STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MILLENNIUM 2000 INC.	:	
Application for Designation as a Wireless Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.	:	**Docket No. 12-0375**

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

PUBLIC VERSION

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The Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys and pursuant to Section 200.800 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.800, respectfully submit their Initial Brief in the above-noted proceeding.

I. INTRODUCTION

On June 5, 2012, Millennium filed its application for designation as a Wireless Eligible Telecommunications Carrier ("ETC") under Section 214(e)(2) of the Telecommunications Act of 1996 ("Application" or "Petition"). 47 USC Section 214(e)(2). Millennium amended its application on April 10, 2013 ("Amended Application"). On June 11, 2013, Staff filed ICC Staff Exhibit 1.0, the Direct Testimony of Dr. James Zolnierek. On September 20, 2013, Millennium submitted the Response

Testimony of Donna Harrison and August H. Ankum, PhD. On December 19, 2013 an evidentiary hearing was conducted and a briefing schedule set.

II. LEGAL STANDARDS

Millennium bears the burden of providing the Commission with compelling evidence in support of its Petition to be an eligible telecommunications carrier ("ETC"). The party seeking relief generally bears the burden of proof. *People v. Orth*, 124 Ill. 2d 326, 337; 530 N.E.2d 210, 216; 1988 Ill. Lexis 134 at 16; 125 Ill. Dec. 182 (1988). The term "burden of proof" includes the burden of going forward with the evidence, and the burden of persuading the trier of fact. *People v. Ziltz*, 98 Ill. 2d 38, 43; 455 N.E.2d 70, 72; 1983 Ill. Lexis 453 at 6; 74 Ill. Dec. 40 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. *Ambrose v. Thornton Twp. School Trustees*, 274 Ill. App. 3d 676, 680; 654 N.E.2d 545, 549; 1995 Ill. App. Lexis 614 at 7; 211 Ill. Dec. 83 (1st Dist 1995), *app. den.*, 164 Ill. 2d 557 (1995); *Chicago Board of Trade v. Dow Jones & Co.*, 108 Ill. App. 3d 681, 686; 439 N.E.2d 526, 530; 1982 Ill. App. Lexis 2193 at 8-9; 64 Ill. Dec. 275 (1st Dist. 1982). Accordingly, because Millennium filed the Petition seeking ETC status, it shoulders the burden of proof throughout this proceeding.

A. Overall Authority

Section 214(e)(2) of the Federal Telecommunications Act of 1996 ("1996 Act") authorizes state commissions to determine the fitness for ETC designation of common carriers subject to their jurisdictions. 47 U.S.C. §214(e)(2). Sections 214(e)(1) and 214(e)(2) of the 1996 Act provide statutory requirements that carriers must meet in

order to be designated as ETCs and the statutory requirements state commissions must follow in performing ETC designations. In particular, Sections 214(e)(1) and 214(e)(2) of the 1996 Act provide that:

> 214(e) PROVISION OF UNIVERSAL SERVICE.--
>
> (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with Section 254 and shall, throughout the service area for which the designation is received--
>
> (A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
>
> (B) advertise the availability of such services and the charges therefor using media of general distribution.
>
> (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (47 U.S.C. §214(e), emphasis added.)

B. Section 214(e)(1) of the 1996 Act

While Section 214(e)(1)(A) of the 1996 Act states that ETCs must provide supported services over their own facilities, in whole or in part, throughout the designated areas, the FCC has found that the use of their own facilities is unnecessary

for Lifeline-only ETCs and has granted blanket forbearance from the facilities requirement of Section 214(e)(1)(A) for carriers seeking Lifeline-only ETC designation. The FCC conditioned the grant of this forbearance on a carrier's compliance with certain 911 requirements and its own (the FCC's) approval of a forbearance related compliance plan. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, FCC 12-11 (February 6, 2012)("Lifeline Reform Order"), at ¶368. Therefore, ETC's may provide services over their own facilities or by meeting the requirements for forbearance of this requirement. In either case, ETCs must also, in order to meet the requirements of Section 214(e)(1), offer the services that are supported by Federal universal service support mechanisms under Section 254(c) and advertise the availability of such services and the charges therefor using media of general distribution throughout their designated areas.

As the FCC has explained, its approval of a forbearance-related compliance plan does not supersede a state commission's authority to make a determination for ETC designation in the state under Section 214(e)(2). For instance, a forbearance-related compliance plan is required to contain information on a carrier's Lifeline offering. FCC Compliance Plan Guidelines Public Notice (DA 12-314). Nevertheless, the FCC's approval of a compliance plan does not signify that the FCC considers the Lifeline offering contained in the approved compliance plan adequate for ETC designation in any state under §214(e)(2). Despite the FCC's approval of a compliance plan

containing Lifeline offering, a state commission determines the adequacy of the Lifeline offering for ETC designation in the state under §214(e)(2):

> While these compliance plans contain information on each carrier's Lifeline offering, we leave it to the designating authority to determine whether or not the carrier's Lifeline offerings are sufficient to serve consumers.

Birch Communications *et al* Compliance Plan Approval Public Notice (DA-12-1286) at fn.7.

Thus, the FCC's approval of a forbearance-related compliance plan serves the stated purpose, which is to meet a key requirement for the blanket forbearance from the facilities requirement provided in the Lifeline Reform Order. It does not override the Commission's authority to determine any other aspect of a carrier's fitness for ETC designation in Illinois under §214(e)(2) of the 1996 Act. To comply with Section 214(e)(1) an ETC must also offer and advertise its services throughout its designated ETC area.

C. Section 214(e)(2) and Public Interest Requirements

Section 214(e)(2) of the 1996 Act authorizes the Commission to determine a carrier's fitness for ETC designation in Illinois. It further requires the Commission to find that designation is consistent with the public interest, convenience, and necessity and provides state Commission's with wide discretion in determining what is in the public interest.

In the first Universal Service Fund ("USF") proceeding, not long after the effective date of the 1996 Act, the FCC concluded that neither the FCC nor a State Commission may impose additional eligibility requirements beyond what is stated in Section 214(e)(1). *See* Report and Order, *In the Matter of Federal-State Joint Board on*

Universal Service, CC Docket No. 96-45, FCC 97-157 (May 8, 1997), at ¶ 135 ("We conclude that section 214(e)(2) does not permit the Commission or the states to adopt additional criteria for designation as an eligible telecommunications carrier.").

