

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2015-290-C

RECEIVED
APR 07 2016
SC Court of Appeals

CTIA – THE WIRELESS ASSOCIATION[®],
.....Appellant,

v.

South Carolina Telephone Coalition and
South Carolina Office of Regulatory Staff,
..... Respondents.

EXHIBIT 1

Public Service Commission Order Number 2016-22
Dated January 26, 2016

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2015-290-C - ORDER NO. 2016-22

JANUARY 26, 2016

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APR 07 2016

SC Court of Appeals

IN RE: Petition of the South Carolina Telephone Coalition for a Determination that Wireless Carriers are Providing Radio-Based Local Exchange Services in South Carolina that Compete with Local Telecommunications Services Provided in the State) ORDER ADDRESSING) WIRELESS-WIRELINE) COMPETITION IN THE) TELECOMMUNICATIONS) INDUSTRY AND ITS) EFFECT ON PAYMENT) INTO THE UNIVERSAL) SERVICE FUND

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a Petition filed by the South Carolina Telephone Coalition. Although we found in Commission Order No. 2001-419 that there was insufficient evidence on wireline-wireless competition for our consideration in that proceeding, we reserved the right to revisit the issue of whether wireless companies should contribute to the South Carolina Universal Service Fund (“USF”). The South Carolina Telephone Coalition Petition now presents the opportunity to revisit that issue.

The issue before the Commission is whether wireless voice telecommunications services are being provided in competition to landline voice telecommunications services in South Carolina. This determination is significant, given the statutory mandate that “[t]he Commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF (“Universal

Service Fund”) as determined by the commission.” S.C. Code Ann. § 58-9-280(E)(2). Telecommunications services includes wireless services provided in competition to landline services. S.C. Code Ann. § 58-9-10(15).

A hearing was held before the Commission on November 3-4, 2015, with Chairman Nikiya (“Nikki”) Hall presiding. M. John Bowen, Jr., Esquire, Margaret M. Fox, Esquire, Bradley S. Wright, Esquire, and Charles L.A. Terreni, Esquire, represented the South Carolina Telephone Coalition (“SCTC”).¹ The SCTC presented Direct and Rebuttal Testimony of H. Keith Oliver, Emmanuel Staurulakis, Douglas Duncan Meredith, and Larry Thompson. Scott Elliott, Esquire, and Jeanne Stockman, Esquire, the latter appearing *pro hac vice*, represented United Telephone Company of the Carolinas LLC d/b/a CenturyLink (“CenturyLink”). CenturyLink presented the Direct Testimony of Alan Lubeck. Burnet R. Maybank III, Esquire, represented Windstream South Carolina, LLC and Windstream Nuvox, LLC (“Windstream”). Windstream presented the Direct Testimony of Bettye J. Willis. C. Jo Anne Wessinger Hill, Esquire, represented Frontier Communications of the Carolinas, LLC (“Frontier”). Frontier presented the Direct Testimony of Susan A. Miller. Frank R. Ellerbe III, Esquire, represented the South Carolina Cable Television Association (“SCCTA”). SCCTA did not present a witness. Patrick W. Turner, Esquire, represented BellSouth Telecommunications, LLC, d/b/a

¹ SCTC member companies are Bluffton Telephone Company, Inc., Chesnee Telephone Company, Chester Telephone Company, d/b/a TruVista, Comporium, Inc. (f/k/a Rock Hill Telephone Company), Farmers Telephone Cooperative, Inc., Ft. Mill Telephone Company, d/b/a Comporium, Hargray Telephone Company, Inc., Home Telephone ILEC, LLC d/b/a Home Telecom, Horry Telephone Cooperative, Inc., Lancaster Telephone Company, d/b/a Comporium, Lockhart Telephone Company, d/b/a TruVista, McClellanville Telephone Company (TDS), Norway Telephone Company (TDS), Palmetto Rural Telephone Cooperative, Inc., Piedmont Rural Telephone Cooperative, Inc., PBT Telecom, d/b/a Comporium, Ridgeway Telephone Company, d/b/a TruVista, Sandhill Telephone Cooperative, Inc., St. Stephen Telephone Company (TDS), West Carolina Rural Telephone Cooperative, Inc., and Williston Telephone Company (TDS). See Exhibit A to SCTC Petition.

AT&T South Carolina (“AT&T”). AT&T did not present a witness. John J. Pringle, Jr., Esquire, represented CTIA – The Wireless Association (“CTIA”). CTIA presented the Direct and Surrebuttal Testimony of Don Price. William E. DuRant, Jr., Esquire, represented FTC Communications, LLC and FTC Diversified Services, LLC (“FTC”). FTC presented the Direct Testimony of Frank Bradley Erwin. Jeffrey M. Nelson, Esquire, and Andrew M. Bateman, Esquire, represented the Office of Regulatory Staff (“ORS”). ORS presented the Direct Testimony of Christopher J. Rozycki.

II. BACKGROUND AND HISTORY OF THE STATE USF

While the issue before us is narrow, it is helpful to provide some brief background on universal service and the State USF in order to provide context for the issue before us today.²

Universal service is the policy that everyone, regardless of where they live, should have access to basic local telephone service at affordable rates, and that rates and services should be comparable in rural and urban areas. See Tr. at 94-95. The challenge in achieving this objective is that service in densely populated urban areas is less expensive to provide, while service in sparsely populated rural areas is more costly. Universal service support becomes even more important in a competitive market to make sure no consumer is left behind because he resides in a high-cost area that competitive providers would choose not to serve. Tr. at 101.

² A more complete summary of the background of State USF can be found in Order No. 2010-337 in Docket No. 2009-326-C at pp. 5-10, and in the many orders issued in Docket No. 1997-239-C, including Order No. 2001-419 implementing the State USF.

In order to ensure universal service, there must be a carrier willing to serve in high cost areas, and that carrier must be able to recover its cost of service in some manner. Tr. at 96. In South Carolina, we have carriers of last resort (“COLRs”) who undertake the obligation “to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service area.” See id.; S.C. Code Ann. § 58-9-10(10).

Unlike other public utility services, telecommunications service is carried over a two-way network, and the service becomes more valuable as more people are connected to the network. In recognition of this public good, both Congress and the South Carolina General Assembly have codified policies to preserve and advance universal service. Section 254 of the Federal Telecommunications Act of 1996 sets forth universal service principles, the first of which is that quality services should be available at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1). Another basic principle is that customers in rural and high-cost areas should have access to telecommunications and information services, including advanced services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254(b) (3).

Section 254 also provides that there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service, and that all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. 47 U.S.C. § 254(b)(4)-(5).

On the State side, S.C. Code Ann. § 58-9-280(E) provides in part: “In continuing South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort.”

With this statutory mandate, the Commission held three (3) rounds of hearings in Docket No. 1997-239-C to establish and begin implementation of the State USF. The Commission issued dozens of orders after multiple proceedings that took place over a period of approximately four years. The orders establishing and implementing the State USF were appealed, and the Supreme Court affirmed the Commission’s orders in all substantive respects. Office of Regulatory Staff v. Public Service Commission of South Carolina, 374 S.C. 46, 54, 647 S.E2d 223, 227 (2007).

Of particular interest to the narrow issue before us today is state and federal law and policy regarding contributions to universal service. Federal law requires all providers of telecommunications services to make equitable and nondiscriminatory contributions to the preservation and advancement of universal service. 47 U.S.C. § 254(b)(4). Wireless carriers contribute to the federal Universal Service Fund. See Tr. at 136. State law likewise provides that all telecommunications companies providing telecommunications services in South Carolina must contribute to the State USF as determined by the Commission. S.C. Code Ann. § 58-9-280(E)(2). Telecommunications services are defined to include nonwireline services provided in competition to landline services. S.C. Code Ann. § 58-9-10(15).

