

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

BRIEF ON EXCEPTIONS ON REHEARING OF MILLENNIUM 2000 INC.

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Proprietary Version

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Table of Contents

I. INTRODUCTION	1
II. RESPONSES TO REASONS GIVEN FOR DENYING THE APPLICATION	10
A. Service Territory	11
B. Technical Ability	13
C. Financial Capability	14
D. Emergency Functionality	16
E. Service Quality and Customer Protection.....	17
F. Pass-Through Support.....	21
G. Public Interest	24
IV. CONCLUSION.....	26
EXCEPTIONS LANGUAGE	
ATTACHMENT 1	
ATTACHMENT 2	

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I. INTRODUCTION

Millennium 2000 Inc. ("Millennium 2000") is a minority women owned company that has focused its efforts on providing telephone service to low income customers, most of whom received assistance from the Lifeline program. Since it began providing wireline service in 2009, it has not been subject to a single complaint at the state or federal level. Nevertheless, the Administrative Law Judge's Proposed Order on Rehearing (ALJPOR) effectively kicks Millennium 2000 out of the State of Illinois by prohibiting the company from providing discounted telephone services to eligible low income consumers and, with absolutely no basis in fact, accuses its owner Ms. Donna Harrison of lying under oath and criminal conduct. Millennium 2000 respectfully requests that the Commissioners themselves review the record in the hope that some modicum of fairness can be provided in a case with a lengthy history of unusual twists and turns.

In 2011, realizing that its customers preferred wireless service over wireline service, Millennium 2000 took careful steps to expand its services to customers. In December 2011, the company began providing free wireless handsets and service to 538 of its customers in order to

beta test its billing and provisioning software. It filed a request with this Commission on June 5, 2012 for designation as a wireless Eligible Telecommunications Carrier. It also submitted a request with the FCC for forbearance from its facilities based requirement, which entailed submitting a detailed "compliance plan" demonstrating that will prevent waste, fraud and abuse by enacting procedures for enrolling customers and certifying their continued eligibility for ETC service. The FCC approved that compliance plan in December 2012.

Testing of its wireless service was completed in February 2013 and Millennium 2000 began billing its wireless customers in April 2013. In an effort to grow its business, Millennium 2000 decided to begin operations in the State of Wisconsin. Demonstrating the difference in regulatory climate between the two states, Millennium 2000's ETC designation was quickly granted by the Wisconsin Public Service Commission and two years ago it began providing Lifeline wireless service to Wisconsin residents.

In Illinois, however, the Staff has spent three years conducting discovery trying to find reasons to deny the application. As this case dragged on, the loss of its wireline customers¹ and the consequent reduction in its revenues were cynically used by the Staff as evidence against the company - arguing that a low customer retention rate was evidence of poor customer service and the reduction in revenues was evidence of lack of financial ability. The evidence on the record demonstrates that neither argument is viable. The Staff's other arguments were a series of either baseless allegations or identification of minor and irrelevant issues.

In his Proposed Order issued on August 5, 2014, the Administrative Law Judge rejected all of the Staff's arguments and recommended approval of the company's application. After the

¹ The company petitioned for and was granted approval to withdraw its wireline Lifeline certificate because it had no Lifeline customers by January 2015. (Docket 15-0282, Order May 6, 2015.)

filing of briefs on exceptions, he submitted to the Commission a Post Exceptions Proposed Order dated September 30, 2014 discussing those briefs and making approval of the application contingent on Millennium 2000 complying with the Staff's proposal to maintain a ratio of non-Lifeline customers to all customers of at least 20%. During rehearing, Millennium 2000 agreed to that condition, in part because it actually has a product for its wireless customers that will dovetail with this new Staff proposed standard.

For reasons known only to the Commission, it rejected the Administrative Law Judge's Post Exceptions Proposed Order, rewriting its findings in order to reach opposite conclusions on most of the elements of the case. The Commission then granted rehearing of that order, most likely because Millennium 2000 pointed out in its Application for Rehearing that the Order improperly cited Staff Ex. 2.0 in thirteen different places as a support for its decision, even though the Administrative Law Judge ruled that the filing should not be admitted as evidence.

The implications of the Commission having relied on Staff Ex. 2.0 are staggering. No party referenced Staff Ex 2.0 in their briefs. Neither the original ALJPO (dated Aug. 5, 2014) nor the Post Exceptions ALJPO (dated Sept. 30, 2014) discussed Staff Ex 2.0 or the fact that the Staff had moved for its admission and its motion was denied. Since the ALJPO did not allow the Staff Ex 2.0 to be admitted into evidence, the only way that exhibit could have become part of the Commission's order is if someone at the Commission searched through e-Docket trying to find evidence to support a decision that had already been made to deny the application and found the exhibit as an attachment to the Staff's motion. Use of such non-evidence is not only highly unusable it is extremely prejudicial in tainting the record and destroying the Applicant's expectation for a fair and reasoned administrative process.

The Commission can restore the integrity of the process by entering an order based on the Post Exceptions ALJPO that the Judge submitted on September 30, 2014. That revised ALJPO reviewed all of the evidence admitted into the record and considered the parties' briefs as well as the briefs on exception. The Post Exceptions ALJPO granted Millennium 2000's application, but as a condition required Millennium 2000 to abide by the Staff's recommendation that 20% of its Illinois cellular customers must be non Lifeline customers. Millennium 2000 has agreed to that condition. No new evidence was submitted during rehearing, so that review of the evidence is complete.

The ALJPOR, unfortunately, simply rewrites the Commission's January 14 final order to take out reference to Staff Ex. 2.0, and inexplicably still reaches the same conclusions from the January 14 final order that led to the denial of the application. The ALJPOR gets to this conclusion by primarily restating factually incorrect findings that first appeared in the Commission's January 14 final order. Other findings stretch minor regulatory lapses (that have been addressed) into a presumed wholesale inability to meet the requirements for ETC designation set forth in 47 USCS § 214(e), 54 CFR 201(c) and 54 CFR 202(b).

Finally, the ALJPOR takes a 19th century approach to jurisprudence and determines that the un rebutted testimony of Millennium 2000's owner is not evidence and thus finds against the company unless her statements are supported by documentary evidence deemed sufficient by the Commission. In one instance the ALJPO finds her statement is a lie because a supporting document (that Staff did not object to being entered into evidence) was not notarized. In another instance, the ALJPO decides the witness is lying because she provided sample billing statements instead of **all** billing statements to thousands of customers over several years. Not only would

such a paper deluge have been unduly burdensome to Millennium 2000, the Staff did not object to what was submitted.

