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

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
Federal-State Joint Board on )  
Universal Service )  
Manchester-Nashua Cellular Telephone, L.P. )  
NH #1 Rural Cellular, Inc. )  
USCOC of New Hampshire RSA #2, Inc. )  
For Designation as an Eligible )  
Telecommunications Carrier )  
In the State of New Hampshire )

CC Docket No. 96-45

To: Wireline Competition Bureau

**Petition for Designation as an Eligible Telecommunications Carrier  
in the State of New Hampshire**

Manchester-Nashua Cellular Telephone, L.P., NH #1 Rural Cellular, Inc., USCOC of New Hampshire RSA #2, Inc. (collectively, "U.S. Cellular"), by its counsel, submits this Petition for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 54.201. U.S. Cellular requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") including, but not limited to, support for rural, insular and high-cost areas and low-income customers. In support of this Petition, the following is respectfully shown:

**I. Applicable Statutes and Rules**

1. The statutes and rules implicated by the instant Petition are as follows: 47 U.S.C.

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§§ 153(27), 153(44), 153(46), 214(e), 253(b), 254(e) 332(c)(3); 47 C.F.R. §§ 51.5, 54.5, 54.101, 54.201, 54.207, 54.307, 54.313, and 54.314.

## **II. Authorization and Service Area**

2. U.S. Cellular is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and for the purposes of Part 54 of the FCC's rules.<sup>1</sup> *U.S. Cellular is therefore considered a common carrier under the Act*

3. Manchester-Nashua Cellular Telephone, L.P. is authorized by the FCC as the Cellular Radiotelephone Service ("CRS") provider in the Manchester-Nashua, New Hampshire Metropolitan Statistical Area ("MSA"). NH #1 Rural Cellular, Inc is authorized by the FCC as the CRS provider in New Hampshire Rural Service Area ("RSA") 1 – Coos. USCOC of New Hampshire RSA #2, Inc. is authorized by the FCC as the CRS provider in New Hampshire RSA 2 – Carroll. A map of U.S. Cellular's proposed ETC service area is attached hereto as Exhibit A. U.S. Cellular is a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). U.S. Cellular provides interstate telecommunications services as defined in 47 U.S.C. § 153(46) and 47 C.F.R. § 54.5.

4. U.S. Cellular has operated continuously in New Hampshire for more than a decade. U.S. Cellular has constructed a digital network and plans to further upgrade its existing facilities in the near future. With high-cost support, U.S. Cellular can rapidly expand its network to deliver high-quality service to rural areas of New Hampshire, and offer customers a viable competitive alternative to incumbent wireline networks. A grant of this application will thus benefit rural citizens in New Hampshire.

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<sup>1</sup> 47 C.F.R. § 54.1 *et seq.*

5. U.S. Cellular currently provides all 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 New Hampshire. Upon designation as an ETC, U.S. Cellular will make available to consumers a universal service offering over its cellular network infrastructure, using the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers. As required by law, U.S. Cellular will provide service to any customer requesting service within the designated ETC service area upon reasonable request. *See also*, Exhibit E, attached.

**III. The New Hampshire Commission Has Provided an Affirmative Statement That It Does Not Have Authority to Designate CMRS Carriers as ETCs.**

6. As a CMRS carrier, U.S. Cellular is entitled to seek designation as an ETC.<sup>2</sup> Section 254(e) of Act, 47 U.S.C. § 254(e), 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 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.”

7. 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.”<sup>3</sup> In its *Twelfth Report and Order* in this docket, 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

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<sup>2</sup> *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) (“*First Report and Order*”).

<sup>3</sup> *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947, 29948 (1997) (“*Section 214(e)(6) Public Notice*”).

consider requests filed pursuant to Section 214(e)(6).<sup>4</sup>

8. On December 5, 2003, the New Hampshire Public Utilities Commission (“NHPUC”) issued an *Order Regarding Jurisdiction of the Commission* in response to RCC Minnesota, Inc. and RCC Atlantic, Inc.’s Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire. The NHPUC found that it does not have jurisdiction to make such designations. Specifically, the Commission held: “the Commission does not have jurisdiction over any cellular carrier because the New Hampshire legislature specifically removed cellular carriers from the jurisdiction of this Commission.”<sup>5</sup> The NHPUC rejected the argument that it nonetheless could regulate CMRS carriers in the limited context of ETC designations.<sup>6</sup> The NHPUC has clearly indicated it does not have the authority to designate CMRS carriers as ETCs. Accordingly, U.S. Cellular requests ETC designation as “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” 47 U.S.C. § 214(e)(6).

