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.	:	**12-0375**

ORDER

January 14, 2015

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ORDER

By the Commission:

On June 5, 2012, Millennium 2000, Inc. ("Applicant") filed a verified application requesting designation from the Illinois Commerce Commission ("the Commission") 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. Applicant was granted a Certificate of Service Authority by the Commission in Docket 10-0477 to provide Commercial Mobile Radio Service ("CMRS") in Illinois. Applicant received ETC authority to provide wireline services in Docket 08-0454.[1]

Pursuant to notice as required by law and the rules and regulations of the Commission, a prehearing conference was held in this matter before a duly authorized Administrative Law Judge ("ALJ") of the Commission on July 9, 2012. The prehearing conference was continued to July 25, 2012. Applicant and Staff were represented by counsel. Thereafter, this matter was continued for status to September 6, 2012, October 26, 2012 and December 5, 2012, then to January 24, 2013 and March 12, 2013. At the status on March 12, this matter was continued generally. A status was held on April 29, 2013, after which it was continued for status to May 14, 2013, June 13, 2013 and July 18, 2013. The July 18 status was canceled and rescheduled for July 31, 2013. This matter was continued for status to September 10, 2013 and October 22, 2013. Continuances were granted to provide time for the submission of data requests and responses.

At the October 22, 2013 status, this matter was continued for hearing on December 18, 2013. The December 18 hearing was canceled and rescheduled for hearing on December 19, 2013. At the December 19, 2013 hearing, the parties appeared by counsel.

[1] Applicant was also issued a Certificate of Service Authority in Docket 07-0273 to provide resold local and interexchange services in Illinois.

Applicant filed Exhibit 1.0RConfidential, the revised direct testimony of Donna Harrison, with attached exhibits 1, 8, 10 and 17, Exhibit 1.0RPublic, Ms. Harrison's revised direct testimony, with attached exhibits 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16; Exhibit 2.0AHA, the direct testimony of August H. Ankum with attached exhibits 1 and 2;

Staff filed Exhibit 1.0, the direct testimony of Dr. James Zolnierek (public and confidential versions); Exhibit 2.0, Dr. Zolnierek's affidavit; Group Exhibit 3, data requests from Staff to Applicant: JZ 1.04, JZ 1.09 with supplement, JZ 1.12, JZ 1.14, JZ 6.02, JZ 6.06, JZ 6.09 with supplement, JZ 6.10, JZ 6.20E, JZ6.21E, JZ 6.22, JZ 6.23 and JZ 6.27. No witnesses were presented for cross-examination. At the conclusion of the hearing on December 19, 2013, the ALJ admitted the parties' exhibits into evidence and continued this matter generally.

After the December 19, 2013 hearing, Applicant filed Exhibit 1.01, Ms. Harrison's affidavit. On December 20, 2013, Applicant filed Exhibit 2.01, Mr. Ankum's affidavit. On December 23, 2013, Applicant filed the following exhibits on e-Docket, all of which are responses or supplemental responses to Staff data requests: Group Exhibit 3, data request responses from Applicant to Staff: 3.01 JZ 1.01 (i)(j)(conf.); 3.02 JZ 1.02 (i)(j) (conf.); 3.03 JZ 1.06, ex. JZ 1.06; 3.04 JZ 1.07; 3.05 JZ 1.08(a) (conf.); 3.06 JZ 1.09(a)-(c); 3.06(a) supp. resp. to JZ 1.09(a) (conf.); 3.07 JZ 1.11, ex. JZ 1.11 (conf.); 3.07(a) supp. resp. to JZ 1.11, ex. JZ 1.11 (conf.); 3.07(b) supp. resp. to JZ 1.11, ex. JZ 1.11 (conf.); 3.08 JZ 1.12, ex. JZ 1.12 (conf.); 3.08(a) supp. resp. to JZ 1.12, ex. JZ 1.12 (conf.); 3.09 JZ 1.14(b) (conf.); 3.10 JZ 1.16(a)(b) ex. JZ 1.16(a); 3.10(a) supp. resp. to JZ 1.16(a); 3.11 JZ 1.17(a)(b) (conf.); 3.11(a) supp. resp. to JZ 1.17(a)(b) (conf.); 3.12 JZ 3.04; 3.12(a) supp. resp. to JZ 3.04; 3.13 JZ 3.17 (conf.); 3.15 JZ 6.02(a)-(f); 3.16 JZ 6.05(a)(b), ex. JZ 6.05(b); 3.17 JZ 6.09(a) JZ 6.09(a) (conf.); 3.17(a) supp. resp. to JZ 6.09(a), ex. 6.09(a) (conf.); 3.17(b) supp. resp. to JZ 6.09(a), ex. JZ 6.09(a-1) (conf.); 3.18 JZ 6.11; 3.19 JZ 6.12(a)(b); 3.20 JZ 6.14(a)(b)(c1)(c2) (conf.); 3.21 JZ 6.18(a)-(c); 3.22 JZ 6.19; 3.23 JZ 6.20(a)-(f), ex.JZ 6.20(c)(d) ; 3.24 JZ 6.21(a)-(e), ex. JZ 6.21(d)(e); 3.25 JZ 6.22(a)-(f) (conf.).

At the December 19, 2013 hearing, this matter was continued generally to allow the parties' time to ensure that all exhibits were filed. This matter was marked "Heard and Taken" on April 1, 2014.

On August 5, 2014, the ALJ issued a Proposed Order in this matter. On August 19, 2014, Staff filed a Brief on Exceptions. On August 26, 2014, Applicant filed a Reply Brief on Exceptions.

I. RELEVANT STATUTORY PROVISIONS

Section 214

(e) Provision of universal service

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 C.F.R. §54.201(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

§54.201(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another

carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

II. STAFF POSITION

Testimony of Dr. Zolnierek

Dr. Zolnierek testified that Applicant was certified by the Commission to provide resold local exchange and interexchange services in Illinois in Docket 07-0273, June 27, 2007. It was certified to provide resold wireless services in Docket 10-0477, September 9, 2010, and it was granted designation as a wireline ETC in Docket 08-0454, November 13, 2008. Applicant seeks ETC designation in order to receive federal Universal Service Fund ("USF") support to offer Lifeline service to qualifying customers. Applicant will not seek access to the USF for the purpose of serving high-cost areas.

Dr. Zolnierek testified that, pursuant to §214(e)(2), state commissions are assigned the task of designating carriers as eligible to receive USF support. Supported services are defined in §54.101(a) as voice telephony services that "provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers…" ETCs are required by §54.101(b) to offer voice telephony services to receive USF support.

Under §214(e)(1), a common carrier must offer the services supported by federal universal service support mechanisms under §254(c), using its own facilities or a combination of its own facilities and resale of another carriers services, and advertise the availability of such services and the charges therefore. Under §214(e)(2), a state commission shall, on its own motion or upon request, designate a common carrier that meets the requirements of ¶1 as an ETC for a service area designated by the Commission. Upon request and consistent with the public interest, convenience, and necessity, a state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC, so long as each additional carrier meets the requirements of ¶1. Prior to designating an additional ETC for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

Satisfying the requirements of §214(e)(1) is a necessary condition, but is not by itself sufficient for ETC designation. Carriers must satisfy the requirements for designation under §214(e)(2), and all other requirements the Commission deems appropriate to ensure that designation is consistent with the public interest, convenience, and necessity.

Dr. Zolnierek testified that how a service area is determined in contained in §214(e)(5). For areas served by non-rural carriers, a service area is the geographic area established by the Commission. For areas served by rural carriers, the service area is the telephone company's study area, unless redefined by the FCC and the Commission. In its 2005 ETC Order regarding multiple ETC designations in an area, the FCC stated that if the per-line support level is high enough, the state may be justified in limiting the number of ETCs in a study area. Multiple ETCs could place a strain on the USF.

Dr. Zolnierek testified that, in instances where the FCC designates carriers as ETCs, the requirements of 47 C.F.R. §54.202 and the determinations the FCC makes under 47 U.S.C. §214(e)(6) are not binding on state commissions. In addition to the requirements the FCC has established for its own ETC designation under §214(e)(6), it has prescribed requirements that all ETCs must meet and that all state commissions must follow when designating ETCs. A state commission is required to make a determination pursuant to §54.201(c) and 47 U.S.C. §214(e)(2), that it is in the public interest to designate an applicant as an ETC. States are otherwise encouraged to apply the eligibility requirements of §54.202(a)-(b), and the relevant considerations set forth in §54.201(h) for determining technical and financial capability. State commissions may introduce additional considerations regarding technical and financial capability.

Commission rules applicable to ETCs are contained in 83 Ill. Adm. Code 736 and 83 ill. Adm. Code 757. In addition, the Commission can impose on a case-by-case basis, conditions that ensure ETC designation meets the statutory requirements and ensures that designation is in the public interest.

Dr. Zolnierek testified that the FCC, in its 2005 ETC Order, placed the burden on the Applicant to prove that ETC designation is in the public interest. Applicant should bear the burden in this Docket. It is the petitioning party and also has possession of the information necessary to determine whether ETC designation should be granted. Placing the burden on the Applicant is consistent with the public interest and would ensure that all ETC requirements are met.

Dr. Zolnierek stated that the Commission should not impose the same standards on Applicant that it has imposed on past ETC applicants, as a technical and financial capability analysis under §54.201(h) is now required. This mandates use of different standard than was previously employed. Also, due to the potential for waste, fraud and abuse in the low-income program, state commissions should subject ETC applicants to a rigorous analysis to ensure that they are capable of providing quality service in compliance with all applicable laws. The Commission should not decline to analyze an applicant or impose conditions merely because it did not do so in prior Dockets.

According to Dr. Zolnierek, ETC designation should be based upon the benefits such designation provides. If a low-income customer has several prepaid wireless options and a new entrant does not provide new or better options, or lower priced service, the customer may be no better off than without the options offered by the new entrant. This is particularly so if the new entrant increases the potential for waste, fraud and abuse, or if it unnecessarily burdens the fund. The Commission should perform assessments based upon the circumstances presented by each applicant, which can change with each applicant. The Commission should strive for uniformity in its assessments, where such uniformity does not subvert ETC requirements.

Dr. Zolnierek testified that the Commission determined in Docket 97-0507 that the service area or minimum geographic area that Ameritech Illinois, a non-rural carrier, must serve to be designated as an ETC, is an exchange. He recommends that the Commission make the same finding in this Docket. Exchanges constitute an industry-standard geographic unit and form the building blocks of ILEC study areas. Whether or not an exchange is included in an ETC service area can be used to determine whether the ETC's service area falls in whole or in part within a rural carrier's study area. Also, identifying a service area in terms of an exchange allows the Commission to determine that the service area is defined in compliance with Section 214(e)(5) of the 1996 Act.

The Commission should require the carrier to provide evidence that it can provide service over its own facilities to all portions of the exchanges it proposes to include in its service area. If the carrier is a reseller, it should provide evidence that that its underlying carrier has contracted and is able to provide the carrier service in all portions of the identified exchanges. If the carrier cannot provide service to an exchange using its own facilities, it should identify such exchange and identify what portion it will serve using its own facilities and what portion it will serve by other means. If a carrier is a reseller and cannot provide service throughout an exchange, it should identify such exchange and identify what portion it will serve using its own facilities and what portion it will serve by other means. If a carrier cannot provide service throughout an exchange through its own facilities or its underlying carrier, it should identify how it will provide service to the portion not served directly or through its underlying carrier. If a carrier cannot provide service throughout an exchange, the Commission should not include the exchange in its designated ETC service area.

A carrier should demonstrate that it will provide the required supported services over its own facilities, in whole or in part, throughout the requested ETC designated area by producing information on the facilities it owns that would impact where the carrier is capable of providing facilities-based service and how it would use other services. A reseller must provide evidence that it has an approved FCC Compliance Plan in order to exercise the FCC's grant of forbearance from the facilities-based requirement. A reseller should also produce information on the wholesale services that it will resell that shows where it is capable of providing the service.

According to Dr. Zolnierek, the following requirements established by the FCC for its own ETC designation under §214(e)(6), should be imposed on a carrier under §214(e)(2): certify that it will comply with the service requirements applicable to the support that it receives; demonstrate its ability to remain functional in emergency situations; demonstrate that it will satisfy applicable consumer protection and service quality standards; and submit information describing in detail the terms and conditions of any voice telephony plans to subscribers. Also, the FCC required that ETCs designated under §214(e)(6) meet the reporting requirements of §54.422(b), regarding a carriers ability to remain functional and maintain service quality.

Dr. Zolnierek testified that the Commission previously found that the FCC's own requirements for ETC designation under §214(e)(6) provide appropriate minimum guidelines for the Commission and he recommended that they be adopted in this Docket.

State commissions are mandated pursuant to §54.403(a)(1) to require ETCs providing Lifeline service to pass through the full amount of support to the qualifying low-income consumer. According to Dr. Zolnierek, the carrier should also be required to demonstrate that its Lifeline rate represents a dollar-for-dollar reduction from its non-Lifeline rate and that it had passed through the full amount of support to the customer.

The FCC also amended §54.201 and §54.202 of its rules to require a carrier seeking Lifeline-only ETC designation to demonstrate that it is financially and technically capable of providing the service in compliance with all low-income program rules. State commissions are explicitly prohibited from granting such designation until the applicant has made the necessary showing. This requirement was intended to strengthen protections against waste, fraud and abuse by filtering out carriers who have not made a sufficient business case and are more likely to commit such acts.

According to Dr. Zolnierek, the Commission should evaluate Applicant's financial statements to determine financial capability. Applicant must demonstrate that it has experience in legitimately and profitably providing service. Dr. Zolnierek recommended that Applicant demonstrate a record of service in Illinois based upon no less than six months of providing non-Lifeline service in Illinois, of the same type it plans to provide Lifeline service. If Applicant has no service record in Illinois, it may rely on its record of comparable services outside Illinois. Applicant should provide evidence that it has a business case to serve such markets, making it less likely to be cited for program non-compliance.

