

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners; Brian J. Moline, Chair  
Robert E. Krehbiel  
Michael C. Moffet

In the Matter of a General Investigation )  
Addressing Requirements for Designation ) Docket No. 06-GIMT-446-GIT  
of Eligible Telecommunications Carriers. )

## **ORDER OPENING DOCKET AND REQUESTING COMMENTS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on its own motion. Being duly advised in the premises and familiar with its files and records, the Commission finds and concludes as follows:

1. 47 U.S.C. § 214(e)(2) delegates authority to state commissions to designate eligible telecommunications carriers (ETC), provided it finds the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Those requirements are to:

- offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS § 254(c)], 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
  - advertise the availability of such services and the charges therefore using media of general distribution.

The Federal Act also provides that before designating an additional ETC in a service area served by a rural telephone company, the state commission must determine that the designation is in the public interest.<sup>1</sup> 47 U.S.C. § 214(e)(6) provides that the Federal

<sup>1</sup> The FCC determined in *In the Matter of Federal-State Joint Board on Universal Service*. Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia. CC Docket No. 96-45. *Memorandum Opinion and Order*. Rel. January 22, 2004, ¶ 27, that designation of ETCs in non-rural areas also requires a public interest determination.

Communications Commission (FCC) shall, when requested, designate an ETC that meets the 214(e) criteria, when that carrier is not subject to state commission jurisdiction.

Pursuant to the 214(e) delegation, this Commission has designated several competitive ETCs.

2. Pursuant to its authority to designate ETCs when a state commission does not have authority to do so, the FCC issued In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, released March 17, 2005, FCC 05-26, (*FCC Order*) adopting minimum requirements that a carrier must meet when it requests designation from the FCC. The FCC also encouraged state commissions to adopt the same requirements.<sup>2</sup>

3. On September 29, 2005, Staff submitted a Memorandum to the Commission recommending the Commission open a docket to request comments on the issues set out in Staff's Memorandum. The Commission has reviewed the Memorandum and is opening this docket to request comments on the issues set out therein, because we believe that it is necessary to establish clear criteria for ETC designation to ensure that all ETCs meet the statutory requirements, including the public interest requirement. The Memorandum is served with this Order. The Commission will address each issue set out in the Memorandum in the Order, but not in the detail that the Memorandum does. Parties should review the Memorandum as well as the Order.

4. Staff explained that the Commission had set aside issues related to designation of ETCs that should be addressed in a generic docket in the orders designating ALLTEL Kansas Limited Partnership (ALLTEL)<sup>3</sup> and RCC Minnesota, Inc.

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<sup>2</sup> *FCC Order*, ¶ 1.

<sup>3</sup> Docket No. 04-ALKT-283-ETC. (*ALLTEL Order*)

(RCC)<sup>4</sup> ETCs. Staff also addressed the *FCC Order* and its encouragement to state commissions to adopt its requirements for ETC designations.

5. Staff first addressed the issues from the ALLTEL and RCC orders. The following issues are set out:

- a) minimum local usage;
- b) content, frequency and types of media for advertising;
- c) per-minute blocking for wireless carriers;
- d) billing standards;
- e) carrier of last resort responsibilities;
- f) build-out plans; and
- g) application of termination fees.

Staff noted the Commission has determined that any new requirements it might adopt in a generic docket would also apply to already designated ETCs.

#### **Local usage**

6. Staff notes sufficiency of local usage provided to customers became an issue in the ALLTEL docket. The FCC did not establish a minimum local usage requirement, but recommended state commissions consider minimum local usage in their designation determinations. The FCC stated it would look at the following factors on an individual case basis each time it was called on to make an ETC designation: size of the local calling scope compared to the incumbent; calling plan with some free minutes; unlimited free minutes to government, social service, health facilities, educational institutions and emergency numbers.<sup>5</sup> Staff recommended the Commission seek comment on these factors and whether additional factors should also be considered. Parties wishing to comment should review the Memorandum at pp. 2-3 for additional detail on this issue.

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<sup>4</sup> Docket No. 04-RCCT-338-ETC. (*RCC Order*)

<sup>5</sup> *FCC Order*, ¶ 34.

## **Content, Frequency and Types of Media for Advertising**

7. 47 U.S.C. § 214(e)(1)(B) requires ETCs to advertise their services throughout the service area for which they have been designated “using media of general distribution.” Staff’s Memorandum notes the FCC has provided no guidance on what constitutes compliance with this requirement. Staff suggested the Commission request comment on what should be the content of the required advertising. Should the advertisements make clear that the ETC has universal service obligations, including provision of service in response to a reasonable request? Should they direct consumers to the Commission’s Office of Public Affairs and Consumer Protection for complaints? Should the Commission require that advertisements be made at certain specified frequencies, if so what should those frequencies be? What types of media should be considered “media of general distribution?” Should ETCs certify compliance on an annual basis and if so, how? Memorandum, p. 3.