III. CTIA MOTION

Prior to the hearing, CTIA filed a Motion to Dismiss Petition, or, in the Alternative, Expand Scope of Proceeding, and to Suspend Case Schedule (“CTIA Motion”). By Order No. 2015-757 dated October 14, 2015, we denied CTIA’s proposal to expand the scope of the proceeding to include a reexamination of State USF, finding that the statutory determination before us is a very straightforward and narrow declaratory matter having to do with nonwireline and wireline competition, and that no reexamination of State USF is necessary in order to make that determination. Likewise, because the issue before us is narrow in scope, we denied the request to further suspend the case schedule, which we believed was more than adequate for this purpose. The hearing had already been delayed once in order to allow all parties adequate time to prepare and file testimony. Further modification of the case schedule was not warranted. We delayed consideration of CTIA’s motion to dismiss until the beginning of the merits hearing. See Order 2015-757.

At the beginning of the merits hearing, we heard that part of CTIA’s Motion that requested dismissal of this action.³ CTIA’s argument for dismissal centered on its reading of certain statutes, focusing on S.C. Code Ann. § 58-9-280(E)(3) and (G)(1). CTIA argued that the statutory requirements for a finding of competition have not been met. For the reasons stated herein, we deny CTIA’s Motion, and address the substance of this matter on its merits.

³ References to the CTIA Motion hereinafter refer to that portion of the motion that was heard before the Commission, *i.e.*, the motion to dismiss.

CTIA's Motion also asserted that SCTC's Petition in this matter was insufficient to put carriers on notice of the issue that would be addressed, arguing that the Petition should have named specific carriers, particular services, geographical areas, etc., *i.e.* that the Petition should have "pled" each and every element of the relevant statutes. See CTIA Motion at pp. 4-7; Reply at pp. 2-4; Tr. at 42-46, 49.

CTIA's assertions regarding the sufficiency of the Petition are without merit. In fact, as CTIA acknowledges, whether and how to proceed with this determination is a matter that is within the Commission's discretion, and "[t]he Commission is not required to proceed merely because the SCTC has requested it to do so."⁴ This Commission could have declined to proceed, or could have proceeded in another manner. Furthermore, the Petition is not a "complaint" and does not state a "claim" or cause of action which must be pled in some specific manner. Instead, it is a request that the Commission proceed to make a determination under statutes enacted by the South Carolina General Assembly that expressly delegate this authority to the Commission.

CTIA also takes issue with the notice in this proceeding. The notice that was published in newspapers of general circulation throughout the State was sufficient to put all wireless carriers operating in South Carolina on notice that the Commission would make a determination regarding whether wireless services are being provided in competition with landline services in the State, as expressly contemplated by the South Carolina General Assembly in the 1996 State Telecommunications Act.

⁴ CTIA Motion at 4.

Under South Carolina law, notice can either be actual or constructive. “Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, *even though such means may not be employed by him*. ... Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is *sufficient to put him on inquiry* ...” Strother v. Lexington County Recreation Comm’n, 332 S.C. 54, 63 n. 6, 504 S.E.2d 117, 122 n. 6 (1998) (emphasis added). In this case, wireless carriers had *both* actual and constructive notice of the proceeding. Wireless carriers, including but not limited to the four national carriers (AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile), had actual notice of the hearing. CTIA intervened in the proceeding on behalf of itself and certain of its member companies, specifically Sprint, T-Mobile, Tracfone, U.S. Cellular, and Verizon. See CTIA Reply, dated October 7, 2015, at p. 1, fn. 1; see also Responsive Testimony of Don Price on behalf of CTIA, Tr. 381, fn. 1. These wireless carriers actually participated in the proceeding and cannot complain of a lack of notice. Other wireless carriers had the same opportunity to be heard.⁵ Subsection (E) (3) requires only an *opportunity* to be heard, not that an actual

⁵ For example, while AT&T Mobility was not a party to this proceeding and did not participate through CTIA, its affiliate BellSouth Telecommunications, LLC, d/b/a AT&T South Carolina (“AT&T”) intervened and participated as a party. CTIA’s carrier member companies include AT&T, Bluegrass Cellular, Inc., Carolina West Wireless, Cavalier Wireless, LLC, Cellcom, DISH Network, DoCoMo Pacific, Inc., East Kentucky Network LLC d/b/a Appalachian Wireless, GCI Communication Corp., GM Onstar, King Street Wireless, LightSquared, MTS Communications, Inc., nTelos Wireless, Pioneer Cellular, Smith Bagley, Inc. d/b/a Cellular One of N.E. AZ, SouthernLINC Wireless, Sprint Corporation, TriStar License Group LLC, T-Mobile USA, TracFone Wireless, Inc., U.S. Cellular, Union Telephone Company, and Verizon Wireless. See CTIA website, <http://www.ctia.org/about-us/current-members>, accessed on 9/17/2015 and again on 12/15/2015.

hearing be held for each and every company. Also, the fact that CTIA appeared before the Commission in an unlimited fashion indicates that it and its members were put on notice.

Furthermore, contrary to CTIA's assertion, South Carolina statutes do not require a company-by-company determination of whether wireless service is being provided in competition with landline services in the State. S.C. Code Ann. § 58-9-280(E)(2) provides:

The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.

“Telecommunications services” are defined in State law as “services for the transmission of voice and data communications to the public for hire, *including those nonwireline services provided in competition to landline services.*” S.C. Code Ann. § 58-9-10(15) (emphasis added).

In other words, S.C. Code Ann § 58-9-280(E)(2) provides the general rule that carriers providing nonwireline services in competition to landline services are required to contribute to the USF as determined by the Commission.

CTIA relies on the language of S.C. Code Ann. § 58-9-280(E)(3), which provides: “The commission *also* shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.” (Emphasis added.)

The word “also” in Subsection (E)(3) is a clear indication that it is *in addition to* the general rule that precedes it. “A statute should be so construed that no word, clause,

sentence, provision or part shall be rendered surplusage, or superfluous” See Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. Statutes § 346). Thus, Subsection (E)(3) provides a method to require *specific* carriers to contribute upon a showing as to that particular carrier. For example, the Commission has previously required wireless eligible telecommunications carriers (“ETCs”) to contribute to the State USF, without making the general wireless industry finding contemplated by Subsection (E)(2). See Order No. 2001-419 in Docket No. 1997-239-C at p. 37; see also Order No. 2008-672 in Docket No. 2008-299-C. Another example would be a new company with a new business model that was not contemplated when the statute was enacted in 1996.

In any event, in summary, the Motion is denied, and we herein rule on the merits of the case.

IV. DISCUSSION AND SUMMARY OF TESTIMONY

As discussed above, State law requires that all providers of telecommunications service contribute to State USF. S.C. Code Ann. § 58-9-280(E)(2). Telecommunications services are defined as “the services for the transmission of voice and data communications to the public for hire, including those non-wireline services provided in competition to landline services.” S.C. Code Ann. § 58-9-10(15). More specific to this case, the Commission must require companies providing competitive radio-based local exchange service in this State to contribute to State USF. See S.C. Code Ann. § 58-9-280(E)(3).

The service alleged to be competitive is voice telephone or voice telecommunications service. Those terms are used interchangeably to describe a service that allows end user customers to place and receive voice telephone calls. See Tr. at 221

(the service under examination is any service where an end-user sends and/or receives telephone calls via the Public Switched Telephone Network); Tr. at 266-72 (both wireless and wireline customers can dial numbers to and receive calls from others, either inside the same (local) exchange or outside the local exchange), Hearing Exhibit No. 8, Exhibit CJR-1 at p. 4 (voice telephone service allows two or more individuals to engage in a simultaneous speaking conversation even though they are not all located in the same place). The wireless service at issue – wireless voice telephone or telecommunications service – is commonly used to describe the provision of radio-based local exchange services, as referenced in Subsection (E)(3). See Tr. at 202.