The ALJPOR thus departs from two previous ALJPOs where it approved Millennium 2000's wireless Eligible Telecommunication Carrier designation only to make a 180 degree turn on virtually every issue, even though the latest proposed order is based upon the same evidence that was previously approved by the ALJPO. Entering an order that merely takes out references to Staff Ex. 2.0, but that achieves the same result would confirm the lack of integrity of the decision making of the Commission in this case. The resources of the Staff and Millennium 2000 have been wasted if the purpose of this rehearing was simply to give the appearance of due process, but come to the same predetermined conclusion that led to the search through e-Docket that uncovered Staff Ex. 2.0. Entering an order that decides that the Commission doesn't really need Staff Ex. 2.0 to justify denial of the application makes a farce of this entire rehearing and calls into question the fairness of the Commission's process, not only this case, but all the ETC dockets that have been inexplicably terminated.

To be clear, although Millennium 2000 has begun successful operations in Wisconsin, its home is Illinois and it wants to provide wireless Lifeline service to the low income community it knows best. Granting the application for ETC designation is the best way to demonstrate that Illinois wants competition for Lifeline customers from such specialized providers. Based on Staff recommendations, the Commission has only approved three applications for ETC designation, all of them large, multistate carriers. All 13 of the remaining applications were withdrawn or are stayed.²

² See Attachment to Millennium 2000's Initial Brief on Rehearing and Staff Reply Brief on Rehearing, p. 24 can only provide reasons for five of those thirteen applications being stayed.

Millennium 2000 is exactly the type of company Illinois needs - an Illinois based, minority woman owned company that provides Illinois jobs, that is unique in understanding the low income community and that wishes to focus its attention on that community. If the Commission wishes to send a message for effective USF services in the state, then it should make a careful review of this local entity that is willing to operate its wireless Lifeline service under Staff's own chosen 20% ETC standard - instead of effectively destroying a small but successful Illinois company of six years.

Unfortunately, the Commission Staff has engaged in economic profiling of small, independent carriers focused on the low income community by assuming that they have a financial incentive to allow their customers to engage in waste, fraud and abuse. The first ALJPO reprimanded the Staff for its baseless attempts to tie Millennium 2000 to waste, fraud and abuse:

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

ALJPO (8-5-14), p. 41-2.

The Staff's obsession with waste, fraud and abuse by the low income community and its distrust of small companies such as Millennium 2000 to prevent it has resulted in its recommendation of the approval of the applications of only large, multistate providers. Thus,

since 2012 only Cricket Communications³ (now owned by AT&T), American Broadband and Telecommunications Company by stipulation⁴ and Virgin Mobile⁵ (owned by Sprint)⁶ have received their ETC designation, while thirteen other ETC designation requests that have either been voluntarily withdrawn or have been continued generally.⁷ Millennium 2000's expert witness Dr. Gus Ankum testified that if only large, multistate wireless providers provide wireless lifeline service in Illinois, universal service will suffer.⁸ Those companies' minimal marketing to the low income community and failure to offer services targeted to that market will result in Illinois falling behind the rest of the country in establishing universal telecommunications service and access to broadband data. Unlike Millennium 2000, these large companies also have not committed employees to the Illinois market.

Staff's prejudgment regardless of the evidence was apparent when it recommended that the Commission deny Millennium 2000's application for ETC designation in a pleading that it filed even before Millennium 2000 had an opportunity to respond to the Staff's testimony.⁹

³ *Cricket Communications, Inc., Application for Designation as an Eligible Telecommunications Carrier*. Docket No. 10-0453, Order July 11, 2012.

⁴ *American Broadband and Telecommunications Company, Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier*, Docket No. 12-0680 (final order granting ETC entered February 5, 2014).

⁵ *Virgin Mobile USA, L.P., Application for Limited Designation As An Eligible Telecommunications Carrier*, Docket 14-0475 (final order granting ETC entered May 20, 2015).

⁶ The Commission recently approved the ETC designation application of Essex Telcom, Inc. d/b/a T6 Broadband, although that approval was for the limited purpose of participating in the FCC's Rural Broadband Experiment program *Essex Telcom, Inc. d/b/a T6 Broadband , Application for Designation as an Eligible Telecommunications Carrier for Purposes Of Receiving Federal Universal Service Support for the Purpose of Participating in the FCC's Rural Broadband Experiment program*, Docket No. 14-0746, (final order granting ETC entered March 25, 2015).

⁷ Attachment 1 to Millennium 2000's Initial Brief on Rehearing.

⁸ Millennium 2000, Ex. 2, pp. 16-19.

⁹ Staff of the Illinois Commerce Commission Response to Millennium 2000 Inc.'s Motion to Strike Portions of ICC Staff Testimony, p. 25.

Something is clearly wrong with how this case was handled and now is the time to address it.

The FCC chairman recently urged steps be taken to increase competition for Lifeline providers.

Competition among providers on price and service offerings would benefit Lifeline subscribers and would ensure ratepayer dollars support an efficient program. The Notice seeks comment on how to encourage providers to participate in the program. The item also asks how to encourage participation by the states.

FCC Chairman Wheeler, FCC DOC-333686A1 (Attached to this Brief as Attachment 1).

Rather than encourage new wireless Lifeline providers, Staff witness Dr. Zolnierek admitted that his standards are designed to **minimize** the number of wireless Lifeline providers in Illinois. He justifies this impact as necessary to control the Commission's workload: "In addition, the Commission's resources required to ensure and verify compliance will increase with each additional designation." Staff Ex. 1.0 at lines 552 to 554. Digging itself a deeper hole, the Staff defended this statement by arguing:

More ETCs to oversee will require more Commission resources . . . Staff advocates that the concrete risk of committing waste, fraud, and abuse that new ETCs represent be considered an incremental cost of designation and that this cost, among others, be weighed against the incremental benefits, if any, the new ETC represents.¹⁰

Considering the Commission's resources as a factor in determining how much market competition is appropriate is obviously an improper way for the Commission to fulfill its duty under the Federal Act. It is quite doubtful that anyone in Illinois government besides the Commission Staff champions the destruction of a long-standing company or the forced unemployment of 27 people as being justified by the workload of a few agency personnel.¹¹ The grave implications of an unfettered and unfair regulatory process herein is not hypothetical – its impacts are palpable and it means that through protracted Staff delay and pre-determined

¹⁰ Staff Reply Brief, p. 22.

¹¹ Millennium 2000 Ex. 3.13.

assumptions, 27 people do not come back to work and a company's Illinois operations are destroyed.

Staff's desire to prevent waste, fraud and abuse by minimizing the number of wireless Lifeline providers is the most indirect, ineffective and costly method of achieving that result. The FCC and the Universal Service Administrative Company ("USAC") are the entities that take direct responsibility for that function. Carriers such as Millennium 2000 that wish to receive forbearance from the facilities based requirement must receive FCC approval of a "Compliance Plan" that provides procedures for enrolling customers and certifying their continued eligibility for ETC service. The FCC approved Millennium 2000's Compliance Plan in December, 2012. Audits of the company's operations to ensure that it only provides service to eligible customers will be conducted by USAC, not by the Staff or this Commission. As can be seen from Attachment 1, the FCC Chairman has recommended a process to continue that agency's efforts to modify the application and recertification process in order to prevent waste, fraud and abuse. The Commission Staff's approach to preventing waste, fraud and abuse by denying applications of all but the largest carriers is neither legal nor necessary.

