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IDAHO PUBLIC
UTILITIES COMMISSION

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.

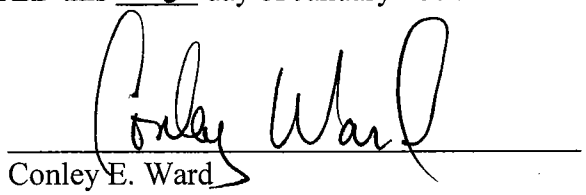
WHEREFORE, ITA and Citizens respectfully request that the Commission enter its order:

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.



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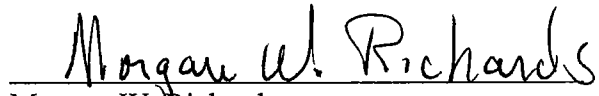

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CERTIFICATE OF SERVICE

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:

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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.

Para.

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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]

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[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]

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[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

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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]

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[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

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[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

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[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).

dead spots demonstrates that Virginia Cellular is not willing or capable of providing acceptable levels of service throughout its service area.

24. Offering the Supported Services Using a Carrier's Own Facilities. Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.[75] Virginia Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers."[76] We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

25. Advertising the Supported Services. We conclude that Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.[77] Virginia Cellular certifies that it "will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission."[78] In addition, Virginia Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Virginia Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Virginia Cellular's service offerings and learn about Lifeline and Linkup discounts.[79] Virginia Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service.[80] We find that Virginia Cellular's certification and its additional commitments to advertising its service offerings satisfy section 214(e)(1)(B). In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.[81]

C. Public Interest Analysis

26. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies Bell Atlantic and GTE South, Inc. We also conclude that it is in the public interest to designate Virginia Cellular as an ETC in Virginia in the study areas served by five of the six affected rural telephone companies. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Virginia Cellular has satisfied the burden of proof in establishing

[75] 47 U.S.C. § 214(e)(1)(A).

[76] Virginia Cellular Petition at 9.

[77] 47 U.S.C. § 214(e)(1)(B).

[78] Virginia Cellular Petition at 9.

[79] Virginia Cellular November 12 Supplement at 5.

[80] *Id.*

[81] *See Pine Ridge Order,* 16 FCC Rcd at 18137, para. 10.

that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Virginia Cellular as an ETC, however, for the study area of NTELOS because we find that Virginia Cellular has not satisfied its burden of proof in this instance.[82]

27. Non-Rural Study Areas. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies of Bell Atlantic and GTE South.[83] We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act.[84] We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Virginia Cellular's public interest showing here is sufficient based on the detailed commitments Virginia Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.[85] We also note that no parties oppose Virginia Cellular's request for ETC designation in the study areas of these non-rural telephone companies. We therefore conclude that Virginia Cellular has demonstrated that its designation as an ETC in the study areas of these non-rural telephone companies, is consistent with the public interest, as required by section 214(e)(6).[86] We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas under section 214(e) of the Act.[87] The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

28. Rural Study Areas. Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any

[82] *See infra* para. 35.

[83] *See* 47 U.S.C. § 214(e)(6). *See also* Appendix A.

[84] *See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

[85] *See* Virginia Cellular November 12 Supplement at 4-5, Attachment; *infra* para. 28.

[86] *See* 47 U.S.C. § 214(e)(6).

[87] *See Portability Public Notice*, 18 FCC Rcd at 1954-55, para. 33.

commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

29. Virginia Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Virginia Cellular has committed to serve residences to the extent that they do not have access to the public switched network through the incumbent telephone company.[88] Also, the mobility of Virginia Cellular's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.[89] Virginia Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Virginia Cellular's customers will be subject to fewer toll charges.[90]

30. We acknowledge arguments made in the record that wireless telecommunications offerings may be subject to dropped calls and poor coverage.[91] Parties also have noted that wireless carriers often are not subject to mandatory service quality standards.[92] Virginia Cellular has committed to mitigate these concerns. Virginia Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage.[93] As evidence of its commitment to high service quality, Virginia Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service.[94] In addition, Virginia Cellular has committed to provide

[88] Virginia Cellular November 12 Supplement at 3-4. According to Virginia Cellular, 11 out of 12 of its proposed cell sites contain some area that is unserved by Virginia Cellular's facilities and/or wireline networks. *See id. at 3; but see* Virginia Rural Telephone Companies Comments at 3 (stating that there is an incumbent ETC in all the areas where Virginia Cellular seeks ETC designation).

[89] Virginia Cellular Petition at 16 (*citing Smith Bagley, Inc.*, Order, Decision No. 63269, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2001) (finding that competitive entry provides a potential solution to "health and safety risks associated with geographic isolation"). *See also Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

[90] *See* Virginia Cellular Petition at 17; Virginia Cellular April 3 Supplement at 1-2.

[91] *See e.g.*, Virginia Rural Telephone Companies Comments at 6; 12 Va. Admin. Code § 5-400-80.

[92] *See* Virginia Rural Telephone Companies Comments at 6; 12 Va. Admin. Code § 5-400-80.

[93] *See* Virginia Cellular November 12 Supplement at 1.

[94] *Id.*; *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising;

the Commission with the number of consumer complaints per 1,000 handsets on an annual basis.[95] Therefore, we find that Virginia Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

31. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs.[96] Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs is growing at a dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately $2 million or 0.4 percent of high-cost support.[97] In the fourth quarter of 2003, 112 competitive ETCs are projected to receive approximately $32 million or 3.7 percent of high-cost support.[98] This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, commenters argue that designation of competitive ETCs will place significant burdens on the federal universal service fund without any corresponding benefits.[99] We recognize these commenters raise important issues regarding universal service support. As discussed above, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.[100] We note that the outcome of the Commission's pending proceeding examining the rules relating to

(6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. *See id.*

[95] *See infra* para. 46 (requesting that Virginia Cellular provide consumer complaint data on October 1 of each year).

