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**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

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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 submits its Reply 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 U.S.C. §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. On January 22, 2014, Staff and

Millennium filed Initial Briefs (“IBs”). In this Reply Brief, Staff responds to certain critical arguments raised in Millennium’s IB. Failure to respond to every argument should not be construed as support for the omitted argument or a change in Staff’s position; rather, Staff relies on the positions taken previously in its testimony and IB.

II. ARGUMENT

Millennium, in support of its Application, makes numerous unsupported and inaccurate statements and assertions. When Millennium does provide support, it often misrepresents the facts. Below, Staff provides information and explanations that refute many of Millennium’s claims. The Commission should, therefore, be mindful to see Millennium’s tactics for what they are. The old lawyers’ adage explains: “When the law is on your side, argue the law; when only the facts are on your side, argue the facts; and when neither the law nor the facts are on your side, jump up and down to do something to distract the decision makers from the real issues.” Millennium has neither facts nor law on its side so it is forced repeatedly to draw attention to matters that have no bearing on whether Millennium itself meets the requirements to be a wireless ETC. Looking beyond such distractions, Millennium has failed to establish the necessary facts for a foundation for its Application and, therefore, should not be designated as a wireless ETC.

A. Millennium Mischaracterizes the Issues before the Commission

Millennium asserts that “[g]iven that Millennium 2000 has already met all of the FCC’s requirements, the issue before the Commission may be formulated as follows: *Are low income residents in Illinois better off with or without the Lifeline services from*

Millennium 2000?' Millennium IB at 5. Millennium fails to provide any support for this assertion. Millennium's characterization of the issues before the Commission for decision is simply wrong.

As an initial matter, Millennium formulates its question presupposing that it has met all of the FCC's requirements. As explained throughout Staff's IB, Millennium has failed to meet several of its federal requirements (both FCC and statutory). Thus, the assumption Millennium relies on in framing its question is wrong.

In addition to its incorrect assumption, the question Millennium asks implies that the sole question the Commission should decide in this proceeding is whether Millennium's service is better than nothing for low income customers. This Commission should not adopt as its sole criterion for designating Millennium as an ETC whether low income residents in Illinois are better off with Lifeline service from Millennium or nothing.

First, the choice Millennium presents for low income consumers in Illinois – Millennium wireless service or nothing – is a false choice. Low income consumers in Illinois are not currently without wireless Lifeline options. Millennium, if designated, would not be, despite its unfounded and repeated assertions to the contrary, the only wireless carrier serving low income customers in its proposed wireless ETC service area (i.e., AT&T's Illinois service area). Millennium IB at 2, 19. There are, in fact, no less than 10 wireless ETCs in Illinois including: Illinois Valley Cellular RSA 2-I and RSA 2-II (Docket Nos. 04-0454/0455/0456), USCOC of Central Illinois, LLC (Docket No. 04-0653), Cellular Properties, Inc. (Docket No. 07-0154), Nexus Communications, Inc. (Docket No. 09-0067), TracFone Wireless, Inc. (Docket No. 09-0213), PlatinumTel Communications, LLC (Docket No. 09-0269), YourTel America, Inc. (Docket No. 09-

0605), Cricket Communications, Inc. (Docket Nos. 10-0452 and 10-0453), Telrite Corporation (Docket No. 10-0512), and i-Wireless (Docket No. 11-0073). As the Orders in these dockets reveal, no less than seven of these carriers (Nexus Communications, Inc., TracFone Wireless, Inc., PlatinumTel Communications, LLC, YourTel America, Inc., Cricket Communications, Inc., Telrite Corporation, and i-Wireless) were granted authority to operate as wireless ETCs throughout Millennium's proposed wireless ETC service area. There are clearly numerous wireless carriers authorized to provide wireless Lifeline service both in Chicago and throughout Millennium's proposed ETC service area. Therefore, customers are not faced with Millennium or nothing, but rather have several current wireless Lifeline providers to choose from should Millennium not be designated as an ETC. In formulating its decision regarding the benefits, if any, to Illinois consumers a Millennium wireless ETC designation would produce, the Commission should not consider the false choice presented by Millennium; instead, the Commission should consider whether Millennium has carried its burden of proof to demonstrate that its proposed wireless Lifeline service offers benefits to low income customers that are currently *unavailable* to consumers (i.e., not offered by any existing ETC, including existing wireless ETC) in the marketplace but would become available upon a Millennium wireless ETC designation. Staff Ex. 1.0 at 25. Millennium has not made such a showing.