Applicant should also demonstrate that, in states where it is providing Lifeline service, that the fraction of non-Lifeline wireless customers to the total of Lifeline and non-Lifeline wireless customers has not fallen below 20% in each state in each month in the period beginning six months prior to submission of the application. If Applicant's record of service is insufficient, ETC designation should be denied until such time as Applicant demonstrates an ability to serve the Illinois market without substantially relying on Lifeline subsidies. In this Docket, the Commission should determine that Applicant cannot begin to provide Lifeline service until it has established a record of providing non-Lifeline service, has supplemented this record to reflect this service area, and has received specific approval from the Commission to begin Lifeline service.

In order to assure that the ETC does not default to a business plan that relies primarily on Lifeline service, Dr. Zolnierek recommended that the Commission require the carrier to provide the same service to non-Lifeline customers that it provides to Lifeline customers. If the fraction of non-Lifeline wireless customers to the total of Lifeline and non-Lifeline wireless customers falls below 20% for any three consecutive months, the Commission should require Applicant to cease enrolling new customers in its wireless Lifeline program and not resume enrollments until it obtains Commission approval.

The Commission should review the background and experience of Applicant's personnel. Applicant should not have had any enforcement actions or ETC revocation proceedings in any state. If such actions did take place, Applicant should produce documentation to show that it has remedied any compliance failings, and that it has been compliance for at least six months prior to submission of its ETC application.

The importance of the E911 system and its funding cannot be overstated. From a public policy perspective, all carriers that provide E911-capable are obligated to pay their share of these costs. Carriers who do not pay, or do not pay their full share, increase profits at the expense of the E911 system and the public interest.

An applicant should demonstrate that it will comply with E911 surcharge obligations by showing how much it has or expects to contribute per customer per month in E911 surcharges for its Lifeline customers. Section 17 of the Wireless Emergency Telephone Safety Act (50 ILCS 751) ("WETSA) requires each carrier to impose and remit a wireless E911 surcharge, and requires the Commission to administer collection of this sum.

The Prepaid Wireless 9-1-1 Surcharge Act (50 ILCS 753) ("PW9SA") was enacted to ensure that funding for the wireless emergency system is maintained with equitable contributions from customers of prepaid wireless services, and not relying solely on contributions from customers of wireless service on subscription plans. The PW9SA imposes on sellers of prepaid wireless service the duty to collect the surcharges from buyers at the point of sale, and requires the Illinois Department of Revenue to administer collection of the sum.

The Commission should require carriers to submit, within 30 days after the end of each calendar quarter the following information: for any wireless carrier remitting a wireless E911 surcharge pursuant to WETSA, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers. For any wireless carrier remitting a wireless E911 surcharge pursuant to PW9SA, it should report the total dollar value of wireless E911 surcharges with respect to its Lifeline customers.

To further strengthen protections against waste, fraud and abuse, the FCC requires all ETCs to comply with the National Lifeline Accountability Database procedures enumerated in §54.404(b) for detection and prevention of duplicative support, marketing, disclosure and de-enrollment requirements of §54.405, subscriber eligibility determination/certification and annual recertification requirements of §54.410, annual carrier certification requirements of §54.416, recordkeeping requirements of §54.417, audit requirements of §54.420, and carrier annual reporting requirements of §54.422(a).

Lifeline ETCs must comply with Part 736, Consumer Protection and Service Quality Standards, such as the Cellular Telecommunications and Wireless Internet Association's Consumer Code for Wireless Service. This provision ensures that wireless ETC customers receive the same protections and service quality regardless of whether the ETCs are facilities or non-facilities based or prepaid or non-prepaid. Wireless ETCs offering prepaid services have in the past requested waivers of those sections that pertain to monthly bills. Staff has supported such waiver requests, but has declined to support waiver requests for other sections for which no reasonable basis for a waiver was shown.

Dr. Zolnierek testified that the Commission has broad discretion to determine specific factors to be considered in performing public interest analyses of ETCs, which should include the costs and benefits resulting from additional designation. Benefits are those things unavailable to consumers, but which will become available upon designation.

Designation is also not without cost implications. Unless there is a reasonable certainty that an additional wireless Lifeline ETC will not inadvertently or deliberately commit waste, fraud and abuse, the additional designation will increase the likelihood of these problems occurring in the low-income program.

Strengthening protections and constraining the growth of the program to ensure it remains viable are among the primary objectives of the FCC's efforts to comprehensively reform the low-income program. Accordingly, the Commission should not designate a carrier as a wireless Lifeline ETC unless the carrier has shown that designation will produce significant benefits that are currently available, but will become available upon designation. A showing that a Lifeline offering represents a meaningful increase in consumer choice and would therefore result in benefits of such choice..

As the "gatekeeper" in Illinois, the Commission entrusted with the task of determining carrier fitness for ETC designation. It should require carriers to submit, within 30 days after the end of each calendar quarter, a Wireless Customer Report providing by month the number of wireless customers; the number of wireless non-Lifeline customers, the number of wireless Lifeline customers; and the wireless non-Lifeline fraction of wireless customers.

Applicant states that it seeks designation in all of the Illinois Bell non-rural service areas: 358 Chicago, 360 Rockford, 362 Cairo, 364 Sterling, 366 Forrest, 368 Peoria, 370 Champaign, 374 Springfield and 376 Quincy. (App. at 7.) The areas specified are not service areas, but local access and transport areas (LATAs). In 1984, Bell Operating Companies were permitted to carry telephone traffic within, not across, LATA boundaries after divestiture from Illinois Bell. Each of the LATAs identified by Applicant contain not only Illinois Bell service areas, but the service areas of other ILECs, many of which are rural phone companies, as that term is used in §214(e)(5) of the 1996 Act. The areas identified are not, therefore, Illinois Bell non-rural service areas.

Applicant also states that it will offer service throughout the coverage area of its underlying carrier. (Amended App. at 15.) Applicant has not identified the exact boundaries of its underlying carriers' service areas, and the service areas of Sprint and Verizon likely extend outside the LATAs Applicant identified as its service area. Sprint and Verizon service areas also likely include at least portions of service areas of rural phone companies, as that term is used in §214(e)(5). Applicant stated in response to Staff DR 2.03, however, that it was not seeking designation any rural carrier's study area. (Staff Ex. 1.01.) Dr. Zolnierek testified that he did not believe Applicant seeks designation in any rural carrier's study area, however the data that formed that basis of his understanding appeared to be inconsistent with the data in the application.

Applicant indicated that it plans to offer Lifeline throughout the coverage area of its underlying carriers, which extends beyond Illinois Bell's service areas and into the LATAs cited above. Dr. Zolnierek testified that he considered the possibility that Applicant meant to serve the portions of the LATA Applicant identified as served by Illinois Bell, but that does not appear to be Applicant's intent. In response to Staff DR JZ 1.19, Applicant provided exchange information identified as "Rate exchange areas within Illinois Bell service areas that are included in the proposed ETC service areas." (Staff Ex. 1.01.) This data is inconsistent with possibility that Applicant might be requesting designation in only those portions of the LATA it identified as served by Illinois Bell. Applicant asserts it will provide service to the Elvaston exchange, located in LATA 977 Macomb, which is in the service area of ILEC Citizens Telecommunications Company of Illinois d/b/a Frontier Citizens Communications of Illinois, a rural company as that term is used in §214(e)(5). This exchange is not, therefore, in Illinois Bell's non-rural service area in a LATA that Applicant asserts it will serve and is, in fact, an area served by a rural telephone company.

There are also several exchanges that Applicant indicates it will not serve that are located in Illinois Bell's non-rural service areas within the identified LATAs. The Evanston exchange is located in Illinois Bell's service area LATA 358 Chicago. The Mound City, Mounds, Olive Branch, Tamms and Thebes exchanges are located in Illinois Bell's service area LATA 362 Cairo. The Athens, Buffalo, Cantrall, Decatur, Harristown, Oakford, Petersburg, Riverton, Rochester, and Springfield exchanges are located in Illinois Bell's service area LATA 374 Springfield. The Beardstown, Burton, Columbus, Fowler, Liberty, Payson and Quincy exchanges are located in Illinois Bell's service area LATA 376 Quincy. These exchanges are, therefore, within the LATAs that Applicant identified as part of its service area and are served by Illinois Bell. However, in its response to Staff DR JZ 1.19(b), Applicant included these exchanges in the list of exchanges identified as "(R)ate exchange areas…within the Illinois Bell service areas that are NOT included in the proposed ETC service areas." (App. Ex. 1.01.)

Dr. Zolnierek testified that Applicant indicates that it is not requesting designation in those portions of the LATAs identified as part of its service area served by Illinois Bell. He states that he is simply is unable to discern what area Applicant proposes as its ETC service area, because it has failed to appropriately identify that area.

According to Dr. Zolnierek, applicant has not demonstrated that it can use the facilities of Sprint and Verizon to provide service throughout its ETC service area, because it has not specifically defined that area. Dr. Zolnierek also testified that, to his knowledge, Applicant has not submitted any evidence as to where Verizon provides service. It did provide some Sprint information pertaining to certain zip codes, but when Staff requested clarification of the zip code data, Applicant responded in Staff DR JZ 4.05 "(T)he data contained in the column entitled "Zip Code Area" on Exhibit 4 to (Applicant's) Petition was not intended to be germane to (Applicant's) proposed service area." (App. Ex. 1.01.) There is no evidence that, even if Applicant had properly defined its proposed service area, that it has the capability to serve any particular area through Sprint or Verizon.

Applicant has not demonstrated the capability to advertise the availability of supported service throughout its ETC service area, because that area is not adequately defined. Applicant commits to providing written notice to directors of municipal, state and federal agencies within its service territory whose clientele are likely to benefit from the services, but without a defined service area, there is no way to know what municipal agencies are included and no way to assess whether this commitment can, or will be, met.

Dr. Zolnierek testified that the evidence indicates that Applicant will not be able to meet the FCC requirements for consumer protection and service quality standards imposed by §214(e)(6) of the 1996 Act. These standards include compliance with Section 736. Applicant commits to abide by these rules "to the extent such rules are applicable to the Company as a prepaid wireless provider." (Petition at 14.) These rules, however, "…apply to all (WETCs) offering or providing either competitive or noncompetitive telecommunications services." Section 736.100. There is no exception for prepaid wireless carriers. Applicant has requested waivers of Sections 736.610, 736.620, 736.640, 736.650, 736.660, 736.685 and 736.690 (Petition at 14), which Staff supports, however to the extent the Commission denies the waivers, and with regard to all other requirements of Section 736, Applicant must fully comply.

Applicant is also required to report service quality data under Section 730 and customer credit information under Section 732. The last two reports filed by Applicant were for the periods October 1, 2012-December 31, 2012 and January 1, 2013-March 31, 2013. In its October 1, 2012-December 31, 2012 report, Applicant stated that "(T)his report has been generated based upon the AT&T Performance Measurement Report that was retrieved from the AT&T CLEC Online application. From October-November 2012, AT&T missed appointments for my Millennium 2000, but information is not reflective in the report." (www.icc.illinois.gov/telecommunications/reporting)

The service quality and credit requirements found in Sections 730 and 732 are imposed upon Applicant regardless of whether or it relies upon another carrier's wholesale offerings. Applicant's inability to comply because of its relationship with its supplier is immaterial. If Applicant is to provide wholesale services, it is responsible for ensuring that its contractual relationship with its underlying carrier enables it to provide service that satisfies Commission regulations. Applicant's inability to comply with wireline service quality rules, resulting from its inability to manage its wireline resale business, shows that it will not be able to comply with the service quality standards required of a wireless ETC reseller.

As demonstrated by prior Lifeline service, Applicant has not shown that is has, or will have, the ability to pass through the full amount of support to which Lifeline customers are entitled. Applicant pledges "…Millennium 2000 will follow the reimbursement procedures outlined in 47 C.F.R. §54.407…" (Petition at 25.) Staff has obtained information in concert with Applicant's tariffs, indicating that Applicant has failed to comply with federal reimbursement requirements. Applicant's tariffed offerings have provided for a smaller subsidy to Lifeline customers than Applicant was required to provide under federal rules.

Under the former three-tiered support structure, Tier 1 provided ETC support equal to the tariffed rate in effect for the primary residential end-user common line charge of the ILEC serving the area. 47 C.F.R.§54.403(a)(1). Under Tier 2, support was equal to additional Lifeline support of $1.75 per month, if the carriers certifies that it will pass through the full amount of Tier 2 support to it low-income customers and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. 47 C.F.R. §54.403(a)(2). Under Tier 3, additional Lifeline support equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month, will be made available to qualifying low-income Lifeline customers if the carrier certifies that it will pass through the full amount of Tier 3 support to qualifying customers, and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction. 47 C.F.R. §54.403(a)(3). Applicant's updated response to Staff DR JZ 5.04 show the amounts collected by applicant for the three Tiers. (App. Ex. 1.01 (conf.).)

Since Tier 3 support is available in an amount of one-half of any state-mandated Lifeline support, and because between January 2011 and July 2012 Illinois had no state-mandated Lifeline support, Applicant, as a condition of the Tier 3 amounts per subscriber, was required to provide additional support. The pass-through amount was consistent with the support received by Applicant and was equal to the sum of Tiers 1, 2 and 3 received, plus the amount Applicant was required to contribute in order to receive twice the amount of Tier 3 support it received.

While Applicant received support consistent with the pass-through amount, its tariff in effect between January 2011 and July 2012 provided for a subsidy of only $10.00. With respect to its wireline ETC offerings, Applicant failed to comply with federal reimbursement requirements and failed to give customers the full Lifeline support amounts to which they were entitled.