This conclusion, however, did not survive its initial review by the federal courts. In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 419 (5th Cir. 1999), the Appellate Court concluded that "the FCC erred in prohibiting the states from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support." Accordingly, since *Texas Office of Public Utility Counsel v. FCC* the FCC not only has allowed states to impose, but has itself imposed additional requirements for ETC designation beyond the requirements specifically stated in Section 214(e)(1) of the Telecommunications Act of 1996. See for example *In the Matter of Federal-State Joint Board on Universal* Service, CC Docket No. 96-45, FCC 05-46 (March 17, 2005) ("ETC Order") where the FCC prescribed an analytical framework for the public interest evaluations for ETC designation in rural and non-rural areas. In short, the FCC has, in rulemaking (as well as adjudication), abandoned the notion that satisfying Section 214(e)(1) per se meets the public interest standards for ETC designation. The FCC made perfectly clear that it (and similarly State Commissions) may impose additional requirements for ETC designation beyond what is specifically prescribed in Section 214(e)(1) of the 1996 Act, stating:

> In this Report and Order, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier.
>
> ETC Order, at ¶ 3.

Consequently, the FCC has focused on the public interest as a primary requirement and the 1996 Act provides state Commission's with wide discretion in determining what is in the public interest. ETC Order, at ¶ 61 ("We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law.")

The FCC again addressed the public interest standard *In the Matter of Federal-State Joint Board on Universal Service Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc. Designations as Eligible Telecommunications Carriers In the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 12-141 (November 26, 2012), at ¶¶ 11-16 ("Reconsideration Order"); emphasizing that because the statue is vague on how to conduct the public interest analysis the FCC, and thus this Commission, have the discretion to determine the specific factors (*i.e.*, beyond those prescribed in Section 214(e)(1)) to consider for its public interest determination. Moreover, The FCC made clear that its requirements for ETC designation have evolved over time, through adjudication and rulemaking. Id. ¶10-12. The FCC noted that the public interest analysis for an ETC Application should be based on the facts and circumstances specific to the applicant. In this regard, the FCC explained that:

> Consistent with its statutory authority, in the *Virginia Cellular Order* and *Highland Cellular Order*, the Commission concluded that a rigorous public interest analysis was appropriate. This decision was based on the Commission's experience with the ETC process at that time. The Commission determined that each request merited a thoughtful analysis of how a particular ETC designation would affect service in the relevant area. The Commission engaged in a fact-specific public interest analysis. It

> concluded that "the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." The Commission evaluated the merits of designating Virginia Cellular and Highland Cellular based on the information before it. We therefore disagree with Petitioners and find that the Commission did in fact explain its reasons for adopting a more rigorous public interest standard.
>
> Reconsideration Order, at ¶12.

Consequently, meeting the requirements of Section 214(e)(1) is necessary but not sufficient for ETC designation. Before designating a carrier as an ETC in Illinois, this Commission must affirmatively find that the designation is consistent with the public interest, convenience and necessity. In order to be designated as an ETC in Illinois, a carrier must also meet requirements prescribed by the FCC for ETC designation under Section 214(e)(2) and all additional requirements the Commission deems appropriate and reasonable to ensure that the designation is consistent with the public interest, convenience and necessity.

D. Defined Service Area Requirement

An ETC's "service area" in Illinois is a geographic area established by the Commission, not the ETC, in which the ETC has universal service obligations and is eligible to receive federal universal service support. See, for example, *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, NTCH, Inc. Petition for Forbearance from 47 U.S.C. §214(e)(5) and 47 C.F.R. §54.207(b), Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, FCC 11-137 (September 16, 2011)("NTCH/Cricket Forbearance Order"), at ¶4. Section 214(e)(5) of the 1996 Act provides for how a service area should be determined for the purpose of ETC designation:

> 214(e)(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.
>
> 47 USC Section 214(e)(5).

In an area served by a non-rural incumbent local exchange carrier ("ILEC") ("non-rural area"), an ETC's service area is the geographic area established by the Commission. In an area served by a rural ILEC ("rural area"), a service area is the rural carrier's study area unless redefined by the FCC and the Commission. A "study area" is the geographic area served by an ILEC within a state, consisting of one or more exchanges. 47 C.F.R. § 69.703(e). While redefinition is permissible under §214(e)(5) of the 1996 Act, the FCC has found that a redefined rural ETC service area should not be below the wire center level or contain partial wire centers of the rural carrier. ETC Order (FCC 05-46) at ¶77

Section 214(e)(5) distinguishes between rural and non-rural areas. In a rural area, an ETC's service area must conform to the study area of the rural carrier unless and until redefined by the FCC and the Commission ("conformance requirement"). *In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, Virgin Mobile USA , L.P. Petition for Forbearance, Cox Communications, Inc. Petition for Forbearance, Time Warner Cable, Inc. Petition for Forbearance, i-wireless, LLC, Petition for Forbearance, Q Link Wireless, LLC Petition for Forbearance, Global Connection Inc. of America Petition for Forbearance*, WC Docket No. 09-197, WC

Docket No. 11-42, FCC 13-44 (April 15, 2013) ("Virgin Mobile *et al* Forbearance Order"), the FCC found that the conformance requirement is unnecessary for Lifeline-only ETCs and granted forbearance for carriers seeking Lifeline-only ETC designation from this requirement:

> We conclude that forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest for carriers seeking designation, or already designated, as Lifeline-only ETCs. For the reasons explained below, we find that all three prongs of section 10(a) are satisfied. As a result, if a commission designates a carrier as a limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. Because forbearance would apply only to designations for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services as it relates to the Commission's Lifeline program.
>
> Virgin Mobile et al Forbearance Order (FCC 13-44) at ¶8.

Through this forbearance, the FCC eliminated the distinction between rural and non-rural areas for the purpose of defining service areas for Lifeline-only ETCs. A carrier seeking Lifeline-only ETC designation in part of a rural ILEC's study area is no longer required to seek redefinition of the ILEC's service area. This forbearance, however, does not apply to carriers seeking designation for the purpose of receiving federal high cost and low income universal service support. Id. at ¶9.

E. FCC Requirements for ETC Designation

The 1996 Act delegates state commissions the task of determining the fitness for ETC designation of carriers subject to their jurisdictions and the FCC the task of performing ETC designation of carriers not subject to state jurisdictions. 47 USC Sections 214(e)(2) and (e)(6). The FCC requirements for ETC designation accordingly

fall into two categories: requirements imposed on carriers seeking ETC designation from the FCC and requirements imposed on all carriers seeking ETC designation (whether from the FCC or state commissions).

The FCC's requirements for its own Section 214(e)(6) evaluations are enumerated in Section 54.202 of its rules as well as its ETC Orders. The requirements of Section 54.202 of the FCC rules and determinations the FCC makes under §214(e)(6) are not binding on state commissions. For example, while similarly required to make the public interest determination for ETC designation, state commissions are not subject to the public interest standards of Section 54.202(b) of the FCC rules. Instead, state commissions must perform public interest evaluations pursuant to Section 54.201(c) of the FCC rules (and Section 214(e)(2) of the 1996 Act).

