dakota Public Utility Commission ("SDPUC") may designate Rural Cellular as an ETC without the need to redefine the LEC service areas. Attached as Exhibit C is a list of rural LECs that are covered in their entirety by Rural Cellular's proposed ETC service area.

8. There are five rural LECs that Rural Cellular does not cover entirely, solely because Rural is not licensed by the FCC strictly along LEC boundaries.⁷ In order to

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

⁴ See 47 U.S.C. § 214(e)(5).

⁵ Those wire centers that Rural partially serves are indicated on Exhibit B with the word "partial."

⁶ See 47 C.F.R. §54.207(b).

⁷ These wire centers are identified in Exhibit D by the word "partial."

accommodate CMRS carriers who have authorized service areas that do not match LEC wire centers, states may designate the competitive ETC's service area along boundaries that are not identical with LEC wire center boundaries. To do otherwise would effectively exclude wireless carriers as a class from receiving universal service support and, as discussed in Section VI, *infra*, would be contrary to the pro-competition policies articulated by the FCC and other states. Accordingly, for the LEC wire centers that are only partially covered by Rural Cellular's authorized service area, Rural Cellular requests that the SDPUC designate the portion of the wire center where Rural Cellular is authorized to provide service.

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

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

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

47 C.F.R. § 54.101(a).

10. Rural Cellular is a full-service wireless carrier which now offers all of these services, as described in detail below. Rural Cellular has been designated as an ETC in Washington, Alabama, Mississippi, Maine, Vermont and Minnesota and has consistently

demonstrated its capability to offer the supported services.⁸ Rural Cellular therefore satisfies the requirements of Section 214(e)(1) of the Act.

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

12. Local Usage. Rural Cellular has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.⁹ As it relates to local usage, the *October 1998 NPRM* sought comment on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comment on how much, if any, local usage should be required to be provided to customers as part of a universal service offering.¹⁰ In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to

⁸ *RCC Minnesota, Inc.*, Docket No. UT-023033 (Wash. Util. & Transp. Comm'n Aug. 14, 2002) ("*RCC Washington Order*"); *RCC Holdings, Inc.* DA 02-3181 (W.C.B. rel. Nov. 26, 2002) ("*RCC Alabama Order*"); *RCC Holdings, Inc. d/b/a Unisel*, Docket No. 02-UA-533 (Mississippi Public Service Commission, Dec. 2, 2002) ("*RCC Mississippi Order*"); and *RCC Minnesota, Inc. Request for Designation as an Eligible Telecommunications Carrier, Order*, Docket No. 2002-344 (Maine PUC, May 13, 2003) ("*RCC Maine Order*"); *RCC Atlantic, Inc.*, Docket No. 5918 (Vermont Public Service Board, Final Order Entered June 26, 2003) ("*RCC Vermont Order*"); *RCC Minnesota, Inc.*, Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503 (Minnesota Public Utilities Commission, June 30, 2003) ("*RCC Minnesota Order*").

⁹ *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502, 1506-07 (rel. Jan. 25, 2002) ("*Guamcell*"); *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) ("*October 1998 NPRM*"); *Federal-State Joint Board on Universal Service Order*, 17 FCC Rcd 22642, (rel. Nov. 8, 2002) ("*Referral Order*").

¹⁰ See *October 1998 NPRM*, 13 FCC Rcd at 21277-21281.

provide.¹¹ In 2002, the Joint Board did not specifically recommend an amount of local usage, but left it to the FCC to decide whether a minimum should be imposed. To date, the FCC has determined that when a carrier offers a variety of rate plans containing varying amounts of local usage, it meets that local usage requirement.¹²

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

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

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

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

¹¹ See *First Report and Order*, 12 FCC Rcd at 8813.

¹² See *Referral Order* and *RCC Washington Order*; See also, *Federal State Joint Board on Universal Service Notice of Proposed Rulemaking*, 18 FCC Rcd 2932, (rel. February 25, 2003) in which the FCC asked for comment on the amount of local usage (if any) that should be required of ETCs.