Finally, the Staff chose to obtain Commission approval of its standards in the most inefficient way possible. The ALJPOR states that "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." ALJPOR, p. 34. The ALJPOR makes it clear that the Commission intends its order in this case to be a precedent applicable to all other carriers. Yet more than three years have passed since the entry of the FCC order, during which carriers have

not known the standards to which their applications would be subject.¹² Additionally, by using this case as the means to establish rules applicable to all other carriers, the Staff has prevented other carriers from voicing their opinions and adding their resources to those of Millennium 2000 to challenge the Staff's most objectionable proposals. Finally, by inserting Staff's proposals in a designation docket, the Commission is precluded from applying those standards to existing wireless Lifeline Carriers. Several Commissioners indicated a concern with that fact when deliberating the request of American Broadband and Telecommunications Company for a waiver of some of the conditions of its ETC designation approval.¹³ A far better process would have been to continue with the Commission rulemaking in 2011 and allow all affected parties to weigh in on ETC designation standards.¹⁴

II. RESPONSES TO REASONS GIVEN FOR DENYING THE APPLICATION

The ALJPOR finds that Millennium 2000 has failed several of the tests for approval of its application. As shown below, those findings are contrary to the record.

¹² Pursuant to ICC direction, the Staff started an ETC rulemaking workshop, but abruptly dropped it three years ago, perhaps because it knew carriers might push back on some of the same criteria meted out to Millennium 2000 and the other 13 ETCs in separate dockets. Instead of completing the ETC workshops, Staff's bureaucratic and inefficient process has resulted in wasting hundreds of thousands of dollars of carriers' resources, which might have better use in the service of Illinois communities. ICC Staff's Proposed Additional Requirements for Low Income Wireless ETC Designation Informal Comments, November 2011.

¹³ Docket 14-0432 Commission December 17, 2014 Open Meeting Transcript, p. 53-57, Attached as Attachment 2.

¹⁴ "Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to." 220 ILCS 5/10-101.

A. Service Territory

ALJPOR

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.

ALJPOR p. 27.

Response:

This is an issue first raised by the Commission in the final order. Whoever wrote the final order was confused by how the supplier contracts operate, although this particular issue was not a point of contention with Staff. The Staff was not concerned that Millennium's contract with its supplier did not list every exchange covered by Sprint and Verizon Wireless in Illinois, because Staff understood that it is a multistate contract providing service using Verizon Wireless and Sprint networks. Thus these multistate contracts did not list every exchange that Verizon Wireless and Sprint serve in the covered states. Nonetheless, in order to clarify its Illinois coverage, Millennium also submitted into evidence, without objection by the Staff, a letter from the president of Reunion that explained the coverage area in the contract. That letter was admitted into the record by the Administrative Law Judge. Referring to its underlying suppliers Verizon Wireless and Sprint, that letter stated: "Please note that Applicant is purchasing service from Reunion that will allow its customers to access each carrier's network within the state of

Illinois where it is deployed, on an identical basis to the footprint that would be available to similarly situated non-Lifeline customers."¹⁵

The fact that the contract does not also list each and every exchange where Verizon Wireless and Sprint have deployed in AT&T's territory was not a contested issue during the proceeding and it certainly is not a valid reason to deny this application. Demanding a list of that combined coverage area is the equivalent of requiring proof that the sun rises in the east. Millennium 2000 requested a service territory in non-rural AT&T exchanges. Millennium 2000 proved that the inter-carrier commercial agreements it had with Reunion Wireless Services, LLC allowed it access to the entire Illinois networks of Sprint and Verizon Wireless.¹⁶ Ms. Harrison testified that Sprint and Verizon Wireless provide nationwide wireless coverage.¹⁷ Staff did not contest that testimony and it waived cross examination of Ms. Harrison. The Commission routinely acknowledges an applicant's use of either an incumbent or a wireless carrier's service territory. This is especially the case with cellular service where maps are electronically posted on the internet and as a regulatory function are not reviewed by ICC Staff primarily because wireless service is not regulated by this Commission. Does this Commission truly believe that together, Sprint and Verizon do not provide service to the non-rural exchanges in AT&T's territory? Verizon Wireless alone claims to provide service to 98% of U.S. residents with its latest, 4G LTE technology.¹⁸

¹⁵ Millennium 2000 Ex. 3.17. (Updated response JZ 6.09(a) (confidential).

¹⁶ Millennium 2000 Ex. 1.0R, p 32. See also Staff Group Exhibit 3.0 Response 1.04a.

¹⁷ *Id.*

¹⁸ <http://www.verizonwireless.com/>.

B. Technical Ability

ALJPOR

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.

ALJPOR p. 29.

Response:

This statement in the ALJPOR is simply wrong. Ms. Harrison testified under oath that Millennium 2000 began providing 538 of its customers with wireless handsets in December 2011 in order to beta test billing and provisioning software.¹⁹ Ms. Harrison testified that the company began billing for wireless services in April 2013.²⁰ Staff never provided any evidence to dispute this fact. The ALJPOR attempts to bootstrap an irrelevant reference made by the Staff in its Reply Brief that Millennium 2000 did not report any wireless revenue in a report to the FCC for calendar year 2012.²¹ Of course it didn't have 2012 revenue; it was still beta testing the system that year and did not charge its customers for wireless service. Therefore, there was no wireless revenue to report. Millennium 2000 Ex. 1.0 at p. 46. Ms. Harrison testified that revenues began in April 2013. Millennium 2000 Group Ex. 3.05. That fact is undisputed.

ALJPOR

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).

¹⁹ Millennium 2000, Ex. 1.0R, p. 46.

²⁰ *Id.* p. 48.

²¹ Staff Reply Brief, p. 16.

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.

ALJPOR p. 29.

Response:

Each of these compliance issues will be addressed in Sections II.E. and II.F below.

C. Financial Capability

ALJPOR

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.)

ALJPOR p. 30.

Response:

This finding is simply wrong because the ALJPOR cites a data response that was subsequently updated with new information. Staff Ex. 1.0 was filed on June 11, 2013. Subsequent to that date, Millennium 2000 provided Staff with an updated response to Staff Data Request JZ 6.10(B)(2), which stated that Millennium 2000 "commenced its wireless service and Lifeline services in the state of Wisconsin as of June 2013." Staff included that updated data response in Staff Group Ex. 3.0. Thus, the fact that Millennium 2000 began providing service in Wisconsin in June 2013 is not only in the record, but it is in a Staff exhibit, which the ALJPOR unfortunately ignores.

