

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

MILLENNIUM 2000 INC. APPLICATION FOR REHEARING

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Public Version

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Pursuant to section 10-113 of the Public Utilities Act (the “Act”) and section 200.880 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”) Millennium 2000, Inc. (“Millennium 2000”) submits its Application for Rehearing (“Application”) of the order issued in the above captioned docket entered on January 14, 2015 and served on January 15, 2015. (“the Order”).

I. INTRODUCTION

After more than two years of discovery, testimony and briefing, the Administrative Law Judge issued a proposed order (“ALJPO”) recommending approval of the application of Millennium 2000 for designation as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving Universal Service Support for wireless services pursuant to Section 214(e)(2) of the Federal Telecommunications Act of 1996 (“the 1996 Telecom Act”). The ALJPO found that Millennium 2000 met each of the requirements under the 1996 Telecom Act

and Section 54.201(d) of the Rules of the Federal Communication Commission (“FCC”), 47 C.F.R. §54.201.

The Administrative Law Judge stated in a memorandum to the Commission, "None of the issues raised by Staff were considered to be, either individually or collectively, sufficient to deny the application." Memorandum to the Commission from John T. Riley, Administrative Law Judge, Dated January 6, 2015. ("ALJ Memorandum"). Eleven days later, the Commission issued an Order that found the opposite: that the issues raised by the Staff justified denial of the application.

In its zeal to find as many reasons as possible to deny the application, the Order appears to suggest that the owner of Millennium 2000 submitted evidence that would amount to lying and criminal conduct, without even a hint of evidence to support those charges. In the face of those unsupported accusations, nowhere in the Order does the Commission acknowledge that Millennium 2000 has provided telecommunications service to thousands of customers since 2009 and has never been the subject of a complaint before this Commission or the FCC.

On a legal level, there are numerous reasons the Commission committed reversible error. The majority of findings of noncompliance - thirteen improper citations - rely on stricken Commission Staff testimony. The remaining findings of noncompliance are either factually wrong, based on regulatory lapses (that have since been corrected) that were found to not impact the Company's ability to provide wireless Lifeline services, or are based upon the Commission Staff's misguided and illegal attempt to micromanage the operations of new (but not existing) ETCs.

On a policy level, the Commission should consider the implications of adopting the Commission Staff's various recommendations supposedly designed to prevent waste, fraud and abuse. Especially troublesome is the requirement that at least 20 percent of an ETC's customers must be non-Lifeline customers. Much of this brief discusses the legal and factual deficiency with this micromanagement of wireless providers' operations. The Commission Staff's pursuit of its recommendations has already driven low income focused companies such as Millennium 2000 out of Illinois and is leaving the provision of Lifeline service to national, mass-market, wireless carriers that consider their Lifeline service to be a side business.

Since the Commission granted ETC designation of Cricket Communications¹ (now owned by AT&T) there have been thirteen ETC designation requests that have either been voluntarily withdrawn or have been continued generally.² There is one active pending ETC designation request - that of Virgin Mobile (owned by Sprint). The only ETC designation request that has been granted since the Cricket order is that of American Broadband and Telecommunications Company by stipulation.³ The continued operation of that company in Illinois is now in doubt after the Commission denied its request for a waiver of the 20 percent rule that had been part of its stipulation with the Staff.⁴ In summary, in the last three years, the Commission has approved the ETC designation of an AT&T subsidiary, may approve the

¹ *Cricket Communications, Inc., Application for Designation as an Eligible Telecommunications Carrier*. Docket No. 10-0453, Order July 11, 2012.

² See Attachment 1 to this Petition for Rehearing for a list of cases and their disposition..

³ *American Broadband and Telecommunications Company, Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier*, Docket No. 12-0680 (final order granting ETC entered February 5, 2014).

⁴ *American Broadband and Telecommunications Company, Petition for a Partial Waiver of the Agreed Joint Stipulation as a Condition of ETC Designation*, Docket No. 14-0432, Order Jan. 14, 2015.

designation of a Sprint subsidiary and by enforcing the 20% rule may be driving away the only non nationwide mass market wireless company whose ETC application it has granted. The status of wireless ETC designations in Illinois cries out for a rulemaking that can allow the Commission to hear from all stakeholders and determine if it wants universal service to be left in the hands of large multistate mass market wireless companies and if not, adopt rules consistent with federal requirements that broaden the base of Lifeline providers.

If only large, multistate wireless providers provide wireless lifeline service in Illinois, universal service will suffer. Those companies' minimal marketing to the low income community and failure to offer services targeted to that market will result in Illinois falling behind the rest of the country in establishing universal telecommunications service and access to broadband data.

On a moral level, the Commission should apologize to Millennium 2000's owner, Ms. Donna Harrison, for the false, unsupported, accusations of lying and criminal conduct made in the Order. By demanding that at least 20% of Millennium 2000's wireless customers be non-Lifeline customers, the Commission has demonstrated an explicit bias against companies that specialize in providing Lifeline service to the low income community. That bias carried over into the rest of the Order, where the Commission refused to accept the veracity of the unrebutted testimony of Ms. Harrison and for the flimsiest of reasons, found that Millennium 2000 will be unable to comply with the most basic tasks of a Lifeline provider.

In light of the various legal and procedural errors described below, the proper relief is for this Commission to issue the ALJ's Proposed Order – an order based upon a balanced and complete review of the record evidence – as the Final Order in this proceeding.

II. THE ORDER RELIES ON EVIDENCE THAT WAS NOT ADMITTED INTO THE RECORD.

The following sections of the Order rely extensively or exclusively on the stricken Rebuttal Testimony of Staff witness Dr. James Zolnierek, identified in the Order as Staff Ex. 2.0⁵:

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

V.D Emergency Functionality

V.E Service Quality and Customer Protection

V.G Public Interest Analysis

Dr. Zolnierek 's rebuttal testimony is not part of the record because after considering the arguments of the parties, the Administrative Law Judge denied the motion of the Commission Staff for leave to file that testimony. (Transcript, Oct. 22, p. 88.) The Staff did not challenge that decision. The Commission cannot retroactively reverse the ALJ's ruling because Millennium 2000 would be denied the right to conduct discovery and cross examine Dr. Zolnierek on that testimony. Moreover, Staff agreed in its motion to file Dr. Zolnierek's rebuttal testimony that if its motion was granted, then Millennium 2000 would have the right to submit reply testimony.⁶ Indeed, Millennium 2000 strongly disagrees with the facts and conclusions reached by Dr. Zolnierek and would have provided a strong response to that testimony if the Staff's motion had been granted. Additionally, that testimony is now obsolete because after it was offered on October 18, 2013, the Staff and Millennium conducted additional discovery. They then placed the responses (Group 3,0 exhibits) each thought to be relevant into the record and their briefs

⁵ There is a Staff Ex. 2.0 properly in the record, but that is merely Dr. Zolnierek 's affidavit verifying his direct testimony and is not the document relied upon in the Order.

⁶ Staff of the Illinois Commerce Commission Motion for Leave to File Instanter, ¶ 9.

reflected that updated information that. Thus, there is no need to reopen the record to revisit Dr. Zolnierek's stricken testimony because it has been superseded by later filed evidence.

The fact that the Order relied on testimony that is not in the record is deeply disturbing. Obviously, the Commission searched through the record for evidence to support its conclusion and found Dr. Zolnierek's rebuttal testimony on E-Docket as an exhibit attached to the Staff's motion. The Commission then failed to determine if the Commission Staff's motion had been granted. The fact that the Staff's Motion was denied should have been obvious to anyone reviewing the record because the briefs of Millennium 2000 and the Commission Staff contain no references to that stricken testimony. The disregard of the parties' briefs and the reliance on testimony not admitted into the record raises serious questions about the integrity of the Commission's deliberations in this proceeding. The ALJPO approved the application based on a review of the totality of the record evidence developed over two years. By contrast, the Order denied the application based upon a stricken Staff filing and without even understanding the arguments of its own Staff, let alone those of Millennium 2000. This process is irrevocably tainted by the fact that Dr. Zolnierek's rebuttal testimony was reviewed by the Commissioners and their assistants and adjudicated to be important enough to be repeatedly recited in the Order. Yet Millennium 2000 cannot address Dr. Zolnierek's arguments in this Petition for Rehearing because it had no opportunity to develop contrary evidence through discovery, cross examination of Dr. Zolnierek and submission of Millennium 2000 rebuttal testimony. The only way for the Commission to remove this taint is to adopt the ALJPO.

In summary, the Commission has committed reversible error because the findings based upon Dr. Zolnierek 's Rebuttal Testimony are not supported by substantial evidence. Moreover, the fact that the Commission considered that testimony violates the administrative process

established in the Public Utilities Act and the Commission's Rules of Practice and denies Millennium 2000 its due process rights.⁷

III. THE REQUIREMENT FOR 20% NON-LIFELINE CUSTOMERS IS CONTRARY TO LAW, NOT SUPPORTED BY THE EVIDENCE AND IS IMPROPER MICROMANAGEMENT OF ETC BUSINESSES.

The 20% rule adopted by the Commission is inconsistent with FCC orders and regulations, violates the Federal Communications Act, is contrary to public policy, is not supported by the evidence and is also improper micromanaging the business of wireless ETCs. On top of all of these deficiencies, it is a completely ineffective method of achieving its stated goal of ensuring the pass through of Lifeline funds.

The Commission accepted its Staff's recommendation that Millennium 2000 did not prove that it has the financial ability to provide ETC service because it will "critically rely" on Lifeline subsidies unless at least 20% of its wireless customers do not receive Lifeline subsidies. Initially, it is crucial to understand that the Staff's "critically rely" standard is allegedly based on

⁷ "The court shall reverse a Commission rule, regulation, order or decision, in whole or in part, if it finds that:

A. The findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission for and against such rule, regulation, order or decision; or

...

