



October 27, 2015

PUBLIC REFERENCE COPY

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Petition of Boost Mobile for Limited Designation As An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, And the District of Columbia, Including Tribal Areas

Dear Secretary Dortch:

On behalf of Sprint Corporation and its prepaid wireless brand, Boost Mobile, please find enclosed a redacted public version of Boost Mobile’s Petition for Limited Designation As An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia, including Tribal Areas. The enclosed petition has been marked “REDACTED – FOR PUBLIC INSPECTION.”

Sprint Corporation, on behalf of its prepaid wireless brand Boost Mobile, is also submitting, by hand delivery, a confidential version of the Petition. The confidential version has been marked “SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT – NOT FOR PUBLIC INSPECTION.”

Should you have any questions regarding the foregoing, please contact the undersigned at 202-437-4066 or bstrandberg@hwglaw.com.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'BDS', with a long horizontal line extending to the right.

Brita D. Strandberg

Counsel to Boost Mobile



October 27, 2015

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: WC Docket No. 09-197; Request for Confidential Treatment of Boost Mobile Petition for Limited Designation As An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, And the District of Columbia, Including Tribal Areas

Dear Secretary Dortch:

Enclosed please find Boost Mobile’s Petition for Limited Designation As An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, And the District of Columbia, including Tribal Areas.

Sprint Corporation, on behalf of its prepaid wireless brand Boost Mobile, respectfully requests that, pursuant to 47 C.F.R. §§ 0.457 and 0.459 of the Federal Communications Commission’s rules, the Commission withhold from public inspection and accord confidential treatment to Exhibit 3 of Boost Mobile’s petition because the documents contain sensitive trade secrets and commercial and financial information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”).¹ Sprint Corporation is voluntarily providing this information “of a kind that would customarily not be released to the public”; therefore, this information is “confidential” under FOIA.² Moreover, Sprint Corporation would suffer substantial competitive harm if this information were disclosed.³

¹ 5 U.S.C. § 552(b)(4) & (7).

² See *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 879 (D.C. Cir. 1992).

³ See *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F. 2d 765 (D.C. Cir. 1974).

Exhibit 3 is marked accordingly with the header “SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT – NOT FOR PUBLIC INSPECTION.”

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,⁴ Sprint Corporation hereby states as follows:

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT⁵

Sprint Corporation, on behalf of its prepaid wireless brand Boost Mobile, seeks confidential treatment of Exhibit 3 to Boost Mobile’s Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, And the District of Columbia, including Tribal Areas (“Petition”).

2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁶

Boost Mobile is filing Exhibit 3 to assist the Commission in evaluating the Petition.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED⁷

The information for which Sprint Corporation seeks confidential treatment contains sensitive trade secrets and commercial or financial information which would customarily be guarded from competitors. Exhibit 3 to Boost Mobile’s Petition contain proprietary commercial information including information about Boost Mobile’s detailed coverage area by wire center.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION⁸

Exhibit 3 to Boost Mobile’s Petition contain information relating to commercial and financial matters that could be used by competitors to Sprint Corporation’s disadvantage. Sprint Corporation, through its prepaid wireless brand Boost Mobile, has numerous competitors in the prepaid wireless sector in which it operates. Detailed coverage and related information of the type provided by Sprint Corporation could compromise its position in this highly competitive industry by giving its competitors critical data relating to Sprint Corporation’s Boost Mobile operations. Release would therefore result in substantial competitive harm to Sprint Corporation’s Boost Mobile brand.

⁴ 47 C.F.R. § 0.459(b).

⁵ *Id.* § 0.459(b)(1).

⁶ *Id.* § 0.459(b)(2).

⁷ *Id.* § 0.459(b)(3).

⁸ *Id.* § 0.459(b)(4).

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM⁹

Competitors could use Sprint Corporation’s proprietary commercial and financial information to Sprint Corporation’s detriment as they would gain access to sensitive and closely-guarded financial and commercial information that is not normally disclosed to the public.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE¹⁰

Sprint Corporation has closely guarded the confidentiality of Exhibit 3 to Boost Mobile’s Petition.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES¹¹

Sprint Corporation has not previously disclosed Exhibit 3 to Boost Mobile’s Petition.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE¹²

Sprint Corporation requests that Exhibit 3 to Boost Mobile’s Petition be treated as confidential for a period of ten years. This period is necessary due to the sensitive nature of the information in Exhibit 3 to Boost Mobile’s Petition.

9. OTHER INFORMATION THAT SPRINT CORPORATION BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED¹³

This information at issue concerns sensitive affiliate coverage data.

⁹ *Id.* § 0.459(b)(5).

¹⁰ *Id.* § 0.459(b)(6).

¹¹ *Id.* § 0.459(b)(7).

¹² *Id.* § 0.459(b)(8).

¹³ *Id.* § 0.459(b)(9).

Should you have any questions regarding the foregoing, please contact the undersigned at 202-730-1346 or bstrandberg@hwglaw.com.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "BDS", with a horizontal line extending to the right.

Brita D. Strandberg

Counsel to Boost Mobile

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telecommunications Carriers Eligible to
Receive Universal Service Support

Boost Mobile

Petition for Limited Designation as
An Eligible Telecommunications
Carrier in Alabama, Connecticut, Delaware,
Florida, Maine, New Hampshire, North
Carolina, New York, Tennessee, Texas, the
Commonwealth of Virginia, and the District of
Columbia, Including Tribal Areas

WC Docket No. 09-197

**PETITION OF BOOST MOBILE FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT, DELAWARE,
FLORIDA, MAINE, NEW HAMPSHIRE, NORTH CAROLINA, NEW YORK,
TENNESSEE, TEXAS, THE COMMONWEALTH OF VIRGINIA, AND THE DISTRICT
OF COLUMBIA, INCLUDING TRIBAL AREAS**

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Filing date: October 27, 2015

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<p>In the Matter of</p> <p>Telecommunications Carriers Eligible to Receive Universal Service Support</p> <p>Boost Mobile</p> <p>Petition for Limited Designation as An Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia, Including Tribal Areas</p>	<p>)</p>	<p>WC Docket No. 09-197</p>
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**PETITION OF BOOST MOBILE FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT,
DELAWARE, FLORIDA, MAINE, NEW HAMPSHIRE, NORTH CAROLINA, NEW
YORK, TENNESSEE, TEXAS, THE COMMONWEALTH OF VIRGINIA, AND THE
DISTRICT OF COLUMBIA, INCLUDING TRIBAL AREAS**

Boost Mobile (“Boost Mobile” or “Boost”), a prepaid wireless brand of parent Sprint Corporation (“Sprint”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”)¹ and Sections 54.201–54.207 of the Federal Communications Commission’s (“FCC’s” or the “Commission’s”) rules,² hereby files this Petition seeking limited designation of its operating entities (the “Boost entities”)³ as Eligible Telecommunications

¹ See 47 U.S.C. § 214(e)(6).
² See 47 C.F.R. §§ 54.201-54.207.
³ Boost Mobile is a brand offering of Sprint Corporation. Boost Mobile is not itself a corporate entity. The terms “Boost Mobile” and “Boost” include the term “Boost entities.” The term “Boost

Carriers (“ETCs”) in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia, including Tribal areas (the “federal default states”). Boost Mobile requests ETC designation for the Boost entities for the limited purpose of offering a Lifeline discount to eligible low-income customers in the federal default states. Boost seeks ETC designation in the geographic areas in every rural and non-rural, incumbent local exchange carrier area where Sprint provides wireless coverage in the federal default states.

