

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF	)	
CELLCO PARTNERSHIP AND ITS	)	
SUBSIDIARIES AND AFFILIATES TO	)	TC10-090
AMEND AND CONSOLIDATE ELIGIBLE	)	
TELECOMMUNICATIONS CARRIER	)	
DESIGNATIONS IN THE STATE OF	)	
SOUTH DAKOTA AND TO PARTIALLY	)	
RELINQUISH ETC DESIGNATION	)	

**BRIEF IN SUPPORT OF MOTION TO STRIKE  
TESTIMONY OF WITNESS PETER BLUHM**

Petitioners Cellco Partnership d/b/a Verizon Wireless (“Cellco”), on behalf of itself and its subsidiaries and affiliates offering commercial mobile radio services (“CMRS”) in the State of South Dakota, pursuant to SDCL 1-26-19 and SDCL 19-12-1, hereby move to strike selected testimony proffered by Peter Bluhm on behalf of intervenor James Valley Wireless, LLC (“James Valley Wireless”).<sup>1</sup> Much of Bluhm’s testimony relates to matters that are not relevant to the subject matter of this proceeding, and therefore such testimony is not admissible in this proceeding.

The Petition in this case seeks to amend and consolidate the eligible telecommunications carrier (“ETC”) designations currently held separately in the name of WWC License, LLC (“WWC”) and RCC Minnesota, Inc. (“RCC”) to reflect Cellco and its subsidiaries and affiliates as the designated entity. As explained in more detail in the Petition, this relief is reasonable and necessary to reflect the transactions whereby RCC and WWC became subsidiaries under the ownership and control of Cellco. But, much of Bluhm’s prefiled testimony is devoted to topics wholly unrelated to the relief requested in the Petition. Bluhm’s testimony suggests that the

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<sup>1</sup> For ease of preparation and presentation of evidence at hearing, Petitioners respectfully request that the Commission rule on this Motion in advance (perhaps at its May 3 meeting), rather than at the outset of the hearing.

RCC and WWC ETC designations should be retroactively revoked, discusses the effects of decisions by the Federal Communications Commission (“FCC”) concerning the distribution of high-cost universal service support to competitive ETCs, and suggests that the Public Utilities Commission of South Dakota (“Commission”) should make affirmative determinations about the appropriateness of line count filings submitted to the Universal Service Administrative Company (“USAC”). Bluhm’s testimony on these and related issues is irrelevant, reflects an inappropriate and impermissible attempt by James Valley Wireless to seek affirmative relief against the Petitioners, and seeks to raise issues that are beyond the Commission’s legal authority. As such, the objected-to testimony should be stricken before the hearing and not allowed to become part of the record.

## **I. BACKGROUND**

### **A. The Commission Has Defined the Issue For Hearing Consistent With the Petition**

The Petition asks the Commission to amend and consolidate the ETC designations currently held separately in the name of WWC and RCC to reflect Cellco and its affiliated legal entities as the designated entity.<sup>2</sup> WWC was first designated as a federal ETC by the Commission in 2001.<sup>3</sup> The Commission later issued an Order approving the expansion of WWC’s designated service area to include the study areas of certain rural telephone companies.<sup>4</sup>

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<sup>2</sup> Petition, p. 1. The Petition further requested the partial relinquishment of ETC status in the study area of Golden West Telecommunications Cooperative, Inc. The Commission approved that relinquishment by Order dated November 16, 2010.

<sup>3</sup> *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. TC98-146, “Order Designating GCC License Corporation as an Eligible Telecommunications Carrier in Non-Rural Telephone Company Exchanges” (Oct. 18, 2001).

<sup>4</sup> *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Docket No. TC98-146, “Order Designating Western Wireless as an ETC for Areas Served by Certain Rural Telephone Companies” (Jan. 6, 2001) and Docket No. TC03-191 “Amended Order Designating Western Wireless as an Eligible Telecommunications Carrier; Findings of Fact and Conclusions of Law; and Notice of Entry of Order” (Jan. 3, 2005).

Similarly, the Commission issued an Order designating RCC as a federal ETC in South Dakota in 2005.<sup>5</sup> To date, the WWC and RCC ETC designations remain in effect.

