Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Public Service Cellular, Inc.	**)**	**CC Docket No. 96-45**
	)	**FCC 97-419**
Petition for Designation as an	**)**	
Eligible Telecommunications Carrier	**)**	
in the State of Alabama	**)**	

REPLY COMMENTS OF PUBLIC SERVICE CELLULAR, INC.

PUBLIC SERVICE CELLULAR, INC.

Michael K. Kurtis
Rebecca L. Murphy
Bennet & Bennet, PLLC
1000 Potomac Street, NW
Suite 200
Washington, DC 20007
202-328-4500

Its Attorneys

Dated: February 23, 2004

TABLE OF CONTENTS

Summary		i
I.	A Stay of Action on PSC's Petition is Unwarranted	2
II.	PSC's Petition, as Amended, Satisfies the Public Interest Standard and Additional Conditions Established in the *Virginia Cellular Order*, and No Other Showing is Required	8
III.	A Grant of PSC's Petition Will Serve the Public Interest	10
	a. The FCC's High-Cost Support Rules Demonstrate That Support Is Necessary	10
	b. Designating PSC as an ETC Will Have Minimal Impact on the USF	11
	c. PSC Will Use USF Support for Its Intended Purpose	11
IV.	Conclusion	13

Summary

The comments filed in opposition to the Public Service Cellular, Inc. ("PSC") petition for designation as an ETC in the State of Alabama, have little to do with the merits of PSC's Petition. Rather, those filers have used the PSC Petition as yet another opportunity to reassert their policy arguments against the legal structure which allows designation of wireless carriers as ETCs with access to Universal Service Funds. While the merits of these and other policy issues are pending before the Federal-State Joint Board on Universal Service, that provides no basis for delaying action on PSC's Petition. Any rule changes which ultimately result from those proceedings will apply to PSC and any other ETC. In the meantime, the FCC must decide the PSC Petition consistent with established rules and precedent.

The Commission recently clarified the standards that it intends to apply in evaluating ETC applications in the *Virginia Cellular Order.* PSC has amended its Petition to bring it into full accord with that Order. Accordingly, based upon established Commission policy, the PSC Petition should be granted with PSC being designated as an ETC in the State of Alabama.

Before the

Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Public Service Cellular, Inc.	**)**	**CC Docket No. 96-45**
	)	**FCC 97-419**
Petition for Designation as an	**)**	
Eligible Telecommunications Carrier	**)**	
in the State of Alabama	**)**	

REPLY COMMENTS OF PUBLIC SERVICE CELLULAR, INC.

Public Service Cellular, Inc. ("PSC"), by its attorneys, pursuant to a Public Notice released by the Federal Communications Commission ("FCC" or "Commission") on November 20, 2003,[1] hereby submits these reply comments regarding its request that the FCC designate PSC as an Eligible Telecommunications Carrier ("ETC") in the state of Alabama. Specifically, these reply comments respond to comments filed by CenturyTel of Alabama, LLC ("CenturyTel"), the Cellular Telecommunications & Internet Association ("CTIA"), the National Association of State Utility Consumer Advocates ("NASUCA"), and the Verizon telephone companies ("Verizon"). As discussed in greater detail herein, the comments filed in opposition to PSC's Petition for Designation

[1] *Wireline Competition Bureau Seeks Comment on the Petition of Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in the State ofAlabam*a, Public Notice, CC Docket No. 96-45, DA 03-3730 (rel. Nov. 20, 2003).

as an ETC in the State of Alabama ("Petition")[2] provide no compelling rationale to deny or delay consideration of PSC's Petition. By contrast, CTIA's comments support PSC's Petition and urge the Commission to exercise its authority to grant ETC status to PSC in the requested service territories in Alabama.[3] Accordingly, the record supports the immediate grant of PSC's Petition and designation of PSC as an ETC in the state of Alabama.

I. A Stay of Action on PSC's Petition is Unwarranted

The comments filed in "opposition" to the PSC Petition have little to do with the merits of the PSC filing. Rather, the objecting commenters have seized yet another opportunity to raise generalized concerns and criticisms of the current regulatory process which allows CMRS carriers to obtain Universal Service Support. Without taking any position as to merits of the arguments advanced in the comments, PSC respectfully submits that they are not relevant to the consideration of PSC's Petition and that the grant of the PSC Petition will, in no way, prejudice those arguments when they are considered in the proper forum nor insulate PSC from any subsequent changes in the rules regarding access to USF.