Second, Millennium's Lifeline service *does*, despite its unfounded assertion to the contrary, impose costs on Illinois telephone customers. Millennium states that "there are no incremental costs to Illinois residents or telecommunications users or companies." Millennium IB at 6. This statement is clearly false.

Illinois telecommunications customers (both low income and non-low income telephone customers) pay to fund the federal universal service programs. Not only do federal universal service subsidies, including federal Lifeline subsidies, impose costs on consumers in Illinois, but federal universal service contributions recovered from consumers in Illinois (as well as in other states) have more than tripled in the past decade, with the federal universal contribution factor increasing from 5.6688 percent for the 4th quarter of 2000 to 17.4 percent for the 4th quarter of 2012. Proposed Fourth Quarter 2000 Universal Service Contribution Factor, Public Notice, CC Docket No. 96-45, DA 00-2065; Proposed Fourth Quarter 2012 Universal Service Contribution Factor, Public Notice, CC Docket No. 96-45, DA 12-1484; and Universal Service Monitoring Report, CC Docket No. 98-202, 2012 (Data Received Through October 2012), Table 1.11. Federal Lifeline subsidies, like other federal universal service subsidies, are recovered through assessments on entities that provide interstate telecommunications. 47 C.F.R. §54.713. Entities that provide interstate telecommunications, in turn, recover these assessments through charges to end-user telecommunications customers, including Illinois customers. 47 C.F.R. §54.712. Thus, every dollar of Lifeline subsidies paid out to Illinois Lifeline providers (as well as every dollar paid to Lifeline providers in other states) imposes a cost on all Illinois telecommunications customers. Millennium's assertions to the contrary are not only false but demonstrate a puzzling lack of basic knowledge of the very program it is seeking Commission approval to participate in. While Millennium's wireless Lifeline services may be provided at no charge to its customers, and they may not have a financial stake in assuring that such services are worth their costs, Millennium's wireless Lifeline services would not be provided at no

incremental costs to “Illinois residents or telecommunications users” as Millennium alleges. Millennium would be compensated for providing wireless Lifeline services, at least in part, by consumers (low income and non-low income), including Illinois consumers; this does represent an incremental cost to consumers and, in particular, Illinois consumers.

Finally, there are unequivocal requirements that ETC applicants must meet and the Commission cannot designate Millennium as a wireless ETC unless it meets all such requirements. For example, the Commission should not designate Millennium as an ETC (1) if Millennium has failed to demonstrate to this Commission that it meets the financial and technical capability requirements of Section 54.201(h) of the FCC rules, (2) if Millennium has failed to demonstrate that it has the ability to provide the supported service for which it seeks designation (i.e., wireless voice telephony service) throughout its proposed ETC service area, and (3) if Millennium has failed to demonstrate that it is able to comply with the service quality requirements in Code Part 736, etc. Therefore, in addition to the question of whether Millennium wireless Lifeline service (or a Millennium wireless ETC designation) would produce concrete incremental benefits to consumers in Illinois, the Commission must also consider whether Millennium meets all other eligibility requirements for wireless ETC designation in Illinois.

In evaluating Millennium’s Petition, the Commission should not assume that Millennium has met all statutory and FCC requirements for ETC designation, should not assume that low income customers in Millennium’s proposed wireless ETC service area would be left with no Lifeline options or no wireless Lifeline options if Millennium is not designated as a wireless ETC, and should not assume that subsidy funds provided to

Millennium are costless to Illinois customers. Because Millennium has entirely failed to provide any support for these assertions and, as Staff has shown, none of these assertions are correct, the Commission should give those assertions the weight they deserve, none.

B. Financial and Technical Requirements

Millennium asserts that “the FCC has determined that Millennium 2000’s financial and technical qualifications are consistent with the Lifeline Report Order.” Millennium IB at 22. The FCC has made no such finding, and does not make findings under Section 54.201(h), which Millennium is subject to. In approving Millennium’s compliance plan, the FCC has found that Millennium meets the requirements, identified in the Lifeline Reform Order, for forbearance from the facilities requirements of Section 214(e)(1) of the 1996 Act. As the FCC rules make clear, it is this Commission, not the FCC, that must determine Millennium’s financial and technical capability:

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 C.F.R. §54.201(h).

Millennium must carry its burden of proof and demonstrate to this Commission that it is financially and technically capable of providing the service for which it is seeking designation and this Commission must find that it has done so. Any assertion that Millennium need not do this is wrong and should be rejected.