There is some question as to what definition we should use in determining whether competition exists. See Tr. at 109. The majority of witnesses cited S.C. Code Ann. § 58-9-280(G)(1) as the applicable definition or as guidance in making our determination.

S.C. Code Ann. § 58-9-280(G)(1) provides in part as follows:

Competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers.

We do not read Subsection (G)(1) in the manner urged by CTIA, which would require a company by company determination of competition. Instead we look to the plain language of Subsection (G)(1), and read all of the statutes including Subsection (E)(2) together. See Municipal Ass'n of South Carolina v. AT&T Communications, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (in construing a statute, language must be read in a sense which harmonizes it with its subject matter and accords with its general purpose). Although we believe that competition between wireline and wireless services is established by the record

in this case even without specific reference to Subsection (G) (1), we also believe that the provisions of this statute are satisfied upon examination of the record in this case, as discussed *infra*.

Subsection (E)(2) requires telecommunications carriers that provide telecommunications services – including nonwireline services provided in competition to landline services – to contribute to the State USF. Therefore, wireless service providers are required by law to contribute to the State USF if they are providing nonwireline services in competition to landline services. SCTC asserts that voice telecommunications service is a competitive service, provided by both wireless and wireline providers. Looking to Subsection (G)(1), the question is whether this service (voice telecommunications service), its functional equivalent, or a substitute service, is available from two or more providers. Under Subsection (G)(1), the showing of competition is to be made for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area. In order to make this determination, we received testimony from ten (10) witnesses in this proceeding, and, again, we have concluded that the provisions of Subsection (G) (1) are satisfied. We also believe that the record presents overwhelming additional evidence of competition between wireless and wireline services. The testimony before the Commission is summarized below.

H. Keith Oliver

Mr. Oliver is Senior Vice President of Corporate Operations of Home Telephone ILEC, LLC d/b/a Home Telecom (“Home Telephone”). He testified on behalf of SCTC and Home Telephone. Mr. Oliver testified to the history and policy behind State USF to

provide context as to why the issue before the Commission is important. According to Mr. Oliver, universal service is an ongoing obligation to fund deployment, upgrading and maintenance of communications infrastructure that would rapidly degrade in the absence of funding. Tr. at 95. Wireless voice service enjoys the same benefit of connection to the “universal” network that traditional landline service does. Tr. at 96-97. Mr. Oliver states that, as a matter of equity, all those connected to the network should participate in support of the network. Tr. at 96.

Mr. Oliver testified that Home Telephone specifically has been impacted by competition from wireless providers. Home Telephone has seen a decline in landline customers of approximately one-third over the last 14 years. Tr. at 97. Home Telephone’s experience is in line with national and state trends showing that over 40 percent of households now use only wireless service. *Id.* Mr. Oliver further notes that there are 60 wireless towers in Home Telephone’s service area, which are being used by AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile to provide wireless service. *Id.* Verizon Wireless and T-Mobile have retail stores located in Moncks Corner in Home Telephone’s local service area. Tr. at 97-98. Each of the four major wireless carriers operating in South Carolina (AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile) maintains a “Yellow Pages” advertisement/listing in Home Telephone’s telephone directory, and has a significant advertising presence in the area. Tr. at 98.

Home Telephone has interconnection agreements with each of the four major national wireless carriers, allowing their customers to call Home Telephone customers and *vice versa*. Tr. at 98-99. Home Telephone has had customers port their landline telephone

numbers to wireless carriers. Tr. at 99. Mr. Oliver also states that Home Telephone is also seeing long-standing dual customers who eventually drop their landline, as well as examples of people who never had a landline to begin with. Id. Data from the North American Numbering Plan Administrator (“NANPA”) shows that 51 NPA NXX blocks (51,000 telephone numbers) have been allocated to AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile in the Moncks Corner rate center. Tr. at 100. Mr. Oliver testified that he is an AT&T wireless customer. Tr. at 116. In preparation for this proceeding, Mr. Oliver also subscribed to wireless service from Verizon, Sprint, and T-Mobile. See Tr. at 116-17. Mr. Oliver testified that he had placed phone calls using all four of the major service providers in South Carolina. See Tr. at 117.

Emmanuel Staurulakis

Mr. Staurulakis, President of telecommunications consulting company John Staurulakis, Inc. (“JSI”), testified on behalf of SCTC regarding the competitive nature of wireless voice service as it relates to the offerings of local exchange service by SCTC member companies. Mr. Staurulakis testified that virtually all wireless networks rely upon a wireline or wired network to provide a transmission path for voice and data traffic. Tr. at 163. Mr. Staurulakis further testified that, in his opinion, wireless voice service competes with the local exchange service offerings of the SCTC member companies. Tr. at 162. This opinion was based on a number of facts. All SCTC member companies have negotiated traffic exchange or interconnection agreements with the major wireless telephone carriers. Tr. at 164.

The four major national wireless carriers own or lease more than 500 wireless

towers located within the collective service areas of the SCTC member companies and utilize over 1,600 circuits to interconnect their cell towers or wireless switching equipment to the SCTC member company networks. Tr. at 165. Wireless telephone carriers collectively have requested and obtained 1,300 telephone number blocks (1.3 million telephone numbers) that are rate centered in the areas served by SCTC member companies.

Id.

The significance of having telephone numbers that are rate centered in the areas served by SCTC member companies is that calls made by a wireline customer in the same rate center to that wireless telephone number (for example, a mother calling her child's mobile phone from the landline home phone) will be rated as local calls. Tr. at 167. When compared with the 1,019 telephone number blocks assigned to SCTC member companies, the sheer amount of telephone numbers made available to wireless carriers, and the fact that they exceed the amount of numbers assigned to SCTC member companies, demonstrates the very competitive nature of wireless voice service. Tr. at 166. Mr. Staurulakis also testified that these assigned numbers are being utilized.

The most recent FCC data available shows that the overall number utilization rate for mobile wireless carriers is over 66%. Tr. at 179. According to Mr. Staurulakis, the increased local competition stemming from customers migrating to wireless service has contributed to the annual decrease to both physical access line connections and basic local service revenues. Tr. at 167-168. Between 2010 and 2014, access lines and basic local service revenues for the SCTC member company group declined by 18.1% and 20.9%, respectively. Tr. at 168. Mr. Staurulakis testified that wireless carriers ported hundreds of

telephone numbers from SCTC member companies in 2014, and that tells only a small part of the competitive story because it does not account for dual-use customers or those who never had a landline to begin with. Tr. at 168-69. Mr. Staurulakis testified that Verizon and AT&T, in their recently filed 10-K Reports with the Securities and Exchange Commission, both recognize that customers are migrating from landline to wireless services, negatively impacting traditional wireline connections and revenues. Tr. at 169. Mr. Staurulakis also cited a 2015 report published by The National Regulatory Research Institute (“NRRI”) showing that twenty-seven (27) states assess the revenues of wireless carriers for contributions to various state universal service funds, eighteen (18) of which had high-cost or intrastate access support universal service funds or both. Tr. at 170.

Douglas Duncan Meredith

Mr. Meredith, Director of Economics and Policy at JSI, testified for the SCTC. According to Mr. Meredith, the term wireless telephone (voice) service is commonly used to describe the provision of radio-based local exchange services, as referenced in S.C. Code Ann. § 58-9-280(E)(3). Tr. at 202. Each of the SCTC member companies provides local telecommunications service to the public. *Id.* Mr. Meredith testified that, reading S.C. Code Ann. § 58-9-280(E)(3) and (G)(1) together, the “clearly defined geographical area” in (G)(1) is “this State,” as referenced in (E)(3). Tr. at 203.

Mr. Meredith presented wireless coverage maps of AT&T, Verizon, T-Mobile, and Sprint, from their own respective company websites, showing extensive wireless coverage in South Carolina. Tr. at 204-207. According to Mr. Meredith, the maps do not indicate that wireless service is available to every single location in the State, but they do indicate

that these carriers advertise coverage and offer competitive voice service in most areas of the State. Tr. at 207.

