

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Millennium 2000, Inc. :
 :
Application for Designation as a Wireless :
Eligible Telecommunications Carrier for : **12-0375**
Purposes of Receiving Federal Universal :
Service Support pursuant to Section :
214(e)(2) of the Telecommunications Act :
of 1996. :

PROPOSED ORDER ON REHEARING

Dated: June 3, 2015

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By the Commission:

On June 5, 2012, Millennium 2000, Inc. (“Applicant” or “Millennium”) filed a verified application requesting designation from the Illinois Commerce Commission (“the Commission”) as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving Universal Service Support for wireless services pursuant to Section 214(e)(2) of the Federal Telecommunications Act of 1996 (47 U.S.C. §214(e)(2) (“the 1996 Telecom Act”), and Section 54.201(d) of the Rules of the Federal Communications Commission (“FCC”), 47 C.F.R. §54.201. Applicant was granted a Certificate of Service Authority by the Commission in Docket 10-0477 to provide Commercial Mobile Radio Service (“CMRS”) in Illinois. Applicant received ETC authority to provide wireline services in Docket 08-0454.¹

Following an evidentiary hearing on December 19, 2013 at which the parties’ evidence was admitted and a briefing schedule set, the Administrative Law Judge (“ALJ”) issued a Proposed Order on August 5, 2014, recommending that ETC designation be granted. On August 19, 2014, Staff filed a Brief on Exceptions and on August 26, 2014, Applicant filed a Reply Brief on Exceptions. On January 14, 2015, the Commission issued a final Order (“the Order”) denying Millennium’s application for ETC designation.

On February 13, 2015, Millennium filed an Application for Rehearing pursuant to 83 Ill. Adm. Code 200.880. The Commission granted the application on February 25, 2015. The parties convened for status on April 6, 2015, and set a schedule for the submission of briefs, issuance of a Proposed Order, and the filing of Exceptions. This matter was continued for status to May 19, 2015. Thereafter this matter was continued generally. On June 3, 2015, the Administrative Law Judge (“ALJ”) marked the Docket “Heard and Taken.”

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

Applicable Legal Authority

47 U.S.C. §214(e) Provision of universal service

(1) Eligible telecommunications carriers

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

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

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

(2) Designation of eligible telecommunications carriers

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

47 U.S.C. §214(e)

Federal regulations require that:

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

additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

47 C.F.R. §54.201(c)

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

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

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

47 C.F.R. §54.201(d)(1) and(2)

I. Applicant Initial Brief on Rehearing

A. Introduction

Applicant stated in its Initial Brief on Rehearing that it agrees to meet the 20% Ratio proposed by Staff. It also asserted that the Order issued by the Commission on January 14, 2015 was improper, because it relied upon evidence that was not admitted into the record. It further stated that Staff's approach to analyzing ETC applications has driven low-income focused companies such as Applicant out of the Illinois market, leaving the provision of Lifeline service to national, mass-market wireless carriers that consider Lifeline to be a side business.

Applicant asserted that the status of wireless ETC designations in Illinois calls for a rulemaking that would allow the Commission to hear from all interests to determine whether it wants service to be left to large, multi-state mass market companies or whether it wants to adopt rules consistent with Federal guideline to broaden the base of Lifeline providers.

B. Applicant Agrees to Meet the 20% Rule

Applicant stated that, even though it will focus upon servicing the low-income community, it believes it can easily exceed the 20% ratio of non-Lifeline wireless to total wireless customers. If it is unable to meet that threshold, it agrees to abide by Staff's

recommendation and cease accepting new Lifeline customers until it again meets the 20% Ratio.

C. The Commission Order Relied On Evidence That Was Not Admitted Into The Record

Applicant argued that the Commission cannot adopt its January 14, 2015 Order as its Order on Rehearing, because many of its findings were based upon Staff Exhibit 2.0, the Rebuttal Testimony of Dr. Zolnierek, which was denied admission into evidence. Sections 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, and V.G-Public Interest Analysis, relied on that testimony. Applicant also argued that the Commission cannot retroactively reverse an ALJ's ruling, because to do so would deprive Applicant of the right to discovery and cross-examination.

Applicant stated that reliance on testimony not in evidence is disturbing, since the denial should have been obvious from the fact that neither party referenced it in their briefs. This raises serious questions about the integrity of the Commission's deliberations in this Docket and taints the entire process. Since the Commission's findings in the January 14, 2015 Order were not supported by substantial evidence, Applicant claims that the proper relief is for the Commission to enter the ALJ's Post Exceptions Proposed order as the final Order in this Docket.

D. Applicant Meets the Federal Guidelines For Approval Of Its Application For ETC Designation

1. Defining the Service Area and Demonstrating the Ability to Provide Supported Services Throughout the Requested Service Area

The Commission found that Applicant had properly defined its service area, but did not prove that it had the ability to provide the supported services throughout that area, citing the Order: "Rather, what concerns the Commission is the service area was not included in the provided contract." (Order at 35). The Commission relied for this conclusion on Staff Exhibit 2.0. The Commission also relied upon Staff Exhibit JZ 1.04, which had been superceded by two of Applicant's supplemental data request responses that did provide the requested information regarding the service area covered by the contract. (Staff Gr. Ex. 3, DR JZ 1.04).

The parties continued to conduct discovery after Staff's Rebuttal Testimony had been filed on October 18, 2013, and they updated responses that had been filed prior to the testimony filing. The parties submitted data request responses in lieu of cross-examination. (App. Gr. Ex. 3/Staff Gr. Ex. 3).

Ms. Harrison testified that Applicant had entered into an agreement with Reunion Wireless Services, LLC ("Reunion"), allowing it access to the Sprint and Verizon

networks, which provide nationwide wireless coverage. (App. Ex. 1.0R; Staff Gr. Ex. 3, resp. to JZ 1.04(b)). The supplemental and second responses to JZ 1.04(b) provide further data concerning the Reunion contract.

2. Technical and Financial Capacity

a. Technical Capability

Applicant argued that the Commission erred in concluding that Applicant did not have the requisite technical capability, because it had no history of providing wireless service and failed to provide several reports required by the Commission. (Order at 37-39). Ms. Harrison had testified, however, that beginning December 2012, Applicant beta-tested the billing and provisioning software it would use for wireless service by providing 538 free handsets to customers. (App. Ex. 1.0R at 46). The Commission's reference to Staff's assertion that the FCC reports show no wireless revenue for Applicant in 2012 is irrelevant, because Ms. Harrison testified that Applicant began billing for wireless services in April 2013. (*Id.* at 48).

Applicant speculated that the Commission may have been influenced by Staff's argument that it had not received documentary evidence supporting Ms. Harrison's testimony. (Staff Reply Br. at 17). Applicant argued that Staff could have requested such documentation and filed a motion to compel if necessary. Staff also waived cross-examination of Ms. Harrison, thereby waiving objection to her verified statement.

Applicant characterized as repugnant the Order's finding that Ms. Harrison is not to be believed unless supported by documents from a third party. Her undisputed sworn testimony states that Applicant has been providing wireless, non-Lifeline service since December 2012 and billing began in April 2013. By waiving cross-examination, Staff waived the right to dispute the evidence.

Applicant also argued that the issues by Staff raised concerning deficiencies in Section 730/732 and Section 757 Reports are inappropriate because it would hold Applicant to a higher standard than other resellers.

b. Financial Capability

Applicant argued that the Order's entire discussion of financial capability was based upon the incorrect assumption that Applicant does not, and cannot, meet Staff's proposed 20% Ratio. Applicant is willing to accept the condition and has the means to achieve it.

3. Emergency Functionality

Applicant argued that the Commission ignored Applicant's evidence and found that it had failed to demonstrate the ability to remain functional in emergency situations, as required by §202(a)(2) of the 1996 Act, based upon Staff rebuttal testimony. The finding is not based upon substantial evidence, because that testimony is not in evidence.

Notwithstanding, Applicant demonstrated that it met the emergency services requirement and submitted a supplemental response to Staff Data Request JZ 609(A), consisting of a letter from the President of Reunion, explaining the nature of the emergency services it would supply to Applicant and its customers. (App. Gr. Ex. 3). Applicant contends that Staff must have been satisfied with the response, because it did not object to the Exhibit and did not address the issue in its briefs. The Commission, however, refused to consider the letter, as it was “not in an affidavit or other form of legally enforceable record.” (Order at 39).