¹³ *Id.*, 18 FCC Rcd. at 8810.

17. Access to Operator Services. Rural Cellular provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing "0".

18. Access to Interexchange Services. Rural Cellular has signed interconnection agreements with interexchange carriers. These arrangements enable Rural Cellular to provide its customers access to interexchange services. Customers may also "dial around" to reach their interexchange carrier of choice.

19. Access to Directory Assistance. Subscribers to Rural Cellular's services are able to dial "411" or "555-1212" to reach directory assistance from their mobile phones.

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

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

22. It is important to note however, that while applicants for ETC designation must be capable of providing all of the above-referenced services, carriers are not required to actually provide service in its proposed ETC service area prior to designation. To require actual provision of the supported services prior to designation would contradict the pro-competitive goals of the Telecommunications Act of 1996.¹⁴ The FCC has made clear that a carrier is only required to

¹⁴ See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. At 113 (purpose of 1996 amendments "to provide for a pro-

provide the supported services once it is designated as an ETC because “[t]he language of the statute does not require the actual provision of service prior to designation.”¹⁵ In addition to others, the Washington Utilities and Transportation Commission concurred with this view in its grant of ETC status to RCC Minnesota, Inc.¹⁶

V. Grant of Rural Cellular’s Petition Will Serve the Public Interest

23. In areas served by non-rural LECs, the Commission can designate Rural Cellular as an ETC upon finding that the company meets the nine-point checklist and that it agrees to advertise the supported services throughout its proposed ETC service area.¹⁷ In areas served by a rural telephone company, the Commission must also find that a grant of ETC status would serve the public interest.¹⁸ In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative, including several involving Rural Cellular.¹⁹

competitive, de-regulatory national policy framework” aimed at fostering rapid deployment of telecommunications services to all Americans “by opening all telecommunications markets to competition. . .”).

¹⁵ See 47 U.S.C. § 214(e)(1); *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168 at ¶¶ 10, 14 (2000) (“*Declaratory Ruling*”).

¹⁶ See *RCC Washington ETC Order, supra*; *RCC Alabama ETC Order, supra*; *Cellular South License, Inc.*, DA 02-3317 (W.C.B. rel. Dec. 4, 2002) (“*Cellular South Alabama Order*”).

¹⁷ See *Cellular South Licenses, Inc.*, Docket No. 01-UA-0451 (Dec. 18, 2001) (Mississippi).

¹⁸ See 47 U.S.C. § 214(e)(2).

¹⁹ See, e.g., *Midwest Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in Minnesota, Order affirming Administrative Law Judge Findings of Fact, Conclusions of Law and Recommendation* (March 19, 2003) and *Order Granting Approval and Requiring Further Filing*, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (August 5, 2003) (*Midwest Minnesota Order*); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) (“*Western Wireless*”), *aff’d*, 24 CR 1216 (Oct. 19, 2001) (“*Western Wireless Recon. Order*”); *Smith Bagley, Inc., Final Order*, Utility Case No. 3026 (Feb. 19, 2002) (New Mexico); *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Az. Corp. Comm. Dec. 15, 2000) (“*SBI Arizona ETC Order*”); *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) (“*Midwest Iowa Order*”); *RFB Cellular, Inc.*, Case No. U-13145 (Mich. P.S.C. Nov. 20, 2001) (“*RFB Michigan Order*”); *RCC Washington*

24. The public interest is to be determined by following guidance provided by Congress in adopting the Telecommunications Act of 1996 ("1996 Act") and the FCC in its enabling orders.²⁰ The overarching principles embodied in the 1996 Act are to "promote competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies."²¹ In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.²²

25. The SDPUC must determine whether designation of Rural Cellular as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas "have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas

Order, supra; Cellular South Alabama Order, supra; RCC Alabama Order, supra; Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., 17 FCC Rcd. 9589 (rel. May 24, 2002) ("Pine Belt ETC Order"); N.E. Colorado Cellular, Inc., Docket No. 00A-315T (Dec. 21, 2001) (Colorado); Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Docket No. P5695/M-98-1285 (Oct. 27, 1999) (Minnesota); RCC Maine Order, supra; RCC Mississippi Order, supra; RCC Vermont Order, supra; and, RCC Minnesota Order, supra.

²⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996); *See also, First Report and Order, supra; Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd. 20432, 20480 (rel. Nov. 2, 1999) ("Ninth Report and Order"); Fourteenth Report and Order, supra. See also NAACP v. FPC, 425 U.S. 662, 669 (1976); accord, e.g., Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1427 (D.C. Cir. 1983); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).*

²¹ *Id.* (preamble).

²² *First Report and Order, supra, 12 FCC Rcd at 8801, 8861-62; Ninth Report and Order, supra, 14 FCC Rcd at 20480.*

and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”²³

26. In considering whether Rural Cellular’s designation will bring new and cost-effective services to rural areas, the SDPUC may properly weigh the public cost against the public benefits. The Minnesota Public Utilities Commission used such a balancing test in its analysis of Minnesota Cellular’s application for ETC designation, determining that the petitioner had produced credible evidence of its intent and ability to offer service and the benefits to Minnesota consumers.²⁴ The benefits to consumers were weighed against costs, which the ILECs mostly claimed to be costs to their business.

27. There are also factors that should *not* be considered in evaluating the public interest analysis. For example, the amount that the federal universal service fund will grow as a result of Rural Cellular’s designation is not the type of “cost” which should be considered in making the public interest analysis. Neither Congress nor the FCC has ever mentioned that potential growth in the federal fund should be a component of a state’s public interest analysis. To the contrary, the FCC has taken a number of actions which make absolutely clear that growth of the fund in absolute terms is not a concern to be addressed by the states or as part of any ETC designation proceeding.

28. For example, in December 2002, the FCC specifically refused to consider the growth of the fund in the context of a CETC petition, rejecting ILEC arguments stating, “these concerns are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC.”²⁵ The December 2002 decision came after the FCC had already taken up this issue in the course of reviewing the Commission’s rules relating to High-Cost Universal Service

²³ See 47 U.S.C. § 254(b)(3).

²⁴ See *Minnesota Cellular, supra*, at pp. 16-18. See also, *Midwest Minnesota Order, supra*, wherein the Minnesota PUC affirmed its public interest analysis in the Minnesota Cellular decision.

²⁵ *RCC Alabama Order, supra*, at ¶ 32.

support in Docket No. 96-45. In that proceeding the FCC specifically asked for public comment on whether any changes to the mechanism for providing support to CETCs should be modified.²⁶

29. Upon designation of any CETC, the federal universal service fund will grow to some extent. At present, Rural Cellular estimates that in its first year it will receive a fraction of one percent of the current high cost support fund, which is roughly \$3.5 billion. Offsetting that cost are numerous public interest benefits which will accrue to South Dakota consumers as a result of Rural Cellular's designation, as follows:

A. Increased Consumer Choice and Service Quality.

30. Designation of Rural Cellular will advance universal service, promote competition and facilitate the provision of advanced communications services to the residents of rural South Dakota. Residents in many rural areas have long trailed urban areas in receiving competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

31. To date, a number of wireless carriers have been designated as ETCs in multiple states, including Rural Cellular in several states.²⁷ Recognizing the advantages wireless carriers can bring to the universal service program, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."²⁸

²⁶ See *Referral Order, supra*; see also, *Federal State Joint Board on Universal Service Notice of Proposed Rulemaking, supra* at n. 12, CC Docket No. 96-45, FCC 03-13 (released February 25, 2003).