Mr. Meredith testified that wireless voice service is a substitute for landline service in South Carolina. Tr. at 207. This opinion was based on his examination of the economic literature and data on wireless substitutability. Twice each year, the United States Department of Health and Human Services' Centers for Disease Control and Prevention ("CDC") publishes data from its National Health Interview Survey ("NHIS") that includes data on the percentage of households with landline and wireless telephone service. The CDC also collects state-specific information. According to this data, wireless-only usage has increased to over 43 percent of South Carolina households in 2013 from 15.4 percent in 2007. Tr. at 212. The Federal Communications Commission ("FCC") also gathers data on competition and issues an annual Local Competition Report. The FCC defines local telephone service competitors to include incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), and mobile/wireless telephony providers. Tr. at 213, citing FCC Local Competition Report, October 2014, p. 1. The FCC data shows that wireless use is large and growing. Id.

In his Rebuttal Testimony, Mr. Meredith responded to CTIA witness Price's assertion that SCTC had not met the specific requirements of (G)(1) because SCTC had not named a particular wireless service, an identifiable class or group of customers, or a particular service provided by landline companies with which wireless services are competing. Mr. Meredith testified that the competitive service is voice telecommunications service (being provided both by wireless and landline companies),

which is functionally the same, regardless of whether it is provided by a wireless or landline carrier. Tr. at 220. The service under examination is any service where an end-user sends and/or receives telephone calls via the Public Switched Telephone Network (“PSTN”). Tr. at 221. The “class or group of customers” comprises all users who subscribe to retail service plans that enable the use of voice telecommunications. Id.

Larry Thompson

Larry Thompson, Chief Executive Officer of telecommunications engineering and consulting company Vantage Point Solutions, Inc., testified on behalf of the SCTC. Mr. Thompson, a licensed professional engineer in twenty-one states, including South Carolina, provided regulatory and engineering facts to support a determination that retail wireless telephone carriers are providing services that compete with wireline local exchange carrier voice service, and that they are providing radio-based local exchange services in the state that compete with local telecommunications service provided in the state. Mr. Thompson testified that the four largest wireless telephone carriers – Verizon Wireless, AT&T, Sprint and T-Mobile – provide voice service in South Carolina, and that it is provided in SCTC member company service areas. Tr. at 261-62.

Like Mr. Meredith, Mr. Thompson considered wireless carrier coverage maps, CDC data, and FCC Local Competition Reports in concluding that wireless voice service is being provided in South Carolina in competition with landline service provided by SCTC member companies and others in the State. Tr. at 262-66. Mr. Thompson pointed out that the FCC recognizes wireless telephone carriers as “providers of local telephone service.” Tr. at 264, citing FCC Local Competition Report, Introduction. Mr. Thompson opined that

wireless telephone carriers have long targeted wireline telephone carriers in their advertising. Tr. at 265.

Mr. Thompson also cited Verizon's own acknowledgment of the direct competitiveness of the two services in its 2014 Annual Report, which states: "The increase in Mass markets revenues was partially offset by the decline of local exchange revenues primarily due to a 5.5% *decline in Consumer retail voice connections resulting primarily from competition and technology substitution with wireless*, competing VoIP, and cable telephony services" See Tr. at 266, citing Verizon's 2014 Annual Report at p. 21 (emphasis added).

In addition, Mr. Thompson testified to the functional equivalency of wireless and wireline voice telecommunications service, as evidenced by similar end user experiences. Tr. at 266-72. Both wireless and wireline customers can dial numbers to and receive calls from others, either inside the same (local) exchange or outside the local exchange. Tr. at 267. This includes the ability to receive Caller ID, to reach adjunct services such as Information and Operator services, to over-dial Touch-Tones™ from their telephone keypads when needed for downstream services beyond the called number, and to dial 911 in an emergency and provide the caller's location to the Public Safety Answering Point ("PSAP"). Tr. at 269-71. Mr. Thompson also testified from an engineering standpoint to the similarities between wireline and wireless telephone carrier voice networks. Tr. at 272-76. The wireless telephone carrier's voice switch interfaces within the PSTN in the same manner as any LEC end office switch or any local/access tandem office switch. Tr. at 272. Both wireline and wireless telephone providers are integral parts of the PSTN, and function

equivalently in interfacing within it. Tr. at 273-74. Wireless calls utilize local exchange carrier facilities in almost all cases. Tr. at 274. Wireless telephone service is radio-based and is provided by a modulated radio frequency signal. Tr. at 276.

Alan Lubeck

Mr. Lubeck, Public Policy Director for CenturyLink, testified that wireless providers currently enjoy a competitive advantage over CenturyLink and other landline service providers because (1) they offer their customers the opportunity to connect to businesses and consumers statewide without contributing to the State USF; and (2) unlike COLRs, they are not obligated to provide service in high cost, rural areas. Tr. at 303-04. Mr. Lubeck testified that wireless voice service not only competes with landline voice service in South Carolina, but that competition for voice service across technologies is fierce. Tr. at 304.

Data obtained from *Centris*, a marketing science firm used by CenturyLink and others, shows that CenturyLink's share of the market for consumer voice service in South Carolina declined from 47% in 1st Quarter 2013 to 37% in 2nd Quarter 2015, while "Wireless Only" service in CenturyLink's South Carolina service areas increased from 31% to 39% over the same time period. Tr. at 305.

USAC's Lifeline Disbursement data shows that wireless providers now account for more than \$15 million of the \$16.5 million in Lifeline disbursements in South Carolina, or about 91%. Tr. at 306. CenturyLink has interconnection agreements in South Carolina with the four national wireless providers: AT&T, Verizon Wireless, Sprint, and T-Mobile. These agreements allow the wireless company's end users to call CenturyLink's end users,

and *vice versa*. Id. There are at least 135 wireless towers in CenturyLink's service areas in South Carolina. Tr. at 307. Mr. Lubeck provided wireless coverage maps of the four large national carriers showing that they advertise coverage in CenturyLink's service areas. Id.

Bettye J. Willis

Bettye J. Willis, Windstream's Regional Government Affairs Vice President for the South Region, testified regarding Windstream's experience with competition from wireless providers in the voice market in South Carolina. Ms. Willis testified that AT&T and Sprint have wireless towers in Windstream's service area. Tr. at 331. AT&T, Verizon Wireless, and T-Mobile have retail stores in Windstream's service area, and all four of the national carriers have authorized dealers in the area. Tr. at 331-32. Coverage maps of AT&T, Verizon Wireless, Sprint and T-Mobile show that each provider offers service in the seven Windstream South Carolina exchanges. Tr. at 332. Ms. Willis testified concerning the Windstream exchanges that are part of the Columbia and Spartanburg-Greenville-Ashville metro areas, and addressed the fact that Windstream customers are exposed to advertising from wireless carriers in the respective metro areas. Id.

Windstream has interconnection agreements with AT&T (New Cingular Wireless), Sprint and Verizon Wireless in South Carolina. Id. Direct interconnection is an indication that the wireless carriers have traffic significant enough to warrant directly interconnecting their networks to Windstream's. Tr. at 333. Hundreds of customers in 2013 and 2014 ported their numbers to wireless providers. Id. There are 12 blocks of telephone numbers

(12,000 telephone numbers) assigned to wireless providers in Windstream's service area.

Id.

