

Conley E. Ward [ISB No. 1683]
GIVENS PURSLEY LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720
Telephone No. (208) 388-1219
Fax No. (208) 388-1300
Attorneys for Idaho Telephone Association

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Morgan W. Richards [ISB No. 1913]
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
101 S. Capitol Boulevard, 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Telephone No. (208) 345-2000
Fax No. (208) 385-5384
Attorneys for Citizens Telecommunications
Company of Idaho

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
IAT COMMUNICATIONS, INC., d/b/a
NTCHIDAHO, INC. OR CLEAR TALK, FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER.

Case No. GNR-T-03-08

IN THE MATTER OF THE APPLICATION
OF NPCR, INC., d/b/a NEXTEL PARTNERS,
SEEKING DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER.

Case No. GNR-T-03-16

**JOINT MOTION TO TAKE
OFFICIAL NOTICE**

The Idaho Telephone Association (“ITA”) and Citizens Telecommunications Company of Idaho (“Citizens”) request that the Commission take official notice of the attached Memorandum Opinion and Order issued by the Federal Communications Commission (“FCC”) in Docket No. 96-45, and in support thereof state as follows:

ORIGINAL

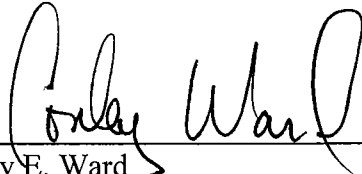
1. Rule 263.01(a)(2) of the Commission's Rules of Procedure provides that the Commission may take official notice of the orders of "any other regulatory agency, state or federal."
2. Evidentiary hearings in this matter concluded on December 11, 2003, and the parties' Briefs were submitted on January 23, 2004. The FCC did not release its Order until January 22, 2004, too late to be included in the parties' briefs.
3. The FCC Order is relevant to the Commission's deliberations because it announces a new legal "framework" for the analysis and consideration of ETC petitions.
4. No party will be prejudiced by the granting of this Motion.

WHEREFORE, ITA and Citizens respectfully request that the Commission enter its order:

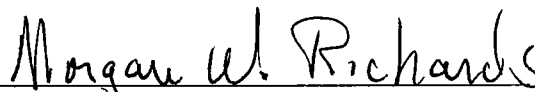
1. Taking official notice of the FCC Order; and
2. Directing that the FCC Order be marked as an exhibit and included in the record as a late-file exhibit.

Oral argument is not requested on this Motion.

RESPECTFULLY SUBMITTED this 30th day of January 2004.



Conley E. Ward
GIVENS PURSLEY LLP
Attorneys for Idaho Telephone Association



Morgan W. Richards
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS
Attorneys for Citizens Telecommunications of Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jean Jewell
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Molly O'Leary
RICHARDSON & O'LEARY
99 E. State Street, Ste. 200
Eagle, ID 83616

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Sean P. Farrell
IAT Communications, Inc.
NTCH-Idaho Inc., d/b/a Clear Talk
703 Pier Avenue, Suite B
PMB 813
Hermosa Beach, CA 90254

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Dean J. Miller
MCDEVITT & MILLER
420 W. Bannock Street
P.O. Box 2564
Boise, ID 83701-2564

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Philip R. Schenkenberg
2200 First National Bank Building
332 Minnesota Street
Saint Paul, MN 55101

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Morgan W. Richards
Moffatt, Thomas, Barrett, Rock & Fields
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Lance A. Tade, Manager
State Government Affairs
Citizens Telecommunications Company of Idaho
4 Triad Center, Ste. 200
Salt Lake City, UT 84180

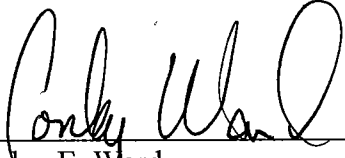
U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Robert M. Nielsen
548 E Street
P.O. Box 706
Rupert, ID 83350

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Charles H. Creason, Jr.
President and General Manager
Project Mutual Telephone Cooperative Association
507 G Street
P.O. Box 366
Rupert, ID 83350

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



Conley E. Ward

ATTACHMENT

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service) CC Docket No. 96-45
)
Virginia Cellular, LLC)
Petition for Designation as an)
Eligible Telecommunications Carrier)
In the Commonwealth of Virginia)

MEMORANDUM OPINION AND ORDER

Adopted: December 31, 2003

Released: January 22, 2004

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, and Adelstein issuing separate statements; Commissioner Martin dissenting and issuing a separate statement.