D. The proceedings or manner by which the Commission considered and decided its rule, regulation, order or decision were in violation of the State or federal constitution or laws, to the prejudice of the appellant."

§ 220 ILCS 5/10-201(e)(5)

the Lifeline Reform Order, but that is not the FCC's standard.⁸ At paragraph 388 of the *Lifeline Reform Order* the standard incorrectly referenced by the Staff actually states "whether the applicant intends to rely *exclusively* on USF disbursements to operate".⁹ Thus, the Order is perpetuating the Staff's misapplication of the *Lifeline Reform Order*. Importantly, the ALJPO did not make this same mistake.

According to the Commission, maintaining this ratio 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." Order, p. 39. The Commission added that it would enforce this rule by requiring Millennium 2000 to cease enrolling ETC customers if the ratio falls below 20% for any three consecutive months and it would need Commission approval in order to resume wireless Lifeline service. *Id.* The Commission then stated:

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.)

Id.

The 20% Rule violates the FCC's *Lifeline Reform Order*, which limits the extent to which state commissions can impose requirements on the provision of Lifeline services beyond those adopted by the FCC:

State communications may include additional qualifying eligibility criteria and imposes additional certification requirements that they believe are necessary to ensure that ETCs are using support consistent with the statute and regulations, ***so long as those additional reporting requirements do not create burdens that***

⁸ See Staff Initial Brief at 30-31.

⁹ Lifeline Reform Order at ¶388 (emphasis added).

*thwart achievement of the objectives of our universal service policies and regulations, . . . or otherwise conflict with federal law.*¹⁰

Importantly, the Staff **agreed** that the Commission's ability to impose requirements on prospective ETCs is limited. In its response to Millennium 2000's Motion to Strike a portion of the direct testimony of Dr. Zolnierek, the Staff agreed with the statement of the FCC in its original ETC Order that "states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."¹¹

The 20% rule violates every element of the FCC directive that state commissions can only regulate "other terms and conditions" of CMRS if (1) they are "generally applicable"; (2) they are "competitively neutral"; (3) they "do not regulate rates or entry"; and (4) they "are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service". First, the 20% rule is not generally applicable because it is not being applied to all providers of wireless ETC services in Illinois.¹² Second, it is obviously not competitively neutral because only new ETCs would be regulated in this manner.¹³ Third, it does not merely regulate entry, it **mandates** Millennium 2000 to enter the non-Lifeline wireless market and then design and price its services and conduct its advertising in such a way so that it maintains at least

¹⁰ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. Nos. 11-42, 03-109, 96-45, 12- 23, 27 FCC Rcd. 6656 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*"), ¶ 61 (emphasis added)

¹¹ Staff Response to Motion to Strike at p. 8 (citing *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, ¶31 (March 17, 2005)).

¹² Section III.C. of this Application for Rehearing.

¹³ *Id.*

a 20% ratio of non-Lifeline customers.¹⁴ Fourth, the 20% rule is not applicable to all ETCs because it does not apply to existing ETCs.¹⁵ Additionally, by eliminating ETC providers that wish to specialize in providing service to low income community, the rule is contrary sections 214 and 254 of the Act because it neither preserves nor advances universal service.¹⁶

As described below, the 20% rule creates an insurmountable barrier to any company such as Millennium 2000 that specializes in providing service to the low income community. This is contrary to the public interest. Millennium 2000 witness Dr. August Ankum stated that the Commission should "welcome more specialization from carriers that know what they are doing, and are willing to stake their business success on it."¹⁷ By imposing the 20% rule, however, the Commission is depriving Illinois and its citizens of the advantages such specialists could bring to this state.

One result of the Commission Staff's delay in processing this proceeding and its opposition to any company that wishes to specialize in providing service to the low income community, is that Millennium 2000 has been forced to adjust its business model and enter the Wisconsin market. The Wisconsin Public Service Commission of Wisconsin timely approved its wireless ETC designation and it has begun providing Lifeline service to Wisconsin residents. Meanwhile, because 96% of ETC customers use wireless service¹⁸ and Millennium 2000 is not authorized to provide that service as a Universal Service supported service in Illinois, its customer base has dwindled. This has forced Millennium 2000 to reduce its Illinois staff. In other words, the Commission is literally driving a Chicago based company out of the state, and

¹⁴ Section III.F. of this Application for Rehearing

¹⁵ Section III.C. of this Application for Rehearing

¹⁶ Section III.D and F. of this Application for Rehearing

¹⁷ Millennium 2000, Ex. 2.0, p. 20.

¹⁸ Millennium 2000, Ex. 1.0R at lines 88-135.

leaving Illinois' low income customers to the mercy of large mass-market wireless companies that have no interest in tailoring their services or marketing to serve a low-income community such as the inner city of Chicago.

A. Millennium 2000 Meets the Elements Required by the FCC For Determining Financial Ability.

Initially, it should be noted that Millennium 2000 undeniably meets the elements demonstrating financial and technical fitness that the FCC requires Commissions to consider. In the *Lifeline Reform Order*, the FCC set forth several factors that should be considered:

Among the relevant considerations for such a [financial and technical] showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to *rely exclusively* on USF disbursements to operate, whether the applicant receives or will receive *revenue from other sources*, and whether it has been subject to enforcement action or ETC revocation proceedings in any states. (emphasis added, footnote omitted).¹⁹

Ms. Harrison testified that Millennium 2000 meets each of those elements.

- Millennium 2000 has provided non-Lifeline wireline service to Illinois customers since 2009.²⁰ In December 2011 it began testing billing and provisioning software by providing free wireless service to 538 customers and then had a full roll-out of paid wireless services in April 2013. *Id.* at 46-8.
- Millennium 2000 has been in business in Illinois since 2007. *Id.* at 42.
- Millennium 2000 does not rely exclusively on USF disbursements to operate. It offers prepaid local, local and toll, long distance and wireless services to all consumers who apply, Lifeline or traditional, regardless of past credit history. *Id.* Moreover, the description of the optional services that will be made available to ETC customers demonstrates that the company intends to generate significant non subsidized revenue from its ETC customers, such as (begin proprietary) ***** (end proprietary). *Id.* at 63-64 (proprietary)

¹⁹ *Lifeline Reform Order*, ¶ 388

²⁰ Millennium 2000, Ex. 1.0R, p. 41.

- Millennium 2000 receives revenue from other sources. See previous item.
- Millennium 2000 has not been subject to enforcement action or ETC revocation proceedings in any state. *Id.* at 42.

There is nothing in the record that disputes any of these facts. Thus, Millennium 2000 undeniably meets the standard set out by the FCC. The only reason the Commission was able to find otherwise was to adopt its 20% rule, which has virtually no relationship to the FCC's standards. Moreover, the 20% rule violates Federal law, frustrates the purposes of the Act and has no basis in either the record or common sense.

B. The 20% Rule Is Contrary to the FCC's Standard For Wireless ETC Approval.

As shown above, the FCC directed state commissions to ask two questions: does the applicant intend to rely exclusively on USF disbursements and does it have and will it have other sources of revenue?²¹ The Commission has taken two steps to go well beyond the FCC standards. First, it decided that instead of considering whether a carrier is "exclusively" relying on USF disbursements as required by the FCC, it will look at whether a carrier "critically" relies on USF disbursements. Order, p. 38-39. This is an error that was not made by the ALJPO. Millennium 2000 is the perfect example of why this distinction is important and why the Commission's modification of the FCC rule is improper. Millennium 2000 specializes in providing service to the low income community. By the very nature of serving the low-income community, the ETC program is crucial to its success, because without it, too few of its low income customers would be able to afford service. Millennium 2000 recognizes, however, that it cannot rely exclusively on USF disbursements. That is why it has developed a package of services to its ETC customers that provide it the opportunity to receive additional revenue

²¹ See *Lifeline Reform Order* at ¶388.

beyond USF disbursements. (See Millennium 2000 Ex. 1.0R p 63-64 (proprietary)). Thus, ETC service is the base upon which it plans to provide a wide range of subsidized and nonsubsidized services that will enable it to have a broad base of revenues.

Second, the Commission has irrationally restricted the source of the other revenue that could be considered by deciding that when the FCC said "revenue from other sources" it really meant "revenue from non-Lifeline wireless customers". In fact, even that description of the 20% rule gives the Commission too much credit because the 20% rule only looks at the relative number of *customers* instead of relative *revenues* from Lifeline and non-Lifeline wireless customers. So the 20% rule abandons any pretense of looking at "other sources of revenues" and instead only concerns itself with the ratio of Lifeline and non-Lifeline customers. Under the 20% rule, it is irrelevant that Millennium 2000 has ETC and non-ETC *wireline* customers or that it plans additional services to Lifeline wireless customers that will generate nonsubsidized revenue. The only thing the Commission cares about is whether Millennium 2000 is able to maintain at least 20% non-Lifeline customers.

There is **nothing** in the FCC order that supports the Commission's belief that the relative number of Lifeline and non-Lifeline wireless customers is a proxy for the determination of financial ability or has anything to do with preventing waste, fraud and abuse. Revenue is revenue, regardless of the source. Neither the Order nor the Staff testimony upon which it is based provides an explanation of why that simple concept is wrong when applied to determining financial capability of providing Lifeline service and passing through lifeline subsidies.

Prior to briefing, Millennium 2000 submitted a data request to the Commission Staff requesting copies of all documents, studies or analyses Dr. Zolnierok reviewed in order to

develop his 20% recommendation.²² In response, Dr. Zolnierek provided no further support other than a general reference to the FCC's requirement of a technical and financial analysis contained in paragraph 388 of the *Lifeline Reform Order*. The Staff had the opportunity to provide legal support for the recommendation of its own witness in its Initial Brief, yet there was no reference to it. Millennium 2000 provided the testimony of Dr. August Ankum on this issue.²³ Millennium 2000, at pages 25-29 of its Initial Brief described both the legal and policy deficiencies of the Staff's unsupported recommendation. The Staff subsequently filed a Reply Brief and a Brief on Exceptions and still never provided legal support for the 20% rule. Thus, the Staff had multiple opportunities to provide legal support for the recommendation of its witness, but failed to do so at each opportunity. The Commission might ask why the Staff did not take any of its opportunities to provide legal support. The answer is in the record evidence. In the Staff's Response to Millennium 2000's Motion to Strike, the Staff noted that the FCC has limited a state commission's ability to regulate ETCs beyond the FCC's rules: "states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."²⁴ As Millennium 2000 has argued throughout this case – and herein – the 20% rule does not satisfy **any** of the FCC's limitations.