The purpose of the relief requested in the Petition is so that the Commission, Staff and, most importantly, consumers understand that the collective Verizon Wireless operations are responsible for compliance with the universal service requirements and obligations throughout the entire area where WWC and RCC are designated as ETCs (the “Designated Area”). The Petition does not seek to expand the scope of the Designated Area.<sup>6</sup> In support of the Petition, Petitioners included information demonstrating the continued satisfaction of all of the applicable eligibility requirements for designation as a federal ETC, as well as information explaining why it continues to be in the public interest to grant the requested amendment and consolidation.<sup>7</sup> The relief requested in the Petition was the very same relief approved by the FCC for the states of Alabama, North Carolina and Virginia.<sup>8</sup>

The Commission has already issued three scheduling orders giving notice of the issue to be determined in this docket. In each, the Commission has squarely framed the issue to be addressed at hearing in this proceeding:

The issue at the hearing is whether the Commission shall grant Cellco Partnership d/b/a Verizon Wireless, and its subsidiaries and affiliates offering commercial mobile radio services in South Dakota (“Verizon Wireless”), request to amend and consolidate the ETC designations currently held separately in the name of WWC and RCC in the state of South Dakota to reflect Cellco Partnership and its affiliated legal entities as the designated entity.<sup>9</sup>

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<sup>5</sup> *In the Matter of the Filing by RCC Minnesota, Inc. and Wireless Alliance, LLC d/b/a Unicel for Designation as an Eligible Telecommunications Carrier*, Docket No. TC03-139, “Order Designating RCC Minnesota, Inc. and Wireless Alliance, LLC d/b/a Unicel as Eligible Telecommunications Carriers; Findings of Fact and Conclusions of Law; and Notice of Entry of Order” (June 6, 2005).

<sup>6</sup> The Petition specifically excluded the Golden West study area for which notice of partial relinquishment was requested. (Petition, p. 3).

<sup>7</sup> Petition, pp. 5-6 and Ex. D (Certification of Linda Stevens), pp. 3-12.

<sup>8</sup> Petition, p. 3, Ex. A.

<sup>9</sup> Second Amended Order for and Notice of Procedural Schedule and Hearing (Feb. 18, 2011), p. 2.

**B. When It Intervened, James Valley Wireless Gave No Hint That It Sought Affirmative Relief**

James Valley Wireless filed a standard two-page petition to intervene in this proceeding on October 14, 2010. The intervention petition noted that James Valley Wireless has been designated as a competitive ETC by the Commission.<sup>10</sup> The only basis stated by James Valley Wireless for seeking intervention was that as a competitive ETC, it “has a direct and immediate pecuniary interest in this Commission’s decision in this docket.”<sup>11</sup> The intervention petition did not identify any issue to be raised, and did not even indicate that James Valley Wireless opposed the Petition. Nothing in the intervention petition gave notice of any intention by James Valley Wireless to advocate for its own affirmative relief in this docket. Nothing in the intervention petition suggested that James Valley Wireless would ask the Commission for “remedies” such as the retroactive revocation of the WWC and RCC ETC designations, or a request that USAC require Cellco to “refund” universal service support. Petitioners did not oppose James Valley Wireless’ intervention, because there was nothing stated in the intervention petition that could reasonably be objected to. By Order dated October 26, 2010, the Commission granted intervention to James Valley Wireless.

**II. BLUHM’S PREFILED TESTIMONY IMPROPERLY SEEKS RETROACTIVE ETC REVOCATION AND OTHER AFFIRMATIVE RELIEF**

Bluhm’s prefiled direct testimony was originally filed on February 4, 2011; a revised version of his prefiled direct testimony, with certain errata noted, was filed on March 25, 2011.<sup>12</sup> Much of Bluhm’s prefiled testimony is directed toward having the Commission retroactively revoke the RCC and WWC ETC designations and impose other “remedies” on the Petitioners.

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<sup>10</sup> Petition to Intervene, ¶ 2.

<sup>11</sup> Petition to Intervene, ¶ 4.

<sup>12</sup> All references to Bluhm’s testimony herein are to the March 25 version.

Bluhm expressly states the purpose of his testimony is to provide “recommendations regarding appropriate remedies regarding past and future eligibility for federal high-cost support to the applicant.” (Bluhm 3:22-23). Specifically, Bluhm wants “the Commission [to] clarify” (a) RCC’s authority to be an ETC “expired as of August 6, 2008”; (b) WWC’s authority to be an ETC “expired as of January 9, 2009”; (c) the RCC and WWC ETC designations are not available for use by Cellco; and (d) South Dakota’s universal service funding for competitive ETCs should not be reduced due to the FCC’s approval requirement to phase down support and its later decision not to redistribute the support to other competitive ETCs. (Bluhm 3:24-4:12). Finally, Bluhm’s testimony recommends that the Commission inform USAC of his requested determinations “and require USAC to have Cellco refund past overpayments of CETC support.” (Bluhm 4:16-17).

