

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

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**MILLENNIUM 2000 INC. REPLY BRIEF ON REHEARING**

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## **I. INTRODUCTION**

In its Initial Brief on Rehearing, Millennium 2000 demonstrated why the Commission should adopt the findings in the revised Administrative Law Judge's Proposed Order submitted to the Commission subsequent to the filing of parties' briefs on exceptions. That Order, dated September 30, 2014, approves Millennium 2000's application for Eligible Telecommunications Carrier ("ETC") designation, but unlike the original ALJPO, adopted the Staff's recommendation that the company maintain a 20 percent ratio of wireless Lifeline customers to total wireless customers.

Millennium 2000 has answered 6 separate sets of discovery -over 230 questions -with detailed specific answers and information, submitted testimony from its CEO, as well as a noted national expert in state and federal telecommunications policy. Millennium 2000 has briefed and responded to each staff accusation five separate times in minute detail. Millennium 2000's evidence is supported by statements of the vary participants to Millennium 2000 agreements. The Company has further documented the many staff members and contract employees that have lost work as a result of the duration of this proceeding.

The Staff's Reply Brief tries to find every possible excuse to deny the application, raising issues that were not addressed in its testimony, that were not subject to discovery, that were not addressed in previous briefs and/or that are simply petty. Many of its arguments are based on the Staff's astonishing position that Millennium 2000 had the burden of proving that it met each of the elements of its case in its Petition rather than based on the totality of all the evidence admitted in the record over a three year period since that petition was filed. Other arguments are based on the Staff's belief that it did not receive sufficient discovery (even though it never sought

more nor availed itself of the Commission's processes for compelling discovery.) Some arguments are based on Staff's belief that Millennium's President, Ms. Donna Harrison did not provide sufficiently detailed testimony, even though the Staff waived cross examination of Ms. Harrison. Finally, staff has suddenly reneged on its own bed-rock requirement that demands a 20 percent non-ETC allocation of business. Millennium 2000 did not have to agree to this staff policy that is unique in this country, but did so to demonstrate how its own \*\*\* BEGIN CONFIDENTIAL xxxxxxxxxxxxxxxxxxxxxxxx <sup>1</sup> END CONFIDENTIAL \*\*\* plan could specifically benefit Illinois consumers. Once again, however, the Staff has moved the goalposts and deems Millennium 2000's agreement insignificant.

On a policy level, it is important to realize that the Staff continues to interfere in commerce to such an extraordinary extent. Not only has it tied up resources of Millennium 2000 and resulted in the layoff of employees while it waits to transition from wireline Lifeline service to wireless Lifeline service, it has also forced all wireless ETC designation applicants to spend time and money in litigation, discovery and witnesses, to no avail - with ETC designation cases languishing at the Commission. A great deal of Staff's misallocation of other peoples resources could have been prevented if the Staff had pursued the rulemaking for wireless ETC applications, thus allowing potential applicants to understand what would be expected of them in both their application proceedings and ongoing operations once approved.

Companies such as Millennium 2000, which is a minority woman owned company familiar with the low income community, are attempting to meet a particular need to provide telecommunications to underserved urban areas to customers who truly want and need the

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<sup>1</sup> See Millennium 2000 Group Exhibit 3.06A (confidential); Millennium 2000 Reply Brief at p. 9 (confidential).

service. The Commission should welcome such efforts rather than erecting one Kafkaesque regulatory roadblock after another. This cannot be a reasonable or proper use of Illinois administrative process.

## **II. MILLENNIUM 2000 MEETS ITS BURDEN OF PROOF ON THE CONDITIONS FOR APPROVAL OF ITS APPLICATION**

Staff refuses to admit that Millennium 2000 has met any of the elements necessary to obtain ETC designation. All of its arguments were rejected by the Administrative Law Judge in the September 30, 2014 revised proposed order. Although the Commission accepted some of the Staff's arguments in its Final Order, it granted Millennium 2000's Application for Rehearing, which had demonstrated the errors in that order. Thus, most of the Staff's arguments are a rehash of arguments it has made before and that have already been addressed in various Millennium 2000 briefs.