## **Per-Minute Blocking for Those Billing on a Usage Basis**

8. Should an ETC be required to implement per-minute blocking for Lifeline customers? Memorandum, pp. 3-4.

## **Billing Standards**

9. Should an ETC, regardless of technology used to provide service, be required to comply with the Commission’s Billing Standards?<sup>6</sup> If so, do the standards need to be modified to fit the unique characteristics of a particular service technology? The Commission notes that it has opened a docket to address Billing Standards, Docket No. 06-GIMT-187-GIT (06-187 Docket), in which all ETCs might wish to participate. Memorandum, p. 4. The Commission will not address specific billing standards in this

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<sup>6</sup> K.S.A. 66-104a and K.S.A. 66-1,143 limit the Commission’s jurisdiction over wireless carriers.

docket, only whether they should apply to everyone and whether technology may warrant different standards for carriers utilizing different technologies for providing service.

Specific changes to the billing standards will be addressed in the 06-187 Docket.

### **Carrier of Last Resort Responsibilities**

10. 47 U.S.C. § 214(e)(4) addresses the carrier of last resort issue. K.S.A. 66-2009 designates incumbent carriers or their successors as carriers of last resort. Should the Commission consider the effect of designation of an additional ETC in a service area on the carrier of last resort obligation as part of the public interest test? If so, what criteria should be used? Considering the differing federal and state statutory provisions for this issue, should the Commission only consider the public interest ramifications for state designation? Please provide comment on any legal issues that may arise with respect to this issue. Memorandum, p. 4.

### **Build-Out Plans**

11. The Memorandum explains, at pp. 4-5, the requirements imposed by the Commission in the *ALLTEL* and *RCC Orders* regarding build-out plans. The *FCC Order* determined that ETC applicants must demonstrate their commitment and ability to provide supported services. The FCC encouraged states that designate ETCs to adopt the same requirements and to determine what constitutes “a reasonable request for service” which would trigger a requirement to provide service.<sup>7</sup> Staff references the requirements relating to build-out established by the FCC in its *FCC Order*, ¶¶ 22-23. Memorandum, pp. 5-6. The Commission requests that the parties review the FCC requirements and provide comment whether the Commission should also require that this information be provided as part of an ETC application. The Commission also requests comment on what

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<sup>7</sup> *FCC Order*, ¶ 21.

constitutes a “reasonable request.” Finally, the Commission requests comment on the value of its annual mapping requirement and its requirement to file quarterly reports on unfilled service requests.

#### **Application of termination fees**

12. Many ETCs require customers to sign a contract for service for a specified period of time and impose termination fees if the customer wants to break the contract. Incumbent carriers generally provide service on a month-to-month basis with no termination fee. Should termination fees be allowed for service plans for residential and small business customers that subscribe to local service? Should all ETCs be required to offer at least one plan without a long-term contract? If so, how would the Commission ensure that the pricing of such a plan not be so high as to assure that no customer would take it? Memorandum, p. 6.

#### **Issues Raised in *FCC Order***

##### **Emergency Situations**

13. The FCC set out a series of factors it would consider in future ETC applications, in addition to those mentioned above and suggested that state commissions address these issues in a similar manner.<sup>8</sup> One of the factors adopted by the FCC is a requirement that the ETC demonstrate it can continue to provide service without an external power source in an emergency situation. The Commission requests comment on whether it should similarly require an ETC applicant to demonstrate its ability to provide service in an emergency situation. Are there Kansas-specific factors that are relevant to a determination on this issue? Should benchmarks be established? Memorandum, p. 7.

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<sup>8</sup> *FCC Order*, ¶ 23. Memorandum, pp. 6-7.

## **Consumer Protection and Service Quality Standards**

14. The FCC also requires an ETC applicant to demonstrate its commitment to meeting consumer protection and service quality standards and requires ETCs to report complaints.<sup>9</sup> The Commission has opened Docket No. 05-GIMT-187-GIT (05-187 Docket) to address specific service standards and whether quality of service standards should be applied to all ETCs and if so, how to tailor standards to apply to different service technologies. The Commission request parties comment on the issues set out in the Memorandum, pp. 7-9, relating to these issues. Parties may also wish to address the relationship between the 05-187 Docket and this one.

## **Equal Access**

15. The FCC acknowledges competitive ETCs are not required to provide equal access, but puts them on notice that it may at some time require an ETC to provide equal access if no other ETC in the particular designated service area provides it.<sup>10</sup> Staff's Memorandum reminds us that this Commission has addressed the equal access issue in Docket No. 99-GCCZ-156-ETC and that the Commission's decision has been appealed to the Nemaha County District Court<sup>11</sup>, but has been stayed to allow the FCC to address this issue. It is also pending before the D.C. Circuit Court of Appeals, which has also stayed its proceedings to allow the FCC to act. Considering the fact that the authority of the Commission to require a wireless (CMRS) ETC to provide equal access is on appeal, Staff suggests the Commission may not wish to address this issue at this time. The Commission agrees. Any party wishing to comment on the Commission's authority to address the issue may do so.