Much of Bluhm’s testimony is devoted to allegations and analyses that purport to provide a basis for his proffered recommendations for “remedies.” He speculates about “universal service effects” resulting from the acquisition of WWC and RCC by Cellco (Bluhm 15:14-17:5, 17:9-19:16), and attempts to describe line count filings made in the wake of the acquisitions, alleging that certain line count filings were inappropriate (Bluhm 9:7-10, 19:19-20:9, 20:12-21:6, 21:9-17, 21:19-22:2, 26:5-6, 26:8-27:2).<sup>13</sup> Bluhm further alleges that Cellco’s actions have affected the Interim Cap for competitive ETC support in South Dakota (Bluhm 22:4-11, 22:15-23:2, 23:5-12, 23:15-24:7), and speculates about the impact that would result if the WWC and RCC ETC designations were relinquished (Bluhm 25:17-26:2). Bluhm challenges certifications filed by WWC and RCC with the Commission in 2009 and 2010 (Bluhm 28:4-29:11, 29:13-16, 29:20-30:2, 30:4-14), and discusses dockets in other states that he alleges provide precedent for

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<sup>13</sup> Much of Bluhm’s testimony, including these passages, is factually incorrect and based on unsound premises. For purposes of this Motion, though, Petitioners will focus on the relevancy of Bluhm’s testimony, not its many other infirmities.

his proposed “remedies” (Bluhm 30:17-31:16, 31:19-32:2, 32:5-11, 32:14-33:8). He recommends that Cellco should be required to submit a new application for ETC designation (Bluhm 35:21-38:19), and closes by summarizing his “recommendations” (Bluhm 44:6-45:8). All of the above-described portions of Bluhm’s testimony – the portions that contain his “recommendations” and “remedies,” and the alleged support therefor – are wholly improper and should be stricken, for the reasons discussed below.<sup>14</sup>

### **III. ARGUMENT**

#### **A. The Commission Should Strike Testimony That Is Irrelevant and Immaterial**

The Commission has ample authority to strike evidence that is not material or relevant to the issue pending before it. The Administrative Procedure Act’s statute concerning the rules of evidence in contested case proceedings begins, “Irrelevant, incompetent, immaterial or unduly repetitious evidence shall be excluded.” SDCL 1-26-19(1) (emphasis added). Accordingly, upon a determination that the objected-to passages of the Bluhm testimony are irrelevant and/or immaterial, the Commission must exclude those passages.

The definition of relevancy is found in the South Dakota rules of evidence: “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” SDCL 19-12-1 (Rule 401) (emphasis added).<sup>15</sup> The issue to be decided has been clearly established in the Commission’s Procedural Orders. But, the objected-to passages of Bluhm’s testimony are far outside the scope of this issue. Accordingly, those portions of Bluhm’s testimony are not “of consequence to the determination” of the Petition, and thus should be stricken as irrelevant. Whether it acts under the Administrative Procedure Act or

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<sup>14</sup> Petitioners’ Motion does not seek to strike the few pages of Bluhm’s testimony that comment on the Petition (Bluhm 40:5-42:16, 42:19-44:3) or the limited other portions of Bluhm’s testimony that address background topics relevant to the issue presented in the Petition and framed by the Commission.

<sup>15</sup> The rules of evidence for civil trials apply to a contested case proceeding such as this. SDCL 1-26-19(1).

the rules of evidence, the Commission plainly has the authority to strike the objected-to portions of the Bluhm testimony.