The closest Staff witness Dr. Zolnierek came to justifying his recommended 20% rule was to cite to a comments made by the Indiana Regulatory Utility Commission ("IURC") and T-Mobile referenced in the *Lifeline Reform Order*. The IURC stated that "companies that have made a business case to serve certain market in a state prior to receiving Lifeline subsidies may

²² Millennium 2000 Ex. 1.0R, p. 49.

²³ See Millennium 2000 Ex. 2.0, pp. 8, 19-23.

²⁴ Staff Response to Motion to Strike, p. 8 (citing In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 05-46, ¶31 (March 17, 2005)).

be less inclined to risk being cited for non-compliance with the program. T-Mobile stated that "Lifeline ETC applicants should be required to make showings of financial and technical capability to provide supported services (including consideration of whether the carrier offers services in addition to Lifeline service) in order to be designated as Lifeline ETCs." Staff Ex. 1.0, p. 18. Millennium 2000 meets the standard articulated by the IURC and T-Mobile because it has made a business case with non-Lifeline revenue.

Given that the Commission is basing the 20% rule on what the IURC once *said*, it is instructive to see what the IURC has *done* when evaluating wireless ETC designation requests. As it turns out, the IRUC has not adopted anything remotely close to the 20% rule. Instead, that commission has followed the language of paragraph 388 of the *Lifeline Reform Order* precisely: first determining if an applicant relies exclusively on USF disbursements and then determining if it has other sources of revenue. The IURC does not inquire into whether an applicant will critically rely on USF disbursements and it does not ask if the ETC applicant has non-Lifeline wireless customers.²⁵ Millennium 2000 is not aware of *any* state that has determined that ETC

²⁵ *In the Matter of the Petition of Sage Telecommunications, LLC for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of offering Lifeline Service to Qualified Households*, Order of the Commission, Cause No. 41052 ETC 73, (Approved February 11, 2015)

In the Matter of the Petition of Tempo Telecom, LLC for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of offering Lifeline Service to Qualified Households, Order of the Commission, Cause No. 41052 ETC 70, (Approved December 18, 2013)

In the Matter of the Petition of Q Link Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of offering Lifeline Service to Qualified Households, Order of the Commission, Cause No. 41052 ETC 69, (Approved December 18, 2013)

In the Matter of the Designation of Eligible Telecommunications Carriers by the Indiana Utility Regulatory Commission Pursuant to the Telecommunications Act of 1996 and Related FCC

approval is dependent upon having at a certain percentage of non-Lifeline wireless customers. Thus, this Commission stands alone among state commissions when it claims that the provision of service to a certain percentage of non-Lifeline wireless customers is a prerequisite to obtaining ETC approval.

C. The 20% Rule Is Anticompetitive and Violates the Law.

The 20% rule violates the equal protection clause of the U.S. Constitution, the Telecommunications Act, FCC's regulations and FCC orders by (1) treating companies requesting ETC designation differently than it treats companies already designated as ETCs, and (2) prohibiting companies from specializing in the low income market. State commissions only have a limited ability to expand the FCC requirements: "states may extend *generally applicable, competitively neutral requirements that do not regulate rates or entry* and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."²⁶ The need to have generally applicable and competitively neutral requirements was repeated in the *ETC Designation Order* when it states that annual certification and reporting requirements should be "applied uniformly on all ETCs they have previously designated."²⁷

The Commission's 20% rule is not generally applicable and is not competitively neutral because it is not being applied to existing carriers that have been granted ETC designation. The

Orders and in Particular the Application of Boomerang Wireless, LLC to be so Designated, Order of the Commission, Cause No. 41052 ETC 65, (Approved May 1, 2013)

In the Matter of the Petition of American Broadband and Telecommunications Company for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of offering Lifeline Service to Qualified Households, Order of the Commission, Cause No. 41052 ETC 62, (Approved December 27, 2012)

The IURC's ETC decisions are available at <https://myweb.in.gov/IURC/eds/Guest.aspx?tabid=28>
Petition type: ETC

²⁶ *ETC Designation Order*, ¶ 31 (emphasis added)

²⁷ *Id.*, ¶ 58.

Commission is aware that the 20% rule is not competitively neutral. During the Commission's December 17, 2014 session, the Commission deliberated the request of American Broadband and Telecommunications Company ("American Broadband") to terminate the 20% rule it had agreed to in its wireless ETC designation proceeding.²⁸ The Administrative Law Judge in that case confirmed that the company was at a competitive disadvantage because it was forced to turn away wireless Lifeline customers in order to maintain ratio of at least 20% wireless non-Lifeline customers.

COMMISSIONER McCABE: Judge Riley, does the 80/20 condition where at least 20 percent of a wireless-eligible telecommunications carrier's customers must be non-lifeline customers for both American Broadband and Millennium disadvantage them compared to other wireless lifeline providers previously certified?

JUDGE RILEY: Commissioner, if I understand your question correctly, you're saying is there a competitive disadvantage.
And I think pretty much the only conclusion you can draw at this point, because it's uncontested that American Broadband did have to turn away customers.

COMMISSIONER McCABE: Had to turn away what kind of customers?

JUDGE RILEY: They had to turn away the lifeline customers.

Transcript of December 17, 2014 ICC Open Meeting, p. 53-54.

Further questioning by Commissioner McCabe showed that the existing carriers do not have the 20% requirement.

COMMISSIONER McCABE: But there's about six existing wireless lifeline providers now who do not have to meet the 80/20 requirement, correct?

JUDGE RILEY: I am sorry. I am not quite getting your question.

²⁸ *In re American Broadband and Telecommunications Company Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier*, Order, ICC Dkt. 12-0680 (rel. Feb. 5, 2014).

COMMISSIONER McCABE: There are other existing wireless lifeline companies that provide these services that do not have to meet the 80/20 rule?

JUDGE RILEY: Yes. As a matter of fact, I checked the -- my prior dockets that I prepared, and going back to 2009, there are several that do not have the delineated requirement.

Id., p. 54.

Questioning by Commissioner del Valle confirmed that the Commission Staff is applying the 20% rule to all new wireless ETC designation applications but not to existing ETCs:

COMMISSIONER del VALLE: The 80/20 is a standard that we established as a Commission by way of the stipulated agreements, right?

JUDGE RILEY: It was something that Staff devised.

COMMISSIONER del VALLE: But there are existing providers who are not being held to that standard?

JUDGE RILEY: Yes. Yes, there is.

COMMISSIONER del VALLE: At some point, will that standard be applied to those providers?

JUDGE RILEY: I don't have any way of answering that. I don't know if anything would ever be filed.

COMMISSIONER del VALLE: So, but it's applied to new applicants, right?

JUDGE RILEY: Right. Yes. About two years ago --

COMMISSIONER del VALLE: I understand the reason behind the standard. But the question raised about --

JUDGE RILEY: Prior lifeline providers are not subject to the standard.

Id. p. 56-57.

In addition to favoring existing ETCs over new ETC applicants, the 20% rule favors companies that are willing and able to serve a broad segment of the market over those companies

that wish to serve the low income community. That disparate impact violates equal protection, the Federal Act and the FCC regulations and orders.

The Order does not provide a defensible rationale for its different treatment of existing and new ETCs and wireless providers that wish to provide service to a broad base of customers and those that wish to focus on low income customers. The entirety of the Commission's defense is:

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.)

Order, p. 34-35.

None of these arguments address the anticompetitive nature of the 20% rule. It is irrelevant whether there is nothing preventing Millennium 2000 from providing CMRS service to the general public because requiring it to do so imposes an obligation on it that is not imposed on existing Lifeline providers. The term "privilege" explains nothing because one could say that about every telecommunications, gas, electric, water and transportation certification requested of this Commission. As with those certifications, applications for ETC designation must meet the applicable requirements. Here, the Commission has adopted a standard that is inconsistent with Federal requirements. Finally, the Commission's citation to ¶ 383 of the Lifeline Report Order is a curious choice because that paragraph of the order addresses the new rules for forbearance of the facilities requirement - a rule Millennium met when the FCC approved its Compliance Plan. In any event, there is nothing in the *Lifeline Reform Order* that authorizes different treatment of

ETCs. Thus, the mandate in the ETC Designation Order that “states may extend *generally applicable, competitively neutral requirements that do not regulate rates or entry* and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.”²⁹ is still the law. The record evidence is clear that the 20% rule violates every element of that mandate.

D. Compliance With the 20% Rule Would Require Millennium 2000 To Violate Federal Law.

Inherent in the 20% rule is the requirement that Millennium 2000 violate federal law in order to continue to comply with that rule. The Commission found that in the event that the percentage of its non-Lifeline customers falls below 20% for a three month period, then Millennium 2000 must stop enrolling eligible Lifeline customers until its ratio of non-Lifeline customers rises above 20% and even then, it must wait for Commission authorization in order to resume enrollment. Order, p. 39. That requirement violates Federal law that an ETC must make its Lifeline services available to all eligible Lifeline applicants throughout its ETC service area. Section 214(e)(1)(A) of the Act, 47 U.S.C. § 214(e)(1)(A), states that “A common carrier designated as an eligible telecommunications carrier under paragraph (2) ... shall, throughout the service area for which the designation is received, offer the services that are supported by the Federal universal service support mechanism under section 254(c) of the Act. Section 54.201(d)(1) of the FCC’s rules, 47 C.F.R. § 54.201(d)(1), contains similar language. And, Section 54.405(a) of the FCC’s rules, 47 C.F.R. § 54.405(a), states that “All eligible telecommunications carriers must make available Lifeline service, as defined in §54.401, to qualifying low-income consumers.”

