

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Millennium 2000 Inc.)
)
) Docket No. 12-0375
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.)

REPLY BRIEF ON EXCEPTIONS OF MILLENNIUM 2000 INC.

(PUBLIC VERSION)

Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda
ROWLAND & MOORE LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60654

Counsel for MILLENNIUM 2000 INC.

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Millennium 2000 Inc. (“Millennium 2000”), by its attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submits this Reply Brief on Exceptions to the Brief on Exceptions filed by the Commission Staff to the Administrative Law Judge’s Proposed Order (“ALJPO”) issued August 5, 2014. The ALJPO correctly determined that the company has met all applicable standards for approval of its application requesting designation as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving Universal Service Support for wireless services pursuant to Section 214(e)(2) of the Federal Telecommunications Act of 1996 (“the 1996 Telecom Act”), and Section 54.201(d) of the Rules of the Federal Communication Commission (“FCC”), 47 C.F.R. §54.201. The Commission should adopt the ALJPO.

I. INTRODUCTION

The Commission should ask itself “What in the world has gotten into the Staff?” Some of its antics are childish, such as calling the wireless ETC program “Obama phones”.¹ The Staff has also demonstrated a willingness to believe the most outlandish criticisms of the ETC program, such as relying on a James O’Keefe video project (the person behind the highly edited video attacking ACORN) showing “distributors giving free Lifeline phones to people who said they planned to resell them” and a recipient saying that “he planned to use it for drug money.”²

This proceeding has taken in excess of two years in order for the Staff to conduct massive discovery and wait for the FCC to rule upon Millennium 2000’s Compliance Plan (after the FCC approved that plan, the Staff suddenly decided the Compliance Plan is irrelevant). Throughout this process, the Staff has demanded the company meet standards applied to no other company in this state. Most disturbingly, the Staff finished its Brief on Exceptions with the petulant threat to seek sanctions against Millennium 2000 and subject it to extraordinary Staff scrutiny if the Commission grants its ETC application.³

The Staff’s rabid opposition to Millennium 2000 is puzzling because this is exactly the type of company that the Commission should be encouraging to provide wireless ETC service. The company’s owner, Donna Harrison, has ties to low income communities in Illinois and has focused her community outreach efforts on providing telecommunications service to qualified low income residents. Millennium 2000 is a minority woman owned company, which has been operating in Illinois since 2007 and providing wireline service to economically disadvantaged customers since 2009. It has provided non-subsidized commercial mobile radio services

¹ Staff Initial Brief, p. 19.

² *Id.*

³ Staff BOE, p. 16.

(“CMRS”) to its customers since 2011. Throughout that time, **there has not been a single customer complaint** brought to the Commission. Moreover, on December 26, 2012 Millennium 2000 became one of the first companies in the nation to complete the rigorous FCC process for obtaining a waiver of the FCC’s “own facilities” requirement, thus allowing it to provide Lifeline ETC services through resale arrangements with its underlying carriers. That FCC process included its approval of the company’s aforementioned Compliance Plan that provides policies and procedures to prevent waste, fraud and abuse. The level of detail in these commitments can be seen from Ms. Harrison’s testimony, where she devoted 18 pages to describing them.⁴

The Staff completely discounts Millennium 2000’s spotless customer service record and the fact that the FCC has determined that it has adopted policies and procedures sufficient to prevent waste, fraud and abuse. Instead, it repeatedly accuses Ms. Harrison and Millennium 2000 of being likely to engage in waste, fraud and abuse. These insulting and groundless attacks on the character of Ms. Harrison and her company must stop. The ALJ, in fact, chastised the Staff for its continued insinuations of waste, fraud and abuse:

There is no evidence to demonstrate, or even suggest, that Applicant would be inclined to engage in waste, fraud and/or abuse of the wireless ETC Lifeline program in order to remain solvent. . . . Notwithstanding that Staff’s testimony is studded with references to waste, fraud and abuse (e.g. Staff Ex. 1.0 at 10, lines 213, 218, 227; at 18, lines 386, 388; at 20, lines 435-436; at 23, line 492; at 26, line 551), Staff makes no claim, and presents no evidence, that waste, fraud and abuse occurred in Applicant’s wireline ETC Lifeline program, its provision of CMRS service, or in its resale operations. It also bears repeating that Staff presented no evidence of any adverse conduct or findings stemming from Applicant’s CMRS or ETC service in Wisconsin.⁵

⁴ Millennium 2000 Ex. 1.0, p. 12-29.

⁵ ALJPO, p. 42.

The Staff's unrealistic fear of waste, fraud and abuse and its alignment with the political views of a character such as James O'Keefe is reflected in the test its witness champions to hold-up any ETC Applicant:

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.⁶

This new "reasonable certainty" test then leads the Staff to argue that the Commission's decision should be based on information not in the record but what the Staff speculates might exist. Thus, the Staff complains that it could not prove that Millennium failed to demonstrate managerial competence because Staff could only base its arguments on "evidence, much of which was and is in the control of Millennium." BOE, p. 5. Continuing this theme that Staff was somehow handicapped by lack of access to information, the Staff argues that the Commission should apply a "negative inference" test to all Millennium testimony:

Rather than applying a negative inference (*see e.g., Schaffner v. Chicago & North Western Transportation Co.*, 129 Ill. 2d 1, 22 (1989)) to Millennium's lack of evidence, which only it could control, the PO again inappropriately switches the burden to Staff and finds that the evidence Staff was able to proffer was insufficient.⁷

It should be noted here that the Staff over two years examining Millennium 2000's records, proffering six (6) sets of data request containing 235 questions and sub parts. Millennium 2000 responded to all of those data requests and by agreement, many of those responses were placed in the record as Millennium 2000 and Staff exhibits (*See Staff Group Ex. 3 and Millennium 2000 Group Ex. 1*). If the Staff had been dissatisfied with those responses it

⁶ Staff Ex. 1.0 at lines 549 to 552.