#### **IV. U.S. Cellular Offers the Supported Services to Qualify for Federal USF Support**

9. Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier’s services, and (2) advertise the

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<sup>4</sup> *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).

<sup>5</sup> *RCC Minnesota, Inc. and RCC Atlantic, Inc. Petition for Designation as an eligible Telecommunications Carrier, Order Regarding Jurisdiction of the Commission*, Order No. 24,245 (December 5, 2003) at p.14. A copy of the Order is attached hereto as Exhibit H.

<sup>6</sup> *See id.* at pp. 14-15 (“[Some commenters] argue that, notwithstanding [the general state prohibition against regulating CMRS], federal law authorizes the [NHPUC] to designate any provider of telecommunications service as an ETC as long as such provider meets the requirements of the law[.] They argue that while the Commission cannot regulate the services of a cellular provider, it is not prohibited from designating a cellular provider as an ETC. We disagree.”)

availability of such services and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). The services which are supported by the federal USF are:

- 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.

47 C.F.R. § 54.101(a).

10. U.S. Cellular is a full-service wireless carrier that now offers all of these services, as described in detail below. U.S. Cellular has been designated as an ETC in Washington, Wisconsin and Iowa and has consistently demonstrated its capability to offer the supported services.<sup>7</sup> U.S. Cellular therefore satisfies the requirements of Section 214(e)(1) of the Act.

11. Voice Grade Access. U.S. Cellular provides voice grade access to the public switched network through interconnection arrangements with local telephone companies. U.S. Cellular offers its subscribers this service at bandwidth between 300 and 3,000 hertz as required by 47 C.F.R. 54.101(a)(1), thereby providing voice grade access.

12. Local Usage. U.S. Cellular has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.<sup>8</sup> As it relates to local usage, the *October 1998 NPRM*

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<sup>7</sup> United States Cellular Corporation, et al., Docket No. UT-970345 (Wash. Util. & Transp. Comm'n, Jan. 27, 2000) ("U.S. Cellular Washington Order"); United States Cellular Corporation, Final Decision, 8225-TI-102 (Wisc. PSC, Dec. 20, 2002) ("U.S. Cellular Wisconsin Order"); and, United States Cellular Corporation, et al., Docket No. 199 IAC 39.2(4) (Iowa Util. Bd., Jan. 15, 2002) ("U.S. Cellular Iowa Order").

<sup>8</sup> *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*

sought comment on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comment on how much, if any, local usage should be required to be provided to customers as part of a universal service offering.<sup>9</sup> In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide.<sup>10</sup> In 2002, the Joint Board did not specifically recommend an amount of local usage, but left it to the FCC to decide whether a minimum should be imposed. To date, the FCC has determined that when a carrier offers a variety of rate plans containing varying amounts of local usage, it meets that local usage requirement.<sup>11</sup>

13. U.S. Cellular offers dozens of rate plans which provide customers with a variety of local usage included free of charge. Any minimum local usage requirement established by the FCC will be applicable to all designated ETCs, and U.S. Cellular will comply with any and all minimum local usage requirements adopted by the FCC.

14. DTMF Signaling. U.S. Cellular provides dual tone multi-frequency (“DTMF”) signaling to facilitate the transportation of signaling throughout its network. U.S. Cellular currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling.

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*in the Territory of Guam*, 17 FCC Rcd 1502, 1506-07 (rel. Jan. 25, 2002) (“Guamcell”); *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) (“October 1998 NPRM”); *Federal-State Joint Board on Universal Service Order*, 17 FCC Rcd 22642, (rel. Nov. 8, 2002) (“Referral Order”).

<sup>9</sup> See *October 1998 NPRM*, 13 FCC Rcd at 21277-21281.

<sup>10</sup> See *First Report and Order*, 12 FCC Rcd at 8813.