Millennium further asserts that Staff has ignored that the Commission previously determined Millennium 2000’s technical and financial ability to provide wireless service

in Illinois. Millennium IB at 23. Millennium is incorrect. Staff has not ignored the Commission's previous decision in Docket No. 10-0477 granting Millennium a certificate of wireless service authority. Staff is aware of the Commission's prior determination, but this previous finding of its financial and technical ability in Docket No. 10-0477 was reached for a different purpose and based upon different and less stringent standards, wholly unrelated to this proceeding. In particular, the Commission's analysis in Millennium's wireless certification proceeding in Docket No. 10-0447 was not guided by the FCC guidelines provided in the Lifeline Reform Order.

For example, for obvious reasons, the Commission did not require Millennium to provide a prior record of providing wireless services in Illinois in order to demonstrate its fitness to receive a certificate of service authority to provide wireless services. However, for the purpose of ETC designation, FCC guidelines expressly recommend that the Commission consider Millennium's prior record of providing services for which it seeks designation (i.e., wireless voice telephony services in the case of Millennium) to non-Lifeline consumers. Also, in seeking to participate in the Lifeline program, Millennium must meet requirements, such as providing the supported service for which it seeks designation throughout its proposed ETC service area and meeting the service quality requirements of Code Part 736, that are not imposed upon Millennium as a provider of wireless services in Illinois. Therefore, the Commission's prior finding of its financial and technical ability in a different context and based upon different considerations and less stringent standards has no bearing on whether Millennium should be found by this Commission to be financially and technically capable under Section 54.201(h) of the FCC rules for the purpose of ETC designation.

C. Quality of Service Requirements

Millennium objects to providing a quality of service record, asserting in support that Staff has ignored the fact that the Commission does not regulate the quality of service of wireless carriers. Millennium IB at 24. In support of this assertion Millennium cites to 220 ILCS 5/13-504 of the Public Utilities Act (“PUA”), but quotes from 220 ILCS 5/13-804. Id. Presumably Millennium intended to refer to 220 ILCS 5/13-804, and not 220 ILCS 5/13-504, in support of its objections and Staff assumes so hereafter. Staff has not ignored Section 13-804. Staff does not advocate imposing service quality requirements on Millennium’s general wireless service offerings in this proceeding, but does propose imposing such requirements when Millennium is offering wireless Lifeline service. The FCC has service quality requirements in its rules for wireless Lifeline services. For example, the FCC rules require ETC’s seeking designation from it (the FCC) must:

Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

47 C.F.R. §54.202(a)(3).

More pointedly, this Commission has rules that explicitly impose service quality requirements on wireless ETCs in Code Part 736. As these rules demonstrate, the Commission has previously found imposition of service quality requirements on wireless ETCs to be expressly permitted by and consistent with federal and state law and the regulations of the FCC and this Commission. Therefore, such requirements are fully consistent with, and not precluded by, Section 13-804 of the PUA.

In addition, Millennium asserts Dr. Zolnierек supports its request for waivers from Sections 736.610, 736.620, 736.630, 736.640, 736.650, 736.680, 736.685 and 736.690 of the Commission's wireless ETC Rules. Millennium IB at 13. This is inaccurate. Dr. Zolnierек supports waivers from Sections 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.685 and 736.690 of the Commission's Rules. Staff Ex. 1.0 at lines 789-791. Section 736.680 governs payment for services, including prepaid services. Millennium has not shown why the prepaid & no-monthly-bill nature of its services or its not-seeking-high-cost-support justifies a waiver from the payment-for-service requirements of Section 736.680. Millennium Amended Petition at 14. Therefore, Staff finds no basis to support its request for waiver from Section 736.680 of the Commission's wireless ETC rules. Millennium also promises that, if designated, it will abide by the remainder of the Commission's wireless ETC rules enumerated in 83 Ill. Adm. Code Part 736. Id. But, it has failed to demonstrate that it is able to do so. Moreover, its past record of noncompliance with 83 Ill. Adm. Code 757 renders its promises for the future of little value.

D. Discrimination and Competitive Neutrality

Millennium asserts that Staff is recommending that Millennium's ETC designation consider factors that were not considered in previous ETC designation proceedings and therefore Staff's recommendations discriminate between previous designees and Millennium and violate federal "competitive neutrality" requirements. Millennium IB at 26. Millennium doggedly ignores recent changes in law. In particular, the FCC recently amended its rules so that state commissions are prohibited from designating carriers as Lifeline-only ETCs unless the carriers have demonstrated that they have the financial

and technical capability to provide the supported service for which they seek designation:

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 C.F.R. §54.201(h).

