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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
IAT COMMUNICATIONS, INC., d.b.a.
NTCH-IDAHO, 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

**FOURTH 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
Case No. 96-45, “In the Matter of Federal-State Joint Board on Universal Service – Highland

ORIGINAL

Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.” In support of this Motion, Petitioners state as follows:

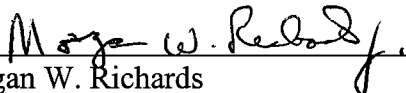
1. Rule 263.01(a)(2) of the Commission’s Rules of Procedure provides that the Commission may take official notice of the orders of “any other regulatory agency, state or federal.”
2. Evidentiary hearings in this matter concluded on December 11, 2003, and the parties’ Briefs were submitted on January 23, 2004. The FCC did not release its opinion and order until April 12, 2004, too late to be included in the parties’ Briefs.
3. The FCC Memorandum Opinion and Order is very relevant to the Commission’s deliberations because it addresses issues relating to the applications by Nextel Partners and Clear Talk for ETC status.
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 Memorandum Opinion and Order; and
2. Directing that the FCC Memorandum Opinion and Order be marked as an exhibit and included in the record as a late-file exhibit.

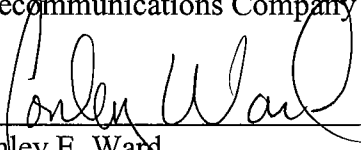
Oral argument is not requested on this Motion.

Respectfully submitted this 15th day of April, 2004.



Morgan W. Richards
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS,
CHTD.

Attorneys for Citizens
Telecommunications Company of Idaho



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2004, I caused a true and correct copy of the foregoing **FOURTH JOINT MOTION TO TAKE OFFICIAL NOTICE** to be served by the method indicated below, and addressed to the following:

John Hammond, Deputy AG IDAHO PUBLIC UTILITIES COMMISSION 472 West Washington Street Post Office Box 83720 Boise, Idaho 83720-0074	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail
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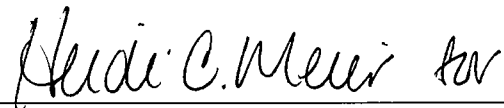
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Conley E. Ward

**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
)	
Highland Cellular, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth of Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2004

Released: April 12, 2004

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

I. INTRODUCTION

1. In this Order, we grant in part and deny in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of 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 Highland Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Highland Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Highland Cellular requests ETC designation for a service area that overlaps, among other areas, the study areas of three rural telephone companies.³ We find that the designation of Highland Cellular as an ETC in a wire center served by Verizon Virginia, Inc. (Verizon Virginia), a non-rural carrier, and certain areas served by two of the three rural companies serves the public interest and furthers the goals of universal service. As explained below, with regard to the study area of Verizon South, Inc. (Verizon South) and the Saltville wire center of United Telephone Company – Southeast Virginia (United Telephone) we do not find that ETC designation would be in the public interest.

¹ Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Sep. 19, 2002 (Highland Cellular Petition).

² 47 U.S.C. § 214(e)(1).

³ The remainder of Highland Cellular's requested service area falls within the service area of Verizon Virginia, a non-rural telephone company.

2. Highland Cellular is licensed to serve the entire study area of only one of the three rural companies for which it seeks ETC designation - Burkes Garden Telephone Company, Inc. (Burkes Garden).⁴ Because Highland Cellular is licensed to serve only part of the study areas of the other two incumbent rural telephone companies, Highland Cellular has requested that we redefine the service areas of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act.⁵ We agree to the service area redefinition proposed by Highland Cellular for the service area of United Telephone, subject to agreement by the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements. 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 Because we do not designate Highland Cellular as an ETC in Verizon South's 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 Highland Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive 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. As we concluded in a recent order granting ETC designation to Virginia Cellular in the Commonwealth of Virginia, this framework shall apply to all ETC designations

⁴ Highland Cellular requests ETC designation in the service areas of the rural telephone companies Burkes Garden Telephone Company, Inc. (Burkes Garden), United Telephone Company - Southeast Virginia (United Telephone), and Verizon South, Inc. - VA (Verizon South). Highland Cellular Petition at 10-13; Highland Cellular, Inc., Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed Oct. 23, 2002, at 1-2 (Highland Cellular Amendment I).

⁵ Highland Cellular Petition at 11-13; Highland Cellular Amendment I at 1-2; Highland Cellular, Inc., Second Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Feb. 26, 2003 (Highland Cellular Amendment II). Specifically, Highland requests redefinition of the service areas of United Telephone and Verizon South. *Id.* In light of our decision to deny ETC designation for the area served by Verizon South, we do not address Highland Cellular's request to redefine that service area.