[96] For example, assuming, that Virginia Cellular captures each and every customer located in the five affected rural study areas, the overall size of the high-cost support mechanisms would not significantly increase because the total amount of high-cost universal service support available to incumbent carriers in the rural study areas where we grant Virginia Cellular ETC designation is only approximately 0.105% percent of the total high-cost support available to all ETCs. *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003, Appendix HC 1 (Universal Service Administrative Company, August 1, 2003) (determining that the total amount of high-cost universal service support available to incumbent carriers in the affected rural study areas is projected to be $899,706 out of a total of $857,903,276 in the fourth quarter of 2003). We note, however, in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive. We hope that the Joint Board will speak to this issue in the proceeding addressing rules relating to high-cost support in competitive areas.

[97] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2001 (Universal Service Administrative Company, Jan. 31, 2002).

[98] Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003 (Universal Service Administrative Company, Aug. 1, 2003). At the same time, we recognize that high-cost support to incumbent ETCs has grown significantly in real and percentage terms over the same period. *See generally, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Cellular Telecommunications Industry Association's Comments, filed May 5, 2003.

[99] *See* Virginia Rural Telephone Companies Comments at 2-4; NTCA Comments at 2-4, 8-9.

[100] *See Portability Public Notice.*

high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

32. Additionally, we conclude that, for most of the rural areas in which Virginia Cellular seeks ETC designation, such designation does not raise the rural creamskimming and related concerns alleged by commenters.[101] Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.[102] In this case, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, Virginia Cellular will be unable to provide facilities-based service to the entirety of the study areas of three of the six affected rural telephone companies - Shenandoah, MGW, and NTELOS. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner intends to creamskim in the rural study area.[103] In this case, however, Virginia Cellular commits to provide universal service throughout its licensed service area.[104] It therefore does not appear that Virginia Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

33. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier's license covers.[105] Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.

34. We have analyzed the record before us in this matter and find that, for the study areas of Shenandoah and MGW, Virginia Cellular's designation as an ETC is unlikely to undercut the incumbents' ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers reveals that, for the study areas of MGW and Shenandoah, Virginia Cellular will not be serving only low-cost areas to the exclusion of high-cost areas.[106] Although

[101] *See* NTCA Comments at 5-6; *see also* Virginia Rural Telephone Companies Comments at 11.

[102] *See 1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172. "Creamskimming" refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. *See, e.g., Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

[103] *See 1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172 (stating that potential creamskimming is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company's study area).

[104] *See* Virginia Cellular Petition at 2, 13.

[105] *See* NTCA Comments at 5.

[106] The Virginia Rural Telephone Companies express concerns about use of the term "wire center" versus "exchange" as the relevant area designated for support. *See* Virginia Rural Telephone Companies November 8, 2002 *ex parte* (stating that, in Virginia, the defined area for regulatory purposes is "exchange"). Virginia Cellular responded that the rural ILEC exchanges in Virginia contain a single wire center and therefore use of the term "wire center" is synonymous with "exchange." *See* Virginia Cellular November 20 Supplement at 2. The Virginia Rural Telephone Companies also state "generally, in rural companies there is one wire center per exchange." *See* Virginia Rural Telephone Companies November 8 *ex parte*. We note that the Commission has historically viewed high cost

there are other factors that define high-cost areas, a low population density typically indicates a high-cost area.[107] Our analysis of population density reveals that Virginia Cellular is serving not only the lower cost, higher density wire centers in the study areas of MGW and Shenandoah.[108] The population density for the Shenandoah wire center for which Virginia Cellular seeks ETC designation is approximately 4.64 persons per square mile and the average population density for Shenandoah's remaining wire centers is approximately 53.62 persons per square mile.[109] The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile.[110]

35. We conclude, however, for the following reasons, that it would not be in the public interest to designate Virginia Cellular as an ETC in the study area of NTELOS. Virginia Cellular's licensed CMRS area covers only the Waynesboro wire center in NTELOS' study area. Based on our examination of the population densities of the wire centers in NTELOS' study area, we find that Waynesboro is the lowest-cost, highest-density wire center in the study area of NTELOS, and that there is a great disparity in density between the Waynesboro wire center and the NTELOS wire centers outside Virginia Cellular's service area. The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS' study area is approximately 33

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support in terms of wire centers. *See, e.g.,* 47 U.S.C. § 54.309. Thus, consistent with our rules, hereinafter in this order, we will discuss support in terms of wire centers.

[107] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, para. 28 (2001) (*MAG Order*), *recon. pending* (discussing Rural Task Force White Paper 2 at <http://www.wutc.wa.gov/rtf>) (stating that "[r]ural carriers generally serve more sparsely populated areas and fewer large, high-volume subscribers than non-rural carriers" and that "[t]he isolation of rural carrier service areas creates numerous operational challenges, including high loop costs, high transportation costs for personnel, equipment, and supplies, and the need to invest more resources to protect network reliability").

[108] *See* Virginia Cellular October 29 Supplement. We note that the Virginia Rural Telephone Companies object to accuracy of the population density data submitted by Virginia Cellular. Rather than submitting different population density data, however, the Virginia Rural Telephone Companies submitted line count data. *See* Virginia Rural Telephone Companies November 8 *ex parte*. Virginia Cellular's response is that it calculated population density using the software program Exchange Plus by MapInfo, which allows a user to "simultaneously query an ILEC's exchange and the Census Bureau population database." *See* Virginia Cellular November 20 Supplement. Virginia Cellular asserts that this software is commonly used in the telecommunications industry and yields accurate data. *Id.* Our review of the line count data submitted by the Virginia Rural Telephone Companies reveals that Virginia Cellular will be serving many of the high-cost, low-density wire centers in the study areas of MGW and Shenandoah. Accordingly, this line count analysis is consistent with the population density analysis that was based on data submitted by Virginia Cellular.

[109] *See* Virginia Cellular October 29 Supplement.