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. Staff's recommendations in this proceeding account for the financial and technical capability requirements newly imposed with respect to Commission ETC designations and, therefore, are a product of, rather than in contravention of, FCC rules.

In particular, Millennium objects to Staff's recommendation that the Commission consider Millennium's prior wireless non-Lifeline service record and that the

Commission consider Millennium's ability to earn revenues from wireless non-Lifeline services in the future. Millennium IB at 26 and 28. The FCC has stated that:

Among the relevant considerations for [a technical and financial capability] 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. Thus, Staff's recommendations, which concern whether Millennium previously offered wireless services (i.e., services for which it is seeking designation) to non-Lifeline consumers, whether it receives and will receive revenue from other sources, are a direct response to the new FCC financial and technical capability requirements that were not imposed under FCC rules when previous wireless ETCs were designated by the Commission. While the Commission and the FCC have always had the latitude to address ETC designations on a case by case basis, in this instance, the Commission must, according to FCC rules, evaluate ETC designations in a manner different than it has in the past.

Millennium asserts that Staff's currently recommended requirements violate the principle of competitive neutrality because they apply to current ETC petitioners and did not apply to past ETC petitioners. Millennium IB at 26. Under Millennium's mistaken view of the "competitive neutrality" principle, eligibility requirements for ETC designation and requirements imposed on carriers as a condition for designation must *never* evolve according to circumstances and over time; current ETC petitioners must be subject to eligibility requirements identical to those which past ETC petitioners were subject to. However, this view is clearly refuted by the FCC through its establishing new and

revising existing eligibility requirements over time. As the FCC has made clear, its (FCC's) requirements for ETC designation evolve over time, through adjudication and rulemaking. Staff Response to Millennium's Motion to Strike at 6.

For example, in 2000 the FCC considered meeting the requirements of Section 214(e)(1) as sufficient to satisfy the public interest standard and designated carriers as ETCs accordingly. Cello Partnership ETC Order (DA 00-2895). However, the FCC changed its position and no longer considers meeting Section 214(e)(1) to be sufficient for ETC designation. Since the FCC's Virgin Cellular ETC Order (FCC 03-338), carriers seeking designation must meet additional requirements that carriers seeking designation in 2000 were not required to meet, e.g., conditions enumerated in the FCC's 2005 ETC Order. Moreover, as the FCC recognized, requirements the FCC imposed in the past on certain carriers as a condition for ETC designation may be more stringent than what are imposed in the Lifeline Reform Order. Lifeline Reform Order at ¶383. Nevertheless, carriers already designated must continue to comply with the more stringent requirements imposed on them when designated. *Id.* Naturally, current ETC petitioners must meet current eligibility requirements for ETC designation, which may be more or less stringent than eligibility requirements that have been applied in the past. This is due to the evolving nature of eligibility requirements, which is made necessary due to evolving conditions and circumstances. The FCC's actions (of establishing new and revising existing eligibility requirements over time) refute Millennium's contention that changes in ETC designation requirements over time violate federal "competitive neutrality" requirements.

E. Wireless Service Record

The FCC guidelines recommend that the Commission consider Millennium's prior record of providing the supported service for which it seeks designation (i.e., wireless voice telephony service) to non-Lifeline consumers. Lifeline Reform Order, at ¶¶387-388. The Illinois Section 54.201(h) evaluation Staff proposes based upon FCC guidelines considers whether Millennium has provided wireless services (i.e., services of the same type that it seeks designation for the purpose of offering to Lifeline consumers) to the general public in Illinois for at least six month and, in particular, whether Millennium has proven, based upon its wireless track record, that it is a viable wireless telecommunication carrier (i.e., able to legitimately and profitably provide wireless services) in Illinois. Staff Ex. 1.0 at 18. Millennium claims that it has demonstrated a record based upon no less than six months of providing Illinois non-Lifeline service of the same type that it plans to provide to Lifeline customers if designated (i.e., wireless services). Millennium IB at 27. Millennium makes this claim based wholly upon its service testing of its wireless billing and provisioning system, which it acknowledges is provided "in the same manner that every company uses prior to rolling out a service to the general public." Id. at 27-28. In making its point, Millennium acknowledges that, during the so-called long wireless history it has alluded to throughout this docket (e.g., "Millennium 2000 has provided prepaid wireless services in Illinois since 2010." Exhibit 1A to Millennium's Petition at 23.), it did not actually offer its wireless service to the general public. Based on its most recent revenue reporting to the FCC, Millennium did not receive any revenue from providing wireless service in any state in 2012. Millennium 2013 FCC Form 499-A. In addition, despite Staff's repeated

