Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Powell Road Landfill site in Montgomery County, Ohio, with Central State University. The settlement requires Central State University to pay $1,000 to the Hazardous Substance Superfund.

The total cost of the cleanup is $26,925,537. This includes $4,735,2237, which represents Waste Management, Inc.'s past costs, including EPA oversight through December 31, 1996, and estimated future costs, including future oversight, of $22,940,300. EPA reduced the estimated future cost figure by $750,000 to account for certain generators who are insolvent or defunct. U.S. EPA's consultant, Industrial Economics, Inc., determined that based on the financial records supplied by Central State, Central State had no currently available resources to contribute to the cost of clean-up. Accordingly, U.S. EPA concluded that a payment of $1,000 was sufficient to resolve Central State's CERCLA liability. The financial analysis of U.S. EPA's consultant is attached to the Administrative Order on Consent as Attachment A. In exchange for Central State University's payment, the United States covenants not to sue or take administrative action pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, Central State University will be entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604 and at the Dayton & Montgomery County Public Library, Huber Heights Branch, 6160 Chambersburg Road, Huber Heights, Ohio 45424.

DATES: Comments must be submitted on or before October 10, 2000.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6670. Comments should reference the Powell Road Landfill site, Dayton, Montgomery County, Ohio, and EPA Docket No. V–W–00–C–589, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 886–6670.

SUPPLEMENTARY INFORMATION: None.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: August 28, 2000.

William E. Muno,

Director, Superfund Division, 052G.

[FR Doc. 00–23150 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 00–248]

Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission provides guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier that may receive federal universal service support.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Declaratory Ruling in CC Docket No. 96–45 released on August 10, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Declaratory Ruling, we provide guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, (the Act) requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier (ETC) that may receive federal universal service support. We believe the guidance provided in this Declaratory Ruling is necessary to remove substantial uncertainty regarding the interpretation of section 214(e)(1) in pending state commission and judicial proceedings. We believe the guidance provided in this Declaratory Ruling will assist state commissions in acting expeditiously to fulfill their obligations under section 214(e) to designate competitive carriers as eligible for federal universal service support.

2. We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253(a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress. We believe that the guidance provided in this Declaratory Ruling will further the goals of the Act by ensuring that new entrants have a fair opportunity to provide service to consumers living in high-cost areas.

3. We note that Western Wireless has raised similar issues in its petition for preemption of a decision of the South Dakota Public Utilities Commission (South Dakota PUC). In its petition, Western Wireless asks the Commission to preempt, under section 253 and as inconsistent with the Act, the South Dakota PUC's requirement that, pursuant to section 214(e), a carrier may not receive designation as an ETC unless it is providing service throughout the service area. In light of the recent South Dakota Circuit Court decision overturning the South Dakota PUC's decision and granting Western Wireless ETC status in each exchange served by non-rural telephone companies in South Dakota, we believe that it is unnecessary to act on the Western Wireless petition at this time. In doing so, we note that section 253(d) requires the Commission to preempt state action only ''to the extent *necessary* to correct such violation or inconsistency.'' We acknowledge, however, that the *South Dakota Circuit Court Order* has been automatically stayed with the filing of the South Dakota PUC's notice of appeal to the Supreme Court of South Dakota. We therefore place Western Wireless' petition for preemption of the South Dakota PUC Order in abeyance pending final resolution of this appeal. The Commission will make a determination at that time as to whether it is necessary to proceed consistent with the guidance provided in this Declaratory Ruling.

I. Discussion

A. Section 253(a) Analysis

1. Discussion

4. We find that requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the new entrant to provide intrastate or interstate telecommunications service, in violation of section 253(a).

5. *Legal Requirement.* As an initial matter, we find that the requirement that a new entrant must provide service throughout its service area as a prerequisite to designation as an ETC under section 214(e) constitutes a state ''legal requirement'' under section 253(a). We have previously concluded that Congress intended the phrase, ''[s]tate or local statute or regulation, or other State or local requirement'' in section 253(a), to be interpreted broadly. The resolution of a carrier's request for designation as an ETC by a state commission is legally binding on the carrier and may prohibit the carrier from receiving federal universal service support. We find therefore that any such requirement constitutes a ''legal requirement'' under section 253(a).

6. *Prohibiting the Provision of Telecommunications Service.* We find that an interpretation of section 214(e) requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service. A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

7. No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

8. In addition, we find such an interpretation of section 214(e)(1) to be contrary to the meaning of that provision. Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall ''offer'' and advertise its services. The language of the statute does not require the actual provision of service prior to designation. We believe that this interpretation is consistent with the underlying congressional goal of promoting competition and access to telecommunications services in high-cost areas. In addition, this interpretation is consistent with the Commission's conclusion that a carrier must meet the section 214(e) criteria as a condition of its being designated an eligible carrier ''and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support.''