[110] *See id.* Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise creamskimming concerns. We also note that there is very little disparity between the population densities of the wire centers in the MGW study area.

persons per square mile.[111] Universal service support is calculated on a study-area-wide basis. Although NTELOS did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower-cost area,[112] we find on the facts here that designating Virginia Cellular as an ETC only for the Waynesboro wire center could potentially significantly undermine NTELOS' ability to serve its entire study area. The widely disparate population densities in NTELOS' study area and the status of Waynesboro as NTELOS' sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage. In addition, we believe that, if NTELOS had disaggregated, the low costs of service in the Waynesboro wire center would have resulted in little or no universal service support targeted to those lines.[113] Therefore, our decision not to designate Virginia Cellular as an ETC in the study area of NTELOS is unlikely to impact consumers in the Waynesboro wire center because Virginia Cellular will make a business decision on whether to provide service in that area without regard to the potential receipt of universal service support.

D. Designated Service Area

36. Virginia Cellular is designated an ETC in the areas served by the non-rural carriers Bell Atlantic and GTE South, as listed in Appendix A.[114] We designate Virginia Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 6 Rural Service Area. Virginia Cellular is designated an ETC in the areas served by the three rural telephone companies whose study areas Virginia Cellular is able to serve completely, as listed in Appendix B.[115] As discussed below, and subject to the Virginia Commission's agreement on redefining the

[111] *See id.*

[112] In the *RTF Order*, the Commission provided incumbent LECs with certain options for disaggregating their study areas, determining that universal service support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area. Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service. There are fewer issues regarding inequitable universal service support and potential harm to concerns regarding the incumbent's ability to serve its entire study area when there is in place a disaggregation plan in which the per-line support available to a competitive ETC in the wire centers located in "low-cost" zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the "high-cost" zones. *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11302, para. 145 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), *recon. pending.* Although the deadline (May 15, 2002) for carriers to file disaggregation plans has passed, the relevant state commission or appropriate regulatory authority may nonetheless require a carrier to disaggregate, either on its own motion or that of an interested party. *See* USAC's website, http://www.universalservice.org/hc/disaggregation; *see also RTF Order*, 16 FCC Rcd at 11303, para. 147.

[113] Section 54.315(d)(2)(ii) of the Commission's rules requires self-certified disaggregation plans to "be reasonably related to the cost of providing service for each disaggregation zone within each disaggregated category of support." 47 C.F.R. § 54.315(d)(2)(ii).

[114] *See* Virginia Cellular Petition at 10 and Exhibit D. We note that, when designating a service area served by a non-rural carrier, the Commission may designate a service area that is smaller than the contours of the incumbent carrier's study area. *See Universal Service Order*, 12 FCC Rcd at 8879-90, paras. 184-85.

[115] *See* Virginia Cellular Petition at 10-11 and Exhibit E.

service areas of MGW and Shenandoah, we also designate Virginia Cellular as an ETC for the entire Bergton, McDowell, Williamsville, and Deerfield wire centers.

37. We designate Virginia Cellular as an ETC in the entire Deerfield, McDowell, and Williamsville wire centers in the study area of MGW.[116] We note that, although the boundaries of its CMRS licensed service area in Virginia exclude a small part of MGW's Williamsville wire center, Virginia Cellular has committed nevertheless to offer service to customers in the entirety of the Williamsville wire center through a combination of its own facilities and resale of either wireless or wireline services.[117]

38. We also designate Virginia Cellular as an ETC for the Bergton wire center in Shenandoah's study area. We note that the study area of Shenandoah is composed of two non-contiguous areas. One such area is composed solely of the Bergton wire center, which falls within Virginia Cellular's licensed service area, and the other area is composed of eight remaining wire centers, which fall outside of Virginia Cellular's licensed service area.[118] We find that, because the Bergton wire center is a low-density, high-cost wire center, concerns about undermining Shenandoah's ability to serve the entire study area are substantially minimized. We further note that the Commission has previously expressed concern about requiring competitive ETCs to serve non-contiguous areas. In the *Universal Service Order,* the Commission concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers.[119] The Commission further concluded that "imposing additional burdens on wireless entrants would be particularly harmful in rural areas...."[120] Accordingly, we find that denying Virginia Cellular ETC status for Shenandoah's Bergton wire center simply because Virginia Cellular is not licensed to serve the eight remaining wire centers would be inappropriate. Thus, we conclude that it is appropriate to designate Virginia Cellular as an ETC for the Bergton wire center within Shenandoah's study area.

39. Finally, for the reasons described above, we do not designate Virginia Cellular as an ETC in any portion of NTELOS' service area.[121]

E. Redefining Rural Telephone Company Service Areas

40. We redefine the service areas of MGW and Shenandoah pursuant to section 214(e)(5). Consistent with prior rural service area redefinitions, we redefine each wire center in

[116] MGW's study area consists of the Deerfield, McDowell, Williamsville, Mountain Grove, and McClung wire centers. Virginia Cellular is licensed to completely serve the Deerfield and McDowell wire centers and to partially serve the Williamsville wire center. *See* Virginia Cellular Amendment at 2.

[117] *See* Appendix C. Virginia Cellular's wireless license covers all but approximately 200 people in 13.5 square miles of the Williamsville wire center. *See* Virginia Cellular October 11 Supplement at 2; Virginia Cellular April 17 Supplement at 2.

[118] The other wire centers within Shenandoah's study area are: Bayse, Edinburg, Fort Valley, Mount Jackson, New Market, Strasburg, Toms Brook, and Woodstock, all in Virginia.

[119] *Universal Service Order*, 12 FCC Rcd at 8882, para. 190.

[120] *Id.* at 8883, para. 190.

[121] *See supra* para. 35.

the MGW and Shenandoah study areas as a separate service area.[122] Our decision to redefine the service areas of these telephone companies is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

41. In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act.[123] We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest.[124] In defining the rural telephone companies' service areas to be different than their study areas, we are required to act in concert with the relevant state commission, "taking into account the recommendations" of the Joint Board.[125] The Joint Board's concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision* are as follows: (1) minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.[126] We find that the proposed redefinition properly addresses these concerns.