ALJPOR

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.

ALJPOR p. 30.

Response:

This finding is wrong for three reasons. First, there is no FCC "critical" reliance standard. The FCC requested that state commission investigate "whether the applicant intends to rely **exclusively** on USF disbursements to operate." paragraph 388 of its *Lifeline Reform Order* Millennium 2000 has not and will not rely exclusively on USF disbursements.

Second, by asking whether an applicant "**intends** to rely" exclusively on Lifeline revenues, the FCC standard is prospective and applies to planned wireless Lifeline service, not historic wireline service. Here, the Commission is applying the standard retroactively when it looks at Millennium 2000's historic wireline operations, during which there was no such exclusive (or "critical") requirement.

Finally, Millennium 2000 will not rely exclusively on Lifeline revenues. Millennium 2000 has committed to the Staff's 20% proposal, so by definition will not rely exclusively on Lifeline revenues. The Company explained how its unique proposed **BEGIN CONFIDENTIAL . . . xxxxxxxxxxxxxxxxxxxxxxxxxxx . . . END CONFIDENTIAL** (See Millennium 2000 Group Exhibit 3.06(a) (confidential) service offering would also meet the objective of demonstrating non-reliance on Lifeline services. All it is asking in this case is the opportunity to prove that its innovative wireless plans will enable it to meet the Staff's requirement.

D. Emergency Functionality

ALJPOR

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).

ALJPOR p. 31.

Response:

This is one of the parts of the ALJPOR that assumes Ms. Harrison is lying in her un rebutted testimony. Here, Millennium 2000 submitted additional documentary evidence, but the ALJPOR rejects it because it was not independently notarized. This is also a new issue that was never raised by Staff but suddenly appeared in the January final order.

Ms. Harrison testified that Millennium 2000 will provide E911 compliant handsets to its customers and provide them access to emergency services regardless of the status of their account.²² That testimony was un rebutted and Staff waived cross-examination of Ms. Harrison. Supplementing that testimony, Millennium 2000 included in its Group Ex. 3.0 a supplemental response to Staff Data Requests JZ 6.09(A), consisting of a letter from the President of Reunion Wireless Services, LLC explaining that Millennium 2000's customers will receive the exact same 911 capability as Verizon and Sprint customers receive.²³ The Staff did not object to the

²² *Id.* pp. 35-36.

²³ Exhibit 3.17b Millennium 2000 Updated Response JZ 6.09 (a) (confidential) (12-18-13).

introduction of that document into the record and did not raise the issue of emergency functionality in any of its briefs prior to rehearing.

The ALJPOR finding to disregard the letter is contrary to the Commission's rules of practice, which (1) allow the admission of non-notarized documents, and (2) require a timely objection.²⁴ Regarding the former, the letter is no different from an admissibility standpoint than the other business documents commonly allowed into evidence in this and other Commission proceedings. Regarding the latter, Staff had no objection to its admission and the ALJ admitted it into the record, which has been heard and taken. The Commission has no authority to manipulate the record to remove evidence that all parties and the Administrative Law Judge agreed is admissible. Finally, even without that letter, Ms. Harrison's sworn testimony is unrebutted. The ALJPOR provides no basis upon which to ignore the record evidence and assume that she is lying.

E. Service Quality and Customer Protection

ALJPOR

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

²⁴ b) . . . In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. **However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs. [5 ILCS 100/10-40] Objections must be made at hearing to preserve them on appeal. . . . 83 IAC 200.610 (emphasis added).**

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.

ALJPOR p. 32.

Response:

In its relentless search for excuses to deny the application, the only filing deficiency the Staff could come up with was that Millennium 2000 filed a report in 2012 that contained zeros in the spaces indicating missed AT&T appointments. More specifically, Dr. Zolnierек took issue with the disclaimer "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.)

Millennium 2000 entered zeros for the performance data 'Missed Appointments' because AT&T had not provided information in the Performance Measurement report for that period. Specifically, Ms. Harrison testified:

Millennium 2000 abides by the FCC and ICC telecom rules and takes its contractual agreements with its underlying carrier, AT&T Illinois (AT&T) very seriously. In an effort to provide the best quality service to its customers in a timely manner, on several occasions Millennium 2000 informally expressed concerns to Dr. Zolnierек regarding the performance of its wireline underlying carrier, AT&T prior to the filing of its Application in this Docket.²⁵

Moreover, Ms. Harrison further testified:

I intended to inform the Staff that parts of the report were impacted by an ongoing dispute with AT&T. Dr. Zolnierек knew about this dispute, so it was my belief that the Staff would understand why the disclaimer was inserted in the

²⁵ Millennium 2000 Ex. 2.0R, p. 51.

report. In line 817-821 of Dr. Zolnierek's Testimony, Millennium 2000 believes that Dr. Zolnierek has misinterpreted the disclaimer included on its Code Part 730/732 reports for filing periods 10/1/2012 to 12/31/2012 and 1/1/2013 to 3/31/2013. Dr. Zolnierek's interpretation of the disclaimer has clearly been taken out of context. The disclaimer should not be accepted as evidence that Millennium 2000 does not have the ability to comply with service quality requirements. The intent of the disclaimer was simply for Millennium 2000 to express its disagreement with the performance measurements totals reported by AT&T.²⁶

Ms. Harrison testified that her proactive approach to her dispute with AT&T had positive results:

After submitting the Notice Letter to AT&T, Millennium 2000 observed significant improvement in the processing of its orders and diminished anti-competitive practices from January through September 2012. However, almost a year later, in October 2012 through March 2013, Millennium 2000 began to observe similar violations and anti-competitive practices from AT&T as outlined in the Notice Letter dated November 28, 2011. As a result, Millennium 2000 included the disclaimer as noted in lines 802-806 of Dr. Zolnierek's Testimony, to indicate that it was not in agreement with the information reported in the performance measurement report extracted from AT&T CLEC Online. Furthermore, Millennium 2000 informally shared these concerns with Dr. Zolnierek in January 2013.²⁷

In summary, prior to filing its application for ETC designation, Millennium 2000 informed the Commission of its dispute with AT&T over its performance in a disclaimer in its Section 730/732 report and Ms. Harrison discussed the matter with Dr. Zolnierek. The fact that the Staff turned this disclaimer and Ms. Harrison's discussions with Dr. Zolnierek into evidence that Millennium 2000 is incapable of managing its telecommunications operations - and the fact that the ALJPOR agreed - is mind boggling. What is the purpose of regulatory personnel if carriers are not allowed to communicate effectively with government representatives to ensure quality services?

²⁶ Millennium 2000 Ex. 2.0R, p. 52.

²⁷ Millennium 2000 Ex. 2.0R, p. 53.