Initially, it should be noted that Staff has a completely misguided concept of the burden of proof. As discussed in Section II.A. below, Staff's argument that Millennium 2000 did not properly define its service territory is based on Staff's belief that the burden must be met in the pleading initiating a proceeding. Thus Staff complains that Millennium 2000 modified its service territory set out in its Application through testimony and exhibits. Despite what Staff may believe, the burden of proof must be met at the end of a case, not at the beginning.

Additionally, Staff ignores its own proof obligations. While Millennium 2000 had the burden of going forward and providing evidence that it met the standard for approval of its application, the burden then shifted to the Staff when it sought to object to granting the application: “[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.”<sup>2</sup> As shown below, the Staff has not met its burden of proving the validity of its objections. Instead, Staff raises issues for the first time in its briefs and then complains that Millennium did not submit testimony addressing those issues.

#### **A. Definition of Service Area**

Staff's initial argument is that Millennium 2000 failed to meet its burden of proof to define its service territory because it did not do so in its initial application for designation as an Eligible Telecommunications Carrier ("Application"). According to Staff, no amendment to the application nor any amount of evidence can correct deficiencies in the initial application. Thus, the Staff argues that because Millennium 2000 revised its service area designation through testimony and exhibits, "then it cannot meet the most basic of ETC requirements, in particular the requirement to offer Lifeline service throughout its designation ETC service area." Staff Brief, p. 7. Nonsense. Cases are not static, but provide for the development of all relevant circumstances throughout the fact-finding process. There is nothing in any rule of evidence, case law or Commission rules that requires a party to only meet its burden of proof in its initial pleading. In fact during the Spring of 2013, the parties worked through a process whereby if necessary errata were submitted to the record and Company's Application was updated without further delaying the case (See Transcript (April 29, 2013) at p. 29; Errata filings April 29, 2013, and February 20, 2014.) Thus, no party in any Commission proceeding has **ever** met its burden of proof merely in its initial pleading. A party must have evidence admitted into the record to

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<sup>2</sup> *City of Chicago v. Ill. Comm. Comm'n*, 133 Ill. App. 3d 435, 442-43 (1st Dist. 1985) (rejecting the People's contention that the Commission illegally shifted the burden of going forward with evidence to the intervenors); *see also Apple Canyon Lake Property Owners' Ass'n v. Ill. Comm. Comm'n*, 2013 IL App (3d) 100832, ¶ 54 (3d Dist. 2013) (finding that the Commission did not improperly shift the burden to the Associations, who failed to show that the costs of the new system were unreasonably high, as they had alleged).

meet its burden. In this case, Millennium 2000's testimony and exhibits defining its service territory were admitted into the record and all parties agree to the parameters of testimony, discovery and exhibits and then filed briefs based on what was contained in Staff's Group 3 and Millennium 2000's Group 3 exhibits.

Similarly, Staff complains that Millennium 2000 changed its service providers during the pendency of this proceeding from Coast to Coast to Reunion. Thus, according to the Staff, the Amended Application, which listed Coast to Coast, "was, and remains inaccurate." Staff Brief, p. 7. This silly argument hardly needs a response. Carriers often amend their operating contracts and substitute replacement arrangements, which is what Millennium 2000 did and described in responses to discovery that were placed in the record. First, Millennium 2000 fully disclosed its third party agreements in its compliance plan to the FCC and in its petition for ETC designation. Second, Millennium 2000 provided an addendum to its agreement with Reunion to demonstrate its ability to provide service on the Sprint and Verizon network. (See Group Exhibit 3.17 – Data Response JZ 6.09(A)). Again, the burden of proof is a standard met throughout the case and the determination of ultimate satisfaction rests at the end of the case, not at the beginning.

Next, Staff takes a sentence of Millennium 2000's evidence out of context to argue that Reunion cannot serve the entire service territory. The Staff argues that because Millennium 2000's contract with Reunion states "Wireless Service Provider acknowledges and agrees that Service may not be available in all the markets that Wireless Service Provider serves" then Millennium 2000 cannot provide service to all areas of its service territory. Staff Brief on Rehearing, p. 7-8. This argument was not contained in the Staff testimony and first appeared in its Initial Brief. Millennium 2000 addressed the Staff's selective quotations in its Reply Brief (Millennium Reply Brief, p. 11-13.).