42. First, we conclude that redefining the affected rural telephone company service areas at the wire center level for MGW and Shenandoah should not result in opportunities for creamskimming. Because Virginia Cellular is limited to providing facilities-based service only where it is licensed by the Commission and because Virginia Cellular commits to providing universal service throughout its licensed territory in Virginia, concerns regarding creamskimming are minimized.[127] In addition, we have analyzed the population densities of the wire centers Virginia Cellular can and cannot serve to determine whether the effects of creamskimming would occur.[128] We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent's ability to serve its entire study

[122] *See RCC Holdings ETC Designation Order*, 17 FCC Rcd at 23547, para. 37. We do not designate Virginia as an ETC in the study area of NTELOS. Thus, we do not redefine the service area of NTELOS. In its original petition, Virginia Cellular stated that the Commission might choose not to redefine the service area of MGW, because Virginia Cellular serves all but a small portion of MGW's study area. *See* Virginia Cellular Petition at 12. Subsequently, Virginia Cellular amended its petition, explaining that there are two additional wire centers (McClung and Mountain Grove) within MGW's service area that it does not propose to serve. *See* Virginia Cellular Amendment at 2. In its amended petition, Virginia Cellular asks the Commission to reclassify each of MGW's five wire centers as separate service areas. *Id.*

[123] *See* 47 U.S.C. § 214(e)(5).

[124] *See* 47 U.S.C. § 214(e)(2), (6).

[125] *See* 47 U.S.C. § 214(e)(5).

[126] *See 1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

[127] *See supra* para. 32.

[128] *See supra* paras. 32-35.

area.[129] Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service areas of MGW and Shenandoah as proposed.

43. Second, our decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas.[130] Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives.[131] Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.[132] Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

44. Third, we find that redefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

45. In accordance with section 54.207(d) of the Commission's rules, we submit this order to the Virginia Commission.[133] We request that the Virginia Commission treat this Order as a petition to redefine a service area under section 54.207(d)(1) of the Commission's rules.[134] Virginia Cellular's ETC designation in the service areas of Shenandoah and MGW is subject to the Virginia Commission's review and agreement with the redefinition proposal herein.[135] We

[129] *See supra* para. 35.

[130] *See Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

[131] *See RTF Order*, 16 FCC Rcd at 11299-11309, paras. 136-164.

[132] *See Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18138-39, para. 15.

[133] 47 C.F.R. § 54.207(d).

[134] Virginia Cellular submits that the Commonwealth of Virginia has no process for redefining service areas. *See* Virginia Cellular October 11 Supplement at 2.

[135] In the *Universal Service Order*, the Commission decided to minimize any procedural delays caused by the need for the federal-state coordination on redefining rural service areas. *See Universal Service Order*, 12 FCC Rcd at 8880-81, para. 187. Therefore, the Commission adopted section 54.207 of the Commission's rules by which the state commissions may obtain agreement of the Commission when proposing to redefine a rural service area. *Id.* at 8881, para. 188. Similarly, the Commission adopted a procedure in section 54.207 to address the occasions when the Commission seeks to redefine a rural service area. *Id.* The Commission stated that "in keeping with our intent

find that the Virginia Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service areas of Shenandoah and MGW, our designation of Virginia Cellular as an ETC for these areas as set forth herein shall also take effect. In all other areas for which this Order grants ETC status to Virginia Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Virginia Cellular's petition with regard to redefining the affected rural service areas.

F. Regulatory Oversight

46. We note that Virginia Cellular is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under sections 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement.[136] Separate and in addition to its annual certification filing under sections 54.313 and 54.314 of our rules, Virginia Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC.[137] Virginia Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis.[138] In addition, Virginia Cellular will annually submit information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year.[139] We require that Virginia Cellular submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004.[140] We find that reliance on Virginia Cellular's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.[141] We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Virginia Cellular satisfies its obligation under section 214(e) of the Act to provide

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to use this procedure to minimize administrative delay, we intend to complete consideration of any proposed definition of a service area promptly." *Id.*

[136] 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

[137] *See* Virginia Cellular November 12 Supplement at 4-5.

[138] *See supra* para. 30; Virginia Cellular November 12 Supplement at 1.

[139] *See supra* para. 15; Virginia Cellular November 12 Supplement at 2.

[140] Virginia Cellular's submissions concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year. We anticipate that Virginia Cellular's annual submission will only encompass the service areas where it is designated as an ETC.

[141] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) In *TOPUC v. FCC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

supported services throughout its designated service area. We adopt the commitments that Virginia Cellular has made as conditions on our approval of its ETC designation for the Commonwealth of Virginia. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.[142] Virginia Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Virginia Cellular fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.[143] The Commission also may assess forfeitures for violations of Commission rules and orders.[144]

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

47. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.[145] Virginia Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.[146] We find that Virginia Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), Virginia Cellular, LLC IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for specified portions of its licensed service area in the Commonwealth of Virginia subject to the conditions described herein.[147]

49. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 54.207(d) and (e), the request of Virginia Cellular, LLC to redefine the service areas of Shenandoah Telephone Company and MGW Telephone Company in Virginia IS GRANTED, SUBJECT TO the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for these rural telephone companies. Upon the effective date of the agreement of the Virginia State Corporation

[142] 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

[143] *See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. *See also* 47 U.S.C. § 254(e).

[144] *See* 47 U.S.C. § 503(b).

[145] 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

[146] Virginia Cellular Petition at 18. *See also* Supplement to Virginia Cellular, LLC Petition for Designation as an ETC in the Commonwealth of Virginia, filed February 28, 2003.

[147] *See supra* para. 46.

Commission with the Commission's redefinition of the service areas for those rural telephone companies, this designation of Virginia Cellular, LLC as an ETC for such areas as set forth herein shall also take effect.

50. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission's rules, 47 C.F.R. §§ 54.207(d) and (e), the request of Virginia Cellular, LLC to redefine the service area of NTELOS Telephone Inc. in Virginia IS DENIED.

51. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

VIRGINIA NON-RURAL WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

Bell Atlantic (Verizon)	**GTE South, Inc. (Verizon)**
Staunton (STDRVASD)*	Broadway
Staunton (STTNVAST)	Edom
Staunton (STTNVAVE)	Hinton
Craigsville	Dayton
Lovingston (NLFRVANF)	Keezletown
Lovingston (LVTNVALN)	Harrisonburg
Lovingston (WNTRVAWG)	McGaheysville
Greenwood	Bridgewater
Pine River	Weyerscave
	Grottoes
	Elkton
	Amherst
	Gladstone

* Because the wire center locality names are the same in some instances, the Wire Center Codes are listed in parentheses.