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

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.

for rural areas pending further action by the Commission.⁹ 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 Highland Cellular has made on the record in this proceeding.¹⁰ These conditions will ensure that Highland 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."¹¹ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.¹²

6. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.¹³ 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."¹⁴ Under section 214(e)(6), the Commission may, with respect to an area served

⁹ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, para. 14 (rel. Jan. 22, 2004) (*Virginia Cellular Order*).

¹⁰ See *infra* para. 43.

¹¹ 47 U.S.C. § 254(e).

¹² 47 U.S.C. § 214(e)(1).

¹³ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved 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*).

¹⁴ 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*

(continued...)

by a rural telephone company, and shall, in all other cases, 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).¹⁵ 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.¹⁶

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.¹⁷

8. Twelfth Report and Order. On June 30, 2000, 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.¹⁸ 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.¹⁹ 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.”²⁰ 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

(...continued from previous page)

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.

¹⁵ 47 U.S.C. § 214(e)(6).

¹⁶ *Id.*

¹⁷ See *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 Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

¹⁸ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁹ *Twelfth Report and Order*, 15 FCC at 12255, para. 93.

²⁰ *Twelfth Report and Order*, 15 FCC at 12264, para. 113.

law to regulate certain carriers or classes of carriers.”²¹

9. **Redefining a Service Area.** Under section 214(e)(5), “[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.”²² Section 54.207(d) 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 the Commission seeks agreement on the new definition with the applicable state commission.²³ Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.²⁴ 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).²⁵ 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 Act, in many respects, places rural telephone companies on a different competitive footing from the 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 the study area level.²⁶

C. Highland Cellular’s Petition

10. On September 19, 2002, Highland 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.²⁷ Highland Cellular contends that the Virginia Commission

²¹ *Twelfth Report and Order*, 15 FCC at 12264, para. 113 (citations omitted).

²² 47 U.S.C. § 214(e)(5).

²³ 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).

²⁴ See 47 C.F.R. § 54.207(d)(1).

²⁵ See 47 C.F.R. § 54.207(d)(1).

²⁶ 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*).

²⁷ See generally, Highland Cellular Petition. On October 2, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Highland Cellular Petition. See *Wireline Competition Bureau Seeks Comment on Highland Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45, Public Notice, DA 02-2487 (rel. Oct. 2, 2002); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of the Cellular Telecommunications and Internet Association, filed Oct. 15, 2002 (CTIA Comments); *In the Matter of Highland Cellular Telephone, Inc., Petition for Designation as and Eligible Telecommunications Carrier in Virginia*, Comments of the Telephone Association of Maine, filed Oct. 15, 2002 (TAM Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of Verizon, filed Oct. 15, 2002 (Verizon Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Reply Comments of Highland Cellular, Inc., filed Oct. 22 (Highland Cellular Reply Comments).

has issued an "affirmative statement" that the Virginia Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Highland Cellular asks the Commission to designate Highland Cellular as an ETC pursuant to section 214(e)(6).²⁸ Highland Cellular also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation and that designating Highland Cellular as an ETC will serve the public interest.²⁹

11. Highland Cellular also requests that the Commission redefine the service areas of two incumbent rural telephone companies, United Telephone and Verizon South, because it is not able to serve the entire study area of each of these companies.³⁰ Highland Cellular states that as a wireless carrier, it is restricted to only providing facilities-based service in those areas where it is licensed by the Commission.³¹ 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.³² Highland Cellular further contends that the proposed redefinition of the rural telephone companies' service areas is consistent with the recommendations regarding rural telephone company study areas, as set forth by the Joint Board in its *Recommended Decision*.³³

III. DISCUSSION

12. After careful review of the record before us, we find that Highland 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 the portions of its licensed service area described herein. First, we find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Highland Cellular's petition under section 214(e)(6). Second, we conclude that Highland 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 designation of Highland Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by better ensuring that consumers in high-cost and rural areas of Virginia have access to the services supported by universal service at affordable rates. Pursuant to our authority under section 214(e)(6), we therefore designate Highland 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 Highland Cellular as an ETC in the study area of the rural telephone company, Verizon South, and the Saltville wire center of the rural telephone company, United Telephone.³⁴ In areas where Highland Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Highland Cellular's ETC designation shall be

²⁸ Highland Cellular Petition at 3-4.

²⁹ Highland Cellular Petition at 4-9, 15-18; Highland Cellular Amendment I at 2.

