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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Federal-State Joint Board on Universal Service )  
Virginia Cellular LLC Petition for Designation as )  
An Eligible Telecommunications Carrier in the )  
State of Virginia )

CC Docket No. 96-45

RECEIVED

JUN 11 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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June 11, 2002

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## SUMMARY

The National Telecommunications Cooperative Association supports those parties that oppose the Petition for Designation as an Eligible Telecommunications Carrier (ETC) by Virginia Cellular, LLC throughout its licensed service area in the State of Virginia.

Virginia Cellular is required to demonstrate that grant of its petition to receive ETC designation in areas served by rural telephone companies is in the public interest, and it has failed to do so. There is no evidence that any rural area currently served by a rural telephone company in Virginia is unserved, or even underserved. Rather than lowering rates and increasing service quality, an additional ETC may force rates to increase and quality of service to decrease in Virginia, with no corresponding public benefit.

NTCA also opposes the request to redefine the service areas to fit Virginia Cellular's objectives. Redefinition will harm rural customers by allowing cream skimming which is contrary to the intent of the Telecommunications Act of 1996.

Further, there is much uncertainty surrounding the universal service portability rules and the potential for waste that exists because of vagueness in the rules. The Commission should refrain from acting on Virginia Cellular's petition until it has had an opportunity to clarify its rules.

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FEDERAL COMMUNICATIONS COMMISSION  
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CC Docket No. 96-45

REPLY COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA) hereby submits its reply comments in the above-captioned matter. NTCA supports those parties who oppose Virginia Cellular LLC's (Virginia Cellular) bid for designation as an eligible telecommunications carrier (ETC) throughout its licensed service area in the State of Virginia. Virginia Cellular has not demonstrated that the public interest would be served by designation of a second ETC in the service areas of the rural telephone companies involved.

**I. INTRODUCTION**

NTCA is a national association made up of more than 500 small, independent telephone companies. All of NTCA's members are "rural telephone companies" as that term is defined in the Communications Act (the Act).<sup>1</sup>

Virginia Cellular requests ETC designation for its entire licensed service area in Virginia. Its licensed service area includes, in whole or in part, the service areas of

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<sup>1</sup> 47 U.S.C. §153(37).

NTCA members Buggs Island Telephone Cooperative, Highland Telephone Cooperative, North River Telephone Cooperative, and MGW Telephone Company.

In its petition, Virginia Cellular asks the Commission to grant it ETC designation in several areas currently served by rural telephone companies and to redefine certain wire centers so that each rural LEC wire center is classified as a separate service area. In the cases of Shenandoah Telephone Company, Clifton Forge Waynesboro Telephone Company and NTCA member MGW Telephone Company, Virginia Cellular serves one portion of each of the companies' service areas, but is not licensed to serve another portion of the service areas. Virginia Cellular claims that reclassifying the rural LEC service areas for ETC purposes is necessary in order to facilitate competitive entry.

NTCA respectfully submits that the Commission should not grant Virginia Cellular's petition. Virginia Cellular has not demonstrated that grant of its petition is in the public interest.

**II. THE COMMISSION SHOULD DENY VIRGINIA CELLULAR'S PETITION BECAUSE IT HAS NOT DEMONSTRATED THAT DESIGNATION OF VIRGINIA CELLULAR AS AN ETC IN AREAS SERVED BY RURAL TELEPHONE COMPANIES IS IN THE PUBLIC INTEREST**

In adopting the 1996 Act, Congress recognized that areas served by rural telephone companies are different from those served by larger carriers. Congress favored competition, but recognized that introducing competition into areas that cannot otherwise support competition would ultimately harm consumers. For this reason, rural telephone companies are initially exempt from the interconnection, unbundling and resale requirements of 47 U.S.C. §251(c). Further, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers

for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.<sup>2</sup>

Virginia Cellular argues that the public interest will be served if its application is granted because designating Virginia Cellular as an ETC would “bring[] the benefits of competition to an underserved marketplace.”<sup>3</sup> However, Virginia Cellular offers no evidence that the areas served by rural telephone companies are, in fact, underserved. As the Virginia Rural Telephone Companies point out, each rural carrier provides high-quality service throughout its service area.<sup>4</sup> Virginia Cellular points to no instance where grant of its petition will bring service to an area currently unserved by a rural telephone company.

Virginia Cellular claims grant of its petition will provide competition, which in turn “drives down prices and promotes the development of advanced communications.”<sup>5</sup> However, universal service support is designed to bring the core services to all Americans at reasonable prices. Universal service is not intended to support advanced services, nor spur its deployment.