<sup>11</sup> See *Virginia Cellular, LLC, Memorandum Opinion & Order*, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular Order*”); *Referral Order, supra*; *RCC Minnesota, Inc.*, Docket No. UT-023033 (Wash. Util. & Transp. Comm’n Aug. 14, 2002) (“*RCC Washington Order*”).

15. 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.<sup>12</sup> U.S. Cellular provides single party service, as that term is defined in Section 54.101 of the FCC’s rules. *See* 47 C.F.R. § 54.101.

16. Access to Emergency Services. U.S. Cellular currently provides 911 access to emergency services throughout its service area.

17. Access to Operator Services. U.S. Cellular provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing “0”.

18. Access to Interexchange Services. U.S. Cellular has signed interconnection agreements with interexchange carriers. These arrangements enable U.S. Cellular to provide its customers access to interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.

19. Access to Directory Assistance. Subscribers to U.S. Cellular’s services are able to dial “411” or “555-1212” to reach directory assistance from their mobile phones.

20. Toll Limitation. U.S. Cellular can provide toll limitation by utilizing its toll blocking capabilities, enabling U.S. Cellular to provide toll blocking service for Lifeline customers once U.S. Cellular is designated an ETC.

21. The Commission’s *Section 214(e)(6) Public Notice* established that a carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”<sup>13</sup> U.S. Cellular will provide the supported services using its existing network infrastructure, which

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<sup>12</sup> *First Report and Order, supra*, 18 FCC Rcd. at 8810.

<sup>13</sup> *Section 214 Public Notice, supra*, 12 FCC Rcd at 22949.

includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers.

22. Pursuant to Section 54.201 of the FCC's rules, 47 C.F.R. § 54.201, U.S. Cellular will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. In addition, U.S. Cellular will advertise the availability of Lifeline and Link-up benefits throughout its service area by including mention of such benefits in advertising and reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Link-up benefits. *See also*, Exhibit E, attached.

#### **V. Grant of U.S. Cellular's Petition Will Serve the Public Interest**

23. With respect to areas served by non-rural LECs, the Act provides that the Commission "shall" designate U.S. Cellular as an ETC upon finding that the company meets the nine-point checklist and that it agrees to advertise the supported services throughout its proposed ETC service area.<sup>14</sup> In areas served by rural telephone companies, the Commission must also

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<sup>14</sup> 47 U.S.C. § 214(e)(6). Until the *Virginia Cellular Order*, the Commission had consistently held that it is *per se* in the public interest to designate competitive ETCs in non-rural areas upon a finding that the applicant satisfies the requirements of Section 214(e)(1). *See, e.g., Corr Wireless Communications, LLC*, DA 02-2855 at ¶ 12 (WCB rel. Oct. 31, 2002) ("*Corr Wireless*"); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, DA 02-1252 at ¶ 13 (WCB rel. May 24, 2002) ("*Pine Belt*"); *Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 002895 at ¶ 14 (CCB rel. Dec. 26, 2000) ("*Cellco*"). We believe the Commission's statement in the *Virginia Cellular Order* that designation in such circumstances will not "necessarily be in the public interest in every instance" directly contradicts the language in Section 214(e)(6). The inclusion of the boilerplate phrase "consistent with the public interest, convenience and necessity" in the statute clearly does not amount to an extension of the public interest analysis to non-rural areas, as such

find that a grant of ETC status would serve the public interest.<sup>15</sup> In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative.<sup>16</sup>

24. The public interest is to be determined by following guidance provided by Congress in adopting the Telecommunications Act of 1996 (“1996 Act”) and the FCC in its enabling orders.<sup>17</sup> The overarching principles embodied in the 1996 Act are to “promote

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a reading would render meaningless the distinction between “may” and “shall.” *See Anderson v. Yungkau*, 67 S.Ct. 428, 485 (1947) (“[W]hen the same [statutory provision] uses both ‘may’ and ‘shall’, the normal inference is that each is used in its usual sense -- the one act being permissive, the other mandatory.”)

<sup>15</sup> See 47 U.S.C. § 214(e)(2).

