

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

<b>In the Matter of</b>	)	
	)	
<b>Federal-State Joint Board on Universal Service</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>Advantage Cellular Systems, Inc.</b>	)	
	)	
<b>Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee</b>	)	<b>DA 04-998</b>
	)	

**To: Wireline Competition Bureau**

**REPLY COMMENTS OF ADVANTAGE CELLULAR SYSTEMS, INC.**

Advantage Cellular Systems, Inc. (“Advantage”), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission’s (“FCC” or “Commission”) rules and regulations and the FCC’s *Public Notice*,<sup>1</sup> hereby files these reply comments regarding its Supplement to Petition to be Designated as an Eligible Telecommunications Carrier (“ETC”) in the state of Tennessee (“Supplement”)<sup>2</sup> in response to oppositions filed by Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively “Frontier”), and Verizon.

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<sup>1</sup> *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations, Public Notice, CC Docket No. 96-45, DA 04-998 (April 12, 2004).*

<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service, Advantage Cellular Systems, Inc., Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (February 17, 2004) (“Supplement”).*

In light of the FCC's *Virginia Cellular Order*,<sup>3</sup> Advantage filed a Supplement to its Petition with the FCC on February 17, 2004. Advantage demonstrated that after applying the FCC's new public interest framework, designation of Advantage as an ETC remains in the public interest. Specifically, it demonstrated that the impact of Advantage's ETC designation on the Universal Service Fund ("USF") will be minimal; Advantage's wireless universal service offering will provide unique services to consumers in rural Tennessee; Advantage will provide its universal service offering through a combination of its wireless network infrastructure, roaming or other contractual arrangements with other wireless service providers, and resale agreements with other wireline carriers in Tennessee; Advantage is committed to providing quality and reliable service in its designated area; and will comply with the ongoing conditions imposed on Virginia Cellular. Further, Advantage modified its request for redefinition of the study areas of the affected rural telephone companies at the wire center level as established in the *Virginia Cellular Order*. Advantage also provided a population density study that reveals that Advantage is not serving only low-cost, high density wire centers, and therefore, Advantage is not attempting to "cream skim." As discussed below, neither Frontier nor Verizon offer a compelling rationale for denial of Advantage's petition.

#### **I. *Virginia Cellular* Did Not Impose New Public Interest Requirements**

Frontier argues that Advantage has failed to meet the FCC's new public interest standard established in its *Virginia Cellular Order*.<sup>4</sup> Frontier states that "all carriers seeking ETC status in rural areas must now comply with [] additional requirements," including, among others, the benefits of increased competitive choice, the impact of multiple designations on the USF, and the

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<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 (January 22, 2004) ("*Virginia Cellular Order*").

<sup>4</sup> See Frontier Comments at 3-5.

unique advantages and disadvantages of the competitor’s USF offering.<sup>5</sup> Apart from the fact that these “criteria” cited by Frontier are obviously not stated as requirements, Frontier fundamentally mischaracterizes the ETC designation framework established by the FCC in its *Virginia Cellular Order*. Contrary to Frontier’s mischaracterization, the FCC did not impose new requirements on ETC applicants. Rather, it stated that it will henceforth consider certain “factors” in making its public interest determination. Among the “numerous factors” cited by the Commission are the benefits of increased competitive choice, the impact of multiple designations on the USF, and the unique advantages and disadvantages of the competitor’s USF offering.<sup>6</sup> Frontier’s attempt to expand the statutory requirements beyond the Commission’s analytical framework should be ignored.

**II. Advantage has Demonstrated It Is Committed to Providing Quality Service Throughout its Entire Designated Service Area**

Frontier claims that it is unclear whether Advantage satisfies the FCC’s criterion that ETCs provide service throughout the entire area in which they seek to be designated. Frontier states that Advantage has only indicated that it will “attempt” to provide service to any customer in its ETC designated service area when, in fact, Advantage has “committed” to provide service to any requesting customers in the service areas in which it is designated as an ETC. Specifically, Advantage has committed to immediately provide service using its network to potential customers within its existing network.<sup>7</sup> And, if a potential customer requests service within Advantage’s licensed service area but outside its existing network coverage, Advantage has committed to: (1) modify or replace the requesting customer’s equipment to provide service; (2) install a roof-mounted antenna or other equipment to provide service; (3) adjust the nearest

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<sup>5</sup> See Frontier Comments at 4.