In carrying out its responsibility of performing ETC designation of carriers not subject to state jurisdictions, the FCC imposes requirements through its §54.202 of its rules and related ETC orders. While not requiring it, the FCC recommends that state commissions adopt these requirements:

> We [the FCC] encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated.
>
> ETC Order at ¶58.

The FCC requires that a carrier seeking Lifeline-only ETC designation from the FCC under Section 214(e)(6) of the 1996 Act in the application: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate

that it will satisfy applicable consumer protection and service quality standards; (4) demonstrate that it has the financial and technical capability to provide supported service in compliance with FCC rules; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. 47 CFR Section 54.202(a). Before designating a carrier as an ETC, the FCC must find that the designation is consistent with the public interest. 47 CFR Section 54.202(b).

The FCC also imposes on federally-designated ETCs additional reporting requirements through Section 54.422(b) of its rules. 47 CFR Section 54.422(b); ETC Order, at ¶69; Lifeline Reform Order, at ¶389. These reporting requirements, which the FCC did not require but recommended state commissions adopt, were set forth in the ETC Order and revised in the Lifeline Reform Order. ETC Order, at ¶¶68-72; Lifeline Reform Order, at ¶389.

Apart from rules it imposes on ETCs that it designates, the FCC also imposes rules of general applicability to ETCs that it and state commissions designate. In the Lifeline Reform Order, the FCC imposed a financial and technical capability requirement through Sections 54.201(h) and 54.202(a)(4) of its rules on carriers seeking Lifeline-only ETC designation from state commissions and the FCC, respectively. Lifeline Reform Order, at ¶387 and 47 CFR §54.201(h) and §54.202(a)(4). To further strengthen protections against waste, fraud and abuse of the federal low income program, the FCC imposes requirements through Subpart E of Part 54 of its rules on federally- and state-designated ETCs for the provision of Lifeline service. Included in the generally

applicable FCC low income support rules are: the requirements of passing through the full amount of support (Section 54.403), the National Lifeline Accountability Database procedures for detection and prevention of duplicative support (Section 54.404), marketing and disclosure requirements and de-enrollment requirements (Section 54.405), subscriber eligibility determination and annual recertification requirements (Section 54.410), carrier annual certification requirements (Section 54.416), and carrier annual reporting requirements (Section 54.422(a)). Lifeline Reform Order and 47 CFR Section 54.Subpart E.

F. Financial and Technical Capability Requirements

The FCC requires all carriers seeking Lifeline-only ETC designation to meet the financial and technical capability requirement:

> [W]e amend Sections 54.201 and 54.202 of our rules, which govern ETC designations by states and this Commission, respectively, to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.
>
> Lifeline Reform Order, at ¶387.

State commissions are prohibited from designating carriers as Lifeline-only ETCs unless the carriers have made such a showing:

> A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.
>
> 47 CFR Section 54.201(h).

A carrier seeking designation as a Lifeline-only ETC in Illinois must demonstrate to this Commission under Section 54.201(h) of the FCC rules that it possesses the necessary financial and technical capability to provide services for which it seeks designation in compliance with rules and laws and FCC/ICC requirements.

In its 2005 ETC Order, the FCC declined to adopt such a requirement for ETC designation and decided that other existing rules would be sufficient to ensure a carrier's financial and technical capability. ETC Order, at ¶¶37-39; Lifeline Reform Order, at ¶¶387-388. The FCC has since changed its position with respect to Lifeline-only ETC designation:

> Given recent growth in the number of companies obtaining ETC designation, we now conclude that it is appropriate to update our rules for federally-designated ETCs and extend the requirement to all ETCs to ensure that Lifeline-only ETCs have the financial and technical ability to offer Lifeline-supported services. Therefore, in order to ensure Lifeline-only ETCs, whether designated by the Commission or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service.
>
> Lifeline Reform Order, at ¶388.

In requiring the showing of financial and technical capability to provide services for which an applicant seeks Lifeline-only ETC designation, the FCC cited the growth in the number of ETCs as well as the Indiana Commission's point that "companies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program." Lifeline Reform Order, at ¶387 and fn. 1010. The FCC also referred to T-Mobile's point that "Lifeline ETC applicants should be required to make showings of

financial and technical capability to provide the supported services (including consideration of whether the carrier offers services in addition to Lifeline service) in order to be designated as Lifeline ETCs" to ensure that Lifeline services are provided by carriers with sufficient incentives to comply with all applicable rules. Lifeline Reform Order, at ¶388 and fn. 1013. Thus, the financial and technical capability requirement was intended to strengthen protections against waste, fraud and abuse by filtering out carriers that have not made a business case and are therefore more likely to commit waste, fraud and abuse of the federal low-income program.

The FCC prescribed a framework for the Commission to perform financial and technical capability evaluations under Section 54.201(h) of the FCC rules:

> Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.
>
> Lifeline Reform Order, at ¶388.

In establishing guidelines for determining whether a Lifeline-only ETC applicant has shown that it has the financial and technical capability to provide services for which it seeks designation, the FCC provided some indication of when state specific experience is relevant. The FCC distinguished the consideration of enforcement actions and ETC revocation proceedings from other relevant considerations; it included the consideration of enforcement actions and ETC revocation proceedings *in any state*, not just in the state in which the applicant seeks designation. In contrast, the FCC did not include the qualifying phrase ("in any state") in other considerations. Specifically, the FCC did not include "in any state" in the consideration of whether the applicant

previously offered services to non-Lifeline consumers or in the consideration of whether the applicant intends to generate non-USF-sourced revenues. Hence, pursuant to the FCC guidelines, the Commission should consider an applicant's experience of providing services for which it seeks designation to non-Lifeline customers in Illinois and the applicant's ability to generate non-USF-sourced revenues in Illinois for the Commission's Section 51.201(h) deliberations.

In addition, the FCC referred to the considerations cited above as among the relevant considerations, rather than the exclusive relevant considerations, for the financial and technical capability evaluations. Therefore, under the FCC guidelines the Commission may introduce additional considerations that it deems appropriate and reasonable for the Commission's §54.201(h) evaluations.

G. Commission Standards for Evaluating ETC Applications

The FCC's requirements for ETC designation have been evolving over time through ETC designation proceedings and rulemaking. See, for example, Cello Partnership ETC Order (DA 00-2895), Virgin Mobile ETC Order (FCC 03-338), Highland Cellular ETC Order (FCC 04-37), ETC Order (FCC 05-46), TracFone Forbearance Order (FCC 05-165), USF/ICC Transformation Order (FCC 11-161), Lifeline Reform Order (FCC 12-11), and Virginia Cellular/Highland Cellular Order on Reconsideration (FCC 12-141) at ¶10. The FCC requirements the Commission must and should apply to ETC designation in Illinois have accordingly evolved over time. For example, the FCC recently amended its rules to require the Commission to perform Section 54.201(h) evaluations for ETC designation. Thus, the Commission must perform ETC designation using different standards than it has in the past.