<sup>16</sup> See e.g., *Cellular South License, Inc.*, 17 FCC Rcd 24393 (2002), recon. pending (“*Cellular South*”); *RCC Holdings, Inc.*, 17 FCC Rcd 23532 (2002), recon. pending (“*RCC Holdings*”); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd. 9589 (rel. May 24, 2002) (“*Pine Belt ETC Order*”); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) (“*Western Wireless*”), *aff’d*, 16 FCC Rcd 19144 (2001) (“*Western Wireless Recon. Order*”); Alaska Digitel, L.L.C., Docket U-02-39, Order No. 10 (Reg. Comm’n of Alaska, Aug. 28, 2003) (“*Alaska Digitel Order*”); Midwest Wireless Communications, LLC, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (March 19, 2003) (“*Midwest Minnesota Order*”); Smith Bagley, Inc., Final Order, Utility Case No. 3026 (N.M. Pub. Reg. Comm’n Feb. 19, 2002) (“*SBI N.M. Order*”); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Az. Corp. Comm. Dec. 15, 2000) (“*SBI Arizona Order*”); U.S. Cellular Iowa Order, *supra*; ALLTEL Communications, Inc., Case No. U-13765 (Mich. P.S.C. Sept. 11, 2003) (“*ALLTEL Michigan Order*”); N.E. Colorado Cellular, Inc., Docket No. 00A-315T (Colo. PUC, Dec. 21, 2001) (“*NECC Colorado Order*”); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC, May 13, 2003) (“*RCC Maine Order*”); RCC Holdings, Inc. d/b/a Unicef, Docket No. 02-UA-533 (Miss. PSC, Dec. 2, 2002) (“*RCC Mississippi Order*”); RCC Atlantic, Inc., Docket No. 5918 (Vermont Pub. Serv. Bd., Nov. 14, 2003) (“*RCC Vermont Order*”); RCC Minnesota, Inc., Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503 (Minn. PUC, June 30, 2003) (“*RCC Minnesota Order*”); NCPR, Inc. d/b/a Nextel Partners, Docket No. 8081-T1-101 (Wisc. PSC Sept. 30, 2003) (“*Nextel Wisconsin Order*”); RCC Washington Order, *supra*.

<sup>17</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996); See also *First Report and Order*, *supra*; *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432, 20480 (rel. Nov. 2, 1999) (“*Ninth Report and Order*”); *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) (“*Fourteenth Report and Order*”). See also *NAACP v. FCC*, 425 U.S. 662, 669 (1976); accord, e.g., *Office of Communication of the United*

competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies.”<sup>18</sup> In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.<sup>19</sup>

25. The FCC must determine whether designation of U.S. Cellular as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”<sup>20</sup>

26. In designating Virginia Cellular as an ETC, the FCC enunciated an expanded public interest framework for its consideration of future ETC designations. Although the *Virginia Cellular Order* is under review, we address the FCC’s analysis in the event this Commission applies all or part of it to U.S. Cellular’s petition. In determining the public interest in Virginia Cellular, the FCC considered:

- The benefits of increased competitive choice;

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*Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

<sup>18</sup> 1996 Act (preamble).

<sup>19</sup> *First Report and Order*, *supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order*, *supra*, 14 FCC Rcd at 20480.

<sup>20</sup> *See* 47 U.S.C. § 254(b)(3).

- The impact of designation on the universal service fund;
- The unique advantages and disadvantages of the competitor's service offering;
- Any commitments made regarding the quality of telephone service; and
- The competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.<sup>21</sup>

U.S. Cellular sets forth below specific facts demonstrating how its designation as an ETC in rural areas of New Hampshire will advance the public interest under these five factors. In addition, the company anticipates providing to the Commission one or more witnesses who will testify to the need for improved wireless telephone service in rural areas covered by this petition.

27. As an initial matter, U.S. Cellular believes strongly that any public costs likely to be incurred as a result of U.S. Cellular's designation are negligible compared to the benefits specifically articulated below. U.S. Cellular notes that it is *public* costs that matter, not the cost to individual companies, as the 5<sup>th</sup> Circuit made clear in *Alenco Communications v. FCC*, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000). Moreover, the impact of U.S. Cellular's designation as an ETC in New Hampshire on the size of the USF would be negligible. In the *Virginia Cellular Order*, the FCC concluded that the petitioner's projected support, which would amount to 0.105 percent of the total high-cost support to all ETCs, "will not dramatically burden the universal service fund".<sup>22</sup> U.S. Cellular's projected support will have an even smaller impact, making up only 0.04 percent of all high-cost support.<sup>23</sup> This minimal cost is by far outweighed by numerous

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<sup>21</sup> *Virginia Cellular Order* at ¶ 28.