The Staff has ignored the common sense explanation of this standard disclaimer that was provided by Reunion's President - all wireless networks contain spots with poor service. He stated that this disclaimer

[r]eflects the fact that all wireless services are subject to atmospheric, topographical, geographical, structure density, and other limitations, including network design and coverage decisions of Reunion's underlying carrier(s)." Millennium 2000 Group Ex. 3.17a.

Reunion's President added that AT&T, Sprint, Verizon and T-Mobile provide a similar disclaimer in their terms and conditions. *Id.* Is this Commission willing to deny the Lifeline designation applications of all carriers using those networks and go back and withdraw those that have already been granted? Denying Millennium 2000's application because of this disclaimer would be grossly inequitable as well as factually baseless. Staff's argument is wrong and it must be rejected, just as it was rejected in the original and revised ALJPO and in the final Commission Order.

The Staff's next argument is another one that it first raised in its Initial Brief, thus depriving the Commission of evidence from either party on this issue. The Staff argues that Millennium 2000 was not able to provide wireline service throughout its service territory because it did not have an interconnection agreement for the Frontier North portion of its service territory. The Staff concludes "Millennium knowingly and willingly decided not to comply with the most basic of ETC requirements, in particular the requirement to offer its Lifeline service throughout its ETC service area." Staff Brief on Rehearing, p. 8-9. As Millennium 2000 noted in its Reply Brief, it did in fact attempt to serve customers in the Frontier North area, but despite marketing in that area, it did not receive a single request for service. Nevertheless, the Company committed to either amending its service territory or obtaining an interconnection agreement with Frontier North. Millennium 2000 Reply Brief, p. 14. Millennium 2000 did in fact complete

negotiations with Frontier North and obtained an interconnection agreement. Millennium 2000 Reply Brief on Exceptions, p. 11.

The Staff's further argument on service territory is to argue that Millennium 2000 misrepresented its underlying carriers when it stated in its Amended Application for ETC designation that it was using Verizon Wireless and Sprint networks. The Staff argues that because Millennium 2000 is actually working in combination with Reunion, the statement in its Amended Application is a deliberate falsehood. Staff Brief on Rehearing, p. 11. What the Staff doesn't admit here, is that as with dozens of carriers, service providers like Reunion operate to provide resold wireless services. Millennium 2000 provided the staff an addendum to the Reunion Agreement, which demonstrates that contract did ensure Sprint and Verizon services! (See Group Exhibit 3.17). Third party aggregation of underlying services is a common and accepted means of provisioning telecommunications service in Illinois as in all states. Thus, Millennium 2000's Amended Application accurately stated that its coverage area is identical to the coverage areas of Verizon Wireless and Sprint. (Amended Application, Errata April 29, 2014, Group Ex 3.17 (a) & 3.17 (b)). The Staff's final argument on service territory is to reference its previous argument about the Reunion contract disclaimer. Staff Brief on Rehearing, p. 11. As discussed above, this disclaimer is a standard used by all major wireless carriers and Staff's position is simply unsupported on this record.

## **B. Retention Rate**

The Staff argues that Millennium 2000's wireline retention rate is "troubling" but does not say why. Staff Brief on Rehearing, p. 11-12. There is no legal basis for Staff's objection because there is no federal or state requirement that Lifeline providers maintain any particular level of retention.

Millennium 2000 addressed this issue extensively in its Initial Brief on Rehearing, pp. 20-22. Unlike any other wireline provider, Millennium 2000 was a prepaid carrier that focused its efforts entirely on the low income community. That market has evaporated for many carriers as well as Millennium 2000 and the lack of Lifeline wireline customer interest in the first quarter of 2015 led it to withdraw its wireless ETC designation. (Docket 15-0282, Order May 6, 2015).<sup>3</sup> A low retention rate for prepaid wireline Lifeline customers is understandable because:

1. prepaid customers are not contractually bound to keep continuous service;
2. many low income customers must juggle bills and continuous phone service may be a low priority. Prepaid service allows a customer to renew service when funds become available;
3. many low income customers are transient and when they move cannot take their wireline service with them; and
4. low income customers prefer wireless service and because they can only have one Lifeline service, have been choosing wireless service over wireline service - with 96 percent of Lifeline customers in 2012 being wireless.