Moreover, over time the FCC and state commissions (including this Commission) have increasingly become aware of the potential for waste, fraud and abuse in the federal low-income program. See, for example, Julian Hattem, "FCC warns companies not to skip income check for 'Obama phones,'" the Hill, *http://thehill.com/blogs/regwatch/technology/309573-fcc-warns-telecoms-companies-about-obama-phones* (last viewed July 10, 2013); Lifeline Clarification Order (DA 13-1441), at fn.2; Staff Report and Initiating Order, MTI Investigation Proceeding (ICC Docket No. 12-0021). Experience has also shown that verifying ongoing compliance by ETCs can be difficult. *See e.g.*, Staff Report and Initiating Order, MTI Investigation Proceeding (ICC Docket No. 12-0021). Thus, to strengthen protections against waste, fraud and abuse, it is imperative for the Commission to subject ETC applicants to a rigorous upfront vetting process to ensure that the applicants have the ability to provide services for which it seeks designation in compliance with rules and laws and FCC/ICC requirements before granting the designation. The Commission should not, when faced with the potential for waste, fraud and abuse, decline to examine an aspect of an ETC application or decline to impose any requirement on an applicant as a condition of eligibility simply because it did not do so in the past. Consistent with Section 214(e)(2) of the 1996 Act and the Lifeline Reform Order, the Commission can and should impose increasingly stringent standards upon new ETC applicants, if additional information becomes available and apparent and argues for more stringent standards to protect the public interest. 47 USC Section 214(e)(2); ETC Order, at ¶ 61.

Furthermore, the public interest evaluations of ETC designation should be based on the benefits the designation will produce for consumers in Illinois and should be

case-by-case determinations. The extent of the benefits to consumers (and hence the public interest benefits) resulting from an additional ETC designation can vary widely from trivial to significant, depending on the number and capability of carriers already designated and the capability of the carrier seeking designation. For example, all else equal, the benefits to consumers resulting from an additional designation are generally greater when there are few carriers already designated than when there are numerous carriers already designated. Therefore, the Commission should make public interest assessments of ETC designation based upon circumstances and facts presented by and specific to the carrier seeking designation, which can change with each additional ETC designation.

Therefore, like the FCC's standards for ETC designation under Section 214(e)(6), the Commission's eligibility requirements for ETC designation under Section 214(e)(2) should also evolve over time and be tailored to individual cases. While the Commission should evaluate each ETC designation based on circumstances and facts presented by and specific to the carrier seeking designation, the Commission should strive for uniformity in assessments where such uniformity does not subvert statutory ETC designation requirements.

III. ARGUMENT

A. Millennium's Ability to Provide Service Throughout its Designated ETC Area

As noted above, a fundamental requirement of an ETC is that it offer supported services throughout its designated service area. 47 USC 214(e)(1). While Millennium recites this requirement in its Petition (Petition at 3), it provides no evidence in its

Petition that it can or will meet this requirement. At a minimum, in order for Millennium to provide supported services throughout its designated service area, Millennium must have a clearly defined wireless ETC service area and the ability to provide its wireless services throughout such clearly defined ETC service area. Millennium's Petition does not clearly define its proposed service area and does not provide any credible evidence that Millennium has the capability to provide wireless service throughout such service area.

In its Petition Millennium provides alternate and conflicting definitions of its proposed wireless ETC service area. Millennium alternatively defines its proposed service area as "all of AT&T Illinois non-rural service areas" and as "358 Chicago, Illinois; 360 Rockford, Illinois; 362 Cairo, Illinois; 364 Sterling, Illinois; 366 Forrest, Illinois; 368 Peoria, Illinois; 370 Champaign, Illinois; 374 Springfield, Illinois; and 376 Quincy, Illinois." Petition at 7. As explained by Dr. Zolnierek, the latter areas identified by Millennium are not AT&T Illinois service areas, but rather Local Access and Transport Areas ("LATAs"). Staff Ex. 1.0 at 30. As further explained by Dr. Zolnierek, the LATAs identified by Millennium contain some service areas (including rural service areas) outside AT&T Illinois non-rural service areas and exclude some service areas inside AT&T Illinois non-rural service areas. Id. Millennium's Petition, therefore, does not clearly define its proposed wireless ETC area.

With respect to its ability to provide wireless ETC service, Millennium states it provides prepaid wireless telecommunications services by obtaining service indirectly, through Reunion Wireless, LLC (in turn through Kajeet, Inc.) and through Coast to Coast Cellular, Inc., from the, respective, underlying carriers, Sprint and Verizon

Wireless. Petition at 4. Millennium subsequently indicated with respect to its Coast to Coast Cellular, Inc. agreement that: "Millennium 2000 notes that footnote 6 from Millennium 2000's Amended ETC Petition filed on April 10, 2013 should have been updated to reflect that the Coast-to-Coast Agreement was no longer in effect." Group Ex. 3.0, Second Supplemental Response to JZ 1 04b. To date, Millennium has not updated its Amended Petition filed on April 10, 2013 and therefore, the Petition continues to contain information that is not currently correct. Nevertheless, even if the Coast to Coast Cellular Inc. agreement was still in effect, Millennium provided no evidence in its Petition that would demonstrate that the Verizon Wireless network that Millennium had contractual access to through Coast-to-Coast, but no longer does, allowed Millennium to provide wireless service throughout its proposed wireless ETC area. Similarly, Millennium offers no evidence in its Petition that the Sprint network that Millennium had, and continues to have, contractual access to allows Millennium to provide wireless service throughout its proposed wireless ETC area.

At a minimum, in order for Millennium to credibly assert that it can and will provide supported services throughout its designated service area, Millennium must: (1) have a clearly identified wireless ETC service area; and (2) have the ability to provide its wireless services throughout such ETC service area. Millennium's Petition does not clearly define its proposed service area and does not provide any credible evidence that Millennium has the capability to provide wireless service throughout such service area.

After Staff identified this deficiency in Millennium's Petition (Staff Ex. 1.0 at 29-35), Millennium, through data request responses and responsive testimony, provided supplementary information with respect to its ability to meet its service requirements.

As explained below, this supplementary information does not prove that Millennium can offer supported services throughout its designated service area.