The Order’s finding ignores the Commission’s rules of practice, which allows admission of such documents and requires a timely objection. The Order states that “(T)he Commission cannot infer a capability-not expressed in the contract-based on the evidence provided. Accordingly, the Commission Order finds that the record does not support a finding that Applicant has demonstrated its ability to remain functional in emergency situations.” (*Id.*).

Applicant noted that the contract relied upon in this finding is not notarized. The Commission’s decision that the letter from Reunion must be notarized is demonstrative of the extraordinary evidentiary barriers the Commission erected before Applicant. The letter is no different than any other business document allowed into evidence in this, and other, Commission Dockets.

It is also another example of the Commission’s refusal to believe Ms. Harrison, unless her testimony is supported by a document. Here, she produced the document, Staff believed her, yet the Commission rejected her testimony because the document was not notarized.

4. Service Quality and Customer Protection

Applicant argues that the Commission again relies to a certain extent upon Staff’s rebuttal testimony, not admitted in to evidence, in support of its finding that Applicant does not meet service quality and consumer protection criteria. (*Id.*). The Commission also, however, relied upon Staff’s direct testimony. The missing information was on a single Section 730/732 Report in 2012, and it was missing because Illinois Bell Telephone Company d/b/a AT&T Illinois d/b/a AT&T Wholesale (“Illinois Bell”) failed to provide the necessary data.

Applicant claims that this does not show that Applicant will not be able to meet future service quality and consumer protection criteria.

5. Pass-Through Support

Applicant argued that the Commission’s finding that Applicant did not pass through the full amount of support to its customers was tantamount to a claim of criminal conduct, but unsupported by evidence. It is reflective of the lack of belief in Ms. Harrison’s unrebutted, sworn testimony. In the case of emergency functionality, the Commission

found that the document was insufficient because it was not notarized. Here it finds that the number of documents were not enough to overcome doubts about the truthfulness of her testimony.

Ms. Harrison testified that, although at one time Applicant's tariff did not reflect the full pass-through of Lifeline support, it provided its Lifeline customers with an additional goodwill discount that resulted in customers receiving more than the required Lifeline support. (App. Ex. 1.0R at 56). To demonstrate what customers saw on their bills, she provided sample bills to pre-pay customers and sample statements to post-pay customers. Staff did not contest admission of these bills into evidence. Moreover, Applicant objected as unreasonably burdensome Staff's request to produce thousands of bills and statements, as each would show the exact same discount. Staff acquiesced to Applicant's objection.

Staff also waived cross-examination of Ms. Harrison, thus waiving its right to object to the truthfulness of her testimony. The Commission, however, found that her testimony was not to be believed, as Applicant did not supply enough bills and statements of service in corroboration. (Order at 40).

The Order found that regardless of whether customers received more than the required pass-through, the fact that Applicant's tariff was at some point incorrect, justifies the conclusion that Applicant "has failed to demonstrate that it has the ability to pass through the full amount of support that Lifeline customers are entitled." (*Id.* at 41). This finding is not supported by substantial evidence, because Applicant's evidence shows that it never failed to pass-through the full amount of wireline Lifeline support, and is committed to doing so in the future.

6. Public Interest Analysis

The Commission relied primarily upon Staff's rebuttal testimony to support its finding that Applicant did not meet the public interest standard, but Staff's direct testimony also addressed this issue.

Applicant argued that the Commission's concerns regarding Applicant's retention rate will be alleviated by its agreement to comply with the 20% Ratio. Applicant's proposed Lifeline plans will be attractive to potential customers, and through its agreement with the 20% Ratio, it will maintain the proper proportion of Lifeline to non-Lifeline customers.

Staff had expressed concern that Applicant had maintained a low-retention rate for its Lifeline wireline customers. (Staff Ex. 1.0R at 46-47). Ms. Harrison explained that a low retention rate was to be expected during the period examined. The emergence of wireless Lifeline service is rendering wireline Lifeline service obsolete. As of 2012, 96% of Lifeline customers were wireless. (App. Ex. 1.0R at 5). It is therefore understandable that, over time, Applicant's wireline Lifeline customers would leave for carriers that could provide wireless Lifeline service.

Further, Dr. Ankum had testified that another factor that reduces the retention rate is prepaid service. It is easy for a customer to discontinue service until resources again become available. While this would appear as low retention, it says little or nothing about the how customers value the service, as Staff mistakenly conjectures. (App. Ex. 2.0 at 27-28).

A low retention rate could also result from the transitory nature of low-income customers for reasons of work, family or housing situations. In such cases, customers might not be able to continue landline Lifeline service. (*Id.*).

Ms. Harrison testified that Applicant is required to de-enroll customers when they lose their Lifeline eligibility, so low retention could also be the result of compliance with the law. (App. Ex. 1.0R at 70). Applicant argued that a comparison of Applicant's retention rate with other carriers does not tell a complete story, because Applicant focuses on the low-income community, which tends to be more transitory. Because a higher percentage of its wireline customers received a Lifeline subsidy compared to other ETC providers, and because of its focus on prepaid service, Applicant is easily susceptible to a low retention rate, compared to other wireline ETCs. This combination of elements has caused all of Applicant's ETC wireline customers to cease wireline service, causing Applicant to file a petition to relinquish its wireline ETC designation. The petition states that Applicant has had no wireline ETC customers since January 1, 2015. (Docket 15-0282, 4/10/15, Pet. at ¶¶8-9).

E. The Commission Order Failed to Perform an Equitable Analysis of the Record.

The Order's refusal to accept the truthfulness of Ms. Harrison's un rebutted testimony is tantamount to alleging the illegal retention of funds. In each instance, the Order stated that there were not enough notarized, or an insufficient number of, documents to support her testimony. Such treatment is mystifying, as Applicant has been serving the low-income community since 2009 without a single complaint to the Commission or the FCC. Moreover, Staff's lack of belief is inappropriate for a witness whom it chose not to cross-examine.

Applicant argues that it has met its burden in this Docket through the testimony and other exhibits admitted into evidence. Staff then had the burden to object. 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." (City of Chicago v. Ill. Comm. Comm'n, 133 Ill. App. 3d 435, 442-43 (1st Dist. 1985)).

Staff made no attempt to accept that burden until its belated attempt to file rebuttal testimony, which was properly rejected by the ALJ. Subsequent to that, it could have tried to make its case cross-examining Applicant's witnesses, but chose not to do so.

Applicant speculates that Staff perceives a carrier such as Applicant that focuses on the low-income community to be less worthy of respect than a carrier that does not have the same focus. Such stigmatization has no place in the regulatory process. The avoidance of waste, fraud and abuse should be confronted directly by ensuring that designees have sufficient preventive systems in place and use them.

Ms. Harrison described Applicant's FCC-approved Compliance Plan and it was admitted into evidence, however Staff made no mention of this. (App. Ex. 1.0R at 12-15; App. Gr. Ex. 3.10). The Commission instead relied upon Staff testimony that was not admitted into evidence, and minor filing deficiencies, to portray Applicant as a mismanaged operation that defrauded its customers, and to suggest that Ms. Harrison is someone who could not be trusted to tell the truth, even under oath.

II. Staff Reply Brief on Rehearing

A. Millennium Has Not Met Its Burden of Proof

Staff argued that Applicant has the burden of proof in this matter according to the FCC and as a matter of state law. It has not, however, presented evidence sufficient to persuade the trier of fact that the relief it requests should be granted. From the outset, Applicant has had difficulty defining its proposed ETC service area. Applicant represented that its proposed service area would overlap areas served by rural carriers. (Amended Pet. at 7). This information was inconsistent with that provided to Staff in data request responses. (Staff Ex. 1.0 at 31). Applicant subsequently filed an Errata to its Amended Petition that intended to clarify that Applicant did not propose to include any rural service area within its proposed ETC service area, but that did not resolve the deficiency. (Errata to Amended App, 4/29/13).