²⁹ *ETC Designation Order*, ¶ 31 (emphasis added)

The requirement that ETCs continue to offer Lifeline services to new Lifeline eligible consumers has been affirmed by the FCC: “We note that all ETCs are required to offer Lifeline services to qualifying low income consumers throughout their designated service areas.”³⁰ Repeating that mandate, the FCC has stated: "ETC providers “have an ongoing obligation to offer Lifeline service in the areas where they are designated, and carriers cannot enjoy the benefits of remaining ETCs without fulfilling the accompanying duties....”³¹

Millennium 2000 would not be able to fine tune its ratio of Lifeline and non-Lifeline customers by pulling back its advertising for ETC services because to do so would violate another section of the Federal Telecommunications Act. Section 214(e)(1)(B) of the Act provides that

A common carrier designated as an eligible telecommunications carrier under paragraph (2) ... shall, throughout the service area for which the designation is received, advertise the availability of such services and the charges therefore using media of general distribution....³²

The FCC regulations repeat that requirement:

A Common carrier designated as a eligible telecommunications carrier under this section ... shall, throughout the service for which the designation is received, advertise the availability of such services and the charges therefore using media of general distribution.³³

The FCC regulations add: "All eligible telecommunications carriers must ... publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to

³⁰ *In re Matter of Connect America Fund ETC Annual Reports and Certifications, Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. Nos. 10-90, 14-58, 29 FCC Rcd. 8769, 49 fn. 86 (rel. Jul. 14, 2014)

³¹ *In re Matter of Lifeline and Link Up Reform and Modernization*, Order, 27 FCC Rcd. 14946, 14956, ¶13 (rel. Nov. 30, 2012).

³² 47 U.S.C. §214(e)(1)(B)

³³ 47 C.F.R. § 54.201(d)(2)

qualify for the service.”³⁴ In summary, the Commission has no authority to override federal law and order Lifelines to stop enrolling eligible Lifeline customers or stop advertising their wireless Lifeline services.

The Commission should also consider the customer confusion and resulting complaints it will receive if ETCs must reject eligible customers because they are approaching or have fallen short of the requirement that they have at least 20% non-Lifeline customers. Potential customers may think that they are being rejected by Millennium 2000 because of they are not eligible for Lifeline subsidies and may therefore not attempt to obtain service from another carrier. This would inhibit Illinois from achieving universal service. Alternatively, customers may initiate complaints with the Commission for denials of service. Neither result is in the public interest.

E. Imposing the 20% Rule In this Proceeding Violates the Administrative Procedures Act.

The Commission may wish to argue that its 20% rule is not really a rule but rather a special requirement imposed on Millennium 2000 based on the record in this case. Such an argument ignores the language of the Order and the recommendation of its Staff in other wireless ETC designation proceedings.

The Commission admitted in the Order that it was establishing a rule applicable to all carriers. Although it has issued two wireless ETC designation orders since the FCC issued the *Lifeline Reform Order*, the Commission noted that the first was issued shortly after the *Lifeline Reform Order* and the second was a settlement. Thus, stated the Commission: "The instant

³⁴ 47 C.F.R. § 54.405(b)

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*." Order, p. 34.³⁵

The Staff also made it clear that it considers the 20% rule to be applicable to all new ETC requests. Dr. Zolnierek did not recommend the 20% rule as a necessary requirement based on the record in Millennium 2000's case. Rather, he spent the first 28 pages of his testimony explaining why the new tests he was proposing for all new wireless ETC designation applications were appropriate. The 20% rule was in response to a question indicating his desire to apply that test to all new ETC applications. "Q. What criteria should the Commission use to evaluate financial capabilities *when designating carriers as Lifeline ETCs*?"³⁶

Other tests proposed by Dr. Zolnierek demonstrate that his recommendations are clearly directed at all ETC applications:

"Q. What criteria should the Commission use to evaluate technical capabilities *when designating carriers as Lifeline ETCs*?"³⁷

"Q. Are there any other criteria the Commission should consider or *requirements a carrier should comply with* in order for its ETC designation to be consistent with the public interest, convenience and necessity?"³⁸

As stated by the Administrative Law Judge during the Commission's December 17, 2014 open meeting, the 20% rule is a recommendation that the Staff has been making since

³⁵ Contrary to the Order's reasoning, the Commission's first opportunity to consider the modification in standards necessitated by the *Lifeline Reform Order* was in its *Cricket* Order, which was issued on July 11, 2012, more than five months after the issuance of the *Lifeline Reform Order* on February 6, 2012. The Commission took that opportunity and incorporated the new requirements in its Order: "Consistent with past Commission rulings, the Commission finds that it will use the guidelines from the FCC's ETC Designation Order, as amended by the *Lifeline Reform Order* where applicable, as the general framework and minimal requirements for considering the ETC designation requested by Cricket and for establishing whether Cricket's application is in the public interest." *Cricket* Order, p. 9.

³⁶ Staff Ex. 1.0, p. 18. (emphasis added).

³⁷ *Id.* p. 20 (emphasis added).

³⁸ *Id.* p. 25 (emphasis added).

"about two years ago".³⁹ Millennium 2000 just happens to be the first case to come before the Commission with those recommendations.

Finally, neither the Staff in its testimony and briefs nor the Commission in its Order attempt to explain what it is about Millennium 2000 that necessitates that it maintain a ratio of 20% non-Lifeline wireless customers. If this is supposed to be a requirement based on the record, then there is no record to support it.

The Staff is attempting and the Commission has allowed here, the imposition of generally applicable rules through this single docket. That process violates the Illinois Administrative Procedure Act ("APA"). Section 1-70 of the Illinois Administrative Procedure Act defines "rule" as follows:

"Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms...

5 ILCS 100/1-70. Given that the Staff is making the same recommendation in every pending wireless ETC designation proceeding regardless of the evidence and this Commission announced its intention to treat this case as its first opportunity to create new standards since the issuance of the FCC's *Lifeline Reform Order*, the 20% rule is clearly intended to be generally applicable. None of the exceptions in the APA apply here.

The purpose of the requirement that rules be adopted, rather than *ad hoc* policy statements, is to ensure that rules are applied in a competitively neutral manner.⁴⁰ The Commission's adoption of the Staff's 20% rule is an illegal attempt to circumvent the rulemaking

³⁹ *Transcript of December 17, 2014 ICC Open Meeting*, p. 54.

⁴⁰ *See, e.g., U.S. v. Utesch*, 596 F.3d 302, 307(6th Cir. 2010) (APA rulemaking requirements "ensure fair treatment for persons to be affected by regulations.")

process.⁴¹ If the Commission believes that the 20% rule proposed by the Staff in every single pending ETC proceeding is appropriate, then it should initiate a rulemaking and allow all interested parties, including existing and potential ETC providers and their customers, to comment on that proposal.

F. The 20% Rule Is Not Consistent With the Public Interest Test And Violates the Prohibition Against Regulating CMRS .

The Commission may claim that the 20% rule is necessary to ensure that approving the ETC designation of Millennium 2000 is in the public interest. However, such an argument would be inconsistent with the FCC orders. In the *ETC Designation Order*, the FCC stated that the public interest benefits of a particular ETC designation must be analyzed in a manner: (1) consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; (2) while ensuring the availability of quality telecommunications services at just, reasonable and affordable rates; and (3) promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.⁴²

The 20% rule will inhibit attainment of universal service by precluding companies that specialize in serving the low income community and leaving those customers to the mercy of wireless carriers that may have little interest in serving that market. By reducing competition for low income customers, the 20% rule will decrease the availability of quality telecommunications services at just, reasonable and affordable rates. Finally, broadband is becoming increasingly

⁴¹ See, e.g., *Illinois Telephone Ass'n Petition for an order amending General order 160, Revised*, ICC Dkt. No. 83-0017 (rel. Sept. 26, 1984) "State agencies [are] not permitted to circumvent or be subject to less stringent requirements than those included in the Illinois Administrative Procedure Act by characterizing agency policies as 'interpretive rules,' 'guidelines,' or 'advisory' in nature".

⁴² *Id.* at ¶ 40.

necessary in our society and the 20% rule prohibits entry into the Illinois market by low income specialists such as Millennium 2000 that could address that need.

The FCC also stated that Section 214(e)(2) of the Act “demonstrates Congress’ intent that state commissions evaluate local factual situations in ETC cases and to exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, *as long as such determinations are consistent with federal and other state law.*”⁴³ The 20% rule violates federal and Illinois law. Section 332(c)(3)(A) of the Federal Telecommunications Act prohibits states from regulating the entry or the rates charged by any provider of CMRS service or any private mobile service: “no State or local government shall have any authority to regulate the entry of the rates charged by any commercial mobile service or any private mobile service.” 47 U.S.C. § 332(c)(3)(A). As noted by the Court in *WWC Holding*, “the Act establishes a detailed regulatory scheme for commercial mobile services, with primary jurisdiction given to the FCC, but expressly permits states to regulate non-rate and non-entry aspects of mobile services.”⁴⁴

Similarly Section 13-804 of the Illinois Public Utilities Act provides the Commission with authority to certify wireless carriers and certify ETCs. It cannot, however, regulate the “rates, terms, conditions, quality of service, availability, classification, or any other aspect of service” of wireless carriers unless “expressly permitted by and consistent with federal law, the regulations of the Federal Communications Commission, [and relevant provisions of the PUA].”