Applicant has not demonstrated that it has the technical ability to provide wireless telecom services in Illinois. Applicant provided no service record and no quality-of-service record regarding its wireless services. The last two wireline service quality reports filed for October 1, 2012-December 31, 2012 and for January 1, 2013-March 31, 2013 are lacking much information. The percentage of monthly service installations completed on time is reported as zeroes for all months in the January 1, 2013-March 31, 2013 filing. Also, several answer time values, such as Operator Answer Time and Repair Office Answer time, are reported as zeroes for both periods.

The information that was reported also suggests that Applicant is not meeting service quality standards. Section 730.545(a) states, "On a monthly basis, each local exchange carrier shall clear 95% of all out of service troubles up to the customer network interface within 30 hours after the troubles reported by the customer." Applicant missed this measure for every month in both time periods.

Section 730.510(a)(1)(A) states, “Operator offices shall be staffed so that the average answer time, calculated on a monthly basis, shall not exceed 10 seconds for the following types of calls: toll and assistance…” Applicant missed this measure for every month in the January 1, 2013-March 31, 2013 filing and reported all zeroes in every month in the October 1, 2012-December 31, 2012 period, signifying that it did not report this information in the October 1, 2012-December 31, 2012 filing. Applicant’s service quality reports argue against the position that it has the technical capability to provide USF supported wireless services.

Applicant has not demonstrated that it has the financial ability to provide wireless ETC services in Illinois. It provided no service record regarding its wireless services in Illinois. Applicant states in its application that it provides wireless service to non-Lifeline customers in Illinois and Wisconsin, and according to its response to Staff DR JZ 1.01(b), it has done so since December 2011. (Amended App. at 15; Staff Ex.1.01.) Nevertheless, Staff disputes that the record supports this assertion. Applicant’s wireless service record does not support the conclusion that it has made a business case and has the financial ability to provide wireless service in Illinois. Also, Applicant does not provide wireless service in any other state that the Commission could look to for support.

Dr. Zolnierek testified that ETCs must also comply with Section 757, Telephone Assistance Programs, which requires ETCs to, among other things, report to the Commission the number of Lifeline customers served. He stated that Applicant was designated as a wireline ETC in Docket 08-0454, November 11, 2008, but to his knowledge, it did not file the quarterly report required by 83 Ill. Adm. Code 757 for the fourth quarter of that year. According to Applicant’s answer to Staff DR JZ 1.02(b), Applicant began providing wireline ETC service in February 2009, but to his knowledge, it did not file a quarterly report for the first two quarters of that year. (App. Ex. 1.01.) Applicant did not file a quarterly report until August 19, 2010, covering the 3rd and 4th quarters 2009 and the 1st and 2nd quarters 2010. Of the four quarterly reports filed for the seven quarters after its wireline ETC designation, all were late-filed.

Applicant’s reports for 1st and 2nd quarters 2011 were 145 and 54 days late, respectively. Its 1st quarter report filed on May 17, 2012 was 22 days late. Over the year, Applicant has failed to file it quarterly reports in a timely manner.

Applicant indicates that, if designated as a wireless ETC provider, it will remit wireless E911 surcharges for its customers, pursuant to PW9SA. Presumably, Applicant has, and will continue to, remit E911 surcharges for its E911 Lifeline customers.

Dr. Zolnierek testified Applicant has an extraordinarily low Lifeline customer retention rate. On FCC Form 555, filed with the Commission in compliance with 47 C.F.R. §54.416, Applicant reports that of 1256 customers it claimed on its May 2012 FCC Form 497, all but 17 have been de-enrolled. 1226 were de-enrolled prior to Applicant’s recertification attempt and 13 were de-enrolled for not responding to the recertification attempt. Dr. Zolnierek testified that, to his knowledge, Applicant’s 1.4% retention rate is well below any other ETC’s Illinois Lifeline customer retention rate.

Applicant's month-to-month customer turnover rate is similarly very high. Applicant ended December 2011 with 1893 Lifeline customers, approved 1722 new customers in January 2012, and ended January 2012 with 1816 customers. Applicant lost 1799 customers in January 2012, more than it enrolled. This means that Applicant retained some customers for less than a full month.

Applicant ended January 2012 with 1816 customers, enrolled 2065 in February 2012, and ended February 2012 with 2136 customers, having lost 1745, 85% of the number it enrolled in February 2012.

Applicant ended February 2012 with 2136 customers, enrolled 2293 in March 2012, and ended March 2012 with 2378, having lost 2051, 89% of the number it enrolled in February 2012. In July and August 2011, Applicant again lost more customers than it enrolled, retaining some customers for less than a month. The vast majority of Lifeline customers do not stay with Applicant for any length of time. This is inconsistent with the claim that Applicant is providing Lifeline services that customers depend upon.

Dr. Zolnierek stated that (1) Applicant has failed to adequately define its ETC service area, a consequence of which is that it has failed to prove it can and will offer and advertise wireless Lifeline service throughout its designated ETC service area; (2) Applicant has failed to prove that it can and will satisfy applicable consumer protection and service quality standards of Section 736; (3) Applicant has failed to prove that it can and will satisfy Section 757 Telephone Assistance Programs rules, as it has filed some quarterly reports late and failed to file other reports at all; (4) Applicant has failed to prove that it will pass through the full amount of support to which Lifeline customers are entitled, as it has failed to pass through the full amount of support to its wireline Lifeline customers; (5) Applicant is required to prove, pursuant to §54.201(h), that it has the financial and technical capability to provide wireless Lifeline services, and has failed to do so; (6) Applicant has extraordinarily high customer turnover, which is inconsistent with the notion that it is providing Lifeline service upon which customers can depend.

Dr. Zolnierek concluded that any one of the above findings would be sufficient to support the conclusion that ETC designation in this Docket would be contrary to the public interest, convenience and necessity and, therefore, he recommended that the Commission not designate Applicant as a wireless ETC.

III. RESPONSE TESTIMONY OF DONNA HARRISON

Ms. Harrison testified that Applicant was certificated as a local and interexchange carrier in Illinois in Docket 07-0273, June 27, 2007. Applicant began to provide local exchange telecommunications services to end-users in Illinois in February 2009, and added long distance service in April 2013. Applicant continues to provide all of those services. Applicant was granted wireline ETC designation in Illinois in Docket 08-0454, November 13, 2008, and began providing service in August 2009. It continues to provide wireline ETC services. Applicant was certificated to provide resold Commercial Mobile Radio Service ("CMRS") in Illinois in Docket 10-0477, September 9, 2010, and continues to provide resold CMRS.

Applicant was also granted wireless ETC designation in Wisconsin in Docket 9593-TI-100, January 5, 2012. Ms. Harrison testified that Applicant has received a positive response from Lifeline customers who are being underserved in Wisconsin. Applicant uses the Wisconsin CARES system to determine customer eligibility for Lifeline services, in conjunction with Applicant's internal data base for duplicates. This allows Applicant to easily eliminate waste, fraud and duplication.

Ms. Harrison testified that Dr. Zolnierek recommended a novel set of rules that he seeks to impose upon new ETC applicants for Lifeline-only service. She testified that it was her understanding that the proposed rules have not been previously applied to other carriers in Illinois, and it is unfair to require Applicant to expend extraordinary resources to vet recommended rules that should be developed on an industry-wide basis. Dr. Zolnierek's testimony was developed with the intent of applying to all ETC applicants, which was made clear in Docket 12-0423. (Motion to Reconsider ALJ Directive of Staff on Testimonial Filing Requirement at ¶4.)

Applicant did not have notice of Staff's proposed rules prior to filing its application in this proceeding. Ms. Harrison testified that it was her understanding that the Commission normally pursues a public comment process for updating its rules. The Illinois Administrative Procedures Act, 5 ILCS 100, is part of that process. Neither Applicant nor the general public, including other potentially impacted carriers, were allowed any input into the rulemaking process. Given the opportunity of a formal process, Applicant and other potential carriers would have provided such input, due to the crucial nature of how the Commission addresses FCC requirements. Staff conducted a workshop, which Ms. Harrison testified she personally attended, to discuss revisions to ETC rules resulting from the FCC's Lifeline Reform Order ("LRO"). The workshop did not result in any resolution of the revisions discussed. Staff usually seeks industry consensus on draft rules prior to submitting them to the Commission.

Ms. Harrison testified that Staff resumed workshops in August 2013 to revise existing rules. Some of Staff's proposed revisions to 83 Ill. Adm. Code 736.555 are the same as the recommended requirements Staff seeks to impose on Applicant in this proceeding. This is evidence that Staff is imposing recommended requirements on Applicant that are not yet rules. The impact of these impositions has inappropriately delayed this Docket and has denied Applicant an appropriate evaluation under existing rules for a true consideration of its ETC eligibility.

The FCC released the LRO in February 2012. It granted blanket forbearance from the "own facilities" requirement for carriers who submit a Compliance Plan for FCC approval, and established a process by which carriers could demonstrate compliance with the LRO and thereby establish procedures to eliminate waste, fraud and abuse within the program. Applicant's Compliance Plan was approved by the FCC on December 26, 2012, making Applicant one of only 20 ETC carriers in the U.S. to obtain this approval.

Ms. Harrison testified that the FCC requires carriers to submit a Compliance Plan providing specific information regarding its underlying carrier(s), its service offerings, and outlining the measures it will take to implement the obligations contained in the LRO.

Applicant described its procedures for enrolling and verifying customers, and provided a detailed explanation of how it will comply with the LRO rules regarding: 911 and E911 services; terms and conditions of the LRO related to the grant of forbearance; additional measures to prevent waste, fraud and abuse; and technical and financial capacity to provide Lifeline-only services. As approval of the Compliance Plan grants Applicant forbearance from the “own facilities” requirement, it is not required to provide services over its own facilities or through a combination of its own facilities and the resale of another carrier’s services. The Compliance Plan process demonstrates that Applicant has met the LRO’s requirements to provide Lifeline support to eligible low-income customers.

Ms. Harrison testified that the FCC’s comprehensive review process and approval of the Compliance Plan is evidence that Applicant has demonstrated an executable plan that will allow expansion of its current Lifeline services to include wireless service, while operating under the rules of the LRO. This plan includes protections against waste, fraud and abuse, the prevention of which Dr. Zolnierek testified was the driving force behind his new standards. (Staff Ex. 1.0 at 10.)

The most direct way to determine whether an ETC could prevent waste, fraud and abuse would be to examine its procedures to enroll customers and certify their continued eligibility for ETC service. Because Applicant chose to request forbearance, it was subjected to an extensive investigation of its policies and procedures to prevent fraud and abuse. Within its Compliance Plan, Applicant demonstrated procedures for enrolling customers, submitting for reimbursement from USAC, and annually verifying eligibility. It described its Lifeline Plans and how it will provide service. Applicant further demonstrated its procedures for the prevention of waste, fraud and abuse related to its non-usage policy, customer education with regard to duplicates and the Lifeline rules, cooperation with state and federal regulators, and its technical and financial capabilities to provide Lifeline-only service. Only carriers requesting forbearance are required to produce such an extensive plan.

Ms. Harrison testified that after receiving FCC approval, Applicant immediately began to implement its Compliance Plan with is current Lifeline customers. In evaluating Applicant’s potential to allow waste, fraud and abuse, the Commission should grant significant weight to the FCC’s approval of the Compliance Plan. Applicant believes that FCC approval should alleviate Dr. Zolnierek’s concerns with regard to Applicant’s eligibility to provide wireless Lifeline service.

Applicant’s current enrollment and verification procedures are explicitly detailed in the Compliance Plan. Applicant has direct contact with all potential customers, either in person through employees, agents or representatives, or by telephone, fax or mail. Customers who do not complete the application in person must return the signed application by mail, fax, e-mail or other electronic transmission. Applicant’s procedures for enrollment in Lifeline include completion of a Lifeline application; current documentation to prove participation in one of the qualifying programs or proof of income eligibility; all documents must have the same name and address as shown on the application; the application must certify that the household does not currently receive

Lifeline support; applicant must initial various certification and authorization statements required by the FCC, which includes one Lifeline support per household; and applicant must certify that he/she has read and understood the 60-day usage requirement in order to continue in the program.

Ms. Harrison testified that when the National Lifeline Accountability Database becomes available, Applicant will comply with the requirements of §54.404. It will consult the database to determine whether a prospective subscriber is currently receiving a Lifeline service from another ETC and whether anyone living in the subscriber's home is currently receiving Lifeline service. To ensure protection against waste, fraud and abuse, Applicant will not enroll a customer or seek reimbursement: if the database indicates, in the case of a person not seeking to port a number, that person is receiving Lifeline service; and if the database indicates that another person in the subscriber's home is receiving Lifeline service, unless the subscribers certifies pursuant to §54.410(d) that no one in the home is receiving Lifeline service.

Until the database is functional, Applicant will follow the enrollment procedures explicitly defined in its Compliance Plan. Applicant provides Lifeline-specific training to all personnel, whether employees, agents or representatives, who interact with actual or prospective customers. The FCC determined in the LRO that ETCs may permit agents and representatives to review documentation of Lifeline eligibility because it has found that licenses and other FCC regulates are responsible for the acts and omissions of employees and independent contractors. Applicant's staff is responsible for overseeing and finalizing each Lifeline enrollment prior to including that customer on the reimbursement form and it, therefore, always deals directly with customers to verify eligibility.

Ms. Harrison testified that, in accordance with the LRO, Applicant will obtain from the subscriber full name, full residential address, which the customer must indicate is his/her permanent address, a billing address for service if different from the residential address, date of birth, last four digits of the Social Security number, the name of the qualifying assistance program from which the subscriber or his/her household receives benefits or, for an income-based application, the number of individuals in the household. A subscriber lacking a permanent address must provide a temporary or other address with information that could be used to check for duplicative support. Applicant will verify every 90 days that the subscriber continues to rely on that address. A subscriber who does not respond to verification attempts within 30 days may be de-enrolled.