attempts to elicit such, Millennium has failed to adduce any evidence in this proceeding that it has ever received any revenue from providing wireless service in Illinois. Millennium has not even demonstrated that it has ever offered wireless service to the general public in Illinois or that it has any capacity to receive any revenue except universal service revenue with respect to such services. Millennium has failed to provide a record of at least six months of providing wireless non-Lifeline service (i.e., Illinois non-Lifeline service of the same type that it plans to provide to Lifeline customers if designated as a wireless ETC) and, in particular, it has not demonstrated, based upon its wireless track record, that it has legitimately and profitably provided wireless services in Illinois.

Similarly, Millennium asserts that “[a]s a wireless reseller, Millennium 2000 has demonstrated the ability to work seamlessly with its underlying carriers and service providers to consistently offer reliable services and expand operations in the face of intensely competitive telecommunications market.” Millennium IB at 3. Millennium has not demonstrated that it has ever offered wireless service to the general public in Illinois. Thus, there is no evidence supporting its claim of working seamlessly with its underlying carriers and service providers. Additionally, as noted in Staff’s IB, during the course of this proceeding, Millennium submitted evidence indicating that it has terminated its relationship with at least one of its wholesale providers. Staff IB at 22. Therefore, Millennium’s assertion regarding its ability to work seamlessly with its underlying carriers is refuted by the facts in this case.

Millennium also asserts that its indirect agreements with Sprint and Verizon (through Reunion Wireless) would enable it able to provide resold wireless services

throughout its proposed ETC service area. Millennium IB at 8 and fn. 15. But, aside from asserting it, Millennium has again failed to carry its burden of proof and adduce any concrete evidence to support this contention. In particular, it has not provided statements from its underlying wireless carriers, whose wireless networks it plans to use to provide resold wireless service in Illinois, certifying that each and every exchange in Millennium's proposed ETC service area is encompassed by the underlying carriers' wireless networks. Millennium has not, in the alternative, provided wireless coverage maps from its underlying carriers that unequivocally show that each and every exchange in its proposed ETC service area is encompassed by the underlying wireless carriers' wireless networks. On the contrary, the wireless coverage map it has provided with its petition shows that *not* every exchange in which it seeks wireless ETC designation is located entirely within its underlying carrier's network coverage area.

Take the example of the Galena exchange, which is an AT&T Illinois exchange and thus an exchange in which Millennium seeks designation. Based upon the wireless coverage map Millennium provided, the Galena exchange is apparently not located entirely within the wireless network coverage area of its underlying carrier. Exhibit 4 to Millennium Petition. Therefore, not only there is no evidence that Millennium has ever provided wireless services to the general public in Illinois, but Millennium has failed to provide concrete evidence, aside from assertions, that it has the technical capability to provide resold wireless services using its underlying carriers' wireless networks throughout each and every exchange in its proposed ETC service area.

F. Regulation of Entry

Millennium claims that Staff's recommendations constitute regulation of its entry, which are, according to Millennium, inconsistent with federal law. Millennium IB at 29. Nothing prohibits Millennium from entering the telecommunications market in Illinois as a wireless carrier (which, as noted above, it claims it has already done). Nothing prevents Millennium from providing wireless service to any consumer in Illinois it desires to serve. If, however, Millennium desires to participate in the federal Lifeline program, then it must meet federal and state requirements for ETC designation. The Commission not only should not, but cannot designate Millennium as a wireless ETC unless it has met all eligibility requirements for such designation.

Millennium similarly argues that it makes no economic sense to restrict entry of ETCs. Millennium IB at 39. As noted above, without ETC designation Millennium is not restricted from providing wireless services to any customer in Illinois. Its service will not, however, be subsidized with funds recovered, in part, from Illinois telecommunications customers.

Millennium, in supporting its position, cites Dr. Ankum's question: "Would Staff prefer that there were only a single provider of nails in Illinois, because a nail is a nail, and the 'customer would be better off without' alternative nail providers?" Millennium IB at 39. Dr. Ankum's hypothetical has no bearing on this proceeding. As explained above, in addition to wireline ETCs, there are no less than seven wireless ETCs in Millennium's proposed wireless ETC service area. And, Millennium has received the authority to offer wireless services to any customers in that area. The question is, whether Millennium should be granted eligibility to receive subsidies for the provision of

wireless service to low income consumers, with subsidies funded from telecommunications customers, including Illinois telecommunications customers. Because, based on the evidence in this proceeding, Millennium does not meet all eligibility requirements, Millennium should not be designated as a wireless ETC and Millennium's wireless services should not be so subsidized. It is neither sound economics nor sound public policy to subsidize a service of a carrier that doesn't meet the standards established for receipt of such subsidies.