The 20% rule goes far beyond the Commission's authority by *requiring* Millennium 2000 to enter the non-Lifeline wireless market. Moreover, the Commission is not merely requiring Millennium 2000 to enter the non-Lifeline wireless market; it is indirectly forcing Millennium 2000 to design its service offerings, rates and marketing for its Lifeline and non-Lifeline services

⁴³ *Id.* at ¶ 61 (emphasis added).

⁴⁴ *WWC Holding Co., Inc. v. Sopkin*, 488 F.3d 1262, 1274 (10th Cir. 2007).

in such a way that it always maintains at least 20% non-Lifeline wireless customers. Then, if its ratio falls below 20% it must stop enrolling Lifeline customers. Such micromanagement of the company's business is exactly what the Federal Act prohibits. The Commission cannot bypass the federal and PUA prohibition against regulating wireless services by claiming it is not directly establishing Millennium 2000's wireless rates and services. Requiring Millennium 2000 to maintain at least 20% wireless non-Lifeline customers, even though the company's business is the provision of service to the low income community, is such an onerous requirement that it is a barrier to entry into the Lifeline market.⁴⁵

G. The 20% Rule Fails to Advance any Proper Policy Goal.

The following is the entirety of the Commission's theory behind the 20% rule:

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.

Order, p. 39.

That statement makes no sense. The IRS would certainly be amused by the theory that solvent individuals and companies are unlikely to cheat on their taxes. In fact, one could easily argue that the Commission has it backwards. The more a company relies on revenues from the Lifeline program, the less likely it is that it will endanger its business by engaging in waste fraud and abuse because to do so risk the imposition of crippling Federal and State penalties that a more diversified company could absorb.

⁴⁵ *Id.* 488 F.3d at 1272. The state commission's regulations will be preempted under Section 332(c)(3)(A) of the Act if the carrier “demonstrate[s] that a state’s requirements effectively regulate rates or are so onerous as to constitute a barrier to entry.”

The Commission's theory also assumes that serving at least 20% non-Lifeline customers enhances solvency. There is nothing in the record or in the real world to support that theory. In fact, a company such as Millennium 2000, whose owner has ties to the low income community and thus focuses its effort on that community, may find it difficult to market to higher income customers and maintain at least 20% non-Lifeline customers without offering services at a price that provides little if any profit margin. Thus, the 20% rule is counterproductive if one accepts the completely unsupported theory that solvency decreases the incentive to break the law.

Finally, the 20% rule ineffectively addresses waste, fraud and abuse when there are already established alternative means of directly addressing that issue. While the Order repeatedly uses the phrase "waste, fraud and abuse" it never accepts the simple fact that the way to prevent waste, fraud and abuse is to ensure that new and existing customers are qualified to receive Lifeline subsidies. That is a task that Millennium 2000 has already undertaken. Non-facilities based wireless providers such as Millennium 2000 face a large hurdle to obtain FCC forbearance of the facilities requirement: the need to obtain FCC approval of their Compliance Plan. Millennium 2000 submitted a Compliance Plan with the FCC that demonstrates the procedures it has in place to ensure that applicants are entitled to Lifeline service, (for example, meet income criteria and are not receiving Lifeline subsidies from another carrier) and that they continue to be eligible for Lifeline subsidies. The FCC approved Millennium 2000's Compliance Plan on December 26, 2012.⁴⁶ Ms. Harrison spent 16 pages of her direct testimony describing the processes Millennium 2000 has committed to following in order to ensure that its customers are entitled to Lifeline subsidies. Millennium 2000 Ex. 1.0R, p. 16-30.

⁴⁶ Millennium 2000 Group Ex. 3, 3.10 (M2000 Compliance Plan); DA 12-2063 Release Date: December 26, 2012 (FCC Public Notice approving Millennium 2000 Compliance Plan).

The Staff and the Commission have completely ignored Millennium 2000's Compliance Plan, with the Staff making no criticisms or suggestions for improvement. Instead of reviewing Millennium 2000's FCC-approved *procedures* for the prevention of waste, fraud and abuse, the Staff created, and the Commission adopted the 20% rule in a misguided attempt to reduce the *incentive* to allow customers to engage in waste, fraud and abuse. Thus, the Commission bases the prevention of waste, fraud and abuse on its unproven theory of criminal behavior incentives instead of looking at the real actions being taken to prevent it.

Finally, the Order attempts to hide the Staff's motivation behind the 20% rule. The Commission deleted two portions of the ALJPO that described the position of the Staff. Summarizing the position taken by the Staff in this case, the ALJPO stated:

Also, the Commission's resources required to ensure compliance will increase with each additional designation. Unconstrained growth of the program will also jeopardize universal service by increasing the contribution burden on consumers and business, thereby discouraging adoption and use of communication services.

...

[A showing that a Lifeline offering represents a meaningful increase in consumer choice and would therefore result in benefits of such choice] necessarily entails that the Lifeline offering is, from a consumer's view, substantively different from offerings currently on the market, including traditional and non-traditional offerings, and there is a reasonable expectation of nontrivial demand for wireless Lifeline offerings. ..

ALJPO, p. 9.

Even though the Staff did not object to that summary of its position in its Brief on Exceptions, the Commission struck all but the bracketed portions. This was highly unusual in this Order because, although the Commission made significant changes to the Commission Analysis and Conclusions section of the ALJPO, it only deleted references to confidential materials and made minor grammatical changes to the sections describing

the parties' positions. Of the almost 30 pages of summary of the parties' positions, only these paragraphs were deleted.

This stricken description of the Staff position demonstrates the Staff's distaste for expanding universal service through the wireless Lifeline service and its desire to find ways to minimize the number of Lifeline providers *and customers*. Its 20% rule is one way because it automatically eliminates all companies that wish to focus on the low income market. The goal of reducing Lifeline providers and customers may serve the Staff's purposes, but it does not serve the people of the State of Illinois.

H. The 20% Rule Micromanages Telecommunications Carriers' Services.

By adopting the 20% rule, the Commission is turning back the clock on its history of allowing the marketplace to determine services, marketing and prices. Through this order, the Commission has intruded into the most basic function of any business: the services it wishes to offer and the customers it wishes to attract. Rather than allow Millennium 2000 to choose to focus its attention on the low income community, the Commission is forcing it to provide service to a minimum percentage of non-Lifeline customers. Millennium 2000 could only do so if it tailors its marketing, prices and service offerings to Lifeline and non-Lifeline customers in a manner that ensures that it maintains the prescribed ratio. If its non-Lifeline ratio falls below 20%, the Commission would require it to stop enrolling Lifeline customers and come back to the Commission to obtain permission to begin enrolling Lifeline customers.

The effect of the 20% rule is to prohibit companies from specializing in providing service to the low income community. As Dr. Ankum summarized:

preventing companies to specialize is as wrong as a federal law requiring (assuming for sake of argument it had the authority to do so) that FedEx cannot specialize in overnight and express mail, or a hospital cannot specialize in, say,

eye-care. Staff's approach is topsy-turvy in that we generally put a premium on companies that specialize, because it suggests that they are good at what they do.⁴⁷

Dr. Ankum added that a company specializing in the provision of Lifeline service can further the universal service goals of the Act:

Marketing to and serving low income residents in often distressed neighborhoods requires a specialized approach, which is very different from the marketing practices of the large wireless carriers, such as Verizon and AT&T. Companies that specialize in Lifeline services often develop specific marketing strategies that focus on going into lower-income neighborhoods, and to deliberately seek out low-income residents that deserve Lifeline service. Also, they tend to provide low cost handsets that further lower the start-up costs of wireless service for low-income residents.⁴⁸

The intrusive regulation embodied in the 20% rule is contrary to everything this Commission has done in the field of regulation, where it has historically been a leader in encouraging the marketplace to take the place of regulation.

I. Millennium 2000 Meets the 20% Rule.

As can be seen from the above portions of Section III of this Application for Rehearing, Millennium 2000 strongly believes that the 20% rule is wrong for a host of reasons. Nevertheless, it must point out that it meets the rule at this time and may be able to meet it in the future. In other words, even under the misguided financial standard adopted in Order, Millennium 2000 has demonstrated financial capability.

Millennium 2000 has been providing prepaid cellular service since April 2013.⁴⁹ Thus, it has a base of existing wireless non-Lifeline customers and its ratio of non-Lifeline wireless customers to Lifeline wireless customers is therefore 100%. Of course, if its application is

⁴⁷ Millennium 2000, Ex. 2.0, p. 20.

⁴⁸ *Id.* p. 18.

⁴⁹ Millennium 2000, Ex. 1.0R, pp. 46-48.

granted, that ratio will fall. Nevertheless, its business plan to offer a [BEGIN PROPRIETARY] *a 5 in 1 family plan that provides a discount for additional non-Lifeline cellular phones for family members of an Lifeline customer* [END PROPRIETARY]⁵⁰ may enable it to maintain the required 20% ratio. Millennium 2000 will certainly meet the FCC standard of not relying entirely on Lifeline revenues. Having said that, the Company still urges the Commission to not impose the 20% requirement. Like any company in a competitive business, Millennium 2000 should be allowed to set its prices, establish its services and conduct its marketing based on market conditions. It should not be forced to deviate from reacting to the law of supply and demand in order to satisfy an artificial benchmark that serves no purpose.

In summary, the Commission's decision that Millennium 2000 has not shown financial fitness because it does not meet the 20% rule is in error because it is not supported by substantial evidence. Millennium 2000 meets that standard. Having said that, the Commission should find that Millennium 2000's application should be granted because it has met the FCC standards as described in Section III.A above, and that approval should not contain the 20% rule for the reasons stated in this Sections III.B through III.G.

IV. THE FINDINGS THAT MILLENNIUM 2000 DID NOT MEET THE FEDERAL GUIDELINES ARE CONTRAY TO THE EVIDENCE.

Each of the issues where the Commission found that Millennium 2000 did not meet the requirements for designation as an ETC are in error because they are not based on substantial evidence and are a product of a procedure that denied the company due process under law.