A subscriber must attest under penalty of perjury that his/her representations are true and correct. Pursuant to the LRO, Applicant's certification form will also explain in plain language that (1) Lifeline is a federal benefit and that willful false statements could result in fines, imprisonment, de-enrollment or being barred from the program; (2) Lifeline is available for only one line per household; (3) a household is defined as any individual or group of individuals who live at the same address and share income and expenses; (4) a household may not receive Lifeline benefits from multiple providers; (5) violation of the one-household rule constitutes a violation of FCC rules and will result in de-enrollment; (6) Lifeline is non-transferable.

Applicant will use its Lifeline brochure to educate consumers about the annual re-certification program. The brochure states that once a consumer is enrolled, he/she must verify annually that he/she is qualified for continued enrollment. A consumer must also certify that no other person in the household is receiving Lifeline services. De-enrollment from the program will result if a consumer fails to recertify eligibility, resulting in the loss of monthly minutes or discounted home phone or wireless services. A consumer must immediately notify Applicant at the number provided if he/she becomes ineligible.

Ms. Harrison testified that FCC Public Notice DA 13-1188A1, May 22, 2013, contains guidelines regarding the 2013 recertification process. All Lifeline subscribers enrolled or recertified in a calendar year must be recertified the next calendar year and every calendar year thereafter. Applicant, pursuant to the FCC Notice, will re-certify the eligibility of its Lifeline subscribers based upon FCC Form 497, to be completed by the end of the year. The results will be reported to USAC by January 31 of the following year. Where ongoing eligibility cannot be determined by access to a database by either applicant or the state, and there is no state administrator verifying eligibility, Applicant will re-certify the continued eligibility or its subscribers by contacting them to obtain confirmation. Where a state agency or third-party has compiled a database that carriers may query to re-certify continued eligibility, Applicant, or the state agency or third-party, will access the database and maintain a record of what specific data was used to recertify eligibility and the date of re-certification. The FCC Notice will explain what actions the customer must take to retain Lifeline benefits, when Lifeline benefits will be terminated and how to contact Applicant. Applicant will provide written notice of termination to subscribers who do not respond to the annual re-certification within 30 days. Subscribers who do not respond to the termination letter to demonstrate that Lifeline service should not be terminated, will be de-enrolled from the program.

To obtain Lifeline reimbursement from USAC, Applicant will follow the procedures set forth in 47 C.F.R. §54.407. This includes, but is not limited to, ensuring that reimbursement amounts for each Lifeline customer equals the federal support amount including the amounts described in §54.403(a) and (c), and certifying when it seeks reimbursement that it has obtained a valid certification form for each customer for whom it seeks reimbursement.

Ms. Harrison testified that Applicant will comply with 47 C.F.R. §54.405(e) to de-enroll subscribers due to non-usage, for receiving duplicative support, or for failing to recertify. As required by the LRO, Applicant will implement a non-usage policy to de-enroll Lifeline customers who have not used the service for 60 days. Applicant will notify its subscribers upon enrollment about non-transferability of the service, its usage requirement, and the de-enrollment that will follow non-usage in any 60-day period. If no usage appears on a subscriber's account during any continuous 60-day period, Applicant will provide notice that failure to use the service within a 30-day period will result in de-enrollment. If service is not used within the 30-day period, Applicant will terminate service for that subscriber.

Applicant will also de-enroll a subscriber who fails to respond to Applicant's attempts to obtain recertification of the subscribers continued eligibility or who fails to provide a one-per-household recertification as required by §54.410(f), or who relies on a temporary address and fails to respond to recertification attempts pursuant to §54.410(g). A subscriber who fails to respond to a written recertification request within 30 days will be de-enrolled five business days after the expiration of the time to respond.

The LRO provides that an account will be considered active for any 60-day period if a subscriber makes a monthly payment, purchases minutes to add to an existing prepaid account, completes an outbound call, answers an incoming call from anyone other than the ETC, its representative or agent, or affirmatively responds to the ETC confirming the desire to continue receiving the service.

Ms. Harrison testified that Applicant’s measures to prevent duplicate service in the same household entail written disclosures and personal due diligence. Applicant will also emphasize in its marketing materials in easily comprehensible language the eligibility certifications listed in 47 C.F.R. §54.410(d), as well as information that the offering is a Lifeline-supported service, only eligible subscribers may enroll in the program, and the program is limited to one benefit per household consisting of either wireline or wireless service. Applicant will also disclose the name under which it does business and the details of its Lifeline offerings. To reinforce the limitation of one Lifeline phone per household, Applicant’s marketing materials will contain in bold font the statement, “Note: By law, the Lifeline program is only available for one phone per household.”

Potential wireline Lifeline subscribers are greeted at Applicant’s office by trained Staff, who carefully explain the program and the application process. Staff also verifies whether eligibility is based upon participation in a qualifying program or income below 135% of the federal poverty guidelines. Applicant provides the Lifeline application to Staff, who verify the most common forms of proof for each eligible program and/or income. Staff then requests documentation to prove identity and/or address. The subscriber provides the requested data and makes the certifications required by §54.410(d)(3).

If the customer meets the initial criteria for eligibility, Staff explains the FCC’s definition of household as an “economic unit where related or unrelated people share income and expenses. 47 C.F.R. §54.400(h). In the event of multiple requests at the same mailing address, the subscriber will make the “one per household” certification required by §54.410(d)(1). Applicant will obtain the necessary information so it can report it to the National Lifeline Accountability Database. Staff will then cross-check the data with its records system to determine whether the subscriber is eligible for Lifeline service. Applicant also queries other state databases to determine eligibility. Staff witnesses completion of the eligibility documents and signs that it has observed the documentation on the Lifeline application.

Ms. Harrison testified that Applicant also posts an enlarged copy of the Lifeline application in its waiting room for subscribers to review prior to completing the application. Subscribers are asked whether they had read the posted application, whether they have any questions, and whether understand the terms of the program. Applicant reviews each section of the application with the subscriber. When a potential subscriber telephones

Applicant to inquire about Lifeline, Staff uses a telephone script to educate the caller. (Exhibit B-3 attached to Applicant's Compliance Plan.)

Applicant often dispatches trained employees and independently-contracted Field Agents to low-income communities that are underserved. The Field Agents receive extensive in-house training regarding Lifeline regulations and their performances are closely monitored by Staff. Applicant uses the filed script to educate subscribers about Lifeline. (Exhibit B-3 attached to Applicant's Compliance Plan.) The process for enrolling subscribers in the field is similar to the office process, with eligibility based upon program participation or income qualification.

Applicant's wireless process will follow the wireline process. Once eligibility is confirmed, the standard process of handing the wireless handset to the subscriber either at the office or subscriber's home will apply. The subscriber's account is activated upon completion of an inbound and outbound call.

Ms. Harrison testified that, in approving Applicant's Compliance Plan, the FCC specifically found that it was compliant with the LRO. She stated that this finding is highly relevant to Applicant's ability to provide Lifeline-only wireless services. The Commission stated in the most recent wireless ETC Order, Cricket Communications, Inc. ("Cricket"), that it would use the guidelines from the FCC's ETC Designation Order, as amended by the LRO, 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. (Docket 10-0453 at 9.)

The Commission made clear in Docket 10-0453 that compliance with the LRO was part of the framework for considering Cricket's ETC request and for establishing whether a grant was in the public interest. Ms. Harrison testified that the FCC's determination that Applicant's procedures for providing Lifeline services were compliant with the LRO is highly relevant to the Commission's framework.

Applicant is seeking wireless ETC designation in all of Illinois Bell's non-rural exchange areas. It does not seek designation in any rural carrier's study area. (App. Ex. 1.0R, Ex. 6 attached). Illinois Bell's entire service area is classified non-rural, according to Staff's response to Applicant's DR 1.01(b). (Id., Ex. 6 attached.) Applicant also has an updated list of Illinois Bell exchanges. (Id., Ex. 7 attached.).

Applicant's underlying carriers for wireless service are Verizon Wireless ("Verizon") and Sprint Spectrum LP ("Sprint"). Applicant provided copies of its third-party agreements to Staff as evidence of its technical capacity to provide wireless service using Verizon and Sprint. (Staff Gr. Ex. 3.0, App. DR resp. JZ-104(b).) Since that time, Applicant has used its agreement with Reunion Wireless to obtain services from Verizon and Sprint. Applicant obtains network infrastructure and wireless transmission facilities from its underlying carriers, pursuant to agreements with the companies, which allows Applicant to provide wireless services to its end-user customers. Applicant will purchase a variety of wireless services from its underlying carriers, which it will package into service plans and be bundled with other services into a complete wireless service offering for low-income customers.

Ms. Harrison testified that Staff's testimony stating that Applicant's service area was not properly identified, was submitted prior to the conclusion of discovery. (Staff Ex. 1.0 at 29.) Applicant's intent is to designate a proposed service area encompassing the entirety of Illinois Bell's non-rural service area. It seeks authority to provide Lifeline services in each of the exchanges listed in Staff Attachment A to its response to Applicant's Data Request 1.01(b). (App. Ex. 1.0RC, #7.)

The "own facilities" language of 47 U.S.C. 214(e)(1)(A) requires an ETC to provide supported services "either through the use of its own facilities, resale, or a combination of its own facilities and the resale of another carrier's services". In the LRO, the FCC granted Applicant forbearance from this requirement. As of the approval of its Compliance Plan, Applicant is no longer bound by the "own facilities" requirement, and may provide Lifeline service through resale agreements with underlying carriers.

Pursuant to Section 757, Applicant will advertise the availability of, and charges for, the supported services to all residential customers in the specified geographic region on a quarterly basis, using media of general distribution that targets such customers. Applicant commits, pursuant to the LRO which revised C.F.R. §54.405(b) advertising requirements, to publicize the availability of Lifeline service in a way reasonably designed to reach those customers likely to qualify for service. Applicant will also indicate on all print, audio, video and web materials used to enroll in its Lifeline program that (i) it is a Lifeline service; (ii) Lifeline is a government assistance program; (iii) the service is non-transferable; (iv) only eligible consumers may enroll; and (v) the program is limited to one discount per household. Applicant will also disclose it name on all such materials.

Applicant will also offer voice telephony services as defined in C.F.R. §54.101(a). It will provide voice grade access, or its functional equivalent, to the public switched network. Applicant's Lifeline service plans will offer customers, for one year at no charge, 250 minutes without a rollover option or 125 minutes with a rollover option. Applicant commits to providing all customers with access to emergency calling services when service begins, and 911 and E911 access will be available from Applicant handsets, even if the applicable account has no remaining minutes. Access will continue regardless of account status. Applicant currently provides 911 and E911 service to the extent that they are deployed by underlying carriers. Emergency calling is enabled for all properly activated handsets, even if the account is suspended or terminated. Applicant commits to any state-specific obligation to obtain either a certification from each PSAP where it plans to offer service, or a self-certification, confirming that it provides subscribers with 911 and E911 access. Applicant will replace non-compliant E911 handsets with complaint 911/E911 handsets at no charge.

Pursuant to the LRO, ETCs are not required to offer toll limitation to low-income customers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. 47 C.F.R. §54.401(a)(2). Since Applicant does not make a distinction in price regarding local or toll calls on its wireless plans, it meets the requirements of §54.401(a)(2).

Applicant has the ability to remain functional in emergency situations, which complies with 47 C.F.R. §54.202(a)(2). Applicant has agreements with its underlying carriers to provide to customers the same ability to remain functional in emergency situations that ILECs provide to their own customers. Wireless resellers are required to provide E911 service only to the extent that the underlying carrier has deployed facilities necessary to deliver E911 data to the PSAP. To the extent that Verizon and Sprint are certified in a given PSAP territory, the 911 capability will function the same for Applicant as it does for the underlying carriers. Verizon and Sprint are contractually obligated to deliver automatic number information and automatic location information to Applicant.

Applicant commits to satisfying all applicable state and federal consumer protection and service quality standards, in compliance with 47 C.F.R. §54.202(a)(3), and will comply with 735.515 by reporting complaints received, dropped calls and signal strength. Applicant will also follow 83 Ill. Adm. Code 736, "Service Quality and Customer Protection Applicable to Wireless Eligible Telecommunications Carriers." Applicant seeks a waiver of the following parts of Section 736, either because it will not be issuing bills or because it does not seek high-cost support: 736.610, 736.620, 736.630, 736.640, 736.650, 736.680, 736.685 and 736.690.

Ms. Harrison testified that Staff misinterpreted the intent of Applicant's waiver requests. Applicant requests a waiver of 736.610 (Customer Billing) because, as a provider of prepaid services, customers will pay in advance. Applicant will not send monthly bills. A waiver of 736.650 (Deposits) is requested because Applicant will not require customer deposits. Staff supports the waivers (Staff Ex. 1.0 at 39) and did not object to the waiver requests in Docket 10-0453, provided that the waiver applies only to pay-in-advance services.

Ms. Harrison testified that 47 C.F.R. §54.201(h) states that a state commission shall not designate a carrier as an ETC for Lifeline service unless it finds that the carrier is technically and financially capable of providing the service. The LRO (¶388) also makes it an explicit requirement in §54.202 and §54.203 that a carrier seeking to provide Lifeline-only service demonstrate its technical and financial capacity to provide the service. It states that the relevant considerations would include whether applicant previously offered services to non-Lifeline customers, how long it has been in business, whether applicant intends to rely exclusively upon USF disbursements to operate, whether applicant receives, or will receive, revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in other states.

The Commission had previously found in Docket 07-0273, June 27, 2007, that Applicant possessed sufficient technical, financial and managerial resources to provide resold local and interexchange services in Illinois. Applicant also demonstrated its technical and qualifications in its Compliance Plan, which the FCC found on December 26, 2012, was in compliance with the LRO.