Ms. Harrison, in her responsive testimony, states that Millennium proposes as its wireless ETC service area each and every exchange within Illinois Bell Telephone Company's incumbent local exchange carrier study area in Illinois. Millennium Ex. 1.0(R) at 31. This information, unlike Millennium's Petition, identifies with specificity Millennium's proposed ETC service area. Ms. Harrison provides further extra-Petition information in her responsive testimony regarding new agreements between Millennium and Reunion Wireless that allow Millennium to resell certain Verizon wireless services. Id. at 32. This information, unlike Millennium's Petition, demonstrates that Millennium can provide service to some unspecified extent making use of the Verizon wireless network. Even considering the extra-Petition information offered by Millennium, the contract information supplied by Millennium is insufficient to establish that Millennium has the technical capability to provide wireless services in each and every exchange within Illinois Bell Telephone Company's incumbent local exchange carrier study area in Illinois.

First, the contract information that Millennium has provided to Staff is incomplete. [redacted] Group Ex. 3.0, Exhibit 3.17 (Confidential). Without a complete contract, it cannot be established what capabilities Millennium is afforded by these contracts.

Second, the information that Millennium has supplied refutes Millennium's assertions that it has the ability to provide service throughout its proposed wireless ETC service area. In particular, Millennium's agreement with Reunion Wireless specifies that [redacted] Group Ex. 3.0, Confidential Response JZ 1.04 b Exhibit JZ 1 04(b) Reunion Part 1. Thus, the information supplied by Millennium does not demonstrate Millennium's technical capability to provide service in all portions of the identified exchanges in its ETC service area and, in fact, indicates explicitly that Millennium has no assurance of such capability.

Finally, Ms. Harrison points out that Sprint and Verizon provide nationwide wireless coverage and that Millennium 2000 obtains the network infrastructure and wireless transmission facilities of these carriers through Millennium's Reunion Wireless contracts. Millennium Ex. 10 at 32. While it is informative to know that Sprint and Verizon market themselves as nationwide providers, it does not provide any information regarding where Sprint and Verizon service is, and is not, available. Second, not only is there is there no credible evidence in the record as to where Sprint and Verizon do and do not provide their retail services, there is also no evidence in the record that specifies where Sprint and Verizon provide their retail services over their own networks and where they provide their retail service through roaming agreements. Thus, there is no information that would reveal how Millennium's capability to serve customers solely through use of Sprint and Verizon networks compares to Sprint and Verizon's ability to serve customers using both their own networks and roaming agreements. The retail

wireless footprints of Sprint and Verizon do not, as Ms. Harrison asserts, provide proof of where Millennium's is capable of providing retail wireless services.

Ms. Harrison argues that Millennium is already licensed as an ETC in Illinois and that by requesting wireless ETC designation, Millennium is simply seeking to expand its Lifeline services. Millennium Ex. 1.0 at 43. Examination of Millennium's track record of ETC compliance, however, emphasizes rather than refutes Staff's concern that Millennium will not fulfill its responsibility to provide Lifeline service throughout its designated ETC service area. As noted by Ms. Harrison, Millennium was designated as a wireline ETC in Docket No. 08-0454. Millennium's wireline ETC service area was established by the Commission's Order to include all of Illinois Bell Telephone Company's and all of Verizon North Inc.'s (now Frontier North Inc.'s) service areas. Order in Docket No. 08-0454 at 24. As explained by Ms. Harrison, Millennium provides its wireline ETC service through resale of Illinois Bell Telephone Company (AT&T Illinois) service. Millennium Ex. 1.0(R) at 31. Thus, Millennium has no ability to provide and, therefore, does not offer service in the Frontier North Inc. portion of its wireline ETC service area, which is outside the Illinois Bell Telephone Company service area. Furthermore, Millennium has reported to the Commission in its Code Part 793 compliance filings that it does not provide service throughout the Illinois Bell Telephone Company portion of its wireline ETC service area; reporting, for example, that it does not provide service in the Collinsville, Decatur, East Moline, East St. Louis, Quincy, and Springfield exchanges (all of which are within Illinois Bell Telephone Company's incumbent local exchange carrier study area in Illinois). Thus, not only has Millennium failed to show that it can provide service throughout its proposed wireless ETC service

area; it has also failed to meet this requirement with respect to its existing wireline ETC designation.

B. Millennium's Ability to Advertise its Lifeline Service Throughout its Designated ETC Area

Another fundamental requirement of an ETC is that it advertises its supported services throughout its designated service area. 47 USC 214(e)(1). While Millennium recites this requirement in its Petition (Petition at 3), the evidence in this proceeding reveals that it has not met this requirement as a wireline ETC. As a condition of its wireline designation, Millennium was required by the Commission to advertise to the public in its ETC-designated area the fact that it is offering the supported universal services and the charges for those services in a manner reasonably designed to reach those likely to qualify for such services and, in particular, in local circulation newspapers. Order in Docket No. 08-0454 at 23-24. Millennium's responses to Staff request for all specific media that Millennium advertised its wireline ETC services in during the period of January 1, 2013 to June 30, 2012 reveal that Millennium did not identify a single local circulation newspaper. Millennium Group Ex. 3.0, Exhibits 3.03, 3.04, 3.10, and 3.18. Thus, while Millennium asserts that it will comply with its wireless ETC advertising requirements, it has failed to comply with equivalent requirements with respect to its wireline ETC designation.

C. Millennium's Technical Ability

Millennium's ability, or lack thereof, to provide service using its resale contracts throughout its proposed service area is only one factor to be considered in assessing Millennium's technical ability to provide service. Another aspect of Millennium's technical ability that the Commission should consider is Millennium's ability to provide

staff necessary to provide its services. While Millennium's Petition, testimony, and the evidence are replete with references to what Millennium alleges its staff does or will do, the evidence in the proceeding indicates that Millennium does not have the staffing to accomplish what it claims it does.

Ms. Harrison states "Millennium 2000 personnel meet potential Lifeline customers that walk into the company's office location and who are addressed by trained staff that carefully explain the FCC Lifeline program." Millennium Ex. 1.0(R) at 24. [redacted] Millennium has four office locations. Staff Group Ex. 3.0, Response to JZ 6 06. [redacted]

Ms. Harrison states that "Millennium 2000's office staff ... cross-checks the customer's information with the company's records system to determine if the customer is eligible to receive lifeline services." Millennium Ex. 1.0(R) at 25. [redacted]

Millennium's Compliance Plan dated December 18, 2012 states "Because Millennium 2000 is responsible for the action of all its employees and agents, including

those enrolling customers in any Millennium 2000 owned or affiliated retail locations, and a Millennium 2000 employee will be responsible for overseeing and finalizing every Lifeline enrollment prior to including the customer on an FCC Form 497 for reimbursement, the Company always 'deals directly' with its customers to certify and verify its customer's Lifeline eligibility." Exhibit 1A to the Petition at 5. [redacted]

Ms. Harrison states: "Where a consumer calls into Millennium 2000's office to inquire about the Lifeline Program, Millennium 2000 in-house staff will use the telephone script (See Exhibit B-3 to Millennium 2000's Compliance Plan) to educate the customer about the Lifeline program." [redacted]

Millennium asserts "Millennium 2000 hours of operations are Monday - Friday, 9:00am to 6:00 pm. Customer complaints are handled by Customer Service Representatives. During normal business hours, calls are immediately answered by a

live-person." Millennium Group Ex. 3.0, Exhibit 3.15. [redacted]

[redacted] Notably, Millennium further states that "If no one is available to take a customer's call during business hours or after hours, the customer may leave a voicemail message. Millennium 2000 makes every attempt to answer all voicemail messages within the same business day. However, all voicemail messages will be returned within 24-48 hours. Millennium 2000 procedures have been in place since it commenced its services." Millennium Group Ex. 3.0, Exhibit 3.15. Notably, apart from staffing issues, the Commission should find that allowing service calls to go to voice-mail and failing to respond for up to two days represents a level of ETC service that is inconsistent with the public interest, convenience, and necessity.