²⁷ See, e.g., *RCC Washington Order, supra* (Washington); *Midwest Minnesota Order, supra* (Minnesota); *Guamcell, supra* (Guam); *Cellular South Licenses, Inc., supra* (Alabama); *N.E. Colorado Cellular, Inc., supra* (Colorado); *Minnesota Cellular Corporation, supra* (Minnesota); *RCC Holdings, Inc, supra* (Alabama); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., supra* (Colorado); *RFB Cellular, Inc., supra* (Michigan); *Midwest Iowa Order, supra* (Iowa); *Western Wireless, supra* (Wyoming); *Smith Bagley, Inc., supra* (Arizona); *Smith Bagley, supra* (New Mexico); *RCC Holdings, Inc., supra* (Mississippi); *RCC Minnesota, Inc., supra* (Maine); *RCC Vermont Order, supra* (Vermont); *RCC Minnesota Order, supra* (Minnesota).

²⁸ *First Report and Order*, 12 FCC Rcd at 8882-83.

The FCC recognized this fact in its initial decision designating Western Wireless as an ETC in the State of Wyoming, observing: "Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."²⁹

32. In addition, with ETC designation, Rural Cellular will implement its Lifeline and Link-Up programs which will offer service to those lowest income customers which had not previously had the opportunity to afford any telephone service. Universal Service support will enable RCC to reach out to those counties in South Dakota that have no choice of service and provide them with quality telephone service.

33. In the first year that it receives support, although not required to do so by federal law, Rural Cellular commits to improve service in areas it would not otherwise invest in. The improved service quality, reliability, and increased choices to rural South Dakota will be significant. As Rural Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency ("RF") signal, its customers will have a greater choice among service providers and will receive more reliable service. Some will have the option to receive Rural Cellular's service for the first time. Others will see service quality and reliability improvement such that they may choose Rural Cellular's service instead of ILECs, as opposed to confining their use of Rural Cellular's service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer.³⁰

B. Health and Safety Benefits.

²⁹ *Western Wireless, supra.*

³⁰ Lowering of prices has never been an issue in the wireless industry, not to mention that if a carrier does not use funding as required ETC status may be revoked.

34. Similarly, in designating the cellular carrier Smith Bagley, Inc. as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to "health and safety risks associated with geographic isolation."³¹ Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. It is self-evident that every time Rural Cellular adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that Rural Cellular constructs, the reliability and performance of Rural Cellular's E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure.

C. Competitive Response.

35. One of the principal goals of the 1996 Act was to "promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."³² Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer's business.

36. There is no question that if Rural Cellular is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs. Service quality and customer service will improve. New investments in plant will be made. High speed data (DSL) may be deployed more quickly to retain and attract customers. Wider local

³¹ *Smith Bagley, Inc., Order*, Decision No. 63269, Docket No. T-02556A-99-0207, at p. 12 (Dec. 15, 2000) (Arizona).

³² *See* 1996 Act (preamble).

calling areas, bundled service offerings, and lower prices overall will be introduced to compete with Rural Cellular to retain and attract customers.

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

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.³³

Further, Congress has mandated that universal service provisions be "competitively neutral" and "necessary to preserve and advance universal service." See 47 U.S.C. §253(b). RCC will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

38. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost support to Rural Cellular will begin to level the playing field with the incumbent LECs and make

³³ *Western Wireless, supra*, 16 FCC Rcd at 57; *See also, RCC Washington Order* at pp. 16-17.

available for the first time a potential competitor for primary telephone service in remote areas of South Dakota.³⁴

39. The consumer benefits of designating a competitive ETC are already becoming evident. Competitive carriers in Arizona, Colorado, New Mexico and Mississippi have earmarked high-cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital.