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<sup>9</sup> *FCC Order*, ¶¶ 28, 30-31. Memorandum pp. 7-8.

<sup>10</sup> *FCC Order*, ¶ 35.

<sup>11</sup> Case No. 01-CV-40.

## **Public Interest Analysis**

16. Staff's Memorandum explains the FCC's determination as to the public interest analysis the FCC will apply when it is required to address designation of an ETC at pp. 9-11. Staff states the Commission applied essentially the same analysis in the ALLTEL and RCC ETC designation proceedings. The Commission refers parties to Staff's Memorandum and the *FCC Order* for comments on this issue. The Commission adopts Staff's recommendation and requests comments on the following issues for determination of the public interest in designating an ETC:

- Should the Commission consider increased consumer choice and advantages and disadvantages of an ETC's service offerings for both state and federal purposes?
- Should the Commission adopt a population density analysis for both state and federal purposes and if so should a bright line test be established?
- Should the Commission consider the impact of designation of an additional ETC on the size of the federal USF and the KUSF, and if so should the Commission examine the per-line support amount that would be ported to the competitive ETC?

## **Annual Certification Requirement**

17. Beginning October 1, 2006, ETCs designated by the FCC are required to submit the following information as part of their annual certification that they have spent their federal USF support as required:

- (1) Progress reports on five-year service quality improvement plan. This report will include a map detailing the progress in meeting targets set out in the initial plan, an explanation of how FUSF support has been used to improve service quality, coverage, capacity, signal quality, etc, and an explanation of why any targets were not met. Information is to be provided at the wire center level.
- (2) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affect at least 10% of the end users in a service area, or that could affect 911. "An outage is defined as a significant degradation in the ability of an end user to establish and

- maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.”<sup>12</sup> The ETC must report: date and time of outage, description of the outage and resolution, particular services affected, geographic areas affected, steps taken to prevent it from happening again, and number of customers affected.
- (3) Number of service requests unfulfilled. The ETC must provide a detailed explanation of how it attempted to serve the potential customer.
  - (4) Number of complaints per 1000 handsets or lines.
  - (5) Certification that the ETC is complying with quality of service standards.
  - (6) Certification that the ETC is able to function in an emergency.
  - (7) Certification that the ETC is offering a local usage plan comparable to that of the incumbent.
  - (8) Certification that the carrier acknowledges that it may be required to provide equal access in the event that there is no other ETC in the service area.<sup>13</sup>

The FCC encouraged state commissions to adopt the same annual reporting requirements and to apply them to all ETCs, not just competitive ETCs. The FCC also made clear state commissions may require any other information they believe is necessary to assure conformance with the federal requirements.

18. The Commission has adopted forms for ETCs to complete to ensure that they use federal USF support and KUSF support as required in Docket No. 05-GIMT-112-GIT. Additionally, the Commission requires RCC and ALLTEL to provide a map detailing their infrastructure and approximate coverage on an annual basis.

19. Consistent with Staff's recommendation, the Commission seeks comment on whether it should expand its ETC certification requirements to include the eight items required by the FCC (¶ 17 above). The Commission also requests comment on whether it should continue to impose the mapping requirement on RCC and ALLTEL and whether that requirement should be expanded to all ETCs, regardless of whether the Commission adopts the FCC criteria. Memorandum, pp. 11-12.

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<sup>12</sup> FCC Order, paragraph 69.

<sup>13</sup> FCC Order, paragraph 69.

## **Other Issues**

20. In the *FCC Order*, the FCC declined to adopt “the place of primary use definition” for identifying the location of the wireless customer.<sup>14</sup> The FCC made clear that it will continue to use the wireless customer’s billing address to determine the customer’s location for the purpose of distributing USF support.<sup>15</sup> The Commission requests comment on this issue. Memorandum, p. 13.

21. Staff’s’ Memorandum, p. 13, observed that some competitive ETCs offer only a limited number of calling plans to Lifeline customers, while incumbent ETCs allow customers to choose any calling plan and apply the Lifeline discount for qualifying customers. As recommended by Staff, the Commission requests comment on how ETCs currently provide Lifeline service, whether the appropriate discount is applied and whether ETCs should be permitted to limit the service options for Lifeline customers.

22. The Commission requests that comments on the issues set out above, as well as others parties deem relevant to this inquiry, be filed by December 16, 2005. Reply comments may be filed by January 13, 2006. The Commission requests that parties recommend a procedural schedule in their reply comments. After receipt of comments and reply comments, the Commission directs Staff to prepare a summary.

23. This Order shall be served on all ETCs. The final order in this docket will also be served on all ETCs. Parties that wish to file comments and/or receive all pleadings filed in the docket shall enter their appearance no later than December 1, 2005. Parties filing pleadings in this docket shall rely on the service list on the Commission’s web page for this docket.

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<sup>14</sup> *FCC Order*, ¶ 83.