The FCC recently dealt with near identical comments in its *Virginia Cellular Order*.[4] While acknowledging that these issues are significant to the underlying USF

---

[2] *In the Matter of Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45 (September 12, 2003) ("Petition").

[3] Comments of Cellular Telecommunications & Internet Association ("CTIA Comments") at 6.

[4] *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of*

policy, the Commission made it abundantly clear that any changes resulting from the current Federal-State Joint Board on Universal Service ("Joint Board") review, would apply to all ETCs, even those granted ETC status before that review is complete. "The outcome of that proceeding could potentially impact, among other things, the support which Virginia Cellular and other competitive ETCs ***may receive in the future*** and the criteria used ***for continued eligibility*** to receive universal support."[5]

Specifically, the comments filed by CenturyTel, NASUCA, and Verizon urge the Commission to stay consideration of PSC's Petition until the Federal-State Joint Board on Universal Service ("Joint Board") and the FCC have completed their review of outstanding ETC issues.[6] CenturyTel notes that "the entire [ETC] designation process is under review by the Joint Board and the FCC in light of the numerous changes that have occurred in the telecommunications marketplace."[7] In light of this fact, CenturyTel argues that the FCC should defer completion of the ETC designation process with respect to PSC and others until it resolves the outstanding issues in the *CETC High-Cost Support Proceeding*.[8] Verizon and NASUCA make similar arguments.

Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular Order*").

[5] *Virginia Cellular Order* at ¶ 3 (emphasis added).

[6] Comments of CenturyTel of Alabama, LLC ("CenturyTel Comments") at 3-4; Comments of National Association of State Utility Consumer Advocates ("NASUCA Comments") at 2; Comments of the Verizon telephone companies ("Verizon Comments") at 2.

[7] CenturyTel Comments at 4.

[8] *See Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (2002); *see Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC*

Rural local exchange carrier ("LEC") arguments that the FCC should stay consideration of this, and other pending ETC applications, because the rules determining the disposition of the Universal Service Fund ("USF") may change, are completely unfounded. While CenturyTel, NASUCA, and Verizon have continually attempted to delay the FCC's consideration of ETC applications by filing oppositions and seeking stay of all ETC applications based on the premise that the FCC must first wait for the completion of related proceedings, the FCC has repeatedly rejected such an argument.[9] The Commission has long followed the holding in *Puerto Rico Sun Oil Co.*, which dictates that applications for ETC status must be evaluated based on the rules as they currently exist.[10] The Commission cannot base its ETC designation decision on unsupported and vague speculation as to *possible* future universal service harm based on *possible* rule changes. Instead, precedent clearly dictates that PSC's ETC application

---

Designation Process, Notice of Proposed Rulemaking, 18 FCC Rcd 1941 (2003) ("High-Cost NPRM").

[9] *See, e.g., Virginia Cellular Order*; *see, Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket 96-45 (rel. Dec. 4, 2002) ("*Cellular South Order*"); s*ee Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket 96-45 (rel. Nov. 27, 2002) ("*RCC Order*"). In its recent *Virginia Cellular Order*, while recognizing that many outstanding ETC issues remain, the Commission made clear that it will continue to review and act on ETC designation requests in a timely manner.

[10] *Puerto Rico Sun Oil Co. v. EPA*, 8 F.3d 73, 79 (1st Cir. 1993) (*citing SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)) (An agency's decision cannot be supported based upon rules that the agency has not yet adopted.)

must be evaluated based on the rules as they exist today.[11] Further, PSC's application must be evaluated by using the same standards as those applied to similarly situated applicants[12] who have already been granted ETC status as modified by the additional standards recently imposed by the Commission in the *Virginia Cellular Order*.[13] In fact, the United States Court of Appeals for the District of Columbia Circuit has long discouraged "disparate treatment" of "similarly situated parties."[14] Accordingly, the Commission should move expeditiously to act on PSC's Petition.