As discussed in greater detail below, each Boost entity meets federal statutory and regulatory requirements to be designated as an ETC provider in the federal default states. Boost Mobile is ready and able to provide the services supported by the Lifeline program throughout its designated service area in these states as a facilities-based wireless provider. Boost seeks ETC designation for the Boost entities so that it can enable Lifeline eligible customers to apply their Lifeline discount to existing Boost Mobile plans, providing these customers with additional choices and increased access to competitive wireless plans. Granting ETC status to the Boost entities will benefit the public interest and further the goals of the Lifeline program by enabling Boost Mobile to provide a Lifeline discount to eligible low-income consumers on its affordable and quality telecommunications services.

Sections 214(e) and 254 of the Act and the Commission’s rules expressly authorize the Commission to designate the Boost entities as ETCs. Specifically, Section 214(e)(6) of the Act provides that the Commission may confer ETC status on a common carrier where the carrier’s

entities” refers to the various operating entities seeking limited designation as eligible telecommunications carriers in certain states as outlined in Exhibit 1.

services do not fall subject to the jurisdiction of a state commission.⁴ Boost Mobile provides herewith affirmative statements conclusively proving that all the states in which it seeks ETC designation lack jurisdiction to confer ETC status to Boost Mobile (see *infra* section II.A). Further, the Boost entities meet the statutory and regulatory requirements for ETC designation. And, finally, consumers will benefit from such designation in the form of low-cost, high-quality wireless service and access to a variety of additional features.

The Boost entities satisfy all requirements necessary to be designated an ETC, and it is in the public interest for the Commission to grant this Petition as Boost Mobile will be able to provide low-income consumers in these states with reliable and cost-effective wireless services. Indeed, as expressed below, the requested ETC designation will promote the public interest by providing eligible low-income consumers a choice of a significant, new facilities-based competitor in the marketplace for Lifeline services. Boost Mobile's entry into the Lifeline market will create competitive pressure on all Lifeline providers, resulting in a higher level of service quality, more competitive pricing, and advantageous service options of Lifeline service for eligible consumers in the federal default states.

Accordingly, Boost Mobile respectfully requests that the Commission grant this application on an expedited basis to designate the Boost entities as ETCs in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia, including Tribal areas.

In support of this Petition, Boost Mobile respectfully states as follows:

⁴ See 47 U.S.C. § 214(e)(6).

I. Background

A. Company Overview

Boost Mobile offers prepaid wireless services through corporate entities in each federal default state as indicated in Exhibit 1. Boost Mobile seeks designation of each of the Boost entities for the purpose of providing Lifeline service to eligible customers.

Boost Mobile initially launched service in 2002 in California and Nevada as a mobile virtual network operator on the Nextel iDEN network. After its 2003 acquisition by Nextel, Boost Mobile continued to roll out its services in additional states. In 2005, Nextel and the Boost Mobile brand were acquired by Sprint, and Boost completed its nationwide rollout. As part of the Sprint Prepaid Group, Boost Mobile is an established, nationwide wireless provider with substantial financial and technical capability. As a wholly-owned affiliate of Sprint, Boost Mobile is a facilities-based provider enjoying beneficial use of Sprint's nationwide Sprint 4G LTE Network reaching more than 270 million people. Through Sprint as its parent company, Boost has access to high-quality spectrum, including 800 and 1900 MHz Commercial Mobile Radio Service ("CMRS") licenses and 2.5 GHz CMRS licenses.

Boost Mobile offers exceptional service and value for wireless consumers with prepaid unlimited talk, text, and data plans and without long-term contracts. Boost's plans are among the most competitively priced monthly unlimited plans in the industry. Boost Mobile also offers daily unlimited talk, text, and data plans and data packs. Additional products and services available to Boost customers include international calling, Boost Mobile Wallet, entertainment and social media applications, phone insurance, a referral program, and a phone buyback program. Boost Mobile customers can choose from a wide selection of handsets to meet their needs and budget, from basic flip-phones to the newly released smartphones. Boost handsets and

top up cards are available through national retailers, such as Best Buy, Target, and Walmart, and through thousands of indirect dealer doors. Products and services are also available at BoostMobile.com. Boost's award-winning customer service has been recognized more than eight times.

Boost has recently introduced mobile Wi-Fi hotspot devices and plans that offer the same strong value proposition as its phone plans. Experienced in providing broadband data access to consumers nationwide, Boost Mobile is prepared to help the Commission reach its goal of expanding broadband access to low-income consumers should the Commission decide to support such service as part of the Lifeline program.

Because Boost Mobile already has in place nationwide distribution channels and activation processes, it is ready to offer telecommunications services with a Lifeline discount to low-income consumers. Using its established marketing approach, Boost Mobile advertises the availability and prices of its services through a variety of mediums, including its website, digital advertising, print, billboards, and occasionally television and radio. Boost Mobile offers are also prominently displayed at its more than 10,000 retail locations nationwide.

B. Proposed Lifeline Offering

Boost seeks designation as an ETC so that it can enable Lifeline eligible customers to apply their Lifeline discount to existing Boost plans, providing these customers with additional choices and increased access to competitive wireless plans.

Boost Mobile anticipates that a number of its existing customers would be eligible for and benefit from a Lifeline discount. Boost customer surveys indicate that nearly 60 percent of Boost customers participate in public assistance programs. The average annual household income of a Boost customer is \$25,000, which would qualify a family of three for Lifeline

under current federal guidelines. Approximately 62 percent of Boost customers are employed with another 13 percent temporarily unemployed and looking for work. A full 90 percent of Boost customers rely exclusively on wireless service, making it critically important that these customers are able to maintain service. For these customers, the \$9.25 Lifeline subsidy, provided through an account credit, could be the difference between maintaining and dropping service in a given month.

Lifeline subscribers will be eligible for any of Boost Mobile's core and current market single-line monthly rate plans. Given the competitive environment, these rate plans change periodically. Once a customer selects a plan, the customer may remain on that plan even if it is no longer offered to new customers until the customer decides to select a new plan. Currently, Boost offers several single-line retail plan options, all with unlimited⁵ data, talk, and text. As illustrated in Exhibit 4, the plans differ depending on the number of 3G/4G data gigabytes desired: (1) two gigabytes of 3G/4G data for \$30 per month for automatic payment customers,

⁵ As explained in Boost Mobile's Terms of Service, "Unlimited does not mean unreasonable. If you subscribe to rate plans, services or features that are described as 'unlimited', you should be aware that such unlimited plans are subject to the Prohibited Network Uses detailed below." See Boost Mobile, *Important Service/Product Specific Terms*, ABOUT US – PRODUCT TERMS CONDITIONS, available at <http://www.boostmobile.com/about/legal/terms-conditions/product-terms-conditions/>. Boost Mobile explains further that:

To improve data experience for the majority of users, throughput may be limited, varied or reduced on the network. With certain plans, throughput data speeds will be slowed when data usage exceeds the selected plan's applicable data threshold(s). During this time, data access will continue but maximum speeds will be limited to 2G speeds of 128Kbps or below for the remainder of plan cycle, resulting in slower page loads, downloads, and degraded streaming media. Data speeds will be restored at the beginning of a new plan cycle, or after a plan cycle restart. Data usage can be monitored online in 'MyAccount'. For more information on Boost's network management tools, policies and other related information, please visit boostmobile.com/networkmanagement.