<sup>15</sup> *FCC Order*, ¶ 82.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. Comments and reply comments may be filed on the issues set out above and other relevant issues by December 16, 2005 and January 13, 2006 respectively.
- B. Entries of appearance shall be filed by December 1, 2005, as set out above.
- C. Parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2004 Supp. 77-529(a)(1).
- D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: OCT 26 2005

ORDER MAILED

OCT 27 2005

  
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Susan K. Duffy  
Executive Director

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# KANSAS

C O R P O R A T I O N   C O M M I S S I O N

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

## M E M O R A N D U M

**To:** Chair Moline  
Commissioner Krehbiel  
Commissioner Moffet

**From:** Janet Buchanan

**Date:** September 29, 2005

**Re:** Generic Proceeding Regarding ETC Designation

In its orders granting eligible telecommunications carrier (ETC) designation for ALLTEL Kansas Limited Partnership<sup>1</sup> (ALLTEL) and RCC Minnesota, Inc.<sup>2</sup> (RCC), the Commission set out several issues related to ETC designations that it believed would be best addressed in a generic proceeding rather than on a case-by-case basis. Subsequent to these orders, the Federal Communications Commission (FCC) issued an order addressing recommendations regarding requirements for ETC designations made by the Federal-State Joint Board on Universal Service (Joint Board).<sup>3</sup> Below, Staff provides a summary of the issues identified by the Commission and by the FCC to be addressed in a generic proceeding.

### ISSUES RAISED IN ALLTEL AND RCC ORDERS

In its orders granting ETC designation for ALLTEL and RCC, the Commission identified several issues for further discussion and analysis.<sup>4</sup> The Commission stated that it would request comments from interested parties on the following issues:

<sup>1</sup> In the Matter of the Application of ALLTEL Kansas Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to Section 47 U.S.C. § 214 (e)(2) of the Communications Act of 1934, Docket No. 04-ALKT-283-ETC, *Order Granting ETC Designation and Addressing Additional Issues*, September 24, 2004. (ALLTEL Order)

<sup>2</sup> In the Matter of the Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2), Docket No. 04-RCCT-338-ETC, *Order No. 14: Order Granting ETC Designation and Addressing Additional Issues*, September 30, 2004. (RCC Order)

<sup>3</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, released March 17, 2005, FCC 05-26. (FCC Order)

<sup>4</sup> ALLTEL Order, paragraph 49. RCC Order, paragraph 55.

- a) minimum local usage;
- b) content, frequency and types of media for advertising
- c) per-minute blocking for wireless carriers;
- d) billing standards;
- e) carrier of last resort responsibilities;
- f) build-out plans; and
- g) application of termination fees.

The Commission also indicated that any new requirements developed for ETC designations would be applicable to any previously designated ETC wishing to retain its designation.

#### *Local Usage*

Regarding local usage, parties to the ALLTEL proceeding raised concerns regarding whether ALLTEL would provide a sufficient number of local minutes of use at an affordable price.<sup>5</sup> However, in its decision regarding the recommendation of the Joint Board, the FCC did not make a specific determination of the minimum local usage required to be offered by an ETC.<sup>6</sup> Instead, the FCC states,

. . . we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.<sup>7</sup>

The FCC encouraged state Commissions to consider this issue in the context of designating additional ETCs in a particular service area. The FCC suggests that states consider not only whether the local usage plans (minutes and prices) offered by an ETC applicant are reasonable but also whether they are “. . . comparable to those offered by the incumbent when examining whether the ETC applicant provides adequate local usage. . .” (emphasis added).<sup>8</sup> The FCC will look at various factors on a case-by-case basis: whether the local calling scope offered by the ETC applicant is larger or smaller than that offered by the incumbent provider; whether the ETC applicant offers a calling plan with some number of free minutes within the local service area; whether the ETC applicant offers a plan with unlimited calling that bundles local and long distance; and whether the ETC applicant will provide free unlimited minutes to government,<sup>9</sup> social service, health facilities, educational institutions, and emergency numbers.<sup>9</sup>

Staff suggests the Commission seek comment on the factors identified by the FCC and whether additional factors should be considered. Staff also suggests that the Commission seek comment

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<sup>5</sup> ALLTEL Order, paragraph 12.

<sup>6</sup> The FCC noted that while it did not determine a specific number of minutes of local usage that must be provided, nothing would prohibit a state Commission from making such a determination. FCC Order, paragraph 34.

<sup>7</sup> FCC Order, paragraph 32.

<sup>8</sup> FCC Order, paragraph 34.

<sup>9</sup> FCC Order, paragraph 33.

on whether it should determine a specific number of local minutes that must be offered and if so, commenters should provide a discussion of how such a determination should be made given the identified factors. For example, incumbent local exchange carriers (LECs) may still collect minutes-of-use data that were required for separations studies. This data could then be used to determine the average minutes of local use given the incumbent LEC's local calling scope. Additionally, Staff suggests the Commission request comments regarding whether it is sufficient to make a determination that the ETC applicant's local usage plan is reasonable or whether the Commission must make a determination that it is comparable to that of the incumbent provider.