Verizon argues that designating PSC as an ETC before resolving several outstanding ETC issues "will unravel the access charge reform established by the CALLS Order."[15] Verizon's stated concern regarding the growth of the high-cost fund due to wireless carriers receiving ETC status reveals an anti-competitive anti-Commercial Mobile Radio Service ("CMRS") bias.[16] Verizon likely raises this concern over the size

---

[11] *Id.*

[12] *See, e.g., Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235 (D.C. Cir. 1997); *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir.1994); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir.1987); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir.1978); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir.1965).

[13] *See generally Virginia Cellular Order*. The FCC granted, in part, and denied, in part, subject to certain conditions, a request by Virginia Cellular to be designated as an ETC throughout its licensed service area. The FCC established a stricter public interest framework to evaluate ETC requests and imposed additional conditions on Virginia Cellular and all future ETCs. As discussed herein, PSC meets these new standards as well as those standards in place at the time it originally filed its Petition.

[14] *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235 (D.C. Cir. 1997).

[15] Verizon Comments at 1.

[16] *Id.*

and sustainability of the USF solely in an attempt to prevent competitive carriers from receiving high-cost support for the provision of alternative services in high-cost areas. Additionally, Verizon's concerns regarding impact on the regulatory regime established by the CALLS Order, and its plea for all ETC applications to be stayed pending resolution of this matter, are non-germane to the instant proceeding and are more properly the subject of separate proceedings.[17]

NASUCA states that the FCC has "provided assurance that ETCs will continue to be subject to the Commission's requirements for ETCs if those requirements change."[18] PSC has specifically addressed this concern in an Amendment to its Petition by expressly agreeing to meet the requirements as adopted by the Commission.[19]

The commenters in opposition to PSC's Petition have provided no legal or public interest basis for delaying consideration of PSC's Petition. The generalized calls for stay of action on the PSC Petition are unfounded because grant of the PSC Petition will neither influence the Joint Board review nor insulate PSC from the application of any FCC rule changes that might result.[20] With the grant of PSC's ETC status being subject

---

[17] Verizon Comments at 1-2. Verizon is almost wholly unaffected by PSC's competitive ETC entry in Alabama. Verizon is not an incumbent local exchange carrier in Alabama. Thus, Verizon's speculative concerns about universal service should be given little, if any, weight in this proceeding.

[18] NASUCA Comments at 2-3.

[19] *In the Matter of Public Service Cellular, Inc. Second Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, at 8 (February 20, 2003) ("Second Amendment").

[20] "…the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal support in competitive areas could

to the outcome of that proceeding, or any other rule changes that the Commission might implement in the future, a stay of this single ETC designation is both unnecessary and inappropriate. In its Petition, PSC substantively demonstrated that grant of its Petition is in the public interest. Specifically, PSC outlined how it provides services and functionalities in Alabama supported by the federal universal service program, enumerated in Section 54.101(a) of the FCC's rules.[21] PSC also established that it satisfied each of the elements required for ETC designation by the FCC pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act").[22] Further, PSC demonstrated in its Second Amendment that it will meet additional conditions as established in the *Virginia Cellular Order*.[23] Because PSC's proposed ETC offering in Alabama is in the public interest, delay of consideration of PSC's Petition by the Commission will prevent consumers in rural Alabama from receiving new advanced services offered by PSC. Accordingly, the public interest dictates that the Commission act swiftly in granting PSC's Petition.

---

potentially impact the support that Virginia Cellular and other ETCs may receive in the future [footnote omitted] This Order is not intended to prejudice the outcome of that proceeding." *Virginia Cellular Order* at ¶ 12.

[21] 47 C.F.R. § 54.101(a).

[22] *See*, 47 U.S.C. § 214(e)(6); *see also*, Petition at 6-10.

[23] *See, generally,* Second Amendment.

II. PSC's Petition, as Amended, Satisfies the Public Interest Standard and Additional Conditions Established in the *Virginia Cellular Order*, and No Other Showing is Required

CenturyTel, NASUCA, and Verizon all observe that the FCC recently imposed a stricter public interest standard and additional conditions on all carriers seeking ETC status.[24] These commenters noted that Alabama consumers deserve the same protections as the Virginia consumers and urged the FCC to direct PSC to supplement the record, showing that it can meet the new framework.[25] In fact, as indicated above, PSC has already supplemented the record, without Commission direction, proving that it can meet the "more stringent" public interest test and additional conditions established in the *Virginia Cellular Order*. PSC has promised to take additional steps to assure consumers and the Commission that it is committed to providing the supported services to requesting customers in its designated area.[26] PSC, therefore, meets the new public standard and should be designated as an ETC in its proposed designated area in Alabama.