Granting ETC status to Virginia Cellular will do nothing to bring the supported services to unserved or underserved Americans. As The Virginia Rural Telephone Companies make clear, except in the exceedingly rare circumstance where a customer drops its wireline service in favor of wireless service, grant of ETC status to Virginia Cellular will merely provide double funding for each of its customers. The universal

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<sup>2</sup> 47 U.S.C. §214(e)(2).

<sup>3</sup> Virginia Cellular Petition, p. 15.

<sup>4</sup> Comments of Virginia Rural Telephone Companies, p. 2.

<sup>5</sup> *Id.*

service funding that Virginia Cellular seeks is in addition to the support currently received by the rural telephone companies.

As the Alabama PSC recently recognized, grant of an addition ETC in rural areas may actually drive prices up and quality down.<sup>6</sup> It will burden the universal service fund with no corresponding public benefit. NTCA submits that grant of Virginia Cellular's application will harm rural telephone companies and their customer, but do nothing to bring new, innovative service to rural America. The petition is not in the public's interest and should be denied.

### **III. THE COMMISSION SHOULD NOT GRANT VIRGINIA CELLULAR'S REQUEST TO REDEFINE SERVICE AREAS SERVED BY RURAL TELEPHONE COMPANIES**

The Commission should not redefine service areas served by rural telephone companies as requested by Virginia Cellular. The law requires an ETC to provide the supported services throughout the service area for which ETC designation is received.<sup>7</sup> Section 214(e)(5) provides that for an area served by a rural telephone company, the term "service area" means such company's study area. Therefore, if Virginia Cellular receives ETC designation for an area served by a rural telephone company, it must offer service throughout the company's study area. The "service area" may be comprised of something other than the company's study area only if the Commission and the States establish a different definition, after taking into account the recommendations of a Federal-State Joint Board.

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<sup>6</sup> Comments of the Alabama Public Service Commission, *RCC Holdings Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-76.

<sup>7</sup> 47 U.S.C. §214(e)(1).

**A. Redefining Rural Study Areas May Irreparably Harm Rural Telephone Companies and the Customers they Serve**

When the Joint Board evaluated this issue, it recommended that the Commission retain the current study areas of rural telephone companies as the service areas for such companies, with good reason. The Joint Board stated that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize “cream skimming” by competitors.<sup>8</sup> “Cream skimming” is minimized since competitors must provide service throughout the rural telephone company’s study areas and cannot serve only the lowest cost portions of a rural telephone company’s study area.

Virginia Cellular argues that it is not attempting to “cream skim” because it may provide service only in those areas where it is licensed to provide service by the FCC. Virginia Cellular says it is not “picking and choosing the lowest cost exchanges.”<sup>9</sup> This argument does not address the fact that “cream skimming” may occur whether or not the wireless licensee chooses which area it serves. It is entirely possible that the lowest cost portion of a rural study area is the only area the wireless carrier is licensed to serve. This inadvertent or accidental cream skimming by a wireless carrier is no less harmful than intentional cream skimming, and can do substantial damage to the rural telephone company and its remaining customers.<sup>10</sup> Ultimately, it sets a dangerous precedent to allow a wireless carrier to serve just a portion of a study area. At best, the customers outside of the wireless carrier’s licensed territory may be forced to pay higher rates to make up lost revenue and suffer decreased quality; at worst, it may destroy a rural

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<sup>8</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, 12 FCC Red 87, 179-180 (1996).

<sup>9</sup> Virginia Cellular Petition, p. 13

<sup>10</sup> The Commission has not yet clarified the meaning of “capture” and therefore competing ETCs receive support for service to the same customer. When and if the Commission defines the term, cream skimming by ETC’s with no carrier of last resort (COLR) obligations will result in higher per unit costs for the customers of carriers with COLR obligations.

telephone company. The Commission has a duty to consider the adverse effect on rural customers regardless of the competitive carrier's good or bad intentions.

Virginia Cellular states that the potential harm of redesignation to rural carriers and their customers is avoided since carriers may disaggregate their study areas to reallocate high cost loop support payments.<sup>11</sup> Disaggregation was not intended to address a situation in which a wireless carrier is exempt from its universal service obligations for much of a rural service area. Further, as the Alabama Public Service Commission points out, "this is the first time these [rural] companies have had the ability or requirement to [disaggregate and target high-cost support below the study area level]."<sup>12</sup> Alabama was correct to express severe reservations about the success of disaggregation, "We are not certain these determinations made by the [rural telephone companies] will . . . achieve the results expected by the FCC."<sup>13</sup> It also indicated that disaggregation may be most difficult for the smallest, and most vulnerable, of companies.