#### *Content, Frequency and Types of Media for Advertising*

In the RCC and ALLTEL proceedings, Staff raised a concern regarding the requirement that an ETC advertise the availability of its service throughout the service territory.<sup>10</sup> Staff suggested that the Commission impose specific requirements regarding the content, frequency and type of media used for advertising the availability of service. The FCC has provided no guidance on this issue.

Staff suggests that the Commission request comments regarding the content of the advertising offered by an ETC. Specifically, Staff suggests the comment seek comment regarding whether an ETC should be required to indicate that it has universal service obligations, including the obligation to provide service upon a reasonable request, whether the advertising should direct consumers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding service issues, and whether any other specific content should be required. Staff suggests that the Commission request comments regarding the appropriate frequency of advertising throughout each service area for which an ETC applicant receives designation. That is, is it sufficient to advertise once in less profitable locations within a service area or should an ETC be required to advertise quarterly, annually, etc. Additionally, Staff suggests that the Commission request comments of the types of media that can be utilized to satisfy this requirement and whether a print advertisement must be utilized with some minimum frequency. Finally, Staff suggests that the Commission request comment regarding whether an ETC should be required to certify, on an annual basis, that it meets any advertising requirements established by the Commission, and if so, commenters should suggest means of accomplishing such certification.

#### *Per-Minute Blocking for Those Billing on a Usage Basis*

In the ALLTEL proceeding, Mr. Paul Cooper, a witness for the Independent Telecommunications Group, Columbus et al, suggested that the Commission consider whether it would be in the public interest to require carriers billing on a per minute basis for local service to institute per-minute blocking. An ETC is required to offer either "toll control" or "toll blocking" services to Lifeline customers at no additional charge. Toll control or toll blocking is required in order to aid Lifeline customers in avoiding additional charges on their phone bill that would arise if the phone were used for toll calling. Mr. Cooper suggested that since wireless carriers bill on a per-minute basis for any usage beyond that covered by the calling plan, it would be prudent to offer Lifeline customers per-minute blocking for local usage.

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<sup>10</sup> ALLTEL Order, paragraph 27. RCC Order, paragraph 25.

Staff suggests that the Commission request comments regarding whether an ETC should be required to implement per-minute blocking at no additional cost for Lifeline customers.

#### *Billing Standards*

Any telecommunications public utility, subject to the jurisdiction of the Commission, operating in Kansas is subject to the Commission's billing standards. However, the Commission's jurisdiction over wireless carriers is limited by K.S.A. 66-104a and K.S.A. 66-1,143. Therefore, wireless carriers have not been required to comply with the Commission's billing standards.

Despite the limitations on the Commission's jurisdiction in Kansas statutes, the Commission has authority to designate wireless carriers as ETCs and to impose eligibility criteria on all ETCs. Staff suggests that the Commission seek comment on whether it is reasonable to require all ETCs to comply with the Commission's billing standards. The Commission may wish to seek comment on whether billing standards would need to be altered to meet the unique characteristics of a particular service technology. In its order requesting comments, the Commission may wish to note that it has opened Docket No. 06-GIMT-187-GIT to discuss proposed changes to the billing standards. All ETCs may wish to participate in that proceeding regardless of whether the billing standards are currently applicable to a particular ETC.

#### *Carrier Of Last Resort Responsibilities*

In the ALLTEL and RCC proceedings, there was discussion of the carrier of last resort obligations that extend to ETCs. Under K.S.A. 66-2009, the incumbent carrier or its successor is to serve as the carrier-of-last-resort. The Federal Act, at Section 214(e)(4), permits the carrier of last resort obligation to shift among ETCs within a service area. Under this provision of the Federal Act, the Commission must allow an ETC to give up its designation if there is another ETC serving the area. Prior to allowing the ETC to cease provision of universal service, the Commission must determine that there is another ETC(s) serving the area and require the ETC(s) to serve all customers previously served by the ETC wishing to give up its designation. The Commission has up to one year to transition customers to another ETC.

Staff suggests that the Commission request comment on whether the carrier of last resort obligation should be considered as part of the public interest finding for ETC designations. Specifically, the Commission may wish to request comments on whether it should consider the impact of additional ETC designations on the ability of a carrier to meet its carrier of last resort obligations. Given the discrepancy between the Kansas Act and the Federal Act, Staff suggests that the Commission request comments on whether the carrier of last resort obligation be considered only in the context of an application to become an ETC for state purposes. It may be appropriate to request that the legal issues surrounding the carrier of last resort obligation be briefed as well.

#### *Build-Out Plans*

In the ALLTEL and RCC proceedings, the Commission required the companies to provide updates regarding their ability to provide service throughout the service areas where the companies requested designation as an ETC. Each company stated that it would follow a multi-step process to determine whether it would be able to provide service to a particular requesting customer. To address concerns of other parties as to the commitment of ALLTEL and RCC to

serve throughout the territory, the Commission required the carriers to submit maps on an annual basis detailing the existing infrastructure and the approximate coverage available from those facilities. Additionally, the Commission required the carriers to provide a report each quarter regarding the number of instances in which the companies refused to serve a customer. The report was to include the location of the customer, an explanation of why none of the options in the multi-step process could be utilized to serve the customer, and the carrier's progress with establishing interconnection arrangements which would permit resale of a wireless carrier's or wireline carrier's service.