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

⁵⁰ *Id.* at 63-64 (proprietary)

The Commission found that Millennium 2000 has adequately defined its service area, but that it did not prove that it has the ability to provide supported services throughout that area, stating: "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).)" Order, p. 35-36. That finding is not supported by the record. The first document cited by the Commission, Staff Ex. 2.0, is Dr. Zolnierek's Rebuttal Testimony which was stricken from the record. The second document cited by the Commission, Staff Ex. JZ 1.04, has been superseded by two supplemental responses to Staff data requests that did indeed provide the requested information regarding the service area covered by the contract.

This finding demonstrates the problem with relying on Dr. Zolnierek's Rebuttal Testimony to support the Commission's decision on a particular issue. Obviously, the primary error is that the Administrative Law Judge denied the Staff's motion to file that testimony, so this testimony is not in the record. This Commission finding also demonstrates that the Commission ignored the Staff's briefs when it revised the ALJPO. The issue of whether Millennium 2000's contract defined its service area was not raised by the Staff in its Brief on Exceptions to the ALJPO.

It is important to remember that Dr. Zolnierek's stricken testimony was filed on October 18, 2013. After that date, the Staff and Millennium 2000 continued to conduct discovery and update discovery responses that had been made prior to the filing of that testimony. By agreement, in lieu of cross examination, the Staff and Millennium 2000 submitted data responses into the record. (Staff Group Ex. 3 and Millennium Group Ex. 3.) Material those group exhibits addressed this issue.

Ms. Harrison testified that Millennium 2000 has an agreement with Reunion Wireless Services, LLC that allows it access to the networks of Sprint and Verizon.⁵¹ That contract is contained in Staff Group Ex. 3, Response to JZ 1.04(b). The Supplemental and Second Supplemental Responses to ZJ1.04(b) (also part of Staff Group Ex. 3) provide further information on the coverage of the Reunion contract. Ms. Harrison noted that Sprint and Verizon provide nationwide wireless coverage.⁵² Does the Commission expect Millennium 2000 to submit testimony of Sprint and Verizon witnesses verifying that those companies provide coverage throughout the Illinois Bell service territory that the company wishes to serve? Has the Commission ever expected any other company to go to such lengths to prove such a commonly understood fact? The Staff did not challenge the finding in the ALJPO that this standard was met. Without notice and opportunity for Millennium 2000 to address such a belated matter, how is it appropriate for the Commission to make this issue a determining factor in the case?

B. Technical and Financial Capability

1. Technical Capability

The Commission found that Millennium 2000 did not demonstrate that it has the technical capability of providing Lifeline service because it has no history of providing wireless service and it has failed to make several Commission reports. Order, p. 37-39. Both findings are not supported by the record evidence.

The first finding, that Millennium 2000 has not provided wireless service, is contrary to the un rebutted testimony of Ms. Harrison. She testified that beginning in December 2012, Millennium 2000 beta tested billing and provisioning software it would be using for wireless

⁵¹ Millennium 2000 Ex. 1.0R, p 32. See also Staff Group Exhibit 3.0 Response 1.04a

⁵² *Id.*

services. It did so by undertaking the costly step of provisioning 538 free handsets to its customers.⁵³ Ms. Harrison testified that the company began full rollout and billing for wireless services in April 2013.⁵⁴ These facts are undisputed. Nevertheless, the Commission relied upon irrelevant facts based upon a citation to the Staff's brief where it states that FCC reports for 2012 (that are not part of the record in this proceeding) show no Millennium 2000 wireless revenue. Order, p. 38. The Commission is misconstruing the timeline. Ms. Harrison testified that the Company did not begin charging for service until April 2013. Thus, it should be no surprise that there was no revenue in 2012.

Perhaps the Commission is influenced by the Staff's argument that it has not received documentary evidence supporting Ms. Harrison's testimony.⁵⁵ Millennium 2000 has two responses. First, Millennium 2000 had no notice that the Staff was unsatisfied with Ms. Harrison's stated verified testimony. If the Staff needed such documentation, it could have asked for, and if denied a response, filed a motion to compel. It does not allege the first and has certainly not filed such a motion. Second, the underlying theme of Staff's argument and the Commission's finding - that Ms. Harrison's verified testimony is not to be believed unless Millennium2000 also submits documents from some third party supporting her testimony - is repugnant. Very simply, Ms. Harrison testified under oath that the company has been providing unbilled wireless non-Lifeline service since December 2012, with a full roll-out of billing for those services in April 2013, and there is nothing in the record disputing that testimony.

In a second finding, the Commission references an instance in which Millennium 2000 corrected its tariff and an incomplete 730/732 report concerning its wireline services. The Order

⁵³ Millennium 2000, Ex. 1.0R, p. 46.

⁵⁴ *Id.* p. 48.

⁵⁵ Staff Reply Brief, p. 17.

refers to a more detailed discussion of the 730/732 report in Section V.E of the Order and the tariff in Section V.F of the Order, so those issues will be addressed in the discussion of those sections of the Commission's order. The Order also references a filing deficiency of a 757 report. Order, p. 38. There is no discussion of a 757 report in the Commission's Findings and Conclusions.⁵⁶

As the Company will show below in the sections addressing the Commission's findings in Sections V.E and VF of the Order, the ALJ correctly rejected these supposed compliance issue arguments as either factually wrong or insignificant filing issues common to all resellers. Regarding the 730/732 report, the ALJ noted that it was inappropriate for the Staff to hold this company to a higher standard than it holds other resellers that come before this Commission: "Such is the case with all resellers and the standard for Applicant should be no different." ALJPO, p. 37. The Commission should adopt the ALJ's findings on these issues.

2. Financial Capability

With respect to the Company's financial qualifications, the Staff propounded data requests related to the Company's financials and the Company responded to those data requests.⁵⁷ The Staff did not object to Millennium 2000 entering those exhibits into the record evidence and waived cross examination of Millennium 2000's witnesses.

⁵⁶ Presumably, the Commission is referring to the fact that Millennium 2000 was late in filing 757 reports in the first quarter of 2012. Since that time, it has filed timely reports. Order, p. 26; Millennium 2000 Ex. 1.0R at 57. The ALJPO found that these late reports were a non issue and stated: ". . .the Commission is disposed to simply admonish Applicant to be more attuned to the requirements of Section 757 and to file all current and future quarterly reports in a timely manner." ALJPO, p. 39.

⁵⁷ See Millennium 2000 Group Exhibit 3, Exhibits 3.07, 3.07a, 3.07b.

The Order's entire discussion of financial capability is based on a misapplication of the FCC's standards. First, the Commission Order has adopted a "critically dependent" standard that is **not** the FCC standard. Order at page 39. Rather, the FCC stated that one relevant consideration in determining financial fitness is "whether the applicant intends to rely exclusively on USF disbursements to operate, [and] whether the applicant receives or will receive revenue from other sources . . ." ⁵⁸

The record evidence in this proceeding has demonstrated that Millennium 2000 does not rely exclusively on USF disbursements. The Company has provided non-Lifeline wireline service in Illinois since 2009, it provides non-Lifeline CMRS in Illinois, and it provides non-Lifeline CMRS in Wisconsin. ⁵⁹ Moreover, Millennium 2000 expects to provide more non-Lifeline services in the future based upon its proposed family Lifeline plan.

With respect to the Staff's 20% rule, Millennium 2000 addressed the faulty standards used by the Commission in Section III of this brief and incorporates those arguments by reference.

The Commission should adopt the finding of the ALJPO on this issue:

Staff has presented no evidence to show or even suggest that Applicant lacks the financial resources and abilities necessary to effectively support its operations in Illinois. The Commission finds that Applicant has clearly established a financial track record during the past several years sufficient to satisfy Staff's six-month recommendation.

ALJPO, p. 37.

⁵⁸ *Lifeline Reform Order*, ¶ 388

⁵⁹ Millennium 2000 Ex. 1.0R, pp. 6, 8.

C. Emergency Functionality

Ms. Harrison testified that Millennium 2000 will provide access to emergency services to its customers, showing that they will have access to 911 and E911 even if their prepaid account has zero minutes remaining and will continue regardless of the status of the customer's account.⁶⁰ Ms. Harrison testified that Millennium 2000 would obtain either a certification from each PSAP where it plans to offer service, or a self-certification, confirming that it provides its subscribers with 911 and E911 access.⁶¹ Finally, Ms. Harrison testified that Millennium 2000 would provide only E911-compliant handsets to its Lifeline customers and replace non-compliant handsets at no charge to the customer.⁶²

Ignoring the record evidence, the Order (at page 39) finds that the Company failed to demonstrate the ability to remain functional in emergency situations as required by §202(a)(2) of the federal Act based on an argument contained in Dr. Zolnierek's stricken Rebuttal Testimony. Obviously, this finding is not based on substantial evidence because that testimony is not in the record. Nevertheless, in order to assure the Staff that Millennium 2000 met the crucial emergency services requirement, the Company submitted a supplemental response to Staff Data Requests JZ 6.09(A), consisting of a letter from the President of Reunion Wireless Services, LLC explaining the nature of the emergency services it would be providing to Millennium 2000 and ultimately, to Lifeline customers. Millennium 2000 placed that response into the record as part of its Group Ex. 3.0.⁶³ The Staff did not object to the introduction of that document into the

⁶⁰ *Id.* pp. 35-36.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Exhibit 3.17b Millennium 2000 Updated Response JZ 6.09 (a) (confidential) (12-18-13)

record. Moreover, the Staff appears to have been satisfied that Millennium 2000 met this requirement because it never addressed it in any of its briefs.

Although the Staff has waived any objection to the admissibility of the letter, which was then admitted into the evidence, and although the Staff never even briefed this issue, the Order overturns the ALJPO. The Commission notes that it refuses to consider that letter because "the facts attested to are not in an affidavit or other form of legally enforceable record." Order, p. 40. That finding ignores the Commission's Rules of Practice, which (1) allow the admission of such documents, and (2) require a timely objection.⁶⁴ Having struck evidence contrary to the finding it wishes to make, the Order then ignores the Staff's decision that Millennium 2000 has met the emergency services criteria and finds: "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." Order, p. 40.