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APPENDIX A -- VIRGINIA NON-RURAL WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR’S ETC SERVICE AREA

APPENDIX B -- VIRGINIA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN VIRGINIA CELLULAR’S ETC SERVICE AREA

APPENDIX C -- VIRGINIA RURAL TELEPHONE COMPANY WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR’S ETC SERVICE AREA

I. INTRODUCTION

1. In this Order, we grant in part and deny in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Virginia Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. We find that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest.³ We also find that the designation of Virginia Cellular as an ETC in areas served by five of the six rural telephone companies serves the public interest and furthers the goals of universal service. As explained below, with regard to the study area of NTELOS, we do not find that ETC designation would be in the public interest.

2. Because Virginia Cellular is licensed to serve only part of the study area of three of six incumbent rural telephone companies affected by this designation, Virginia Cellular has requested that the Commission redefine the service area of each of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act.⁴ We agree to the service area redefinition proposed by Virginia Cellular for the service areas of Shenandoah and MGW, subject to the agreement of the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements.⁵ We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.⁶

¹ Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, filed April 26, 2002 (Virginia Cellular Petition).

² 47 U.S.C. § 214(e)(1).

³ Virginia Cellular requests ETC designation in the study areas of the following non-rural telephone companies: Bell Atlantic and GTE South, Inc. (GTE). Virginia Cellular requests ETC designation in the study areas of the following rural telephone companies: Shenandoah Telephone Company (Shenandoah), NTELOS Telephone Inc. (NTELOS, formerly Clifton Forge-Waynesboro Telephone Company), MGW Telephone Company (MGW, formerly Mountain Grove-Williamsville Telephone Company), New Hope Telephone Company (New Hope), North River Telephone Cooperative (North River), and Highland Telephone Cooperative (Highland). We note that although the Virginia Cellular Petition requested ETC designation for the study area served by Central Telephone Company of Virginia, Virginia Cellular subsequently withdrew its request for ETC designation in Central Telephone's study area. See Supplement to Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, filed April 17, 2003 at 1 (Virginia Cellular April 17, 2003 Supplement).

⁴ Virginia Cellular asked the Commission to redefine the service areas of Shenandoah, NTELOS, and MGW. See Virginia Cellular Petition at 11-12 and Virginia Cellular Reply Comments at 7. See also Virginia Cellular Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed October 21, 2002, at 2 (Virginia Cellular Amendment).

⁵ As discussed below, at this time, we do not designate Virginia Cellular as an ETC in the study area of NTELOS. See *infra* paras. 35, 39. Accordingly, we do not find it necessary to redefine the service area of NTELOS.

⁶ If the Virginia Commission does not agree to our redefinition of the affected rural service areas, we will reexamine our decision with regard to redefining these rural service areas.

Because we do not designate Virginia Cellular as an ETC in NTELOS' study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) the Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs.⁷ Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas.⁸ The outcome of that proceeding could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive universal service support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission. We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding.⁹ These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

II. BACKGROUND

A. The Act

5. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."¹⁰ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Process*, CC Docket 96-45, 18 FCC Rcd 1941, Public Notice (rel. Feb. 7, 2003) (*Portability Public Notice*).

⁸ See generally, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, United States Telecom Association's Comments, filed May 5, 2003; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Verizon's Comments, filed May 5, 2003.

⁹ See *infra* para. 46.