40. With high-cost support in South Dakota, Rural Cellular will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

D. State and Federal Precedent.

41. Designation of Rural Cellular as an ETC is consistent with ETC decisions across the country. Affiliates of RCC have been designated as ETCs in Maine, Minnesota, Washington, Vermont, and Alabama. There are now at least thirty cases at the state and federal level where designation of a wireless carrier as an ETC in a rural area was found to be in the public interest. Numerous state commissions and the FCC have repeatedly found that designating wireless carriers as ETCs will promote competition, advance universal service, and further the deployment of advanced services. For example, in its decision to designate RCC Minnesota, Inc. as an ETC, the Washington Utilities and Transportation Commission stated: "Granting ETC designation to RCC ... will facilitate the telecommunications choices available to rural citizens,

³⁴ See, e.g., *Midwest Minnesota Order*, *supra* at para. 37 ("although Midwest Wireless has been successful in obtaining conventional cellular customers, it does not currently compete for basic local exchange service. Designation of Midwest as an ETC would provide the support necessary to allow Midwest to provide...service and to enhance its network so that it can compete for basic local exchange service...Competition would benefit consumers in south Minnesota by increasing customer choice (from no choice in most areas to more than one) and providing services made possible by wireless technologies.")

support the growth of new technologies and services, preserve and advance universal service, and promote competition and the benefits it brings.”³⁵ More recently, in designating Midwest Wireless Communications, LLC as an ETC in Minnesota, the Minnesota Public Utilities Commission held that, “Competition would benefit consumers in southern Minnesota by increasing customer choice (from no choice in most areas to more than one) and providing new services made possible by wireless technologies ...”³⁶ Similarly, in its decision designating Western Wireless as an ETC in the State of Wyoming, the FCC held: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³⁷

42. In the most recent state ETC proceeding involving US Cellular, the Wisconsin Public Service Commission held:

The Commission finds that designating US Cellular as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice ... Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin.³⁸

Similarly, in designating US Cellular as an ETC in the State of Washington, the Washington Utilities and Transportation Commission stated that “rural customers will benefit from the

³⁵ *RCC Washington Order, supra* at ¶68.

³⁶ *Midwest Wireless Communications, LLC Order*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, March 19, 2003, *affirming ALJ’s Findings of Fact, Conclusions of Law, and Recommendation* (ALJ Dec. 31, 2002), ¶37.

³⁷ *Western Wireless, supra* n. 26, 16 FCC Rcd at 55 (2000).

³⁸ *United States Cellular Corporation, Final Decision*, 8225-TI-102 (Wisconsin, Dec. 20, 2002), p. 8.

increased availability of wireless service. These benefits include increased mobility and increased level of service.”³⁹

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

VI. Rural Cellular Requests Redefinition of Rural LEC Service Areas.

44. Rural Cellular requests the NPSC to redefine the following Rural LEC Service Areas: Alliance Communications Cooperative, Inc. (Split Rock), Interstate Telecommunications Cooperative, Inc. – South Dakota, James Valley Cooperative Telephone Company, Prairiewave Community Telephone, Inc. and Sioux Valley Telephone Company as explained herein.

45. Rural Cellular requests the SDPUC to classify each rural LEC wire center listed on Exhibit D as a separate service area. Once the SDPUC establishes redefined service areas for the aforementioned rural LECs, either the SDPUC or Rural Cellular may file a petition requesting the FCC to concur with the state’s redefinition.

46. In considering the redefinition of a rural LEC service area, the SDPUC must take into account the recommendations of the Joint Board. In the *Recommended Decision*⁴⁰ which laid the foundation for the FCC’s *First Report and Order*, the Joint Board recommended that state commissions consider three issues when redefining a service area.

47. First, the Joint Board noted that breaking down ETC service areas below the study area level may create the potential for “cream skimming,” which could occur if a competitor

³⁹ *United States Cellular Corporation*, Docket No. UT-970345 (Third Supplemental Order Granting Petition, Jan. 27, 2000) at para. 41.

⁴⁰ *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) (“*Recommended Decision*”).

proposed to only serve the lowest-cost exchanges.⁴¹ There is no possibility for cream skimming in this case because Rural Cellular is restricted to providing service in those areas where it is licensed by the FCC. Rural Cellular is not picking and choosing among exchanges. On the contrary, Rural Cellular has based its requested ETC area solely on its licensed service area. Moreover, as of May 2002, all rural ILECs, were required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive to enter into incumbent LEC service territories in an uneconomic manner.⁴²

48. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.⁴³ In deciding whether to designate Rural Cellular as an ETC, the SDPUC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). As the Joint Board observed, Congress mandated this public interest analysis in order to protect the special status of rural carriers — much in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.⁴⁴

49. Accordingly, if the SDPUC finds that Rural Cellular's ETC designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether Rural Cellular's service area designation should be adopted for federal

⁴¹ *Recommended Decision*, 12 FCC Rcd at 179-80.

