

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Cellular South License, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	

To: Wireline Competition Bureau

Reply Comments of Cellular South License, Inc.

Cellular South License, Inc. ("Cellular South"), by counsel and pursuant to the Commission's Public Notice, DA 02-746 (rel. April 2, 2002), hereby submits its Reply Comments in the above-captioned proceeding.

I. Introduction

The Alabama Rural Local Exchange Carriers ("Rural LECs") and the National Telecommunications Cooperative Association ("NTCA") have failed to raise any issues that would warrant denial or delay of Cellular South's petition for designation as an eligible telecommunications carrier ("ETC") in Alabama ("Petition"). The Alabama Public Service Commission ("APSC") has provided an affirmative statement that it lacks jurisdiction to rule on requests for ETC designation by CMRS carriers. Contrary to the assertions made by NTCA and the Rural LECs, Cellular South is not required to consult with the APSC because the latter has explicitly ceded jurisdiction to the Federal Communications Commission ("FCC", "Commission") and has had ample opportunity to

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address its concerns in multiple proceedings before the Commission.

Cellular South currently offers all of the services and functionalities required of ETCs under the Commission's rules, and has shown that it is capable and committed to provide the supported services throughout its service area. By arguing that ETC designation should be withheld until a carrier actually offers and advertises its services on every inch of its territory, the Rural LECs demonstrate a fundamental misunderstanding of the Communications Act and the FCC's universal service rules. Moreover, the Rural LECs attempt to erect a performance standard for Cellular South that has never been required of wireless or wireline carriers.

Grant of Cellular South's request will begin to level the competitive playing field and provide incentives for all of the affected LECs to lower their prices and improve service. Alabama's customers will realize improved service because Cellular South will improve infrastructure in areas that cannot support first-rate service without the provision of high-cost support.

Cellular South is constrained to note that Rural LEC member Pine Belt Telephone Company, Inc. and ALLTEL Alabama, Inc. did not join the group in their comments.¹ Pine Belt's affiliates, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., recently received ETC status from the FCC on the strength of the identical *APSC Order* the Rural LECs object to in this proceeding.² On the merits, virtually every aspect of Cellular South's petition which the Rural LECs consider deficient was also present in Pine Belt Cellular's recent application (*e.g.*, the lack of "ubiquitous" coverage). ALLTEL, as one of the largest wireless carriers in the country, has ample motive to sit out this proceeding so

¹ Comments of the Rural LECs at pp. 1-2.

² See Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Docket U-4400 (rel. Mar. 12, 2002) ("*APSC Order*").

as to preserve its future ability to apply for ETC status on behalf of its wireless affiliates.

The Rural LECs appear to be motivated by the simple desire to forestall subsidized competitive entry and preserve their monopoly in rural areas. Because Cellular South has shown that it meets all the statutory and regulatory prerequisites for ETC designation, and designating Cellular South as an ETC will serve the public interest, the FCC should grant Cellular South's petition expeditiously.

II. The APSC Has Expressly Ceded Jurisdiction Over Wireless ETC Designations and Has Already Been Afforded an Opportunity to Raise Its Concerns Before the FCC

In its filing before the FCC on June 4, 2002, Cellular South provided a copy of an order of the APSC stating that "the APSC'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."³ Therefore, the APSC concluded, "[p]roviders of such services seeking Eligible Telecommunications Carrier status should . . . pursue their requests through the Federal Communications Commission."⁴ The APSC confirmed this statement in its comments to the FCC in the proceeding to designate RCC Holdings, Inc. ("RCC") as an ETC in Alabama, raising no objections to RCC's petition on jurisdictional grounds.⁵ Indeed, the Rural LECs acknowledge that "Cellular South has arguably provided an 'affirmative statement'

³ *APSC Order* at p. 2.

⁴ *Id.* at p. 4.

⁵ *See* 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, Comments of the APSC at p. 1 (filed May 23, 2002) ("APSC Comments").

that meets the [FCC's] requirements[.]”⁶ NTCA similarly makes no attempt to question the APSC's jurisdictional deference to the FCC.