Millennium 2000 Ex. 2.0, pp. 27-28.

Staff then raises an entirely new issue based on facts outside the record when it alleges that Millennium 2000 has a zero retention rate for its wireless Lifeline service in Wisconsin. The Staff alleges that it gleaned this information from one of the reports that Millennium 2000 provided to the FCC. Staff Brief on Rehearing at 12. The Commission should not continue yet another attempt to expand this docket and insert new evidence at the last minute. This is especially the case with something that was raised in an unverified brief, after the record has been closed in the original proceeding and after Staff waived any right to submit testimony in the rehearing phase of this proceeding. In any event, the document fails to demonstrate what Staff purports to show, nor reflect the increase in Millennium 2000's customer base in the state.

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<sup>3</sup> See Withdrawal of Nexus wireline ETC certificate Docket 15-0114, ( May 6, 2015).

Because of the way the Staff has chosen to raise this issue, Millennium has no opportunity to respond to an FCC report, which merely shows that Millennium 2000 is in compliance with the Lifeline Reform rules, which require that ETCs account for the total number of subscribers based upon FCC Form 497 for the February 2014 data month when Millennium 2000 was starting its Wisconsin services. Nonetheless, Millennium 2000 continues to successfully attract customers in Wisconsin even in a prepaid environment. Finally, the Staff confirmed there is no regulation on the length of time a customer must receive service to receive a lifeline benefit (See Exhibit 1.0R - Ex. 17). Again, the Staff's baseless and unsubstantiated argument should be rejected.

### **C. Five Day Plan**

Staff argues that there was something nefarious about one of Millennium 2000's wireline service offerings - a service that gave a Lifeline customer five days of unlimited local calls. As with most of the Staff's arguments, it never raised this issue in its testimony or conducted any discovery on it. The Staff also waived cross examination of Ms. Harrison when it could have asked her the mechanics of this tariff, how it benefited customers and how it was consistent with the Lifeline program. Instead, this issue first appeared in the Staff's Initial Brief. The Staff has ratcheted up its argument to now claim that this service defrauds the Lifeline program. It does no such thing.

Millennium 2000 provided the Lifeline customer an option to select the wireline plan that best meets its needs, which included the choice of selecting a thirty day service plan or a five day service plan. Selecting five days of unlimited service equates to 7,200 minutes - a figure well beyond the monthly allowance of many Lifeline cellular plans, which on average provides 250 wireless minutes to a Lifeline customer. As required by federal rules, once a Lifeline customer selects a plan of its choice, the \$9.25 Lifeline discount is applied. The Lifeline customer is not

charged a reconnection fee when it prepays for another five days of unlimited service the next month. Thus, Millennium 2000 provided customers with a choice of affordable wireline call plans.

There is nothing untoward about this option. This service, like all of Millennium 2000's services, has never been the subject of complaints by its customers, the FCC or USAC.<sup>4</sup> It may offend the Staff's sense of what low income customers want, but that is merely a function of the Staff being out of touch with the low income community and not comprehending living on a budget that requires difficult choices.

#### **D. Lifeline Benefit Pass-Through**

The evidence shows that Millennium 2000 provided Lifeline customers with a "goodwill" discount credit on their bills that, combined with the Lifeline credit in its tariff, provided customers with **more** than the required credit. (See Millennium 2000 Initial Brief on Rehearing, p. 17-20.) Ms. Harrison testified to this fact. Attached to her testimony as Exhibits 11 and 12 are copies of customer "Statements of Service" that showed how the goodwill discount was added to the Lifeline credit to create a total credit that exceeded the required Lifeline pass-through. Staff chose not to cross examine Ms. Harrison. While the Staff claims that there are some mathematical errors in the sample bills provided by Millennium 2000 in discovery, it does not, and cannot argue, that even with those errors, customers received less than the required lifeline credit.<sup>5</sup> As Ms. Harrison stated, customers received more, not less of a discount than they were entitled to. (Group Ex 3.25) Staff's primary argument is that Millennium 2000 objected to the Staff's outrageous request for every billing statement that had been issued by

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<sup>4</sup> Millennium 2000 Ex. 1R, at lines 1208-1210.