See id.

with the potential to grow to more gigabytes after a specified number of on-time payments;⁶ (2) two gigabytes of 3G/4G data for \$35 per month, with the potential to grow to more gigabytes with on-time payments; (3) 5 gigabytes of 3G/4G data for \$45 per month; or (4) unlimited 4G LTE high-speed data for \$60 per month.⁷ Once a plan’s 3G/4G data threshold reached, speeds are reduced to 2G speeds for the remainder of the plan cycle.⁸

Boost proposes to permit its customers to apply the full amount of the Lifeline subsidy to current market single-line monthly rate plans. Boost does not intend to offer service plans specifically designed for Lifeline customers. As such, the plans described herein for Lifeline customers are the same as the plans offered to non-Lifeline customers. Similarly, Lifeline customers will have access to the wide range of handsets and devices available to all Boost customers at the same low rates available to all Boost customers. Boost Mobile also has daily unlimited plans, international plans, Wi-Fi hotspot plans, and Data Packs that will not be eligible for use with the Lifeline subsidy.

II. ETC Designation

A. The Commission Has the Authority to Perform the Requested Designations

While the authority to designate ETCs traditionally falls on state utility commissions, Sections 214(e) and 254 of the Act authorize the FCC to designate each Boost entity as an ETC in Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, New

⁶ As explained on Boost Mobile’s website, customers become eligible for “500MB of extra high-speed data after every 3 on-time payments. Up to 3GB after 18 on-time payments. So the longer [customers] stay with Boost, the more high-speed data [customers will] have for streaming, sharing, gaming and more.” Boost Mobile, *Only Boost grows your data plan*, NEW! ONLY BOOST GROWS YOUR DATA PLAN, available at <http://www.boostmobile.com/shop/plans/growing-data/>.

⁷ Once the 3G/4G data allotment is exhausted, unlimited data is available on the 2G network.

⁸ See Boost Mobile, *Important Service/Product Specific Terms*, ABOUT US – PRODUCT TERMS AND CONDITIONS, <http://www.boostmobile.com/about/legal/terms-conditions/product-terms-conditions/>.

York, Tennessee, Texas, the Commonwealth of Virginia, and the District Of Columbia, including Tribal areas. Specifically, Section 214(e)(6) of the Act provides that the Commission may confer ETC status on a common carrier where the carrier’s services do not fall subject to the jurisdiction of a state commission. In the instant petition, Boost Mobile supplies affirmative statements from all the states in which it seeks ETC designation that these states lack the authority to perform the requested designations for wireless carriers. Those statements are attached hereto at Exhibit 2.

Specifically, Boost Mobile submits affirmative statements from state commissions in the identified states showing that each lacks jurisdiction to confer ETC status. Boost Mobile submits copies of the following orders and correspondence:

The Alabama Public Service Commission issued an order finding that its “jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial radio services,” and that “wireless providers seeking ETC status should pursue their designation request with the FCC.”

The Connecticut Department of Public Utility Control provided a letter confirming that it lacks jurisdiction over wireless ETC petitions.

The Delaware Public Service Commission issued an order clarifying that as a “federal default state” it does not administer its own ETC program.

The District of Columbia confirmed by letter that it lacks jurisdiction to designate wireless carriers as ETCs.

The Florida Public Service Commission acknowledged by letter that “the revision to Chapter 364, Florida Statutes, changed the Commission’s jurisdiction regarding

telecommunications companies.” The letter confirmed that “the Federal Communications Commission, rather than this Commission is the appropriate agency to consider . . . [bids] for ETC status.”

On June 13, 2013, the Maine PUC issued an order amending Chapter 206 of its rules and stated that the PUC “will no longer certify carriers that apply for ETC designation for the sole purpose of offering Lifeline, Link-Up, or other low-income program benefits. Going forward, such carriers will apply to the [FCC] for ETC designation.”

The General Counsel of the New Hampshire Public Utilities Commission issued a letter confirming that the PUC lacks jurisdiction to consider petitions for ETC status filed by mobile radio communication carriers.

The New York Public Service Commission confirmed by letter that it lacks jurisdiction to entertain Boost Mobile’s ETC petition.

The North Carolina Utilities Commission released an Order concluding that “the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC.”

The Tennessee Regulatory Authority issued an order finding that its statutory “lack of jurisdiction over CMRS providers” precludes it from processing ETC petitions.

In November 2012, the Texas Public Utility Commission released an order that relinquishes ETC designation for CMRS providers within the State of Texas to the FCC.

The Virginia State Corporation Commission issued an order stating that it “has not asserted jurisdiction over CMRS carriers,” and that wireless ETC applicants “should apply to the Federal Communications Commission.”

Also, Boost Mobile is seeking ETC designation for the Boost entities in the Tribal areas

throughout its service territory in the identified states.

Accordingly, for each of the above states, Boost Mobile requests that the Commission exercise its authority under Section 214(e)(6) and determine that it is not subject to a state commission’s ETC jurisdiction.

B. Each of the Boost Entities Satisfies All Requirements Necessary to Be Designated an Eligible Telecommunications Carrier

In order to receive an ETC designation, Section 214(e)(1) of the Act and Section 54.201(d) of the Commission’s rules provide that a petitioning carrier must:

1. be a common carrier;
2. offer all of the services supported by federal USF support mechanisms;
3. either use its own facilities or a combination of its own facilities and the resale of another carrier’s services, except where the Commission has forborne from the “own facilities” requirement;
4. advertise the availability and pricing of its universal service support qualifying services; and
5. comply with all of the relevant regulations applicable to ETCs.

1. The Boost Operating Entities Qualify as Common Carriers

The Boost operating entities are common carriers because they each provide interstate and foreign communications by radio⁹ and qualify as a Commercial Mobile Radio Service (“CMRS”) provider.¹⁰ In addition, section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.¹¹

⁹ The Act defines a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio” 47 U.S.C. § 153(11). The Act further defines a “person” to include “an individual, partnership, association, joint-stock company, trust, or corporation.” 47 U.S.C. § 153(39).

¹⁰ See 47 C.F.R. § 20.3.

¹¹ See 47 U.S.C. § 332(c)(1)(A).