Ms. Harrison testified that Staff ignores the fact that the Commission also previously determined Applicant's technical ability in granting Applicant a Certificate of Service Authority to provide Commercial Mobile Radio Service ("CMRS") in Docket 10-0477, September 9, 2010. (Staff Exhibit 1.0 at 41-42.) Further, Staff seeks a quality-of-service record from Applicant (Id. at 42), ignoring the fact that the Commission specifically does not regulate quality of service for a CMRS. 220 ILCS 5/13-504. Applicant meets the requirements of 47 U.S.C. §214(e)(1)(A) by obtaining network and wireless transmission facilities from Sprint and Verizon. Applicant also has had no complaints filed against it since beginning service in 2009.

Ms. Harrison testified that Applicant meets the five factors set forth in ¶388. Applicant offers services to non-Lifeline customers, has been in business in Illinois since 2007, and has successfully operated as a wireline provider since 2009. Applicant has also provided wireless service since December 2011, with its full roll-out beginning in April 2013. Applicant has been in business in Illinois since 2007. It does not rely exclusively on USF disbursements to operate. Applicant offers prepaid local, local and toll, long distance and wireless services to all consumers who apply, Lifeline or traditional, regardless of past credit history. Applicant thereby receives revenue from other sources. It has not been subject to enforcement action or ETC revocation proceedings in any state.

Ms. Harrison testified that, to test its technical ability to provide the best quality wireless services to its customers, Applicant executed a beta-test to ensure the functionality and quality of the software it had acquired. From December 2011 through February 2013, Applicant provisioned 538 handsets to beta-test a newly procured, off-the-shelf wireless billing and provisioning system. (Staff Gr. Ex. 3/3.05, DR JZ 1.08(a).) Applicant used the best practices known in the software industry to test its systems in the same manner that every company uses prior to rolling out service to the public.

Ms. Harrison testified that Applicant, at Staff's request, provided its Balance Sheet and Statement of Cash flows for 2010 and 2011. (Staff Ex. 1.0 at 18; Staff Gr. Ex. 3/3.07, DR JZ 1.11.) Applicant does not believe that the standard imposed by Staff, to provide non-Lifeline service for six months before being allowed to Lifeline service, is supported by law. (Id. at 18-19.) Staff's recommendation is inappropriate because it appears to target only new ETCs. Existing ETCs would be allowed to follow existing rules. Applicant believes that Staff's requirement would violate the competitive neutrality requirement of 47 U.S.C. §253(b), however it will meet the requirement for CMRS and it meets the spirit of the requirement, since Applicant has provided wireline service for many years and has serviced all customers.

Ms. Harrison testified that Staff's proposal that Applicant provide the same type of service for six months imposes an arbitrary standard and is also inappropriate for the same reasons as specified for the non-Lifeline six-month period. (Staff Ex. 1.0 at 21.) Ms. Harrison testified that Applicant will nevertheless meet the six-month requirement for its CMRS service prior to offering Lifeline CMRS. (App. Ex. 1.0RC, ex. 8, DR JZ 1.01(k).) Applicant has therefore complied with Staff's proposed six-month requirement for the same type of service for both wireline and CMRS.

Ms. Harrison testified that Applicant does not critically rely on Lifeline services, as it also provides prepaid local, local and toll, long distance and wireless services to Lifeline and traditional customers, regardless of credit history.

Applicant also considers it relevant that it is already certificated to provide wireline service in Illinois. Applicant now seeks to provide more options to its existing Lifeline customers and to serve potential Lifeline customers who are without permanent residency and have no wireline support.

Ms. Harrison testified that Staff's 20% recommendation is also fundamentally unfair, because other ETCs will not be regulated in the same way. (Staff Ex. 1.0 at 19.) Staff should have first initiated a rulemaking proceeding to establish industry-wide ETC rules. Applicant attempted to obtain the data upon which Staff based its 20% recommendation, however Staff was unable to provide any additional support. (App. Ex. 1.0RP, ex. 9, DR 1.02, citing Staff Ex. 1.0 at 6-7, 16-18.) Moreover, Section 13-804 of the Act states that the Commission does not regulate CMRS. 220 ILCS 5/13-804. Staff's recommendation also targets new carriers, which violates the requirement of competitive neutrality.

Ms. Harrison testified that Applicant, in response to Staff's recommendation that the Commission review the experience of an applicant's personnel (Staff Ex. 1.0 at 21), provided a description of its managerial personnel in Section IV.D. of its application. Ms. Harrison also provided her resume in response to Staff DR JZ 1.15.

In response to Staff's recommendation that an applicant should not have, or have had, any enforcement actions or revocation proceedings against it any state (Id.), Ms. Harrison testified that Applicant has not been the subject of either proceeding.

In response to Staff's recommendation that an applicant should be in compliance with E-911 surcharge obligations (Id.), Ms. Harrison testified that Applicant remits E-911 taxes.

Ms. Harrison testified that Staff criticized Applicant's service quality data report for 10/1/12-12/1/12, filed pursuant to Sections 730 and 732, because it contained a disclaimer. (Id. at 37). Applicant has complied with Sections 730 and 732 by filing quarterly reports as required. Applicant had informally expressed concerns to Staff regarding the performance of Illinois Bell. The disclaimer stated that Illinois Bell had missed appointments for Applicant, but that data was not reflected in the AT&T Performance Measurement Report. The intent was to inform Staff that parts of the report were affected by an ongoing dispute with Illinois Bell. Staff knew about this, so Ms. Harrison believed that Staff would understand why the disclaimer was included. Staff, however, has misinterpreted the disclaimer, viewing it as evidence that Applicant does not have the ability to comply with service quality requirements. This is an unjustifiably broad based conclusion and exhibits a lack of understanding of the wireline resale business.

Ms. Harrison testified that on 11/28/11, Applicant submitted a notice letter to Illinois Bell expressing concern that Illinois Bell's anticompetitive practices violated 220 ILCS 5/13-515. (App. Ex. 1.0RC, Ex. 10.) From 1/12 through 9/12, Applicant noted significant improvement in the processing of its orders and diminished anti-competitive practices. From 10/12 through 3/13 however, Applicant began to observe violations and practices similar to those outlined in the 11/28/11 letter. As a result, its report included a disclaimer similar to that referenced above. Applicant's working relationship with its underlying carrier does not have an impact on its ability to manage its wireline operation. It has had no customer complaints since its wireline offering began in 2009.

Staff questioned Applicant's technical ability, noting that certain information was missing from Applicant's service quality reports. (Staff Ex. 1.0 at 41-42.) Conceding that Applicant had reported zeros for percentage of service installs, operator answer time and repair office answer time, Ms. Harrison explained that when a customer dials '0' from the home phone, the call is routed directly to Illinois Bell, not Applicant. This performance measure is not included on Applicant's performance measurement profile located on CLEC Online. Applicant did not report arbitrary information to the Commission for those performance measurements.

Regarding Staff complaints pertaining to service trouble and answer time (Id. at 42-43), when customers report trouble on their wireline, Applicant calls Illinois Bell for a line test. This information was not reported, since Illinois Bell does not return repair office answer time in its performance measurement profile report for Applicant. Ms. Harrison stated that Staff never inquired or requested corrections to data contained on the Sections 730/732 reports. Moreover, Applicant has been notified that, effective 6/28/13, Applicant, as a CLEC, is no longer is required to submit Service Quality and Customer Credit Quarterly Reports pursuant to Sections 730/732.

Ms. Harrison testified that Staff erred in stating that Applicant did not properly pass through federal subsidies for its wireline customers. (Id. at 38-41.) Staff correctly identified the amount that Applicant was required to pass through. (Id. at 41.) Applicant, however, claims to have met its pass-through obligation to pass-through the required. (App. Ex. 1.0RP, Ex. 11 (conf.).) All Lifeline bills contained the same pass through amount and Applicant continued to pass through those amounts when it began prepaid service. Prepaid accounts do not receive bills, but do receive, upon customer request, a Statement of Service showing the service plan, credits, and total taxes and fees. (Id., ex. 12.)

From 7/12 through 8/12, the pass through amount was not properly reflected in Applicant's tariff due to an oversight, however Applicant did pass through an amount in excess of that which was legally required. Ms. Harrison testified that Staff also erred in stating that Applicant failed to pass through the full Lifeline support amounts to which customers were entitled. (Staff Ex. 1.0 at 38.) In five data requests, Staff did not inquire with regard to the full amount of support passed through, so it is likely that Staff did not have access to all pertinent information.

With regard to Staff's testimony regarding Applicant's Section 757 quarterly reports for wireline Lifeline service (Id. at 44), Ms. Harrison testified that Applicant began providing local exchange service in Illinois in 2/09. In DR JZ 5.05(a)-(i), Staff asked several clarifying questions regarding Applicant's calculation of numbers and Applicant responded with an explanation on April 18, 2013. Some of the Section 757 reports were late-filed due to an oversight that was immediately corrected when discovered. Applicant has since met the timelines in the last three quarters of 2012 and the first two quarters of 2013, and is committed to filing Section 757 reports in a timely manner.

The Commission previously found that Applicant's designation as a wireline ETC was in the public interest. (Docket 08-0454 at 21.) The Commission recently stated that it will use the guidelines from the FCC's 2005 ETC Designation Order ("Designation Order"), as amended by the LRO, as the general framework and minimal requirements for considering the ETC designation requested by Cricket Communications, Inc., and for establishing whether its application is in the public interest. (Docket 10-0453 at 9.)

In Docket 10-0453, the Commission referenced the Designation Order, wherein the FCC indicated that consumer choice and the advantages and disadvantages of a particular service offering would be examined in its public interest analysis for ETC applicants. Applicant offers a variety of plans that can be tailored to meet individual customer needs. Applicant's current wireline Lifeline customers will be given the choice to transfer to wireless service or retain their wireline service. That choice will be particularly attractive to customers who do not have a permanent address. The plans are also affordable in order to meet customer needs. In addition, Ms. Harrison testified that Applicant has a unique Lifeline plan proposal.

Ms. Harrison testified that Staff's recommendation, that an applicant show that its Lifeline plans will, upon designation, offer benefits currently unavailable to consumers (Staff Ex. 1.0 at 25), is a subjective standard, and places new entrants at a disadvantage against current wireless ETCs. Under Staff's proposed standards, a new Lifeline plan offered by an entrant must somehow differ from plans offered by other ETCs. If a plan currently offered by an ETC is in the public interest, the same plan offered by a new entrant should also be in the public interest. The customer and the market should dictate what plans are acceptable. If Staff's recommended proposal is enforced, Applicant unfairly risks losing loyal customers to other providers, instead of being allowed to meet current customer and market demand. Applicant will, however, offer benefits not currently available.

Ms. Harrison testified that Staff also developed arbitrary and subjective standards in recommending that Applicant demonstrate a meaningful increase in customer choice that includes an offering that is substantively distinct or differentiated (from the consumers perspective) from Lifeline offerings currently available to consumers, and a reasonable expectation of nontrivial demand. (Staff Ex. 1.0 at 27, 570-574.) This would also apply only to new ETC applicants.

Staff was unable to provide legal authority for these proposed standards. It stated that the intent of the passage was to identify wireless offerings that, measured against

Lifeline offerings currently available, provide for a considerable quantity of distinctness, capable of being perceived by consumers. Staff had not conducted any research with regard to the perspectives of Illinois consumers. (App. Ex. 1.0RP, ex.13 DR 1.08.)

Staff stated that its use of the term “nontrivial demand” was to convey demand for service beyond that of employees, their relatives, or transitory customers added to customer counts for no business purpose than to inflate demand counts, thereby making wireless Lifeline offerings appear to be generally available and of value, when they are not. (Id., ex. 14 DR 1.14.) Staff also stated that its proposed standards would not be applied to currently authorized ETCs. (Id., ex. 15, DR 1.07.)

Ms. Harrison testified that, for each month the consumer is eligible to receive Lifeline services, Applicant will provide the option of 250 free minutes with no monthly rollover, or 125 free minutes with monthly rollover, for up to one year. Applicant will also offer discounted rates to Lifeline customers for additional purchases. (See Table, App. Ex. 1.0RC and 1.0RP at 63.)

Ms. Harrison testified that Applicant is a minority-owned, woman-owned business with ties to Chicago and is uniquely situated to serve eligible customers through community outreach efforts. ETCs should have the flexibility to market Lifeline supported services in creative and innovative ways. (LRO ¶277). Coordination should also include cooperative outreach efforts with state commissions, tribal organizations, carriers, social service agencies, community centers, nursing homes, public schools, and private organizations that may serve low-income individuals, such as AARP and the United Way. Cooperative outreach among those most likely to have influential contact with low-income individuals will help to target messages about Lifeline to the low income community. (Id. at ¶288.)

Ms. Harrison testified that Staff also recommended that wireless carriers submit a Wireless Customer Report and a quarterly report detailing E911 taxes. (Staff Ex. 1.0 at 28.) It was her understanding that Staff intended the Wireless Customer Report to be used to enforce the ratio of wireless non-Lifeline to wireless Lifeline customers. Staff indicated that it would not apply either of these recommended reporting requirements to existing wireless ETCs. (App. Ex. 1.0RP, ex. 16, DR 1.15(d).) Applicant should not be placed in a competitively unequal position by being compelled to report matters that other carriers are not.

Ms. Harrison testified regarding Staff concerns about customer retention (Staff Ex. 1.0 at 47), that, at a meeting with Applicant, UTAC and Staff, Staff confirmed that there is no length of time a customer must stay on to receive Linkup in Illinois. (App. Ex. 1.0RC, ex. 17, DR JZ 4.07 (conf.).) Lifeline providers experience turnover due to the industry-wide shift of wireline customers seeking the convenience and mobility of wireless service. Applicant’s proposal to serve both types of customers gives them a true choice that best meets their needs. A customer eligible to maintain wireline service could choose wireless and thereby impact the turnover rate.