While one of the main objectives of the 1996 Act is to introduce competition into local markets previously monopolized by incumbent local exchange carriers, the FCC has long recognized that the benefits of increased competition from an additional ETC designation per se are unlikely to satisfy the public interest standard of ETC designation. ETC Order at ¶44. In order to be designated as a wireless ETC, Millennium must meet all eligibility requirements; its being an additional Lifeline provider, if designated, is not, by itself, sufficient to qualify it as a wireless ETC. As Staff has shown, Millennium does not meet all eligibility requirements for ETC designation under Section 214(e)(2) in Illinois and has failed to establish that its designation is consistent with the public interest, convenience and necessity.

G. Cross Subsidization

Millennium claims that Staff is proposing that Millennium subsidize Lifeline services with revenues from non-Lifeline services. Millennium IB at 29. This alleged "Staff proposal" makes no sense, and Staff makes no such proposal. The implied notion behind this alleged "Staff proposal" is that Millennium is somehow able to profitably compete for wireless end user customers *without* access to subsidies but is

somehow unable to profitably compete for wireless end user *with* access to subsidies and thus would require revenue from its unsubsidized portion of its wireless operation (i.e., non-Lifeline service) to cross-subsidize the already subsidized portion of its wireless operation (i.e., Lifeline service). Millennium's alleged proposal is illogical and, contrary to its assertion, Staff has never proposed it. In fact, this alleged "Staff position" is fabricated by Millennium and attributed to Staff (notably without any citation to Staff testimony, briefs, or any other Staff filing). To be clear, Staff does not propose and strongly opposes any implicit cross subsidization between Millennium's subsidized (i.e., Lifeline) and unsubsidized (i.e., non-Lifeline) services. The financial and technical requirements that Staff proposes in this docket are designed, in part, to ensure that Millennium has the ability to profitably provide non-Lifeline wireless services and thus that Millennium, when offering an equivalent Lifeline service, will be able to pass through subsidies dollar for dollar to its customers and not be incented to retain such subsidies to support an otherwise nonviable service.

H. Staffing Concerns

Millennium states "Dr. Zolnierек admits that he thinks the best way to prevent fraud and abuse in the Lifeline program is to limit the number of carriers able to offer that service so the Commission has a lighter case load." Millennium IB at 37. This is a gross mischaracterization of Staff's position.

In support of its characterization, Millennium refers to the following statements by Dr. Zolnierек:

Unless we have reasonable certainty that the additional wireless Lifeline ETC will not, inadvertently or purposefully, commit waste, fraud and abuse, the additional designation will increase the overall likelihood of waste, fraud, and abuse of the federal low income program in Illinois. In

addition, the Commission's resources required to ensure and verify compliance will increase with each additional designation.

Millennium IB at 36. These are irrefutable facts. If the Commission makes more designations of carriers that may commit waste, fraud, and abuse, then there is a greater chance that there will be waste, fraud, or abuse. More ETCs to oversee will require more Commission resources. Millennium cites these truisms, which it does not and cannot refute, as evidence that Staff advocates limiting the number of ETCs so the Commission has a lighter case load. The conclusion Millennium draws (and attributes to Staff) does not follow from the facts used to justify it. To be clear, Staff does not advocate that any applicant be denied ETC designation in order to lighten the Commission's case load. Instead, Staff advocates that the concrete risk of committing waste, fraud, and abuse that new ETCs represent be considered an incremental cost of designation and that this cost, among others, be weighed against the incremental benefits, if any, the new ETC represents.

The evidence in this case fails to provide the Commission reasonable certainty that Millennium will not, inadvertently or purposefully, commit waste, fraud and abuse. Based upon the evidence provided in this proceeding, there is no basis to believe that Millennium has the ability to and thus, will, provide wireless service in compliance with laws and rules.. Moreover, the incremental cost implications of additional designation underscores the necessity of the requirement that, in order to be designated as an ETC, Millennium not only must meet all other eligibility requirements but must also demonstrate that its designation will produce concrete incremental benefits to consumers in Illinois, which Millennium has failed to do.