⁷ *Id.*

could have submitted other clarifying questions and if negotiations were unfruitful could have filed a motion to compel. It never filed such a motion or raised any discovery issues with the Administrative Law Judge.⁸ Nor did the Staff object to the data responses being put into the record because they supposedly failed to provide a complete picture of the company's operations. Also, Staff had access to every report and document ever filed by Millennium 2000 with the Commission and FCC. In summary, the Staff's "negative inference" argument has no basis. In fact, by being reduced to proposing that standard, the Staff demonstrates the complete lack of grounds for denying the application. The ALJPO succinctly described the Staff's obsession with waste, fraud and abuse, when it states: "Staff's fears appear to be more the result of speculation than of any concrete evidence."⁹

The Staff also proposes that the Commission provide extra scrutiny to all new ETC applications in order to conserve its resources: "In addition, the Commission's resources required to ensure and verify compliance will increase with each additional designation."¹⁰ Because the Commission has already approved the wireless ETC applications of mostly large, multi-state carriers, the Staff's illegal attempt to limit the number of wireless ETCs in Illinois leaves no room in this state for small local carriers such as Millennium 2000 that focus on Illinois' low income community. Thus, the Staff's approach is directly in conflict with this Commission's encouragement of competition and access by Illinois citizens to telephone service.

Having first decided to deny Millennium 2000's application, Staff has spent years trying to find an excuse to do so. After all of this time, it has come up empty handed. The ALJPO carefully examines the Staff's allegations and debunks every one. Still not willing to give up, the

⁹ ALJPO, p. 42.

¹⁰ Staff Ex. 1.0 at lines 552 to 554.

Staff has filed a Brief on Exceptions that continues its troubling pattern of ignoring the record evidence (the Amended Application as well as the testimony with Group Exhibits Staff Ex. 3 and Millennium 2000 Ex. 3 filed by both parties) and alleging whatever it takes to stop Millennium 2000 from obtaining an ETC designation.

Staff begins its argument regarding Millennium 2000's managerial ability with the wild claim that "Millennium has either grossly mismanaged its wireline ETC business or, alternatively, ignored its requirements as a wireline ETC."¹¹ Millennium 2000 demonstrated in its briefs and the ALJPO finds that there is absolutely no evidence to support the hyperbole of Staff. In fact, the record demonstrates Millennium 2000 received FCC approval for its detailed Compliance Plan and has maintained a five year period of providing wireline services without a single customer complaint. A review of the Staff's allegations shows that at most, they amount to, as the ALJPO found, isolated "inconsistent management practices and sporadic inefficiency." The Staff's BOE does not even attempt to cite to the record when it heaves such insulting claims about Ms. Harrison's management of Millennium 2000. Instead, it merely cites to its brief irrespective of the fact that each of those claims were refuted by record evidence and citation in Millennium 2000's Reply Brief.

Staff assertions:

- Not proving that through its underlying carriers (Sprint and Verizon) Millennium 2000 is capable of providing service throughout its service territory – Staff BOE, p. 6 (addressed in Millennium 2000 Reply Brief, p. 10-15)
- Pursuing direct marketing instead of advertising its services in local circulation newspapers throughout its service territory - Staff BOE, p. 6 (addressed in Millennium 2000 Reply Brief, p. 15-17)

¹¹ Staff BOE, p. 5.

- Passing through more wireline Lifeline subsidies than required by the FCC and that had been set out in its tariff (That's correct. Staff complains that the error on Millennium 2000's tariff supersedes the fact that the Company provides its Lifeline customers benefits that surpass those that are required by federal law.) Staff BOE, p. 6-7, 9-10 (addressed in Millennium 2000 Reply Brief, p. 35)
- Not timely filing all of its Code 757 Reports - Staff BOE, p. 8 (addressed in Millennium 2000 Reply Brief, p. 32-36)

Supported by the record evidence, the ALJPO properly rejected each of the Staff's arguments as set forth in the pleadings. In the instances where the ALJPO found that Millennium 2000 needs to improve its regulatory performance, it imposed specific obligations on the company. (*See* Findings 7-9). This targeted response to the record is in stark contrast to the Staff's shot-gun demands for a denial of the application. Staff's BOE can be likened to imposing a death penalty for the offense of jaywalking.

The Staff's claim that Millennium 2000 does not possess the financial capability necessary to provide ETC service (Staff BOE, p. 10-11) is based entirely on its misreading of the FCC's Lifeline Reform Order. Millennium 2000 has shown that the Staff has elevated one of the factors the FCC said should be considered when evaluating financial viability into an absolute bar and in any event, it has non-ETC revenue sources.¹²

The Staff next claims that Millennium 2000's wireline retention rate is too low and therefore it is not in the public interest to grant the ETC Application.¹³ Millennium 2000 showed in its Reply Brief (p. 26-29) that there is no federal or state standard requiring a specific retention rate and in any event, its low retention rate of wireline ETC customers is a function of customers

¹² See Millennium 2000 Reply Brief, p. 23-25.

¹³ Staff BOE, p. 11-14.

moving their wireline service over to cellular service. This transition of its customers to wireless service is exactly the reason it is requesting wireless ETC designation and the Staff's delay of the receipt of that designation has exacerbated that low retention rate.

The Staff's final argument is that because Millennium 2000 chose to use the service territory definition recommended to it by the Staff, this "raises the concern as to whether Millennium adequately understands where its proposed service area is."¹⁴ This silly and completely baseless speculation is emblematic of how Staff demonstrated its mind was made up even before discovery was concluded or Applicant had filed testimony and thus the extraordinary lengths to which the Staff has undertaken to oppose the Company's Application.

In summary, as shown by the ALJPO, Millennium 2000 meets each of the statutory and regulatory requirements to obtain a wireless ETC designation. Moreover, given its close ties to the low income community, it is in the public interest that this company be able to market and provide ETC services in a way that large, national corporations cannot or will not and thus expand the availability of telecommunications service in the State of Illinois. The Commission should therefore reject all of the recommended changes to the ALJPO.

