

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

In the Matter of)
)
Federal-State Joint Board)
On Universal Service) CC Docket No. 96-45
)
RCC Holdings, Inc.)
)
Petition for Designation as)
Eligible Telecommunications Carrier)
Throughout its Licensed Service Area)
in the State of Alabama)

**ALABAMA RURAL LOCAL EXCHANGE CARRIERS' RESPONSE TO
OPPOSITION TO SUPPLEMENT TO APPLICATION FOR REVIEW**

To: The Commission

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Blountsville Telephone Company
Brindlee Mountain Telephone Company, Inc.
Butler Telephone Company, Inc.
Castleberry Telephone Company, Inc.
Frontier Communications of Alabama, Inc.
Frontier Communications of Lamar County, Inc.
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
GTC, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Company, Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone Company, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company
OTELCO Telephone LLC
Peoples Telephone Company
Ragland Telephone Company
Roanoke Telephone Company, Inc.
Union Springs Telephone Company, Inc.
Valley Telephone Company

June 16, 2004

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On April 12, 2004, parties were invited to update the record pertaining to pending petitions for designation as eligible telecommunications carriers ("ETCs")¹ in response to the Commission's order in *Virginia Cellular*.² The Alabama Rural Local Exchange Carriers (the "Alabama Rural LECs") responded in accordance with the *ETC Notice* by filing a Supplement on May 14, 2004 (the "*LEC Supplement*"), updating their Application for Review of the ETC designation of RCC Holdings, Inc. ("RCC").³ On the same date, RCC responded to the *ETC Notice* with a Supplement updating the *RCC Alabama Petition*.⁴

¹ *Parties Are Invited to Comment on the Supplemented Petitions for Eligible Telecommunications Carrier Designations*, DA-04-998, Public Notice (rel. April 12, 2004) ("*ETC Notice*").

² *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

³ *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama* ("*RCC Alabama Petition*"), CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532 (Wireline Comp. Bur. 2002) ("*RCC Order*").

⁴ See Supplement to *RCC Alabama Petition*, CC Docket No. 96-45 (May 14, 2004).

RCC initially responded to the *LEC Supplement* with a Motion to Dismiss that ignored the *ETC Notice* and asserted that the *LEC Supplement* was untimely and in violation of Section 1.115 of the Commission's Rules.⁵ RCC also filed a Reply to the Alabama Rural LECs' Response to the *RCC Motion to Dismiss*.⁶ Most recently, RCC reasserted its objections to the *LEC Supplement* and raised new administrative law challenges to the *ETC Notice* in an Opposition to the *LEC Supplement* filed with the Commission (as opposed to with the Wireline Competition Bureau (the "Bureau")).⁷

In essence, the Opposition contends that the *LEC Supplement* is improper and should not be considered by the Bureau or the Commission in evaluating the pending application for review because "[f]rom a procedural standpoint, this case is floundering."⁸ The fact is, however, that the Opposition itself is procedurally improper. Accordingly, the Commission and/or Bureau should dismiss the Opposition. However, if the Commission determines that it or the Bureau should consider the legal issues raised in the Opposition on the merits, the Commission should ensure that the analysis considers the full implications of those issues on all the pending petitions for ETC designation as well as the Application for Review.

⁵ See RCC Motion to Dismiss, CC Docket No. 96-45 (May 19, 2004) ("*RCC Motion to Dismiss*").

⁶ See Reply of RCC to Response of Alabama Rural LECs to *RCC Motion to Dismiss*, CC Docket No. 96-45 (May 28, 2004).

⁷ See RCC Opposition to *LEC Supplement*, CC Docket No. 96-45 (June 1, 2004) ("Opposition").

⁸ Opposition at 11.

I. THE OPPOSITION IS PROCEDURALLY IMPROPER AND SHOULD BE DISMISSED

As a general matter, a Supplement to an Application for Review submitted pursuant to Section 1.115 of the Commission's rules must be filed within 30 days after release of public notice of the action for which review is sought.⁹ The *LEC Supplement* was not filed pursuant to Section 1.115, however, but was filed with the Bureau in response to the express invitation in the *ETC Notice*. In opposing the *LEC Supplement*, RCC argues that the action of the Bureau in inviting supplemental comments on the effect of the Commission's intervening *Virginia Cellular* and *Highland Cellular*¹⁰ decisions on the pending Application for Review was improper as a matter of administrative law.¹¹ RCC attempts to raise this issue with the Commission by submitting its Opposition to the Commission rather than to the Bureau. This is not the appropriate mechanism through which RCC may seek Commission review of the action taken by the Bureau in the *ETC Notice*.