<sup>5</sup> Millennium 2000 addressed these minor billing errors in more detail in its Reply Brief, p. 36-37.

Millennium 2000 over the years. Millennium 2000 properly objected to this burdensome request and the Staff did not pursue it either in further correspondence with counsel for Millennium 2000 or if necessary with a motion to compel. Having waived its opportunity to either cross examine Ms. Harrison or take advantage of the Commission's discovery provisions, the Staff has no basis for arguing that the lack of discovery is grounds to deny the application.

#### **E. Financial Statements**

The Staff complains that Millennium 2000 did not attach a balance sheet or income statements to the Application, even though Staff agrees that there is no Commission rule requiring an ETC applicant to provide financial data in its petition. Staff Brief on Rehearing, p. 14-15. It is difficult to understand the Staff's argument, because it then admits that Millennium 2000 provided it with detailed profit and loss as well as summaries of the Company's financial information during the discovery phase of the case. *Id.* That material is contained in the record (Staff Group Ex 3). If the Staff wished to base an argument on the fact that the financial information shows lack of financial capability, it had the information in its hands to do so. Moreover, it could have made an effort to cross examined Ms. Harrison in order to further inquire into the finances of the company. Instead, it sat on its hands and now complains about an alleged lack of information that is wholly of its own making.

The ALJPO dated September 30, 2014 stated that the imposition of the 20% rule on Millennium 2000 is justified by the need to ensure that it meets the financial capability standard. The Company accepted that condition in its Initial Brief on Rehearing. Millennium 2000 further notes that to the extent that the Staff may believe that the company's finances are less than robust, that is also a function of the fact that this case has taken three years, during which the Company's wireline customers switched to wireless service from other carriers. While the Staff

argues that Millennium 2000 shows lack of financial capability, it should be noted that the company has borne a three year burden of litigation expenses during this proceeding while continuing to financially operate and provide quality home phone and wireless services to its Lifeline and Non-lifeline customers. Again, this demonstrates that the Staff's argument should be rejected

#### **F. Wireless Service Dates**

The Staff argues that Millennium 2000 listed an incorrect date for the initiation of wireless service in Wisconsin in its FCC Compliance Plan filed in December 2012. In that Compliance Plan, Millennium 2000 mistakenly stated that it was currently providing wireless service in Wisconsin. The Staff argues that this statement is inconsistent with an updated response to a Staff data request stating that the company began offering Lifeline wireless service in Wisconsin in June 2013. Staff Brief on Rehearing, p. 16. The Staff knows perfectly well that Millennium 2000 contacted the FCC, and under the direction of the FCC filed a letter to clarify that, while it had a certificate of authority from the State of Wisconsin to offer wireless service on the date it filed its compliance plan, it did not begin serving customers until June 2013. A copy of this letter was provided to Staff counsel as an attachment to Millennium 2000's Reply Brief on February 20, 2014.<sup>6</sup>

It is also worth noting that despite Staff's alleged concern for waste, fraud and abuse, there is not one word in Dr. Zolnierek's testimony or any of Staff's briefs examining the steps that Millennium 2000 committed to undertake in its FCC approved Compliance Plan to prevent waste, fraud and abuse. Instead, Staff admits that it reviewed the FCC approved Compliance Plan looking for supposed inconsistent statements in order to demonstrate that Millennium

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<sup>6</sup> Attachment 2 Millennium 2000 Reply Brief, contained in Errata filed Feb. 20, 2014.

2000's history of service provision and revenues do not show it has financial qualifications to be an ETC. Staff Brief on Rehearing, p. 16.