**B. Bluhm's "Recommendations" And Other Testimony Should Be Stricken**

1. Bluhm's Testimony Is Irrelevant

The most important reason why the objected-to passages of Bluhm's testimony should be stricken is that they are simply outside the scope of the issue in this proceeding, as identified by the Commission. The question presented by the Petition is:

...whether the Commission shall grant Cellco Partnership d/b/a Verizon Wireless, and its subsidiaries and affiliates offering commercial mobile radio services in South Dakota ("Verizon Wireless"), request to amend and consolidate the ETC designations currently held separately in the name of WWC and RCC in the state of South Dakota to reflect Cellco Partnership and its affiliated legal entities as the designated entity.<sup>16</sup>

The "recommendations" presented by Bluhm – retroactive revocation of the WWC and RCC ETC designations, actions to frustrate the FCC's universal service funding decisions, and requesting USAC to "reclaim" support from Petitioners – need not be addressed in order to resolve the question at issue. Petitioners' qualifications to be the named entity providing service as an ETC exist independent of receipt of universal service support, and independent of line count filings submitted to USAC. Bluhm's allegations about how other competitive ETCs' receipt of universal service support may be affected by granting the Petition are especially irrelevant, because "the purpose of universal service is to benefit the customer, not the carrier."<sup>17</sup>

Whether the Commission found Bluhm's objected-to allegations and recommendations to be credible, or found them to be unfounded and riddled with errors, it would not matter to the resolution of whether the WWC and RCC ETC designations should be amended and consolidated as requested in the Petition. The objected-to passages of Bluhm's testimony are

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<sup>16</sup> Second Amended Order for and Notice of Procedural Schedule and Hearing (Feb. 18, 2011), p. 2.

<sup>17</sup> *Alenco Comm'ns, Inc. et. al v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000).

therefore irrelevant and immaterial. They need not be, and should not be, considered by the Commission as evidence in this proceeding.

2. Through Bluhm's Testimony, James Valley Wireless Is Inappropriately Seeking Affirmative Relief

The clearest indication of the irrelevance and inappropriateness of Bluhm's testimony is that it explicitly advocates "recommendations" and suggests "remedies" that go far beyond mere opposition to the Petition. In particular, Bluhm recommends that the WWC and RCC ETC designations should be retroactively revoked as of dates in 2008 and 2009 (Bluhm 3:22-4:8), even though those ETC designations have been continuously in place without controversy since 2000 and 2005, respectively. If granted, these recommendations would not simply result in the denial of the Petition, but could have the effect of reversing the Commission's prior decisions, in 2009 and 2010, to certify WWC's and RCC's use of universal service support.

It is particularly inappropriate and unfair for James Valley Wireless, having given no indication at the time of its intervention that it would seek some sort of affirmative relief, to now seek this unprecedented relief, going far outside the scope of the issue presented by the Petition. James Valley Wireless did not file a petition or complaint, and accordingly it cannot seek its own affirmative relief. If James Valley Wireless had forthrightly indicated its intention to seek such far-reaching and unrelated affirmative relief at the time of its intervention, the Petitioners would have had a basis and opportunity to oppose the intervention. Instead, James Valley Wireless became an intervenor into this proceeding under an innocuous cover, only to belatedly reveal its true intent. James Valley Wireless' attempt to use the Bluhm testimony to expand and distort the scope of this proceeding, without providing any proper notice, should not be countenanced by the Commission.

3. Bluhm's Testimony "Recommends" That The Commission Take Unlawful Actions

The "recommendations" and "remedies" in the objected-to portions of Bluhm's testimony seek Commission action that is not only outside the scope of this proceeding, but is entirely outside the scope of the Commission's authority and jurisdiction. For example, the Commission does not have authority to make the WWC and RCC ETC designations "expire" as dates in 2008 and 2009, as Bluhm requests. As an initial matter, the Commission's statutory authority concerning a federal ETC is both defined and limited by 47 U.S.C. § 214(e). The authority delegated under Section 214(e) allows the Commission to designate common carriers as ETCs (§ 214(e)(2)); to allow ETC designations to be relinquished (§ 214(e)(4)); and to establish the "service area" for universal service purposes (§ 214(e)(5)). The Commission is further authorized by FCC rules to make certain certifications to the FCC and USAC concerning the use of federal universal service support. *See, e.g.*, 47 C.F.R. §§ 54.313 and 54.314. Also, the Commission has adopted regulations relating to federal universal service. The Commission's regulations set forth the applicable standards and procedures governing an ETC designation (ARSD 20:10:32:42 *et seq.*), an ETC relinquishment (ARSD 20:10:32:48), and an ETC revocation (ARSD 20:10:32:49). Nothing in federal statutes, in the FCC's rules and decisions implementing Section 214(e), in South Dakota law, or in the Commission's regulations authorizes the Commission to deem an ETC designation to have "expired."