The FCC addressed this issue in its order regarding issues raised by the Joint Board. The FCC indicates that state Commissions should determine what constitutes a reasonable request for service. In making this determination, the FCC encouraged state Commissions to examine any build-out commitments made by the ETC applicant, current line extension policies applicable to incumbent ETCs and carrier of last resort obligations.<sup>11</sup>

The FCC stated that it would consider the following in evaluating whether an ETC had received a reasonable request for service:

- If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately.
- In those instances where a request comes from a potential customer within the applicant's licensed area but outside its existing network coverage, the ETC should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.<sup>12</sup>

Additionally, the FCC requires ETCs which it has designated to file notice with the FCC that the ETC has an unfulfilled request for service. The notice must be given within 30 days of the ETC's determination that it cannot meet the request for service.

Further, the FCC will,

- ... require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent the receipt of support. . . . (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support

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<sup>11</sup> FCC Order, paragraph 21.

<sup>12</sup> FCC Order, paragraph 22.

throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements.<sup>13</sup>

Staff suggests that the Commission seek comment regarding whether it should require the same information required by the FCC to be filed as part of an ETC application to demonstrate an ETC's commitment to provide service throughout the designated areas. Additionally, Staff suggests that the Commission seek comment regarding what should be considered a "reasonable request." The Commission may wish to offer the FCC's evaluation process as a starting point for comments. Staff suggests that the Commission receive comments on the value of its annual mapping requirement and its quarterly reporting process for unfulfilled service requests. The Commission will need to determine whether it will apply these requirements to all ETCs.

#### *Application of Termination Fees*

In the RCC and ALLTEL proceedings, concern was raised regarding the imposition of service termination fees. While most incumbent carriers offer basic service on a month-to-month basis, many ETCs require customers to sign a contract locking the customer into a service arrangement for certain periods of time depending upon the service plan. Those ETCs also require the customer to pay a termination fee in order to exit the contract prior to its expiration date. In many instances, the term contract is required in order for a carrier to be assured it will recoup the cost of a phone or special serving arrangements.

Staff suggests that the Commission seek comment regarding whether an ETC must offer at least one plan meeting any local usage requirements developed by the Commission that does not require a customer to enter into a long-term contract. The Commission may also wish to seek comment regarding whether there should be a prohibition on termination liabilities for residential and small business customers subscribing to basic local service.

### **ISSUES RAISED IN THE FCC ORDER**

As indicated above, the FCC issued an order regarding recommendations of the Joint Board relating to ETC designations. Specifically the FCC indicated that it would consider the following in future applications for ETC designation:

... an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. . . . ETCs

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<sup>13</sup> FCC Order, paragraph 23.

designated by the Commission prior to this Report and Order will be required to make such showings when they submit their annual certification filing on October 1, 2006. We encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction.<sup>14</sup>

As indicated at the end of the quote, the FCC suggested that state Commissions also address the same issues in a similar manner. Where there was overlap with issues identified by the Commission in the ALLTEL and RCC proceedings, Staff provided a discussion of the FCC Order above.

*Commitment and Ability to Provide Services*

The FCC Order was discussed above under *Build-Out Plans*.

*Ability to Remain Functional in an Emergency*

In the FCC Order, the FCC states that,

. . . in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.<sup>15</sup>

Additionally, the FCC required that ETCs provide data on outages annually. This will be discussed further with other annual certification requirements imposed by the FCC.

Staff suggests that the Commission seek comment on whether it should require an ETC applicant to provide evidence regarding its ability to provide service in an emergency situation.

Specifically, Staff suggests the Commission seek comment on whether an ETC applicant should make a showing, as required by the FCC, that it has back-up power, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes that might result from an emergency. The Commission should seek comment regarding whether there are any Kansas specific factors (geography, demographics, etc) that are relevant for consideration. While the FCC did not provide any particular benchmarks (i.e., that back-up power be sufficient to provide service for 8 hours following an emergency), the Commission may wish to seek comment as to whether it is reasonable to impose specific benchmarks regarding the ability of a carrier to remain functional in an emergency.

*Consumer Protection and Service Quality Standards*

In the FCC Order, the FCC states that,

. . . we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission. We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. . . . a commitment to comply

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<sup>14</sup> FCC Order, paragraph 20.

<sup>15</sup> FCC Order, paragraph 25.

with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission.<sup>16</sup>

The FCC also imposed an annual reporting requirement regarding complaints that will be discussed further with other annual certification requirements imposed by the FCC.