**B. The Commission is Obligated to Consult with the State of Virginia**

It is because of a jurisdictional accident that Virginia lacks jurisdiction over Virginia Cellular's petition for ETC designation. Virginia does not have regulatory authority over CMRS providers in the state because of laws and regulations in effect long before ETC designations were an issue. However, it is clear that Congress intended that the Commission and the states work together, specifically when one is considering altering the definition of a service area served by a rural telephone company.

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<sup>11</sup> *Id.*

<sup>12</sup> Comments of the Alabama Public Service Commission, *RCC Holdings Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-76, p. 4.

<sup>13</sup> *Id.*

Congress recognized the implications of changing the definition of a rural ILEC's service area and understood that the expertise of both the state and the Commission were needed before such a drastic measure should take place.

In adopting rules implementing Section 214, the Commission concluded that the "plain language" of the section dictates that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers.<sup>14</sup>

Both Congress and the Commission recognized the importance in requiring competitors, as a condition of eligibility, to provide services throughout a rural telephone company's study area and that the state has certain knowledge, lacking in the Commission, of the impact of redefining a service area within the state's jurisdictional boundaries. The Commission must consult with and consider the expertise of the state before granting Virginia Cellular's petition.

**IV. THE COMMISSION SHOULD REFRAIN FROM ACTING ON VIRGINIA CELLULAR'S PETITION UNTIL QUESTIONS ABOUT THE UNIVERSAL SERVICE FUND ARE ANSWERED.**

Virginia Cellular seeks ETC designation specifically for the purpose of receiving universal service support. The core purpose of universal service support has always been and continues to be to help telephone companies in high-cost areas to make necessary investments in the infrastructure and to assure that rural consumers have reasonably-priced, quality telecommunications. There is a considerable amount of uncertainty about the implementation of the portability rules and the Commission should refrain from acting on Virginia Cellular's petition until the uncertainties are resolved.

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<sup>14</sup> *In the Matter of Federal-State Joint Board on Universal Service, First Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881 (1997).

The Virginia Rural Telephone Companies point out the flaws with the current system of universal service support. Allowing numerous carriers to receive ETC status places significant demands on the federal fund.

Rural telephone companies and their customers are wholly dependent on the universal service fund. With the creation of the Interstate Common Line Support (ICLS) mechanism as part of the MAG Order, rural companies will become even more dependent on universal service support. Beginning July 1, rural carriers will begin to receive a portion of their common line costs from the ICLS that were previously recovered in interstate access charges.

The Commission's rules subject the ICLS to the same portability rules as the federal high cost fund. However, there is uncertainty about the future of the portability as the rules are currently the subject of a petition for reconsideration.<sup>15</sup> In its petition for reconsideration, NTCA pointed out that ETCs seeking ICLS are not required to demonstrate their eligibility to receive ICLS, nor are they required to show that support meets the use and sufficiency requirements in Section 254(e) of the Act.<sup>16</sup> NTCA requested that the FCC suspend implementation of the ICLS portability rule until it has reviewed and revised its rules and the definition of competitive neutrality.

Further, Section 54.307(a)(4) of the Commission's rules requires that the amount of universal service support provide to an incumbent LEC be reduced by an amount equal

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<sup>15</sup> *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *National Telephone Cooperative Association Petition for Reconsideration* (filed Dec. 31, 2001).

<sup>16</sup> Section 254(e) of the Act states that "[a] carrier that receives such support [referring to universal service] shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. §254(e).

to the amount provided to a competitive ETC for the lines that it “captures” from the incumbent. The Universal Served Administrative Co. (USAC), in charge of implementing the rule, asked the Commission for guidance in February of 1999.<sup>17</sup> USAC questioned whether the term “capture” means only instances where the subscriber abandoned the incumbent LEC’s service for the competitor’s service, or whether it includes instances where the subscriber adds service from the competitor in addition to the incumbent’s service.

The issue of what constitutes a “captured” line will significantly impact the size of the fund and the amount of support available to incumbents and competitors alike. It may also influence a carrier’s decision of whether or not to seek ETC status and invest in the infrastructure necessary to provide service. However, the Commission has yet to act on USAC’s request for guidance.

Further, the Commission’s “billing address” reporting rules, 47 C.F.R. §54.307(b) have not been clarified sufficiently to ensure that the Commission is able to enforce Section 254(e) of the Act. The rules are sufficiently liberal to permit mobile wireless service providers to report “loops” and collect support even for customers that never use their wireless service in the corresponding ILEC service area upon which support is based.

The decisions on these and other related issues will dramatically impact the size of the fund and who is eligible to receive support. Given the importance of the issue, the Commission should refrain from granting any additional competitors ETC status until it

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<sup>17</sup> See, Letter from Robert Haga, Secretary & Treasurer of USAC to Ms. Irene Flannery, Chief, Accounting Policy Division, FCC, regarding Clarification of Section 54.307, dated February 11, 1999, See Attachment hereto.

has undergone a comprehensive review of its rules governing the portability of universal service funds.