9. In addition, we note that ETC designation only allows the carrier to become *eligible* for federal universal service support. Support will be provided to the carrier only upon the provision of the supported services to consumers. We note that ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service. We also note that the state commission may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria.

10. In addition, we believe the fact that a carrier may already be providing service within the state prior to designation is not conclusive of whether the carrier can reasonably be expected to provide service throughout the service area, particularly in high-cost areas, prior to designation. While a requirement that a carrier be providing service throughout the service area may not affect the provision of service in lower-cost areas, it is likely to have the effect of prohibiting the ability of carriers without eligibility for support to provide service in high-cost areas.

11. *Gaps in Coverage.* We find the requirement that a carrier provide service to every potential customer throughout the service area before receiving ETC designation has the effect of prohibiting the provision of service in high-cost areas. As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer. We believe the ETC requirements should be no different for carriers that are not incumbent LECs. A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC. Thus, we find that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.

12. *State Authority.* Finally, although Congress granted to state commissions, under section 214(e)(2), the primary authority to make ETC designations, we do not agree that this authority is without any limitation. While state

commissions clearly have the authority to deny requests for ETC designation without running afoul of section 253, the denials must be based on the application of competitively neutral criteria that are not so onerous as to effectively preclude a prospective entrant from providing service. We believe that this is consistent with sections 214(e), 253, and 254, as well as the decision of the United States Court of Appeals for the Fifth Circuit in *Texas Office of Public Utility Counsel* v. *FCC.* We reiterate, however, that the state commissions are primarily responsible for making ETC designations. Nothing in this Declaratory Ruling is intended to undermine that responsibility. In fact, it is our expectation that the guidance provided in this Declaratory Ruling will enable state commissions to move expeditiously, in a pro-competitive manner, on many pending ETC designation requests.

B. Section 253(b) Analysis

1. Discussion

13. We find that a requirement to provide the supported services throughout the service area prior to designation as an ETC does not fall within the ''safe harbor'' provisions of section 253(b). To the contrary, we find that this requirement is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service. We therefore find that a requirement that obligates new entrants to provide supported services throughout the service area prior to designation as an ETC is subject to our preemption authority under section 253(d).

14. *Competitive Neutrality.* We find that the requirement to provide service prior to designation as an ETC is not competitively neutral. We believe this finding is consistent with the Commission's determination in the *Universal Service Order,* 62 FR 32862 (June 17, 1997), that ''[c]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.'' At the outset, we believe that, to meet the competitive neutrality requirement in non-rural telephone company service areas, the procedure for designating carriers as ETCs should be functionally equivalent for incumbents and new entrants. As discussed above, requiring the actual provision of supported services throughout the service area prior to ETC designation unfairly skews the universal service support mechanism in favor of the incumbent LEC. As a practical matter, the carrier most likely to be providing all the supported services throughout the requested designation area before ETC designation is the incumbent LEC. Without the assurance of eligibility for universal service funding, it is unlikely that any non-incumbent LEC will be able to make the necessary investments to provide service in high-cost areas.

15. We are not persuaded that such a requirement is competitively neutral merely because the requirement to provide service prior to ETC designation applies equally to both new entrants and incumbent LECs. We recently concluded that the proper inquiry is whether the *effect* of the legal requirement, rather than the method imposed, is competitively neutral. As discussed above, we find that the result of such a requirement is to favor incumbent LECs over new entrants. Unlike a new entrant, the incumbent LEC is already providing service and therefore bears no additional burden from a requirement that it provide service prior to designation as an ETC. We therefore find that requiring the provision of supported services throughout the service area prior to ETC designation has the effect of uniquely disadvantaging new entrants in violation of section 253(b)'s requirement of competitive neutrality.

16. *Consistent with Section 254 and Necessary to Preserve and Advance Universal Service.* We find that the requirement to provide service prior to designation as an ETC is not consistent with section 254 or ''necessary to preserve and advance universal service.'' To the contrary, we find that such a requirement has the effect of prohibiting the provision of service in high-cost areas. As discussed above, this requirement clearly has a disparate impact on new entrants, in violation of the competitive neutrality and nondiscriminatory principles embodied in section 254. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. If new entrants are not provided with the same opportunity to receive universal service support as the incumbent LEC, such carriers will be discouraged from providing service and competition in high-cost areas. Consequently, under an interpretation of section 214(e) that requires new entrants to provide service throughout the service area prior to designation as an ETC, the benefits that may otherwise occur as a result of access to affordable telecommunications services will not be available to consumers in high-cost areas. We believe such a result is inconsistent with the underlying universal service principles set forth in section 254(b) that are designed to preserve and advance universal service by promoting access to telecommunications services in high-cost areas.

17. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: a description of the proposed service technology, as supported by appropriate submissions; a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; a description of the extent to which the carrier has entered into interconnection and resale agreements; or, a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services. We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

C. Federal Preemption Authority

1. Discussion

18. We find an interpretation of section 214(e)(1) that requires a new entrant to provide service throughout the service area prior to designation as an ETC to be fundamentally inconsistent with the universal service provisions in the 1996 Act. Specifically, we find such a requirement to be inconsistent with the meaning of section 214(e)(1), Congress' universal service objectives as outlined in section 254, and the Commission's policies and rules in implementing section 254. As discussed above, this approach essentially requires a new entrant to provide service throughout high-cost areas prior to its designation as an ETC. We find that such a requirement stands as an obstacle to the Commission's execution and accomplishment of the full objectives of Congress in promoting competition and access to telecommunications services in high-cost areas. To the extent that a state's requirement under section 214(e)(1) that a new entrant provide service

throughout the service area prior to designation as an ETC also involves matters properly within the state's intrastate jurisdiction under section 2(b) of the Act, such matters that are inseparable from the federal interest in promoting universal service in section 254 remain subject to federal preemption.

19. *Section 214.* We find that the requirement that a carrier provide service throughout the service area prior to its designation as an ETC conflicts with the meaning and intent of section 214(e)(1). Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall ''offer'' and advertise its services. The statute does not require a carrier to provide service prior to designation. As discussed above, we have concluded that a carrier cannot reasonably be expected to enter a high-cost market prior to its designation as an ETC and provide service in competition with an incumbent carrier that is receiving support. We believe that such an interpretation of section 214(e) directly conflicts with the meaning of section 214(e)(1) and Congress' intent to promote competition and access to telecommunications service in high-cost areas.

20. While Congress has given the state commissions the primary responsibility under section 214(e) to designate carriers as ETCs for universal service support, we do not believe that Congress intended for the state commissions to have unlimited discretion in formulating eligibility requirements. Although Congress recognized that state commissions are uniquely suited to make ETC determinations, we do not believe that Congress intended to grant to the states the authority to adopt eligibility requirements that have the effect of prohibiting the provision of service in high-cost areas by non-incumbent carriers. To do so effectively undermines congressional intent in adopting the universal service provisions of section 254.

21. *Section 254.* Consistent with the guidance provided above, we find a requirement that a carrier provide service prior to designation as an ETC inconsistent with the underlying principles and intent of section 254. Specifically, section 254 requires the Commission to base policies for the advancement and preservation of universal service on principles that include promoting access to telecommunications services in high-cost and rural areas of the nation. Because section 254(e) provides that only a carrier designated as an ETC under section 214(e) may be eligible to receive federal universal service support, an interpretation of section 214(e) requiring carriers to provide service throughout the service area prior to designation as an ETC stands as an obstacle to the accomplishment of the congressional objectives outlined in section 254. If new entrants are effectively precluded from universal service support eligibility due to onerous eligibility criteria, the statutory goals of preserving and advancing universal service in high-cost areas are significantly undermined.

22. In addition, such a requirement conflicts with the Commission's interpretation of section 254, specifically the principle of competitive neutrality adopted by the Commission in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that, ''competitive neutrality in the collection and distribution of funds and determination of *eligibility* in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework.'' As discussed above, a requirement to provide service throughout the service area prior to designation as an ETC violates the competitive neutrality principle by unfairly skewing the provision of universal service support in favor of the incumbent LEC. As stated in the *Universal Service Order*, ''competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.'' Requiring new entrants to provide service throughout the service area prior to ETC designation discourages ''emerging technologies'' from entering high-cost areas. In addition, we note that section 254(f) provides that, ''[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.'' For the reasons discussed extensively above, we find an interpretation of section 214(e) requiring the provision of service throughout the service area prior to designation as an ETC to be inconsistent with the Commission's universal service policies and rules.

III. Ordering Clauses

23. Pursuant to sections 4(i), 253, and 254 of the Communications Act of 1934, as amended, and section 1.2 of the Commission's rules, and Article VI of the U.S. Constitution, that this Declaratory Ruling is adopted.

24. It is further ordered that Western Wireless' Petition for Preemption of an Order of the South Dakota Public Utilities Commission shall be placed in abeyance pending resolution of the appeal.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–22852 Filed 9–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–147; FCC 00–297]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document invites further comment on a number of issues related to the obligation of incumbent LECs to provide collocation. The Second Further Notice responds to the decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corp.* v. *FCC,* by requesting comment on the meaning of ''necessary'' and ''physical collocation.'' In addition, the document requests comment on whether an incumbent LEC must permit collocators to cross-connect with other collocators and on other collocation-related issues.

DATES: Written comments by the public on the proposed information collections are due October 12, 2000, and reply comments are due November 14, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before November 7, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Julie Patterson, Attorney Advisor, Common Carrier Bureau, Policy and