CenturyTel and NASUCA then assert that PSC should be held to an even stricter standard than that applied by the Commission to Virginia Cellular, arguing that PSC should be subject to the same service quality, reliability, or availability obligations of

---

[24] CenturyTel Comments at 5 & 10; NASUCA Comments at 2; Verizon Comments at 2.

[25] CenturyTel Comments at 10; Verizon Comments at 2.

[26] *See, generally*, Second Amendment. PSC, pursuant to the *Virginia Cellular Order*, will take the following steps: (1) annually submit information regarding its build-out plans and progress in areas in which it is designated as an ETC along with its Section 54.313 and 54.314 filings; (2) become a signatory to the Cellular Telecommunications & Internet Association's Consumer Code for Wireless Service; (3) annually provide to the FCC the number of consumer complaints it receives per 1,000 mobile handsets; and (4) annually submit information regarding how many requests for service from potential customers in its designated area were unfulfilled for the past year.

wireline carriers, including equal access.[27] However, having urged that PSC be held to the standards of the *Virginia Cellular Order*, these commenters ignore the expressed disposition of this exact argument in that Order.[28] Equal access is not a current requirement of ETCs.

The Commission has found that designating wireless carriers as ETCs serves the public interest, stating "[a]n important goal of the 1996 Act is to open local telecommunications markets to competition."[29] As CTIA observed in its comments, "[i]t is now well established that wireless carriers can bring significant benefits to the universal service program."[30] Indeed, unlike traditional LEC services, mobility provides customers with increased flexibility, public safety, and service options.[31] The Commission recently noted that mobility of telecommunications assists consumers in rural areas who must drive significant distances to their jobs, schools, and critical community locations.[32] PSC's wireless universal service offering, with the additional benefit of mobility, not only meets the public interest standard, but exceeds it. PSC,

---

[27] CenturyTel Comments at 8; NASUCA Comments at 3.

[28] Section 54.101(a)(7) of the rules states that one of the supported services is access to interexchange services, ***not*** equal access to those services. (footnote omitted)(emphasis added).

[29] *RCC Order* at ¶ 23.

[30] CTIA Comments at 4.

[31] Second Amendment at 6.

[32] *Virginia Cellular Order* at ¶ 29; *see also* CTIA Comments at 5.

therefore, requests that the FCC abide by the current rules and designate PSC as an ETC in Alabama.

III. A Grant of PSC's Petition Will Serve the Public Interest

As discussed above and in its Petition and Second Amendment, a grant of PSC's ETC request will serve the public interest. In comments supporting PSC's petition, CTIA agreed that designating PSC as an ETC is in the public interest, stating that "PSC's application will serve the public interest by bringing the benefits of competition to an underserved marketplace and new advanced telecommunications services to consumers in Alabama."[33]

a. The FCC's High-Cost Support Rules Demonstrate That Support Is Necessary

In its comments, CenturyTel states that "PSC has failed to demonstrate that support is necessary to maintain rates that are affordable and reasonably comparable and competitive with the ILEC's."[34] PSC disagrees with CenturyTel's argument and submits that the amount of "necessary" USF support in the proposed service areas of Alabama is determined by Commission rule for all ETCs in a particular service area. The Commission's high-cost model and interstate access support mechanisms calculate the level of support necessary for both the incumbent and a competitive ETC based upon underlying costs without regard to any other carrier-specific measure, *e.g.*, the financial performance of either carrier.

---

[33] CTIA Comments at 4.