In Docket 09-0403, the Commission stated the "Applicant's local calling packages are offered to all who apply for service regardless of past credit history. This trend leads to a large churn and default rate. Consequently, the cost of doing business may be higher for Tennessee than for Illinois Bell." (Order at 14.) The Commission noted the challenges and impact a carrier faces when providing services to all customers regardless of credit history, which includes higher costs to the carrier. Regardless of the potential for high turnover, the Commission stated that:

> "…the designation of Tennessee as an ETC for the limited purpose of offering Lifeline and Link-up service will increase customer choice for low-income consumers…Another factor for consideration is the advantages and disadvantages of the particular service offering. Tennessee's offering is intended to provide additional options for low income customers and increased access to emergency services for the public overall, to the extent that it enables low income customers to obtain service." (Id. at 20.)

Offering the Lifeline customer more choices at competitive rates should allow Applicant to increase its customer retention rate.

Ms. Harrison testified that efforts to eliminate waste, fraud and abuse could lead to an increase in the customer turnover rate. Applicant has de-enrolled customers who had Lifeline service with another carrier; who received more than one Lifeline support per household; who received Lifeline benefits at more than one address; or who failed to recertify eligibility to continue to receive Lifeline support. A customer under any of these circumstances must be de-enrolled, regardless of the impact on the turnover rate. She stated that Applicant is committed to ensuring that FCC requirements and Applicant's practices are always aligned with the goals of the LRO to eliminate waste, fraud and abuse.

IV. RESPONSE TESTIMONY OF MR. ANKUM

Mr. Ankum testified that Staff erred egregiously in asserting that low-income residents would have phone service with or without Applicant. He estimated that as many as one million low-income residents in Illinois are without phone service and the FCC has also noted that low-income residents without Lifeline are likely to have no service at all. A rejection of this application would effectively deny possibly thousands of low-income residents phone service and leave them unable to search for jobs and maintain contact with family members, doctors and support systems.

The LRO states that the loss of phone service can have devastating consequences for a person's personal and professional life, and a person's ability to re-enter the labor force is greatly enhanced by access to wireless service. (LRO at 16, 21.) Mr. Ankum disagreed with Staff's reasoning, that customers are better off with no phone service at all rather than having service from Applicant.

Mr. Ankum testified that Lifeline is funded through federal dollars and rejecting the application in this Docket would hurt Illinois by diverting those dollars to other states. Lifeline service could also save or rebuild lives damaged by the recession.

Staff's rejection of Applicant is even more startling, given that it is a minority, woman-owned business. To treat Applicant as just another competitor of Illinois Bell and Verizon Wireless entirely misses the point of what it means to serve low-income customers who cannot afford standard wireless service. Staff's testimony displays a palpable indifference to the promotion of Lifeline service and a seemingly callous disregard for low-income residents. Staff is also obsessed with fraud well beyond its concerns for universal service, as if Applicant will commit fraud if granted ETC status. There is no evidence to support this. Staff mentions fraud over a dozen times, but fails to mention terms like poor, poverty, unemployed, or promotion of universal service.

Staff's testimony is deficient in economics and in public policy and should be ignored. Staff skews its cost/benefit analysis against Applicant by contriving the costs and ignoring the benefits. (Staff Ex. 1.0 at 25-26.) Lifeline subsidies are paid from a federally funded program. There are no costs to Illinois. If Lifeline customers are unhappy with Applicant's service, they can discontinue it or switch to another provider. Applicant will bring to Illinois free federal dollars, the private benefit of service to low-income customers, and the public benefit when low-income customers are able to obtain and maintain employment. The benefits clearly outweigh zero costs.

Staff's new requirement that Applicant must have over 20% non-Lifeline customers and cannot specialize in Lifeline service is misguided and makes no sense. (Id. at 20.) It calls upon the Commission to interfere in the marketplace. As Illinois suffers from a shortage of specialized carriers, Staff's recommendation is counter-productive. Federal policy has determined that Lifeline subsidies are in the public interest and the commission also seeks to promote Lifeline service. It is not up to Staff to inhibit promotion of Lifeline services by artificially prohibiting specialized carriers. Fraud can be just as easily committed by carriers who provide Lifeline service on an incidental basis as by a specialized carrier. Fraud is neither encouraged nor discouraged by this gratuitous, counter-productive requirement.

Mr. Ankum testified that Staff focuses on technical issues while low-income residents go without phone service. (Id. at 20-21.) Staff's testimony is wireline centered and narrowly focused on requirements that may pertain to facilities-based providers. Concerns over network reliability and ability to serve exchange areas are not as relevant, since Applicant resells the wireless services of Verizon Wireless and Sprint. As Applicant is also successfully providing wireless Lifeline service in Wisconsin, why would it not be able to provide the same service in Illinois? The Commission should ignore Staff's testimony, as it is too deeply flawed to be used as a basis for an ETC petition.

Mr. Ankum testified that, despite Staff's testimony that the Commission's public interest analysis should consider benefits and costs resulting from additional designation, Staff did not consider the costs or benefits associated with granting the petition. (Id. at 25-26.) Such an analysis would overwhelmingly favor approval of the petition. Any costs incurred would be business costs to be borne solely by the Applicant. Staff has not identified any waste, fraud or abuse in Applicant's wireline service and Applicant has never been the subject of a complaint. (App. Ex. 1.0RC at 44.) Applicant in its Compliance Plan demonstrated its procedures to prevent waste, fraud and abuse and the quality of service is for customers to decide.

In addition to the benefits to Illinois' economy, benefits following approval of the application would also include Lifeline service to low-income customers. Mr. Ankum testified that he did not know why Staff ignored these benefits, but the suggestion is that Staff assumes that there are other carriers already serving low-income residents. Staff testified that it wants Applicant to offer new, innovative and/or cheaper services, otherwise there is no reason to add Applicant to the list of Lifeline providers. (Staff Ex. 1.0 at 10.) That testimony suggests that no low-income residents will be deprived of Lifeline service if the application is denied. The assumption is wrong and directly contradicts the Commission's official position.

On September 3, 2013, the Commission issued a press release announcing Lifeline Awareness Week and urging eligible consumers to sign-up for service. This makes it clear that there are low-income residents who do not have Lifeline service. Staff provided no analysis of how many low-income residents in Illinois do not have Lifeline service.

U.S. Census Bureau statistics suggest that there are possibly one million low-come residents in Illinois who do not have access to phone service. Low-income is income at or below 135% of the federal poverty level. This is the income level at which a household qualifies for Lifeline. Using Census Bureau data, one can calculate that a significant number of households are unserved or underserved and have no access to phone service. Billy Jack Gregg, in a study titled Options for Managing Growth in the Federal Low-Income Fund for Telecommunications presented to the U.S. House of Representatives on April 25, 2013, estimated that, as of 2013, one-million households and 2.6 million individuals in Illinois were below the federal poverty level and were, therefore, eligible for Lifeline. Since the Commission reports Lifeline participation at approximately 700,000 individuals, the indication is that a significant portion of the low income population of Illinois is unserved or underserved.

The FCC also recognized that without Lifeline, low-income residents are likely to have no phone service at all. (LRO at ¶ 15.) Also, large wireless carriers are not interested in marketing to low-income residents. The fact that the Commission has to advertise "Lifeline Awareness Week" shows that there is a "hole in the market." Smartphones do not need to be advertised because the marketplace takes care of that. The Commission's website lists approximately 60 Lifeline carriers, however the vast majority are landline carriers while approximately 96% of Lifeline customers use wireless service. The Commission website lists only six wireless Lifeline carriers and only two of those appear to offer service in Chicago. Even if there are more than the website indicates, Staff should not speculate about what consumers want or how many companies are allowed into the marketplace. Such regulatory intervention was outmoded by the 1996 Act. Moreover, carriers marketing to low-income residents in distressed areas often develop marketing strategies that focus on low-income residents and tend to provide low-cost handsets that further lower the start-up costs.

Staff objected to carriers specializing in Lifeline services, stating that Applicant should demonstrate that the ratio of non-Lifeline to total wireless customers has not fallen below 20% in each state for each month for the six months prior to submission of the application. (Staff Ex. 1.0 at 19.) Staff's requirement is flawed because it dictates to carriers how to operate their business. This is Commission interference in the marketplace.

Also, prohibiting specialization is wrong. A premium is placed on companies that specialize because it suggests that they are good at what they do. Further, Staff's requirement is counter-productive, because Illinois suffers from a shortage of specialized carriers that know how to serve low-income customers, and Staff should welcome specialization from a carrier that knows what it is doing. In addition, federal policy states that Lifeline subsidies are in the public interest and the Commission also seeks to promote Lifeline service. It is not up to Staff to impede such service with artificial prohibitions.

If Staff has any proof that Applicant has acted, or intended to act, fraudulently, it should provide proof so the matter can be dealt with explicitly, rather than by veiled insinuations. A better approach would be to establish auditing procedures. Also, Staff's concerns about waste, fraud and abuse should be allayed by the fact that the FCC has already approved Applicant's Compliance Plan. If the FCC thought that Staff's (20%) proposal would be helpful, the FCC would have made it a requirement, but it did not.

Staff implies that, if a carrier incurs losses in its Lifeline service, it would be less inclined to commit fraud when it has a majority of other customers who bring in revenues, than if it specialized in Lifeline service. Federal law, however, prohibits subsidizing services with revenues from other services, but that is precisely what Staff proposes. Section 254(b)(5) of the 1996 Act states that "(T)here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." This section has been interpreted by the FCC to prohibit a carrier from using revenues from one service to subsidize another to promote universal service. The FCC stated that these internal subsidy flows are incompatible with competition (FCC Docket 96-98, 11 FCC Rcd 15499 (1996)), but Staff is essentially asking for their reinstatement.

Mr. Ankum testified that Staff's statement that, "[I]f a low income consumer…has several prepaid wireless options and new wireless ETC does not provide any new and/or better service options or provide lower priced service, the customer may be better off than without the options offered by the new…ETC…", makes no sense. (Staff Ex. 1.0 at 10.) It ignores the possibility that without Applicant's offerings, many low-income residents may not have phone service at all. Economically, it makes no sense to restrict the number of providers and reduce competition. One of the main objectives of the 1996 Act is to promote competition. Subsidization is immaterial. Many products and services are subsidized, but there are no arguments that competition should be limited.

Moreover, how would Staff identify what constitutes improved service? Regulators have no proven expertise in this field. Staff also ignores that low-income customers are capable of deciding what carrier they prefer, and do not need a regulator to make that decision. Further, Staff has not performed an analysis to determine which alternative ETCs are operating in the areas Applicant will serve and what it will take to effectively market Lifeline service. Since Lifeline service is aimed at a specific segment of the population and requires unique marketing strategies, Staff's narrow focus is misguided. Applicant's expertise will be in marketing Lifeline, which is what is needed in Illinois.

Staff's testimony does not disclose any awareness of how Lifeline is marketed. Companies like Applicant have proven expertise. Even if Applicant were offering mere wireless service, if it can offer superior marketing, it should be welcomed into Illinois to promote universal service. Much of Staff's testimony is wireline-centered, but most of Lifeline customers are wireless. Staff's discussions about landline service are misdirected.

Staff's testimony regarding retention rates shows its lack of understanding of Lifeline services and its conclusion is misdirected. (Staff Ex. 1.0 at 46-47.) Applicant's services tend to be prepaid. Customers are not contractually bound as are customers with traditional landline and wireless service. Comparing Applicant's retention rates with those in other segments of the industry in invalid. Also, it is the nature of poverty that low-income people need to "juggle" bills. The phone bill can be a low priority depending upon what other bills are due. Because Applicant's bills are prepaid, it is easy for a customer to suspend service until resources are again available. While this may appear to be low retention, it says nothing about how much customers value the service.

It is also in the nature of poverty that low-income people may be transient. If they move, move out, or become homeless, they will not continue their landline service. What Staff perceives as low retention is in part, the transient nature of the Lifeline population. Further, as the vast majority of Lifeline customers prefer wireless service, Applicant's Lifeline offering has a higher attrition rate as customers seek wireless alternatives.

Staff's use of Applicant's landline service as a proxy for its wireless service is also invalid. Since some of the high turnover is due to the lack of landline portability, Applicant would have higher retention rates for wireless Lifeline. This is one reason why Applicant seeks a wireless ETC designation.

V. COMMISSION ANALYSIS AND CONCLUSIONS

Applicant seeks designation as a wireless ETC to provide low-cost, Lifeline support to customers in Illinois Bell's non-rural service areas. As the Applicant, it bears the burden of proof to establish and demonstrate that it meets Commission and FCC requirements for such designation.

The FCC requires state commissions to make a public interest determination pursuant 47 C.F.R. §54.201(c) and (d) and §214(e)(2) of the 1996 Telecom Act. The

FCC further requires state commissions to impose the technical and financial requirements of §54.201(h) on Lifeline-only ETC designations.

The FCC requires ETCs to comply with: the National Lifeline Accountability Database procedures in §54.404b, to protect against duplicative support; the marketing and disclosure requirements of §54.405; subscriber eligibility and annual recertification requirements of §54.410; the annual carrier certification requirements of §54.416; the recordkeeping requirements of §54.417; the audit requirements of §54.420; and the carrier annual reporting requirements of §54.422(a).