APPENDIX B

VIRGINIA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

New Hope Telephone Company

North River Telephone Company

Highland Telephone Cooperative

APPENDIX C

VIRGINIA RURAL TELEPHONE COMPANY WIRE CENTERS FOR INCLUSION IN VIRGINIA CELLULAR'S ETC SERVICE AREA

Shenandoah Telephone Company

Bergton

MGW Telephone Company

McDowell

Williamsville

Deerfield

SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Competition is for rural as well as urban consumers. In this item, we recognize the unique value that mobile services provide to rural consumers by giving added substance to the public interest standard by which we evaluate wireless eligible telecommunications carriers (ETC). At the same time, we reinforce the requirement that wireless networks be ready, willing and able to serve as carriers of last resort to support our universal service goals.

The areas Virginia Cellular proposes to serve are indeed rural – they are areas where retail rates do not cover the cost of providing service and where high-quality wireless service is intermittent or scarce. This decision remains true to the requirement that ETCs must be prepared to serve all customers upon reasonable request and requires them to offer high-quality telecommunications services at affordable rates throughout the designated service area. In this case, Virginia Cellular has documented its proposed use of federal universal service funding and made important commitments to provide high-quality service throughout its designated service area. To ensure that Virginia Cellular abides by its commitments, moreover, we have imposed reporting requirements and, of course, retain the right to conduct audits and other regulatory oversight activities, if necessary.

Despite the importance of making rural, facilities-based competition a reality, we must ensure that increasing demands on the fund should not be allowed to threaten its viability. Incumbent local exchange carriers, competitive local exchange carriers and wireless carriers should have a competitively neutral opportunity to receive universal service funding. Yet determining an effective, equitable and affordable means of balancing competition and universal service goals is no easy task. The Federal-State Joint Board on Universal Service (Joint Board) is now considering a comprehensive record on these issues and plans to provide a recommended decision to us. I urge them to conclude their inquiry as expeditiously as possible in light of the complexity of the issues involved. Once we receive recommendations from the Joint Board, I hope to move quickly to provide much-needed regulatory certainty in this area and to ensure the support necessary to maintain a sustainable, competitively neutral universal service fund.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

In this Order, the Commission has taken an important (albeit incremental) step toward establishing a more rigorous framework for evaluating ETC applications. When the Commission initially exercised its authority to grant ETC status in areas where state commissions lack jurisdiction, it appeared to regard entry by any new competitor as *per se* consistent with the public interest. While promoting competition is undoubtedly a core goal under the Telecommunications Act of 1996, the use of universal service funding to engender competition where market forces alone cannot support it presents a more complex question. Particularly in rural study areas, where the cost of providing service typically far exceeds retail rates, regulators must carefully consider whether subsidizing the operations of an additional ETC promotes the public interest.

The Joint Board is developing comprehensive recommendations on the ETC designation process and the appropriate scope of support, and this isolated case is not an appropriate proceeding in which to make any fundamental changes. Nevertheless, to qualify for support even under our existing rules, I believe that an ETC must be prepared to serve all customers upon reasonable request, and it must offer high-quality services at affordable rates throughout the designated service area. State commissions exercising their authority under section 214(e)(2), and this Commission acting pursuant to section 214(e)(6), therefore should make certain that an applicant for ETC status is ready, willing, and able to serve as a carrier of last resort and is otherwise prepared to fulfill the goals set forth in section 254 of the Act.

To this end, I am pleased that the Commission has required Virginia Cellular to submit build-out plans to document its proposed use of federal universal service funding for infrastructure investment. I also support the Commission's insistence on appropriate service-quality commitments. Moreover, the Commission is right to consider the increasing demands on the universal service fund: While at one point the cost of granting ETC status to new entrants may have appeared trifling, the dramatic rate of growth in the flow of funds to competitive ETCs compels us to consider the overall impact of new ETC designations on the stability and sustainability of universal service. Finally, I strongly support our efforts to beef up regulatory oversight by imposing reporting requirements on Virginia Cellular and by reserving the right to conduct audits and revoke this ETC designation in the event of a failure to fulfill the requirements of the statute and this Order. All of these requirements are consistent with the statutory framework. The Joint Board may soon recommend that this Commission and state commissions impose additional requirements, and I eagerly await the outcome of that proceeding.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.*

Today we grant Virginia Cellular eligible telecommunication carrier (ETC) status in study areas served by rural and non-rural telephone companies. We make some headway in this decision toward articulating a more rigorous template for review of ETC applications. Although I support this grant, I believe that the ETC process needs further improvement. The long-term viability of universal service requires that the Commission get the ETC designation process right. We must give serious consideration to the consequences that flow from using the fund to support multiple competitors in truly rural areas. And when we do fund competition, we need to ensure that we provide the appropriate level of support. For these reasons, I look forward to reviewing the Joint Board's upcoming Recommendation on universal service portability and ETC designation. I am hopeful that this document will lay the foundation for an improved approach that both honors the public interest and reflects the realities of the market.

SEPARATE STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Late last year, I had the opportunity to further outline my thoughts on the Commission's eligible telecommunications carrier (ETC) designation process and the role of the public interest in that process.[148] For the reasons discussed at that time, I am pleased to support this Order responding to the petition of Virginia Cellular, LLC to be designated as an ETC in the Commonwealth of Virginia. I believe this Order establishes a better template for the ETC designation process that is a significant improvement from past Commission decisions and that more fully embraces the statutory public interest mandate. I expect that state commissions also will find the template that we adopt here to be useful in their deliberations of ETC requests.