While Millennium misrepresents Staff's position, Staff is concerned with the Commission resources that would be necessary to ensure Millennium complies with its commitments. As the evidence in this case reveals, Millennium has, in several instances, failed to comply with its obligations until Staff identified such failures. For example, Millennium failed to charge rates consistent with its tariffs. With respect to this admitted "oversight" Millennium states: "during the five (5) ICC data requests, the staff did not inquire into the full amount of support passed-through to Lifeline customers." Millennium IB at 56. Millennium excuses its error by laying blame on Staff for failure to specifically identify the error earlier for it. Similarly, Millennium has repeatedly failed to file reports in compliance with Code Part 757, and has on several occasions corrected its error only in response to Staff's identification of the compliance failure. Staff IB at 37. By relying on Staff to identify its compliance problems, Millennium has not only experienced several periods of noncompliance, but has forced Staff to expend valuable resources in attempts to elicit corrective action on the part of the Company. The burden of proof is on Millennium to provide information to the Commission, not on Staff to identify potential errors in compliance by the Company.

Ironically, Millennium argues that the best way to prevent fraud and abuse is to ensure that carriers abide by their commitments. Millennium has not done so in the past with respect to its wireline ETC obligations and, based upon the evidence in this proceeding, there is no indication that it will do so going forward. In this case, the best way to prevent fraud and abuse of the program is not to expend great time and effort in an attempt to make Millennium comply going forward, but rather, based upon its past behavior and the fact that there is no evidence to indicate that Millennium will provide

any benefits to customers that they are not already available to them, to deny Millennium's petition for wireless ETC designation.

I. Customer Retention

Millennium asserts that "Dr. Zolnierek is improperly comparing wireline retention (of which only 4 percent of eligible customers seek) with wireless retention (of which 96 percent of customers seek)." While Dr. Zolnierek did compare Millennium's wireline retention rates to retention rates of wireless ETCs, Dr. Zolnierek also compared Millennium's wireline retention rate to the retention rates of other wireline ETCs. Compared against any and all wireline ETCs, Millennium had the lowest such retention rate in Illinois.

J. Approved Compliance Plans

Millennium asserts that "Millennium 2000 is proud to be one of the only twenty (20) qualified telecommunications carriers in the United States to have received FCC approval of its federal Compliance Plan ..." Millennium IB at 2. Millennium is incorrect that only twenty telecommunications carriers in the United States have received the FCC's approval of their compliance plans. The FCC has approved plans for twenty carriers since its Lifeline Reform Order; a list of these carriers is posted on the FCC's website at <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>. These are not, however, the only carriers that have obtained the FCC's approval of their compliance plans. For example, as noted in Staff's IB, the FCC, prior to its Lifeline Reform Order, approved compliance plans for numerous carriers including, but not limited to, TracFone Wireless, Inc., i-Wireless, LLC, and Telrite Corporation. Staff IB at 40-41. Thus, Millennium's assertion of being one of only twenty qualified

telecommunications carriers in the United States to have received FCC approval of its federal compliance plan is factually incorrect.

Apart from this factual error, Staff reiterates that the FCC's approval of a forbearance-related compliance plan is only one of the necessary requirements for Millennium to receive blanket forbearance from the facilities requirement of Section 214(e)(1). And, the facilities requirement 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. Therefore, the FCC's approval of a forbearance-related compliance plan is necessary but not sufficient for this Commission to designate a wireless reseller such as Millennium as an ETC.

The FCC's approval of Millennium's compliance plan simply does not mean that the FCC considers Millennium to be financially and technically capable under Section 54.201(h) of its rules or supersede this Commission's authority to determine Millennium's financial and technical capability pursuant to Section 54.201(h) of the FCC rules. For instance, Millennium also included in its compliance information on its Lifeline offerings. Compliance Plans Guideline Publics Notice (DA 12-314) at 2-3. With respect to this information, the FCC stated:

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.

Millennium *et al* Compliance Plan Approval Public Notice (DA-12-2063) at fn.7.

Thus, the FCC's approval of a forbearance-related compliance plan serves the stated purpose: meeting one of the requirements for Millennium to qualify for the blanket

forbearance from the facilities requirement of Section 214(e)(1) provided in the Lifeline Reform Order, but nothing more. It does not mean that Millennium passes this Commission's Section 54.201(h) evaluation or meets all other eligibility requirements for ETC designation in Illinois. In fact, as Staff has shown, Millennium does not meet all eligibility requirements in Illinois and therefore should not be designated as a wireless ETC in Illinois.