Susan A. Miller

Susan A. Miller, Manager of Regulatory and Legislative Matters, testified on behalf of Frontier. According to Ms. Miller, not only do landline providers send and receive voice traffic to and from wireless providers, customers can and do switch their voice service from landline to wireless providers by porting their telephone numbers from one provider to the other. Tr. at 343. Ms. Miller cited CDC data showing that 41% of Americans have wireless voice service only. Tr. at 343; Hearing Exhibit No. 7. She also cited to the FCC's Seventeenth Annual Wireless Competition Report, which contains extensive information showing the phenomenal growth of wireless service at both the national and state levels. Tr. at 344; Hearing Exhibit No. 7. Ms. Miller testified that federal regulations require all voice providers to allow a customer's number to be ported to another company, including from an ILEC to a wireless provider, and provided evidence that many wireless providers use this capability as a marketing tool to encourage subscribers. Tr. at 345; Hearing Exhibit No. 7.

Frank Bradley Erwin

Frank Bradley Erwin, CEO of Farmers Telephone Cooperative, Inc., testified on behalf of two of its affiliated companies for which he also serves as CEO: FTC Communications, LLC ("FTC Wireless") and FTC Diversified Services, LLC ("FTC CLEC"). FTC Wireless provides wireless voice service in South Carolina. FTC Wireless has been designated as an Eligible Telecommunications Carrier ("ETC") in the State, and

as such, is required to and does contribute to State USF. Tr. at 353-54. Mr. Erwin testified that the wireless service provided by FTC Wireless in the State of South Carolina is the same service that is provided by other retail wireless service providers in the State, including but not limited to Verizon Wireless, AT&T Mobility, T-Mobile, and Sprint. Tr. at 353. FTC CLEC has been operating as a competitive local exchange carrier in South Carolina since 1998. FTC CLEC also contributes to State USF. Tr. at 354-55. Mr. Erwin testified that FTC Wireless and FTC CLEC believe that like services should be subject to the same treatment, and that failure to do so creates a disparate competitive environment. Tr. at 353.

Don Price

Mr. Price, a consultant specializing in public policy issues in the communications industry, testified on behalf of CTIA, which appeared in the case on behalf of itself and members Sprint, T-Mobile, TracFone, US Cellular, and Verizon.⁶ Tr. at 381. Mr. Price provided what he considered to be the appropriate framework for assessing SCTC's requested relief, and testified that SCTC's witnesses failed to provide evidence concerning the statutory criteria for determining whether particular wireless services compete with particular local telecommunications services, as set forth in Sections 58-9-280(E)(3) and (G)(1). Tr. at 384-85. Specifically, Mr. Price testified that the SCTC witnesses failed to discuss particular, defined or identifiable service provided by landline companies, instead using generic terms to refer to landline services. Tr. at 385. He further testified that SCTC

⁶ "Although Mr. Price indicated that he was appearing for CTIA as a whole and the five individual companies in a footnote to his testimony now found on page 381 of the Transcript, the names of those companies were not presented in CTIA's Petition to Intervene, or in any other manner. However, no objection was raised by the parties."

witnesses did not mention a particular wireless service. Tr. at 386. He stated that SCTC failed to identify a specific class or group of customers, but instead referred only to “end users.” Tr. at 387.

He also testified that SCTC’s witnesses failed to provide evidence of a clearly defined geographic area, and that the “entire state” of South Carolina is not a clearly defined geographical area. Tr. at 388. Mr. Price went on to testify that, to his knowledge, wireless carriers do not provide local telecommunications service but typically only offer “all-distance” services. Tr. at 390. Mr. Price explained further: “It is certainly possible to make a call from a wireless phone to a landline when the wireless caller happens to be in the called party’s local calling area. But I am not aware of any wireless carriers that have local calling areas for retail purposes.” Tr. at 390.

Mr. Price testified that the evidence offered by SCTC on coverage maps, cell towers and associated circuits, number blocks, and ported numbers relates to how wireless carriers’ networks are designed, constructed, and operated, and does not demonstrate any degree of statutory competition as defined by Subsection (G)(1). Tr. at 392. Mr. Price further testified that a significant percentage of customers are “dual use,” indicating that, at least for an overwhelming quantity of customers, wireless and landline are complementary services. Tr. at 394. Mr. Price also stated that SCTC’s testimony on wireless substitution and penetration rates failed to take into account the impact that cable and other providers are having on the subscription levels of traditional local exchange carriers. Tr. at 395. By Mr. Price’s own testimony, however, wireless carriers have 4.5 million customers in the State of South Carolina. See Tr. at p. 389, line 5, Tr. at p. 397,

lines 21-22, Tr. at p. 400, lines 21-22. The remainder of Mr. Price's Direct Testimony was devoted to arguing as a matter of public policy that wireless carriers should not be required to contribute to the State USF.

Christopher J. Rozycki

Christopher J. Rozycki, Director of Telecommunications, testified for ORS. ORS's review found that wireless service is readily available throughout South Carolina, and that many households in South Carolina have dropped their landline telephone service, becoming wireless-only households. Tr. at 466. According to Mr. Rozycki, ORS reviews data published by the FCC each year and produces a report entitled "Annual Report: The Status of Local Competition in South Carolina." A copy of the most recent report was attached as an exhibit to Mr. Rozycki's testimony. See Hearing Exhibit No. 8. The report is produced as required by S.C. Code Ann. § 58-9-280(G)(3). Tr. at 489. The report is filed with the Commission. ORS's most recent local competition report shows that the number of wireless telephone subscribers in South Carolina more than doubled in the 11-year period from 2003-2013. Tr. at 467; Hearing Exhibit No. 8, Exhibit CJR-1 at p. 9. Wirelines have declined significantly over that same time period, and wireless subscribers outnumbered ILEC wirelines in the state in 2013 by nearly 4 to 1. Id. ORS defines the local competition market as:

The delivery of voice telephone service to residential and/or business customers over a wired or wireless communications path regardless of the technology used. This market includes traditional wired telephone service, replacement VoIP service, and wireless or cellular telephone service. Each of these services allows two or more individuals to engage in a simultaneous speaking conversation even though they are not all located in the same place *and are considered direct substitutes for each other.*

See Hearing Exhibit No. 8, Exhibit CJR-1 at p. 4 (emphasis added).

Mr. Rozycki testified that this is the service definition the Commission should use for purposes of determining competition under S.C. Code Ann. § 58-9-280(G) (1). Tr. at 486. ORS's local competition report concludes in part: "Voice services are increasingly provided by wireless and VoIP providers using the underlying telecommunications network built by South Carolina's telephone utilities." Hearing Exhibit No. 8, Exhibit CJR-1 at p. 12.

Mr. Rozycki also reviewed the most recent FCC Wireless Mobile Competition Report as well as CDC data. In 2008, nearly 80% of adults lived in a household with a landline telephone. By the end of 2014, just six years later, less than 53% of adults lived in a household with a landline phone. Conversely, adults living in wireless-only households rose from 18.4% in 2008 to 44.1% in 2014. Tr. at 469. Mr. Rozycki testified that wireless service offered by the four national carriers (AT&T, Sprint, T-Mobile, and Verizon Wireless) is available throughout South Carolina, and that these carriers advertise that they are competing directly with local telephone service and providers in South Carolina. Tr. at 470-71.

Mr. Rozycki testified that, in administering the State USF, ORS periodically examines the surcharge, and based on his rough calculations, the impact of assessing wireless revenues would be to reduce the current 2.65 percent surcharge to approximately 0.81 percent. Tr. at 473, 485-86. According to Mr. Rozycki's rough calculation, this translates to approximately 38 cents per month per cell phone user. Id. Many of those customers have both a wireless and a wireline device, so they would see a corresponding,

if not larger, decrease in their wireline fee. Tr. at 479-80. Mr. Rozycki confirmed that the outcome of this proceeding would not change the level of the State USF. Tr. at 475. Mr. Rozycki testified that wireless competes with and takes customers from landline service providers, and that there has been competition in these markets since at least 2010. Tr. at 474. He also testified that it is equitable that all users of the network contribute to State USF. Tr. at 478-79. Mr. Rozycki further testified that the statutory criteria for determining competition have been met. See Tr. at 481-82.