II. BURDEN OF PROOF

The Staff complains that the ALJPO accepted the evidence presented by Millennium 2000 and rejected the Staff's evidence. Without explaining what it means or providing examples, the Staff characterizes all of the Company's evidence as "unsubstantiated assertions" and its own evidence as "actual evidence in the record." Thus, according to the Staff, the ALJPO

¹⁴ Id. at p. 15.

improperly shifted the burden of proof to the Staff when it found that Millennium 2000 meets the standards for ETC designation.¹⁵

Contrary to the Staff's rhetoric, Millennium 2000's evidence was far more than unsubstantiated assertions. Ms. Harrison and Dr. August Ankum provided detailed testimony as well as exhibits addressing each of the standards for ETC designation.¹⁶ The ALJPO addressed all six of the specific issues and ancillary issues raised by the Staff and found that none were grounds for denying ETC designation.¹⁷ Very simply, Millennium 2000 met its burden of proof. The Staff's problem is that it did not have a case.

Moreover, the Staff is not without its own proof obligations. While Millennium 2000 had the burden of going forward and providing evidence that it met the standard for approval of its application, the burden then shifted to the Staff when it sought to object to granting the application. As is common in all Commission proceedings: "[o]nce a utility makes a showing of the costs necessary to provide service under its proposed rates, it has established a prima facie case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith."¹⁸ The ALJPO carefully examined the Staff evidence and found that it was deficient.

¹⁵ Id. at p. 5.

¹⁶ Millennium 2000 Ex. 1.0R and 2.0, and Group Ex. 3.0. Dr. Ankum is Senior Vice President and Chief Economist of QSI Consulting, Inc.

¹⁷ ALJPO p. 35-44.

¹⁸ *City of Chicago v. Ill. Comm. Comm'n*, 133 Ill. App. 3d 435, 442-43 (1st Dist. 1985) (rejecting the People's contention that the Commission illegally shifted the burden of going forward with evidence to the intervenors); see also *Apple Canyon Lake Property Owners' Ass'n v. Ill. Comm. Comm'n*, 2013 IL App (3d) 100832, ¶ 54 (3d Dist. 2013) (finding that the Commission did not improperly shift the burden to the Associations, who failed to show that the costs of the new system were unreasonably high, as they had alleged).

Stymied by the fact that the record supports Millennium 2000's application, the Staff next argues that the Commission should assume that evidence that is adverse to the company is out there, it just hasn't been found yet. Thus the Staff argues that the Commission should apply a negative inference to what the Staff characterizes as Millennium 2000's lack of evidence that only it could control.¹⁹ As noted in the Introduction of this brief, however, the Staff **had** access to all of Millennium's information through over two years of discovery, including data requests and its ability to view any Millennium 2000 document on file with this Commission or publicly available from the FCC. More fundamentally, the negative inference doctrine applies to missing witnesses, and it does so only in very limited circumstances. The doctrine does not apply to evidence in general and it certainly does not apply to unknown adverse evidence that the Staff merely thinks might exist. The test, as stated by the Illinois Supreme Court in the case cited by the Staff, is rigorous:

. . . the adverse inference is available when the missing witness was under the control of the party to be charged and could have been produced by reasonable diligence, the witness was not equally available to the party requesting that the inference be made, a reasonably prudent person would have produced the witness if the party believed that the testimony would be favorable, and no reasonable excuse for the failure to produce the witness is shown.²⁰

Once that test is met, a jury may be allowed to draw an adverse inference from the party's failure to present that witness. This is a far cry from the Staff's argument that the Commission should infer the existence of evidence that is adverse to Millennium 2000 because . . . well, Staff really doesn't explain why and it doesn't even pretend to know what that adverse evidence would be. Instead, it asks the Commission to base its decision on speculation of the entire universe of

¹⁹ Staff BOE, p. 5.

²⁰ *Schaffner v. Chicago & North Western Transportation Co.*, 129 Ill. 2d 1, 22 (1989).

possibilities real or imagined. Such a nonstandard approach evokes neither competent evidence nor reasonable grounds of reliance for a sustainable record.

III. TECHNICAL AND FINANCIAL CAPABILITY

A. The Staff's Brief on Exceptions refers back to its Initial Brief where the Staff argued for the first time that Millennium 2000 does not offer wireline ETC service throughout the Frontier North service area.

At page 6 of its Brief on Exceptions, the Staff again references not the record, but merely its brief, to assert for the first time in the proceeding, that the Company provides wireline service through the resale of AT&T Illinois service, but does not have a contract with an incumbent for the resale of service in the Frontier North portion of the Company's wireline ETC service area. As the Company explained in its Reply Brief, at the time of its wireline ETC Application Millennium 2000 did market and intended to provide service in the Verizon (now Frontier North) footprint. Despite the fact that the Company initiated marketing efforts at that time it did not receive a request for service from any customer residing within the Frontier North service area.²¹ However, after the Staff injected this late raised issue, Millennium 2000 completed negotiations, executed an interconnection agreement with Frontier North Inc., and the parties jointly filed a Petition for Approval of an Opt-in Agreement for that service territory on July 25, 2014.²² But in any event, the Staff's argument is based on an incomplete record due to its decision to raise this issue for the first time in its brief.

²¹ Millennium 2000 Reply Brief at p. 14.

²² *Frontier North Inc., and Frontier Communications of the Carolinas LLC, and Millennium 2000 Inc., Joint Petition for Approval of an Opt-In Agreement for Local Interconnection Pursuant to 47 U.S.C. Section 252*, Docket 14-0479.

B. The Staff’s Brief on Exceptions refers back to its Initial Brief where the Staff argued for the first time that Millennium 2000 does not offer wireline ETC service throughout the Illinois Bell service area.