The Errata defined the proposed service area as (1) the group of Local Access and Transport Areas ("LATAs") including LATA 358 (Chicago), 360 (Rockford), 362 (Cairo), 364 (Sterling), 366 (Forrest), 368 (Peoria), 370 (Champaign), 374 (Springfield), and 376 (Quincy); (2) Illinois Bell non-rural service areas; and (3) the service areas of Sprint and Verizon Wireless. Each of these definitions are mutually inconsistent. (Staff Ex. 1.0 at 29-31).

Staff argued that, in response to its data requests, Applicant furnished additional definitions based upon exchanges that were also inconsistent with prior definitions, and again included rural areas in the proposed ETC service area. (Id. at 32-34). Ms. Harrison testified regarding these inconsistencies that "Dr. Zolnierek's testimony was submitted prior to the completion of discovery. (App. Ex. 1.0R at 32). Staff argued that Applicant continued to rely upon Staff Data Requests and Staff testimony to cure evidentiary defects, even after Staff's only opportunity to file testimony in this Docket was complete. Applicant's inability to define its proposed ETC service area without material assistance from Staff is evidence of a failure in Applicant's capability to provide service throughout its service area. If Applicant is incapable of identifying its service area, it cannot meet the

most basic of ETC requirements, i.e. to offer Lifeline service throughout its designated ETC service area.

Applicant asserted in its Amended Application that it provided prepaid wireless service by obtaining the services of Sprint and Verizon Wireless indirectly, through Reunion, in turn through Kajeet, Inc., and through Coast-to-Coast Cellular. (Amended App. at 4). Applicant admitted that it did not have a contract with Coast-to-Coast when it filed its Amended Application, so the Amended Application was, and remains, inaccurate. (Staff Gr. Ex. 3.0, 2nd Supp. Resp. DR JZ 1.04b).

After admitting that it did not have an effective agreement with Coast-to-Coast, Applicant relied upon a contract with Reunion, substantial parts of which were not signed until after the Amended Petition was filed, as evidence of its ability to provide service throughout its service area. (App. Gr. Ex. 3.17). Further, the Reunion contract states “Wireless Service provider acknowledges and agrees the Service may not be available in all the markets that Wireless Service Provider serves.” Applicant provided a letter from Reunion that states that wireless services are subject to the network design and coverage decisions of Reunion’s underlying carriers. (App. RB at 12; Staff Gr. Ex. 3, DR JZ 6.09). The letter therefore emphasizes that Applicant may not be able to cover its entire territory with Reunion’s services. There is no evidence that their networks cover the entire proposed service area, and therefore Applicant has not demonstrated that it can provide service throughout its entire proposed service area. This evidence supports the Commission’s determination that it “cannot find that the record supports the conclusion that Applicant has the technical capability to provide service in all portions of the identified service area.” (Order at 35).

Applicant’s failure to meet its commitment to offer wireline Lifeline service throughout its service area is more than a theoretical or prospective concern. Its wireline service included all of the Illinois Bell and (now) Frontier North, Inc. (“Frontier”) service areas. (Docket 08-0454, Order at 24-25). Ms. Harrison’s explanation, that Applicant provides wireline ETC service through resale of Illinois Bell’s service, indicates that five years after wireline ETC designation, Applicant had no ability whatever to offer service in Frontier’s portion of its wireline ETC service area.

Applicant explained that its marketing efforts in the Frontier North footprint were unsuccessful, so it did not make the effort to obtain an interconnection agreement for that territory. (App. RB at 14). Staff argued that it became clear only at the briefing stage of this proceeding that Applicant had made the decision not to offer service throughout its wireline ETC area, and knowingly and willfully decided not to comply with the most basic of ETC requirements – to offer Lifeline service throughout its ETC service area.

Staff argued that it is clear that Applicant’s advertising methods did not comply with the requirements to which it was subject in its wireline designation in Docket 08-0454. The Commission determined that Applicant’s intent to market itself through Lifeline brochures, live contact, and electronic media, thereby satisfying the media of general distribution requirement of §54.201(d)(2), does not change the fact that Applicant did not

advertise its services in a local circulation newspapers, as required by Docket 08-0454. (Staff IB at 26; Order at 36). Applicant then reported directly to the Commission that it was not offering service in the Frontier North area, contrary to any implicit assertion that it was offering such service. (Staff IB at 25).

Staff argued that the evidence is substantial, and reflects a significant compliance failure, that Applicant failed to offer wireline Lifeline service throughout its designated ETC service area. In its application in Docket 08-0454, Applicant committed to comply with 47 C.F.R. §54.202(a)(1)(i) and provide service throughout its proposed service area, (Docket 08-0454 at ¶17), and that it "...is providing service to customers through the use of AT&T Illinois and Verizon facilities..." (Id. at ¶19). Applicant did not provide such service, did not have the ability to do so, and affirmatively chose not to do so.

Applicant stated in its Amended Application that it provides prepaid wireless service to consumers nationwide by agreements with Verizon and Sprint (Amended App. at 4), yet in response to a Staff data request, Applicant acknowledged that its agreement with Verizon was no longer in effect at that time. (Staff Gr. Ex. 3 2nd Supp. Resp. DR JZ 1.04b; Staff IB at 21-22). Applicant was not, therefore, using Verizon's network and did not have lawful authority or the capability at the time to do so.

Further, the agreement submitted by Applicant was not with Sprint or Verizon, and did not demonstrate that Applicant has the ability to use its underlying carrier's network in all parts of Applicant's proposed service area. (Staff Gr. Ex. 3 2nd Supp. Resp. DR JZ 1.04b; Staff IB at 24). Applicant again misrepresents its capacity to provide service and failed to provide evidence in support of its assertion that it not only could provide service, but was actually doing so. The Commission was correct to conclude that the record does not support the conclusion that Applicant has the technical capacity to provide service in all portions of the identified service area. (Order at 35). Given Applicant's misrepresentations, the Commission should again deny ETC designation.

Applicant's annual Lifeline verification report indicates that its customer retention rate is 1.4% and that its monthly turnover rate has often exceeded 100%, a retention rate well below that of any other Illinois ETC's retention rate. (Staff Ex. 1.0 at 46-47). Applicant's position is that the low rate is a result of lessening demand for wireline service compared to prepaid wireless service. (App. IB on Rehearing at 21). Applicant's most recent annual Lifeline verification report for Wisconsin, however, shows a customer retention rate of 0%. Applicant also suggests that its low retention rate is a result of its concentration on the low-income community, however Lifeline service can only be offered to the low-income community. (App. IB on Rehearing at 22). All ETC's share this disadvantage.

Staff argued that Applicant's explanations fail to consider a more troubling possibility. Applicant offers a five-day Lifeline plan that allows it to recover a full month's subsidy while offering customers only five days of service. This is evidence that Applicant's own business practices contribute to its low retention rate. The plan is antithetical to the purpose of Lifeline service, which is to connect customers to the public

switched network and keep them there. The five-day plan has precisely the opposite effect; it exhausts a customer's entire subsidy in five days, then disconnects the customer. On its face, retaining a full month's subsidy while providing only five days of service defrauds the program.

Applicant replied that Staff did not even state whether any customers had chosen the plan, much less whether the hypothetical customer was unsatisfied with the plan. The referenced plan is only one of four ETC wireline plans offered. (App. RB at 29). Staff argued that even though the record does not specify how extensively Applicant relied upon this plan to defraud the system, it does not represent any deficiency in Staff's case. Applicant's transgression is clear, the extent of which is not Staff's duty to determine.

Staff alleged that Applicant had failed to supply customers with the full Lifeline subsidy to which they were entitled. (Staff Ex. 1.0 at 41). Applicant stated that it did pass through the full Lifeline discount, but its tariffs were inaccurate. (App. Ex. 1.0R at 56). Failure to accurately tariff its prices is again an indication of Applicant's inability to comply with ETC requirements.

In support of Applicant's contention that it did pass through the full Lifeline subsidy, it provided sample Statements of Service from July through August 2012, when it provided prepaid service. (App. Ex. 1.0R, Ex. 12). The first, second, third and fifth samples provided contain simple math errors. They show subtotals of \$24.34, when the subtotal for a \$37.50 service discounted by \$15.00 should be \$22.50. The subtotals are \$1.84 more than they should be, which inflates customer charges to Applicant's benefit.