K. Other Arguments

Millennium's IB paints a picture of Millennium and its potential role in the Illinois that is much brighter than it actually is. Millennium's IB is rife with unsupported and inaccurate assertions regarding its history, a factually defective characterization of the Illinois Lifeline market, and a gross misrepresentation of Staff's analyses and views. An accurate assessment of Millennium and its potential role in the Illinois wireless Lifeline market as described in Staff's testimony and IB provides a less favorable picture of Millennium.

Millennium casts itself as making available wireless Lifeline services to customers that would otherwise have no other wireless Lifeline option if it is not designated as a wireless ETC ("Millennium 2000 will offer an important choice to eligible low income consumers – the choice to receive landline or wireless Lifeline service"). Millennium IB at 19. This simply is not the case. There are, as explained above, no fewer than ten providers of wireless ETC services that offer services and focus on providing services to economically disadvantaged, low-income communities in Illinois, including at least seven Commission designated wireless ETCs in the area that

Millennium is proposing to service. Thus, low income consumers in Illinois already have “a true choice” between wireline and wireless Lifeline offerings. Id. at 19-20.

Millennium alleges that Dr. Zolnierek favors “massive out-of-state corporations that provide mass market wireless services” but provides no citation to Staff’s testimony stating such a position. Millennium IB at 20. Contrary to Millennium’s mischaracterization, Dr. Zolnierek specifically focuses on service in Illinois as reflected in his recommendation that Millennium first and foremost demonstrate a record of no less than 6-months of providing non-Lifeline service of the same type that it will offer to Lifeline consumers if designated as a wireless ETC (i.e., wireless voice telephony service) in Illinois. Staff Ex. 1.0 at 18. Additionally, Millennium’s attempt to portray itself as a uniquely Illinois based provider amongst “massive out of state corporations” is misleading. Millennium provides no evidence that it is the only ETC headquartered in Illinois and, in fact, that is not the case. For example, the wireless ETC PlatinumTel’s principle place of business is in Illinois. PlatinumTel Communications, LLC, Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, filed June 4, 2009 in Docket No. 09-0269 at 3. Furthermore, Millennium itself is currently seeking ETC designation in no less than 10 states and the District of Columbia. Revised Petition of Millennium 2000 Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only (“Millennium FCC ETC Petition”) in WC Docket 09-197, dated April 16, 2013. Thus, not only Millennium is not the only carrier headquartered in Illinois, but it is also not solely focused on the Illinois market.

Millennium supports its assertion that its designation will provide consumers in Illinois with a true choice and thus will benefit low income consumers in Illinois by assuming away choices that are currently available to low income consumers in the marketplace in Illinois. Millennium IB at 19. Millennium uses AT&T and Verizon as the benchmarks against which it measures itself, asserting that AT&T and Verizon have “different business plans” and find “Lifeline activities are more of regulatory distraction.” Millennium IB at 4. Apart from Millennium’s inappropriate attempts to represent the views and opinions of carriers that are not parties to this proceeding, these carriers serve only as straw men for Millennium’s argument. Neither AT&T nor Verizon is among the numerous designated wireless ETCs in Illinois. Therefore, there is no basis for Millennium to benchmark itself against such carriers. Instead Millennium should benchmark its wireless Lifeline services against the wireless Lifeline services of the seven wireless providers, referenced above, designated as ETCs in Millennium’s proposed wireless ETC service area.

Millennium states that the Commission has expressed concerns about the low-income residents Millennium 2000 seeks to serve in Illinois and that Staff has not. Millennium IB at 5. This is simply not true. Dr. Zolnierek explicitly recommended that Millennium demonstrate that the Lifeline services it seeks to provide would produce incremental benefits to consumers in Illinois and benefits currently unavailable to consumers in Illinois (i.e., not offered by any existing ETCs) but will become available upon its designation . Staff Ex. 1.0 at 26. These recommendations are unmistakably concerned with and aimed at ensuring that low-income customers benefit from a Millennium wireless ETC designation. More broadly, Staff’s primary concerns, reflected

throughout its testimony and IB in this proceeding are that Illinois consumers, including low-income consumers, benefit from a Millennium wireless ETC designation. Any assertion to the contrary is unsupported and false.

The Commission should not be misled by the false picture of reality that Millennium paints. The fact is there is no evidence that a Millennium wireless ETC designation will bring benefits to Illinois customers that are currently unavailable to them in the marketplace in Illinois and no reason to believe that such designation is consistent with ETC requirements, and consistent with the public interest, convenience and necessity.

III. 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.

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