³⁰ Highland Cellular Petition at 10-13; Highland Cellular Reply Comments at 2-3; Highland Cellular Amendment I at 1-2; Highland Cellular Amendment II at 2.

³¹ Highland Cellular Petition at 13; Highland Cellular Amendment I at 1-2.

³² Highland Cellular Petition at 13.

³³ *Id.* at 13-15. See also 1996 *Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

³⁴ See *infra* paras. 29-33.

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, Highland Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding, now before the Joint Board, examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Highland Cellular and other ETCs may receive in the future.³⁵ This Order is not intended to prejudice the outcome of that proceeding. We also note that Highland 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.³⁶

A. Commission Authority to Perform the ETC Designation

13. We find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and the Commission has authority to consider Highland Cellular's petition under section 214(e)(6) of the Act. Highland Cellular submitted as an "affirmative statement" an order issued by the Virginia Commission addressing an application filed by Virginia Cellular, LLC (Virginia Cellular) seeking ETC designation.³⁷ In the *Virginia Commission Order*, the Virginia Commission concluded that it "has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation."³⁸

14. We find that, as required by the *Twelfth Report and Order*, the Virginia Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Virginia Commission Order*.³⁹ We find it sufficient that the Virginia Commission indicated that it does not have jurisdiction over CMRS carriers and that the Federal Communications Commission is the proper venue for CMRS carriers seeking ETC designation in the Commonwealth of Virginia. Therefore, based on this statement by the Virginia Commission, we find the Virginia Commission lacks jurisdiction to designate Highland Cellular as an ETC and this Commission has authority to perform the requested ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).⁴⁰

³⁵ See *Portability Public Notice*, 18 FCC Rcd at 1941.

³⁶ See *Declaratory Ruling*, 15 FCC Rcd at 15173; see also 47 U.S.C. § 214(e)(4).

³⁷ See Highland Cellular Petition at Exhibit A (Virginia Corporation Commission, *Virginia Cellular, LLC*, Order, Case Nos. PUC970135 & PUC010263 at 4-5 (Apr. 9, 2002) (*Virginia Commission Order*)).

³⁸ Virginia Commission Order at 4-5. Virginia Cellular's application was the first time a CMRS carrier filed for ETC designation before the Virginia Commission. See *id.* at 2.

³⁹ See *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113. See also *RCC Holdings, Inc. Petition for Designation as and Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532, 23537, para. 13 (Wireline Comp. Bur. 2002) (*RCC Holdings ETC Designation Order*) (finding that an order from a prior proceeding involving unaffiliated CMRS providers seeking ETC status constituted an "affirmative statement" for the purposes satisfying section 214(e)(6) of the Act).

⁴⁰ 47 U.S.C. § 214(e)(6).

B. Offering and Advertising the Supported Services

15. Offering the Services Designated for Support. We find that Highland 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, Highland Cellular is an “A2-Band” cellular carrier for the Virginia 2 Rural Service Area, serving the counties of Bland and Tazewell.⁴¹ Highland 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.⁴² Highland 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.⁴³ Highland Cellular also complies with applicable law and Commission directives on providing access to emergency services.⁴⁴ In addition, although the Commission has not set a minimum local usage requirement, Highland 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.⁴⁵ As discussed below, Highland 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.⁴⁶

16. Highland Cellular has also made specific commitments to provide service to requesting customers in the service areas in which it is designated as an ETC. Highland Cellular states that if a request is made by a potential customer within its existing network, Highland Cellular will provide service immediately using its standard customer equipment.⁴⁷ In instances where a request comes from a potential customer within Highland 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

⁴¹ Highland Cellular Petition at 1.

⁴² *Id.* at 2. The Commission has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

⁴³ Highland Cellular Petition at 4-8 and Exhibit B.

⁴⁴ *See* 47 C.F.R. § 54.101(a)(5); Highland Cellular Petition at 7.

⁴⁵ Highland Cellular Petition at 5-6 and Exhibit B.

⁴⁶ *See infra* para. 43; Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, FCC, filed Nov. 19, 2003 (Highland Cellular November 19 Supplement).