2. Boost Mobile Offers the Services and Functionalities Supported by the Federal Low-Income Universal Service Program¹²

Boost Mobile will offer all of the services and functionalities supported by the federal low-income Universal Service program. Boost seeks limited designation as an ETC to provide Lifeline service in the wire centers provided in Exhibit 3. As described below, Boost Mobile certifies that it provides voice telephony service supported by federal universal service support mechanisms, including the following capabilities:

1. Boost Mobile will provide each of the services supported by the federal Universal Service Fund (“USF”) immediately upon its launch of Lifeline services in each federal default state. These services include voice grade access to the public switched telephone network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, as well as access to emergency services, operator services, interexchange services, and directory assistance.
2. As noted herein, Boost Mobile’s proposed Lifeline offering will include varying rate plans with different amounts of local usage.
3. Boost Mobile will provide its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes. It will provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to its subscribers, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services.
4. As the Commission has changed its definition of “supported services” for purposes of USF reimbursement, ETCs are no longer required to offer toll limitation service to

¹² 47 C.F.R. § 54.201(d).

low-income consumers if the Lifeline offering provides a set amount of minutes that does not distinguish between toll and non-toll calls.¹³ Boost Mobile’s proposed Lifeline offering meets this requirement and therefore, Boost Mobile will not offer toll limitation.

3. Boost Mobile Will Provide the Supported Services Using Its Own Facilities

Boost Mobile service is provided exclusively on the Sprint Nationwide Network.

Boost Mobile does not purchase or resell the network service of any carrier. The Boost operating entities are wholly-owned subsidiaries of Sprint, which is a facilities-based wireless telecommunications carrier with its own switching, cell sites, and associated telecommunications facilities throughout its proposed service areas and therefore, meets the applicable facilities-based requirements for ETCs.¹⁴ Sprint uses radio licenses issued by the Commission to provide CMRS and will use its own network facilities to provide Lifeline service to eligible consumers in its requested ETC service area.

4. Boost Mobile Will Provide Service Throughout Its Designated Service Area

Boost Mobile commits to provide Lifeline service, including all of the supported services, throughout its designated service area, consistent with all applicable requirements. Boost Mobile’s requested designated ETC service area is its wireless coverage area, which includes the wire centers identified in Exhibit 3. The proposed designated wire centers include federally

¹³ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶ 230 (rel. Feb. 6, 2012).

¹⁴ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1). See *Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, District of Columbia, Delaware, and New Hampshire*, WC Docket No. 09-197, Order, ¶15 (rel. Dec. 29, 2010).

designated Tribal lands, as discussed above.

5. Boost Mobile Will Advertise the Availability and Pricing for its Universal Service Qualifying Offerings

Boost Mobile engages in national and local advertising for all of its services, including those that will be supported by federal universal service support mechanisms pursuant to 47 USC § 254(c) if this Petition is granted. In states in which Boost Mobile will be designated as an ETC and will offer services supported by federal universal service support mechanisms pursuant to 47 USC § 254(c), Boost Mobile will offer such services under its Boost Mobile brand. Boost Mobile advertises its brand offering in national and local media of general distribution including television, radio, print, billboards, and the Internet. Samples of digital and print advertisements and other marketing materials for Boost Mobile are attached hereto as Exhibit 4.

6. Boost Mobile Will Satisfy its Statutory Obligations as an ETC

a. Certify Compliance with Applicable Requirements

Boost Mobile certifies that it will comply with the service requirements applicable to the support that it receives and the services it provides.¹⁵ Boost Mobile will provide service on a timely basis and within a reasonable period of time as required by § 54.202(a)(1)(i)(A), (B). See Exhibit 5, which contains Boost Mobile's certification of this response.

b. Ability to Function in Emergency Situations

As a wholly-owned subsidiary of Sprint, Boost Mobile is able to remain functional in emergency situations as required by section 54.202(a)(2) of the FCC's regulations (47 CFR § 54.202(a)(2)). Sprint has established a variety of internal programs, policies, and teams dedicated to analyzing, assessing, and responding to emergency situations. Sprint's response to emergencies

¹⁵ See 47 C.F.R. § 54.202(a)(1)(i).

is dynamic, and plans are in place to address the specific conditions, geographic impact, and other factors presented by each emergency. Sprint has maintained its network in the face of natural disasters (e.g., hurricanes, blizzards, floods, and earthquakes), utility emergencies such as black-outs, and special events involving a congregation of tens of thousands of people (e.g., sporting events, political rallies). Sprint local switching offices are staffed by trained technicians and management, who coordinate with these larger Sprint operation centers, to ensure that Sprint's networks are properly maintained and network performance is at expected levels. In addition, Sprint has reasonable amounts of back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Finally, each cell site in the Sprint network is equipped with battery back-up power, and the company is capable of rerouting traffic around damaged facilities.

c. Consumer Protection and Service Quality Standards

Boost Mobile has complied with the CTIA-The Wireless Association® Consumer Code for Wireless Service (“Consumer Code”) since its inception and will continue to comply with the Consumer Code once designated as an ETC.¹⁶ Boost Mobile annually certifies its compliance with the Consumer Code, and the Commission and the FCC recognize the value of such compliance. In prior years, Boost Mobile has received numerous awards for its high-quality customer service, including the prestigious J.D. Power award recognizing Boost Mobile as a “2014 Customer Champion.”

In addition, Boost Mobile will provide service to any customer making a reasonable request for service throughout its designated service areas.

¹⁶ Boost Mobile's compliance with the Consumer Code also satisfies its obligations under the FCC's regulations. *See* 47 C.F.R. § 54.202(a)(3).

To ensure that customers receive uninterrupted access to 911 emergency and customer care services, Lifeline customers will be able to access 911 emergency and customer care services regardless of whether they have any remaining minutes in their account. In addition, minutes used for calls placed to 911 emergency services and Boost Mobile customer care are not decremented from a customer's account. The terms of Boost Mobile's proposed Lifeline offering are detailed above in this Petition.

d. Financial and Technical Capability to Provide Lifeline Service and Information on Lifeline Service Offering

Boost Mobile has the financial and technical capability to provide Lifeline service and information on its service offerings. Boost Mobile has provided service since 2002. As demonstrated herein, Boost Mobile, through its parent company Sprint, is a well-established facilities-based wireless telecommunications carrier with a history of providing service to non-Lifeline customers and does not intend to rely exclusively on USF disbursements. Boost Mobile receives revenue from several non-USF sources.

Boost Mobile has not been subject to ETC-related enforcement action or ETC revocation proceedings in any state. Boost Mobile has also not been subject to any FCC enforcement action. Moreover, Boost Mobile's parent company is a holder of numerous FCC CMRS licenses. Deploying a facilities-based wireless communications network such as Boost Mobile's requires considerable financial and technical capability. In addition, as a CMRS licensee through its parent company, Boost Mobile has independent obligations and incentives to comply with Commission rules.

In sum, as a licensed carrier with a well-established track record of providing quality mobile voice and data services to non-Lifeline customers, Boost Mobile has made the requisite showing of financial and technical capability.

C. Boost Mobile Will Guard against Waste, Fraud, and Abuse

Boost Mobile will implement the Commission's existing and any new procedures to prevent customers from receiving duplicate service, ensure customer eligibility, and re-certify continued customer eligibility.

During the activation process, applicants for Lifeline service will be required to complete a Boost Mobile Lifeline application. The application will be reviewed in real-time, and a decision will be rendered at the point of sale within 5-10 minutes by a third-party eligibility administrator. The applicant will be required to provide on the application form all information mandated by regulation, including their name, residential address, date of birth, and the last four digits of their Social Security number. The application will also be required to indicate the relevant eligibility criteria, including providing proof of eligibility in states that do not make a database available for eligibility verification purposes. The applicant will be required to provide proof of identity and address that must match the information on the application. The enrollment form will include an applicant certification section wherein each applicant must attest and sign under penalty of perjury that the applicant meets the relevant Lifeline eligibility criteria to receive service from Boost Mobile.