⁴² *See Fourteenth Report and Order, supra*, 16 FCC Rcd at 11302.

⁴³ *See Recommended Decision*, 12 FCC Rcd at 180.

⁴⁴ *Id.*

universal service funding purposes. Further, Rural Cellular notes that no action in this proceeding will affect or prejudice any future action the PSC or FCC may take with respect to the LECs' status as a rural telephone company.

50. Finally, the Joint Board recommended that the FCC and state commissions consider the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.⁴⁵ In the instant case, Rural Cellular is proposing to redefine rural LEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way the rural LECs referenced herein calculate their costs, but it is solely to determine the area in which Rural Cellular is to be designated as an ETC.⁴⁶ Accordingly, redefinition of the aforementioned service areas as proposed in this Petition will not impose any additional burdens on the rural LECs effected

VII. High-Cost Certification

51. Under FCC Rule Sections 54.313 and 54.314, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, self-certify with the FCC and the Universal Service Administrative Corporation ("USAC") their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. Rural Cellular attaches its high-

⁴⁵ *Id.*

⁴⁶ LECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order* and its November 2001 *MAG Order*. See *Fourteenth Report and Order, supra*, 16 FCC Rcd at 11304 n.377; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98077 and 98-166*, 16 FCC Rcd 19613 (2001) ("MAG Order").

cost certification letter as Exhibit E hereto. Rural Cellular respectfully requests that the SDPUC issue a finding that Rural Cellular has met the high-cost certification requirement and that Rural Cellular is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.⁴⁷

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

Respectfully submitted,

**RCC Minnesota, Inc.
Wireless Alliance, L.L.C.**

By: David A. LaFuria / *DA*

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November 17, 2003

⁴⁷ See, e.g. *Guam Cellular and Paging, Inc. Petition for Waiver of FCC Rule Section 54.314*, CC Docket 96-45 (filed Feb. 6, 2002).

Exhibit A

MAP OF PROPOSED SERVICE AREA

Exhibit B
Non-Rural LEC Wirecenters For Immediate Designation

<u>Company Name</u>	<u>Wirecenter Code</u>	<u>Locality</u>	<u>Partial</u>
QWEST CORPORATION	BELOIT	CNTNSDCO	Partial
QWEST CORPORATION	FORMAN	FRMNDXA	Partial
QWEST CORPORATION	E. HARRISBURG	HRBGSDCO	Partial
QWEST CORPORATION	MILBANK	MLBNSDCO	
QWEST CORPORATION	BIG STONE CITY	ORVLMNOR	Partial
QWEST CORPORATION	SIOUX FLS	SXFLSDCO	
QWEST CORPORATION	SIOUX FLS	SXFLSDSE	
QWEST CORPORATION	SIOUX FLS	SXFLSDSW	
QWEST CORPORATION	TEA	TEA SDCO	
QWEST CORPORATION	WATERTOWN	WTTWSDCO	

