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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Federal-State Joint Board on )  
Universal Service )  
 )  
RCC Holdings, Inc. )  
 )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
in the State of Alabama )

CC Docket No. 96-45

**RECEIVED**

**MAR 26 2002**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

To: Common Carrier Bureau

**Amendment to Petition for Designation as an Eligible Telecommunications  
Carrier in the State of Alabama**

RCC Holdings, Inc. ("RCC"), by counsel, hereby amends its Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Alabama. RCC amends its application to include a recent Order of the Alabama Public Service Commission ("PSC"), which clarifies that the PSC does not have authority to regulate Commercial Mobile Radio Service Providers ("CMRS") for purposes of ETC designation.

RCC filed its Petition for Designation as an ETC with the Commission on March 19, 2002. In its Petition, RCC included a letter from Administrative Law Judge John A. Garner issued in the Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. proceeding ("Pine Belt Proceeding") as evidence that the PSC does not exercise jurisdiction over CMRS carriers with respect to ETC designation. We have since been advised by FCC staff that the letter from Judge Garner is insufficient to constitute an "affirmative statement" from the state commission that it lacks jurisdiction to perform the designation, as required by 47 U.S.C. 214(e)(6). Therefore, we amend RCC's Petition to include an Order released on March 12, 2002 by the PSC in the Pine Belt

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Proceeding.<sup>1</sup> The PSC's Order is attached hereto as Exhibit A. That Order, which represents an official action by the PSC, states:

Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action 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).<sup>2</sup>

The PSC's Order constitutes an "affirmative statement" from the PSC, as required under Section 214(e)(6), that the FCC is the appropriate authority to consider RCC's Petition for Designation as an ETC.

Therefore, RCC hereby amends its original application to include the recent "affirmative statement" from the Alabama PSC that it does not have jurisdiction to designate CMRS carriers as ETCs.

Respectfully submitted,

**RCC Holdings, Inc.**

By 

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March 26, 2002

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<sup>1</sup> *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition: For ETC Status and/or Clarification Regarding The Jurisdiction Of The Commission To Grant ETC Status To Wireless Carriers, Order, Docket U-4400 (March 12, 2002).*

<sup>2</sup> *Id.* at p.2.

**EXHIBIT A**



**STATE OF ALABAMA**  
**ALABAMA PUBLIC SERVICE COMMISSION**  
 P.O. BOX 981  
 MONTGOMERY, ALABAMA 36101-0881

JIM SULLIVAN, PRESIDENT  
 JAN COOK, ASSOCIATE COMMISSIONER  
 GEORGE E. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
 SECRETARY

**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.

**DOCKET U-4400 - #2**

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 97-418) 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).

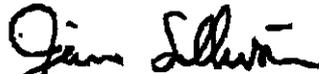
## DOCKET U-4400 - #3

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 12<sup>th</sup> 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

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

**CERTIFICATE OF SERVICE**

I, Janelle Wood, hereby certify that I have, on this 26<sup>th</sup> day of March, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing AMENDMENT TO PETITION filed today to the following:

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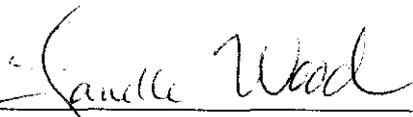
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Janelle Wood

\* Via Hand Delivery and E-mail