¹⁰ 47 U.S.C. § 254(e).

and advertise the services supported by the federal universal service mechanisms throughout the designated service area.¹¹

6. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.¹² Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹³ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other areas, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁴ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹⁵

B. Commission Requirements for ETC Designation and Redefining the Service Area

7. Filing Requirements for ETC Designation. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹⁶

¹¹ 47 U.S.C. § 214(e)(1).

¹² 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

¹³ 47 U.S.C. § 214(e)(6). See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, Memorandum Opinion and Order, 17 FCC Rcd 21435 (Wireline Comp. Bur. 2002). We note that the Wireline Competition Bureau has delegated authority to perform ETC designations. See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

¹⁴ 47 U.S.C. § 214(e)(6).

¹⁵ *Id.*

¹⁶ *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49. See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities*

8. Twelfth Report and Order. On June 30, 2002, the Commission released the *Twelfth Report and Order* which, among other things, sets forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁷ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.¹⁸ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.”¹⁹ The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”²⁰

9. Redefining a Service Area. Under section 214(e)(5) of the Act, “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”²¹ Section 54.207(d) of the Commission’s rules permits the Commission to initiate a proceeding to consider a definition of a service area that is different from a rural telephone company’s study area as long as it seeks agreement on the new definition with the applicable state commission.²² Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.²³ In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Federal-State Joint Board on Universal Service (Joint Board).²⁴ When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for “cream skimming” is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area; (2) the Telecommunications Act of 1996 (1996 Act), in many respects, places rural telephone

Commission, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

¹⁷ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁸ *Id.* at 12255, para. 93.

¹⁹ *Id.* at 12264, para. 113.

²⁰ *Id.*

²¹ 47 U.S.C. § 214(e)(5).

²² See 47 C.F.R. § 54.207(d). Any proposed definition will not take effect until both the Commission and the state commission agree upon the new definition. See 47 C.F.R. § 54.207(d)(2).

²³ See 47 C.F.R. § 54.207(d)(1).

²⁴ See *id.* We note that the Wireline Competition Bureau has delegated authority to redefine service areas. 47 C.F.R. § 54.207(e).

companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than a study area level.²⁵

C. Virginia Cellular's Petition

10. On April 26, 2002, Virginia Cellular filed with this Commission a petition, pursuant to section 214(e)(6), seeking designation as an ETC throughout its licensed service area in the Commonwealth of Virginia.²⁶ In its petition, Virginia Cellular contends that the Virginia Commission issued an "affirmative statement" that the Virginia Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Virginia Cellular asks the Commission to exercise jurisdiction and designate Virginia Cellular as an ETC pursuant to section 214(e)(6).²⁷ Virginia Cellular also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating Virginia Cellular as an ETC serves the public interest.²⁸

11. Virginia Cellular also requests the Commission to redefine the service areas of three rural telephone companies, Shenandoah, NTELOS, and MGW, because it is not permitted under its current license to provide facilities-based service to the entire study area of each of these companies.²⁹ Virginia Cellular states that as a wireless carrier, it is restricted to providing facilities-based service only in those areas where it is licensed by the Commission.³⁰ It adds that it is not picking and choosing the "lowest cost exchanges" of the affected rural telephone companies, but instead is basing its requested ETC area solely on its licensed service area and proposes to serve the entirety of that area.³¹ Virginia Cellular contends that the proposed redefinition of the rural telephone companies' service areas is consistent with the recommendations regarding rural telephone company study areas set forth by the Joint Board in its *Recommended Decision*.³²

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*).

²⁶ See generally, Virginia Cellular Petition. On May 15, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Virginia Cellular Petition. See *Wireline Competition Bureau Seeks Comment on Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No 96-45, Public Notice, 17 FCC Rcd 8778 (Wireline Comp. Bur. 2002); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of Virginia Rural Telephone Companies, filed June 11, 2002 (Virginia Rural Telephone Companies Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Reply Comments of the National Telecommunications Cooperative Association, filed June 17, 2002 (NTCA Comments).