Exhibit C
Rural Wire Centers For Immediate Designation

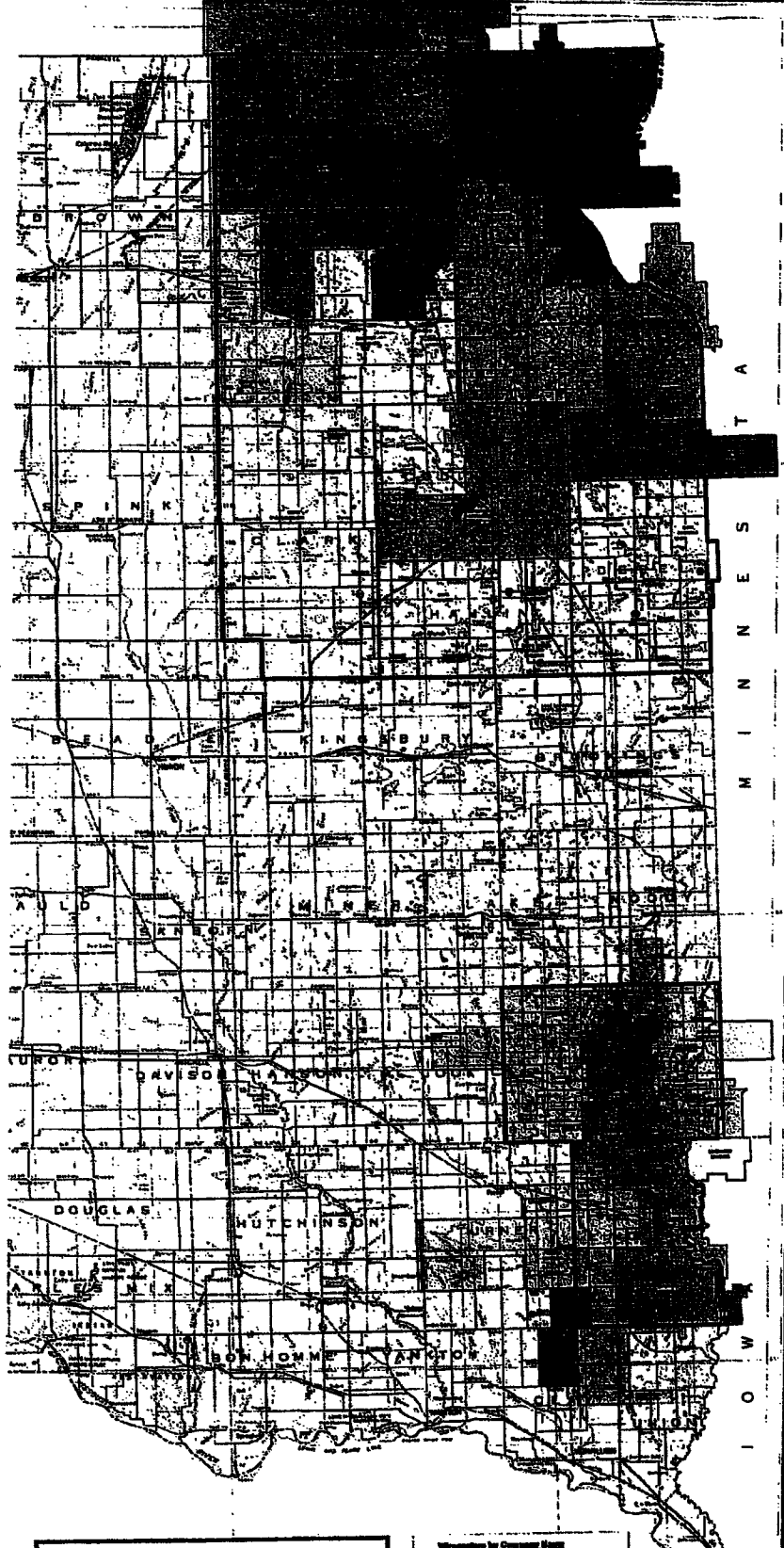
<u>Company Name</u>	<u>Locality</u>	<u>Wire Center Code</u>
ALLIANCE COMMUNICATIONS COOPERATIVE, INC. (BAL TIC)	BAL TIC	BLTCS DXA
ALLIANCE COMMUNICATIONS COOPERATIVE, INC. (BAL TIC)	CROOKS	CRKSS DXA
RC COMMUNICATIONS, INC.	PEEVER	PEVRS DXA
RC COMMUNICATIONS, INC.	SUMMIT	SMMTS DXA
RC COMMUNICATIONS, INC.	NO VELEN	VLNS DXA
RC COMMUNICATIONS, INC.	WILMOT	WLMTS DXA
ROBERTS COUNTY TELEPHONE COOPERATIVE ASSN.	CLAIRE CITY	CLCYS DXA
ROBERTS COUNTY TELEPHONE COOPERATIVE ASSN.	NNWEFFNGTN	NWEFS DXA
STOCKHOLM - STRANDBURG TELEPHONE CO.	REVILLO	RVLLS DXA
STOCKHOLM - STRANDBURG TELEPHONE CO.	SOUTHSHORE	SSHRS DXA
STOCKHOLM - STRANDBURG TELEPHONE CO.	STOCKHOLM	STKHS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	NO BRITTON	BRTNS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	LANGFORD	LNFRS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	PIERPONT	PIRPS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	ROSHOLT	RSHTS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	ROSLYN	RSLNS DXA
SULLY BUTTES TELEPHONE COOPERATIVE, INC.	SISSETON	SSTNS DCO
UNION TELEPHONE CO.	HARTFORD	HRFRS DXA
UNION TELEPHONE CO.	WALL LAKE	HRFRS DXS