Notwithstanding the APSC's explicit disavowal of jurisdiction, NTCA and the Rural LECs claim that Cellular South should have engaged in active consultation with the APSC⁷ and obtained its support prior to filing its petition.⁸ These claims are without merit. Indeed, the Rural LECs recognize this by pointing out that the FCC has already rejected the argument that it must consult with state commissions prior to designating a CMRS provider as an ETC for a service area that differs from a rural LEC's study area.⁹

Conceding that there may, in fact, be no consultation requirement, the Rural LECs suggest that the APSC has not been provided “the opportunity to participate fully in the ETC designation proceeding,”¹⁰ and even that the APSC has submitted comments seeking “at a minimum, a consultative role prior to FCC approval of an ETC request in a rural LEC area[.]”¹¹ On the contrary, the APSC has been afforded a full and fair opportunity to air its concerns regarding the designation of competitive ETCs in rural LEC service areas, and indeed it has done so.¹² Moreover, in its recent comments on RCC's petition for ETC designation in Alabama, APSC did not indicate that it desired

⁶ Comments of the Rural LECs at p. 7.

⁷ *See id.*

⁸ *See* Comments of NTCA at p. 2.

⁹ *See* Comments of the Rural LECs at p. 7.

¹⁰ *Id.*

¹¹ *Id.* at p. iv.

¹² *See* APSC Comments.

“at a minimum, a consultative role” as the Rural LECs claim. Rather, the APSC merely stated that it “encourages the FCC to closely scrutinize the public interest concerns of granting ETC status to RCC in the rural companies’ service territories in Alabama.”¹³ The FCC’s notice-and-comment procedures secure the ability of the APSC and other parties to express their concerns to the FCC, and the APSC has already taken the opportunity to do so.¹⁴ Accordingly, any assertion that the APSC has been denied the chance to bring its concerns to light is without merit.

III. Cellular South Offers All of the Services and Functionalities Required of ETCs and Has Demonstrated Its Ability and Commitment to Provide Universal Service

In its petition, Cellular South explained how it will provide each of the services required under 47 C.F.R. § 54.101(a). Consistent with the FCC’s *Section 214(e)(6) Public Notice*,¹⁵ Cellular South stated that it will offer the supported services through its own facilities. Additionally, Cellular South certified that it will advertise its universal service offering throughout the service areas designated by the FCC.

Although Cellular South has amply demonstrated its capability and commitment to provide the supported services throughout its designated service area, the Rural LECs would require Cellular South to show that it is *actually providing* the supported services in every corner of its requested services area prior to designation as an ETC. Specifically, the Rural LECs argue that Cellular South

¹³ *Id.* at p. 6.

¹⁴ See *Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, FCC 01-283 at ¶ 19 (rel. Oct. 5, 2001).

¹⁵ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997) (“*Section 214(e)(6) Public Notice*”).

fails to satisfy the requirements under Section 214(e)(1) due to (1) a failure to allege that it currently provides local usage and voice-grade access throughout its service area,¹⁶ and (2) lack of evidence that Cellular South will advertise the supported services.¹⁷

These arguments directly contradict the clear language of the Act and the FCC's orders, which state that a carrier is only required to provide the supported services once it is designated as an ETC.¹⁸ The FCC confirmed this fact in its *Declaratory Ruling* regarding Western Wireless' request for ETC designation in South Dakota, concluding that "[t]he language of the statute does not require the actual provision of service prior to designation."¹⁹

To require actual provision of the supported services prior to designation would make no sense in light of the pro-competitive goals of the Telecommunications Act of 1996. Requiring a carrier to offer and advertise all of the supported services throughout its service area prior to being designated as an ETC would effectively preclude competitive entry. As the FCC has emphasized, a competitor is unlikely to be able to make a substantial investment to construct a network in a high-cost area if it is uncertain that it will receive the universal service support necessary for such an undertaking.²⁰

¹⁶ Comments of the Rural LECs at pp. 9-13.

¹⁷ *Id.* at pp. 13-14.

¹⁸ See 47 U.S.C. § 214(e)(1); *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, FCC 00-248 at ¶ 10 (rel. Aug. 10, 2000) ("*Declaratory Ruling*").