The Staff's next argument on service dates is to complain that Millennium 2000 misstated the date that it began providing wireless service in Illinois. This argument is a pointless exercise in complaining about a typo. Millennium 2000 began testing wireless service in December 2011 by providing its customers with free cellular phones. It then spent more than year testing its off-the-shelf wireless and provisioning system before it began charging customers for those phones. It began billing for wireless services in April 2013. (See Group Exhibit 3.05(a)). A typographical error in Millennium 2000's Application for Rehearing and Initial Brief on Rehearing listed the beginning of testing as December 2012 instead of the correct date of December 2011.<sup>7</sup> It is sad, but not surprising that rather than applauding Millennium 2000 for its due diligence in foregoing any revenue for more than a year in order to ensure that its wireless service performed perfectly, the Staff focuses on a typographical error in Millennium 2000's pleadings.

The Staff next claims that "Further, because of contradictory evidence presented by Millennium, its (sic) not clear when Millennium began providing unbilled wireless service." Staff Brief on Rehearing, p. 17. The Staff goes on to argue that "There is no evidence in this proceeding that Millennium has collected any revenue from wireless service provided to non-Lifeline customers in Illinois." *Id.* There is nothing contradictory about the evidence. Ms. Harrison stated that Millennium 2000 began providing wireless service and **billing** customers for that service in April 2013 (Millennium 2000 Ex. 1R, pp. 41, 48). There is no evidence in this

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<sup>7</sup> Millennium 2000 Application for Rehearing, p. 34-35; Brief on Rehearing, p. 11.

proceeding contradicting that fact. If the Staff wanted more information about the number of customers, when they were billed and how much they were billed, it could have done so by cross examining Ms. Harrison. Instead, it waived cross examination and purposefully dropped any inquiry. Staff is in no position to now make the baseless argument that Ms. Harrison is not telling the truth.

### **III. MILLENNIUM 2000 WILL NOT RELY EXCLUSIVELY ON LIFELINE REVENUES**

Millennium 2000 has agreed to abide by Dr. Zolnierek's recommendation that it commit to maintaining a ratio of at least 20% non-Lifeline customers. As noted in its Initial Brief on Rehearing, Millennium 2000 believes that one of its proposed unique service offerings will allow it to maintain that ratio. Moreover, Millennium 2000 agrees with Dr. Zolnierek's recommendation that it provide reports to the Commission on the ratio of its customers and in its ratio falls below 20 percent for a three month period, to stop signing up new Lifeline customers. (See Staff Ex. 1.0, p. 18-20.). This commitment goes to the heart of this case and squarely addresses the arguments in the Staff's Initial Brief that one reason to deny Millennium 2000's application was because it failed this test and relied critically on Lifeline revenues. (Staff Initial Brief, p. 30-32).

The Staff argues that there are other reasons to deny Millennium 2000's application, so the company's agreement in its Initial Brief on Rehearing to maintain 20% non-Lifeline customers is not sufficient reason to grant the application. Staff Brief on Rehearing, p. 19-20. As shown elsewhere in this brief, however, the Staff's other reasons for denying the application are unfounded. Millennium 2000's agreement not to rely exclusively on Lifeline revenues

assures the Commission that the Company will abide by what Staff asserts to be a necessary element of Illinois wireless Lifeline regulation.

Oddly, the Staff retreats from its position that all new wireless Lifeline applicants meet the 20% rule. It claims "Staff recommended that this requirement be imposed upon providers that have an insufficient service record [e.g., no prior record of service, no history of non-lifeline service, etc.] (Staff Ex. 1.0, 19.)" Staff Brief on Rehearing, p. 20. This position is contrary to the verified statement of Dr. Zolnierrek, who explicitly argued that the 20% rule to applies to all ETC designation applicants. Staff Ex. 1.0, p. 20, lines. 421-431. Indeed, the Staff has demanded that Virgin Mobile, a company with ETC designation in 41 jurisdictions serving over two million Lifeline customers<sup>8</sup> maintain the 20% ratio in Illinois<sup>9</sup> and that it provide the Commission with quarterly reports of its Lifeline and non-Lifeline customers.<sup>10</sup>

The Staff then spends four pages of its brief defending its 20% rule. Staff Brief on Rehearing, pp. 20-23. Millennium 2000 agrees to meet the 20% rule, so it is unclear why the Staff feels the need to re-defend the issue.