The FCC indicated that,

. . . state commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. . . . In determining whether any additional consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state – *i.e.*, where such a requirement would not otherwise apply to the ETC applicant – we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC.<sup>17</sup>

More specifically the FCC states,

[w]e also reject commenters' arguments that consumer protection requirements imposed on wireless carriers as a condition of ETC designation are necessarily inconsistent with section 332 of the Act. While Section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate other terms and conditions of commercial mobile radio services. Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and enhance universal service.<sup>18</sup>

The Commission has expressed a desire to examine whether billing standards should be applied to those ETCs over which the Commission would not normally have jurisdiction. This was addressed above under *Billing Standards*. The Commission accepted the commitment of ALLTEL and RCC to meet the CTIA's Code for Wireless Service and to report the number of complaints per 1,000 handsets. However, the Commission stated that it desired additional discussion of quality of service issues. The Commission is addressing quality of service standards in Docket No. 05-GIMT-187-GIT. If the Commission determines that it does not wish to modify the quality of service standards for facilities-based carriers, it will need to either continue with an investigation in Docket No. 05-GIMT-187-GIT regarding whether to apply similar standards to ETCs over which the Commission would not otherwise have jurisdiction or

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<sup>16</sup> FCC Order, paragraph 28.

<sup>17</sup> FCC Order, paragraph 30.

<sup>18</sup> FCC Order, paragraph 31.

address that issue in the generic proceeding opened to discuss issues identified in this memorandum.

*Local Usage*

Local usage issues were discussed above under the heading *Local Usage*.

*Equal Access*

Equal access is not required for purposes of designation as an ETC for federal purposes. However, as the Kansas Act defines universal service at K.S.A. 66-1,187(p), equal access is required. The Commission previously determined that it could not require a wireless carrier to provide equal access as a condition of designation as an ETC for state purposes. This issue is currently on appeal with other issues in Docket No. 99-GCCZ-156-ETC and was a portion of the Nemaha County appeal. The appeal has been stayed until the FCC addresses the issue.

Regarding the provision of equal access to a long distance carrier, the FCC declined to impose a requirement that equal access be provided. However, the FCC states that,

[a]lthough we do not impose a general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area.<sup>19</sup>

Since the issue has been appealed, it may not be appropriate for the Commission to address the issue at this time.

*Public Interest Analysis*

In its Virginia Cellular ETC Designation Order and its Highland Cellular ETC Designation Order, the FCC developed a public interest analysis.<sup>20</sup> In response to the Joint Board, the Commission reiterated its previously developed analysis. Specifically, the FCC noted that it had adopted one set of criteria to be applied for rural and non-rural service areas. However, the FCC indicated that it may conduct the analysis differently or reach a different outcome depending on the area served – that is, more weight may be given to certain factors in the rural context than in the non-rural<sup>21</sup>. The analysis adopted by the FCC is discussed below. The Commission, determined that it would follow this analysis in the ALLTEL and RCC proceedings.

The FCC determined that it would conduct a cost-benefit analysis considering the benefits of additional consumer choice and the advantages and disadvantages of a particular service offering. The FCC stated that the burden of proof is placed on the ETC applicant.<sup>22</sup> Regarding consumer choice, the FCC acknowledged that this is generally believed to be a benefit; however, the FCC noted that this factor alone is unlikely to satisfy a public interest test.<sup>23</sup> Regarding the

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<sup>19</sup> FCC Order, paragraph 35.

<sup>20</sup> See Virginia Cellular ETC Designation Order, 19 FCC Rcd at 1576 and Highland Cellular ETC Designation Order, 19 FCC Rcd at 6433.

<sup>21</sup> FCC Order, paragraph 43.

<sup>22</sup> FCC Order, paragraph 44.

<sup>23</sup> FCC Order, paragraph 44.

advantages and disadvantages of a particular service offering, the FCC determined that it would consider the benefits of mobility, calling scope, services comparable to those available in urban areas and disadvantages such as dropped call rates and poor coverage.<sup>24</sup> Similar analysis was applied by the Commission in the ALLTEL and RCC proceedings.

If an ETC applicant requests designation below the service area level of a rural incumbent, the FCC will also examine the potential for cream-skimming. The FCC states that,

[t]he potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the high-density wire centers in an incumbent LEC's service area. By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's cost of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support. Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. . . . In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (*e.g.*, at the wire center level).<sup>25</sup>

This analysis was applied by the Commission in the ALLTEL and RCC proceedings. A concern raised there was whether there should be a benchmark for determining when the disparity in population densities served by the incumbent and the applicant are great enough to warrant a finding that it would not be in the public interest to designate an ETC below the service area of the incumbent. In the FCC Order, the FCC declined to establish a bright-line test to determine whether cream-skimming concerns are present.<sup>26</sup>

Finally, in its public interest consideration, the FCC determined that it would consider the impact of a designation on the size of the Federal Universal Service Fund (FUSF). However, the FCC did not adopt a specific test or benchmark. The FCC indicated that because the FUSF is so large, it is unlikely that any one ETC applicant will have a significant impact on the fund's size.<sup>27</sup>

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<sup>24</sup> FCC Order, paragraph 44.

<sup>25</sup> FCC Order, paragraph 49.

<sup>26</sup> FCC Order, paragraph 53.

<sup>27</sup> FCC Order, paragraph 54.