<sup>22</sup> *Id.* at ¶ 31.

<sup>23</sup> This estimate is based on U.S. Cellular's projected support of \$125,438 per month, measured against \$303,236,023 per month in high-cost support to all carriers, as shown on USAC's web site at: <http://www.universalservice.org/overview/filings/2004/Q2/default.asp>.

public interest benefits which will accrue to New Hampshire consumers as a result of U.S. Cellular's designation, as follows:

**A. Increased Consumer Choice and Service Quality.**

28. Designation of U.S. Cellular will advance universal service, promote competition and facilitate the provision of advanced communications services to the residents of rural New Hampshire. Residents in many rural areas have long trailed urban areas in receiving competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

29. To date, a number of wireless carriers have been designated as ETCs in various states, including U.S. Cellular in several states.<sup>24</sup> Recognizing the advantages wireless carriers can bring to the universal service program, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."<sup>25</sup> The FCC recognized this fact in its initial decision designating Western Wireless as an ETC in the State of Wyoming, observing: "Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."<sup>26</sup>

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<sup>24</sup> See, e.g., U.S. Cellular Washington Order, *supra*; U.S. Cellular Wisconsin Order, *supra*; U.S. Cellular Iowa Order, *supra*; RCC Washington Order, *supra*; Midwest Minnesota Order, *supra*; Guamcell, *supra*; Cellular South, *supra*; NECC Colorado Order, *supra*; Pine Belt, *supra*; ALLTEL Michigan Order, *supra*; Midwest Iowa Order, *supra*; Western Wireless Order, *supra*; SBI Arizona Order, *supra*; SBI N.M. Order, *supra*; and Alaska Digitel Order, *supra*.

<sup>25</sup> *First Report and Order, supra*, 12 FCC Rcd at 8882-83.

<sup>26</sup> *Western Wireless, supra*.

30. In addition, with ETC designation, U.S. Cellular will implement its Lifeline and Link-up programs which will offer service to those lowest-income customers who have not previously had the opportunity to afford any choice in telephone service. Universal Service support will enable U.S. Cellular to reach out to those counties in New Hampshire that have no choice of service and provide them with quality telephone service.

31. U.S. Cellular commits to use high-cost support to improve service in areas it would not otherwise invest in. As U.S. Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency (“RF”) signal, its customers will have a greater choice among service providers and will receive more reliable service. Some will have the option to receive U.S. Cellular’s service for the first time. Others will see service quality and reliability improvement such that they may choose U.S. Cellular’s service instead of ILECs, as opposed to confining their use of U.S. Cellular’s service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer.

32. While acknowledging that “wireless carriers often are not subject to mandatory service quality standards, the Commission recently credited a wireless ETC applicant’s commitments to alleviate dropped calls by using universal support to build new towers and facilities to offer better coverage, comply with the “Cellular Telecommunications Industry Association Consumer Code for Wireless Service,” which “sets out certain principles, disclosures, and practices for the provision of wireless service,” and provide the FCC with data concerning the number of consumer complaints per 1,000 handsets on an annual basis, all of

which represented a commitment to provide better coverage to unserved areas that addressed concerns about the quality of wireless service.<sup>27</sup> U.S. Cellular hereby commits to use high-cost support in its service area to improve coverage and channel capacity to improve system performance when needed. U.S. Cellular also commits to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service.<sup>28</sup>

**B. Health and Safety Benefits.**

33. As the FCC recently emphasized in the *Virginia Cellular Order*, wireless mobility is invaluable to “consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations” and provides “access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”<sup>29</sup> Similarly, in designating the cellular carrier Smith Bagley, Inc., as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to “health and safety risks associated with geographic isolation.”<sup>30</sup> Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. It is self-evident that every time U.S. Cellular adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that U.S. Cellular constructs, the

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<sup>27</sup> *Virginia Cellular Order, supra*, at ¶ 46.