As RCC well knows, Section 1.115(a) of the Commission's Rules allows an aggrieved party to seek Commission review of an action by a designated authority (here, the Bureau) by filing an application for review of the action with the Commission. However, Section 1.115(c) also provides that any such application will not be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass. Because the Bureau has not had an opportunity to pass on the administrative law issues upon which RCC

⁹ 47 C.F.R. § 1.115(d).

¹⁰ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 32 Communications Reg. (P&F) 233 (2004) ("*Highland Cellular*").

¹¹ See Opposition at 8-16.

bases its challenge to the *ETC Notice* and the *LEC Supplement*, RCC should have raised those issues in a petition for reconsideration of the *ETC Notice* filed with the Bureau. Under Section 1.106(f) of the Commission's Rules, such a petition would need to have been filed within 30 days after release of the *ETC Notice* (i.e., by May 12, 2004). RCC did not file a petition for reconsideration with the Bureau in that timeframe. RCC is now precluded from challenging the action taken in the Public Notice by addressing to the Commission an Opposition to the *LEC Supplement* that was filed in accordance with the *ETC Notice*.

This argument applies as well to RCC's procedural objections to the Bureau's original Public Notice seeking comment on the Application for Review.¹² Those objections should have been raised in a petition for reconsideration filed with the Bureau within 30 days after the release of that Public Notice.¹³

II. ANY ANALYSIS OF THE ADMINISTRATIVE LAW ISSUES RAISED IN THE OBJECTION MUST CONSIDER THE IMPLICATIONS OF THOSE ISSUES FOR ALL PENDING PETITIONS IN THIS PROCEEDING

If the Commission determines that it or the Bureau should address the legal issues raised in the Opposition on the merits, the Commission should ensure that the full implications of those issues in this proceeding are fully considered.

The Opposition contends that the Commission and the Bureau have improperly been treating ETC designation proceedings as rulemaking proceedings rather than adjudicative proceedings. The Opposition further asserts that the Commission's attempt to enunciate a generally-applicable public interest standard for ETC designations in response to an individual

¹² See Opposition at 2, 7-8.

¹³ See *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, Public Notice, DA 03-45 (rel. Jan. 10, 2003) ("2003 Public Notice").

petition and to apply that standard to the pending Application for Review violates the Administrative Procedure Act. This argument clearly has implications not only for the Application for Review, but for all the pending petitions for ETC designation to which the Commission has proposed to apply the *Virginia Cellular* and *Highland Cellular* standard. The Commission thus should ensure that any analysis of the Opposition on its merits considers all of the implications of the legal issues raised therein.¹⁴

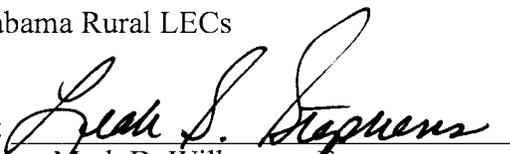
CONCLUSION

The Opposition alleges procedural impropriety in the action taken by the Bureau in the *ETC Notice*. In fact, it is the Opposition itself that is procedurally improper and must be dismissed. If the Commission determines that it or the Bureau should address the issues raised in the Opposition on the merits, the Commission should assure that the analysis takes into account the full implications of those issues for all the pending petitions for ETC designation.

Respectfully submitted,

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June 16, 2004

¹⁴ To the extent that the Commission determines that it or the Bureau should address the issues raised in the Opposition on the merits, the Alabama Rural LECs reserve the right to file additional comments on those issues.

CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 16th day of June, 2004, a true and correct copy of the above and foregoing RESPONSE TO OPPOSITION TO SUPPLEMENT TO APPLICATION FOR REVIEW, unless otherwise designated, have been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

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