Boost Mobile will check all Lifeline applicants against the National Lifeline Accountability Database ("NLAD") to validate identity and ensure the customer is not currently receiving a Lifeline discount or is eligible for transfer of the discount. Boost Mobile will also interface with available state databases to verify customer eligibility based on program participation and/or income. If the applicant is determined eligible, his/her identity is validated by NLAD, and the applicant is eligible for enrollment through NLAD. Boost Mobile will, in turn, approve the customer for a Lifeline discount at the point of sale. In summary, Boost Mobile will

ensure that its verification procedures are thorough, effective, and compliant with Commission requirements.

III. Boost Mobile Will Make Valuable Lifeline Offerings Available to Low-Income Consumers

Following its designation as an ETC, Boost Mobile will make available to qualified low-income consumers a discounted, facilities-based service offering that meets all applicable Lifeline requirements. Consumers increasingly rely on their mobile phones for all of their communications needs, and qualifying low-income consumers are no exception. Low-income consumers would be the beneficiaries of Boost Mobile's service offerings. Indeed, Boost Mobile proposes to pass through the full amount of the Lifeline discount to customers on its retail service plans, providing low-income consumers with the opportunity to apply Lifeline discounts to more robust plans that are competitive in the prepaid marketplace. As it does so, Boost Mobile will implement its Lifeline service offerings consistent with all applicable requirements.

IV. ETC Designation for Boost Mobile Will Promote the Public Interest

Section 54.202(b) of the Commission's rules mandates that ETC designations serve the public interest. In considering whether any designation is in the public interest, "the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering."¹⁷ First, Boost Mobile's service offers increased consumer choice and has unique advantages for consumers in the geographical areas served. For example, Boost Mobile's service provides a low-cost, reliable alternative to traditional rate plans. It allows customers to rely on the extensive network of its parent company, while taking advantage of Boost Mobile's additional features and services

¹⁷ 47 C.F.R. § 54.202(c).

provided by secure facilities.

In addition, Boost Mobile’s service meets the goals of the Act. For example, the Act aimed to “secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all American consumers.¹⁸ Conferring ETC status upon Boost Mobile will provide consumers with high-quality services at lower prices in the designated service areas.

Designation of Boost Mobile as an ETC also meets the Commission’s stated goals for promoting competition and increasing customer choice. The Commission has determined that “designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”¹⁹ Boost Mobile adds competition to the marketplace with the addition of its affordable and innovative services.

Finally, because Boost Mobile will remain compliant with each of its ETC responsibilities, the Commission should designate it as an ETC in the proposed service areas.

V. Anti-Drug Abuse Certification

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862.

VI. Conclusion

As Boost Mobile has demonstrated, the Commission’s grant of this Petition designating Boost Mobile as a Lifeline ETC would promote the public interest. Boost Mobile requests that

¹⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁹ See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket No. 96-45, ¶ 17 (rel. Dec. 26, 2000).

the Commission grant this Petition on an expedited basis so that Boost Mobile may begin providing the benefits of Lifeline service to qualifying low- income consumers.

Respectfully submitted,



Brita D. Strandberg

Traci D. Biswese

Harris, Wiltshire & Grannis LLP

1919 M. St. NW, 8th Floor

Washington, D.C., 20036

(202) 730-1300

Counsel for Boost Mobile

October 27, 2015

EXHIBIT 1

LISTING OF BOOST ENTITIES AND RELEVANT STATES

Boost Entities

The terms “Boost Mobile” and “Boost” include the term “Boost entities.” The term “Boost entities” includes the following entities, seeking limited designation as eligible telecommunications carriers in the following states:

State	Entity*
Alabama	Sprint Spectrum, LP SprintCom, Inc. Louisiana Unwired, LC
Connecticut	Sprint Spectrum, LP
Delaware	PhillieCo, LP
Florida	Sprint Spectrum, LP SprintCom, Inc. Louisiana Unwired, LC
Maine	Sprint Spectrum, LP
New Hampshire	Sprint Spectrum, LP Independent Wireless Once Corporation
North Carolina	SprintCom, Inc. AirGate PCS, Inc.
New York	Sprint Spectrum, LP Independent Wireless Once Corporation Horizon Personal Communications
Tennessee	Sprint Spectrum, LP UbiquiTel Operating Company SprintCom, Inc. Louisiana Unwired, LLC Horizon Personal Communications
Texas	Sprint Spectrum, LP SprintCom, Inc. Texas Telecommunications, LP Southwest PCS, LP Georgia PCS Management, LLC Louisiana Unwired, LLC
Virginia	American PCS Communications, LLC SprintCom, Inc. Horizon Personal Communications
District of Columbia	American PCS Communications, LLC

*Each entity is a wholly owned direct or indirect subsidiary of Sprint Corporation.

EXHIBIT 2

AFFIRMATIVE STATEMENTS OF THE FEDERAL DEFAULT STATES

Alabama Public Service Commission

Orders

PINE BELT CELLULAR, INC. and PINE BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or clarification regarding the jurisdiction of the Commission to grant ETC status to wireless carriers.

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214 (e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

October 14, 2004

In reply please refer to:

UR&R:TE: Undocketed:PFR

Tracie R. Chesterman, Attorney
Greenberg Traurig
Met Life Building
200 Park Avenue
New York, NY 10166

Re: TracFone Wireless, Inc.

Dear Attorney Chesterman:

The Department of Public Utility Control (Department) is in receipt of a letter dated August 27, 2004, on behalf of TracFone Wireless, Inc. (TracFone or Company) requesting a statement that TracFone is not subject to the Department's jurisdiction. Specifically, TracFone requests affirmation from the Department that it does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers, including TracFone, for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier (ETCs) designations. TracFone is seeking designation as an ETC by the Federal Communications Commission (FCC). TracFone is a reseller of CMRS and provides service in Connecticut through a virtual network consisting of services obtained from licensed operators of wireless networks.

The Department does not regulate or license the wireless carrier services' rates and charges per the Federal Omnibus Budget Act of 1993. The Department does, however, continue to regulate the terms, conditions, and provisions under which those services are offered including the funding of other telecommunications services (i.e., 911, Universal Service, Lifeline, Telecommunications Relay Service (TRS), etc.). Since TracFone appears to be a wireless carrier and therefore is not subject to the Department's jurisdiction for the purposes of ETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

A handwritten signature in cursive script that reads "Louise E. Rickard".

Louise E. Rickard
Acting Executive Secretary



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

August 18, 2010

VIA E-MAIL

Lance J.M. Steinhart, P.C.
1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

Dear Mr. Steinhart:

I received your letter on behalf of i-wireless, LLC requesting clarification on Delaware's competitive eligible telecommunication carrier process. This is to confirm that Delaware is a "default" State and, therefore, it is the FCC, not Delaware, that determines eligibility to receive the federally-subsidized price reductions. I am attaching the October 11, 2005 order in PSC Docket No. 05-016T that discusses this issue in a Verizon Delaware, Inc. docket.