⁶⁴ a) In all proceedings subject to this Part, irrelevant, immaterial or unduly repetitious evidence shall be excluded. [5 ILCS 100/10-40]

b) This subsection applies to all proceedings except those under the ICTL. In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. **However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs. [5 ILCS 100/10-40] Objections must be made at hearing to preserve them on appeal.** Evidence may be received orally or in writing. (emphasis added)

It should be noted that the contract relied upon in this finding, as well as numerous other documents relied on by Millennium 2000 and Staff witnesses in this proceeding, is not notarized. The Commission's decision that the letter from the President of Reunion explaining the contract (and explaining the Staff witness's misconception about the contract) must be notarized is demonstrative of the extraordinary evidentiary barriers the Commission is erecting before Millennium 2000. That letter is no different from an admissibility standpoint than the other business documents commonly allowed into evidence in this and other Commission proceedings. This issue is also another example of the Commission's tendency to not believe Ms. Harrison is telling the truth unless she can produce a document that supports her testimony. Here, she did so, the Staff believed her, yet the Commission still decided to reject her un rebutted testimony because that document was not notarized. Has the Commission ever held any witness or company to such a standard?

D. Service Quality and Customer Protection

The Commission partially relies upon Dr. Zolnierrek's stricken Rebuttal Testimony, to support its finding that Millennium 2000 does not meet the service quality and customer protection criteria. Order, p. 40. Thus, the Order is not based on substantial evidence. Nevertheless, because the Order also cites to Dr. Zolnierrek's Direct Testimony, it is necessary to examine this issue. As noted in the Order, the missing information was on a single Millennium 2000 730/732 report in 2012 and it was missing because AT&T failed to provide Millennium 2000 with the necessary data to complete an entry. *Id.*

To put this issue in context, the Staff spent two years pouring over hundreds of pages of documents from five rounds of discovery responses, as well as numerous reports filed by Millennium 2000 with the Commission and with the FCC - and all it could come up with was

this minor deficiency in a single report filed more than two years ago. The ALJ properly found that this issue hardly rises to the level of showing that in the future, Millennium 2000 will not be able to meet service quality and consumer protection criteria:

However, this issue involves a single, isolated report. Staff attempts to extrapolate the deficiency in this report covering a single quarter into the ultimate conclusion that Applicant is unable to comply with Commission wireline rules as a result of its inability to manage its entire wireline resale business.

To agree with Staff would require a quantum leap that the Commission is unwilling to take. The Commission finds that a deficiency in one report does not serve as evidence that Applicant cannot comply with the entirety of §736, or that it cannot properly manage its wireline resale business, or any of its other operations. As the Commission found in Section c., above, Applicant has managed its wireline resale, wireline ETC and CMRS operations in Illinois and in Wisconsin for a number of years. Staff presented no evidence that, of all the reports Applicant is required to file, it has been deficient or delinquent at any other time. Further, Staff presented no evidence that Applicant's wireline resale operation, its customers, or the public interest were in any way compromised by the shortcomings of this single report.

ALJPO, p. 38.

The Commission should reinstate the ALJ's finding.

E. Pass-Through Support

The Order finds that "there is no evidence in the record to support that the accurate discounts were provided to its Lifeline customers." Order, p. 41. This is a serious allegation because the Commission's finding is tantamount to claiming that Millennium 2000 has engaged in criminal conduct by taking Lifeline subsidies and not passing them on to its customers. That explosive charge is not supported by substantial evidence. Instead, it is reflective of the Commission's disbelief of Ms. Harrison's unrebutted testimony provided under oath. In the case of emergency services, the Commission found that the document wasn't sufficient because it was

not notarized. Here, it finds that there were not *enough* documents to overcome the Commission's disbelief in her veracity.

Ms. Harrison testified under oath that although there was a period of time that Millennium 2000's tariff did not reflect the full pass through of wireline Lifeline support, the company provided its Lifeline customers with an additional "good will" discount during that period that resulted in customers receiving an amount more than the required Lifeline support. In order to demonstrate what customers saw on their bills, she provided sample bills to her post-pay customers⁶⁵ and sample statements of services for her pre-pay customers.⁶⁶ Ms. Harrison's testimony is undisputed. Moreover the Staff did not object to these bills and statements going into the record. Additionally, the Staff accepted Millennium 2000's objection to the Staff's data request for the remaining thousands of bills and statements of service. Millennium 2000 informed the Staff that compliance with its request for thousands of documents would be unreasonably burdensome, given that the samples showed the exact same discount reflected in the thousands of bills and statements of service.⁶⁷ The Staff made no attempt formally or informally to pursue its request for these thousands of bills and statements of service.

Although there is nothing in the record disputing Ms. Harrison's testimony, the Order finds that Ms. Harrison's testimony is not to be believed because Millennium 2000 did not submit into the record enough bills and statements of service:

⁶⁵ Millennium Ex. 1.11.

⁶⁶ Millennium Ex. 1.12

⁶⁷ Millennium Group Ex. 3, Exhibit 3.23 (Millennium 2000 Response JZ 6.20); Exhibit 3.24 (Millennium 2000 Response JZ 6.21).

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.

Order, p. 41.

Once again, has the Commission ever held any witness or company to such a standard of proof?

The Order then finds that whether or not customers received more than the required pass-through, the fact that for a period of time the Company's tariff was incorrect justifies a finding that Millennium 2000 "has failed to demonstrate that it has the ability to pass through the full amount of support that Lifeline customers are entitled." Order, p. 41. That finding is not supported by substantial evidence because the unrebutted evidence is that Millennium 2000 has *never* failed to pass through the full amount of its wireline Lifeline subsidy and it has committed to passing through its wireless Lifeline subsidies.

F. Public Interest Analysis

The Order relies primarily on Dr. Zolnierек's stricken Rebuttal Testimony to support its finding that Millennium 2000 did not meet the public interest standard. Nevertheless, because this is an issue also discussed in his direct testimony and in the testimony of Ms. Harrison and Dr. Ankum, it will be addressed here.

Dr. Zolnierек had expressed concern in his direct testimony that Millennium had a low retention rate of its Lifeline wireline customers. Staff Ex. 1.0R, p. 46-47. Millennium 2000 explained that a low retention rate for Lifeline wireline customers, especially prepaid customers, should be expected during the period he examined. The primary reason for the company's low retention rate is that the emergence of wireless Lifeline service has made wireline Lifeline

obsolete. As of 2012, 96% of Lifeline customers were using wireless service instead of wireline.⁶⁸ Thus, it is understandable that over the years, Millennium 2000 has seen its wireline Lifeline customers leave for other carriers that can provide them wireless Lifeline service.

Dr. Ankum noted that Millennium 2000's offering of prepaid service is another factor that reduces its retention rate, stating that when service is prepaid, "it is easy for a customer to not continue the service until resources become available again. While this will show up as 'low retention,' it says little or nothing about how much customers value the service, as Staff mistakenly conjectures."⁶⁹ He also noted that a low retention rate could be a function of the fact that low income customers tend to be on the move – for reasons of work, or family or housing situations. When such a challenge occurs the customer may not be able to continue their Lifeline landline service.⁷⁰

Ms. Harrison testified that Millennium 2000 is required to de-enroll customers when they lose their eligibility for Lifeline service. Thus, some of the low retention rate is a function of the company complying with the law.⁷¹

Finally, comparison of Millennium 2000's retention rate to that of other ETCs does not tell the full story because Millennium 2000 focuses its efforts on the low income community. For all of the reasons described above, the low income community tends to be less stable customers. Because a higher percentage of its wireline customers received a Lifeline subsidy compared to other wireline ETC providers and because of its focus on prepaid service, Millennium 2000 has been faced with a perfect storm that makes it especially susceptible to a low retention rate compared to other wireline ETCs.

⁶⁸ Millennium 2000 Ex. 1.0R at lines 88-135.

⁶⁹ Millennium 2000 Exhibit 2.0 at pages 27-28.

⁷⁰ *Id.* at page 27-28.

⁷¹ Millennium 2000, Ex. 1.0R, p. 70-71.

After reviewing the testimony, the ALJPO correctly determined that the Staff's issue with retention rate does not negatively impact the public interest. ALJPO 40-41. The Commission should do the same.

V. THE COMMISSION HAS FAILED TO PERFORM AN EQUITABLE ANALYSIS OF THE RECORD.

As discussed above, the Order repeatedly discounts the unrebutted testimony of Ms. Harrison. In the case of the pass-through of wireless Lifeline subsidies, the Order's refusal to accept the veracity of her unrebutted testimony results in a finding tantamount to alleging the illegal retention of funds. In each case, the reason given for refusing to accept the fact that she is telling the truth is because there was not enough notarized or sufficiently numerous documents supporting her statements. As has been asked several times above, when has the Commission ever demanded that a witness or a company meet such a burden of proof? Such treatment is particularly puzzling for a company that has been successfully providing service to the low income community since 2009 without a single complaint before this Commission or the FCC and a witness that the Commission Staff chose not to cross examine. Because Dr. Zolnierek's Rebuttal Testimony was stricken, Ms. Harrison's testimony stands unrebutted.

Millennium 2000 met its burden of proof in its application, testimony and group exhibits placed in the record in lieu of cross examination. The burden then shifted to the Staff if it wished to object to granting the application. Courts have found that “[o]nce a utility makes a showing of the costs necessary to provide service under its proposed rates, it has established a prima facie case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.”⁷² Staff made no attempt to accept that

⁷² *City of Chicago v. Ill. Comm. Comm'n*, 133 Ill. App. 3d 435, 442-43 (1st Dist. 1985)

burden until its belated decision to try to file reply testimony, which was correctly rejected by the Administrative Law Judge. Even after that, it could have tried to make its case on cross examination of Millennium 2000's witnesses but chose not to do so and instead waived cross examination.