Applicant provided additional sample Statements of Service for January 2013, two of which contain incorrect billing periods, Statement Period 01/11/13-01/10/13 and Statement Period 01/06/13-01/05/13. (App. Cross Ex. 3.0, Ex. 3.24, Resp. to DR JZ 6.21). In attempting to determine what Applicant actually charged customers to verify that it passes through the full amount of the subsidy, Staff uncovered billing errors in the majority of the statements supplied. Staff requested more billing statements to determine the extent of the inaccuracies, however Applicant replied that the request involved thousands of documents and would be therefore unduly burdensome, as the statements showed the same discount in the bills and Statements of Service. (Application for Rehearing at 42).

Staff argued that the evidence clearly shows that the bills, like the tariffs, were inaccurate. The Commission correctly challenged Applicant's assertion that the bills demonstrate that Applicant passed through the full Lifeline discount to its customers.

Applicant failed to include any financial information in its Amended Application. It did not include a Balance Sheet, Statement of Cash Flows, FCC financial filings or any similar documents (Staff IB at 30), however Applicant did provide certain financial information upon Staff's request. (App. Ex. 1.0R at 45). Staff argued that Applicant correctly stated that there is no Commission requirement to produce such documents (App. RB at 23), because the Commission has no ETC designation rules. Applicant is

free to contest production of financial documents regarding its fitness, but doing so leaves it without basic proof of that fitness.

In addressing Applicant's financial qualifications, Staff examined Applicant's service history and revenues. Applicant's Compliance Plan, December 18, 2012, states that Applicant currently provides wireless service to non-Lifeline customers in Illinois and Wisconsin. (Amended App. at 15). When Staff requested confirmation of this data, Applicant admitted it was erroneous. Applicant's Compliance Plan was incorrect when filed. Applicant then said it was updating its response to DR JZ 1.01 (b), (d), (j), (l), and (k) to clarify that it did not begin wireless and Lifeline service in Wisconsin until June 2013. (Staff Gr. Ex. 3.0, Resp. to DR JZ 6.10). Applicant did not provide service in Wisconsin on December 18, 2012, contrary to the verified statement it submitted to the FCC. Applicant's Amended Petition is incorrect regarding Applicant's service history.

Staff argued that Applicant's own testimony disputes its argument that Applicant has been providing unbilled wireless non-Lifeline service since December 2012, with a full roll-out of billing in April 2013 and there is nothing in the record to dispute this. (App. IB on Rehearing at 12). The actual testimony says that "Millennium 2000 provided wireless services in Illinois since December 2011, with its full roll-out of wireless services commencing in April 2013. (App. Ex. 1.0R at 41). Applicant's Amended Compliance Plan states that "Millennium 2000 has provided prepaid wireless services in Illinois since 2010." (Amended App., Ex. 1A at 23). Because of the contradictory evidence, it is unclear when Applicant began providing unbilled wireless service.

Staff states that there is no evidence in this proceeding that Applicant has collected any revenue for wireless service to non-Lifeline Illinois customers. Applicant's response to this was to advise Staff that if it needed such documentation, it could have asked for it and, if denied, could file a motion to compel. (App. IB on Rehearing at 12). Based on the erroneous information filed by Applicant, the Commission has every reason to doubt the accuracy of the information supplied. It is Applicant's burden alone to rectify this deficiency and it is not incumbent upon Staff to compel an information filing.

Staff stated that Applicant argued that it met its burden of proof in its application and exhibits. Applicant's Amended Petition has, and continues to contain, erroneous information, there is extensive evidence that it does not meet the requirements for ETC designation, and that designation would not be in the public interest. Applicant's case is thoroughly deficient and neither Staff nor the Commission bears any burden to resuscitate it. Staff argued that Applicant's continued inability to provide accurate and responsive information is the basis for Staff's and the Commission's position that Applicant should not receive ETC designation. (App. IB on Rehearing at 11-12).

B. Demonstration That Applicant Will Not Critically Rely On Lifeline Subsidies

Staff advised that, if a carrier's record of service is insufficient, e.g., no prior record of service or no history of non-Lifeline service, the Commission should not grant ETC designation until the carrier demonstrates an ability to serve the Illinois market without

relying substantially on Lifeline subsidies. In this case, the Commission should find that Applicant cannot begin to provide Lifeline service until it has established a six-month record of providing non-Lifeline service in Illinois, has supplemented the record to reflect this period, and has received specific approval from the Commission to begin Lifeline service. (Staff Ex. 1.0 at 19-20).

Applicant replied that Staff subsequently filed a Reply Brief and a Brief on Exceptions and never provided legal support for the 20% rule, despite having multiple opportunities. The Commission might ask why Staff did not avail itself of these opportunities. The answer is record evidence. (App. for Rehearing at 14).

Staff argues that the actual answer is that Staff did not recommend that the Commission apply this condition to Applicant upon designation. Staff's position is that Applicant's Petition be denied.

Staff reiterated that Applicant has failed to comply with the most basic requirements as a wireline ETC, including the requirement to offer and advertise Lifeline service throughout its service area, to offer customers a full month of service for their monthly subsidy, to appropriately reflect its Lifeline rates in its tariffs, to provide accurate bills, and to provide adequate customer service. In addition, Applicant has failed to timely comply with Section 757 Lifeline reporting requirements. (Staff Ex. 1.0 at 44-45). This pattern of untimely filings is a further indication of either an inability or an unwillingness to meet the conditions of wireline ETC designation.

Staff has repeatedly recommended denial of the application in this Docket. (Staff Ex. 1.0 at 48; Staff IB at 43; Staff RB at 29). Staff does not recommend conditional acceptance, because Applicant's poor showing in its wireline Lifeline service is evidence that it fails to comply, at times willfully and knowingly, with the conditions of its application. Conditions are only effective to the extent the ETC complies with them. Applicant's history demonstrates that it does not.

Staff recommended that, for carriers previously designated as ETCs in other states, or for other types of service, the Commission consider the carrier's non-Lifeline to Lifeline service record. (Staff Ex. 1.0 at 19). The Commission was correct to consider Applicant's potential dependence on Lifeline revenue. That is what the FCC directed when it recently changed its rules requiring a financial and technical assessment of Applicant's fitness. (§54.201(h)). The framework for such an assessment is set forth in the FCC's Lifeline Reform Order ("LRO"), ¶388.

Staff elicited Applicant's service revenues through data requests, based upon Applicant's service-related financial filings with the FCC. Staff contends that these filings reveal a historically heavy, and virtually exclusive, dependence on Lifeline revenues. The evidence showing this dependence is of the type that the FCC has indicated should be viewed unfavorably when making an ETC decision.

Applicant argued that the FCC standard applies only if Applicant's revenues are exclusively from Lifeline subsidies. (App. for Rehearing at 8). Staff cautions that the LRO should not be read so narrowly. The LRO suggests that state commissions should consider the level of dependence by ETC's on Lifeline revenue. It would be absurd to completely discount the FCC's Order, based upon a minute sum of non-Lifeline revenue. Moreover, a de minimis level of non-Lifeline revenue does not prove a carrier's financial fitness.

Applicant stated that "by enforcing the 20% rule (the Commission) may be driving away the only non-nationwide mass market wireless company whose ETC application it has granted" and "the Commission is literally driving a Chicago-based company out of the state." (App. for Rehearing at 4, 10-11). Staff argues that Applicant's quoted language makes it starkly clear that without ETC designation and the Lifeline subsidy, it cannot survive. The total dependence upon the Lifeline subsidy is precisely what the FCC advises that state commissions guard against. Applicant's plan to recover a full month's Lifeline subsidy for five days of service indicates that the FCC was properly concerned that over-dependence on the subsidy can create incentives for the carriers to abuse or defraud the program. (Staff Ex. 1.0 at 17-18).

In arguing that Staff's recommendations discriminate against new carriers (App. for Rehearing at 9-10), Applicant overlooks the fact that the FCC changed its rules to provide for a financial analysis of new applicants that did not apply to prior applicants. Any financial assessment and any conditions based upon it results in a different designation process than was used in the past.