[34] CenturyTel Comments at 5.

b. Designating PSC as an ETC Will Have Minimal Impact on the USF

Similar to arguments made by Verizon, CenturyTel argues that, "there has been significant increase in the number of ETC petitions in non-rural areas, and each additional ETC reduces the amount of [interstate access support] available to other carriers."[35] PSC, however, already addressed CenturyTel's speculative concern regarding the sustainability of universal service. As stated in its Second Amendment, PSC calculated the total per-line support that each competing incumbent LEC currently receives, including high-cost model and interstate access support. Specifically, PSC estimates that it will receive approximately $305,931.00 per year in USF support. This represents less than 0.036% of the USF. CenturyTel's concerns lack merit because PSC's ETC request will have minimal impact on the USF. The benefits of designating PSC as an ETC outweigh any potential harm to the sustainability of the fund.[36] While the global policy issue relating to the ability of the USF to continue to support ETCs is presently under consideration by the Joint Board, it is abundantly clear that the grant of PSC's Petition will not threaten the ongoing viability of the fund.

c. PSC Will Use USF Support for Its Intended Purpose

As required by the Act, PSC will use its Federal universal service support for construction, maintenance and upgrading of facilities serving areas for which such

---

[35] CenturyTel Comments at 7.

[36] *See Virginia Cellular Order* at ¶ 31 (holding that 0.105% of total high-cost support does not dramatically burden the USF).

support is intended.[37] PSC currently provides service in Alabama utilizing Analog and Time Division Multiple Access ("TDMA") technology and has begun to overbuild its network with Global System for Mobile Communications ("GSM") technology. If granted ETC status, PSC will use its universal service support to build additional GSM network facilities necessary to provide further coverage. PSC has also committed to undertake additional steps to ensure that consumers in rural Alabama will receive comparable and competitive wireless coverage.[38] In an effort to delay FCC consideration of PSC's Petition, CenturyTel states in its comments that the FCC should require states to oversee and verify that universal service funds are being used for the purpose intended.[39] The FCC addressed CenturyTel's concern in its *Virginia Cellular Order* by requiring Virginia Cellular to comply with additional annual reporting requirements, ensuring that Virginia Cellular uses its universal service support as intended.[40]

PSC will also comply with the FCC's additional reporting requirements adopted in the *Virginia Cellular Order*.[41] PSC notes that the additional reporting requirements exceed those applied to CenturyTel or any other incumbent ETC. PSC will submit this information to the FCC and the Universal Service Administration Company every October.

---

[37] *See* 47 U.S.C. § 254(c); *see also* Second Amendment at 10.

[38] Second Amendment at 9-10.

[39] CenturyTel Comments at 9.

[40] *Virginia Cellular Order* at ¶ ¶ 46–47.

[41] *See Virginia Cellular Order* at ¶ 46; *see also,* footnote 27, *supra*.

IV. Conclusion

PSC has demonstrated in its Petition that it meets the legal and policy requirements necessary to be designated as an ETC pursuant to Sections 214(e) and 254 of the Act.[42] Further, PSC has supplemented the record to comport with the more stringent public interest test and additional reporting requirements pursuant to the FCC's *Virginia Cellular Order*.[43] The CenturyTel, NASUCA, and Verizon comments offer no compelling arguments as to why the Commission should not grant PSC's Petition and further the promotion and advancement of universal service in rural Alabama.

Respectfully submitted,

PUBLIC SERVICE CELLULAR, INC.

By: /S/ *Michael K. Kurtis*

Michael K. Kurtis
Rebecca L. Murphy

Bennet & Bennet, PLLC
1000 Potomac Street, NW
Suite 200
Washington, DC 20007
202-328-4500

Its Attorneys

Dated: February 23, 2004

[42] *See generally* CTIA Comments.

[43] *See generally* Second Amendment.

CERTIFICATE OF SERVICE

I, Ruth E. Garavalia, a secretary with the law firm of Bennet & Bennet, PLLC, do hereby certify that I have this 23rd day of February 2004, had copies of the foregoing "REPLY COMMENTS OF PUBLIC SERVICE CELLULAR, INC." sent via hand delivery to the following:

Eric Einhorn
Chief, Telecommunications Access
Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Paul Garnett
Acting Assistant Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Courtyard Level
Washington, DC 20554

Karen Brinkman*
Tonya Rutherford
Latham & Watkins
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
(Counsel for CenturyTel, Inc.)

David C. Bergmann*
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

Michael Altschul*
Christopher R. Day
Cellular Telecommunications & Internet
Association
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036

Ann H. Rakestraw*
Michael E. Glover
Edward Shakin
1515 North Courthouse Rd., Suite 500
Arlington, VA 22201
(Counsel for Verizon telephone companies)

Scott A. Mackoul
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

/S/ Ruth E. Garavalia
Ruth E. Garavalia

*Sent via First Class United States Mail, postage prepaid