Ms. Harrison states that "Field Agents' performances are closely managed and monitored by in-house staff." [redacted]

Ms. Harrison states "Millennium 2000's staff has been trained in the provisioning of both wireline and wireless services." [redacted]

Millennium processes and provides service to thousands of customers each month. Staff Ex. 1.0 at 46-47. The level of staffing maintained by Millennium is insufficient to perform the activities that Millennium asserts that it currently does. The Commission should find that Millennium has not demonstrated that it is able to adequately staff its business and therefore that it has not demonstrated the technical capability the Commission is required to find it has in order for it to be designated a wireless ETC.

D. Millennium's Financial Ability

Millennium failed to include within its Petition any substantial financial information. It included no Balance Sheet, Statement of Cash Flows, FCC financial filings or any other similar financial documents. Thus, Millennium's Petition provides no credible evidence that it has the financial ability to provide service.

Millennium subsequently entered additional financial information into the record. Millennium misrepresents the nature of this information. In particular, Ms. Harrison alleges that Millennium subsequently supplied to Staff "Balance Sheet and Statement of Cash Flows for 2010 and 2011." Ms. Harrison's statement was false when she submitted it on September 20, 2013. Millennium provided only selected information for 2010 and 2011. Contrary to Ms. Harrison's testimony, Millennium had not provided a Statement of Cash Flows for 2011.

Not only is the financial information supplied by Millennium insufficient to prove Millennium's financial capabilities, it contains information that suggests Millennium's financial capabilities are deficient. The FCC has indicated that among the relevant considerations of a carrier's financial ability is a showing of whether the applicant will rely exclusively on USF disbursements to operate. The extra-Petition evidence elicited

from Millennium by Staff shows that Millennium has been and, thus will almost certainly be, critically dependent on its ETC receipts to remain profitable.

[redacted]

[redacted] Millennium seeks in this proceeding, to remedy its adverse financial system by offering wireless Lifeline service for which it will recover the majority, if not all, of its wireless Lifeline customer revenue in the form of universal service subsidies (Petition at 16.) In other words, it seeks to increase its dependence on universal service revenues.

It's historical heavy dependence on universal service revenues, the adverse financial circumstances it now faces, and its plea for authority to become even more dependent on universal service revenue in this proceeding, provides collective information that is, consistent with the FCC's guidance, highly relevant to the Commission's determination in this proceeding. Millennium provided no credible evidence in its Petition that it has the financial ability to sustain itself in the absence of wireless Lifeline subsidies and the subsequent evidence it has provided in this proceeding indicate that it will, in fact, be critically dependent on such revenues. For these reasons, Millennium has not demonstrated the financial capability that the Commission must find it has in order to designate it as a wireless ETC.

E. Millennium's Wireline ETC Performance

As explained above, Millennium's wireline ETC performance demonstrates that Millennium did not and does not comply with its fundamental ETC requirements to offer and advertise its wireline service throughout its designated ETC service area. These are not, however, the only examples of Millennium's wireline ETC performance that should inform the Commission as to whether Millennium's designation as a wireless ETC will be in the public interest.

Millennium's low wireline Lifeline customer retention rates are evidence of its inability to provide Lifeline service in a manner that is consistent with the public interest,

convenience, and necessity. As Dr. Zolnierek explained, Millennium's service records indicate that Millennium's customers do not, as a general rule, stay on Millennium service for any appreciable length of time; Millennium lost more customers than its signed up in several months. Staff Ex. 47. Ms. Harrison attributes Millennium's extraordinarily low Lifeline customer retention rate to customer demand for wireless as opposed to wireline services, to Millennium's practice of not checking credit histories, or the theory that low income customers are likely to be more transient than other customers. Millennium Ex. 1.0(R) at 68-69. These explanations fail to explain why Millennium's customer retention rate is below any other ETC's Illinois customer retention rate. Staff Ex. 1.0 at 46. Furthermore, they overlook explanations that assign responsibility to Millennium's own business practices.

Millennium has included in its tariffs a five day Lifeline service offering. Illinois Tariff No. 1, 3rd Revised Page 31, Effective October 26, 2012. This offering, which provided Millennium's Lifeline customers a full months Lifeline discount of $9.25, provided customers with only five days of actual service. This product offering is not only antithetical to the entire premise of the Lifeline program which is to get customers connected to, and keep them connected to, the public switched telephone network, but is evidence that Millennium's own business practices contribute to its extremely low customer retention rate.

Similarly, Ms. Harrison provides customer bills that Millennium sent to its Lifeline customers that reveal that Millennium charged a "Line Maintenance" charge to its Lifeline customers of $20 per month. Exhibit 11 to Millennium Ex. 1.0(R). The Citizens Utility Board ("CUB") states with respect to such programs: "CONSUMER WARNING:

Inside-wire problems happen only once every 20-30 years, on average. Drop this service." http://www.citizensutilityboard.org/optionalmonthlyservices.html. This CUB warning is issued based upon a charge between $5 and $9 a month, which is far less than the $20 per month that Millennium charged its customers. Id. Again, this product offering is antithetical to the premise that Lifeline offerings are to provide an affordable option for low-income telephone customers and, further, is evidence that Millennium's own business practices contribute to its extremely low customer retention rate.

As these examples reveal, Millennium's low customer retention levels are attributable not only to the nature of its customer base, but to the terms of Millennium's own unique wireline ETC service offerings. As such, Millennium's low wireline Lifeline customer retention rates are evidence of the Companies inability to provide Lifeline service in a manner that is consistent with the public interest, convenience, and necessity.

Millennium's wireline Lifeline service-quality history also demonstrates its inability to provide Lifeline service in a manner that is consistent with the public interest, convenience, and necessity. Millennium's own reports to the Commission reveal that Millennium had service quality problems and was unable to comply with its Code Part 730 and Code Part 732 service quality requirements. Staff Ex. 1.0 at 36-38.