Staff also argued that it recommended the 20% rule going forward only when an applicant has an insufficient service record, (e.g., no prior record of service, no history of Lifeline service, etc.). (Staff Ex. 1.0 at 19). This requirement would not apply to providers with an established viable service record in Illinois, and that have provided evidence that they are not establishing service solely to collect the Lifeline subsidy. There is no evidence to support that, if the Commission had been required to apply the FCC-required financial analysis in the past, that this condition would have been imposed on existing carriers. There would also have been no need to apply the condition to any ETC applicant that had a meaningful level of non-Lifeline service. The Commission correctly concluded that "requiring a demonstration of legitimate and profitable operation, and the demonstration that...Applicant will not critically rely upon Lifeline subsidies, will provide the Commission with some assurance that Applicant will be less inclined to risk engaging in waste, fraud and abuse as a means of remaining solvent." (Order at 38).

Applicant's belief that it could easily exceed the 20% ratio of non-Lifeline wireless customers to total wireless customers is based upon its expectation that a substantial percentage of families using its Lifeline phone would wish to obtain additional non-subsidized lines. (App. IB on Rehearing at 6). Staff argued that Applicant's reasoning is unexplained and inexplicable. Making a commitment on such a suspect assumption is unreasonable and likely to result in a failure to comply with the commitment.

C. ETC Activity in Illinois

Staff argues Applicant's contention, that 13 ETC designation requests have been withdrawn or continued generally due to Staff or Commission action, is unsupported and clearly wrong. (App. IB on Rehearing at 4, Attachment 1). Of the 13 ETC applicants, Assist Wireless, LLC, Everycall Communications, Inc. d/b/a All American Home Phone d/b/a All American Wireless, US Connect, LLC and Linkup Telecom, Inc. have not had their compliance plans approved by the FCC. Q Link Wireless, LLC requested a stay of its proceeding because its Chief Executive Officer was charged with second-degree murder. (Docket 12-0095, Joint Motion to Stay Proceedings, 10/24/14). These continuances are the result of external factors, not the result of any Staff or Commission action.

Applicant cannot provide evidence as to why other applicants withdrew their applications, but its assertion that Staff is driving low-income based ETCs away from Illinois is speculation.

Applicant further has no support for its assertion that multi-state wireless carriers who provide wireless Lifeline in Illinois employ minimal marketing to the low-income market and fail to offer services targeted to that market. (App. IB on Rehearing at 5). Universal Service Administrative Company low-income reporting shows many ETCs in Illinois receiving hundreds of thousands of dollars in Lifeline subsidies each month, which is hardly consistent with a failure to market Lifeline service to the low-income market. (<http://www.usac.org/li/tools/disbursements/default.aspx>). Staff asserts that it is Applicant's qualifications that are at issue in this proceeding, and that is what the Commission should consider.

D. Emergency Functionally

Applicant cited to a letter from Mr. Widbin, the President of Reunion Services, LLC, as support for its assertion that it meets the crucial emergency services requirement. (App. IB on Rehearing at 15; App. Gr. Ex. 3.0, 3.17b, App. resp. to DR JZ 6.09(a)). Applicant asserts that Staff made the decision that Applicant met the emergency services requirement. Staff's decision, however, was to recommend that Applicant not be designated a wireless ETC. Because Staff based this recommendation on numerous identified deficiencies (Staff IB), but did not provide a comprehensive list, does not mean that Staff decided that Applicant met any particular criteria. If the Commission accepts App. Gr. Ex. 3.0, 3.17(b), it will note that Mr. Widbin's remarks fail to support Applicant's assertions.

E. Reliance On Evidence Not Admitted Into The Record

Applicant argued that the Commission cannot adopt the Commission's Order as the Order on Rehearing, because many of the findings were based upon Staff Ex. 2.0, testimony that was not admitted into evidence. Citations to Staff Exhibit 2.0 are unnecessary, because evidence supporting the Commission's decision is in the record.

The Commission referenced Staff Ex. 2.0 and Staff Gr. Ex. 3.0, JZ 1.04(b) in finding that Applicant is not technically capable of providing service in all portions of the identified service area, because a stated service area was not included in Applicant's contracts with its underlying carrier. (Order at 35). The Commission need only to revise its Order to reflect Staff Gr. Ex. 3.0, Second Response JZ 1.04(b), and App. Gr. Ex. 3.0, 3.17. These exhibits reference Applicant's contract with Reunion. Reference to Staff Ex. 2.0 is unnecessary.

The Commission also cited Staff Ex. 2.0 in finding that Applicant cannot remain functional in emergency situations, and that Applicant's wireline Lifeline reporting is indicative of its future inability to provide adequate service. In each issue, the evidence relied upon is the Reunion contract, also included in Staff Gr. Ex. 3.0, Second Response JZ 1.04(b), and App. Gr. Ex. 3.0, 3.17. Reference to Staff Ex. 2.0 is unnecessary.

The Commission also referred to Staff Ex. 2.0 in noting that it has designated ten wireless ETCs, seven of which have authority to operate in all of Applicant's service area. These facts are a matter of public record and are contained in the Order of ETC designation for Dockets 04-0454/04-0455/04-0456 (Consol.), 04-0653, 07-0154, 09-0067, 09-0213, 09-0269, 09-0605, 10-0452, 10-0453, 10-0512 and 11-0073. Reference to Staff Ex. 2.0 is unnecessary.

The Commission referred to Staff Ex. 2.0 regarding Applicant's low retention rate, relative to all other ETCs in Illinois. This issue is also addressed in Staff Ex. 1.0. The Commission's comparison to other ETC's in Staff Ex. 2.0 demonstrates the magnitude of difference, however this detail is unnecessary as the Commission's finding is specific to Applicant ("the high turnover rate of Applicant's wireline Lifeline customers is dramatic, and is inconsistent with the notion that Applicant is providing customers a dependable service.") (Order at 42). Applicant's deficiency on this issue is clear, the extent of which is not incumbent upon Staff or the Commission to determine. Reference to Staff Ex. 2.0 is unnecessary.

The Commission's references to Staff Ex. 2.0 are contained elsewhere in the record or in publicly available Orders. Staff argues that correcting the above citations and removing immaterial turnover rate details for other ETCs does not alter the Commission's determinations.

III. Applicant Reply Brief on Rehearing

A. Introduction

Applicant argued that it has provided specific, detailed answers to over 230 questions from Staff, contained in six separate sets of data requests. It has briefed and responded to each Staff accusation five separate times in minute detail, and its evidence is supported by the various parties to its agreements.

According to Applicant, Staff attempts to find every possible excuse to deny the application, raising issues that were not addressed in the testimony, were not subject to discovery, and were not addressed in prior briefs. Staff's arguments are based upon its position that Applicant bears the burden of proof to meet the elements of its case, rather than on the totality of three years of evidence; that it did not receive sufficient discovery, even though it did not seek more or avail itself of the process for compelling discovery; and that Ms. Harrison did not provide sufficiently detailed testimony, even though Staff waived her cross-examination. Staff also reneged on its 20% requirement, to which Applicant had agreed in order to demonstrate how one plan in particular could benefit Illinois consumers.

Applicant argued that, on a policy level, Staff has interfered with commerce, compelling Applicant to lay off employees as it transitions from wireline Lifeline to wireless Lifeline service, and required Applicant to spend time and money in litigation to no avail. Applicant, as a minority, woman-owned company, is attempting to meet a need in the underserved low-income community by providing telecommunications to customers.

B. Millennium 2000 Meets Its Burden of Proof on the Conditions for Approval if Its Application

1. Definition of Service Area

Staff argued that Applicant failed to meet its burden of proof to define its service area, because it did not do so in its initial application. Because Applicant revised its service area through subsequent testimony and exhibits, Staff stated that "it cannot meet the most basic of ETC requirements, in particular the requirement to offer Lifeline service throughout its designation (sic) ETC service area." (Staff RB on Rehearing at 7).

Applicant argues that cases are not static, but provide for development of all relevant circumstances throughout the fact-finding process. Applicant is not required by any law, rule or regulation to meet its burden of proof only in its pleading, and cited errata that was filed to amend the application in this Docket. (Errata filed 4/29/13, 2/10/14; 4/29/13 Tr. at 29). A party meets its burden with admissible evidence, as was done with Applicant's Group Exhibit 3.