Finally, referring to Millennium 2000's unique rate plan that provides Lifeline customers with additional non-Lifeline lines, the Staff argues that it does not believe that ". . . households that require assistance in order to be able to afford basic phone service will pay for additional unsubsidized lines . . . ." Staff Brief on Rehearing, p. 23. The Staff then argues that Millennium

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<sup>8</sup> *Virgin Mobile USA, L.P. Application for Limited Designation As An Eligible Telecommunications Carrier.*, ICC Docket 14-0474, ALJPO, p. 13. Millennium 2000 requests that pursuant to Commission Rules of Practice 83 IAC 200.640 that it take administrative notice of the Administrative Law Judge's Proposed Order in Docket 14-0474, which of course may be final by the time it issues a final order in this proceeding.

<sup>9</sup> *Id.* p. 13.

<sup>10</sup> *Id.* p. 17, item 11.

2000's commitment relies on a "suspect assumption" and is "likely to result in a failure to comply with such commitment." *Id.*

Millennium 2000 has been providing service in Illinois since 2009 and knows perfectly well what low income customers demand and what commercial products are viable. The Staff, which has no business experience with this market, has an unrealistic view of the services that a low income consumer will pay for. All recipients of Lifeline phones are not destitute with zero funds available for one or more additional phones for other family members. In fact, ensuring the ability for family members to communicate with each other may be a high priority worth making sacrifices elsewhere in the family budget. The Staff's opinion that anyone eligible for Lifeline service does not need and cannot afford additional non-Lifeline phones demonstrates an ivory tower mentality that appears to demonstrate a rather arrogant if not clueless perspective about life in low income communities. In any event, Millennium 2000 is willing to stake its wireless ETC designation on its rate plan allowing it to meet the 20% rule. If Millennium 2000 fails to meet the required ratio, pursuant to the test standards that Staff laid out in its own proposal, then the Company would appropriately stop enrolling Lifeline customers until it meets the standards.

#### **IV. THE COMMISSION SHOULD BE CONCERNED ABOUT THE LOW ETC ACTIVITY IN ILLINOIS**

The Staff argues that of the 13 wireless ETC designation cases identified by Millennium 2000 as having been either withdrawn or placed on hold, four are resellers that, unlike Millennium 2000, have yet to obtain FCC approval of a compliance plan. Staff notes that another company's request is stayed because its Chief Executive Officer was arrested and charged with murder in the second degree. Staff Brief on Rehearing, p. 24. That leaves eight

carriers. While none of the pleadings in those eight carriers' proceedings indicate why they have not pursued their requests, the fact remains that the only unrestricted wireless Lifeline applications approved by this Commission in the more than three years since the release of the FCC's Lifeline Reform Order on February 6, 2012<sup>11</sup> are those of Cricket Communications<sup>12</sup> (now owned by AT&T) and American Broadband and Telecommunications Company by stipulation.<sup>13</sup> The State of Illinois does not appear to be hospitable to Lifeline providers. Three years have passed since the entry of the FCC's Lifeline Reform Order and Illinois still has no rules for wireless ETC designation proceedings. Perhaps those eight carriers have been surprised by Staff discovery or testimony setting out the standards the Staff seeks to apply in ETC cases. Perhaps they saw the Staff testimony in this case and other proceedings inexplicably recommending denial of ETC designations. In any event, the Commission should be asking itself how has Staff lead it down this circuitous path and perhaps more significantly, why.

## **V. MILLENNIUM 2000 MEETS THE EMERGENCY FUNCIONALITY REQUIREMENT**

Staff has filed three briefs in this proceeding, its Initial Brief, its Reply Brief and its Brief on Exceptions. None of those briefs raised the issue of emergency functionality. Now for the first time, the Staff is arguing that the evidence does not support a finding that Millennium 2000

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<sup>11</sup> *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, FCC 12-11 (February 6, 2012)(“*Lifeline Reform Order*”).

<sup>12</sup> *Cricket Communications, Inc., Application for Designation as an Eligible Telecommunications Carrier*. Docket No. 10-0453, Order July 11, 2012.