¹⁹ *Declaratory Ruling* at ¶ 14.

²⁰ See *id.* at ¶ 13.

Some of the requirements the Rural LECs seek to impose on Cellular South have never been required of other ETC applicants, and it is unlikely that the Rural LECs could satisfy them. For example, the Rural LECs assert that Cellular South does not provide single-party voice grade service in all of the areas where it requests ETC designation.²¹ Specifically, the Rural LECs state that Cellular South “simply does not, and with its current infrastructure cannot, provide ubiquitous service throughout its Alabama ‘footprint.’”²² The FCC has rejected the notion of requiring carriers to provide service to every potential customer throughout its service area prior to receiving ETC designation.²³ Moreover, no carrier — whether wireline or CMRS — provides service to every corner of its service area. Instead, the logical expectation is that a carrier will grow its network to provide service upon request. Indeed, the Rural LECs have for years used high-cost support to extend their networks to unserved and underserved areas.

These allegations have no bearing on Cellular South’s commitment or capability to provide high-quality service to customers throughout its designated service area. When the Rural LECs began receiving universal service support, they did not serve their entire service area. It is the high-cost support that enabled the Rural LECs to extend their networks into high-cost areas, to the benefit of Alabama consumers. Likewise, Cellular South will use high-cost support to improve its network and enable Alabama’s rural consumers to have a meaningful choice of service providers.

Cellular South is not required to provide “ubiquitous” service. It is required to serve customers upon request, which it can and will do. The Rural LECs have not provided any grounds

²¹ Comments of the Rural LECs at p. 10.

²² *Id.*

²³ *See Section 214(e)(6) Public Notice* at ¶ 17.

to contradict Cellular South's capability or the commitments made in its Petition to provide the supported services throughout the requested service area.

IV. Grant of Cellular South's Request for ETC Status Will Serve the Public Interest

In its Petition, Cellular South enumerated the public-interest benefits that would result from its designation as an ETC, including more consumer choices, high-quality service, and lower rates.²⁴ Moreover, Cellular South noted that the FCC has consistently emphasized the advantages of competitive entry by wireless carriers into rural and high-cost areas.²⁵ Nonetheless, NTCA asserts that Cellular South has not demonstrated that its designation as an ETC in rural LEC areas would serve the public interest.²⁶ The Rural LECs venture even further, claiming that such a grant would "harm consumers and undermine the federal universal service fund".²⁷

Contrary to the assertions made by NTCA and the Rural LECs, the requested designation will lift barriers to competition and benefit consumers by spurring the improvement of service quality and the rapid deployment of new telecommunications technologies by both Cellular South and the affected Rural LEC companies, in furtherance of the goals set by Congress in the 1996 Act.²⁸ As CTIA notes in its comments, Cellular South has amply demonstrated that the public interest will be

²⁴ See Petition at p. 15.

²⁵ See *id.* at pp. 14-15.

²⁶ See Comments of NTCA at p. 2.

²⁷ Comments of the Rural LECs at p. 15 (footnote omitted).

²⁸ Telecommunications Act of 1996, Public Law 104-104, 100 Stat. 56.

served by the introduction of competitive service in the proposed ETC service area.²⁹ Far from providing “targeted” coverage,³⁰ Cellular South offers mobile telecommunications services throughout its licensed service area, which includes large rural areas. Coverage will continue to improve once Cellular South begins receiving high-cost support.

The public-interest analysis must take into consideration that fact that there is simply no business plan, wireline or wireless, which enables a carrier to provide high-quality local exchange service to customers in most remote areas, unless high-cost support is provided. In the absence of high-cost support, wireless service will only be seen as a convenience, and will not offer rural customers a choice of local service providers that many urban customers enjoy today. With high-cost support, a wireless carrier such as Cellular South will be able to improve its network and offer alternative services, which will spur competitive offerings from incumbents, all to the customer’s benefit.