<sup>6</sup> See *Virginia Cellular Order* at ¶ 4.

<sup>7</sup> See Supplement at 5-6.

cell site to provide service; (4) identify and make any other adjustments that can be made to the network or customer facilities to provide service; (5) offer resold services or roaming in certain areas using another carrier's facilities to provide service; or (6) determine the feasibility of installing an additional cell site, cell extender, or repeater to provide service.<sup>8</sup>

In its *Virginia Cellular Order*, the Commission noted that “to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.”<sup>9</sup> Advantage has done all it can by committing to provide service to any requesting customers within its ETC designated territory because it cannot feasibly provide the service until it receives USF support. Further, the FCC stated that a new ETC entrant can make a “reasonable demonstration” of its capability and commitment to provide universal service, and found the six steps outlined above to be a sufficient showing of an ETC's commitment to provide universal service throughout its designated area.<sup>10</sup> As demonstrated herein, Advantage has made a reasonable demonstration of its capability and commitment to serve any customer in its designated service area that requests service. Accordingly, Advantage has made clear that it is committed to providing quality service throughout its designated area in accordance with the FCC's *Virginia Cellular* standards.

### **III. The FCC Should Not Adopt New ETC Requirements**

Frontier requests that the Commission impose new requirements on Advantage that the FCC has not imposed on previous ETC applicants. Specifically, Frontier requests that the FCC require Advantage to commit to a “specific timeframe” for provisioning service in response to a

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<sup>8</sup> Advantage has made these additional commitments to comply with the commitments made by Virginia Cellular. *Virginia Cellular Order* at ¶ 15; *see also*, Supplement at 7. Further, Advantage has committed to comply with the Cellular Telecommunications & Internet Association's (“CTIA”) Consumer Code for Wireless Service, which sets out certain service quality standards for wireless carriers.

<sup>9</sup> *Virginia Cellular Order* at ¶¶ 17-19.

<sup>10</sup> *Id.*

customer's request within the proposed ETC area.<sup>11</sup> In its *Virginia Cellular Order*, the FCC stated that it would consider an ETC applicant's ability to provide service throughout its designated area within a "reasonable timeframe" as a factor in determining whether to designate an additional ETC.<sup>12</sup> The FCC has already adopted the "reasonable timeframe" standard for ETCs to provide service throughout its designated area and Advantage has committed to meeting this standard. Indeed, provisioning service to a specific customer within a reasonable timeframe is all that can be expected of a wireless carrier. The timeframe for provisioning service to a new customer is dependent on many factors which cannot all be accounted for in establishing a single timeframe applicable to all ETC applicants, and adopting a requirement for carriers to provide service within a specific timeframe may hinder competitive carriers' ability to provide service. For example, Advantage may be requested to provide wireless service to a customer outside of Advantage's CMRS-licensed territory where such customer's wireline provider has not constructed wireline facilities that extend to that customer's home. In such case, Advantage will not be able to resell wireline service to that customer. If granted ETC status, Advantage would use its resources to provide wireless service to such customers, but would need a flexible timeframe to do so. Imposing a specific timeframe upon Advantage to provide service to customers who don't even have wireline service is unreasonable and would only hinder Advantage's ability to provide service to unserved areas of Tennessee.

Even if the Commission were to follow Frontier's suggestion and adopt a rule that required ETCs to commit to a specific timeframe for provisioning service in response to a

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<sup>11</sup> See Frontier Comments at 8.

<sup>12</sup> *Virginia Cellular Order* at ¶ 3.

customer's request within the proposed ETC area, the FCC, in compliance with the Administrative Procedure Act,<sup>13</sup> would have to initiate a notice-and-comment rulemaking.

#### **IV. State ETC Requirements Do Not Apply**

Frontier attempts to bootstrap, with no legal support, distinct state ETC requirements onto Advantage's federal ETC application. Frontier states that incumbent ETCs are currently subject to a myriad of service quality provisioning and repair requirements that extend beyond CTIA's Consumer Code for Wireless Service.<sup>14</sup> While it is true that some states have required incumbent ETCs to meet certain service quality standards, such standards have no relevance to the instant proceeding. In addition, the state of Tennessee has specifically ceded jurisdiction to the FCC in this matter and additional state requirements are non-germane. Advantage's ETC application is before the FCC, and therefore, the state requirements to which Frontier refers do not govern Advantage's federal ETC application.