While, according to Mr. Rozycki, the Commission “only need find that competition exists in one exchange to, in fact, find that competition exists in the State of South Carolina,” ORS’s report finds that competition exists throughout the State. Tr. at 487. Mr. Rozycki agreed that the State of South Carolina is a defined geographical area. Tr. at 487. Mr. Rozycki testified that, while the number of wireline access lines across the State is declining, the wireline *network* is growing, in large part due to wireless carriers’ use of the landline networks. See Tr. at 492-95. He testified that the landline networks are not “fading,” that for many areas and types of businesses (such as schools and doctors’ offices) landline is “the way to go” for many reasons (such as superior security), and that he does not see wireless displacing wireline telephone service “anytime in the foreseeable future.” See Tr. at 494, 504. When asked if ORS had a recommendation in this matter, Mr. Rozycki responded that ORS believes the evidence provided shows that wireless service competes with wireline service in South Carolina, and there has been no evidence provided that would contradict that. Tr. at 504-05.

V. FINDINGS OF FACT

1. Wireless carriers, including the four large national carriers (AT&T Mobility, Verizon Wireless, T-Mobile, and Sprint) have hundreds of cell towers in South Carolina, including more than 500 in the rural areas served by SCTC members, and at least 135 in CenturyLink's South Carolina service areas. See Tr. at 165, 307.

2. Wireless carriers, including the four large national carriers, have been assigned 1,300 NPA NXX blocks of telephone numbers representing 1.3 million telephone numbers in SCTC's rural service areas in South Carolina. Tr. at 165. Evidence of record shows that a significant portion of these numbers are being utilized. See Tr. at 179 (most recent FCC data shows a utilization rate for numbers assigned to wireless carriers of over 66%).

3. The wireless coverage maps of the four large national carriers show wireless coverage is available throughout South Carolina, including but not limited to those areas served by SCTC companies, CenturyLink, Frontier, and Windstream. See Tr. at 204-07, 261, 308-11, 332; Hearing Exhibit No. 5 (Exhibits LT-1 through LT-5); see also Tr. at 470. While coverage is available throughout the State, this does not mean that service is available to every location in the State. See Tr. at 207, 261-62. However, it does show that wireless carriers are advertising coverage to customers in those areas.

4. By CTIA's own testimony, wireless carriers have 4.5 million customers in the State of South Carolina. See Tr. at p. 389, line 5, Tr. at p. 397, lines 21-22, Tr. at p. 400, lines 21-22. Other evidence of record shows that wireless carriers are marketing and selling their voice telecommunications services in South Carolina. See Tr. at 16-29 (each

of the seven public witnesses testified that they subscribe to wireless service in South Carolina – five from Verizon, one from T-Mobile, and one from Clear Talk); Tr. at 116-17 (Also, Mr. Oliver was able to subscribe and place calls in South Carolina using wireless service from AT&T, Verizon, Sprint, and T-Mobile).

5. The four national wireless carriers have entered into interconnection agreements with CenturyLink and with each of the SCTC member companies in South Carolina. Tr. at 306, 164. Windstream has interconnection agreements with Verizon, Sprint, and AT&T (New Cingular Wireless). Tr. at 332. Interconnection agreements allow wireless carriers' customers to call the landline company's customers and *vice versa*. Tr. at 98-99, 306. Direct interconnection is an indication that the wireless carrier has traffic significant enough to warrant directly connecting its network to the landline carrier's network. Tr. at 333.

6. Wireless carriers have retail stores and authorized dealers in the State, including . See Tr. at 97-98, 331-32.

7. Wireless carriers advertise their services in South Carolina, including advertisements that expressly target landline customers. See Tr. at 98, 332, 265-66, 470-71.

8. Hundreds of customers ported telephone numbers from their landline carriers to wireless carriers in 2014. See Tr. at 168-69, 333. While this shows direct substitution of wireless service for landline service, it tells only a small part of the competitive story, because many customers substitute wireless for landline services without porting telephone numbers – *e.g.*, customers who are “dual-use” and drop their

landline, or customers who subscribe to wireless service and never had a landline to begin with. Id.; see also Tr. at 211 (discussing CDC reports showing growth of “wireless-only” households in South Carolina from 15.4% in 2007 to 43.1% in 2014); Tr. at 469.

9. FTC Wireless is a wireless provider of voice telecommunications service in South Carolina, and has been designated by the Commission as an eligible telecommunications carrier. The service provided by FTC Wireless is the same service provided by other wireless carriers in South Carolina, including but not limited to AT&T Mobility, Verizon Wireless, T-Mobile, and Sprint. Tr. at 353.

10. The terms ‘voice telephone service’ and ‘voice telecommunications service’ are used interchangeably to describe a service that allows end user customers to place and receive voice telephone calls. See Tr. at 221 (the service under examination is any service where an end-user sends and/or receives telephone calls via the Public Switched Telephone Network), Tr. at 266-72 (both wireless and wireline customers can dial numbers to and receive calls from others, either inside the same (local) exchange or outside the local exchange), Hearing Exhibit No. 8, Exhibit CJR-1 at p. 4 (voice telephone service allows two or more individuals to engage in a simultaneous speaking conversation even though they are not all located in the same place).

11. The wireless service at issue – wireless voice telephone or telecommunications service – is commonly used to describe the provision of radio-based local exchange services, as referenced in Subsection (E)(3). See Tr. at 202.

12. Wireless voice telecommunications service and landline voice telecommunications service are functionally equivalent services. See Tr. at 266-72 (Mr.

Thompson testified in detail to the functional equivalency of wireless and wireline voice telecommunications service, as evidenced by similar end user experiences); Tr. at 221 (“the service under examination is any service where an end-user sends and/or receives telephone calls via the PSTN”); Hearing Exhibit No. 8, Exhibit CJR-1 at p. 4 (“The local telephone market is defined as the delivery of voice telephone service to residential and/or business customers over a wired or wireless communications path regardless of the technology used”).

13. Wireless voice telecommunications service and landline voice telecommunications service are substitute services. See Tr. at 207-214 (wherein Mr. Meredith discusses the concept of substitutability at length, concluding that wireless and wireline voice services are substitutes for one another). Substitution between the services is actually occurring. CDC data shows that the percentage of “wireless only” households in South Carolina has grown from 15.4% in 2007 to 43.1% in 2013. See, e.g. Tr. at 211. Other evidence shows that traditional landlines are decreasing as wireless subscribers increase. See, e.g., Tr. at 167-68, 305.

14. Wireless carriers are an integral part of the public switched telephone network (“PSTN”), and wireline and wireless providers function equivalently in interfacing with it. Tr. at 273-74. Wireless calls rely upon the landline network. See Tr. at 274, 163.

15. Wireless voice telecommunications services are radio-based and are provided by a modulated radio frequency signal. Tr. at 276.

16. Wireless carriers contribute to the federal universal service fund. Tr. at 136.

17. Wireless carriers contribute to universal service funds in a number of other states. See Tr. at 155.

VI. CONCLUSIONS OF LAW

Based upon the Discussion, Findings of Fact as set forth herein, and the record of the present proceeding, the Commission makes the following Conclusions of Law:

1. The issue before us is a straightforward and narrow declaratory matter having to do with nonwireline and wireline competition.

2. S.C. Code Ann. § 58-9-280(E)(2) provides: “The Commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the Commission.”

3. S.C. Code Ann. § 58-9-10(15) defines the term “telecommunications services” to mean “the services for the transmission of voice and data communications to the public for hire, including those nonwireline services provided in competition to landline services.”

4. S.C. Code Ann. § 58-9-280(E)(3) provides: “The commission shall also require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.”

5. S.C. Code Ann. § 58-9-280(G)(1) provides: “Competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group

of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers.”