I will attach these documents to an e-mail so that you will receive them expeditiously. If you would also like a hard copies of the documents by mail let me know by e-mail and I will forward them to you.

Sincerely

A handwritten signature in cursive script that reads 'Janis L. Dillard'.

Janis L. Dillard
Acting Executive Director

DOCKET COPY
DO NOT REMOVE FROM OFFICE

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., TO MODIFY THE)
LIFELINE SERVICE BY ADDING AN INCOME) PSC DOCKET NO. 05-016T
QUALIFIER TO THE ELIGIBILITY CRITERIA)
(FILED JUNE 17, 2005))

ORDER NO. 6736

This 11th day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.¹ And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

¹See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).

federal Lifeline discounts on the federal list of supported services.² And even though in "default" States, Lifeline is almost an exclusively federal program, VZ-DE has, since 1997, filed at the State level, tariff provisions setting forth its Lifeline offerings.³

3. In 2004, the FCC changed some of the "eligibility" rules describing which subscribers may participate in the federal Lifeline/Link-Up program.⁴ In particular, the 2004 amendments added additional programs to the list of "eligible" programs where participation confers federal default Lifeline/Link-Up eligibility.⁵ The 2004 amendments also introduced an additional eligibility criteria premised on the subscriber's household income.⁶ Eligible telecommunications carriers, such as VZ-DE, were given one year to implement this new, additional income-based eligibility criteria.⁷

4. To implement these changes prescribed by the FCC, VZ-DE initially filed revisions to the Lifeline and Link-Up portions of its

²See PSC Order No. 4680 (Dec. 17, 1997) ("ETC" designation for VZ-DE). See also PSC Dckt. No. 97-023T (initial Lifeline tariff filing by VZ-DE).

³From December 2000 through December 2003, VZ-DE offered, under its state tariff, an "expanded" Lifeline program for Delaware. The discounts under such program exceeded the Tiers 1 & 2 levels normally available in a default State. VZ-DE offered this expanded program to fulfill a condition imposed by the FCC in approving the Bell Atlantic-GTE merger. See PSC Order No. 6317 (Dec. 9, 2003) (explaining content and cause of this expanded Lifeline offering). Whether Delaware remained a "default State" during this period when VZ-DE subsidized the deeper discounts is an issue that need now be explored or resolved. This "expanded" program ended in December 2003.

⁴In the Matter of Lifeline and Link-Up, Report and Order and Further NPRM, 19 FCC Rcd. 8302 (FCC 2004) ("Lifeline Order").

⁵47 C.F.R. §§ 54.409(b) (Lifeline eligibility criteria in "default" State); 54.415(b) (Link-Up eligibility criteria in "default" State).

⁶47 C.F.R. §§ 54.409(b), 54.410 (Lifeline); 54.415(b), 54.416 (Link-Up).

⁷47 C.F.R. §§ 54.410(a)(ii), 54.416.

State tariff. These changes incorporated into the State tariff provisions the expanded list of "eligibility-conferring" programs.⁸ At the same time, the Commission Staff began discussions with VZ-DE to determine whether, under the applicable federal default rules, it was appropriate for VZ-DE to continue to include in its State tariff Lifeline provisions language that conditioned Lifeline eligibility on the subscriber foregoing the ability to purchase many optional or vertical services.⁹ Eventually, VZ-DE revised its State tariff Lifeline provisions to delete the questioned restrictions.¹⁰ Then in June 2005, VZ-DE filed another Tariff revision to reflect its implementation of the household-income criteria for eligibility for Lifeline and Link-Up discounts.¹¹ Finally, on September 9, 2005, VZ-DE submitted another set of revised tariff sheets reflecting further textual revisions, as originally suggested by Staff. In part, these final changes sought to make the State tariff's description of how VZ-DE would administer its Lifeline/Link-Up program to more closely parallel the governing federal default rules.¹²

⁸See PSC Dckt. No. 04-017T (filed July 26, 2004; eff. July 27, 2004).

⁹That restriction - limiting Lifeline subscribers to a small group of designated vertical services - had been a continual part of VZ-DE's state-tariffed Lifeline offerings since 1997. In its Lifeline Order, the FCC expressed its belief that "any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the [Lifeline] program. Lifeline Order at ¶ 53.

¹⁰See PSC Dckt. No. 05-008T (filed April 8, 2005; eff. April 16, 2005).

¹¹See PSC Dckt. No. 05-016T (filed June 17, 2005; eff. June 22, 2005).

¹²See PSC Dckt. No. 05-016T, amended tariff sheets filed on September 9, 2005 but with effective date of June 22, 2005).

5. The Commission enters this Order not so much to "approve" the various Lifeline filings made by VZ-DE but to recount the course of the filings made since the FCC changed its federal Lifeline/Link-Up program in 2004. Indeed, given that Delaware is a "default" State, VZ-DE's Lifeline/Link-Up offerings are governed more by the federal default rules than by any "approved" State tariff provision. Any State tariff provision that might conflict with a federal default rule would necessarily have to yield. However, the Commission will accept the Lifeline and Link-Up tariff filings lodged by VZ-DE. The Commission believes that VZ-DE's last submission (in September 2005) sets forth a Lifeline and Link-Up offering that is consistent with the federal default rules. However, the filing and acceptance of the State tariff provisions should not be seen as foreclosing any later challenge that VZ-DE's program falls short of the federal directives.

Now, therefore, **IT IS ORDERED:**

1. That, as explained in the body of this Order, the Commission accepts the tariff filings made by Verizon Delaware Inc., to implement its responsibilities to provide federal Lifeline and Link-Up in this "federal default" jurisdiction. In particular, the Commission now accepts the tariff revision filing made September 9, 2005 pertaining to the following leaves in P.S.C.-Del.-No. 1:

Section 20D, Fourteenth Revised Sheet 1 (Link-Up);

Section 20D, Fifth Revised Sheet 2 (Link-Up); and

Section 20E, Eighth Revised Sheet 2 (Lifeline).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Annella McKee
Chair

Vice Chair

Jane Crossway
Commissioner

Jane R. [unclear]
Commissioner

[unclear]
Commissioner

ATTEST:

Norma J. Sherwood
Acting Secretary



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

February 29, 2012

Via First Class & Electronic Mail

Lance J.M. Steinhart
Lance J.M. Steinhart, P.C., Attorney at Law
1725 Windward Concourse, Suite 150
Alpharetta, GA 30005

Dear Mr. Steinhart:

Thank you for your February 23, 2012 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or lwalt@psc.dc.gov.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Beverly".

Richard A. Beverly
General Counsel

Enclosure



D.C. Council Home

Home Search Help ©

Welcome to the online source for the District of Columbia Official Code

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness

Division V. Local Business Affairs

Title 34. Public Utilities.

↳ Subtitle V. Telecommunications.

↳ Chapter 20. Telecommunications Competition.