I am confident that this Order remains true to the Communications Act, which, through Universal Service, requires the Commission to ensure that all Americans, whoever they are or wherever they live, have access to a rapid and efficient communications system at reasonable rates. Congress clearly intended that, when appropriate, competitive carriers should have access to high cost funds on a technologically neutral basis. I believe the Federal-State Joint Board on Universal Service (Joint Board) can play a critical role in determining the parameters of where such competition is appropriate. I am pleased, however, that this Commission has been willing to strengthen the public interest test, pending a Joint Board recommendation. The template established in this Order provides a much more stringent examination of the public interest in making our ETC determination. Among other factors, Virginia Cellular has made significant investment and service quality commitments throughout its proposed service areas. Finally, I believe that our Order conducts a thorough and proper analysis of rural telephone company service areas pursuant to Section 214(e)(5). Indeed, we ultimately decided not to designate Virginia Cellular as an ETC in certain portions of its licensed service area. In other areas, it was determined, based on a detailed review of the affected service areas, that cream skimming or other similar concerns do not arise, and these areas ultimately are proposed for redefinition.

I look forward to working with my colleagues both at the Commission and on the Joint Board to provide further guidance on the ETC designation process and other Universal Service support issues in the upcoming months. As I outlined in the attached remarks, I believe there are many constructive actions we can take to make sure our Universal Service mandate is upheld while still ensuring that the fund does not grow dramatically.

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[148] Commissioner Jonathan S. Adelstein, *Accessing the Public Interest: Keeping America Well-Connected*, Address Before the 21st Annual Institute on Telecommunications Policy & Regulation (Dec. 4, 2003) (http://www.fcc.gov/commissioners/adelstein/speeches2003.html). A copy of the remarks is incorporated into this statement.

Remarks of
Jonathan S. Adelstein
Commissioner, Federal Communications Commission

"Accessing the Public Interest:
Keeping America Well-Connected"
21st Annual Institute on Telecommunications Policy & Regulation
The International Trade Center - Washington, DC
December 4, 2003
[As prepared for delivery]

I. Introduction

Thank you Henry for that kind introduction.

There is no greater opportunity for someone who has dedicated his whole life to public service than to serve as an FCC Commissioner. My singular goal is to serve the public interest. But sometimes the hardest part is figuring out what that means. It is especially frustrating in the context of communications policy, because we hear so many conflicting views from parties with big stakes in the outcome.

Winston Churchill once described Russia as "a riddle, wrapped in a mystery, inside of an enigma." Similar terms are used to describe the public interest standard of the FCC. As an eternal optimist, I still believe the public interest does exist and can be a meaningful standard. It is our job to figure it out, since Congress referred to it over 100 times in the Communications Act. If we are not sure what it means any given case, it is job number one to figure it out.

Looking back over the past year and across the Commission's broad jurisdiction, I am guided in my public interest determinations by one key principle – that the public interest means securing access to communications for everyone, including those the market may leave behind.

I have tried to address these needs this last year, by protecting people with disabilities, non-English speakers, rural and low-income consumers, and many others. I have looked for opportunities for new entrants and smaller players who are seeking to compete in spectrum-based services and in broadcasting.

Today, I would like to focus on securing access to communications opportunities in three key areas. First, we face an urgent need to establish a new framework to shore up universal service so it can continue to fulfill its function of connecting everyone in this country to the latest telecommunications systems, no matter where they live. Second, we need to expand access to the spectrum so that people can maintain those connections in the increasingly untethered, portable world made possible by advances in wireless technologies. Finally, we need to ensure that communities have access to the broadcast airwaves and local broadcasters remain connected to the communities they serve, even as these broadcasters make the transition to the digital era.

II. Universal Service

Just this week, the Commission held an important forum on a development that could revolutionize not only the telephone system as we know it today, but the entire regulatory structure that has grown around it over the last century: Voice over Internet Protocol, or VoIP. As voice traffic is increasingly conveyed in packets, it becomes difficult to distinguish a voice call from e-mail, photos, or video clips sailing over the Internet.

This is one of the most exciting developments in telephony in decades, and promises a new era of competition, new efficiencies, lower prices, and innovative services. But we have to make sure that all consumers can benefit from the promises that VoIP may hold.

At Monday's forum, we kept coming back to the question of what that means for the future of universal service. The Communications Act requires that, through Universal Service, the Commission ensure that all Americans, whoever they are or wherever they live, have access to a rapid and efficient, communications system at reasonable rates. VoIP presents a long-term challenge to the current structure of the Universal Service program.

Yet, the system is already under increasing pressures as it is financed by interstate revenues – a declining source of funding – while new demands are being placed on it by competitive providers, and by those carriers that are trying to invest in upgrading their networks. This is the imminent crisis we must address now.

One area of concern is the growth of new entrants that are receiving universal service funding. Although the amount of funding these carriers receive is not yet that large, it is growing rapidly. The Act provides that only eligible telecommunications carriers, or ETCs, can receive Universal Service support. State commissions have the primary responsibility for designating ETCs, and can designate additional carriers, known as competitive ETCs or CETCs. In some cases, the FCC evaluates requests for these additional carriers because the states do not have the authority or have chosen not to use it.

This ETC process has raised a lot of questions from those who are concerned that many States and the FCC began using universal service to "create" competition in areas that could barely support just one provider, let alone multiple providers. They question if this is what Congress intended.

Reading the Act, it is safe to assume that Congress did intend that multiple carriers would have access to universal service. Otherwise, it would not have given the authority to designate additional carriers for eligibility. But it is not clear that Congress fully contemplated the impact of this growing competition on the ability of the fund to keep up with demand, and eventually to support advanced services. It may come down to a choice Congress never envisioned between financing competition or financing network development that will give people in Rural America access to advanced services like broadband.

But Congress did give some very clear direction we cannot ignore. The law requires that the designation of an additional ETC in a service area, both rural and non-rural, must be consistent

with the public interest. And it established an even higher level of review for those areas served by rural carriers. In those rural areas, the law requires that the authorizing agency shall find that the designation is in the public interest.

a. ETC Designation Template

That is why I have been working with my colleagues to establish a better template that appropriately embraces this public interest mandate.

Under this approach, competition alone cannot satisfy the public interest analysis. We must weigh other factors in determining whether the benefits exceed the costs. For example, we must increase oversight to ensure that universal service funds are actually being invested in the network for which funding is received. We should weigh the overall impact on the Universal Service Fund. And we should also assess the value of the provider's service offering. We must consider whether the applicant has made a service quality commitment or will provide essential services in its community. This is particularly important, as providers that gain ETC status may some day serve as their customers' only connection, so they must work well.