Finally, the Rural LECs provide selective and misleading data to support their bold claim of 94% penetration throughout their service territories. According to the FCC’s most recent report on telecommunications subscribership in the U.S., Alabama ranks among the fifteen states with the lowest telephone penetration levels in the country.³¹ The Rural LECs attempt to distract the Commission from their poor track record by touting the Gulf Telephone Company’s coverage of Foley, Alabama. In showcasing Foley, “[o]ne of the largest Alabama cities served by the Alabama

²⁹ See Comments of CTIA at p. 4.

³⁰ See Comments of the Rural LECs at p. 18.

³¹ See “Telephone Subscribership in the United States” at p. 9 (rel. May 21, 2002).

Rural LECs,”³² the Rural LECs ignore Cellular South’s proposed ETC service area, which covers large rural expanses having little in common with Foley. Moreover, the statistics presented by the Rural LECs in their discussion of Foley are taken from Census Bureau data on an altogether different city, Lanett, which is far outside of Cellular South’s service area.³³ In short, the Rural LECs have provided no evidence to suggest they have been successful in lifting Alabama’s sub-par subscribership rates, something Cellular South commits to undertake upon its designation as an ETC.

V. The Rural LEC Service Areas Should be Redefined as Proposed by Cellular South

The Rural LECs and NTCA present no persuasive argument against Cellular South’s proposal to redefine affected LEC service areas. Most of the policy arguments raised by those commenters on this issue are better directed to the Commission in ongoing rulemaking proceedings.

The general concerns expressed by the Rural LECs about cream skimming should have been resolved by their respective filings on May 15, 2002, to disaggregate support.³⁴ The Rural LECs ignore that it is they, not competitive ETCs, who determine the manner in which high-cost support is to be calculated and distributed. *See* 47 C.F.R. § 54.307(a)(1). Several of the Rural LECs, including Frontier Communications of Alabama, Inc., Frontier Communications of the South, and Millry Telephone Company, have self-certified plans which disaggregate support below the study-area level. Other Rural LECs opted for Path One, which indicates that they must not be concerned

³² Comments of the Rural LECs at p. 3.

³³ *See id.* at n.3.

³⁴ *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11294, 11299-309 (2001) (“*Fourteenth Report and Order*”).

about cream skimming. Cellular South did not have a say in the manner in which Alabama's incumbent LECs chose to target and distribute their support; thus, any remaining concern about cream skimming is as a result of the Rural LECs' own doing.³⁵

Redefining Rural LEC service areas as proposed in Cellular South's application is required to permit Cellular South to be designated as an ETC throughout its proposed service area. Moreover, Cellular South has not selected the lowest-cost areas for ETC designation, but rather it has committed to provide service throughout its FCC licensed area. That area is rural in character, and includes remote areas that will not receive competitive service without the provision of high-cost support. Accordingly, Cellular South urges the FCC to redefine the affected Rural LEC service areas as proposed in the application.

VI. Other Issues

The Rural LECs raise a litany of minor issues which merit only a summary response. The assertion by the Rural LECs that "no adequate protections exist to insure that universal support paid to Cellular South . . . will be used to *benefit subscribers* that use the service *within* the requested designation area"³⁶ is without merit. Cellular South must certify to the Commission that such support is used only for the construction, maintenance and upgrading of facilities serving the rural areas for which support is intended. *See* 47 C.F.R. § 54.314(b). As the Commission has emphasized, "ETC designation prior to the provision of service does not mean that a carrier will receive support without

³⁵ *See Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration*, FCC 01-311 at ¶ 12 (rel. Oct. 19, 2001).

³⁶ Comments of the Rural LECs at p. 15 (emphasis in original).

providing service.”³⁷ Moreover, Cellular South must submit to audits, and risks losing ETC status or its FCC license for non-compliance. Cellular South therefore has every incentive to provide service in rural areas where it is needed most and lawfully spend high-cost support funds.