It is also worth noting that PA 98-45, effective June 28, 2013, amended the Public Utilities Act. As a result of those amendments, Competitive Local Exchange Carriers (“CLECs”) are no longer subject to Code Parts 730 or 732 and are not required to file Service Quality and Customer Credit Quarterly Reports pursuant to Code Part 730/732. Also, the 736 reporting requirement was repealed at 38 Ill. Reg. 21064, effective October 23, 2014. Although Millennium 2000 has demonstrated its ability to comply with the 730/732 and 736 rules, these two reporting requirements should not be considered when determining Millennium 2000’s eligibility for wireless ETC designation since both reporting requirements has been repealed.

The Revised Proposed Order properly found that this minor filing deficiency does not come close to providing grounds to find that the company cannot meet its service quality and consumer protection obligations:

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

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

Revised Proposed Order, pp. 38-39.

By reversing that common sense finding, the ALJPOR has indeed made a quantum leap in logic. Is this Commission ready to direct its Staff to review the 730/732 filings of every carrier in the state and impose sanctions on those that committed any "errors" as minor as providing a

disclaimer when placing zeros on a single line in a single report, regardless of the reason for the disclaimer? If not, then why is Millennium 2000 being treated any differently? Did the Staff review the 730/732 filings of Virgin Mobile USA, L.P. looking for such minor filing deficiencies when it recommended approval of that company's ETC designation in ICC Docket 14-0475? Not likely. Again, the Company hopes that the Commissioners can ask, "why is it that Millennium 2000 is being treated any differently?"

F. Pass-Through Support

ALJPOR

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.

ALJPOR p. 33.

Response:

Here the ALJPOR does not stop at making the baseless accusation that Ms. Harrison is lying. Inexcusably, the ALJPOR also accuses her of criminal conduct by claiming without any basis whatsoever, that her company failed to pass through to customers the required Lifeline discount. As with the finding on the ability of the company to provide emergency services, even with the evidence of compliance in the record, the ALJPOR refuses to believe that she is telling the truth unless her testimony is supported by additional documentary evidence. In this instance, the company provided the supporting materials, but the ALJPOR overrules the first two ALJPOs by deciding that there just were not enough of them.

Under oath, Ms. Harrison testified that the company's Lifeline customers all received **more than** the required pass through when the discount in its tariff was combined with a good will discount provided to all Lifeline customers. In order to demonstrate how those charges were reflected on customers' bills, the company provided the Staff with sample bills to post-pay customers²⁸ and sample statements of services for pre-pay customers.²⁹ Staff then asked in a data request if these samples were representative of all bills and Millennium 2000 responded that they were:

Staff Data Request JZ 6.20

At 55 of Ms. Harrison's Response Testimony she refers to a sample bill provided in Exhibit 11 and further states that "All bills for Lifeline customers contained the same pass through amount." B. Were the bills included in Exhibit 11 issued to the customers in exactly the same form and including exactly the same information as they appear in Exhibit 11? If not, please provide a complete copy of each bill in the exact format and with the same information as was issued to each of the customers.

Response: Yes.³⁰

Ms. Harrison's testimony was undisputed, Staff waived cross examination and Staff did not object to those bills and statements or the above quoted data response being admitted into the record.

Disregarding these facts, the ALJPOR finds that Ms. Harrison's testimony is not truthful and that sample bills prove nothing because there were not enough of them, even though Staff had no objection to their admission into evidence, did not press its burdensome request for copies

²⁸ Millennium Ex. 1.0R, Attachment 11.

²⁹ Millennium Ex. 1.0R, Attachment 12.

³⁰ Millennium 2000 Ex. 3.23.

of every Lifeline and non-Lifeline bill issued from 2010 through 2013 or assert any right via a motion to compel that additional evidence was necessary. Again, has this Commission ever so readily refused to accept the veracity of any company President providing sworn testimony? Similarly, the submission of sample bills is common in all Commission proceedings. Why is Ms. Harrison being treated with such disdain and Millennium 2000 being held to a standard that is not applied to any other company?

ALJPOR

The failure to accurately reflect Lifeline discounts, therefore, misleads the Commission and Applicant's Lifeline customers.

ALJPOR p. 33.

Response:

Customers were not misled. Does the Commission seriously believe that a single Lifeline customer reviewed Millennium 2000's tariff, and assuming that they did so, that they were somehow deceived? This is especially ironic when the sample bills showed a higher net discount than the tariff. The customer received **more** discounts not less for the service. It is also worth noting that despite the ALJPORs professed concern with the accuracy of filed tariffs, tariffs are not even required by the Commission any longer for competitive telecommunications services. Pursuant to the ICC rules for appropriately displaying terms and conditions on a company web site, Millennium 2000 currently reflects the full discount. The Commission can be sure that the Staff will ensure that the web site rates remain correct. After petulantly threatening to seek sanctions against Millennium 2000 for the petty or non-existent filing deficiencies it identified during three years of discovery, Staff stated in its Brief on Exceptions to the initial ALJPO recommending approval of the application for ETC designation that ". . . Staff . . . will certainly

carefully review any and all filings that Millennium makes at the Commission, should Millennium be granted ETC designation. Staff Brief on Exceptions (8-19-14), p. 16.

G. Public Interest

ALJPOR

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.

ALJPOR p. 35.

Response:

Millennium 2000's nationally recognized expert witness, Dr. Ankum, testified that it was inevitable that prepaid companies like Millennium 2000 would have a low retention rate of its wireline customers because:

1. prepaid customers are not contractually bound to keep continuous service;

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

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

The ALJPOR finding that a low **wireline** retention rate is indicative of waste, fraud and abuse and of an undependable service is completely baseless. There have never been any complaints at the state or federal level against Millennium 2000 for any reason, including for waste, fraud and abuse or the dependability of its service. Millennium 2000 Ex. 1.0 at 43, 53. Moreover, this Commission has never had a standard for retention rates (a fact admitted by Dr. Zolnierek) and if it did, it would have been grossly obsolete by 2012, when the evidence showed that 96% of Lifeline customers were using wireless service. For that reason alone, any consideration of retention rate of **wireline** customers is irrelevant, especially, when as here, the company provides prepaid service to primarily low income customers.

The FCC has never mentioned retention rate as a factor in determining eligibility for ETC designation. Nor should it because that would create a criteria that discriminates against companies that focused on providing prepaid Lifeline wireline service to the low income community and are thus susceptible to having a low retention rate. It is inappropriate for a regulatory agency to dictate such aspects of a commercial market. This is especially true for a carrier such as Millennium 2000, which offers local calling services to all who apply for service

regardless of past credit history. As this Commission found in a previous ETC designation proceeding:

Applicant's local calling packages are offered to all who apply for service regardless of past credit history. This tends to lead to a large churn and default rate. Consequently, the cost of doing business may be higher for Tennessee than for Illinois Bell.³¹

Finally, there is one key difference between wireline service and wireless service that provides Millennium 2000 with an incentive to maintain a high retention rate: handsets. In the case of its wireline service, Millennium only provided its customers a connection to the network. As with most telephone users, customers needed to provide their own telephones. Millennium, however, will bear the expense of providing its wireless customers with wireless handsets, the cost of which it must recover over a period of time. As with any wireless company providing its customers with handsets, Millennium 2000 will attempt to keep its customers for as long as possible.