↳ **§ 34-2006. Exemptions.**

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through January 11, 2012

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JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

June 2, 2011

Mr. Lance J.M. Steinhart, P.C.
Attorney At Law
1720 Windward Concourse
Suite 115
Alpharetta, GA 30005

Re: Docket No. 110101-TP – i-wireless, LLC's ETC designation

Dear Mr. Steinhart:

We received your May 20, 2011 letter requesting a statement that the Florida Public Service Commission's jurisdiction to grant ETC designation to i-wireless, LLC changed with Governor Scott's approval of HB 1231, the telecom reform bill. In your letter, you mentioned that i-wireless, LLC is a commercial mobile radio service provider.

This letter acknowledges that Governor Scott's approval of HB 1231, the telecom reform bill, revises Chapter 364, Florida Statutes, thereby changing the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, including the revisions by HB 1231 for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider i-wireless, LLC's bid for ETC status.

Sincerely,

A handwritten signature in black ink that reads "S. Curtis Kiser".

S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00220

June 13, 2013

PUBLIC UTILITIES COMMISSION
Amendment to Standards for Designating
and Certifying Eligible
Telecommunications Carriers Qualified to
Receive Federal Universal Fund Support
(Ch. 206)

ORDER ADOPTING
AMENDED RULE AND
STATEMENT OF FACTUAL
AND POLICY BASIS

WELCH, Chairman; LITTELL and VANNOY, Commissioners

I. SUMMARY

By this Order, we adopt amendments to Chapter 206 of the Commission's rules which establishes standards for the designation and annual certification of Eligible Telecommunications Carriers (ETCs). After these amendments, the Commission will no longer certify carriers that apply for ETC designation for the sole purpose of offering Lifeline, Link-Up, or other low-income program benefits. Going forward, such carriers will apply to the Federal Communications Commission (FCC) for ETC designation.¹

II. BACKGROUND

Chapter 206, adopted by the Commission on November 20, 2007, established standards for the designation and annual certification of ETCs. The rule was created, in large measure, to supplement the federal rules for ETC designation to account for distinctions between the services provided by wireline and wireless ETCs.

Since the adoption of Chapter 206, carriers seeking ETC designation for the sole purpose of offering Lifeline, link-Up, or other low-income benefits have entered the market in ever increasing numbers.² The majority of these carriers are pre-paid wireless service providers that resell the cellular telephone service of large national carriers. These pre-paid wireless ETCs typically provide a telephone handset and offer a set number of minutes (anywhere from 68 to 250 minutes per month) to low-income

¹ This rule is a routine technical rule as defined in Title 5, chapter 375, subchapter 2-A of the Maine Revised Statutes.

² The federal Lifeline program provides a subsidy from the federal Universal Service Fund (USF) to ETCs for the purpose of providing discounted telephone service to qualifying low-income consumers. Link-Up is a federal program that provides a subsidy from the federal USF to ETCs to offset the cost of telephone service installation for low-income customers. The FCC has recently eliminated the Link-Up program for all areas of the country except Tribal Lands.

customers at no charge to the customer. The service is made "free" to the low-income customer by the application of a federal universal service fund subsidy (currently \$9.25 per month) to the monthly charge on a customer's account; a charge that exactly equals the amount of the subsidy.

When drafted, Chapter 206 did not contemplate the pre-paid Lifeline business model or the designation of "Lifeline-only" ETCs. Since the proliferation of pre-paid wireless Lifeline-only ETCs, the FCC has taken steps to standardize the certification requirements for such carriers. Notably the FCC recently enacted a requirement that a non-facilities-based wireless ETC applicant have a "compliance plan" approved by the FCC before a state commission or the FCC may designate the applicant as an ETC.³ Further, as there is no state subsidy for Lifeline service, the Commission expends substantial resources administering what is for all intents and purposes a federal program.

On April 9, 2013, we issued a Notice of Rulemaking (NOR) in this proceeding detailing the proposed amendments to Chapter 206. The Commission did not schedule a public hearing on this matter, but, pursuant to rulemaking procedures, we provided an opportunity for interested persons to request such a hearing; the Commission did not receive any public hearing requests. Additionally, we provided interested persons with an opportunity to provide written comments on the proposed amendments to Chapter 206. The deadline for submitting such comments was May 17, 2013; the Commission did not receive any comments by the deadline.

It is the view of the Commission that there is no longer any advantage to Maine consumers, financial or otherwise, for the Commission to certify ETCs that apply for the designation solely for the purpose of offering Lifeline service and receiving the federal Lifeline subsidy. Because the FCC will certify Lifeline-only ETCs, Maine consumers will continue to benefit from the availability of the services offered by those carriers.

In accordance with 5 M.R.S. § 8057-A(1), we stated in our NOR that we expect that there will be no fiscal impact from this rulemaking. Further, we stated that we expect that this rulemaking will not impose an economic burden on small businesses. We continue to believe this will be the case

III. DISCUSSION OF THE RULE AMENDMENTS

A. Section 1: Purpose

In the NOR we proposed to amend Section 1 of the rule to specify that the Commission will not designate ETCs seeking such designation solely for the purpose of receiving support to provide Lifeline, Link-Up, or other low-income services, and that carriers seeking designation for that purpose must apply to the Federal

³ In our experience, the majority of Lifeline-only wireless ETCs are non-facilities-based resellers.

Communications Commission. No comments were received regarding this proposed amendment. Therefore, we adopt the amendment to Section 1 of the rule without modification.

B. Section 2: Definitions

1. Applicant

In the NOR we proposed to amend the definition of "Applicant" to exclude carriers seeking ETC designation solely for the purpose of receiving support to provide Lifeline or other low-income services.

2. Lifeline/Link-Up

In the NOR we proposed eliminating the definition of "Lifeline/Link-up."

No comments were received regarding these proposed amendments. Therefore, we adopt these amendments to Section 2 of the rule without modification.

C. Section 3: Contents of Petition by Applicant

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the provision in Section 3 that requires ETC applicants to include in their application a statement that the ETC will advertise the availability of low-income programs such as Lifeline and Link-Up. No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 3 of the rule without modification.

D. Section 6: Annual Reports

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the requirement that Competitive ETCs annually certify that they have publicized the availability of low-income programs such as Lifeline and Link-Up.⁴ No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 6 of the rule without modification.

E. Section 7: Applicability to Carriers Designated as ETCs Before the Effective Date of this Chapter

In the NOR we proposed eliminating a superfluous section requiring submission of information by ETCs that were designated prior to December 4, 2007.

⁴ A Competitive ETC is an ETC that is not an Incumbent Local Exchange Carrier.

No comments were received regarding this proposed amendment. Therefore, we adopt this amendment to Section 7 of the rule without modification.

IV. ORDERING PARAGRAPHS

In light of the foregoing, we

ORDER

1. That the attached Chapter 206 is hereby adopted;
2. That the Administrative Director shall notify the following of the final adoption of the attached rule:
 - a. All Local Exchange Carriers in the State of Maine;
 - b. All Eligible Telecommunications Carriers in Maine;
 - c. The Telephone Association of Maine;
 - d. All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.
3. That the Administrative Director shall send copies of this Order and the final rule:
 - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
 - b. Executive Director of the Legislative Council.

Dated at Hallowell, Maine, this 13th day of June, 2013.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Littell
Vannoy

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

THE STATE OF NEW HAMPSHIRE



CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland

Tel. (603) 271-2431

FAX (603) 271-3878

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Website:
www.puc.nh.gov

PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

March 28, 2011

RE: ETC Certification in New Hampshire

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Anne Ross".

