

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

In the Matter of)	
)	
Farmers Cellular Telephone, Inc.)	
)	
Petition For Designation as an)	CC Docket No. 96-45
Eligible Telecommunications Carrier)	FCC 97-419
)	

To: Chief, Common Carrier Bureau

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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Dated: July 23, 2002

**PETITION FOR DESIGNATION AS AN
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Farmers Cellular Telephone (“Farmers”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”),¹ and the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice on Section 214(e)(6) Procedures*,² hereby seeks designation as an eligible telecommunications carrier (“ETC”) for purposes of receiving federal and any state universal service support available to Farmers’ service in Alabama, as described herein. Because the Alabama Public Service Commission (“APSC”) lacks jurisdiction to consider Farmers’ request under Section 214(e)(1) and (2),³ the FCC clearly has jurisdiction under Section 214(e)(6) to grant this petition. As demonstrated below, Farmers

¹ 47 U.S.C. § 214(e)(6)

² *Public Notice, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, FCC 97-419, 12 FCC Rcd 22497 (1997) (“*Section 214(e)(6) Procedure Public Notice*”). In the Notice, the Commission delegated authority to the Common Carrier Bureau to designate carriers as ETCs.

³ See Exhibit 1, Letter from Alabama Public Service Commission Administrative Law Judge John Garner to Azita Sparano.

meets all statutory and regulatory requirements for ETC designation to serve Alabama customers, and designating Farmers as an ETC will serve the public interest.

I. FARMERS' UNIVERSAL SERVICE OFFERINGS

Farmers is a commercial mobile radio service (“CMRS”) carrier, licensed by the Commission to provide cellular communication services in Rural Service Area (“RSA”) 308B2, which is comprised by Dekalb and Cherokee Counties, and part of Jackson County in northeastern Alabama, as illustrated by the map attached as Exhibit 4 to this petition. The company, which has provided service for over 10 years, is locally owned and operated. Farmers is well-positioned to bring competitive universal service to consumers in rural and non-rural Alabama who are now served exclusively by incumbent local exchange carriers (“ILECs”).

Farmers seeks ETC designation to expand its telecommunications offerings to consumers within its RSA 308B2, as described further in Section II, below. Farmers provides all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission’s Rules, throughout its cellular service area in Alabama. Upon ETC designation, Farmers will make available to consumers a universal service offering over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities the company uses to serve existing mobile cellular customers. Farmers will provide service to any requesting customer within its licensed service area. If necessary, Farmers will deploy any additional facilities to do so. Furthermore, if the Commission ultimately finds that the ETC designated should include service areas that are outside Farmers’ licensed service area, Farmers will provide service to any requesting customers through use of commercially reasonable efforts to serve customers in such areas requesting service from Farmers.

II. IDENTIFICATION OF THE SERVICE AREA

Section 214(e)(2) provides that ETC designations shall be made for a “service area” designated by the state commission. Section 214(e)(5) defines “service area” as a geographic area established by the state commission. Farmers requests that it be designated as an ETC for a service area as shown on the map attached hereto as Exhibit 4.

As shown in Exhibit 4, Farmers’ service area includes the non-rural, wireline service areas of BellSouth Telecommunications, Inc. and Verizon South, Inc., in RSA 308B2. Farmers’ service area also includes rural areas in RSA 308B2 served by Peoples Telephone Company (“Peoples”), a wireline telephone subsidiary of Telephone & Data Systems (“TDS”) that qualifies as a “rural telephone company” within the meaning of Section 153(37).⁴ Notably, Farmers is seeking ETC designation in both rural areas of Peoples and in non-rural service areas that are contained within Farmers’ cellular service territory. Although Peoples is a rural telephone company within Section 153(37), its status as a subsidiary of TDS, which according to year 2000 information serves over 600,000 telephone access lines nationwide (making TDS the 12th largest telephone company in the country, based on access lines served⁵) clearly distinguishes Peoples from the typical independent or family-owned rural telephone company. Farmers is licensed to serve almost all of Peoples’ study area (10 of 11 wire centers). Farmers seeks designation for that portion of Peoples’ service area that Farmers is licensed to serve. The Commission may require that Farmers use commercially reasonable efforts to serve customers requesting service from the company.⁶ If so required, Farmers will ensure that it provides

⁴ 47 U.S.C. § 153(37).