Without any supporting evidence, the Rural LECs state that the mobility of Cellular South’s customers will provide Cellular South with an incentive to target areas with high levels of per-line support. The Rural LECs explain their theory by claiming that Cellular South’s subscribers in rural ILEC territory will “actually use the service outside the designated service area.” Therefore, the Rural LECs claim, it is “highly probable” that “high cost support will be paid to Cellular South for services used in low-cost, urban areas.”³⁸

Cellular South cannot target low-cost urban areas because, as noted above, the Rural LECs are able to disaggregate support so as to reduce available subsidies in low-cost areas. Moreover, the idea that a wireless phone may “roam” into an urban area is not new. The FCC has granted ETC status to several carriers who propose to provide mobile service, and sufficient enforcement mechanisms exist to ensure that high-cost support is properly applied.³⁹ As noted above, all high-cost funds will be used to construct upgrade and maintain Cellular South’s network. That a customer may roam outside of Cellular South’s service area, a feature not included in basic universal service provided by Cellular South, is irrelevant because a customer who roams on another carrier’s network

³⁷ See *Declaratory Ruling* at ¶ 15.

³⁸ Comments of the Rural LECs at p. 16.

³⁹ See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11316 n.433 and accompanying text; *Order on Reconsideration*, FCC 02-171 at ¶ 14 (rel. June 13, 2002).

will pay the serving carrier for such usage. Put simply, roaming is not included in Cellular South's basic service offering and thus will not be subsidized.

Introducing competition into monopolistic LEC territory will not create "rate spirals" or otherwise harm the public interest.⁴⁰ As Cellular South demonstrated in its petition, a grant of Cellular South's request will bring to consumers the benefits of competition, including increased choices, higher quality service, and lower rates.⁴¹ Competition benefits consumers and inevitably, it introduces new risks and challenges to the previously entrenched incumbents, many of which, as the Rural LECs admit, rely on "a few large business customers."⁴² If these and other monopolistic business practices are disrupted by the introduction of a competitor, this is a reason to grant, not deny, Cellular South's request. At this time, Cellular South is at a competitive disadvantage in high-cost areas because incumbent LECs are subsidized. Under the current system, incumbent LECs will continue to receive implicit subsidies that are not yet explicit and portable to Cellular South. A grant of ETC status will narrow the disparity, to be benefit of Alabama consumers.

The Rural LECs improperly rely on the APSC's 1997 universal service order in arguing for a strict standard of review for competitive ETC designations.⁴³ Whatever the APSC's standards for granting requests for ETC designation by wireline carriers, those standards do not apply to Cellular South's petition which, as all of the commenters agree, is outside the APSC's jurisdiction. The FCC has made a policy judgment that encouraging competitive ETCs to apply for high-cost support will

⁴⁰ Comments of the Rural LECs at p. 19.

⁴¹ Petition at p. 15.

⁴² Comments of the Rural LECs at p. 19.

⁴³ *See id.* at p. 8.

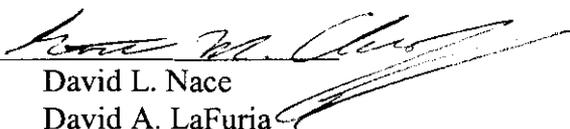
serve the public interest by developing infrastructure investment in rural areas.⁴⁴ It has also consistently granted ETC status to competitive carriers, noting that there is no evidence that competitive entry in even remote areas will have negative effects on consumers.⁴⁵ Accordingly, there is no reason to apply a higher standard of review to Cellular South's Petition.

VII. Conclusion

For the reasons set forth above, Cellular South respectfully requests the Commission to reject the arguments of the Rural LECs and NTCA and grant Cellular South's Petition for designation as an ETC in Alabama on an expedited basis.

Respectfully submitted,

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July 12, 2002

⁴⁴ See, e.g., *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8802-3, 8944 (1997); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000); *Guam Cellular and Paging, Inc. d/b/a Guamcell, Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, DA 02-174, ¶ 15 (rel. Jan. 25, 2002).

⁴⁵ See *Western Wireless, supra*, 16 FCC Rcd at 55.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

CERTIFICATE OF SERVICE

I, Janelle Wood, hereby certify that I have, on this 12th day of July, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing REPLY COMMENTS OF CELLULAR SOUTH LICENSE, INC. filed today to the following:

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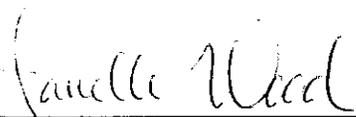
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