F. Anne Ross

General Counsel

New Hampshire Public Utilities Commission

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
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LEONARD A. WEISS
NEAL N. GALVIN



DAWN K. JABLONSKI
General Counsel

JANET HANB DEIXLER
Secretary

March 27, 2003

TO WHOM IT MAY CONCERN:

Re: Nextel CMRS Jurisdiction

We have received a letter request from NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. In response to this request, please be advised that the New York State Public Service Law (PSL) §5 provides that:

Applications of the provisions of this chapter [i.e., the PSL] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the commission [i.e., the NYS Public Service Commission] . . . makes a determination, after notice and hearing, that regulation of such services should be reinstated to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstated under PSL §5. Consequently, based on the representation by Nextel Partners that it is a CMRS provider, Nextel Partners would not be subject to the application of the PSL, and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth H. Liebschutz".

Elizabeth H. Liebschutz
Assistant Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
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NEAL N. GALVIN



DAWN JABLONSKI RYMAN
General Counsel

JACLYN A. BRILLING
Secretary

March 18, 2004

Mitchell Brecher
Greenberg Taurig, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006

RE: Case 04-C-0227 - Petition of TracFone Wireless, Inc. for a Declaratory Ruling that the Company, a Commercial Mobile Radio Service Provider, is not subject to Commission Jurisdiction.

Dear Mr. Brecher,

I am responding to your letter to Secretary Brillling, dated February 23, 2004, on behalf of TracFone Wireless, Inc. ("TracFone"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 *et seq.* You indicated that TracFone is an authorized reseller of CMRS throughout the United States, including New York.

In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission . . . makes a determination, after notice and hearing, that regulation of such services should be reinstated to the extent found necessary to protect the public interest because of a lack of effective competition.

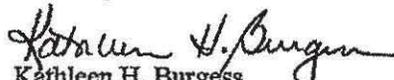
Mr. Mitchell Brecher

March 18, 2004

The New York State Public Service Commission has not made a determination that regulation should be reinstated under Public Service Law §5. Consequently, based on the representation by TracFone that it is a CMRS provider, TracFone would not be subject to the application of the Public Service Law and, therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Case 04-C-0227 will be closed.

Sincerely,


Kathleen H. Burgess
Assistant Counsel

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)j. Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Patricia Swenson".

Patricia Swenson, Deputy Clerk

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:)	
)	
APPLICATION OF ADVANTAGE CELLULAR)	DOCKET NO.
SYSTEMS, INC. TO BE DESIGNATED AS AN)	02-01245
ELIGIBLE TELECOMMUNICATIONS CARRIER)	

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the “Authority”), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* (“*Application*”) filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. (“Advantage”) is a commercial mobile radio service provider (“CMRS”) seeking designation as an Eligible Telecommunications Carrier (“ETC”) by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage’s *Application*. Of foremost consideration was the issue of the Authority’s jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, “[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission.”

The Authority’s lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission’s jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission (“FCC”) to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority’s decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission’s rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

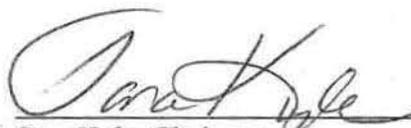
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

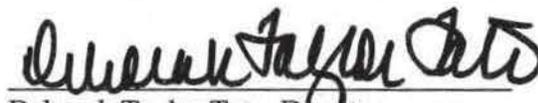
As a matter of “state-federal comity,” the FCC requires that carriers seeking ETC designation “first consult with the state commission to give the state commission an opportunity to interpret state law.”³ Most carriers that are not subject to a state regulatory commission’s jurisdiction seeking ETC designation must provide the FCC “with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation.”⁴

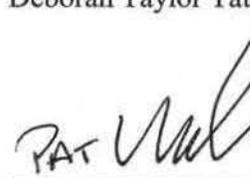
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The “affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.”)

PROJECT NO. 40561

2012 NOV 21 AM 11:37

**RULEMAKING TO AMEND §
SUBSTANTIVE RULE 26.418 RELATING §
TO DESIGNATION OF COMMON §
CARRIERS AS ELIGIBLE §
TELECOMMUNICATIONS CARRIERS §
TO RECEIVE FEDERAL UNIVERSAL §
SERVICE FUNDS §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

FILED

**ORDER ADOPTING AMENDMENT TO §26.418
AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, with no changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6874). The amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

The commission did not receive any comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive

telecommunications marketplace; and maintain a wide availability of high quality interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §§14.002 and 51.001.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Applicability.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller.
- (c) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to

Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

- (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

- (d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:

- (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertises the availability of and charges for such services using media of general distribution.

- (e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

- (1) meet the requirements of subsection (d) of this section;
- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

- (1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) of this section and subsection (d) of this section.
- (2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) of this section and subsection (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.
- (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to

amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this

section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;
- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

- (vi) contain a copy of the text of the notice;
 - (vii) contain the proposed effective date of the designation; and
 - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
- (C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
- (i) comply with the requirements of subparagraph (B) of this paragraph;
 - (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (2) **Commission processing of application.**
- (A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause,

determines at any point during the review that the application should be docketed.

- (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
 - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
 - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
 - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
 - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
 - (IV) notice was provided as required by this section;

- (V) the applicant satisfies the requirements contained in subsection (c) of this section; and
 - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
 - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected

persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
- (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;
 - (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and
 - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and
 - (B) commission designation of a new ETC for the service area or areas.

- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.
- (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.
 - (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
 - (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
 - (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF

support certification and make an appropriate recommendation as a result of any such review.

- (1) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
- (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:
- (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
 - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
 - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
 - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315,

(June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:
 - (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
 - (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
 - (C) the ratio of per line FUSF support shall be publicly available;
 - (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

- (E) each support category complies with subparagraphs (A) and (B) of this paragraph;
 - (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
 - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
 - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
 - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
 - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of

- support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and
- (E) maps identifying the boundaries of the disaggregated zones within the study area.
- (5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:
- (A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;
- (B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or
- (C) changes in ownership or changes in state or federal regulation warrant the commission's action.
- (6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

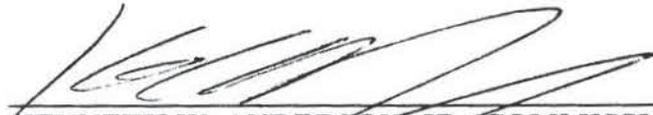
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.418 relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, is hereby adopted with no changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 16th day of November 2012.

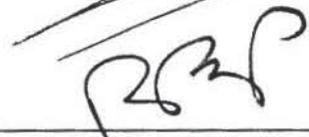
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



ROLANDO PABLOS, COMMISSIONER

COMMONWEALTH OF VIRGINIA
REDACTED - FOR PUBLIC INSPECTION
STATE CORPORATION COMMISSION DOCUMENT CONTROL

AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.¹ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

¹ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").²

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.³

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In 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.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.⁴ The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."⁵

² CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia.*

³ See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.state.va.us/scc/caseinfo.htm>.

⁴ The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

⁵ The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.⁶ However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

⁶ See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

EXHIBIT 3
WIRE CENTERS

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