<sup>28</sup> [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf).

<sup>29</sup> *Virginia Cellular Order, supra* ¶ 29.

<sup>30</sup> SBI Arizona Order, *supra*, at p. 12.

reliability and performance of U.S. Cellular's E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure. U.S. Cellular commits to comply with all 911 and E-911 mandates and to increase E-911 availability for New Hampshire consumers.

**C. Competitive Response.**

34. One of the principal goals of the 1996 Act was to "promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."<sup>31</sup> Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer's business.

35. U.S. Cellular submits that, if it is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs as they seek to retain and attract customers. Such a response could include: improved service quality and customer service; new investments in telecommunications plant; more rapid deployment of high-speed data (DSL) service; wider local calling areas; bundled service offerings; and lower prices overall.

36. The public interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless' ETC designation in Wyoming would have on rural telephone companies, the FCC said:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of

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<sup>31</sup> See 1996 Act (preamble).

an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.<sup>32</sup>

Further, Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.” *See* 47 U.S.C. §253(b). U.S. Cellular will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

37. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost support to U.S. Cellular will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of New Hampshire.<sup>33</sup>

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<sup>32</sup> *Western Wireless, supra*, 16 FCC Rcd at 57; *See also, RCC Washington Order* at pp. 16-17.

<sup>33</sup> *See, e.g., Midwest Wireless Communications, LLC ALJ’s Findings of Fact, Conclusions of Law, and Recommendation, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686 (ALJ Dec. 31, 2002) at ¶ 37* (“although Midwest Wireless has been successful in obtaining conventional cellular customers, it does not currently compete for basic local exchange service. Designation of Midwest as an ETC would provide the support necessary to allow Midwest to provide...service and to enhance its network so that it can compete for basic local exchange service...Competition would benefit consumers in southern Minnesota by increasing

38. The consumer benefits of designating a competitive ETC are already becoming evident. Competitive carriers in Arizona, Colorado, New Mexico and Mississippi have earmarked high-cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital.

39. With high-cost support in New Hampshire, U.S. Cellular will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

**D. State and Federal Precedent.**

40. Designation of U.S. Cellular as an ETC is consistent with ETC decisions across the country. Affiliates of U.S. Cellular have been designated as ETCs in Wisconsin, Iowa, and Washington.<sup>34</sup> There are now at least 30 cases at the state and federal level where designation of a wireless carrier as an ETC in a rural area was found to be in the public interest. Numerous state commissions and the FCC have repeatedly found that designating wireless carriers as ETCs will promote competition, advance universal service, and further the deployment of advanced services. For example, in its decision to designate U.S. Cellular as an ETC, the Washington Utilities and Transportation Commission stated: “rural customers will benefit from the increased availability of wireless service. These benefits include increased mobility and increased level of service.”<sup>35</sup> More recently, in designating Alaska DigiTel, L.L.C. as an ETC in Alaska, the Regulatory Commission of Alaska held that, “Granting the application will also provide

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customer choice (from no choice in most areas to more than one) and providing services made possible by wireless technologies.”)

<sup>34</sup> See U.S. Cellular Washington Order, *supra*; U.S. Cellular Wisconsin Order, *supra*; U.S. Cellular Iowa Order, *supra*.

<sup>35</sup> U.S. Cellular Washington Order, *supra*, at ¶ 41.

customers more choices for meeting their communications needs..... customers will also have a choice in local calling areas, including an option for a wider local calling area than offered by the incumbent....”<sup>36</sup> Similarly, in its decision designating Western Wireless as an ETC in the State of Wyoming, the FCC held: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”<sup>37</sup>

41. In the most recent state ETC proceeding involving U.S. Cellular, the Wisconsin Public Service Commission held:

The Commission finds that designating U.S. Cellular as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice ... Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin.<sup>38</sup>

42. For all of the above reasons, the public interest would be served by the designation of U.S. Cellular as a competitive ETC throughout its requested service area.