#### **V. Advantage's ETC Application will Not Undermine the Continued Viability of the USF**

Both Frontier and Verizon argue that a grant of all the pending ETC applications may dramatically increase the size and undermine the continued viability of the USF.<sup>15</sup> Verizon states that the pending ETC petitions, if granted, along with the recent Virginia Cellular and Highland Cellular ETC designations, could amount to approximately \$376 million per year in high cost funding.<sup>16</sup> Verizon also argues that these ETC grants are "just the beginning" because many ETC applicants are seeking high-cost support in all states that they operate.<sup>17</sup> Advantage is

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<sup>13</sup> 5 U.S.C. § 553.

<sup>14</sup> See Frontier Comments at 7.

<sup>15</sup> *In the Matter of Federal-State Joint Board on Universal Service, Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Opposition of Verizon, CC Docket 96-45, (May 7, 2004) ("Verizon Comments"); see also Frontier Comments at 5.

<sup>16</sup> See Verizon Comments at 2.

<sup>17</sup> See Verizon Comments at 3.

seeking ETC designation in only one state, Tennessee. As stated in its Supplement, Advantage estimates that it will receive approximately \$1,127,000 per year in USF support. This represents less than 0.13% of the high cost portion of the USF. The benefits of designating Advantage as an ETC outweigh any potential harm to the sustainability of the fund.<sup>18</sup>

In evaluating adverse impact on the USF, the Commission has tended to analyze whether any such impact would result in an annual aggregate shift in high-cost support in an amount equal to or greater than one-percent of the total high cost fund for the pertinent funding year.<sup>19</sup> The Commission has used this one-percent test for study area waivers in order to limit potential adverse impact on the federal high cost fund. Applying this one-percent test to Advantage's ETC case, Advantage falls well below the Commission's one-percent threshold. Accordingly, grant of Advantage's ETC request will have minimal impact on the USF.

#### **VI. Verizon's Opposition Is Irrelevant to the Instant Proceeding**

In its opposition, Verizon voices its concern over dilution of the USF because of the increased frequency of ETC applications and requests that the FCC stay the pending ETC applications until the numerous outstanding universal service issues are resolved.<sup>20</sup> Verizon also comments on the Sprint Petition for Reconsideration of *Virginia Cellular* in its opposition to Advantage's ETC application.<sup>21</sup> Verizon's opposition is irrelevant to the instant proceeding and is more properly the subject of separate proceedings. Verizon may address its concerns either through participation in the ongoing Joint Board proceeding and/or by filing an opposition to Sprint's Petition for Reconsideration.

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<sup>18</sup> See *Virginia Cellular Order* at ¶ 31 (holding that 0.105% of total high-cost support does not dramatically burden the USF).

<sup>19</sup> See *in re M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Order, FCC 04-86 at ¶ 15 (April 12, 2004).

<sup>20</sup> See Verizon Comments at 4-5.

<sup>21</sup> See Verizon Comments at 5-10.

Even if the Commission chooses to address Verizon's USF concerns in this proceeding, Verizon offers no reasonable basis why Advantage's specific ETC request should be delayed or denied. Verizon is not an incumbent local exchange carrier in Tennessee, and therefore, almost wholly unaffected by Advantage's competitive ETC entry in Tennessee.

**VII. Conclusion**

Advantage has demonstrated that it meets the public interest standard as modified by the FCC's *Virginia Cellular Order*, and conditions adopted therein, as well as the legal requirements necessary to be designated as an ETC pursuant to Sections 214(e) and 254 of the Communications Act of 1934, *as amended*.<sup>22</sup> As discussed herein, neither Frontier nor Verizon offer compelling arguments why the Commission should not grant Advantage's Petition and further the promotion and advancement of universal service in rural Tennessee.

Respectfully submitted,

**ADVANTAGE CELLULAR SYSTEMS, INC.**

By: \_\_\_\_\_ /s/\_\_\_\_\_

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<sup>22</sup> 47 U.S.C. §§ 214(e) and 254.