As noted by Staff, Millennium's service quality reports indicate that Millennium has been unable to comply with the Commission's service quality rules, in part because of its relationship with its underlying wireline provider AT&T. Staff Ex. 1.0 at 37-38. In response, with respect to its provision of operator service reports, Ms. Harrison admits that Millennium failed to report service quality information in response to Code Part 730

and Code Part 732 because its underlying provided, AT&T, did not make available to Millennium operator service performance information and therefore Millennium could not measures the service quality it provided its customers. Millennium Ex. 1.0(R) at 54. Similarly, Ms. Harrison indicates that Millennium didn't report its responsiveness to its customer calls and reports of trouble on their wirelines because Millennium must call its underlying carrier, AT&T, to resolve such issues and AT&T didn't make information on its responsiveness to Millennium available to Millennium. The service quality obligations imposed upon Millennium under Code Part 730 and Code Part 732 were imposed upon Millennium. Nothing excuses Millennium from fulfilling these obligations simply because it has chosen to provide service in a manner (through its resale contract with AT&T) that, based upon the evidence provided by Millennium, does not enable it to meet these requirements. Furthermore, Millennium seems to misunderstand its obligations. For example, it is Millennium that is obligated to answer its customers trouble report calls in a timely manner. The fact that Millennium contracts with AT&T to get the actual repairs completed does not mean that Millennium is excused from its obligation to answer its repair calls in a timely manner. Millennium's misunderstanding of, and consequent noncompliance with, its past Code Part 730 and Code Part 732 wireline service quality obligations is indicative of its inability to provide its Lifeline service in a manner consistent with the public interest, convenience, and necessity.

Additionally, Millennium's evaluation of its own service quality is methodologically unsound. In particular, Ms. Harrison testifies that Millennium has had repeated problems with its underlying wireline service provider, AT&T, but indicates that Millennium has never had any complaints from its customers. Millennium Ex. 1.0(R) at

52-53. As revealed by Ms. Harrison, however, the Company does not consider customer service issues to be complaints if Millennium itself determines that it has resolved the issue to the customer's satisfaction. Group Exhibit 3.0, Exhibit 3.15 Millennium 2000 Response to JZ 6.02. Thus, while Millennium has indicated in its reports to the Commission that it has experienced service quality problems, which it attributes to its underlying provider, it dismisses these problems because they have, in Millennium's estimation, been resolved to the satisfaction of the customers (or, as explained above, because Millennium simply can't measure its own performance). These service quality problems should have been tracked and reported to the Commission consistent with Millennium's Code Part 730 and Code Part 732 responsibilities. The fact that they were not, is further evidence of Millennium's inability to provide its Lifeline service in a manner consistent with the public interest, convenience, and necessity.

The manner in which Millennium has reported its wireline Lifeline rates in its tariffs should also be considered by the Commission in evaluating Millennium's request to be designated as a wireless ETC. Based upon Millennium's tariffs, Dr. Zolnierek alleged that Millennium failed to supply customers with the full Lifeline amounts they were entitled to receive from Millennium. Staff Ex. 1.0 at 41. Ms. Harrison indicated that Millennium did pass through the full Lifeline amount, but that Millennium's tariffs did not accurately reflect its pass-through amount due to a Millennium tariffing oversight. Millennium Ex. 1.0(R) at 56. Notably, Millennium has provided no evidence of if and when it remedied this oversight.

Failing to charge customers that are taking service pursuant to a tariff and the rates contained in that tariff, beyond whatever legal problems it creates, misleads customers, the Commission Staff, and the Commission itself. Tariffs (or, under recently enacted Public Act 98-0045, written service offerings made available on the telecommunications carrier's website) are the primary mechanism for the Commission to ensure that Millennium is: (1) not discriminating amongst its customers, and (2) providing its Lifeline customers the discounts to which they are entitled and that Millennium is required, pursuant to rules and regulations, to provide to its Lifeline customers. Millennium's failure to accurately tariff its pass-through amounts is further evidence of Millennium's inability to provide its Lifeline service in a manner consistent with the public interest, convenience, and necessity.

Millennium has also failed to Comply with its Part 757 Lifeline reporting obligations, filing several required reports untimely or not at all. Staff Ex. 1.0 at 44-45. Again, Ms. Harrison attributes these compliance failures, in part, to a Millennium oversight. Millennium Ex. 1.0(R) at 57. She further indicates that "[o]nce the oversight was discovered, it was immediately corrected." Id. The first time Millennium filed quarterly reports was when it late filed its 3rd and 4th quarter 2009 reports in August of 2010. Staff Ex. 1.0 at 44-45. Thus, at least as early as August of 2010, Millennium was aware of its Part 757 quarterly reporting obligation. Nevertheless, Millennium later, again, filed untimely Code Part 757 quarterly reports in 2011. Id. at 45. It did so again in 2012. Id. Thus, after its first partial correction, Millennium repeated its error again and again. It did not, as Ms. Harrison states immediately correct its oversight. With respect to its missing filings for 1st and 2nd quarters of 2009 (Id. at 44), Millennium has

provided no evidence that it has remedied its oversight. Millennium's failure to file, and file timely, its Code Part 757 Lifeline reports is evidence of Millennium's inability to comply with Commission rules and, therefore, Millennium's inability to provide its Lifeline service in a manner consistent with the public interest, convenience, and necessity.

Billing evidence provided by Millennium provides further evidence of Millennium's shortcomings with respect to its technical ability to adequately provide its services. Ms. Harrison provides sample Statements of Service from July through August 2012 when Millennium 2000 provided prepaid service. Exhibit 12 to Millennium Ex. 1.0(R). Of the five samples provided by Ms. Harrison, four contain simple math errors. In particular, the first, second, third, and fifth such statements provide subtotals that are $1.84 more than they should be (each includes a subtotal of $24.34, when the subtotal for a $37.50 service discounted by $15.00 should be $22.50). These statements inflate customer charges to the benefit of Millennium. Millennium provided further erroneous Statements of Service in response to Staff data requests. In particular, Millennium provided sample Statements of Service for January 2013. Group Cross Exhibit 3.0, Exhibit 3.24 Millennium 2000 Response to JZ 6.21. Of the two samples provided for January 2013 both include incorrect billing periods (Statement Period 01/11/2013 - 01/10/2013 and Statement Period 01/06/2013 - 01/05/2013). The high percentage of errors in these sample Statements of Service provide evidence of Millennium's lack of technical ability to bill its wireline services properly, which the Commission should consider as evidence that it cannot rely on Millennium's assertions that it will be able to effectively manage its wireless resale business.