⁴⁷ Highland Cellular November 19 Supplement, at 3.

provide service.⁴⁸ In addition, if after following these steps, Highland 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.⁴⁹

17. Highland Cellular has further committed to use universal service support to further improve its universal service offering by constructing new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage.⁵⁰ Highland Cellular states that it will modify its construction plans based on the areas where ETC designation is granted.⁵¹ Highland Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.⁵² In connection with its annual reporting obligations, Highland Cellular will submit detailed information on its progress toward meeting build-out plans.⁵³

18. Offering the Supported Services Using a Carrier's Own Facilities. Highland 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.⁵⁴ Highland 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."⁵⁵ We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

19. Advertising the Supported Services. We conclude that Highland 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.⁵⁶ Highland Cellular certifies that it will "use media of general distribution that it currently employs

⁴⁸ Highland Cellular November 19 Supplement, at 3-4.

⁴⁹ Highland Cellular November 19 Supplement at 4, n. 7 (agreeing to follow the service provisioning commitments made by Virginia Cellular during its ETC designation proceeding). See *Virginia Cellular Order*, FCC 03-338, at para. 14.

⁵⁰ Supplement to Highland Cellular, Inc. Petition for Designation as an ETC in the Commonwealth of Virginia, filed April 8, 2003 at 3-4 (Highland Cellular April 8 Supplement).

⁵¹ See Highland Cellular December 12 Supplement at 5. For example, to date Highland Cellular has committed to construct cell sites only in areas for which we deny ETC designation – notably in the Jewell Ridge, Richlands, and Tazewell wire centers in the Verizon South rural study area. See Highland Cellular November 19 Supplement at 4-5. In a subsequent filing, Highland Cellular described alternative build-out plans should the Commission limit Highland Cellular's ETC designation to complete wire centers. See Highland Cellular December 12 Supplement at 5 (proposing cell sites in the Verizon South and Burkes Garden rural study areas). We assume that Highland Cellular's build-out plans will change as a result of this Order.

⁵² See Highland Cellular November 19 Supplement at 5; Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, FCC, filed Dec. 12, 2003 (Highland Cellular December 12 Supplement).

⁵³ See *infra* para. 43.

⁵⁴ 47 U.S.C. § 214(e)(1)(A).

⁵⁵ Highland Cellular Petition at 8-9.

⁵⁶ 47 U.S.C. § 214(e)(1)(B).

to advertise its universal service offerings throughout the service areas designated by the Commission.”⁵⁷ In addition, Highland Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Highland Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Highland Cellular’s service offerings and learn about Lifeline and Linkup discounts.⁵⁸ Highland 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.⁵⁹ We find that Highland Cellular’s certification and its additional commitments to advertise 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.⁶⁰

C. Public Interest Analysis

20. We conclude that it is “consistent with the public interest, convenience, and necessity” to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We also conclude that it is in the public interest to designate Highland Cellular as an ETC in Virginia in the study area served by the rural telephone company, Burkes Garden and the Bland and Ceres wire centers served by the rural telephone company, United Telephone. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Highland Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Highland Cellular as an ETC, however, for the study area of Verizon South and the Saltville wire center of United Telephone because we find that Highland Cellular has not satisfied its burden of proof in this instance.⁶¹

21. Non-Rural Study Areas. We conclude that it is “consistent with the public interest, convenience, and necessity” to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia.⁶² We note that the Common Carrier Bureau previously 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.⁶³ 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

⁵⁷ Highland Cellular Petition at 9.

⁵⁸ Highland Cellular November 19 Supplement at 5.

⁵⁹ Highland Cellular November 19 Supplement at 5.

⁶⁰ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18137, para. 10.

⁶¹ See *infra* paras. 29-33.

⁶² See 47 U.S.C. § 214(e)(6). See also Appendix A.

⁶³ 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).

complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Highland Cellular's public interest showing here is sufficient based on the detailed commitments Highland Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Highland Cellular has satisfied the more rigorous public interest analysis for certain rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.⁶⁴ We also note that no parties oppose Highland Cellular's request for ETC designation in the study area of this non-rural telephone company. We therefore conclude that Highland Cellular has demonstrated that its designation as an ETC in the study area of this non-rural telephone company, is consistent with the public interest, as required by section 214(e)(6).⁶⁵ We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate both non-rural and rural ETCs under section 214(e) of the Act.⁶⁶ The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

22. 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 Highland 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 Highland 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 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 prejudice the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

23. Highland Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Highland Cellular has committed to serve residences that do not have access to the public switched network through the incumbent telephone company.⁶⁷ Also, the mobility of Highland 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

⁶⁴ See Highland Cellular November 19 Supplement at 1-7.

⁶⁵ See 47 U.S.C. § 214(e)(6).

⁶⁶ See *Portability Public Notice*, 18 FCC Rcd at 1954-55, para. 33.

⁶⁷ Highland Cellular November 19 Supplement at 3-4.