6. The relevant portions of these statutes were enacted at the same time as part of the same legislative Act. The sections of the statutes should be read together and harmonized. See Locke v. Dill, 131 S.C. 1, 126 S.E. 747 (acts of the same session are to be read together, and are not to be construed as inconsistent if they can reasonably be construed otherwise).

7. Subsection (G)(1) does not require a company-by-company determination of competition. By its express language, Subsection (G)(1) defines what is considered a competitive *service*.

8. We find that voice telecommunications service is a “particular service” for purposes of applying Subsection (G)(1). We reject CTIA’s suggestion that Subsection (G)(1)’s “particular service” language means a *tariffed* service. See Tr. at 435-36 (wherein Mr. Price opines that “voice service” is not a “service” because it cannot be found in a tariff or contract). That interpretation is not supported by the plain language of the statute. The word “tariff” does not appear in Subsection (G)(1). Voice telecommunications is a particular service that is distinguishable from other services such as broadband Internet access service or special access service. See Tr. at 191, 220. Consumers think of telecommunications service in terms such as “voice telephone” service, not in terms of what individual services or features might be called in a tariff, and consumers are the ones who are making the competitive choices. See Tr. at 486-87.

9. Based on the overwhelming evidence of record, we find that competition exists for voice telecommunications service in South Carolina. Voice telecommunications service is available from two or more providers in the State – the incumbent local exchange carrier in its respective service area and at least one retail wireless service provider in those areas. See, e.g., Tr. at 204-07; 261, 308-11, 332; Hearing Exhibit No. 5 (Exhibits LT-1 through LT-5); see also Tr. at 470.

10. Voice telecommunications service (from both wireline and wireless providers) is available to subscribers, both residential and business, in South Carolina. Residential and business voice telecommunications subscribers constitute an “identifiable class or group of customers.” See Tr. at 221, 322.

11. We find that the relevant “clearly defined geographical area” referenced in Subsection (G)(1) is the State of South Carolina. CTIA’s argument that the “clearly defined geographical area” must be an exchange or group of exchanges ignores the plain language of Subsection (G)(1) which states the relevant area as “an exchange, group of exchanges, *or* other clearly defined geographical area” (Emphasis added.) The State of South Carolina is, in fact, a clearly defined geographical area. See Tr. at 203, 487. Both Subsections (E)(2) and (E)(3) expressly refer to the State as being the relevant area for determination. Subsection (E)(2) references “within South Carolina” and Subsection (E)(3) includes the phrase “in this State” twice. This interpretation is also consistent with the legislative intent expressed in Subsection (E)(2) that all companies providing telecommunications services *in the State* are required to contribute to State USF, and consistent with the manner in which the State USF operates for all other contributing

carriers today. See Tr. at 222; Sloan v. S. C. Bd. Of Physical Therapy Examiners, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006), rehearing denied (a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers).

12. A finding of competition under Subsection (G)(1) does not require competition *throughout* the State, but requires only a demonstration that the competitive service is available in “*an* exchange” See Tr. at 487. In this case, the evidence of record goes far and above the minimum threshold showing that would be required under Subsection (G)(1). Even if we were to construe the “clearly defined geographical area” to mean an exchange or group of exchanges, there is overwhelming evidence in the record to support a finding of competition for voice telecommunications services in a specific exchange or group of exchanges. See Tr. at 97-100 (competition in Moncks Corner exchange), Tr. at 332 (competition in Windstream’s seven South Carolina exchanges), Tr. at 304-07 (competition in CenturyLink’s South Carolina service area). CTIA would have us read Subsection (G)(1) to mean that competition must be demonstrated in *each and every* exchange before a company can be required to contribute to State USF. That interpretation is not supported by the plain language of the statute. See Adkins v. Comcar Indus., 323 S.C. 409, 411, 475 S.E.2d 762, 762 (1996) (“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation”); Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (“Courts will reject a statutory interpretation

which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”).

13. Wireless and landline voice telecommunications services are functionally equivalent services. See Tr. at 220-21, 266-72.

14. Wireless and landline voice telecommunications services are substitute services. See, e.g., Tr. at 207. Not only can they be substituted for one another, but the evidence of record shows that they are, in fact, being substituted for one another, as customers port numbers from landline to wireless carriers, and as more and more South Carolina households become “wireless-only.” See, e.g., Tr. at 168-69, 333, 212. Wireless carriers also advertise their services as a substitute for traditional landline services. See Tr. at 265-66, 345, see also Hearing Exhibit No. 7 (Miller Exhibit No. 3).

15. Turning to Subsection (E)(3), we must require any company providing telecommunications service (which includes wireless voice telecommunications service) to contribute to the USF if, after notice and opportunity for hearing, we determine that the company is providing radio-based local exchange services in this State that compete with a local telecommunications service provided in this State. Again, the evidence of record goes far and above the minimum threshold showing required under Subsection (E)(3), which can be met by showing that “the” company provides services that compete with local telecommunications service provided in this State. The evidence in this proceeding is that *all* retail wireless companies are providing such services.

16. The undisputed evidence of record is that wireless voice telecommunications services are “radio-based.” See Tr. at 276. The evidence also shows

that wireless voice telecommunications services are “local exchange” services. See Tr. at 266-67; see also 47 U.S.C. § 153(54) (defining “telephone exchange service” to mean “(A) service within a telephone exchange ... or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.”).

17. Wireless voice telecommunications service includes local service, regardless of whether it is offered on a local-only or “all-distance” basis. There is evidence in the record to support the conclusion that retail wireless service providers are providing voice telecommunications service on a local basis in South Carolina. USAC’s Lifeline Disbursement data shows that wireless providers account for approximately 91% of the \$16.5 million in Lifeline disbursements for the State of South Carolina. See Tr. at 306. Lifeline service providers are required to provide certain services, including “minutes of use for *local service*.” See 47 C.F.R. §§ 54.401(a)(2) and 54.101(a) (emphasis added).

18. We conclude that wireless voice telecommunications services are radio-based local exchange services. The evidence also clearly demonstrates that wireless voice telecommunications service competes with “a local telecommunications service provided in this State.” As discussed above, the overwhelming evidence of record shows that wireless voice telecommunications service is competing with local voice telecommunications services provided by SCTC member companies, CenturyLink, Windstream, and Frontier in this State. Thus, the requirements of Subsection (E)(3) have been satisfied.

19. Wireless carriers have acknowledged competition between their wireless and traditional landline operations in their respective 10-K Reports filed with the Securities and Exchange Commission. See Tr. at 169-70, 214-16, 266. CTIA's position that there is competition for purposes of public securities filings but not for purposes of South Carolina law is based on an incorrect reading of the South Carolina statutes. CTIA claims there is insufficient evidence to show that *each individual wireless carrier* competes with *specifically-named tariffed services* (such as "hunting services" referenced at Tr. p. 435) in *each exchange* of the state with *specifically-named* other carriers. CTIA's interpretation is not consistent with the plain language of the statutes, and is in direct conflict with state and federal universal service policy requiring nondiscriminatory and equitable contributions to State USF. See Adkins, supra, 323 S.C. at 411, 475 S.E.2d at 762 (the words of a statute must be given their plain and ordinary meaning without resorting to forced construction); Municipal Ass'n of South Carolina, supra, 361 S.C. at 580, 606 S.E.2d at 470 (in construing a statute, language must be read in a sense which harmonizes it with its subject matter and accords with its general purpose); see also Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (in ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole).

20. Overwhelming evidence was presented to show that nonwireline services are being provided in competition to landline services in South Carolina. Overwhelming evidence was presented to show that retail wireless carriers provide radio-based local exchange services (voice telecommunications services) in this State that compete with local

telecommunications services (again, voice telecommunications services) being provided in this State.

21. The determination that we make today will serve the public interest. Consistent with state and federal law and policy, all telecommunications carriers should contribute on an equitable and nondiscriminatory basis to State USF.