I will recommend that the Commission use this analysis whenever it reviews an ETC request.

b. The Gregg Benchmark Proposal

In response to these concerns, Joint Board member Billy Jack Gregg has suggested that there are certain areas where financing a competitor is simply not a proper use of universal service funds. He proposed that in areas where the high cost carrier receives more than $30 per line, we should limit funding to only one ETC. In areas where the funding per line is between $20-$30, then we should permit no more than two ETCs. And in areas with less than $20 per line in funding there would be no limit on the number of ETCs. These benchmarks could be challenged and overridden on a case-by-case basis with specific evidence.

Although this proposal needs further discussion, it has a lot of merit. The High Cost Fund ensures that end users in high cost, mostly rural, areas will have access to quality services at reasonable rates. Universal service funding became necessary in these areas because the costs of service were prohibitively high and without it, many would not have had access to telecommunications service at all. Yet, we now fund more than one carrier in several of these same high cost areas.

Mr. Gregg's proposal may allow us to move back toward the initial concept of the High-Cost Fund. Maybe the public interest is better served by ensuring that we use that fund to build out and advance the network in the highest cost areas rather than funding competitive ventures there.

This proposal would help to limit and better control the growth of the fund.

c. Primary Lines

Some are suggesting that a way to control costs is to fund only the primary lines. I believe that this would deny consumers the full support Congress intended. Universal service is not about one connection per household – it encompasses that concept, but is not limited by it. The Low-Income fund ensures at least one connection per household. But the High-Cost Fund embraces the concept of network development and support so that all Americans have access to comparable services at comparable rates, eventually evolving to advanced services.

Basing support solely on primary lines is likely to reduce network investment. It also will have severe implications for consumers who use second lines for fax machines or dial-up access to the Internet. This could have disastrous results for small businesses that operate in rural areas. Their telecommunications costs could easily become too expensive to continue affording services. This could undercut rural economic development and severely damage the economy in Rural America.

So I will not support restricting funding to primary lines only. There are other, better options for addressing the growth of the fund, such as the steps I already have outlined.

d. Basis of Support

Another way to better control the size of the fund and be true to our Congressional mandate is to make sure to provide the right level of support. Currently, competitive ETCs receive the same per line amount of funding as the incumbent local exchange carrier or ILECs. If the ILEC is rural, then its universal service funding is based on its own costs. That means the funds received by the competitive carriers are based on the rural ILECs' costs, not their own.

A large number of CETCs are wireless carriers. Wireline and wireless carriers provide different types of services and operate under different rules and regulations. Their cost structures are not the same. To allow a wireless CETC to receive the same amount of funding as the wireline carrier, without any reference to their cost structures, is artificial, not to mention clearly inconsistent with Section 254(e).

Section 254(e) requires that all carriers receiving Universal Service funding use that support "only for the provision, maintenance, and upgrading of facilities and services for which that support is intended." I believe the law compels us to change the basis on which we provide support to competitors.

III. Managing Spectrum in the Public Interest

When thinking about the federal role in ensuring access to the latest technologies, the Commission is also charged with managing the nation's spectrum in the public interest. Spectrum is the lifeblood of innovations that provide so many new services that people are demanding.

As some of you may know, I have set out an approach for spectrum policy that I call a "Framework for Innovation." In dealing with the spectrum, I believe the Commission should establish ground rules for issues such as interference and availability. But, to the greatest extent possible, we should let innovation and the marketplace drive the development of spectrum-based services. My goal is to maximize the amount of communications and information that flow over the Nation's airwaves, on earth and through space.

Spectrum is a finite public resource. And in order to improve our country's use of it, we need to improve access to spectrum-based services. We cannot afford to let spectrum lie fallow. It is not a property right, but a contingent right to use a public resource – it should be put to use for the benefit of as many people as possible.

I remain concerned that we need to do more to get spectrum in the hands of people who are ready and willing to use it. That is why I am taking a fresh look at our service and construction rules to ensure that our policies do not undercut the ability of carriers to get access to unused spectrum – whether they are in underserved areas or have developed new technologies. For example, we need to adopt tough but fair construction requirements to ensure that spectrum is truly being put to use. This was the case in our decision earlier this year to shorten the construction period for the MVDDS service from ten years to five.

Improved access to spectrum is also the reason why I pushed for our relatively unique service rules for the 70/80/90 GHz bands, which can provide for fiber-like first and last mile connections. This makes it easier for all licensees to get access to spectrum for Gigabit-speed broadband.

While I continue to support the use of auctions, Section 309(j)(6) of the Act recognizes that the public interest is not always served by adopting a licensing scheme that creates mutual exclusivity. Because of the unique sharing characteristics of the 70/80/90 GHz bands, we had an opportunity here to break that mold, and I am glad we did.

I have repeatedly said the FCC needs to improve access to spectrum by those providers who want to serve rural areas, particularly community-based providers. That is why I pushed for the inclusion of both Economic Areas as well as RSA licenses in our recent Advanced Wireless Services Order. Large license areas can raise auction prices so high that many companies that want to serve smaller areas cannot even afford to make a first bid. I certainly recognize that there is value in offering larger service areas for economies of scale and to facilitate wider area deployments. But the public interest demands that we find a balance in developing a band plan, and I am very pleased we did so in that item.

But I am not sure we are doing enough in this area. We heard last month at our wireless ISP forum that operators across the country need access to more spectrum. More spectrum can drive broadband deployment deeper and farther into rural America. We have to be more creative with a term I will coin "spectrum facilitation." That means stripping away barriers, regulatory or economic, to get spectrum into the hands of operators serving consumers at the most local levels.

For example, I was very pleased to support new guidelines to facilitate a more robust secondary market. We removed significant obstacles and provided a framework for allowing licensees to lease spectrum more easily, while ensuring that the Commission does not lose ultimate control over the spectrum. In doing so, we move closer to achieving our goal of ensuring that all Americans have access to the latest wireless technologies, no matter where they live.