Staff complained that Applicant changed service providers during this proceeding, from Coast-to-Coast to Reunion. Since the amended application listed Coast-to-Coast, it is inaccurate. (Staff RB on Rehearing at 7). Applicant argues that Carriers often amend their operating contracts and make arrangements with substitutes. Applicant fully disclosed its third-party agreements in its Compliance Plan and in its application. Applicant also provided an addendum to its agreement with Reunion to demonstrate its ability to provide service on the Sprint and Verizon networks. (App. Gr. Ex. 3, Exs. 3.17, 3.17(a) and 3.17(b), response to DR JZ 6.09(a)). The burden of proof is a standard that is met throughout the case and is determined at the end of the proceedings.

Staff argued that Applicant's contract with Reunion, which states that service may not be available in all markets, means that Applicant cannot provide service to its entire

designated territory. (Staff RB on Rehearing at 7-8). This argument first appeared in Staff's Initial Brief, which Applicant addressed in its Reply Brief. (Staff IB at 23-24; App. RB at 11-13). Applicant argued that what Reunion did was provide a standard disclaimer that all wireless services are subject to atmospheric, topographical, geographical and other limitations. (App. Gr. Ex. 3, Ex. 3.17(a), response to DR JZ 6.09(a)). It added that Illinois Bell, Sprint, Verizon and T-Mobile provide similar disclaimers. Denial of ETC designation on this basis would be grossly inequitable and factually baseless.

Applicant also takes issue with Staff's assertion that it deliberately misrepresented its underlying carriers when it said in the amended application that it was using Verizon Wireless and Sprint networks, when it was actually working with Reunion. (Staff RB on Rehearing at 11). Reunion, however, provides resold wireless services. Applicant provided an addendum to the Reunion agreement showing a contract for services with Verizon Wireless and Sprint. (App. Gr. Ex. 3, Exs. 3.17, 3.17(a) and 3.17(b), response to DR JZ 6.09(a)). Third party aggregation of underlying services is an accepted means of providing service in all states. Applicant's amended application accurately states that its coverage area is identical to that of Verizon Wireless and Sprint.

Staff next argued, again for the first time in its Initial Brief, that Applicant could not provide service throughout its proposed service area because it did not have an interconnection agreement with Frontier North. (Staff IB at 25). Applicant stated that it did, in fact, attempt to serve customers in the Frontier North area, but its marketing efforts were unsuccessful and it failed to record a single request for service. (App. RB at 14). Applicant entered into an interconnection agreement with Frontier North on July 25, 2014. (App. RBOE at 11).

2. Retention Rate

Applicant argues that there is no basis for Staff's objection to Applicant's retention rate, because there is no federal or state requirement that Lifeline maintain any particular level of retention. Further, the wireline Lifeline market has evaporated for many carriers, as well as for Applicant, and the lack of wireline Lifeline customer interest in the first quarter of 2015 "led it to withdraw its wireless (sic) ETC designation." (App. RB on Rehearing at 8; Docket 15-0282, 5/6/15).

Applicant argued that a low retention rate for prepaid wireline Lifeline customers is understandable, because they are not contractually bound to keep continuous service; many low-income customers must juggle bills and continuous phone service may be a low priority; many low-income customers are transient and cannot take their wireline service with them; and low-income customer prefer wireless service, as did 96% of Lifeline customers in 2012. (App. Ex. 2.0 at 28).

Staff alleged for the first time in its Reply Brief on Rehearing that Applicant had a zero retention rate in Wisconsin, obtaining the information from a report filed by Applicant with the FCC. (Staff RB on Rehearing at 12). Applicant argues that Staff should not be allowed to insert new evidence at this stage of the proceeding. Staff's brief is unverified, the original proceeding has been closed, Staff waived the right to submit testimony on

rehearing, and Applicant has had no opportunity to respond to the report. Further, the document does not support Staff's allegation, nor does it reflect the increase in Applicant's customer base in Wisconsin.

3. Five Day Plan

Staff first raised this issue in its Initial Brief. (Staff IB at 33). It was not included in testimony and Staff never conducted discovery on it. Applicant provided Lifeline customers with an option of a thirty-day plan or a five-day plan. The five-day plan of unlimited service equates to 7200 minutes. Other Lifeline cellular plans provide an average of 250 minutes. Once the plan selection is made, the \$9.25 discount is applied and customers are not charged a reconnection fee when they prepay for the same plan the following month. This plan has never been the subject of a complaint from customers, the FCC or USAC.

4. Lifeline Benefit Pass-Through

Applicant provided customers with a goodwill discount on their bills that, when combined with the tariffed Lifeline credit, provided more than the required credit. (App. IB on Rehearing at 18; App. Exs. 11-12). While Staff can claim that there are mathematical errors in the sample bills provided, it cannot claim that customers received less than the Lifeline credit to which they were entitled.

5. Financial Statements

Staff complained that Applicant did not submit a Balance Sheet or Income Statement with its application, even though it agrees that there is no Commission rule requiring such financial data. (Staff RB on Rehearing at 14-15). Staff then concedes that Applicant provided a detailed Profit and Loss Statement, as well as summaries of its financial information during discovery. (*Id.*; App. Gr. Ex. 3.0, 3.07, 3.07(a), 3.07(b), resp. and supp. resp. to DR JZ 1.11; (3.08), 3.08(a), resp. to DR JZ 1.12). If Staff wanted to argue that the data shows a lack of financial capability, it had the information available to do so. It could also have cross-examined Ms. Harrison. Staff took no action and now complains about a lack of information that is wholly of its own making.

Applicant also accepted Staff's proposed 20% rule. (App. IB on Rehearing at 3, 14). Applicant also notes that if Staff believes that its finances are less than robust, it is the result of three years of litigation during which Applicant's wireline customers switched to wireless service from other carriers. Applicant has carried a three-year burden of legal expenses while continuing to financially operate and provide quality home phone and wireless service to all of its customers.

6. Wireless Service Dates

Staff argued that Applicant stated in its FCC Compliance Plan, December 18, 2012, for wireless Lifeline service in Wisconsin, that it had begun non-Lifeline wireless service to customers in Illinois and Wisconsin. Staff stated that this statement is

inconsistent with an updated response to a Staff data request in which Applicant said it began providing wireless Lifeline service in Wisconsin in June 2013. (Staff Br. on Rehearing at 16).

Applicant replied that Staff is fully aware that Applicant contacted the FCC, and under its direction, filed a letter to clarify that, while it had authority in Wisconsin to offer wireless service on the date it filed its Compliance Plan, it did not begin serving customers until June 2013. (App. RB, Errata, Attachment 2, filed 2/20/14).

Applicant also noted that, despite Staff's alleged concern for prevention of waste, fraud and abuse, in none of Staff's testimony or briefs does it examine the steps Applicant has taken in its approved Compliance Plan to prevent waste, fraud and abuse. Instead, Staff admits that it reviewed the Compliance Plan looking for inconsistent statements to demonstrate that Applicant's history of service and revenues do not show that it is financially qualified to be an ETC.

Applicant asserts that Staff's argument that Applicant misstated the date on which it began providing wireless service in Illinois is a pointless complaint about a typographical error. Applicant began testing wireless service in December 2011 by providing customers with free cellular phones. It spent more than a year testing its off-the-shelf and provisioning system before charging customers. The typo occurred in Applicant's Application for Rehearing and its Initial Brief on Rehearing, showing that the testing beginning in December 2102, not 2011. (Application for Rehearing at 34-35; App. IB on Rehearing at 11).

Staff next claims that because of contradictory evidence, it is unclear when Applicant began providing service. Staff adds that there is no evidence in this proceeding that Applicant has collected any revenue for wireless service to non-Lifeline customers in Illinois. (Staff RB on Rehearing at 17). There is no contradiction. Applicant's evidence shows that it began providing, and billing for, wireless service in Illinois in April 2013. (App. Ex. 1.0R at 41, 48).

C. Millennium 2000 will Not Rely Exclusively On Lifeline Revenues

Applicant has agreed to abide by Staff's recommendation to maintain a 20% ratio of wireless non-Lifeline customers to total wireless customers, and further agrees to provide reports to the Commission on the customer ratio. If the ratio falls below 20% non-Lifeline customers for three consecutive months, Applicant will cease enrolling Lifeline customers. (Staff Ex. 1.0 at 18-19). This commitment squarely addresses Staff's arguments that the application should be denied because it critically relied on Lifeline revenues. (Staff IB at 30-32).