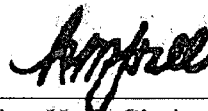
22. Requiring wireless telecommunications carriers to contribute to the State USF will not increase the size of the fund. See Tr. At 85, 106, 475. The size of the fund will remain the same. This proceeding implements the Legislature’s directive in S. C. Code Ann. Section 58-9-280(E)(2) that all telecommunications carriers – including wireless telephone carriers – contribute on an equitable basis to the State USF. Tr. at 106. This ruling “levels the playing field” with regard to the payment by telecommunications carriers into the State USF, especially since wireless carriers depend upon wireline facilities in order to function. Payment into the State USF will now be fairly distributed between wireless and wireline carriers.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

- (1) CTIA’s Motion to Dismiss is denied; and
- (2) Based on the overwhelming evidence of record, we find that:
 - (a) wireless voice telecommunications service competes with landline voice telecommunications services in South Carolina; and
 - (b) wireless retail carriers operating in South Carolina are providing radio-based local exchange services in this State that compete with local telecommunications service provided in this State; and

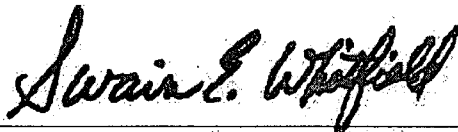
- (c) wireless retail carriers operating in South Carolina are, therefore required, pursuant to S.C. Code Ann. Section 58-9-280(E)(2), to contribute to the State USF in the same manner that other telecommunications service providers contribute.
- (3) This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Nikiya Hall, Chairman

ATTEST:



Swain E. Whitfield, Vice Chairman

(SEAL)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2015-290-C

CTIA – THE WIRELESS ASSOCIATION®,
.....Appellant,

v.

South Carolina Telephone Coalition and
South Carolina Office of Regulatory Staff,
..... Respondents.

EXHIBIT 2

Public Service Commission Order Number 2016-179
Dated March 8, 2016

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2015-290-C - ORDER NO. 2016-179

MARCH 8, 2016

IN RE: Petition of the South Carolina Telephone)	ORDER DENYING
Coalition for a Determination that Wireless)	PETITION FOR
Carriers are Providing Radio-Based Local)	REHEARING
Exchange Services in South Carolina that)	
Compete with Local Telecommunications)	
Services Provided in the State)	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Petition for Rehearing filed by CTIA – The Wireless Association (“CTIA” or “the Association”), wherein CTIA moves that this Commission rehear or reconsider Order No. 2016-22, entitled “Order Addressing Wireless-Wireline Competition in the Telecommunications Industry and its Effect on Payment into the Universal Service Fund.” CTIA alleges that this Commission did not address its arguments. Because this Commission fully considered and addressed each of the arguments raised by CTIA, and because CTIA has presented no new arguments that would lead this Commission to a different result, we deny the Petition.

In general, the Petition argues that that the Commission misapplied and failed to harmonize various subsections of S.C. Code Ann. Section 58-9-280, namely (E)(2), (E)(3), and (G)(1). The Association alleges that (E)(3) and (G)(1) together provide the process that the Commission must follow and the test for competition that the Commission must use in order to require wireless carriers to pay into the South Carolina Universal Service

Fund (“USF”). Further, CTIA states that this Commission improperly relied on Subsection (E)(2), the enabling legislation that requires telecommunications providers to pay into the USF, as a “safety valve,” and that we do not address properly its arguments that (E)(3) delineates the issues in this case. The Association claims that, as a result, we failed to make required “company-specific” findings. CTIA’s assertions are contrary to the law in this case, which, accordingly, requires that we deny the Petition.

The Association ignores the general applicability of Section 58-9-280 (E)(2), which states that all telecommunications companies providing telecommunications services must contribute to the South Carolina Universal Service Fund, as determined by the Commission. Section 58-9-10 (15) defines telecommunications services as including those nonwireline services provided in competition to landline services. Accordingly, (E)(2) provides the cardinal rule and is the enabling legislation on the subject of who should contribute to the USF, i.e. all telecommunications companies. Subsection (E)(3) reads as follows: “The commission **also** shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.” (Emphasis added.) The subsection utilizes the term “also,” which means “in addition.” See Cambridge English Dictionary. In other words, under the statutory scheme set up by the General Assembly, subsection (E)(2) is the primary statute, with (E)(3) present as a companion section that provides direction in the case where local exchange services and/or radio-based local exchange services compete with local

telecommunications services. As such, (E)(2) and (E)(3) harmonize completely with the requirements of Section 58-9-10 (15), which enfolds into “telecommunications services” those nonwireline services provided in competition to landline services.

Contrary to the CTIA Petition, this Commission fully considered the provisions of subsection (E)(3) in Order No. 2016-22, and found that the overwhelming evidence of record shows that wireless voice telecommunications service is competing with local voice telecommunications services provided by SCTC member companies, CenturyLink, Windstream, and Frontier in this state. (Order No. 2016-22 at 37.) Nothing in the language of Subsection (E)(3) requires the company-by-company determination advocated by CTIA. Although the statute does contain the word “company,” the evidence in the case showed that wireless companies in general provide radio-based local exchange services in South Carolina that compete with local telecommunications services, and therefore fall under the general provisions of subsection (E)(2). Clearly the suggestion by CTIA that subsection (E)(2) applies to wireline companies and subsection (E)(3) applies to wireless companies does not comport with the plain language of the statute.

Further, nothing in subsection (G)(1) requires a company-by-company determination. We rejected and continue to reject CTIA’s views on the meaning of the terms in subsection (G)(1). The statute states: “Competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers.” In Order No. 2016-22, we found that voice communications service is a “particular service” for purposes of this section, and we


rejected the CTIA idea that the term “particular service” means a tariffed service. Further, we found that the “clearly defined geographic area” in the statute was the State of South Carolina, and that voice communications was available from two or more providers, and that this exceeded the minimum standard, which is that competition must only be available in an exchange. (Order at 34-35). Accordingly, we believe that this Commission properly addressed the statutes at issue, and that we harmonized the statutory scheme, including the provisions of (G)(1), as is required by the law of this state.

CTIA further alleges that this Commission, in Order No. 2016-22, somehow departed from a previous decision on the application of (E)(3), since it alleges that notice was not given to particular wireless carriers. The particular wireless carrier in Order No. 2008-672 applied to this Commission for eligible telecommunications carrier or ETC status, and after hearing, ETC status was granted. In Order No. 2001-419, we had previously held that an application for competitive ETC status and the subsequent hearing constituted the notice and hearing called for in Subsection (E)(3). Under the provisions of Order No. 2001-419, carriers with ETC status have to contribute to the State USF. In Order No. 2008-672, we held that Subsection (E)(3) required notice and hearing for a particular wireless carrier wanting ETC status, prior to requiring that carrier to pay into the USF, without making the general wireless industry finding contemplated by Subsection (E)(2). This category of cases is what is discussed on page 10 of Order No. 2016-22. In the present case, no declaration of ETC status was requested. Notice and hearing were still provided, but all wireless providers were given actual and/or constructive notice of the proceeding. However, since ETC status was not under consideration in the present case for an

individual carrier, no departure from a previous order or inconsistency occurred with the use of actual and/or constructive notice for all wireless carriers. In this case, the general wireless industry finding contemplated under Subsection (E)(2) was appropriate.

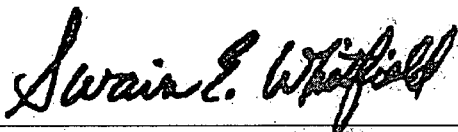
Because this Commission fully considered and addressed each of the arguments raised by CTIA, and because CTIA has presented no new arguments that would lead this Commission to a different result, the Petition for Rehearing is denied. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Nikiya Hall, Chairman

ATTEST:



Swain E. Whitfield, Vice Chairman

(SEAL)