#### **VI. U.S. Cellular Requests Redefinition of the Granite State Telephone Company Service Area.**

43. Granite State Telephone Company ("Granite") has noncontiguous service area located outside of U.S. Cellular's FCC-licensed territory. Therefore, U.S. Cellular requests redefinition of Granite's service area pursuant to Section 54.207(d) of the FCC's rules. Service

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<sup>36</sup> *Alaska DigiTel Order, supra* at p. 13.

<sup>37</sup> *Western Wireless, supra* n. 26, 16 FCC Rcd at 55 (2000).

<sup>38</sup> *U.S. Cellular Wisconsin Order, supra* at p. 8.

incumbent LEC's study area, a competitor no longer has the incentive to enter into incumbent LEC service territories in an uneconomic manner.<sup>41</sup>

47. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.<sup>42</sup> In deciding whether to designate U.S. Cellular as an ETC, the FCC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, if the FCC finds that U.S. Cellular's ETC designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether U.S. Cellular's service area designation should be adopted for federal universal service funding purposes. Further, U.S. Cellular notes that no action in this proceeding will affect or prejudice any future action the PSC or FCC may take with respect to the LECs' status as a rural telephone company, or disturb the "rural exemption" contained in Section 251 of the Act.

48. Finally, the Joint Board recommended that the FCC and state commissions consider whether a rural LEC would face an undue administrative burden as a result of service area redefinition.<sup>43</sup> In the instant case, U.S. Cellular is proposing to redefine Granite's service area solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way Granite calculates its costs, but it is solely to determine the area in which U.S. Cellular is to be designated as an ETC.<sup>44</sup> Accordingly, redefinition of Granite's service area

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<sup>41</sup> See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11302.

<sup>42</sup> See *Recommended Decision*, 12 FCC Rcd at 180.

<sup>43</sup> *Id.*

<sup>44</sup> LECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order*. See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11304 n.377.

as proposed in this Petition will not impose any additional burdens on the affected LEC.

49. Although U.S. Cellular does not agree with the FCC's findings in the *Virginia Cellular Order*,<sup>45</sup> U.S. Cellular submits that in this instance it meets the FCC's criteria in its analysis of population density as a means of determining the likelihood of U.S. Cellular receiving uneconomic levels of support. As indicated by the population density figures in the attached Exhibit I, U.S. Cellular serves the three *least* densely populated of Granite State's four wire centers. Based upon the FCC's assumption in the *Virginia Cellular Order* that "a low population density typically indicates a high-cost area," the population density figures provided here demonstrate that no cream skimming is proposed.<sup>46</sup>

## VII. High-Cost Certification

50. Under FCC Rule Sections 54.313 and 54.314, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, self-certify with the FCC and the Universal Service Administrative Corporation ("USAC") their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. U.S. Cellular attaches its high-cost certification letter as Exhibit F hereto. U.S. Cellular respectfully requests that the FCC issue a finding that U.S. Cellular has met the high-cost certification requirement and that U.S. Cellular is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.<sup>47</sup>

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<sup>45</sup> See, *Virginia Cellular Order*, *supra*, at ¶¶ 34-35.

<sup>46</sup> *Id.* at ¶ 34.

<sup>47</sup> See *Guam Cellular and Paging, Inc. Petition for Waiver of FCC Rule Section 54.314 of the Commission's Rules and Regulations*, 18 FCC Rcd 7138 (2003).

**VIII. Anti-drug Abuse Act Certification**

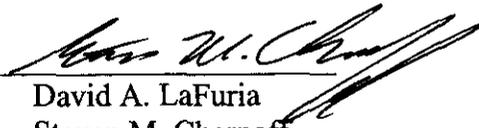
51. U.S. Cellular certifies that no party to this petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. *See Exhibit G hereto.*

WHEREFORE, pursuant to Section 214(e)(2) of the Act, U.S. Cellular respectfully requests that the Commission, (1) enter an order designating U.S. Cellular as an ETC for its requested ETC service area as shown on Exhibit A hereto, and (2) certify to the FCC that U.S. Cellular will use the support for its intended purpose.

Respectfully submitted,

**Manchester-Nashua Cellular Telephone, L.P.  
NH #1 Rural Cellular, Inc.  
USCOC of New Hampshire RSA #2, Inc.**

By: \_\_\_\_\_

  
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