The "expiration" that Bluhm recommends is functionally the same as a retroactive revocation. The Commission's ETC revocation rule, ARSD 20:10:32:49, does not contain any provision or term that would authorize the Commission to retroactively revoke an ETC designation. To the contrary, ARSD 20:10:32:49 recognizes that revocation is a sanction triggering both procedural and substantive due process requirements to which the Commission

must adhere. The Commission cannot revoke an ETC designation except “after notice and opportunity for hearing,” and after a determination that the ETC “does not qualify as an eligible telecommunications carrier.” ARSD 20:10:32:49. This forward-looking language in the rule demonstrates that the Commission may only act prospectively, not retroactively, to revoke an ETC designation.<sup>18</sup> If those requirements are met, the Commission “shall revoke” the ETC designation. *Id.* The rule’s use of the future tense indicates that the revocation must take place prospectively. Because Bluhm’s testimony asks the Commission to take action that is contrary to its own rules, the objected-to portions of the testimony are plainly irrelevant, and thus should be stricken.

Retroactive revocation of ETC status is not the only aspect of Bluhm’s testimony that seeks a Commission determination far outside the Commission’s legal authority or jurisdiction. Bluhm also requests that the Commission determine that “the FCC’s decisions about how Celco’s phased-down funding should be redistributed are...inapplicable to South Dakota.” (Bluhm 4:11-12). It is elementary that the Commission does not have the authority to unilaterally declare South Dakota to be immune from the FCC’s decisions relating to distribution of universal service funding, or to take action to circumvent FCC decisions. 47 U.S.C. § 254(f). Similarly, Bluhm purports to recommend that the Commission can “require USAC to have Celco refund past overpayments of CETC support.” (Bluhm 4:17). The Commission does not have authority to require USAC to do anything. Rather, USAC acts at the direction of the FCC. 47 C.F.R. § 54.702. These examples merely illustrate the extent to which the objected-to passages in Bluhm’s testimony seek to push the Commission to take improper, unlawful, and impossible action. Because they are not grounded in a proper understanding of the scope of the

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<sup>18</sup> Retroactive revocation of the WWC and RCC ETC designations, as Bluhm suggests, would also likely constitute a taking and/or a due process violation under the U.S. Constitution.

Commission's authority, the objected-to passages of the Bluhm testimony should be stricken as irrelevant, immaterial, and incompetent. SDCL 1-26-19.

**C. Identification of Specific Passages That Should Be Stricken**

For ease of reference, Petitioners will specifically identify each passage of Bluhm's testimony that should be stricken, along with a brief explanation based on the arguments explained above as to why the passage should be stricken and disallowed from becoming part of the record.

1. 3:22-4:12 (recommendations seeking remedies regarding past and future eligibility for federal high-cost support).

Bluhm's recommendations regarding retroactive revocation of the WWC and RCC ETC designations should be stricken because, as explained in detail above, they constitute inappropriate requests for affirmative relief, they are incompatible with and outside the scope of the issue presented in this proceeding, and the Commission does not have the legal authority to implement them.

2. 4:16-21 (recommendation that Commission inform USAC of requested determinations and require USAC to seek refund of past payments of CETC support).

Bluhm's recommendations that the Commission contact USAC and require USAC to seek a refund of past disbursements to WWC and RCC should be stricken because they constitute inappropriate requests for affirmative relief, they are incompatible with and outside the scope of the issue presented in this proceeding, and the Commission does not have the legal authority to implement them.

3. 9:7-10 (claim of federal high-cost support for legacy subscribers).

Bluhm's testimony that Cellco has "claimed" universal service support for "legacy" subscribers, or has not adequately explained line count reports submitted by RCC and WWC to USAC, should be stricken because these issues are outside the scope of this proceeding. The

ETC amendment and consolidation requested is not contingent on an analysis of which customers should be included in line count reports pursuant to 47 C.F.R. §§ 54.307 and 54.802. Any questions about the propriety of previously-filed line count reports should be addressed by the FCC. The Commission cannot take action in this proceeding in response to James Valley Wireless' alleged improprieties in line count submission.

4. 15:14-17:5 (discussion of potential universal service effects in the FCC's 2008 approval of Cellco-RCC transaction).

Bluhm's testimony about alleged "universal service effects" resulting from the 2008 approval of the Cellco-RCC acquisition should be stricken because it is irrelevant and immaterial. Whatever "effects" might have happened, the transaction closed more than two years ago. The only issue before the Commission is whether the RCC ETC designation should be amended and consolidated; other issues relating to the FCC's approval of the Cellco-RCC transaction are neither presented by the Petition nor necessary to its resolution.