III. CONCLUSION

For the reasons stated above, the Commission should make the attached changes to the Administrative Law Judge's Proposed Order on Remand.

Dated: June 17, 2015

Respectfully submitted,

s/ Thomas H. Rowland

³¹ *Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC, Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, Docket No. 09-0403, (Order, Nov. 24, 2009) p. 15.*

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EXCEPTIONS LANGUAGE

Retain the first three paragraphs in the *Commission Analysis and Conclusions on Rehearing* beginning on page 24. Delete everything beginning with "The Commission disagrees" through the end of the Order and replace it with the following.

The Commission agrees. The Commission's January 14, 2015 Order relied on Staff Ex. 2.0. Moreover, Applicant has demonstrated during Rehearing that all of the findings in the Commission's January 14, 2015 Order that reversed findings in the Administrative Law Judge's Post Exceptions Proposed Order submitted on September 30, 2014 were not supported by substantial evidence and were contrary to the law. Thus, the remainder of this order on rehearing is a restatement of the Post Exceptions Proposed Order.

The FCC requires state commissions to make a public interest determination pursuant 47 C.F.R. §54.201(c) and (d) and §214(e)(2) of the 1996 Telecom Act. The FCC further requires state commissions to impose the requirements of 47 C.F.R. 54.403(a)(1) regarding pass-through support, and the requirements of §54.201(h), which provides the framework for technical and financial analyses.

The FCC further 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 added that the Commission should impose upon Applicant the minimum guidelines set forth in §214(e)(6). (Staff Ex. 1.0 at 16). Staff also stated that state commissions are encouraged to apply the eligibility requirements of §54.202(a) and (b) to ETC designation. (Id. at 6). Neither of these provisions are binding upon ETC applicants.

Staff raised six specific issues in its testimony. (Id. at 47-48). Staff also suggested several other measures to which Applicant should be required to adhere in order to obtain ETC designation. (Id. at 19-21). The following analysis first addresses the six issues and then discusses the various other measures.

a. Failure to Define Service Area

First among the multitude of issues raised by Staff in this matter is that Applicant has failed to adequately define its ETC service area, a consequence of which is that it has failed to prove it can and will offer and advertise wireless Lifeline service throughout its designated

ETC service area. Staff's concern is that Applicant has designated various LATA's 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). (Staff Ex. 1.0 at 30).

While Staff's concern is valid, it eventually conceded that Applicant has identified its service area as each and every exchange within Illinois Bell's ILEC study area. (Staff Init. Br. 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). It also stated in response to Staff data request JZ 2.03(a), that it did and it does not seek to provide ETC wireless service in any rural carrier's study area. (Id. 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 of the LATAs. (Amended App. at 7).

The Commission notes that Staff acknowledged that it did not believe that Applicant was seeking ETC designation in any rural carrier's study area, however it considered Applicant's evidence to be inconsistent with the amended application. (Staff. Ex. 1.0 at 31). Staff further acknowledged that it does not appear to be Applicant's intent to provide service in the identified LATAs served by Illinois Bell. (Id. at 32). Staff's concern is the possibility of an inadvertent "spill-over" effect into rural service areas that may be part of the service areas of Sprint and Verizon, Applicant's underlying carriers.

The Commission does not share Staff's concern. Applicant's evidence is consistent with the amended application. Based upon the above-cited evidence, the Commission finds that Applicant has adequately defined the service area in which it proposes to provide wireless Lifeline service, and it will not include the rural service area of either Verizon Wireless or Sprint Spectrum LP, Applicant's underlying carriers.

Staff also 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 App. at 9). Staff's position is that, without a properly defined service area, there is no way to determine what agencies are included and whether the commitment can be met. 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 Init. Br. 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. Staff has no concerns with regard to Applicant's

ability to meet this commitment.

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

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

Additionally, §54.201(d)(2) requires Applicant to "(A)dvertise the availability of such services and the charges therefore 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).

b. Technical and Financial Capability

Staff also raised the issue that Applicant did not furnish evidence of its technical capabilities, since it failed to provide a service records, and in particular, quality-of-service-records with regard to its wireless service in Illinois. (Staff Ex. 1.0 at 41-43). Staff bases its criticism on a series of quarterly service quality reports in which much information appears to be missing, e.g., percentages of monthly service installations completed on time and several answer time values are reported as all zeroes. Some performance measures were allegedly missed entirely. (*Id.* at 42).

In response, 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 further explained that the performance measurements 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. Reply Br. at 33).

The Commission is not persuaded that there is a link between Staff's evidence and the conclusion that Applicant does not have the requisite technical capability to support the services it offers. As Applicant pointed out, it was found by the Commission to have the technical resources and abilities in the two Dockets cited above. Moreover, it is clear that Applicant, as a reseller of telecommunications services, is largely dependant upon its underlying carriers to meet the reporting requirements of Sections 730 and 732. Such is the case with all resellers and the standard for Applicant should be no different. The Commission accepts Applicant's explanation that if it reports zeros on a performance measure, that is the only data available to report. It does not necessarily compel the conclusion that the performance measure was missed.

The analysis of Applicant's financial capabilities is contained in Section VI., Exceptions. It supercedes the Analysis stricken immediately below and in Section V. g., Other Issues.

c. Service Quality and Customer Protection

Staff also alleged 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. It appears that Staff refers to a disclaimer contained in Sections 730/732 reports filed by Applicant, based upon an Illinois Bell Performance Measurement Report. Applicant's disclaimer states that "From October-November 2012, (Illinois Bell) missed appointments for my Millennium 2000, but information is not reflective in the report." The referenced "report" is apparently the Illinois Bell Performance Measurement Report. (Staff Ex. 1.0 at 36).

Staff states that Sections 730/732 requirements and the service Applicant provides to its customers are solely Applicant's responsibility. (Id. at 37-38). The Commission agrees with Staff that, with regard to the deficient report, Applicant is solely responsible for meeting the requirements of Sections 730/732. If it relies upon the offerings of another wholesale supplier, it cannot "pass the buck" to that supplier. However, this issue involves a single, isolated report. Staff attempts to extrapolate the deficiency in this report covering a single quarter into the ultimate conclusion that Applicant is unable to comply with Commission wireline rules as a result of its inability to manage its entire wireline resale business.