²⁷ Virginia Cellular Petition at 3-4.

²⁸ *Id.* at 1-2, 4-9, 14-17.

²⁹ *Id.* at 10-14. See Supplement to Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed October 11, 2002 at 1-2 (Virginia Cellular October 11 Supplement) and Virginia Cellular Amendment at 2.

³⁰ Virginia Cellular Petition at 13.

³¹ *Id.*

³² *Id.* at 12-14. See also 47 U.S.C. § 214(e)(5).

III. DISCUSSION

12. After careful review of the record before us, we find that Virginia Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for portions of its licensed service area. First, we find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Virginia Cellular's petition under section 214(e)(6). Second, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC in accordance with section 214(e)(1). In addition, we find that the designation of Virginia Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by providing greater mobility and a choice of service providers to consumers in high-cost and rural areas of Virginia. Pursuant to our authority under section 214(e)(6), we therefore designate Virginia Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia, as set forth below. As explained below, however, we do not designate Virginia Cellular as an ETC in the study area of NTELOS.³³ In areas where Virginia Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Virginia Cellular's ETC designation shall be subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Virginia Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future.³⁴ This Order is not intended to prejudge the outcome of that proceeding. We also note that Virginia Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.³⁵

A. Commission Authority to Perform the ETC Designation

13. We find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider Virginia Cellular's petition under section 214(e)(6) of the Act. Specifically, Virginia Cellular states that it submitted an application for designation as an ETC with the Virginia Commission, and on April 9, 2002, the Virginia Commission issued an order stating that it had not asserted jurisdiction over CMRS carriers.³⁶ In its order, the Virginia Commission directed Virginia Cellular to file for ETC designation with the FCC.³⁷ Based on this statement by the Virginia Commission, we find that the Virginia Commission lacks jurisdiction to designate Virginia Cellular as an ETC and that this Commission has authority to perform the requested

³³ See *infra* paras. 35, 39.

³⁴ See *Portability Public Notice*, 18 FCC Rcd at 1941.

³⁵ See *Declaratory Ruling*, 15 FCC Rcd at 15173; see also 47 U.S.C. § 214(e)(4).

³⁶ See Virginia Cellular Petition at 3-4 and Exhibit A.

³⁷ *Id.*

ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).³⁸

B. Offering and Advertising the Supported Services

14. Offering the Services Designated for Support. We find that Virginia Cellular has demonstrated through the required certifications and related filings, that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service support mechanism. As noted in its petition, Virginia Cellular is an “A-Band” cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland, as well as the cities of Harrisonburg, Staunton, and Waynesboro.³⁹ Virginia Cellular states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission’s rules throughout its cellular service area in Virginia.⁴⁰ Virginia Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.⁴¹ Virginia Cellular also complies with applicable law and Commission directives on providing access to emergency services.⁴² In addition, although the Commission has not set a minimum local usage requirement, Virginia Cellular certifies it will comply with “any and all minimum local usage requirements adopted by the FCC” and it intends to offer a number of local calling plans as part of its universal service offering.⁴³ As discussed below, Virginia Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under sections 54.313 and 54.314 of the Commission’s rules.⁴⁴

15. Virginia Cellular has also made specific commitments to provide service to requesting customers in the service areas that it is designated as an ETC. Virginia Cellular states that if a request is made by a potential customer within its existing network, Virginia Cellular will provide service immediately using its standard customer equipment.⁴⁵ In instances where a request comes from a potential customer within Virginia Cellular’s licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) the requesting customer’s equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier’s facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to

³⁸ 47 U.S.C. § 214(e)(6).

³⁹ Virginia Cellular Petition at 1.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 4-8 and Exhibit B.

⁴² *See* 47 C.F.R. § 54.101(a)(5); Virginia Cellular Petition at 7.

⁴³ *Id.* at 5-6 and Exhibit B.

⁴⁴ *See infra* para 46; Virginia Cellular November 12 Supplement at 4.