5. 17:9-19:16 (discussion of potential universal service effects in the FCC's 2009 approval of Cellco-Alltel transaction).

This passage should be stricken for the same reasons as item 4, *supra*.

6. 19:19-20:9, 20:12-21:6, 21:9-17, 21:19-22:2 (claim of improper line count filings).

This passage should be stricken for the same reasons as item 3, *supra*.

7. 22:4-11, 22:15-23:2, 23:5-12, 23:15-24:7 (claim of effect of allegedly improper line counts on other South Dakota CETCs in connection with Interim Cap).

Bluhm's testimony about the effect of WWC's and RCC's line count reports on other CETCs' receipt of support should be stricken as immaterial and irrelevant, because the effect on other carriers' use of support is not a proper or relevant consideration when analyzing ETC designation and compliance. The "purpose of universal service is to benefit the customer, not

the carrier.”<sup>19</sup> Moreover, if James Valley Wireless has a concern about the amount of universal service support it receives as a result of the FCC’s decisions, it has the option of exempting itself from the Interim Cap by reporting its own costs for direct reimbursement.<sup>20</sup>

8. 25:17-26:2 (discussion of effect if Cellco “relinquishes support” under FCC phase-down requirement).

Bluhm’s testimony about the potential effects if the Petitioners’ ETC designations are relinquished should be stricken as irrelevant because the Petition does not seek relinquishment of ETC status.

9. 26:8-27:2 (challenge to line count filings with USAC).

This passage should be stricken for the same reasons as item 3, *supra*.

10. 28:4-29:11, 29:13-16, 29:20-30:2, 30:4-14 (challenge to WWC and RCC certifications filed with Commission).

Bluhm’s testimony about the Petitioners’ previous certifications to the Commission regarding use of support should be stricken as irrelevant because those certifications are not at issue in this proceeding. Nothing in the Petition’s requested relief requires a re-analysis of them.

11. 30:17-31:16 (recommendation of remedy seeking declaration that RCC and WWC ETC status “expired” and notification to USAC to avoid effects of FCC CETC interim cap).

Bluhm’s testimony about proposed “remedies” should be stricken for the same reasons as item 1, *supra*.

12. 31:19-32:2 (discussion of AT&T ETC dockets in Texas and Wisconsin).

Bluhm’s testimony about AT&T dockets in Texas and Wisconsin should be stricken as irrelevant because regulatory decisions in other States, made under different factual

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<sup>19</sup> *Alenco*, 201 F.3d at 621.

<sup>20</sup> *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (May 1, 2008), ¶ 1 (“*Interim Cap Order*”), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

circumstances, under different States' laws, and involving a different carrier, hold no precedential value for the issue presented to this Commission.

13. 32:5-11, 32:14-33:8 (discussion of Nevada application and Nevada relinquishment dockets).

This passage should be stricken for the same reasons as item 12, *supra*.

14. 35:21-38:19 (discussion of legal and policy reasons to require Cellco to apply for ETC designation).

This passage should be stricken as irrelevant and immaterial because it is based on the incorrect assumption that the Petition in this proceeding seeks a "transfer" of ETC designation. As is clear from the issue as stated in the Commission's Procedural Orders, there is no "transfer" at issue here.

15. 44:6-45:8 (concluding remarks and recommendation to declare that the RCC and WWC ETC designations expired; seeking reversal of South Dakota CETC funding contrary to FCC decisions; and seeking to have USAC refund past payments of CETC support).

This passage should be stricken for the same reasons as item 1, *supra*.

#### **IV. CONCLUSION**

The Bluhm testimony improperly addresses issues that are beyond the identified scope of this proceeding, and are thus irrelevant. Even worse, James Valley Wireless, through Bluhm's testimony, improperly seeks affirmative relief that is contrary to the Commission's rules and is outside the scope of the Commission's authority. Accordingly, the identified passages of the Bluhm testimony should be stricken before hearing.

Dated: April 12<sup>th</sup>, 2011

Respectfully submitted,

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By \_\_\_\_\_

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## CERTIFICATE OF SERVICE

The undersigned certifies that on the 12<sup>th</sup> day of April, 2011, I served a true and correct copy of Cellco's Brief in Support of Motion to Strike Testimony of Witness Peter Bluhm in the above-entitled matter, via electronic mail to:

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