Rural Wire Centers Requiring Reclassification Along Wire Center Boundaries

<u>Company Name</u>	<u>Wirecenter Code</u>	<u>Locality</u>	<u>Served</u>	<u>Entire/Partial</u>
ALLIANCE COMM. COOPEATIVE, INC. (SPLIT ROCK)	BRANDON	BRNDSDXA	Y	Entire
ALLIANCE COMM. COOPEATIVE, INC. (SPLIT ROCK)	GARRETSON	GRSNSDXA	Y	Partial
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	ASTORIA	ASTRSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	BRADLEY	BRDLSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	BRANDT	BRNTSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	BRYNTWLWLK	BRYNSD01	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	CLEAR LAKE	CLKSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	CLARK	CLRKSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	CASTLEWOOD	CSWSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	ESTELLINE	ESTLSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	FLORENCE	FLRNSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	GARY	GARYSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	GOODWIN	GDWNSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	HAYTI	HAYTSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	LAKENORDEN	LKNRSD01	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	TORONTO	TOROSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	WAUBAY	WABYSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	WEBSTER	WBSTSDXA	Y	Entire
INTERSTATE TELECOM. COOP., INC. - SOUTH DAKOTA	BRYNTWLWLK	WLLKSDXA	Y	Partial
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	ANDOVER	ANDVSDXA	Y	Entire
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	BRISTOL	BRSTSDXA	Y	Entire
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	CLAREMONT	CLMTSDXA	N	
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	GROTON	GRTNSDXA	Y	Partial
PRAIRIEWAVE COMMUNITY TELEPHONE, INC. (DAKOTA)	LENNOX	LNNXSDXA	Y	Partial
PRAIRIEWAVE COMMUNITY TELEPHONE, INC.	ALSEN	VBRGSDAA	Y	Partial
PRAIRIEWAVE COMMUNITY TELEPHONE, INC.	PARKER	PRKRSDXA	N	
SIOUX VALLEY TELEPHONE CO.	COLTON	COTNSDXA	Y	Entire
SIOUX VALLEY TELEPHONE CO.	DELLRAPIDS	DLRPSDXA	Y	Partial
SIOUX VALLEY TELEPHONE CO.	HUMBOLDT	HMBLSDXA	Y	Partial
SIOUX VALLEY TELEPHONE CO.	VALLEY SPG	VYSPSDXA	Y	Partial
VALLEY TELEPHONE COMPANY - MINNESOTA	WBROWNSVILLE	BWVYMNXB	Y	Partial
FARMERS MUTUTAL TELEPHONE COMPANY - MN	WMARIETTA	MRTTMNXM	Y	Entire

Exhibit E

HIGH-COST CERTIFICATION LETTER



RCC Minnesota, Inc. and Wireless Alliance, L.L.C.
 South Dakota Requested ETC Area

— Requested ETC Boundary
 — Wire Center Boundaries

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