<sup>13</sup> *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).

meets the emergency functionality requirement for ETC designation. Putting aside the fact that it is woefully late in making this allegation, the Staff is ignoring evidence that the Staff itself submitted into the record.

Millennium 2000 submitted into the record, without Staff objection, a letter from Mr. Mark Widbin, President of Reunion Communications, the carrier from which Millennium 2000 contracted for the purchase of wireless minutes. Reunion's President stated: "Through its agreements with its underlying carriers, Verizon and Sprint will route 911 calls from Millennium 2000 customers in the same manner as 911 calls from Verizon's and Sprint's own retail customers." Millennium 2000 Group Ex. 3, Exhibit 3.17b Millennium 2000 Updated Response JZ 6.09 (a) (confidential) (12-18-13).

The Staff disputes the fact that Reunion Wireless Services has the ability to provide Millennium 2000 with emergency functionality because that company purchases wireless minutes from a third company with unknown network capabilities. Staff Brief on Rehearing, p. 26. The Staff is ignoring its own Group Ex. 3.0, Supplemental Response JZ 1.04, **which Staff placed in the record**. In that supplemental response to one of the Staff's data requests, Millennium 2000 indicated that Reunion purchases minutes from Kajeet, Inc., which in turn purchases minutes from Sprint Spectrum LP. Millennium 2000 also stated in that data response that it has an agreement with Reunion to purchase minutes from Verizon. Finally, Millennium 2000 stated in that data request that Verizon and Sprint have the capability of meeting the requirements under 47 CFR 54.202(a)(2). The letter and underlying Sprint and Verizon and Reunion documents are in the record and Millennium 2000's President included a sworn affidavit to the statements and authenticity of the materials supporting Group Ex 3.

Finally, Dr. Ankum commented on misguided attention Staff gives to network reliability when Millennium 2000 is reselling minutes using the robust networks of Verizon Wireless and Sprint:

Concerns about network reliability, ability to serve exchange areas, etc., are just not as relevant given that Millennium 2000 services will be provided over the network of these huge carriers. It's like fretting over the ability of a reseller of airline seats to safely cross the Atlantic Ocean if the resold seats are on an American Airlines operated Boeing 747. Surely, if Staff has concerns about the reliability of the switched wireless network of major carriers in Illinois, picking on Millennium 2000 is not the solution.

Millennium 2000 Ex. 2.0, pp. 9-10.

## **VI. MILLENNIUM 2000 HAS ALREADY ADDRESSED THE FINDINGS IN THE COMMISSION ORDER BASED ON STAFF TESTIMONY NOT IN THE RECORD**

The Staff argues that the Commission can salvage the sections of its order relying upon the rebuttal testimony of Dr. Zolnierek that was never admitted into the record by simply deleting the references to that testimony. Staff Brief on Rehearing, pp. 27-29. As shown in Millennium 2000's Initial Brief on Rehearing, however, that tactic will not work. Millennium 2000 examined each finding and demonstrated why the remaining evidence did not support the conclusions unfavorable to Millennium 2000. In addition to the discussion of these issues above in this Reply Brief, the sections in the Commission Order that relied on Dr. Zolnierek's Rebuttal Testimony were addressed in the following portions of Millennium 2000's Initial Brief on Rehearing:

Section V.A Defining the Service Area and Demonstrating the Ability to Provide Supported Services throughout the Requested Service Area. (addressed in Millennium 2000 Initial Brief on Rehearing, pp. 9-10);

Section V.D Emergency Functionality (addressed in Millennium 2000 Initial Brief on Rehearing, pp. 14-17);

Section V.E Service Quality and Customer Protection (addressed in Millennium 2000 Initial Brief on Rehearing, pp. 17-18); and

Section V.G Public Interest Analysis (addressed in Millennium 2000 Initial Brief on Rehearing, pp. 20-22)

## **VII. CONCLUSION**

For the reasons stated above and in its Initial Brief on Rehearing, the Commission should grant Millennium 2000's Application for Designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service.

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Respectfully submitted,  
Millennium 2000, Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Reply Brief on 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 18th day of May 2015 by electronic mail.

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