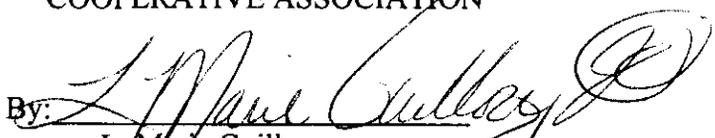
**V. CONCLUSION**

Virginia Cellular's petition does not demonstrate that its designation as an ETC in areas served by rural telephone companies is in the public interest. Further, redefining rural study areas as requested by Virginia Cellular may irreparably harm rural telephone companies and the customers they serve.

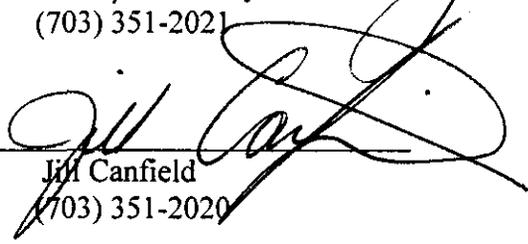
For these and the above stated reasons, the Commission should deny Virginia Cellular LLC's petition for designation as an eligible telecommunications carrier throughout its licensed service area in Virginia.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
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June 11, 2002

# ATTACHMENT

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Robert Haga  
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February 11, 1999

Ms. Irene Flannery  
Chief, Accounting Policy Division  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C., 20554

Re: Clarification of Section 54.307

Dear Ms. Flannery:

Several parties have questioned USAC regarding the operation of Section 54.307 of the Commission's rules. As a result of these inquiries, USAC's High Cost and Low Income Committee authorized the corporation to seek clarification of Section 54.307 as it relates to the calculation of Universal Service support for both the competitive eligible telecommunications carrier (CETC) and the incumbent local exchange carrier (ILEC) in situations where both carriers are eligible recipients of support.

Specifically, we seek clarification of the phrase "captures an incumbent local exchange carrier's (ILEC) subscriber lines" in the calculation of support for the CETC.<sup>1</sup> Does the term "capture" mean only instances where the subscriber abandoned the ILEC's service for the CETC, or does it include instances where the subscriber adds service from the CETC in addition to its ILEC service (e.g., a second wireline service or wireless service)?

Additionally, USAC seeks clarification of the Section 54.307(a)(4) calculation methodology. Section 54.307(a)(4) requires that the amount of universal service support provided to an ILEC be reduced by an amount equal to the amount provided to such CETC for the lines that it captures from the incumbent. Did the Commission intend for USAC to calculate a per line amount for the CETC as described in Section 54.307 (a)(2), multiply the resulting amount by the number of captured lines, and subtract that amount from the support originally calculated for the incumbent per Section 54.307 (a)(4)?

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<sup>1</sup> 47 C.F.R. § 54.307(a).

February 11, 1999  
Ms. Irene Flannery  
Page 2

The current rules operate such that ILEC "A" and CETC "B" would report their respective number of working loops as of December 31 of the previous year<sup>2</sup> (this assumes ILEC "A" and CETC "B" are both eligible telecommunications carriers providing service in ILEC "A's" serving area).<sup>3</sup> If ILEC "A" reports 800 lines and has total high cost support of \$8,000 per month, the resulting per line support amount is equal to \$10 per line per month. CETC "B" for that same period reports 200 customer lines in the service area, 100 of which are new customers and 100 of which have been "captured" from ILEC "A." The amount of support for CETC "B," at \$10 per line, would then be \$2000.<sup>4</sup> USAC then deducts the support amount associated with CETC "B's" captured lines from ILEC "A's" support.<sup>5</sup> ILEC "A's" support amount is thus adjusted to \$7,000 per month (\$8,000 minus \$1,000 support associated with CETC "B's" 100 captured lines). Thus the operation of the rules provide \$8.75 per line in support for ILEC "A's" 800 lines and \$10 per line of support for CETC "B's" 200 lines.

We appreciate the Commission's attention to clarifying whether the operation of this section of its rules is what was intended or whether some other outcome should result. Please contact us if there are any questions regarding our request or if there is anything further we can do for you.

Sincerely,

  
Roger Riaga  
Secretary & Treasurer

RJR:abk

Enclosure

cc: Craig Brown  
Lisa Zama  
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2 47 C.F.R. §§ 36.311(h), 54.307(b).  
3 47 C.F.R. §§ 54.201-54.207.  
4 47 C.F.R. § 54.307(a)(1).  
5 47 C.F.R. § 54.307(a)(4).

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 02-1253 was served on this 11th day of June 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

  
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