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

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..." The Commission is unable to find, based upon Staff's evidence, that Applicant will not be able to adequately manage its telecommunications operations and comply with §54.417 and §736.

d. Section 757 Reporting Requirements

Staff testified that Applicant either did not file, or late-filed, Section 757, Telephone Assistance Programs quarterly reports, between 2008 and 2012. (Staff Ex. 1.0 at 44-45). Applicant corroborates Staff, claiming that the deficiencies were due to an oversight that was immediately corrected upon discovery. (App. Ex. 1.0R at 57).

The Commission finds it difficult, if not actually impossible, to ascertain what point, if any, Staff attempts to make with this evidence. Staff does not describe what issue its testimony raises and makes no attempt to explain what problems have, or will, arise due to the deficient filings. Staff draws no conclusions and fails to state what impact, if any, the missing and late-filed quarterly reports have on the pending application. Staff states only that, "(A)s this information reveals, Millennium has repeatedly over the years failed to file quarterly reports in a timely manner." (Staff Ex. 1.0 at 45).

The Commission certainly agrees with Staff's statement, but other than its statement regarding Applicant's failure to file some quarterly reports, Staff does not state or even suggest that the application should be denied, or that conditions should be imposed, or that Applicant should be sanctioned otherwise. Without a clearly defined issue, the Commission is disposed to simply admonish Applicant to be more attuned to the requirements of Section 757 and to file all current and future quarterly reports in a timely manner. Beyond that, the Commission is unable to make any connection between the deficient filings and Staff's opposition to Applicant's request for ETC designation in this Docket.

e. 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 to customers less than the amount of support it received. 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). The Federal Lifeline support amount established by §54.403(a)(1) is \$9.25 per month.

Upon reading Staff Ex. 1.0, Applicant discovered that it had inadvertently omitted from its tariffs an additional goodwill discount that it had been providing to its customers. Factoring in the goodwill discount, Applicant had actually passed through a reimbursement amount to subscribers in excess of that required by Federal regulation. (App. Ex. 1.0R at 56; App. Init. Br. at 31).

The Commission notes foremost that Applicant's Exhibit 11 shows the goodwill discount on customer bills going back as far as January 2011, the date upon which Staff states that the pass-through deficiency began. The issue is not that Applicant passed through a lesser amount than it tariffed. The issue is that it failed to correctly tariff the amount it actually passed through, which was a higher amount than the required federal support amount.

The Commission would be able to conclude that, by not tariffing the exact amount to equal the amount of federal support, Applicant had been for a specific period, in the strictest sense, non-compliant with §54.403(a) and §54.407. Notwithstanding, 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, due to its occasionally deficient management practices. Further, the Commission does not conclude that this deficiency is evidence of Applicant's inability to pass through the full amount of Lifeline support, or that it is so contrary to the public interest, that it should serve as a basis to deny the application. Even though the inaccurate tariff may reflect somewhat clumsy management on Applicant's part, the tariff, in conjunction with Applicant's Exhibits 11 and 12, shows that Applicant provided a pass-through amount that exceeded the amount required by federal regulation.

Under these circumstances, the Commission finds no basis to sanction Applicant beyond requiring it to refile its tariffs to show that the reimbursement amount in the tariffs matches the exact amount of federal support. Applicant shall be further directed to pass-through the properly tariffed amounts to all of its customers in the future.

f. Customer Retention

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

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

The Commission agrees with Applicant that there is no existing rule requiring customer retention for any specific length of time, however, the salient issue is whether the

turnover rate cited by Staff supports its conclusions. There is no question that large numbers of customers left Applicant's service for each of the months cited, however Staff's window is just the first three months of 2012, plus July and August 2011, two months for which Staff cited no statistics. Applicant has been certificated to provide wireline ETC Lifeline service since November 13, 2008.

The Commission could find that the vast majority of customers did not stay with Applicant for an appreciable length of time for the five months cited, but that leaves approximately 36 months of service for which there is no evidence suggesting that the same low retention problem existed. There is no comprehensive study or other data to show that these high turnover rates have occurred consistently, or even intermittently, since Applicant began providing service.

Due to the lack of analysis of Applicant's wireline ETC Lifeline for the entire period since its certification, the Commission is unable to connect the statistics cited by Staff to the general conclusion that the "vast majority" of Applicant's customer do not stay with it for any length of time. An analysis of the turnover for thirty-six months, which covers approximately 87% of the time Applicant has been providing wireline ETC Lifeline service, is missing. Staff's evidence provides little more than a brief snapshot of Applicant's turnover. For that reason, the Commission finds that Staff's evidence is too select and limited to be considered "inconsistent with the notion that Applicant is providing Lifeline service that customers depend on and have available over time." Considering as well the uncontested assertion that there is no rule requiring customer retention for any set length of time, the Commission finds Staff's proof to be insufficient and is unable to find any basis to deny the application on this issue.

g. Other Issues

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. In addition to prevailing on the six issues raised by Staff, Applicant provided evidence to show that, not only that it has met the technical and financial requirements required by ¶388 of the LRO, but it also explained how it gave full consideration to the five relevant factors suggested by the FCC. (App. Ex. 1.0 at 40-42.). In addition, Applicant testified in detail regarding the procedures it would follow in enrolling and verifying customers (*Id.* at 15-16), its employee Lifeline training (*Id.* at 18), data to be provided on its application (*Id.* at 19), its certification and recertification processes (*Id.* at 20-22), procedures for submitting reimbursement from USAC (*Id.* at 22), its non-usage policy (*Id.* at 22), procedures to educate consumers under a wide variety of circumstances (*Id.* at 23-28), and procedures for customer de-enrollment (*Id.* at 28).

Prompted by language from the FCC, Staff also encouraged the Commission to require Applicant to comply with the non-binding provisions of §214(e)(6) of the 1996 Telecom Act and 47 U.S.C. §54.202(a) and (b). Section 214(e)(6) contains largely the same language as §214(e)(2), however it pertains strictly to the requirements that the FCC has established in conferring its own ETC designation. (Staff Ex. 1.0 at 6). The Commission

finds that, since Applicant is deemed to be in compliance with §214(e), it has complied with the provisions of §214(e)(6).

47 U.S.C. §54.202(a) states that “(I)n order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:” and then proceeds to list requirements in subparagraphs (1) through (5). These requirements also pertain strictly to the FCC in conferring its own ETC designation. Applicant specifically addressed §54.202(a)(2), (a)(3), (a)(4) and (a)(5) in its testimony.

Pursuant to the LRO, ETCs are not required to offer toll limitation to low-income customers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. (47 C.F.R. §54.401(a)(2)). Since Applicant does not make a distinction in price regarding local or toll calls on its wireless plans, it meets the requirements of §54.401(a)(2) and §54.202(a)(5). (App. Ex. 1.0R at 36-37).