Staff argued that there are other reasons to deny the application, so Applicant's agreement to maintain 20% non-Lifeline customers is not sufficient reason to grant the application. (Staff RB on Rehearing at 19-20). The reasons advanced for denial, however, are unfounded. Applicant's agreement not to exclusively rely on Lifeline

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

Staff then retreats from the 20% rule for all wireless Lifeline applicants, and reserves it for applicants who have an insufficient record of service (e.g., no prior record of service, no history of non-Lifeline service, etc.). (Staff Ex. 1.0 at 19; Staff RB on Rehearing at 20). Staff contradicts this position by stating that the 20% ratio applies to all ETC applicants. (Staff Ex. 1.0 at 20, lines 421-431). Then, in Docket 14-0475, Staff demanded the same 20% ratio for the Applicant, a carrier with ETC designation in 41 jurisdictions and two million customers, and that it provide quarterly reports of its Lifeline and non-Lifeline customers to the Commission. (Docket 14-0475, Staff Ex. 1.0 at 20-21).

Staff also argued with regard to Applicant's unique rate plan that provides Lifeline customers with additional non-Lifeline lines, 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 adds that Applicant's commitment relies on a "suspect assumption" and is "likely to result in a failure to comply with such commitment." (Staff RB on Rehearing at 23).

Applicant has been providing service in Illinois since 2009 and knows what low-income customers demand and what products are viable. Staff, which in Applicant's view has no business experience with this market, has an unrealistic view of the services for which a low-income customer will pay. Lifeline recipients are not destitute with no funds to pay for one or more additional phones. Ensuring that other family members can communicate with each other may be a priority, for which a customer might make sacrifices elsewhere in the family budget. Staff's opinion that anyone eligible for Lifeline service does not need and cannot afford additional non-Lifeline phones demonstrates an ivory-tower mentality revealing an arrogant, if not clueless, perspective about life in the low-income community.

D. The Commission Should Be Concerned About The Low ETC Activity in Illinois

Staff argues that, of the 13 wireless ETC Dockets identified by Applicant as having been withdrawn or placed on hold, four are resellers awaiting approval of their compliance plans. Another applicant's request is stayed because its CEO has been charged in a criminal matter. While none of the pleadings of the eight remaining carriers indicate why they have not pursued their requests, the fact is that the only unrestricted wireless Lifeline applications approved since release of the LRO on February 6, 2012 are those of Cricket Communications, Inc. (now owned by Illinois Bell), Docket 10-0453, and American Broadband and Telecommunications Company, Docket 12-0680. Illinois does not appear to be hospitable to Lifeline providers, as three years have passed since the LRO was issued and there still are no rules for wireless ETC dockets.

E. Millennium 2000 Meets The Emergency Functionality Requirement

Staff raised for the first time in its Reply Brief on Rehearing the issue that Applicant does not meet the emergency functionality requirements for ETC designation. (Staff RB on Rehearing at 25-27). Staff ignores evidence it submitted to the record.

Applicant submitted to the record a letter from Reunion that stated Verizon and Sprint will route 911 calls from Applicant's customers in the same manner as 911 calls from Verizon and Sprint's own customers. (App. Gr. Ex. 3, Ex. 3.17(b), response to DR JZ 6.09(a)). Staff contends that Reunion cannot provide Applicant with the necessary emergency functionality, because it purchases wireless minutes from a third party with unknown network capabilities. (Staff RB on Rehearing at 26).

Applicant argued that Staff ignores the evidence it placed in the record. In a supplemental response to one of its data requests, Applicant indicated that Reunion purchases minutes from Kajeet, which in turn purchases minutes from Sprint Spectrum, LP. Applicant also has an agreement with Reunion to purchase minutes from Verizon. Applicant stated that that Verizon and Sprint are capable of meeting the emergency functionality requirements of §54.202(a)(2). (Staff Gr. Ex. 3.0, App. Resp.to DR JZ 1.04(b)).

Applicant also cited testimony in its behalf that stated concerns about matters such as network reliability and ability to serve exchange areas are not as relevant, since Applicant will provide service over the network of these huge carriers. Staff's concerns about the reliability of the wireless network of major carriers in Illinois will not be allayed by its opposition to Applicant. (App. Ex. 2.0 at 9-10).

Applicant argues that the Commission cannot salvage portions of its Order that relied on unadmitted Staff Exhibit 2.0 by merely deleting references to that testimony. (Staff RB on Rehearing at 27-29). Applicant asserts that it has demonstrated why the remaining evidence did not support the conclusions unfavorable to it.

IV. Commission Analysis and Conclusions on Rehearing

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

The parties elected not to set a date for rehearing or to provide new evidence, opting instead to file a round of briefs on rehearing according to a preset schedule. (Tr., 4/6/15 at 12, 15). Much of the argument presented in these briefs is a repeat of the arguments made in prior Initial and Reply Briefs, and Briefs and Reply Briefs on Exceptions. In several instances, Staff attempts to introduce matters that were not previously admitted into evidence. These matters cannot, by any evidentiary standard, be considered.

Applicant made the repeated assertion in its Initial and Reply Briefs on Rehearing that at least part of the Commission's decision to deny ETC designation was based upon Staff Exhibit 2.0, Staff Rebuttal Testimony. Staff's motion to admit Exhibit 2.0 was denied. (Tr., 10/22/13 at 88). Applicant proposed that a reexamination of the evidence and arguments without the support of the disallowed exhibit suggests that the Commission could enter the Post Exceptions Proposed Order submitted to the Commission by the ALJ. (Tr., 4/6/15 at 4, 6).

The Commission disagrees. A review of the Commission's January 14, 2015 Order discloses that Staff Exhibit 2.0 was cited in the following four sections: A. Defining the Service Area and Demonstrating the Ability to Provide Supported Services throughout the Requested Service Area; D. Emergency Functionality; E. Service Quality and Customer Protection; and G. Public Interest Analysis. In each of these sections, all references to Staff Exhibit 2.0 and the accompanying text are deleted, and the remaining evidence is found sufficient to sustain the Commission's findings. The Commission's original findings in the January 14, 2015 Order otherwise remain unchanged.

The FCC requires state commissions to make a public interest determination pursuant to 47 C.F.R. §54.201(c) and (d) and §214(e)(2) of the 1996 Telecom Act. The FCC further requires state commissions to impose the technical and financial requirements of §54.201(h) on Lifeline-only ETC designations.

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

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

The Commission notes that since the Lifeline Reform Order, it has only approved two Lifeline ETC designations. The first came four months after the FCC issued the

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

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

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

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

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

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

Applicant argued that the Commission's finding, that Applicant failed to adequately define its service area, was based upon Staff Exhibit 2.0, which stated "...the service area was not included in the provided contract. That finding is not supported by the record." (App. IB on Rehearing at 9-10; Order at 35).

The Commission disagrees. Deleting the reference to Staff Ex. 2.0 does not affect the validity of Staff Group Exhibit 3.0, JZ 1.04, JZ 1.04(b) and the supplemental response, which was as much the basis for the Commission's original finding as was Staff Exhibit 2.0. (Order at 35). Applicant's argument, that the supplemental responses provide the requested information regarding the service area covered by the contracts, falls short. The Commission found that the contracts referenced in Exhibit 3.0, JZ 1.04 and JZ

1.04(b), and the supplemental response, and contained in Applicant Group Exhibit 3.0, 3.17, failed to provide a description of the designated service area. Exhibit 3.0, JZ 1.04, JZ 1.04(b), the supplemental response and Exhibit 3.0, 3.17 are fully independent of, and stand apart from, Staff Ex. 2.0. Expunging the reference to Staff Exhibit 2.0 does not preclude the Commission from making the same finding on rehearing that it made originally. (Order at 35). The Commission's original language on this issue, and its conclusions, below, are otherwise unchanged.

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

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

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

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

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

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

B. Ability to Advertise the Availability of Lifeline Services.

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

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

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

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

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

§54.201(d)(2). The Commission finds that Applicant's intent to market its services through print, using the Lifeline brochures, and through live contact and electronic media, is sufficient to satisfy the "media of general distribution" requirement of §54.201(d)(2).