Instead, the FCC now indicates that it will look at the dollar amount of the per-line support that will be ported to the ETC applicant. In examining this factor, the FCC stated that,

[i]f per-line support is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.<sup>28</sup>

The FCC did not adopt a bright-line test for determining when an incumbent's per-line support was high enough to justify limiting the number of ETCs in a particular service area. The FCC noted that topography, population density, distance between wire centers, loop length, types of investment (i.e., fiber to the home) all drive support levels and all must be considered when making a determination to designate an additional ETC. The FCC also tempered this discussion with the following:

Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality.<sup>29</sup>

Staff suggests that the Commission request comments on consideration of increased consumer choice and the advantages and disadvantages of an ETC's service offerings when making a public interest determination in an ETC proceeding for both state and federal purposes. Staff also suggests that the Commission request comments regarding the population density analysis and whether that should be utilized in ETC determinations for state and federal purposes. Staff suggests the Commission seek comments on whether a bright-line test for the population density analysis be established. Additionally, Staff suggests that the Commission request comments regarding whether it should consider the impact of designation of an additional ETC on the size of the FUSF and KUSF. Specifically, Staff suggests the Commission seek comments on whether it should follow the FCC and examine the per-line support amount that would be ported to the ETC.

#### *Annual Certification Requirements*

The FCC determined that the carriers for which it has granted ETC designation must submit the following information as part of its annual certification requirements which are filed on October 1 of each year beginning in 2006:

- (1) Progress reports on five-year service quality improvement plan. This report will include a map detailing the progress in meeting targets set out in the initial plan, an explanation of how FUSF support has been used to improve service quality, coverage, capacity, signal quality, etc, and an explanation of why any targets were not met. Information is to be provided at the wire center level.
- (2) Detailed information on any outage lasting at least 30 minutes for any facilities that an ETC owns, operates, leases, or otherwise utilizes that potentially affect at least 10% of the end users in a service area, or that could affect 911. "An outage is defined as a

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<sup>28</sup> FCC Order, paragraph 55.

<sup>29</sup> FCC Order, paragraph 56.

significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.”<sup>30</sup> The ETC must report: date and time of outage, description of the outage and resolution, particular services affected, geographic areas affected, steps taken to prevent it from happening again, and number of customers affected.

- (3) Number of service requests unfulfilled. The ETC must provide a detailed explanation of how it attempted to serve the potential customer.
- (4) Number of complaints per 1000 handsets or lines.
- (5) Certification that the ETC is complying with quality of service standards.
- (6) Certification that the ETC is able to function in an emergency.
- (7) Certification that the ETC is offering a local usage plan comparable to that of the incumbent.
- (8) Certification that the carrier acknowledges that it may be required to provide equal access in the event that there is no other ETC in the service area.<sup>31</sup>

Additionally the FCC states that it,

... encourage[s] state commissions to adopt these annual reporting requirements. To the extent they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.  
... Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.<sup>32</sup>

In Docket No. 05-GIMT-112-GIT, the Commission adopted forms which it would utilize in making determinations that FUSF and KUSF support was being utilized appropriately by ETCs. Along with accounting data, the ETCs are required to provide a narrative of the investment it has made in its service area. As discussed above, the Commission also requires RCC and ALLTEL to provide annually a map detailing its infrastructure and the approximate coverage associated with that infrastructure.

Staff suggests that the Commission seek comment regarding whether it should expand its annual certification requirements to include the eight items required by the FCC for carriers it designates as an ETC. Staff suggests that the Commission seek comments regarding whether to continue to impose the requirement to file maps on RCC and ALLTEL and whether that requirement should be imposed on all ETCs regardless of whether the Commission adopts the FCC's reporting requirements.

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<sup>30</sup> FCC Order, paragraph 69.

<sup>31</sup> FCC Order, paragraph 69.

<sup>32</sup> FCC Order, paragraph 71.

## **OTHER ISSUES**

In the FCC Order, the FCC indicates that it will continue to consider the billing address as the indicator of customer location, when that customer uses a mobile wireless service, rather than basing the location on place of primary use. Staff suggests that the Commission seek comment regarding whether this same indicator should be used for KUSF purposes.

It has come to the attention of Staff that some ETCs offer a limited number of calling plans to Lifeline customers. Incumbent carriers allow customers to choose any calling plan and apply a discount equal to the Lifeline support the carrier will receive from the FUSF and KUSF. Staff suggests that the Commission seek comment regarding the provisioning of Lifeline service. Staff suggests that the Commission request comment regarding how ETCs currently provide the service, whether the appropriate discount is provided, and whether an ETC should be permitted to limit the service options available to a Lifeline customer.

## **PROCEDURAL ISSUES**

Staff suggests that the Commission establish a timeline for comments and reply comments. Once comments have been received, the Commission can then determine whether it is appropriate to conduct a workshop, address legal issues that may be raised by parties, receive testimony, hold a technical hearing etc. Staff suggests that the Commission note that following the first comment cycle, the Commission will determine how best to proceed.