Staff argues that state commissions are encouraged by the FCC to apply the eligibility requirements of §54.202(a) and (b) to their ETC designation, and recommends that the Commission do so here.[2] (Staff Ex. 1.0 at 6, 16.) In addition, Staff argues that the Commission should adopt in its ETC designation analysis the recommended considerations in In the Matter of Lifeline and Link Up Reform and Modernization, 27 F.C.C.R. 6656, 6819 at ¶ 388 (February 6, 2012) ("Lifeline Reform Order") for the financial and technical capability analysis under §54.201(h), as well as apply cost/benefit analysis as a consideration in the Commission's public interest analysis under §214(e)(2). Finally, Staff also suggests several ongoing reporting requirements that a Lifeline ETC carrier should adhere to if its designation is approved. (Staff Ex. 1.0 at 27-28.)

The Commission notes that since the Lifeline Reform Order, it has only approved two Lifeline ETC designations. The first came four months after the FCC issued the Lifeline Reform Order in Cricket Communications, Inc., Final Order, ICC Docket No. 10-0438 (July, 11, 2012). The second was an approval of an agreed joint stipulation between the applicant and Staff which contained or accounted for all of the requirements proposed by Staff in this docket. (See American Broadband and Telecommunications Company, Final Order, ICC Docket No. 12-0680 (February 5, 2014).) The instant matter provides an opportunity to hear and address the merits of Staff's recommendations for Illinois ETC designation in response to the Lifeline Reform Order.

The Lifeline Reform Order made clear that the FCC and state commissions are entrusted with the responsibility to oversee access to the federal Lifeline fund intended for eligible low-income customers. To protect both low-income and non-low-income consumers, and guard against waste, fraud, and abuse of the federal low-income program, the Commission has the obligation to ensure that a carrier has the willingness and capability to provide quality service in compliance with federal and state laws, rules, and requirements. Further, the Commission is obliged to ensure that the designation of the carrier as a Lifeline ETC is consistent with the public interest, convenience, and necessity. The Commission finds Staff's recommendations are reasonable, will assist the Commission in considering ETC designation applications and are, therefore, adopted.

[2] Specifically, applicants must: certify that they will comply with service requirements applicable to the support it receives (§54.202(a)(1)); demonstrate their ability to remain functional in emergency situations (§54.202(a)(2)); demonstrate they will satisfy applicable consumer protection and service quality standards (§54.202(a)(3)); and submit information describing terms and conditions of any voice telephony plans offered to Lifeline subscribers (§54.202(a)(5)); and satisfy the FCC public interest standard (§54.202(b)).

The Commission disagrees with Applicant's contention that Staff's proposals constitute the regulation of entry and are not competitively neutral. (See App. IB at 24-29.) Nothing prevents Applicant from providing CMRS or wireless service to the general public in Illinois prior to ETC designation. ETC designation, however, is a privilege. If Applicant desires to participate in the federal Lifeline program, it must meet the federal and state requirements described above for such designation. Further, the FCC has shown how the needs and requirements involved in ETC designation must change with time. (See e.g. Lifeline Reform Order at ¶ 383.)

Turning to Millennium 2000's application, Staff raised several specific issues in its testimony. (Staff Ex. 1.0 at 47-48.) The following discussion will address the various issues raised by Staff in the ETC designation analysis.

A. Defining the Service Area and Demonstrating the Ability to Provide Supported Services throughout the Requested Service Area.

First, Staff raises the issue that Applicant has failed to adequately define its ETC service area. Staff recommends that the Commission find that the minimum geographic area of a service area be represented as an exchange. (Staff Ex. 1.0 at 11.) Staff's concern is that Applicant designated in its petition various LATAs that contain not only Illinois Bell service areas, but the service areas of rural telephone companies as that term is used in 214(e)(5). (Id. at 30.) The Commission finds that the minimum geographic service area is represented as an exchange.

While Staff's concern is valid, it conceded that Applicant, through discovery, has identified its service area as each and every exchange within Illinois Bell's ILEC study area. (Staff IB at 23.) Applicant stated in its response testimony that it seeks wireless designation in all of Illinois Bell's non-rural exchange areas. (App. Ex. 1.0R at 31, 32-33; Ex. 7.) Applicant also stated in response to Staff data request JZ 2.03(a), that it does not seek to provide ETC wireless service in any rural carrier's study area. (App. Ex. 5.)

Further, Staff stated in its response to Applicant's DR 1.01(b) (App. Ex. 6) that "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 214(e)(2) and (e)(5) and, thus, each and every such exchange is an exchange that does not overlap with rural areas." Additionally, the amended application explicitly states that Applicant seeks wireless ETC designation in all of Illinois Bell's non-rural service areas, even though it lists several LATAs. (Amended Pet. at 7.)

Applicant's evidence provided through discovery is consistent with the amended application. Based upon the above-cited evidence, the Commission finds that Applicant has adequately defined the service area as the exchanges in which it proposes to provide wireless Lifeline service, and it will not include the rural service area of Applicant's underlying carrier.

The Commission must then determine whether the Applicant has demonstrated the ability to provide the supported services throughout the requested service area. Applicant asserts that its third party contracts, provided in discovery, demonstrates its ability to provide service through the Sprint and Verizon networks. (App. RB at 10.) Staff contests this assertion, arguing that the Applicant's third party contract provided in the record is incomplete and actually indicates an explicit lack of assurance of capability to provide such service. (Staff IB at 23-24.)

The Commission agrees with Applicant's assertion, as it is supported in the record. (See Group Ex. 3.17, at ¶ 1 (conf.).) The whole contract has been provided. Staff's argument that the contract provided is incomplete, however, is misdirected. Rather, what concerns the Commission is the service area was not included in the provided contract. (Staff Ex. 2.0 at 9; Staff Ex. JZ 1.04b (conf.).) Thus, the Commission cannot find that the record supports the conclusion that Applicant has the technical capability to provide service in all portions of the identified service area.

B. Ability to Advertise the Availability of Lifeline Services.

Staff disputes that the Applicant has demonstrated its ability to advertise the availability of Lifeline services. Staff's position is that without a properly defined service area there is no way to determine what governmental agencies are included in the geography for advertising, and whether the commitment to do so can be met. Staff cited the amended application wherein Applicant committed to "provide written notification of universal service programs to the directors of municipal, State and federal government agencies within Millennium 2000's service territory whose clientele is likely to benefit from the program." (Amended Pet. at 9.) Staff also noted that Applicant did not, in its response to several data requests, identify a single local circulation newspaper in which it would advertise its services. (App. Gr. Ex. 3 - 3.03, 3.04, 3.10, 3.18; Staff IB at 26.)

Since the Commission has already found that Applicant adequately defined the area in which it proposes to provide service, it does not believe that Applicant will be unable to identify what agencies are included within it.

Applicant Group Exhibit 3.03 (response to DR JZ 1.06) contains a general Lifeline brochure that Applicant uses to publicize its Lifeline offerings in every state where Applicant offers service. Applicant responded to Ex. 3.04 (DR JZ 1.07) by, again, referencing the general Lifeline brochure and stating that it will be used in every state where Applicant offers service.

Applicant responded to Group Exhibit 3.18 (DR JZ 6.11) by referring Staff to its Compliance Report. (Ex. 3.10, DR JZ 1.16.) On pages 12-13 of the report, Applicant states that it "…will market to potential customers through live contact through Millennium 2000 employees and independent contractors, as well as through print and electronic media." Various samples of marketing materials were attached to the report. Applicant also testified that, in accordance with Section 757, it will advertise the general availability of, and charges for, the supported services to all telecommunications customers in the specified geographic area on a quarterly basis. (83 Ill. Adm. Code 757.220(b); App. Ex. 1.0R at 33.)

Additionally, §54.201(d)(2) requires Applicant to "(A)dvertise the availability of such services and the charges therefor using media of general distribution." Since this section does not otherwise define what constitutes "media of general distribution", the Commission finds that Applicant's marketing plans do not need to be any more specific than the regulation. Applicant is not specifically required to advertise its services in local newspapers. Accordingly, the Commission finds that Applicant did not contravene §54.201(d)(2). The Commission finds that Applicant's intent to market its services through print, using the Lifeline brochures, and through live contact and electronic media, is sufficient to satisfy the "media of general distribution" requirement of §54.201(d)(2).

C. Technical and Financial Capability

The Commission is required, pursuant to §54.201(h), to find that "the carrier seeking [ETC] designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service." Staff recommends the Commission adopt several requirements and criteria for this analysis. The recommendations and analyses follows.

1. Technical capability

Staff recommends that the Commission, in determining the technical capability of an applicant, consider the experience and background of the applicant's personnel (Staff IB 27-29), its prior record of wireless service (Staff Ex. 1.0 at 18), as well as the applicant's ability to comply with federal and state laws and rules. (Staff Ex. 1.0 at 41-43.) Staff avers that Applicant failed to make adequate demonstrations under the three inquiries.

In response, Applicant argues that they have provided enough evidence to support a finding of technical capability. In support of this position, Applicant cited Dockets 07-0273 and 10-0477, wherein it was found by the Commission to possess, among other things, sufficient technical resources and abilities to provide telecommunications services in Illinois. (App. Ex. 1.0R at 39-40.) Applicant also argues that the FCC's approval of its Compliance Plan supports a finding that Applicant demonstrates the technical and financial capability for ETC designation. (App. Ex. 1.0 at 42-43.) Specific to Staff's arguments, Applicant argues that it has adequately staffed its business with contractors and has been providing wireline services for years. (App. RB at 19-22.) Further, Applicant asserts that it has provided prepaid wireless service in Illinois since 2010. (App. Pet., Ex. 1A.) In response to Staff's assertion that Applicant lacks the technical ability to comply with state and federal law, Applicant explained that the performance measurements referred to by Staff contained zeroes because the information was not reported to Applicant by the underlying carrier. (Id. at 54.) Applicant argued that the data supplied to it by the underlying carriers is what it supplies to the Commission. (App. RB at 33.)

The Commission is not persuaded by the Applicant that it possesses the requisite technical capability to support the services it offers. First, certification by the state of

Illinois to provide wireless services does not demonstrate a carrier's technical abilities as required for ETC designation; nor does it require the certificated carrier to actually provide service. Second, the Commission rejects the argument that an approved FCC Compliance Plan supports a finding of technical and financial capability. As Staff correctly noted, the FCC recognizes that "[w]hile these compliance plans contain information on each carrier's Lifeline offering, *[the FCC] leave[s] it to the designating authority to determine* whether or not the carrier's Lifeline offerings are sufficient to serve customers." (Staff RB at 25 (citing Millennium et al Compliance Plan Approval Public Notice (DA-12-2063) at fn.7) (emphasis added).)

The Commission is satisfied that Applicant has adequate staffing and supervision to provide service to its customers. This is not by itself, however, sufficient to satisfy the technical capability analysis. Applicant must also demonstrate that it has the ability to comply with federal and state laws and rules and demonstrate a prior history or providing wireless services.

As Staff notes, there is no evidence in the record that supports the claim that Applicant has provided prepaid wireless service in Illinois since 2010. The record supports this assertion. (Staff RB at 16 (conf.).) The Commission cannot presume that because Applicant has the authority to provide the service to the general public that it can and does. It is upon the Applicant to demonstrate this capability for ETC designation, and it has failed to do so.

Staff recommends that the Commission require Applicant to demonstrate its ability to comply with federal and state laws and requirements. Staff lists several compliance issues that Applicant has had as a designated wireline Lifeline provider, including filing an inaccurate tariff (*see* Part V.F. below), late or absent filings of Part 730/732 and 757 reports (see Part V.E. below), and inaccurate or incomplete Part 730/732 filings (see Part V.E. below). The Commission finds that the compliance issues and inaccurate tariff raised by Staff, and discussed in greater detail below, are indicative of an inability to comply with the Part 736 and §54.417 requirements.

The Commission also notes that the Lifeline Reform Order, at ¶ 388, recommends in the technical and financial analysis considering whether the applicant has been subject to enforcement action or ETC revocation proceedings in any state. The Commission adopts such an inquiry in its designation analysis, and finds that Applicant has demonstrated that it has not been subject to any revocation proceedings or enforcement actions in Illinois or any other state. (See App. IB at 21 (citing App. Ex. 1.0R at 42).)

2. Financial Capability

With regard to Applicant's financial capabilities, Staff recommends that Applicant demonstrate that it has experience legitimately and profitably providing service in Illinois, if applicable, and other states through an evaluation of financial statements covering a period of no less than six (6) months. (Staff Ex. 1.0 at 18-19.) Staff also recommends that Applicant demonstrate that it does not rely critically on Lifeline subsidies by demonstrating that the fraction of non-Lifeline wireless to total wireless non-Lifeline customers has not fallen below 20% in each state in each month in the period beginning six months prior to its application. (Id. at 19-20.)

The Commission acknowledges Applicant's argument that it was issued a Certificate of Service Authority to provide resold local and interexchange service in Docket 07-0273, and a Certificate of Service Authority to provide CMRS in Docket 10-0477. As discussed in the section immediately above, these are not sufficient to satisfy the financial and technical requirements for ETC designation. Applicant argued that it has been providing Commercial Mobile Radio Service ("CMRS") in both Illinois and Wisconsin, contrary to Staff's claim that it has not. (App. RBOE at 20; Staff BOE at 11.) However, in its reply to DR JZ 1.01, Applicant states that, "(A)s of March 6, 2013, Millennium 2000 has not provided CMRS to end users in Wisconsin." (Staff Ex. 1.0, Attachment 1.01 at 83.)

The Commission finds merit in Staff's concerns regarding Applicant's financial capabilities. According to Staff, Millennium has been and, thus will almost certainly be, critically dependent on its ETC receipts to remain profitable. (Staff Initial Brief at 30-32 (conf.).) No evidence was provided supporting a demonstration that Applicant has experience legitimately and profitably providing wireless service to non-Lifeline customers in Illinois or any other states. Further, having examined Applicant's Exhibits 3.08 and 3.08(a), the Commission is persuaded that Applicant is currently dependent upon Lifeline subsidies for the vast majority of its revenue.