In its Initial Brief, for the first time the Staff alleged that certain Millennium 2000 Part 793 reports did not contain a correct listing of all the AT&T Illinois service areas. Millennium 2000’s Part 793 Reports are not part of the record in this proceeding. Thus, the Staff did not present data requests or testimony on this new matter and it waived cross-examination of Millennium 2000’s witnesses. Staff therefore fails to provide any citation to a record and only refers to an unproven allegation first asserted in its Initial Brief. Upon receiving notice of this issue, Millennium 2000 reviewed its Part 793 Reports and confirmed that it mistakenly left out several AT&T Illinois exchanges from the total list of exchanges it reported at the end of 2012 in its wireline service territory.²³ To the important question of whether customers received service in the AT&T exchanges they may have requested, the answer unequivocally is yes. As the Company explained in its Reply Brief, the error did not impact any of Millennium 2000’s customers.²⁴ Any eligible customer that sought wireline ETC service within AT&T Illinois’ footprint has received the requested service.²⁵ In its Reply Brief Millennium 2000 committed to file a correct list when it filed its upcoming Part 793 report in April 2014.²⁶ The Company corrected its list of AT&T Illinois service areas on its February 27, 2014 Part 793 filing.

²³ Millennium 2000 Reply Brief at p. 15.

²⁴ Id.

²⁵ Id.

²⁶ Id.

C. The Staff’s Brief on Exceptions refers back to its Initial Brief, where the Staff argued for the first time that Millennium 2000 has not advertised in a “local circulation newspaper.”

In its Initial Brief at page 26, for the first time the Staff asserted that Millennium 2000 did not identify a “single local circulation newspaper” that it advertised in pursuant to the Commission Order in Docket 08-0454. Importantly, the Staff did not claim in either its Initial Brief or its Brief on Exceptions the Company has not met the federal and state standards for advertising. Rather, the Staff makes a very narrow and specific claim that Millennium 2000 did not specifically advertise in a “single local circulation newspaper.”

As Millennium 2000 explained in its Reply Brief, has indeed met all required federal and state rules under 47 USC 214(e)(1)(B) and Part 757 of the Illinois Administrative Code. In the Commission Analysis and Conclusion portion of the Docket 08-0454 Order, the Commission stated advertisement requirements consistent with the federal and state rules:

Millennium 2000 commits to advertising the availability and terms of its services in conformance with all applicable Commission rules. Likewise, with regard to advertising the availability of Lifeline and Link-up services, Millennium 2000 represents that it will advertise the availability of those services in conformance with the requirements of 83 Ill. Adm. Code Part 757. No party took issue with Millennium 2000 with regard to the above commitments and the Commission has reviewed the record on these issues. With respect to advertising the availability of the supported services within the meaning of §214(e)(1)(B) of the Act, the Commission finds that Millennium 2000 has shown that it will “advertise the availability of such services and the charges therefore using media of general distribution.” (Verified App. at §10).²⁷

In an effort to advertise and educate consumers regarding the Lifeline program, Millennium 2000 directly distributes a Lifeline flyer through live contact. The Company has found this method to be the most effective way to reach the low income market, which comprises of a high volume of transient consumers. That advertising strategy was approved by the FCC through its approval of

²⁷ 08-0454 Order at p. 13.

the Company's Compliance Plan. As the Company stated: "Millennium 2000 will market to potential customers through live contact through Millennium 2000 employees and independent contractors, as well as through print and electronic media."²⁸ A copy of the Company's brochure was attached to the Compliance Plan as Exhibit B-2.²⁹ Thus, Millennium 2000 has indeed advertised its wireline ETC offering "in a manner reasonably designed to reach those likely to qualify for such services"³⁰ and it has "advertise[d] the availability of such services and the charges therefore using media of general distribution."³¹ At pages 36-37, the ALJPO correctly concludes that Millennium 2000's methods of advertising are compliant with §54.201(d)(2) of the federal rules.

D. Ignoring the substance of the pass through issue, the Staff now elevates the Company's tariff beyond public interest considerations and falsely claims that Millennium 2000 did not demonstrate that it passed through an amount in excess of that which is required by federal law to all its customers.

The Proposed Order correctly analyzed the pass through issue to determine that the error on the Company's tariff was not evidence of an inability to pass through the full amount of Lifeline support, or that it is contrary to the public interest. The ALJPO correctly identifies the issue: The issue is that it failed to correctly tariff the amount it actually passed through, which was a higher amount than the required federal support amount. The Proposed Order further resolves the issue by requiring Millennium 2000 to refile its tariff to document the correct pass through amount.³² As Millennium 2000 has previously argued, the fact that the Company

²⁸ See Millennium 2000 Group Ex. 3.03; Millennium 2000 Group Ex. 3.10a at pages 12-13 of the Company's Compliance Plan.

²⁹ Id.

³⁰ 08-0454 Order at 23-24.

³¹ Id. at p. 13.

³² ALJPO at pages 40, 44.

provides support in excess of the required federal amount should be seen as evidence that the Company's offering is squarely within the public interest.³³ The Staff does not argue against this assertion. Rather, the Staff elevates a mistake in the Company's tariff over the real public interest consideration in which the Company provides its customers a benefit that exceeds that which is required under federal law.

For the first time, in its Brief on Exceptions the Staff now takes issue with the fact that Millennium 2000 provided sample bills and statements of service to the Staff in response to Staff as Exhibits 11 and 12 to Ms. Harrison's Response Testimony. Thus, according to the Staff's new claim, the Company did not provide sufficient evidence of its pass through to its customers. In its Brief on Exceptions at pages 9-10 the Staff ignores record evidence to claim that Millennium 2000 has not demonstrated that it passes through an amount in excess of that which is required by federal law. The Staff followed up on the Company's Exhibits 11 and 12 by propounding data requests to the Company.³⁴ Millennium 2000 responded to those data requests, in part by providing sample bills and statements of service for the relevant months and years requested by the Staff.³⁵ Had the Staff truly been concerned with the Company's data request responses it could have corresponded with the Applicant to obtain further examples of the evidence of the pass through, and, if it deemed it necessary, filed a Motion to Compel Millennium 2000 to provide further bills and/or service statements through discovery. The Staff neglected to take these steps. Instead, the Staff waited until it filed its Brief on Exceptions to complain for the first time. In any event, the Staff also ignores Millennium 2000's Response

³³ Millennium 2000 Ex. 1.0R at lines 1549-1557; Millennium 2000 Initial Brief at p. 31; Millennium 2000 Reply Brief at p. 35.