C. Technical and Financial Capability

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

1. Technical capability

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

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

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

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

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

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

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

2. Financial Capability

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

The Commission acknowledges Applicant's argument that it was issued a Certificate of Service Authority to provide resold local and interexchange service in Docket 07-0273, and a Certificate of Service Authority to provide CMRS in Docket 10-0477. As discussed in the section immediately above, these are not sufficient to satisfy the financial and technical requirements for ETC designation. Applicant argued that it has been providing Commercial Mobile Radio Service ("CMRS") in both Illinois and Wisconsin, contrary to Staff's claim that it has not. (App. RBOE at 20; Staff BOE at 11.)

However, in its reply to DR JZ 1.01, Applicant states that, "(A)s of March 6, 2013, Millennium 2000 has not provided CMRS to end users in Wisconsin." (Staff Ex. 1.0, Attachment 1.01 at 83.)

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

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

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

D. Emergency Functionality

Applicant states that the Commission's findings on Emergency Functionality were not based upon substantial evidence, because Staff Exhibit 2.0, the testimony purporting to support such findings, was not admitted into evidence. (App. IB on Rehearing at 15). A review of Staff Exhibit 1.0, testimony that was admitted into evidence, does not address Emergency Functionality. Applicant, however, also provided Group Exhibit 3, Ex. 3.17(b) (conf.), in support of its contention that it could remain functional in emergency situations.

The Commission found Group Exhibit 3, Ex. 3.17(b) (conf.) to be insufficient. None of the arguments submitted on rehearing compel the Commission to alter its original conclusions. The Commission reiterates that the facts attested to are not in an affidavit or other form of legally enforceable record. The Commission cannot infer a capability—not expressed in the contract—based on the evidence provided. Accordingly, the Commission finds that the record does not support a finding that Applicant has demonstrated its ability to remain functional in emergency situations. (Order at 39).

E. Service Quality and Customer Protection

Applicant argued that the Commission’s findings with regard to Service Quality and Customer Protection were also not based upon substantial evidence, because Staff Exhibit 2.0 is not in evidence. (App. IB on Rehearing at 17). The Commission, however, also cited Staff Exhibit 1.0 in support of its original conclusions. The Commission finds that Exhibit 1.0 is sufficient by itself to sustain the finding that Applicant will not be able to comply with the Commission’s service quality rules. (Staff Ex. 1.0 at 37-39). Deleting the testimony from Staff Exhibit 2.0 does not alter the Commission’s original conclusions. (Order at 39-40). The remainder of the Commission’s original language is unchanged, below.

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

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

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

If Applicant relies upon the offerings of another wholesale supplier, it cannot “pass the buck” on to its wholesale supplier and report nothing to the Commission. Applicant was solely responsible for meeting the requirements of Sections 730/732 as a designated ETC and it failed to satisfy its reporting requirements. The Commission is unable to find, based on the record before it, that Applicant will be able to adequately manage its telecommunications operations and comply with §54.417 and §736.

F. Pass-through Support

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

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

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

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

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

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

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

G. Public Interest Analysis

The Commission's public interest analysis focused upon whether Applicant's Lifeline offerings differ substantively from other carriers' Lifeline offerings, and upon what the Commission perceives to be Applicant's low retention rate. The Commission found for Applicant on the issue of distinctive offerings, however the support for its findings came exclusively from Staff Exhibit 2.0. ("The Commission believes that Applicant's intended offering (sic) are substantively distinct from those already operating in the service area"). (Order at 41). Staff's public interest analysis in Exhibit 1.0 dealt only with what it perceived to be Applicant's low customer retention rate, and did not mention distinctive Lifeline offerings. Notwithstanding, Applicant Exhibit 1.0R outlines various Lifeline calling plans that Applicant states were designed to compete with the other offerings available to customers. (App. Ex. 1.0R at 63; conf.). Applicant also described a new plan that it is developing. (*Id.* at 64; conf.). Applicant added that it is developing other plans as well, and customers will be able to tailor their phone service as needed. (*Id.* at 65; conf.).

The plans Applicant describes are numerous, and vary considerably in minutes allowed, services covered, and prices charged. While no other carrier's Lifeline plans are in evidence, the Commission has no concerns that Applicant will have at least some Lifeline offerings that are, or will be, unique compared to most other carriers.

Applicant argued on rehearing that the Order relies primarily on Staff Ex. 2.0 to support its finding that Applicant does not meet the public interest standard. Applicant argued that the Commission's concerns regarding its retention rate will be alleviated by Applicant's compliance with the 20% standard of non-Lifeline customers. Applicant argued that a low retention rate should be expected since, as of 2012, 96% of Lifeline customers used wireless service. (App. Ex. 1.0R at 5). A low retention rate could also be due to a lack of customer resources or the transitory nature of the low-income population, neither of which measures how much customers value the service. (App. Ex. 2.0 at 27-28). De-enrollment due to ineligibility is also a factor in low retention rates. (App. Ex. 1.0R at 70).

While Staff Exhibit 2.0 discussed what it called Applicant's low retention rate, this issue was also raised in Staff Exhibit 1.0 (at 46-47), which was cited by the Commission in concluding that Applicant's low customer retention rate is grounds for denial of the application. The Commission again agrees with Applicant that references to Staff Exhibit 2.0 and the accompanying text should be deleted. (Order at 42). Staff Exhibit 1.0, however, is replete with data addressing the same issue. (Staff Ex. 1.0 at 46-47). The Commission's original conclusion that Applicant's retention rate is too low to permit ETC designation is sufficiently supported by Staff Exhibit 1.0, which can stand independently. (Order at 42). The Commission finds no reason to alter its conclusions on rehearing, and its original language follows below.

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

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

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

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

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

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

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

The high turnover rate of Applicant's wireline Lifeline customers is dramatic, and is inconsistent with the notion that Applicant is providing customers a dependable service. Moreover, the high turnover rate coupled with the findings of Section V.C.2., that the

Applicant is dependent on Lifeline funds, leads the Commission to conclude that Applicant's ETC designation would not be consistent with the public interest.

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

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

V. Findings and Ordering Paragraphs

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

- (1) Millennium 2000, Inc. filed an Application on June 5, 2012, requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;
- (2) on April 10, 2013, Applicant filed an amended application requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;
- (3) Applicant was previously certificated by the Commission in Docket 07-0273 to provide resold local and interexchange service in Illinois, in Docket 08-0454 to provide wireline ETC Lifeline service in Illinois, and in Docket 10-0477 to provide commercial mobile radio service in Illinois, and as such is a telecommunications carrier in Illinois pursuant to Section 13-202 of the Act (220 ILCS 5/13-202);
- (4) the Commission has jurisdiction of the parties and of the subject matter herein;
- (5) on January 14, 2015, the Commission entered an order denying Applicant's request to provide wireless Lifeline ETC service in Illinois;
- (6) on February 25, 2015, the Commission granted Applicant's request for rehearing in this Docket;

- (7) the Commission finds that Applicant has identified its intended service area for ETC designation;
- (8) the Commission finds that Applicant has failed to demonstrate that it has the ability to provide service throughout its requested service area;
- (9) the Commission finds that Applicant has demonstrated its ability to advertise throughout its requested service area;
- (10) the Commission finds that Applicant has failed to demonstrate it has the financial and technical capability to provide service in its requested service area;
- (11) the Commission finds that Applicant has failed to demonstrate its ability to remain functional in emergency situations;
- (12) the Commission finds that Applicant has failed to demonstrate its ability to satisfy applicable consumer protection and service quality standards;
- (13) the Commission finds that Applicant has failed to demonstrate the ability to pass-through the full amount of federal support to its Lifeline customers;
- (14) the Commission finds that Applicant has failed to demonstrate that a grant of the requested wireless ETC Lifeline designation would be in the public interest;
- (15) the Commission finds that the evidence in the record is insufficient to support the requested wireless ETC Lifeline designation;
- (16) the amended application should be denied.

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

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

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

DATED: June 3, 2015
BRIEFS ON EXCEPTIONS DUE: June 17, 2015

John T. Riley,
Administrative Law Judge