The Commission believes that requiring a demonstration of legitimate and profitable operation, and the demonstration that the Applicant will not critically rely on Lifeline subsidies will provide the Commission with some assurance that the Applicant will be less inclined to risk engaging in waste, fraud, or abuse as a means of remaining solvent. The Commission must strike a balance between ensuring that eligible households have access to the Lifeline fund, while ensuring ETC applicants are vetted for potential for waste, fraud, and abuse. For that reason, the Commission adopts Staff's recommendation to require Applicant to maintain a ratio in Illinois of not less than 20% non-Lifeline wireless customers to total wireless customers. If the ratio falls below 20% for any three consecutive months, Applicant will be required to cease enrolling new wireless Lifeline customers until it obtains Commission approval to resume wireless Lifeline service. The Commission agrees with Staff that maintenance of the ratio at 20% would ensure that Applicant has the ability to profitably provide non-Lifeline wireless services and thus, when offering an equivalent Lifeline service, will be able to pass through the full dollar-for-dollar Lifeline funds to its customers, and not be incented to retain Lifeline funds to support an otherwise nonviable service. (Staff Ex. 1.0 at 20.) The Commission would note that to further discourage such incentives it could impose a more stringent ratio; however, the Commission believes that Staff's ratio is a reasonable and permits smaller service providers to participate in the program while providing some assurance of the viability of their business.

Based on the above discussion, the Commission finds that Applicant has failed to provide evidence which would, based upon its Illinois service record, establish a financial track record demonstrating its ability to provide wireless services without overreliance on Lifeline funds.

D. Emergency Functionality

Staff argues that Applicant has failed to demonstrate the ability to remain functional in emergency situations as required by §202(a)(2). (Staff Ex. 2.0 at 10-11.) According to Staff, the evidence provided by Applicant does not support the conclusion that it can remain functional. (Staff Ex. 2.0 at 11 (conf.).) Staff explains that the ability to remain functional in emergency situations is different for a wireless provider than it is for a wireline provider based on the differences in network architecture. (Id.)

Applicant submitted evidence to dispute this argument. (Group Ex. 3.17b (conf.)) Applicant provided a document prepared for these proceedings to support Applicant's assertion that it will have the required capabilities; however, the facts attested to are not in an affidavit or other form of legally enforceable record. The Commission cannot infer a capability—not expressed in the contract—based on the evidence provided. Accordingly, the Commission finds that the record does not support a finding that Applicant has demonstrated its ability to remain functional in emergency situations.

E. Service Quality and Customer Protection

Section 54.417(a) requires ETCs to "maintain records to document compliance with all Commission and state requirements governing the Lifeline … program for the three full preceding calendar years." Section 54.202(a)(3) and Code Part 736 both impose service quality requirements on wireless Lifeline providers.

Staff argues that Applicant has failed to prove that it can and will satisfy applicable service quality and consumer protection standards of §214(e)(6), which includes the requirements set forth in 83 Ill. Adm. Code 736.

First, as a wireline Lifeline provider Applicant was required to file service quality reports with the Commission pursuant to Sections 730/732. Staff cites these reports as stating, "This report has been generated based upon the AT&T Performance Measurement Report... From October-November 2012, (Illinois Bell) missed appointments for my Millennium 2000, but information is not reflective in the report." (Staff Ex. 1.0 at 37.) Staff argues that Sections 730/732 requirements and the service Applicant provides to its customers are solely Applicant's responsibility. (Id. at 37-38.) They further assert that complying with these regulations means not only filing timely required reports, but filing reports with accurate information. The Commission agrees.

If Applicant relies upon the offerings of another wholesale supplier, it cannot "pass the buck" on to its wholesale supplier and report nothing to the Commission. The evidence relating to Applicant's wireline Lifeline reporting is indicative of future (in)ability to provide adequate service, as the issues present in the wireline service are likely to exist in the Applicant's wireless service. (Staff Ex. 2.0 at 14 (conf.).) Applicant was solely responsible for meeting the requirements of Sections 730/732 as a designated ETC and it failed to satisfy its reporting requirements. The Commission is unable to find, based on the record before it, that Applicant will be able to adequately manage its telecommunications operations and comply with §54.417 and §736.

F. Pass-through Support

47 C.F.R §54.407 states in relevant part:

> (b) An eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer served. For each qualifying low-income consumer, receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the federal support amounts described in §54.403(a) and (c).

Staff's evidence showed that Applicant's tariffs effective from January 2011 through July 2012 provided for a pass-through amount of the Lifeline subsidy to customers less than the amount than what Applicant was required to provide pursuant to the federal rules. Staff interpreted this to mean that Applicant has not demonstrated the ability to pass through the full amount of support to which Lifeline customers are entitled. (Staff Ex. 1.0 at 38-41.)

In response to Staff's finding regarding Applicant's tariff, Applicant argues that it had inadvertently omitted from its tariffs an additional goodwill discount that it had been providing to its customers. Applicant provided a handful of statements reflecting that it had actually passed through a reimbursement amount to subscribers in excess of that required by Federal regulation as a "goodwill discount." (App. Ex. 1.0R at 56; App. IB at 31.) Applicant's Exhibit 11 shows the goodwill discount on a handful of individual customer bills for 2011. Applicant avers that the issue is not that Applicant passed through a lesser amount than it tariffed, but that it failed to correctly tariff the amount it actually passed through, which was a higher amount than the required federal support amount.

The record reflects that Applicant had been for a specific period non-compliant with §54.403(a) and §54.407. Though it appears at first glance that a greater amount has been discounted from Applicant's customers' statements, the Commission agrees with Staff that there is no evidence in the record to support that the accurate discounts were provided to its Lifeline customers. Though the handful of examples presented by Applicant to demonstrate that an amount greater than the federal amount required was applied to some of its customers, it does not necessarily demonstrate that the Applicant has passed through the full Lifeline discount to all of its Lifeline customers.

In addition, though the Commission is not disposed to believe that Applicant's failure to tariff the precise pass-through amount to match the required federal support amount was anything other than an error on Applicant's part, this error cannot be taken lightly. Tariffs and written service offerings are the primary mechanism for the Commission and customers to ensure that Lifeline providers are providing their customers the discounts to which they are entitled and the providers are required to provide. The failure to accurately reflect Lifeline discounts, therefore, misleads the Commission and Applicant's Lifeline customers.

Accordingly, the Commission finds that Applicant has failed to demonstrate that it has the ability to pass through the full amount of support that Lifeline customers are entitled.

G. Public Interest Analysis

The FCC requires state commissions to make a public interest determination pursuant to 47 C.F.R. §54.201(c) and (d) and §214(e)(2) of the 1996 Telecom Act.

Staff recommends that the Commission assess ETC designations based upon the benefits that the Applicant provides to Illinois consumers. (Staff Ex. 1.0 at 10.) Staff argues that if a low income consumer in Illinois has several prepaid wireless options and a new prepaid ETC doesn't provide any new and/or better service options or provide lower priced services, the customer may be no better off than without the new designated ETC. (Id.) Specifically, Staff recommends that Applicant demonstrate that the wireless Lifeline offering is substantively distinct or differentiated (from a consumer's perspective) from Lifeline offerings currently available to consumers in the Marketplace, and that there is no reasonable expectation of nontrivial demand for the wireless Lifeline offering in Illinois. (Id. at 27.) The assessment, however, should be performed based upon the individual circumstances presented by the carrier seeking ETC designation. (Id. at 10-11.)

The Commission begins by noting that Illinois has ten (10) designated wireless ETCs. (Staff Ex. 2.0 at 21.) Seven (7) of those ETCs have the authority to operate in all of Applicant's identified service area. (Id.) Thus, the Commission first considers whether Applicant's offerings are substantively distinct or differentiated from the existing ETC designated service providers.

Applicant explains that it will provide Lifeline customers with the option of receiving 250 free minutes without rollover, or 125 free minutes with the ability to rollover unused minutes. (App. Ex. 1.0R at 63.) Applicant also provided its intended additional service offering for both Lifeline and non-Lifeline wireless customers, which it believes will be unique among the service providers. (*Id.*)

Staff responds by providing the service offerings of six ETC designated providers in Illinois. (Staff Ex. 2.0 at 23.) The Commission notes that three of the offerings are identical to Applicant's, and all three of them operate in Applicant's service area. Staff intentionally omitted whether the existing ETC providers include texts, data or other features from Table 1 (see id. at fn. 46). The three providers' plans show that there are a variety of rate offerings provided by Applicant's competitors. (Id. at fns. 47, 48, & 51.) The Commission believes that Applicant's intended offering are substantively distinct from those already operating in the service area. The public interest analysis must also consider individual circumstances presented by the carrier.

The Commission also notes that Applicant is a minority-woman-owned business incorporated in Illinois and based in Chicago, IL, who has been operating in Illinois for several years.

As a concern brought by the specific circumstances of this Applicant, Staff raised the issue of Applicant's low customer retention rate in its wireline Lifeline service, citing statistical data in support. (Staff Ex. 1.0 at 46-47; Staff Ex. 2.0 at 29-30.) Staff concluded from the statistics that the vast majority of Applicant's customers do not stay with it for any length of time, and that its evidence is inconsistent with the notion that Applicant is providing Lifeline service that customers depend on and have available over time. (Staff Ex. 1.0 at 46-47.)

Applicant did not contest the numbers cited by Staff, but stated that there is no existing rule that requires an ETC to retain customers for any specific amount of time. In support, Applicant cited App. Ex. 17, its response to DR JZ-4.07 (conf.). (App. Ex. 1.0R at 67.)

The vast majority of customers did not stay with Applicant for an appreciable length of time for the five months cited. The burden is on the Applicant to demonstrate that its designation as an ETC provider is in the public interest. The Commission notes that Applicant's numbers are dramatically worse than any other wireline Lifeline provider. (Staff Ex. 2.0 at 30.) Specifically, the next lowest wireline-only provider has a better retention rate by 44% with over 50,000 more customers. (Id., Table 1 (looking at Illinois Bell Telephone Co.).) Comparing a similarly sized wireline-only provider, the next lowest has a better retention rate of 72%, with 1,377 customers. (Id., Table 1 (looking at Illinois Consolidated Telephone Co.).)

Staff's concerns with future problems with Applicant's wireless ETC Lifeline operation are based upon the Applicant's management and operation of its current Wireline ETC services. Staff suggests that Applicant's practices related to its wireline ETC Lifeline program are those which foster waste, fraud, and abuse in the program. The Commission shares Staff's concerns.

The high turnover rate of Applicant's wireline Lifeline customers is dramatic, and is inconsistent with the notion that Applicant is providing customers a dependable service. Moreover, the high turnover rate coupled with the findings of Section V.C.2., that the Applicant is dependent on Lifeline funds, leads the Commission to conclude that Applicant's ETC designation would not be consistent with the public interest.

The Commission must look to protect both low-income and non-low-income consumers, and guard against waste, fraud, and abuse of the federal low-income program in its vetting process. The Commission disagrees with Applicant when it complains that Staff fails to allege any waste, fraud, or abuse—that is not Staff's burden. Further, a vetting process is meant to be predictive and attempt to anticipate issues in the future. The Commission is concerned that Applicant's financial state will lead to undesirable incentives—particularly when Applicant intends to operate in a service area that already has significant competition—and this concern is amplified when considered in light of Applicant's retention record as a wireline Lifeline provider.

The Commission finds that Applicant has demonstrated that it intends to provide a different and distinguishable service from other ETC designated providers, and the Commission welcomes that Applicant is an Illinois minority-woman owned business. However, based upon the individual circumstances presented by the Applicant and the record evidence, the Commission cannot find that Applicant has demonstrated that ETC designation would be consistent with the public interest, convenience, and necessity.

VI. FINDINGS AND ORDERING PARAGRAPHS

Having reviewed the entire record herein and being fully advised in the premises, the Commission is of the opinion and finds that:

(1) Millennium 2000, Inc. filed an Application on June 5, 2012, requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;

(2) on April 10, 2013, Applicant filed an amended application requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;

(3) Applicant was previously certificated by the Commission in Docket 07-0273 to provide resold local and interexchange service in Illinois, in Docket 08-0454 to provide wireline ETC Lifeline service in Illinois, and in Docket 10-0477 to provide commercial mobile radio service in Illinois, and as such is a telecommunications carrier in Illinois pursuant to Section 13-202 of the Act (220 ILCS 5/13-202);

(4) the Commission has jurisdiction of the parties and of the subject matter herein;

(5) the Commission finds that Applicant has identified its intended service area for ETC designation;

(6) the Commission finds that Applicant has failed to demonstrate that it has the ability to provide service throughout its requested service area;

(7) the Commission finds that Applicant has demonstrated its ability to advertise throughout its requested service area;

(8) the Commission finds that Applicant has failed to demonstrate it has the financial and technical capability to provide service in its requested service area;

(9) the Commission finds that Applicant has failed to demonstrate its ability to remain functional in emergency situations;

(10) the Commission finds that Applicant has failed to demonstrate its ability to satisfy applicable consumer protection and service quality standards;

(11) the Commission finds that Applicant has failed to demonstrate the ability to reimburse the full amount of federal support for its Lifeline customers;

(12) the Commission finds that Applicant has failed to demonstrate that a grant of the requested wireless ETC Lifeline designation would be in the public interest;

(13) the Commission finds that the evidence in the record is insufficient to support the requested wireless ETC Lifeline designation;

(14) the amended application should be denied.

IT IS THEREFORE ORDERED that Millennium 2000, Inc.'s Application to be designated as a wireless Eligible Telecommunications Carrier for the purpose of receiving federal low-income Lifeline Universal Service support in all of Illinois Bell Telephone Company's non-rural service areas is denied.

IT IS FURTHER ORDERED that any motions, petitions, objections or other matters in this proceeding that remain outstanding are hereby disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Entered this 14th day of January, 2015.

BY ORDER OF THE COMMISSION