⁴⁵ *Id.* at 3.

provide service.⁴⁶ In addition, if after following these steps, Virginia Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.⁴⁷

16. Virginia Cellular has further committed to use universal service support to further improve its universal service offering by constructing several new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage.⁴⁸ Virginia Cellular estimates that it will construct 11 cell sites over the first year and a half following ETC designation.⁴⁹ These 11 cell sites will serve a population of 157,060.⁵⁰ Virginia Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.⁵¹

17. The Virginia Rural Telephone Companies raise several concerns about Virginia Cellular's service offerings. We address each of these concerns below, and in so doing, we conclude that Virginia Cellular has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. Initially, we note that the Commission has held that to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.⁵² Instead, "a new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service."⁵³

18. We also reject the argument of the Virginia Rural Telephone Companies that Virginia Cellular does not offer all of the services supported by the federal universal service support mechanisms as required by section 214(e)(1)(A).⁵⁴ Specifically, the Virginia Rural Telephone Companies claim that Virginia Cellular: (1) has not yet upgraded from analog to digital and until

⁴⁶ *Id.* at 3-4.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 4-5.

⁴⁹ *Id.* at 4-5 and Attachment. For purposes of this analysis, we exclude Virginia Cellular's proposed cell site in Crimora, Augusta County, Virginia, which would be located in the study area of NTELOS. As discussed above, we deny Virginia Cellular's request for ETC designation in the NTELOS study area.

⁵⁰ *Id.* Virginia Cellular estimates the populations covered by these cell sites as follows: Hinton (population of 65,027), North Harrisonburg (population of 52,750), Churchville (population of 5,865), Spottswood (population of 7,114), Central Nelson (population of 9,354), Middlebrook (population of 4,749), Bergton (population of 2,987), Afton (population of 7,064), McDowell (population of 731), Mustoe (population of 1,094), and West Augusta (population of 325). *Id.* at 5 and Attachment.

⁵¹ *Id.* at 5.

⁵² See *Declaratory Ruling*, 15 FCC Rcd at 15173-74, paras. 12-14. In the *Declaratory Ruling*, the Commission stated that "a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support." *Id.* at 15173, para. 13.

⁵³ *Id.* at 15178, para. 24.

⁵⁴ See Virginia Rural Telephone Companies Comments at 4-6.

this happens, Virginia Cellular cannot effectively implement E-911 or the Communications Assistance for Law Enforcement Act (CALEA); (2) offers no local usage; (3) has stated that its customers will not have equal access to interexchange carriers; (4) states only that it will participate "as required" with respect to Lifeline service; and (5) has wireless signals that are sporadic or unavailable in some of the mountainous regions that Virginia Cellular proposes to serve.⁵⁵

19. We find that Virginia Cellular's commitment to provide access to emergency services is sufficient. Virginia Cellular states that it is in compliance with state and federal 911 and E-911 mandates and is upgrading from analog to digital technology.⁵⁶ Virginia Cellular states that it is implementing Phase I E-911 services in those areas where local governments have developed E-911 functionality and that upon designation as an ETC, it will be able to effectively implement E-911.⁵⁷

20. We find sufficient Virginia Cellular's showing that it will offer minimum local usage as part of its universal service offering. Therefore, we reject the Virginia Rural Telephone Companies' claim that Virginia Cellular should be denied ETC designation because it does not currently offer any local usage.⁵⁸ Although the Commission did not set a minimum local usage requirement, in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services.⁵⁹ Virginia Cellular states that it will comply with any and all minimum local usage requirements adopted by the FCC.⁶⁰ It adds that it will meet the local usage requirements by including a variety of local usage plans as part of a universal service offering.⁶¹ In addition, Virginia Cellular states that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes.⁶² Accordingly, we find that Virginia Cellular's commitment to provide local usage is sufficient.

21. We reject the Virginia Rural Telephone Companies' claim that ETC designation should be denied because Virginia Cellular's customers will not have equal access to

⁵⁵ *Id.* at 5-6.