The mobile wireless industry is marked by dynamic competition – due in no small part to the regulatory framework that the Commission initially adopted. In the future, we should continue to apply only those rules that truly benefit the public interest so as to avoid undermining these healthy competitive conditions.

For example, I was very pleased that this summer we took significant steps toward improving access to digital mobile wireless phones by those Americans who use hearing aids. We stepped in where the market did not step up. I can think of no more an appropriate action for a government agency to take.

Similarly, there is no higher priority for us at the Commission than improving E911 service. Every day, we confront issues that can affect millions of dollars; but nothing we do is more important than emergency response services. Unlike a lot of issues that get so much attention, this literally is a matter of life or death.

During the last year, the Commission has really stepped up its work with all stakeholders to accelerate the deployment of wireless E911. Continued success requires the unprecedented cooperation of such a wide range of players – the FCC, wireless carriers, public safety answering points, equipment and technology vendors, local exchange carriers, state commissions, and local governments. We all need to work together to get this done quickly and effectively.

Local number portability, or LNP, is another one of the more difficult issues that we faced over the past several months. It truly seemed that everyone in the telecommunications industry hated some part of it. Yet, LNP is one of those issues where the consumer clearly is the winner.

Clearly, there are a number of lingering concerns with LNP and its implementation. Ultimately, though, I believe both the public interest and the law are on our side. And while the concerns raised by both wireline and wireless carriers are significant, and we need to address them, the benefits to consumers outweigh these concerns.

IV. Media Diversity

As we saw this past year, Americans are very concerned about their media. The airwaves belong to the American people. Nowhere is it more important for us to preserve access to the airwaves as widely as possible. We should encourage a broad range of voices and viewpoints.

In today's radio and television, we are hearing troubling accounts of pay-for-play that is not being fully disclosed to the listening and viewing public. To the extent these allegations are true, this poses a real threat to the public airwaves. Practices like payola may inhibit the local broadcaster from making independent judgments about the needs of listeners in their community.

This can deny local artists and musicians access to their local airwaves. We need to investigate these allegations and make sure our rules address any troubling practices we identify.

It seems that the transition to digital television is finally upon us. As we move into the new era, we should not abandon our public interest model that sustains localism, competition and diversity. Courts have consistently reaffirmed these priorities as central to the health of our democracy.

We should reaffirm the public interest accountability of our broadcast media. Broadcasters enter into a social compact to use the public airwaves. Broadcasters can now magnify their voice digitally from one channel to say five or six. If triopolies are allowed by the courts, digital can expand three channels to up to eighteen. It is time to examine the public interest obligations of broadcasters on those multiple programming streams. Broadcasting is still a public privilege. Broadcasters must serve the public interest and remain accountable to their local communities for all their programming.

The FCC already has undertaken a number of steps to accelerate the digital transition. As we turn to the few remaining pieces, we should establish comprehensive public interest obligations for the digital era. With respect to carriage, broadcasters make the case that multicast carriage will further localism. If so, there should be no reason why they cannot accept a localism requirement on all their digital program streams that gain the privilege of must-carry.

V. Conclusion

As we have seen from the recent media debate, Congress clearly considers the communications industries as far more than makers of widgets. All communications fields involve externalities that are not fully captured in the marketplace. Communications technologies are the way people become informed and participate in society. These technologies bring us up-to-date with our friends and relatives. They educate us with stories, images, and people's creativity. They expand our horizons – from our neighborhoods to our towns and cities, our country, and the world around us. They literally bring the world to our fingertips.

It is the Commission's duty to protect every segment of the public in their access to technologies that convey information necessary to stay well-connected in our society. I look forward to working with all of you, and welcome your ideas on furthering the public interest as we move forward to secure the blessings of modern telecommunications for all of our citizens.

Thank you.

DISSENTING STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.

Today's decision designates Virginia Cellular, LLC (Virginia Cellular) as an eligible telecommunications carrier (ETC) in areas served by five rural telephone companies and two non-rural telephone companies in the State of Virginia. The Commission finds the designation of Virginia Cellular as an ETC to be in the public interest and furthers the goals of universal service by "providing greater mobility" and "a choice" of providers in high-cost and rural areas of Virginia.[149] I object to this Order's finding that the goals of universal service are to "provide greater mobility" and "a choice" of providers in rural areas. Rather, I believe the main goals of the universal service program are to ensure that all consumers—including those in high cost areas have access at affordable rates.

During the past two years, I have continued to express my concerns with the Commission's policy of using universal service support as a means of creating "competition" in high cost areas.[150] As I have stated previously, I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. The Commission's policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in rural areas.

I am troubled by today's decision because the Commission fails to require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support. In my view, competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers.

First, today's decision fails to require CETCs to provide equal access. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. As I have stated previously, I believe an equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.[151]

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[149] Order at para. 12.

[150] Separate Statement of Commissioner Kevin J. Martin, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket (No. 00-256)(rel. October, 11, 2002).

[151] Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service,* CC Docket No.96-45, (rel. July 10, 2002); Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service, FCC 03-170,* CC Docket No. 96-45, (rel. July 14, 2003).

Second, the Commission redefines several rural telephone company service areas where Virginia Cellular's proposed service areas do not cover the entire service area of the incumbent rural telephone company. Given the potential for creamskimming, I do not support this redefining of the service areas of incumbent rural telephone companies. The Commission's decision to permit service area redefinition relies solely on an analysis of population densities of the wire centers that Virginia cellular can and cannot serve to determine whether the effects of creamskimming would occur, but fails to justify the decision based upon any cost data to verify whether Virginia Cellular is serving low-cost, high revenue customers in the rural telephone company's area.

Finally, I am concerned that the Commission's decision on Virginia Cellular's application may prejudge the on-going work of the Federal-State Joint Board regarding the framework for high-cost universal service support. Today's decision provides a template for approving the numerous CETC applications currently pending at the Commission, and I believe may push the Joint Board to take more aggressive steps to slow the growth of the universal service fund such as primary line restrictions and caps on the amount of universal service support available for service providers in rural America.