F. Millennium's FCC Compliance Plan

Millennium argues that "[i]n evaluating the potential for Millennium 2000 to allow waste, fraud and abuse, this Commission should grant significant weight to the fact that the FCC approved Millennium 2000's Compliance Plan." Millennium Ex. 1.0(R) at 15. FCC approval of an ETC's forbearance related Compliance Plan signifies only that Millennium has obtained FCC relief from the requirement of Section 214(e)(1) of the 1996 Act that an ETC provide service over its own facilities. It does not substitute for an ETC designation. Millennium's own Compliance Plan approval from the FCC makes this clear. In granting Millennium's Compliance Plan, the FCC stated that "The [FCC] has not acted on any pending ETC petitions filed by these carriers, and the Public Notice only approves the compliance plans of [Airvoice Wireless, Amerimex Communications, Blue Jay Wireless, Millennium 2000, Nexus Communications, Platinumtel Communications, Sage Telecom, Telrite, and Telescape Communications]." Exhibit 1B to Petition.

The requirement to provide service over one's own facilities is only one of the statutory requirements that must be met in order for the Commission to designate a carrier as an ETC under Section 214(e)(2) of the 1996 Act. It falls upon this Commission to determine whether requirements other than the facilities based requirement have been met. Again, Millennium's own Compliance Plan approval from the FCC makes this clear. In granting Millennium's Compliance Plan, the FCC stated that "While these compliance plans contain information on each carrier's Lifeline offering, we leave it to the designating authority to determine whether or not the carrier's Lifeline offerings are sufficient to serve customers." Id.

While the FCC has approved Millennium's Compliance Plan, it has not approved Millennium's Petition to it to be designated as an ETC in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas and Virginia, which was last revised by Millennium in April of 2013. Revised Petition of Millennium 2000 Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only, WC Docket No. 09-197, Dated April 16, 2013. The fact that the FCC has granted Millennium's Compliance Plan, but has not, over a year after such grant, designated Millennium as an ETC makes clear that approval of a Compliance Plan does not signify that ETC designation is automatically warranted.

While Ms. Harrison asserts that approval of Millennium's Compliance Plan should bear significantly on the Commission's evaluation of the potential for Millennium 2000 to commit waste, fraud and abuse of the Lifeline program, recent evidence proves why Ms. Harrison is incorrect. The FCC recently issued numerous Notices of Apparent Liability of Forfeiture to carriers that have had approved Compliance Plans. These Notices were issued, among others, to TracFone Wireless, Inc., i-wireless, LLC, and Telrite Corporation. Federal Communications Commission, Notice of Apparent Liability for Forfeiture, In the Matter of TracFone Wireless, Inc., FCC 13-133, September 30, 2013, Federal Communications Commission, Notice of Apparent Liability for Forfeiture, In the Matter of i-wireless, LLC, FCC 13-148, November 1, 2013, Federal Communications Commission, Notice of Apparent Liability for Forfeiture, In the Matter of Telrite Corporation d/b/a Life Wireless, FCC 13-154, December 11, 2013. In each case, the FCC noted the ETCs apparently willfully and repeatedly violated the FCC's ETC rules.

Id. Each of these carriers has an approved FCC Compliance Plan. Federal Communications Commission, Lifeline Reform Order at paragraph 379, footnote 998 and Federal Communication, Public Notice, DA 12-2063, Dec. 26, 2012. As these FCC Notices of Apparent Liability of Forfeiture reveal, approval of a Compliance Plan does not eliminate the potential for waste, fraud and abuse of the Lifeline program.

Ms. Harrison cites to the FCC's statement, which the FCC made in the course of approving Millennium's Compliance Plan, that "[t]he Bureau has reviewed the nine plans listed in the Appendix for compliance with the conditions of the Lifeline Reform Order and now approves those nine compliance plans." Millennium Ex. 1.0(R) at 41. She asserts based upon this statement that "the FCC has determined that Millennium 2000's financial and technical qualifications are consistent with the Lifeline Reform Order." Ms. Harrison is incorrect. The FCC, in Millennium's Compliance Plan approval, specifically identified the conditions in the Lifeline Reform Order that Millennium met. In particular, the FCC stated: "in the Lifeline Reform Order, the Commission conditionally granted forbearance from the Act's facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 public safety requirements; and (2) Bureau approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligations contained in the Order." Exhibit 1B to Petition at 2. Nowhere did the FCC state that it had found Millennium 2000's financial and technical qualifications to meet requirements for wireless ETC designation. That is a decision for the Commission to make in this proceeding. 47 C.F.R. § 54.201(h).

Notably, Ms. Harrison alleges that Millennium's Compliance Plan was subject to "a strenuous vetting process by the FCC" and that it "went through a comprehensive review process by the FCC." Millennium Ex. 1.0(R) at 12 and 13, respectively. What Ms. Harrison's testimony does not reveal is that in seeking approval of its Compliance Plan, Millennium supplied information to the FCC that was incorrect when filed.

Millennium's Compliance Plan dated December 18, 2012 states "Millennium 2000 currently provides wireless services to non-Lifeline customers in Illinois and Wisconsin." Exhibit 1A to the Petition at 15. Information in the record in this proceeding indicates that Millennium's Compliance Plan was incorrect when filed. According to Millennium, "Millennium 2000 wishes to update its response to the data requests JZ 1.01(b),(d),(j), (l) and (k) to clarify that it commenced its wireless service and Lifeline services in the state of Wisconsin as of June 2013." Staff Group Ex. 3.0, Response to JZ 6 10(a). Thus, Millennium did not provide wireless service in Wisconsin on December 18, 2012.

Millennium's Compliance Plan dated December 18, 2012 states "Millennium 2000 has provided prepaid wireless services in Illinois since 2010." Exhibit 1A to the Petition at 23. In her testimony, Ms. Harrison states: "Millennium 2000 provided wireless services in Illinois since December 2011, with its full roll-out of wireless services commencing in April 2013. Millennium Ex. 1.0(R) at 41. Again, the information supplied to the FCC by Millennium in it Compliance Plan was incorrect when filed.

The FCC has indicated that among the considerations it finds relevant in assessing an ETC applicants financial and technical capability is whether the applicant has previously offered services to non-Lifeline customers. Federal Communications

Commission, Lifeline Reform Order at paragraph 388. Thus, even if the FCC was, in reviewing Millennium's Compliance Plan, assessing Millennium's financial and technical capability, the FCC was making its assessment of materially incorrect information. This Commission is required to make its own findings regarding Millennium's financial and technical capability. 47 C.F.R. § 54.201(h). Because Millennium included incorrect information to the FCC with respect to considerations relevant its financial and technical capability, the Commission should not rely on, or place any weight on, the FCC's approval of its Compliance Plan as regards Millennium's financial and technical capability.

IV. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding deny Millennium's Petition for ETC status.

Respectfully submitted,

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