Applicant also has the ability to remain functional in emergency situations, which complies with 47 C.F.R. §54.202(a)(2). Applicant has agreements with its underlying carriers to provide to customers the same ability to remain functional in emergency situations that ILECs provide to their own customers, including access to a reasonable amount of back-up power, rerouting of traffic around damaged facilities, and the capability to of managing traffic spikes resulting from emerging situations. Applicant further committed to satisfying all applicable state and federal consumer protection and service quality standards, in compliance with 47 C.F.R. §54.202(a)(3). (*Id.* at 37).

47 C.F.R. §54.202(a)(4) requires an applicant to demonstrate its technical and financial capabilities to provide Lifeline service. Applicant thoroughly addressed this issue in its testimony (App. Ex. 1.0R at 40-41). Further, as the Commission found in Section b., above, that Applicant’s evidence shows that it has the technical and financial capacity to support Lifeline service in Illinois.

With regard to §54.202(a)(1), the Commission finds that, as Applicant is deemed to be in compliance with all of the other binding and non-binding requirements cited above, Applicant will comply with the service requirements applicable to the low-cost support it receives. The Commission notes that, under §54.202(a)(1)(ii), Applicant, as a Lifeline-only provider, is not required to submit a five-year plan for approval.

The Commission finds that Applicant’s evidence overall demonstrates that it is in compliance with §214(e)(1)(2) of the 1996 Telecom Act, as well as 47 C.F.R. §54.201(c) and (d) and all of the other mandatory and non-mandatory provisions cited above. The Commission is aware that Applicant’s management style appears at times to be somewhat uneven, however there is no evidence that customers in any phase of Applicant’s operations have not been well served. On that basis, the Commission concludes that Applicant has made the necessary showing that issuance of wireless ETC Lifeline designation would better serve the public than if Applicant was not granted the requested designation.

Exceptions

It was not the intent of the Proposed Order to shift the burden of proof to Staff, and the Commission does not agree that the burden was shifted. (Staff BOE at 4-5). Staff raised six specific issues with regard to Millennium's application, which the Proposed Order addressed in Section V. above. Also addressed were the various requirements imposed upon Applicant by FCC regulation, and that discussion followed the disposal of the six issues.

Staff's contention that Applicant was required in Docket 08-0454 to advertise its wireline service in a newspaper of local circulation was raised for the first time in its Initial Brief. (Docket 08-0454 Order at 23, #6; Staff IB at 26; Staff BOE at 6; App. RBOE at 13).

Staff's did not raise the issue of inflated charges and inaccurate calculations prior to filing its Initial Brief (Staff IB at 38; Staff BOE at 7). Staff raised only the issue that Applicant failed to pass-through the full amount of lifeline support to its customers, but made no mention of inflated charges or inaccurate calculations. (Staff Ex. 1.0 at 38).

Staff clearly stated that Applicant did not file Section 757 quarterly reports in a timely manner (Staff Ex. 1.0 at 44-45), but Staff also did not conclude that Applicant is unable to adequately manage its Lifeline service until it filed its Initial Brief and Brief on Exceptions. (Staff IB at 37; Staff BOE at 7). Staff's language connecting the deficient Section 757 filings and Applicant's alleged high turnover rate also appears for the first time in its Brief on Exceptions. (Staff BOE at 7-8).

Staff criticizes the Proposed Order for citing just five bills out of thousands as evidence the Applicant passed through to customers sums that exceeded the amounts required by Federal regulation. (App. Ex. 11). Staff also criticizes the Proposed Order for citing five sample Statements of Service, which were not issued to customers, as evidence of a Goodwill Discount it provided. (App. Ex. 12). Each exhibit represented a miniscule percentage of the bills and statements prepared by Applicant, and omitted thousands of instances where there is no evidence that Applicant charged rates consistent with Lifeline pass-through requirements. (Staff BOE at 9-10).

According to Staff's Initial Brief, the bills and sample statements were submitted to Staff as Data Request responses. There is no evidence that Staff requested any more documentation than what was submitted. Moreover, Staff relies on App. Ex. 12, plus two additional samples from App. Group Ex. 3.0, Ex. 3.24, response to JZ DR 6.21, to conclude that Applicant does not have the technical ability to bill its wireline ETC customers properly. (Staff IB at 38). If the customer bills and sample statements, however limited, are sufficient to enable Staff to draw its conclusions, they should also be sufficient for Applicant's purposes.

The Commission sees nothing in Staff's Exceptions that would compel it to alter its findings regarding Applicant's turnover rate.

from other sources.

The Commission's amendment of the Proposed Order and imposition of Staff's suggested 20% ratio in no way alters or affects any of its findings on the other issues addressed in this Order.

Findings and Ordering Paragraphs

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

- (1) Millennium 2000, Inc. filed an Application on June 5, 2012, requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;
- (2) on April 10, 2013, Applicant filed an amended application requesting designation as an Eligible Telecommunications Carrier to provide wireless Lifeline service in Illinois;
- (3) Applicant was previously certificated by the Commission in Docket 07-0273 to provide resold local and interexchange service in Illinois, in Docket 08-0454 to provide wireline ETC Lifeline service in Illinois, and in Docket 10-0477 to provide commercial mobile radio service in Illinois, and as such is a telecommunications carrier in Illinois pursuant to Section 13- 202 of the Act (220 ILCS 5/13-202);
- (4) the Commission has jurisdiction of the parties and of the subject matter herein;
- (5) the Commission finds that Applicant has made the necessary showing that a grant of the requested wireless ETC Lifeline designation would be in the public interest;
- (6) the Commission finds that Staff's evidence is insufficient to warrant a denial of the requested wireless ETC Lifeline designation;
- (7) Applicant should be directed to refile its tariffs to show that the reimbursement amount in the tariffs matches the exact amount of federal support;
- (8) Applicant should be directed to pass-through the properly tariffed amounts to all of its customers in the future;
- (9) Applicant should be directed to file all current and future Section 757 quarterly reports in a timely manner;

- (10) Applicant should be directed to maintain a ratio 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 should be required to cease enrolling new wireless Lifeline customers until it obtains Commission approval to resume wireless Lifeline service;
- (11) the amended application should be granted.

IT IS THEREFORE ORDERED that Millennium 2000, Inc. is hereby designated, effective as of the date of this Order, 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.

IT IS FURTHER ORDERED that Applicant shall refile its tariffs to show that the reimbursement amount in the tariffs matches the exact amount of federal support.

IT IS FURTHER ORDERED that Applicant shall pass-through the properly tariffed amounts to all of its customers in the future.

IT IS FURTHER ORDERED that Applicant shall file all current and future Section 757 quarterly reports in a timely manner.

IT IS FURTHER ORDERED that Applicant shall maintain a ratio 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 is required to cease enrolling new wireless Lifeline customers until it obtains Commission approval to resume wireless Lifeline service.

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.

By Order of the Commission this day of , 2015.

Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Brief on Exceptions on Rehearing of Millennium 2000 Inc. has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 17th day of June 2015 by electronic mail.

/s/ Thomas H. Rowland

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