⁵ “Phone Lines 2001,” JSI Capital Advisors, LLC.

⁶ See e.g., Smith Bagley, Inc. Case No. 3026, *Recommended Decision and Certification of Stipulation* (New Mexico, released Aug. 14, 2001) at p. 17.

designated services to its universal service customers through partnership with other CMRS providers or resale agreements with ILECs, currently providing local service to the requesting customers.

III. FARMERS SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Farmers satisfies each of the five elements required for ETC designation by the Commission set forth in the Commission's *Section 214(e)(6) Procedure Public Notice*, as shown below.

A. Farmers is not Subject to the Jurisdiction of the Alabama Public Service Commission

Farmers is a CMRS provider, and the Commission has previously recognized that a CMRS provider may seek designation as an ETC.⁷ Section 254(e) of the Communications Act of 1934 provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.” 47 U.S.C. §214(e). Pursuant to Section 214(e)(6) of the Act, 47 U.S.C. §214(e)(6), the Commission may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”

In the Section 214(e)(6) Public Notice, the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a state commission.”⁸ In its *Twelfth Report and*

⁷ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *First Report and Order*, 12 FCC Rcd. 8776, 8858-59, ¶ 145 (1997) (“Universal Service First Report and Order”); See also, Federal-State Joint Board on Universal Service, Access Charge Reform, *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119* at ¶ 72 (rel. May 28, 1999).

⁸ *Section 214(e)(6) Public Notice* at 22948.

Order, the Commission stated that where a carrier provides the Commission with an affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the Commission would consider requests filed pursuant to 214(e)(6).⁹

Through its consultant, Farmers recently petitioned the Alabama Public Service Commission (“APSC”) concerning its jurisdiction over commercial mobile radio service carriers. In response, an APSC Administrative Law Judge (“ALJ”) notified Farmers’ consultant that CMRS providers are not subject to state jurisdiction in Alabama and therefore must seek ETC designation from the FCC pursuant to Section 214(e)(6).¹⁰ The ALJ’s determination was based on a Declaratory Ruling the APSC issued in March 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 1999, the APSC has no authority to regulate *in any respect* cellular services, broadband personal communications services and commercial mobile radio services in Alabama.¹¹ In view of this position by APSC, Farmers is “not subject to the jurisdiction of a state commission.” For purposes of designation as an ETC in Alabama, Farmers is clearly a “common carrier.”¹² Farmers provides telephone exchange service and exchange access that are not subject to the jurisdiction of a state commission, and designation of Farmers as an ETC for

⁹ Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000) (“*Twelfth Report and Order*”).

¹⁰ See Exhibit 1, Letter from Administrative Law Judge, John A. Garner to Azita Sparano, dated January 12, 2002.

¹¹ A copy of this Order is attached as Exhibit 2.

¹² As defined in 47 U.S.C. § 153(10), a “common carrier” is a person engaged as a common carrier on a for-hire basis in interstate or foreign communications utilizing either wire or radio technology.

its service territory, as modified herein, in the State of Alabama is left to the FCC under Section 214(e)(6). Accordingly, the Commission has jurisdiction to designate Farmers as an ETC.

B. Farmers Provides all of the Services Supported by the Federal High-Cost Universal Service Program.

In order to be designated as an ETC, a carrier must be a common carrier and must offer and advertise the supported services throughout the designated service area.¹³ According to the *Section 214(e)(6) Public Notice*, a certification that the carrier provides each of the supported services is required.¹⁴ As shown below and in the declaration attached as Exhibit 3 hereto, Farmers satisfies the Commission's requirements that an ETC designated pursuant to Section 214(e)(6) "offer, or will be able to offer, all of the services designated for support by the Commission."¹⁵ As described below, Farmers currently offers each of the supported services specified in Section 54.101(a) of the Commission's rules,¹⁶ throughout its existing cellular service area. Once designated as an ETC, Farmers commits to make available a "universal service" offering that includes all of the supported services for consumers in the designated

¹³ 47 U.S.C. §214(e)(1).