³⁴ See Millennium 2000 Group Ex. 3.23 and 3.24.

³⁵ Id. As explained in Ms. Harrison's Testimony Ex 1.0,R the statements of service are created for a customers when requested by a customer, since CMRS as a prepaid service does not generate a post-paid type of bill as with wireline service.

Testimony where its witness specifically stated under oath that **all** Millennium 2000 post-pay bills and pre-pay statements of service contain the pass through in excess of that which is required by federal law. The relevant passage from Ms. Harrison's testimony is reproduced below:

Q. Do you have sample bills that demonstrate the pass through amount described above?

A. Yes. Exhibit 11, attached hereto, contains sample bills from January 2011 when Millennium 2000 provided post-pay service. Those bills demonstrate the pass through amount I described above.

Q. Was the pass through amount contained on all of Millennium 2000's post-pay bills?

A. Yes. All bills for Lifeline customers contained the same pass through amount.

Q. Did Millennium 2000 continue to pass through that amount when it began providing prepaid services?

A. Yes, it did. As a prepay service provider, we do not mail monthly invoices to our prepay customers. However, at the customer's request, we will provide a copy of the Statement of Service, which will show the customer's service plan, credits and a total amount of applicable taxes and fees. Attached Exhibit 12 contains a sample Statement of Services from July through August 2012 when Millennium 2000 provided prepaid service.³⁶

Thus, the Staff is flatly wrong and mischaracterizes the record when it states that the Company provided evidence of its pass through for only *** BEGIN CONFIDENTIAL ***% *** END CONFIDENTIAL of its customers. Rather, the Company has stated under oath that all of its Lifeline customers have received the benefit of a pass through amount in excess of that which is required by federal law.

³⁶ Millennium 2000 Ex. 1.0R at lines 1558-1574.

E. The ALJPO correctly concludes that past issues related to the filing of Part 757 Reports do not impact the Applicant’s technical ability to provide wireless ETC service.

The ALJPO correctly concludes that the Staff’s issue with late-filed reports does not impact the technical analysis of the Company’s request to provide wireless ETC services. In its Brief on Exceptions, the Staff continues to emphasize the fact that in the past the Company late-filed some Part 757 Reports. The Staff tells only a small part of the story. First, the Staff fails to acknowledge that it reviewed the Company’s Part 757 reports and did not find any substantive issues with the Company’s reports:

Q. Did the Staff inspect Millennium 2000’s Part 757 Quarterly Reports?

A. Yes. The Staff asked several clarifying questions in its fifth set of data requests, specifically, Data Requests JZ 5.05 (a) - (i). Millennium 2000 responded to those questions on April 18, 2013.

Q. Did the Staff have any substantive questions regarding Millennium 2000’s calculations?

A. The Staff asked several questions in Data Request JZ 5.05 (a) – (i) regarding Millennium 2000’s calculation of numbers. Millennium 2000 responded to each of those questions, providing an explanation of Millennium 2000’s calculations. It is Millennium 2000’s understanding that Staff’s inquiries have been appropriately answered and resolved.³⁷

Second, the Staff fails to acknowledge that Millennium 2000 has internally remedied the fact that it late-filed reports in the past:

Q. Has Millennium 2000 timely filed its reports in 2012 and 2013?

A. Yes. We have met the timelines in the last three quarters of 2012 and the 1st two quarters in 2013. If there is an existing issue with the timeliness of Millennium 2000’s 757 Report filings at this time, it has not been made known to Millennium 2000.

Q. Moving forward, does Millennium 2000 commit to abide by the

³⁷ Id. at lines 1606-1617.

Commission’s timelines for its wireline Quarterly Reports?

A. Yes. Millennium 2000 commits to filing the 757 quarterly reports in a timely manner.

Q. If it obtains authorization, does Millennium 2000 commit to abide by the Commission’s timelines for wireless Quarterly Reports?

A. Yes, it does.³⁸

Third, and most importantly, the Staff ignores that fact that the ALJPO resolves the Staff’s issue by requiring that “Applicant should be directed to file all current and future Section 757 quarterly reports in a timely manner”.³⁹

In its Reply Brief, Millennium 2000 demonstrated how the Staff’s analysis regarding Part 757 Reports is based on its mistaken belief that there are “missing filings” for the 1st and 2nd quarters of 2009.⁴⁰ However, as Millennium 2000 has informed the Staff, it did not provide Lifeline service at that time.⁴¹ Thus, there is no missing filing for those quarters. As noted in Group Ex 3 (JZ- 1.02), Millennium 2000 began to provide wireline Lifeline services in Illinois beginning in August 2009 to the present day. As a result, Millennium 2000 has filed quarterly reports for the periods 2009Q3 through the present day. Millennium 2000 did not have Lifeline customers nor did it seek reimbursement for Lifeline customers in 2008Q4, 2009Q1 and 2009Q2. To be sure, Ms. Harrison acknowledged in her testimony that the Company had in past years missed specific filing dates on some reports.⁴² However, as described above, that issue has

³⁸ Id. at lines 1623-1636. Since the submission of its Testimony the Company has timely filed for the remainder of 2013 and the first two quarters of 2014.

³⁹ ALJPO at page 44.

⁴⁰ Millennium 2000 Reply Brief at p. 35.

⁴¹ Millennium 2000 Millennium 2000 Group Exhibit 3.14.

⁴² That discussion was codified into FCC rule 47 USC 54.202(a)(4): “For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.”

been remedied by the Company and the ALJPO ensures that the Company will continue to timely file its reports.