⁵⁶ See Supplement to Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia, filed October 3, 2002 at 3-4 (Virginia Cellular October 3 Supplement); Virginia Cellular October 11 Supplement at 3.

⁵⁷ See Virginia Cellular Reply Comments at 3.

⁵⁸ Virginia Rural Telephone Companies Comments at 5.

⁵⁹ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service Order*) (subseq. history omitted). Although the Commission's rules define "local usage" as "an amount of minutes of use of wire center service, prescribed by the Commission, provided free of charge to end users," the Commission has not specified a number of minutes of use. See 47 C.F.R. § 54.101(a)(2). See also *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 02J-1 (rel. Jul. 10, 2002) (*Supported Services Recommended Decision*).

⁶⁰ Virginia Cellular Petition at 5-6.

⁶¹ *Id.* at 6.

⁶² Virginia Cellular Reply Comments at 4.

interexchange carriers.⁶³ Section 54.101(a)(7) of the rules states that one of the supported services is access to interexchange services, not equal access to those services.⁶⁴ Virginia Cellular states that it provides access to interexchange services.⁶⁵ Accordingly, we find sufficient Virginia Cellular's showing that it will offer access to interexchange services.

22. We find that Virginia Cellular's commitment to participate in the Lifeline and Linkup programs is sufficient. In its petition, Virginia Cellular states that it currently has no Lifeline customers, and upon designation as an ETC, it will participate in Lifeline as required.⁶⁶ Virginia Cellular also states that it will advertise the availability of Lifeline service to its customers.⁶⁷ Although Virginia Cellular does not currently advertise Lifeline to its customers, we note that the advertising rules for Lifeline and Linkup services apply only to already-designated ETCs.⁶⁸ Thus, we find sufficient Virginia Cellular's commitment to participate in Lifeline and Linkup.

23. Although the Virginia Rural Telephone Companies claim that Virginia Cellular's wireless signals are sporadic in certain areas, we find that the existence of so-called "dead spots" in Virginia Cellular's network does not preclude us from designating Virginia Cellular as an ETC. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.⁶⁹ Moreover, as stated above, Virginia Cellular has committed to improve its network.⁷⁰ In addition, the Commission's rules acknowledge the existence of dead spots.⁷¹ "Dead spots" are defined as "[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service."⁷² Section 22.99 of the Commission's rules states that "[s]ervice within dead spots is presumed."⁷³ Additionally, the Commission's rules provide that "cellular service is considered to be provided in all areas, including dead spots"⁷⁴ Because "dead spots" are acknowledged by the Commission's rules, we are not persuaded by the Virginia Rural LECs that the possibility of

⁶³ Virginia Rural Telephone Companies Comments at 5.

⁶⁴ 47 C.F.R. §54.101(a)(7). We note that in July 2002, four members of the Joint Board recommended adding equal access as a supported service. See *Supported Services Recommended Decision*, at paras. 75-86. In July 2003, the Commission decided to defer consideration of this issue pending resolution of the Commission's proceeding examining the rules relating to high-cost universal service support in competitive areas. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, 18 FCC Rcd 15,090, 15,104, para. 33 (2003).

⁶⁵ Virginia Cellular Reply Comments at 4-5.

⁶⁶ Virginia Cellular Petition at 8.

⁶⁷ Virginia Cellular Reply Comments at 5.

⁶⁸ See *Twelfth Report and Order*, 15 FCC Rcd at 12249-50, para. 76-80.

⁶⁹ See *Declaratory Ruling*, 15 FCC Rcd at 15175, para. 17.

⁷⁰ See *supra* para. 16; Virginia Cellular Petition at 2, 17 and Virginia Cellular October 3 Supplement at 2, Virginia Cellular November 12 Supplement at 4-5 and Attachment.

⁷¹ See 47 C.F.R. § 22.99.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See 47 C.F.R. § 22.911(b).