¹⁴ *Section 214(e)(6) Public Notice* at 22948.

¹⁵ *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd. 4547, 4552, ¶ 11 (CCB 1998) ("Fort Mojave"). *Fort Mojave* makes it clear that the Commission will designate carriers as ETCs, pursuant to Section 214(e)(6), upon finding that they "offer or will be able to offer" the supported services throughout the service area. A Declaration attesting to Farmers' ability and commitment to offer each of the supported services is attached hereto at Exhibit 3.

¹⁶ 47 C.F.R. § 54.101(a). The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.

service areas in Alabama. Farmers will also make available its universal service offering over its existing cellular network infrastructure and spectrum and commits to provide service to any requesting customer within the designated service area and if necessary, to deploy additional facilities to do so.

1. Voice-Grade Access to the Public Switched Network. The Commission concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 2700-Hertz within 300 to 3000 Hertz frequency range.¹⁷ As an existing cellular service provider in Alabama, Farmers provides voice-grade access to the public switched network. Through interconnection agreements with ILECs, Farmers is able to originate and terminate telephone service for all of its subscribers. All customers of Farmers are able to make and receive calls on the public switched network within the specified bandwidth.

2. Local Usage. Farmers service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. The service allows for unlimited local calling for a flat-rated monthly charge. Farmers currently offers several service options that include varying amounts of local usage in monthly service plans. To date, the Commission has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.¹⁸ Any minimum local usage requirement established by the Commission as a result of the above mentioned proceeding will be applicable to all designated ETCs. Farmers will comply with any and all minimum local usage requirements adopted by the Commission. Thus, even though the Commission has yet to adopt any specific quantity of minimum local usage ETCs

¹⁷See Universal Service First Report and Order, 12 FCC Rcd at 8810-11 (1997).

must provide for designation, Farmers clearly satisfies the local usage criterion for ETC designation.

3. Functional Equivalent of Touch-Tone (“DTMF”) Signaling. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the Commission permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.¹⁹ Farmers currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.²⁰ Farmers, therefore, meets the requirements of providing DTMF signaling or its functional equivalent.

4. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.²¹ The Commission concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. Farmers meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.²²

5. Access to Emergency Service. The ability to reach a public emergency service provider through dialing 911 is a required universal service offering. Customers can reach an

¹⁸See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998).

¹⁹ 47 C.F.R. § 54.101(a)(3)

²⁰ Universal Service First Report and Order, 12 FCC Rcd at 8815, ¶ 71 (1997).

²¹ See Universal Service First Report and Order, 12 FCC Rcd at 8810.

²² *Id.*

emergency dispatch, or public safety answering point (“PSAP”), by dialing “911.” Upon dialing “911,” the customer’s emergency call will be routed to the appropriate PSAP.

Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements with the local provider for delivery of such information. A wireless carrier such as Farmers is not required to provide E911 services until a local emergency provider has made arrangements for delivery of ALI and ANI from carriers.²³ Farmers has implemented Phase I of the Commission’s requirement for access to emergency services. Farmers currently provides all of its customers with access to emergency services by dialing 911. To date, public emergency service providers in Farmers’ service territory have neither requested Phase II compliance nor made arrangements for delivery of ANI or ALI from Farmers. The Commission has already designated other wireless providers as ETCs despite the current unavailability of E911.²⁴ By providing 911 service and anticipating capability to provide E911 service upon request, Farmers meets the Commission’s requirement to provide access to emergency service.

6. Access to Operator Services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Farmers currently offers its subscribers access to operator services for

²³ *See, id.* at 8815-8817.

²⁴ *See, e.g.,* Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-174, rel. Jan. 25, 2002 (designating Guam Cellular and Paging, Inc. as an ETC, even though Guamcell provides no E911 service to its subscribers. At the time of its ETC Petition, no public emergency service provider had requested that Guamcell provide Phase I or II E911.) *See* Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, filed Jul. 26, 2001 at 6.

the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. Moreover, Farmers will make such services available throughout its designated service area. Therefore, Farmers meets this requirement by providing all of its customers with access to operator services.