F. The Staff continues to misstate the standard for a financial analysis and it ignores record evidence of the Company's provision of CMRS in Illinois and Wisconsin.

In its Brief on Exceptions the Staff continues to misstate the FCC's standards pursuant to paragraph 388 of the *Lifeline Reform Order*. At page 10, the Staff states:

The financial information presented by Millennium shows that that Millennium has been and will be critically dependent on its Lifeline revenues to remain profitable in Illinois – a circumstance that the FCC has found to be evidence inconsistent with the financial ability of a potential ETC. Staff IB at 30-31.

This “critically dependent” standard is not the FCC standard. The Staff's proposed standard for a financial analysis is demonstrably different from the standard described by the FCC at paragraph 388 of the *Lifeline Reform Order*. Paragraph 388 of the *Lifeline Reform Order* states, in part:

Among the relevant considerations for such a [financial and technical] 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 states. (footnote omitted).⁴³

As Millennium 2000 demonstrated in its Reply Brief, the Staff manipulates and misstates the FCC's standard. In fact, at page 30 of its Initial Brief, the Staff acknowledged the correct standard:

⁴³ That discussion was codified into FCC rule 47 USC 54.202(a)(4): “For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.”

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.⁴⁴

However, the Staff's proposed standard at page 10 of its Brief on Exceptions is again the incorrect and undefined "critically dependent" standard.⁴⁵ The ALJPO recognizes that the record evidence in this proceeding has demonstrated that Millennium 2000 meets the actual standard because it does not rely exclusively on USF disbursements. The Company has provided non-Lifeline wireline service in Illinois since 2009, it provides non-Lifeline CMRS in Illinois, and it provides non-Lifeline CMRS in Wisconsin.⁴⁶

The Staff falsely claims at page 11 of its Brief on Exceptions that there is no evidence that Millennium 2000 has provided CMRS in Illinois and Wisconsin. The Staff ignores Millennium 2000's responses to its Data Requests as well as the testimony of Ms. Harrison:

Q. Has Millennium 2000 tested its technical ability to provide wireless services to its customers in Illinois?

A. Yes, it has.

Q. Please explain.

A. Testing is the final step in the software development lifecycle that is completed prior to rolling out an application. As a proactive effort, in order to provide the best quality service to its customers, Millennium 2000 executed a beta-test to ensure the functionality and quality of the software that it acquired. Millennium 2000 performed due diligence testing prior to its full roll-out of wireless service in Illinois. As indicated in data response JZ 1.08(a), during the period of December 2011 through February 2013, Millennium 2000 provisioned 538 handsets to beta-test a newly procured off-the-shelf wireless billing and provisioning system. Just as USAC is testing the National Database prior to its roll out, Millennium 2000 used best practices known in the software industry to

⁴⁴ Staff Initial Brief at p. 30.

⁴⁵ This is a continuation of the Staff's argument from its Initial Brief at page 32 where it similarly misstated the FCC standard "Millennium has been and, thus will almost certainly be, critically dependent on its ETC receipts to remain profitable." See also Millennium 2000 Reply Brief at pages 23-24.

⁴⁶ Millennium 2000 Ex. 1.0R at lines 158-161, 204-216.

test its systems in the same manner that every company uses prior to rolling out a service to the general public. Thus, Millennium 2000 has indeed confirmed its technical ability to provide wireless services to its customers in Illinois.⁴⁷

Ms. Harrison further testified: “I stated in response to data request JZ 1.01(k) . . . , beginning April 1, 2013 Millennium 2000 began to offer the noted wireless packages to non-lifeline customers in Illinois.”⁴⁸

IV. SERVICE QUALITY AND CUSTOMER PROTECTION

The Staff complains that the ALJPO incorrectly found that it presented evidence on retention rates of Millennium 2000 for only a short period of time. The Staff’s response to the ALJPO is to provide a chart in its BOE (a chart not presented anywhere in the record as either an exhibit or as part of its witness’s testimony) showing the number of Millennium 2000’s new wireline customers and lifeline subsidy customers for each month from January 2011 through February 2012.⁴⁹ The Staff’s new chart proves nothing for several reasons. Moreover, the Staff is unable to assert that Millennium 2000’s wireline retention rate will carry over to its wireless retention rate.

First, the Staff’s chart of figures from Millennium 2000’s FCC Form 497 filings does not show the company’s retention rate. Rather, it only shows a total of requested reimbursement for each month, i.e. the number of customers that received Lifeline and Linkup subsidies for that period. A retention rate cannot be developed by simply subtracting one from the other.

Second, Staff is still only looking at a slice in time. As noted in the ALJPO, Millennium 2000 has been providing wireline ETC service since August 2009. The ALJPO noted: “There is no comprehensive study or other data to show that these high turnover rates have occurred

⁴⁷ Id. at lines 1281-1299.

⁴⁸ Id. at lines 1329-1331.

⁴⁹ Staff BOE, p. 12-14.

consistently, or even intermittently, since Applicant began providing service.” ALJPO, p. 41. Staff’s new chart, which only begins in 2011, does not address the defect identified in the ALJPO because it fails to show any data from 2009 or 2010.

Third, Millennium 2000’s retention rate has always has been impacted by the fact that it is a prepaid carrier without term contracts or cancellation fees that customers can easily leave and return to as their finances allow.⁵⁰ Also, FCC policies require de-enrollment of ETC customers in numerous circumstances in order to prevent waste, fraud and abuse. Millennium 2000 takes its responsibility seriously and frequently de-enrolls customers.⁵¹ More importantly, however, any recent retention rates shown would be a function of the rapid evolution in customer preferences, with the vast majority of its customers preferring to abandon the use of home phones in favor of wireless phones for family members.⁵² That is exactly why Millennium 2000 filed its application – so it could start providing the service its customers demand, especially as described below, with plans that can generate both ETC and non-ETC revenues for the company. Staff, however, without any basis for even speculating it, claims that Millennium 2000’s retention rate “shows that Millennium has not provided wireline Lifeline service that its customers can depend upon and have available over time.”⁵³ Staff adds to its speculation by titling this section of its Brief on Exceptions “Service Quality and Customer Protection” without ever even hinting at how the **wireline** retention rate is caused by or related in any way to service quality or consumer protection, let alone service quality or consumer protection attendant to Millennium 2000’s proposed wireless ETC offerings. As noted at the beginning of this brief, no customer has ever complained to this Commission about the company’s service quality or

⁵⁰ Millennium 2000 Ex. 2.0 at p. 27-28.