Part of the problems appears to be the Commission Staff's and the Order's obsession with waste, fraud and abuse. Perhaps there is a perception that any carrier like Millennium 2000 that focuses its efforts on the low income community and thus on the Lifeline program, is somehow less worthy of respect than a carrier that does not have that focus. Such stigmatization has no place in the regulatory process. The avoidance of waste, fraud and abuse in the wireless Lifeline program should be addressed directly: by ensuring that designees have sufficient systems in place to prevent it and that they use those systems. In fact, Millennium 2000's FCC-approved Compliance Plan (and in particular the Company's procedures for the prevention of waste, fraud and abuse) was described in Ms. Harrison's Testimony and the entirety of the Compliance Plan itself was introduced into the record evidence.⁷³ The prevention of waste, fraud and abuse should not be addressed by erecting rules, such as the 20% rule, that prevent companies from specializing in serving the low income community. It certainly should not be addressed by assuming that the un rebutted testimony of the owner of such a company should be given little or no weight and every minor issue should be blown up into excuses to deny an ETC designation application.

Based on the record evidence, the ALJPO noted the inequity of the Staff's proposed requirements, analysis and recommendation to deny the Application. The ALJPO firmly rejected

⁷³ Millennium 2000 Ex. 1.0 at pages 11-30; Millennium 2000 Group Ex. 3.10.

the Staff's position and its tactic of repeatedly raising the specter of waste, fraud and abuse without any reason to even suggest that it has occurred:

The Commission reiterates that Applicant has not had so much as a single complaint since it first began telecommunications service in Illinois. (App. Init. Br. at 14). There is no evidence to demonstrate, or even suggest, that Applicant would be inclined to engage in waste, fraud and/or abuse of the wireless ETC Lifeline program in order to remain solvent. The Commission found in Section b., above, that Applicant has the financial ability to sustain its telecommunications services in Illinois. Further, Staff's criticism of Applicant's wireline ETC Lifeline program is aimed principally at its inconsistent management practices and sporadic inefficiency. Notwithstanding that Staff's testimony is studded with references to waste, fraud and abuse (e.g. Staff Ex. 1.0 at 10, lines 213, 218, 227; at 18, lines 386, 388; at 20, lines 435-436; at 23, line 492; at 26, line 551), Staff makes no claim, and presents no evidence, that waste, fraud and abuse occurred in Applicant's wireline ETC Lifeline program, its provision of CMRS service, or in its resale operations. It also bears repeating that Staff presented no evidence of any adverse conduct or findings stemming from Applicant's CMRS or ETC service in Wisconsin.

Staff appears to anticipate future problems with Applicant's wireless ETC Lifeline operation, based upon its perception of Applicant's current telecommunications services. The Commission, again, does not share Staff's concerns. It is clear from the preceding paragraphs that the Commission has not found anything in Applicant's current operations that would lead it to conclude that Applicant could not properly manage its wireless ETC Lifeline business. Staff's fears appear to be more the result of speculation than of any concrete evidence. For that reason, the Commission finds that Staff had not established the necessity for the 20% rule in this Docket and declines to impose it.

ALJPO, p. 41-42.

The ALJPO concisely summarized the tactics of the Staff and the reasons its recommendation should be rejected. For all of the reasons stated above in this Application for Rehearing, the Commission committed error by rejecting the ALJPO's approval of the Application and striking these two paragraphs from the ALJPO.

Finally, the Commission has demonstrated a callous disregard for its implications of its Order. If the Commission wishes to ensure that no company can specialize in providing wireless

service to the low income community in Illinois, then it should have granted the Application with the condition that Millennium 2000 meet the 20% condition. That was apparently the revised ALJPO discussed in the Administrative Law Judge's memo to the Commission dated January 7, 2015. Then Millennium 2000 could have made the business decision whether to fight that rule or move its operations to another state that does not share the Commission's view that specialization in serving the low income community demonstrates financial unfitness. What the Commission did here, however, was to use stricken Staff testimony and minor filing deficiencies to paint Millennium 2000 as a mismanaged company that has defrauded its customers and Ms. Harrison as a person who cannot be trusted to tell the truth even when under oath. By demonizing Millennium 2000 and demonstrating such contempt for Ms. Harrison, the Commission has unfairly tarnished her reputation and is inhibiting her ability to obtain a license to provide telecommunications service and to be designated an ETC in other states.

VI. CONCLUSION

Millennium 2000 is the victim of what is essentially, the Commission Staff's blanket prohibition on approving almost all ETC's (See Introduction and Attachment 1). The Commission Order has repeatedly ignored the unrebutted evidence of Millennium 2000 while at the same time relying on a stricken Staff testimony. Such an unbalanced (and procedurally defective) analysis demonstrates this Commission's misunderstanding of not only the record, but of the legal and policy implications that impact Universal Service support in Illinois, and ultimately the low-income community of Illinois. The Commissioners have a duty to review the record of this proceeding.

While the Order repeatedly falls back on the claim that the Commission is trying to prevent waste, fraud and abuse, it never asks whether Millennium has prevented it with its wireline Lifeline customers and has enacted procedures that will prevent it occurring if its request for wireless ETC designation is approved. If the Commission had done so, it would have seen that the company has never been subject to claims that it has failed to prevent waste, fraud and abuse in its wireline service. The Commission would have also seen that Millennium 2000 has enacted a comprehensive set of policies designed to ensure that customers are eligible for a Lifeline subsidy when they first take Millennium 2000 Lifeline service and that they continue to maintain eligibility.⁷⁴ Millennium 2000 urges the Commissioners to review the Company's Compliance Plan and the Company's demonstrated procedures for the prevention of waste, fraud and abuse - a plan that was among the first compliance plans approved by the FCC.

Millennium 200 has operated in Illinois since 2009 and during that time it has not been the subject of a complaint before this Commission or the FCC. The Commission might consider how all the baseless allegations and conclusions inserted into the Final Order comport with those simple, undisputed facts. The Commission might consider how the ALJPO – based on the totality of a more than two-year proceeding and an analysis of the record – determined that none of the Staff's concerns warranted the rejection of Millennium 2000's Application.

Finally, as demonstrated above, this Commission does not have the authority to impose the 20% rule on individual carriers. That rule is inconsistent with the *Lifeline Reform Order* and contrary to the Federal Act, which requires that such rules must be “generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with

⁷⁴ See Millennium 2000 Compliance Plan, Millennium 2000 Group Ex. 3, Ex. 2.10.

sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.”
ETC Order at ¶ 31.

Millennium 2000 therefore requests that the Commission grant rehearing and issue an amended order that adopts in its entirety the ALJPO.

Dated: January 13, 2015

Respectfully submitted,
Millennium 2000, Inc.

by: s/ Thomas H. Rowland_____

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ATTACHMENT 1

Illinois Wireless ETC Designation Proceedings Pending or Withdrawn Since Entry of Lifeline Reform Order February 6, 2012

- 10-0453 Cricket Communications, Inc., Application for Designation as an Eligible Telecommunications Carrier. ((final order granting ETC entered 7/11/12)
- 11-0440 *Safari Communications, Inc., Petition for Limited Designation as an Eligible Telecommunications Carrier.* (Motion to Withdraw Application granted 8/2/13)
- 11-0488 *Assist Wireless, LLC, Application for Designation as an Eligible Telecommunications Carrier.* (continued generally, Notice 4/4/12)
- 11-0543 *TAG Mobile, LLC, Application for Designation as an Eligible Telecommunications Carrier under the Telecommunications Act of 1996.* (Motion to Withdraw Application granted 9/10/13)
- 11-0551 *Everycall Communications, Inc. d/b/a All American Home Phone d/b/a Local USA d/b/a All American Wireless, Application for Designation as an Eligible Telecommunications Carrier under the Telecommunications Act of 1996.* (continued generally, Notice 4/6/12)
- 11-0579 *Global Connection Inc. of America d/b/a Stand Up Wireless Application for Designation as an Eligible Telecommunications Carrier.* (Motion to Withdraw Application granted 7/10/13)
- 11-0583 *US Connect LLC, Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois on a Wireless Basis (Low Income Only)* (continued generally, Notice 2/16/12)
- 12-0095 *Q LINK WIRELESS LLC, Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois.* (Joint Motion to Stay granted 10/27/14)
- 12-0391 *Linkup Telecom, Inc., Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois* (continued generally, Notice 12/18/13)
- 12-0423 *Budget PrePay, Inc. d/b/a Budget Phone, Application for Designation as an Eligible Telecommunications Carrier under the Telecommunications Act of 1996.* (Motion to Withdraw Application granted 3/20/13)

- 12-0451 *Total Call Mobile, Inc., Application for Designation as an Eligible Telecommunications Carrier in the State of Illinois.* (Motion to Withdraw Application granted 1/14/14)
- 12-0564 *Boomerang Wireless, LLC, Application for Designation as an Eligible Telecommunications Carrier* (Motion to Withdraw Application granted 7/31/13)
- 12-0680 *American Broadband and Telecommunications Company, Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier.* (final order granting ETC entered 2/5/14)
- 12-0642 *Birch Telecom of the Great Lakes, Inc. d/b/a Birch Communications, Verified Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households.* (Motion to Withdraw Application granted 2/14/13)
- 13-0448 *Tempo Telecom, LLC, Verified Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households.* (Motion to Withdraw Application granted 2/20/14)
- 14-0475 *VIRGIN MOBILE USA, L.P. Application for Limited Designation as a Wireless Eligible Telecommunications Carrier* (briefs filed, awaiting ALJPO).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Application for Rehearing of Millennium 2000 Inc. has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 13th day of February 2014 by electronic mail.

/s/ Thomas H. Rowland

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