7. Access to Interexchange Service. An ETC providing universal service must offer consumers access to interexchange service to make or receive toll or interexchange calls. Customers will have access to live or automatic operator assistance for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls, as well as obtaining related information. Farmers has direct interconnection agreements with one or more interexchange carriers (“IXCs”), as well as indirect connections with other IXCs. As a result, Farmers meets the requirement to provide all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements it has with an IXC.

8. Access to Directory Assistance. The ability to place a call to directory assistance is a required service offering of an ETC. Farmers meets this requirement by providing all of its customers with access to to information contained in directory listings by dialing “411” or “555-1212.”

9. Toll Limitation for Qualifying Low-Income Customers (Lifeline and Link-Up Services). An ETC must offer toll restriction, which can be in the form of “toll control” or “toll blocking” services to qualifying Lifeline universal service customers at no charge. Toll blocking allows customers to block the completion of outgoing toll calls. Toll control allows the customer to limit the toll charges a subscriber can incur during a billing period. The Commission’s current rules require an ETC to provide either toll control or toll blocking as part of the toll limitation

services required under 47 C.F.R. § 54.101(a)(9).²⁵ Certain low-income consumers will be eligible to pay reduced connect charges and monthly fees under the Federal Link-Up and Lifeline programs, and customers may contact Farmers for more information on eligibility criteria. If enrolled in Lifeline, a customer can choose to have Farmers block all attempted toll calls originating from the customer's phone. Currently, Farmers provides toll blocking services for international calls and customer selected toll calls. Farmers will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Farmers Provides the Supported Services Using its Own Facilities

Farmers provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Farmers' existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network. As stated above, in the event that the Commission ultimately finds that the ETC designated should include service areas that are outside Farmers' licensed service area, Farmers will provide service to any requesting customers through use of commercially reasonable efforts to serve customers in such areas requesting service from Farmers.

²⁵ See Federal-State Joint Board on Universal Service, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72* 13 FCC Rcd 5318 (1997).

D. Farmers will Advertise its Universal Service Offering

Farmers will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. Currently, Farmers employs several advertising media to promote its service offerings, including television, radio, newspaper, and billboard advertising, as well as special targeted advertising. Farmers will expand upon these media, as necessary, to insure that consumers within its designated service area are fully informed of its universal service offering. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investment Farmers plans to make to enhance its network to fully serve the universal service needs of consumers in Alabama, Farmers will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering in Alabama.

E. Designating Farmers as an ETC will Advance the Public Interest

Farmers requests designation as an ETC for wire centers served by non-rural and rural service areas of Peoples, a rural telephone company within the meaning of Section 153(37) of the Act, that fall within Farmers' service area in Alabama. Farmers will make available its universal service offering, including all of the services and functionalities set forth by the Commission in 47 C.F.R. § 54.101, throughout its designated service area. The designation of Farmers as an additional ETC clearly is in the public interest.²⁶ First, designating Farmers as an ETC will facilitate competition in the provision of universal service to the benefit of consumers in

²⁶ 47 U.S.C. § 214(6)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

Alabama.²⁷ Second, designating Farmers as an ETC will advance universal service by bringing consumers in Alabama new telecommunications service, including wireless service. Third, designating Farmers as an ETC in rural areas of Alabama will promote rapid development of new technologies in those areas. This will not only result in Farmers deploying advanced facilities, but will also provide an incentive to the competing ETCs to improve their networks to stay competitive, resulting in the availability of improved services to Alabama consumers.

IV. ANTI-DRUG ABUSE CERTIFICATION

Farmers certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862.²⁸

²⁷ See *Universal Service First Report and Order*, 12 FCC Rcd. At 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish “a pro-competitive ... framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all* Americans by opening *all* telecommunications markets to competition”) (*emphasis added*).

²⁸ 21 U.S.C. § 862. See attached Certification at Exhibit 3.

CERTIFICATE OF SERVICE

I, Gilene N. Alami, hereby certify that on this 23rd day of July, 2002 copies of the foregoing Petition for Designation as an Eligible Telecommunications Carrier were express mailed via UPS for delivery to those parties listed below:

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