⁵¹ Millennium 2000 Ex. 1.0R at lines 1969-2015.

⁵² Id. at lines 75-87.

⁵³ Staff BOE, p. 14.

anything related to consumer protection issues, so Staff's attempt to link retention rate to either is baseless.

Fourth, the ALJPO correctly notes that that there is no state or federal requirement or even suggested standard for retention rate.⁵⁴ Moreover, Millennium 2000 is required to de-enroll ineligible customers.⁵⁵

Fifth, the most basic flaw in the Staff's analysis is its failure to apply common sense and recognize customer preferences have changed since Millennium 2000 first began offering wireline ETC service in 2009. The Staff never truly acknowledges the undisputed fact that 96% of customers now seek a wireless offering.⁵⁶ Thus, over the past few years wireline ETC customers have switched to wireless ETC service - the vastly preferred and vastly more convenient platform. The Staff never explains how a low retention rate for **wireline** ETC service translates to a public interest analysis for proposed **wireless** ETC service. In fact, Millennium 2000 expects to have a robust retention rate once it is able to offer wireless ETC service because, as it has demonstrated through its testimony, its responses to data requests and in its Briefs, the Company intends to offer innovative services to its customers that are unique to the currently available offerings of wireless ETCs in Illinois.

Nowhere in this proceeding did the Staff even address the benefits of consumer choice and the advantages of Millennium 2000's proposed wireless service offerings – the public interest standard this Commission has consistently applied. In its recent *Cricket Order* this Commission stated: “Consistent with past Commission rulings, the Commission finds that it will

⁵⁴ ALJPO at 41; See also Millennium 2000 Ex. 1.0R at lines 1892-1904; Confidential Ex. 17 to Millennium 2000 Ex. 1.0R.

⁵⁵ Millennium 2000 Ex. 1.0R at lines 1964-1997.

⁵⁶ Millennium 2000 Ex. 1.0R at lines 88-135 (“In 2012, 737,428 Illinois residents were participating in the Lifeline Assistance Program. Approximately 96 percent of those participants were using wireless telecommunications service.”).

use the guidelines from the FCC’s ETC Designation Order, as amended by the *Lifeline Reform Order* where applicable, as the general framework and minimal requirements for considering the ETC designation requested by Cricket and for establishing whether Cricket’s application is in the public interest.”⁵⁷

The Staff ignored the innovative services that Millennium 2000 seeks to offer to new wireless customers and its current wireline ETC customers that seek to join the 96% of consumers seeking wireless service. Millennium 2000 will offer its Lifeline customers a choice of innovative service plans that are not currently being offered by existing ETCs in Illinois.⁵⁸ For each month the consumer is eligible to receive Lifeline services, Millennium 2000 will provide Lifeline customers the option of receiving 250 free minutes without the ability to rollover unused minutes or 125 free minutes with the ability to rollover unused minutes each month for up to one year.⁵⁹ Millennium 2000 will offer discounted rates to Lifeline customers for additional purchases.⁶⁰ Millennium 2000 has further committed to offer an innovative plan that is currently not otherwise available to Lifeline consumers in Illinois. As discussed by Ms. Harrison, in addition to those plans, the Company has negotiated an additional proposed plan with its underlying carrier *** **Begin Confidential Information** *****

*****⁶¹ *****

*****⁶² *****

⁵⁷ *Cricket Order* at page 9.

⁵⁸ Millennium 2000 Ex. 1.0R at lines 1792-1828 (confidential); See also Millennium 2000 Group Exhibit 3.06A (confidential).

⁵⁹ Millennium 2000 Exhibit 1.0R at lines 1779-85.

⁶⁰ *Id.* at lines 1787-88.

⁶¹ *Id.* at lines 1800-04 (confidential).

⁶² *Id.* at lines 1823-28 (confidential).

*****.⁶³ ***** End Confidential Information** An additional innovation was proposed by the Company in order to serve the low income community.⁶⁴ ***** Begin**

Confidential Information *****

***** ***** End Confidential Information** This latter plan directly addresses the Staff’s argument that Millennium 2000 will be almost entirely dependent upon Lifeline revenues. On the contrary, Millennium 2000 will continue to seek ways to leverage its ETC status in ways to enhance non-lifeline revenues.

Thus, the record clearly demonstrates that Millennium 2000 seeks to offer services that are substantively distinct from plans currently available to Illinois consumers.⁶⁵ Those unique and innovative proposed services strike to the heart of the public interest consideration that this Commission has adopted, and tellingly, the Staff has failed to even address the public interest considerations of consumer choice and the advantages of Millennium 2000’s proposed service offerings.

Millennium 2000 witness Dr. Ankum described why the Staff’s attempt to link wireline retention to a public interest standard for wireless ETC service is fatally flawed. “The broader group of eligible customers often seeks the convenience and mobility of a wireless offering. As I

⁶³ Id. at lines1805-11.

⁶⁴ See Millennium 2000 Group Exhibit 3.06A (confidential).

⁶⁵ See Millennium 2000 Exhibit 1.0R at lines1830-47, and Millennium 2000 Group Exhibit 3.06 (A) (confidential).

also stated previously, a wireless Lifeline offering is better suited for eligible customers who do not have a permanent address (or who move from a permanent address to a temporary one).”⁶⁶

As Dr. Ankum further noted, “[b]ecause Millennium 2000’s Lifeline service (as those of other providers in the industry) is pre-paid, it is easy for a customer to not continue the service until resources become available again. While this will show up as ‘low retention,’ it says little or nothing about how much customers value the service, as Staff mistakenly conjectures.”⁶⁷ Dr.

Ankum further testified:

Indeed, it is easy to see how a low income customer who is able to afford the service only intermittently (and thus causes a low retention rate) may in fact be critically dependent on the service. Further, low income customers who tend to be on the move – for reasons of work, or family or housing situations – would naturally have a high churn rate.⁶⁸ Finally, it is in the nature of poverty that a low income person may be transient (e.g., frequently move, become homeless, have to live on another family member’s couch, etc.).⁶⁹ When such a challenge occurs the customer will obviously not continue their Lifeline *landline* service – *which is not portable!*⁷⁰

The Staff has presented no basis on why it would be proper to compare wireline retention rates with hypothetical wireless retention rates. For all these reasons, such a comparison would be invalid.

Finally, it is necessary to address the Staff’s theory on the cause of Millennium 2000’s retention rates. At page 8 of its Brief on Exceptions, citing back to its Initial Brief at p. 32-33, the Staff colors pure speculations as “evidence” that purportedly explains a low retention rate. Expanding upon its unbalanced wireline to wireless retention comparison, the Staff refers back to its Initial Brief where it attempted to identify for the first time alleged “deficiencies” in the

⁶⁶ Millennium 2000 Exhibit 1.0R at lines 1915-20.

⁶⁷ Millennium 2000 Exhibit 2.0 at pages 27-28.

⁶⁸ Id. at page 28.

⁶⁹ Id. at page 27.

⁷⁰ Id. at page 27-28.

Company's provision of wireline ETC service totally outside of the record evidence in this proceeding. There, the Staff made wholly unsupported and speculative outside-the-record arguments for the first time. As Millennium 2000 explained in its Reply Brief, the Staff speculated that one of Millennium 2000's four wireline ETC plans could cause a high turn-over rate. Yet the Staff could not even state whether any actual Millennium 2000 customer had chosen the plan, much less whether any actual customer was dissatisfied with the plan.⁷¹ That is because the Staff had absolutely zero evidence to base its speculations on. Just as egregious, the Staff speculated that a wireline line maintenance charge issue (an issue that had already been resolved by the Staff and Millennium 2000 back in 2011) somehow created a high turnover rate.⁷² Again, aside from having no record evidence support whatsoever, it is telling that the Staff fails to acknowledge that ICC Staff and the Company did in fact resolve the matter and the issue was closed in 2011.⁷³

V. SERVICE AREA DEFINITION

At page 15 of its Brief on Exceptions the Staff criticizes the Company for consulting with the Staff in order to define a service area acceptable to the Staff. It is unclear to Millennium 2000 why the telecommunications Staff of the Illinois Commerce Commission would be unwilling to consult with a telecommunications carrier concerning its proposed service area, much less why it would criticize the Company for doing so after the fact. In any event, as Ms. Harrison testified:

⁷¹ Millennium 2000 Reply Brief at p. 29-30.

⁷² See *Id.* at p 30-31.

⁷³ *Id.*

Q. What is Millennium 2000's proposed service area?

A. Millennium 2000 seeks ETC designation for wireless services in all of AT&T Illinois' non-rural exchange areas. To be clear, Millennium 2000 is not seeking wireless ETC designation in any rural carrier's Study Area.

Q. Is it your understanding that the entire AT&T service area is classified as non-rural?

A. Yes. In Staff's Response to Millennium 2000 data request 1.01(b), it stated: "each and every exchange within Illinois Bell Telephone Company's incumbent local exchange carrier study area in Illinois is an exchange that is not served by a rural telephone company as that term is used in 47 U.S.C. 214(e)(2) and 47 U.S.C. 214(e)(5) and, thus, each and every such exchange is an exchange that does not overlap with rural areas."

Q. Does Millennium 2000 have an updated list of AT&T exchanges in which it is seeking authorization?

A. Yes, it does. Staff's Attachment A to its response to Millennium 2000 data request 1.01(b) contains a listing of all of AT&T's exchanges.⁷⁴

The Staff's issue is much ado about nothing, however, since underlying the insult is the fact that the Staff agrees that Millennium 2000 has correctly defined its proposed service area⁷⁵:

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.⁷⁶

⁷⁴ Millennium 2000 Ex. 1.0R at lines 852-869 (internal footnotes omitted).

⁷⁵ The Staff is apparently unaware that on April 29, 2013 the Company filed an Errata to its Petition (posted on the Commission's E-docket system and e-mailed to the parties on the service list) in order to clarify that it was only seeking authority to provide Lifeline-only CRMS in the "AT&T non-rural service areas". Errata at ¶2 (dated April 29, 2013). In fact, Millennium 2000 and the Staff Counsel agreed to this method of updating its Application during a status hearing on April 29, 2013 (Tr. at p. 29); See Millennium 2000 Reply Brief at p. 10.

⁷⁶ Staff Initial Brief at p. 23.

VI. CONCLUSION

For the foregoing reasons, the Administrative Law Judge's Proposed Order is well reasoned and is completely supported by the record evidence in this proceeding. Millennium 2000 respectfully requests that this Commission reject the Staff's proposed revisions to the ALJPO and enter the ALJPO as the Final Order in this proceeding.

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Respectfully submitted,

s/ Thomas H. Rowland

Thomas H. Rowland
Stephen J. Moore
Kevin D. Rhoda
Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60654

Counsel for Millennium 2000 Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Reply Brief on Exceptions of Millennium 2000 Inc. has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 26th day of August 2014 by electronic mail.

/s/ Thomas H. Rowland

Thomas H. Rowland
Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60654
(312) 803-1000
tom@telecomreg.com

ATTORNEY FOR MILLENNIUM 2000 INC.