

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
)	
North Carolina RSA 3 Cellular)	
Telephone Company)	

**COMMENTS OF THE
CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™ ("CTIA")¹ hereby submits its comments in the above captioned proceeding in support of the Petition for Eligible Telecommunications Carrier ("ETC") designation in the State of North Carolina filed by North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West Wireless (collectively, "Carolina West").²

INTRODUCTION

On June 8, 2004, Carolina West filed an application ("Carolina West Petition") seeking ETC designation for areas within its licensed service area. CTIA supports Carolina West's

¹ CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Parties Are Invited to Comment on Carolina West Wireless's Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, Public Notice, CC Docket No. 96-45, DA 04-2067 (rel. July 9, 2004); see also Parties Are Invited to Comment on Carolina West Wireless's Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, 69 Fed. Reg. 46541 (August 3, 2004) (setting August 13, 2004, comment date).

Petition, which demonstrates that Carolina West meets the requirements for designation as an ETC. Section 214(e)(6) provides for ETC designation of carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the 2 requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.³

Since Carolina West is a commercial mobile radio service (“CMRS”) provider not subject to the authority of the North Carolina Utilities Commission (“NCUC”), the FCC has the authority to grant ETC status to Carolina West pursuant to 47 U.S.C. § 214(e)(6).

DISCUSSION

A. Carolina West Is Not Subject To the Jurisdiction of the North Carolina Utilities Commission

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission, so long as the carrier otherwise meets the Act’s requirements. The Commission has held that, for this purpose: “[M]any CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act.”⁴ The Commission has also stated that a carrier may demonstrate that it “is not subject to the jurisdiction of a state commission” by

³ 47 U.S.C. §214(e)(6). *See also Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997).

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15,499, 15-998-99, at ¶1012(1996). *See also id.* at ¶1004 (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services”).

providing an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.⁵ In this case, the North Carolina Utilities Commission has previously issued an Order noting that the Commission “lacks jurisdiction to designate ETC status for CMRS carriers.”⁶

B. Carolina West Offers All Of the Services Supported by Universal Service Support Mechanisms

Carolina West addressed the nine services and functionalities identified in the Commission’s rules, 47 C.F.R. §54.101(a), that are the core services to be offered by an ETC and supported by federal universal service support mechanisms.⁷ Carolina West’s universal service offering will be provided in its requested service area in North Carolina primarily over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to serve existing mobile

⁵ *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket 96-98, Twelfth Report and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

⁶ *Order Granting Petition of North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West in the Matter of Designation of Carriers Eligible for Universal Service Support*, Docket No. P-100, Sub 133c (August 28, 2003).

⁷ *See* Carolina West Petition 4-5.

⁸ *See id* at 2-3.

⁹ *See id.* at 8.

cellular service subscribers.⁸ Carolina West further states that it will advertise its new universal service offering to ensure that consumers within the designated service areas in North Carolina are aware of the service.⁹ Accordingly, Carolina West has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission’s rules regarding ETC eligibility.

C. Designating Carolina West as an ETC Will Advance The Public Interest

CTIA agrees with Carolina West that grant of Carolina West’s Petition will serve the public interest by bringing the benefits of competition to an underserved marketplace.¹⁰ In addition, designation of CMRS providers, such as Carolina West, is consistent with the principal goals of the universal service program and provides unique benefits associated with wireless service, such as mobility, to consumers.

It is now well established that wireless carriers can bring significant benefits to the universal service program. One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”¹¹ In granting ETC status to CMRS carriers, the Commission has found that “[d]esignation of competitive ETCs promotes

⁹ *See id.* at 8.

¹⁰ *See id.* at 8-10.

¹¹ Telecommunications Act of 1996, Public Law No. 104-104, 100 Stat. 56 (1996).

competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”¹²

The Commission has also found that CMRS ETC designations provide substantial benefits to “consumers in cases where they do not have access to a wireline telephone.”¹³ In the *Virginia Cellular Order*, the Commission stated that “the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.”¹⁴ Furthermore, the Commission also recognized the critical public safety role that wireless services can play in rural and insular areas by noting that “the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”¹⁵

In this case, Carolina West has committed to use available federal high-cost support for its intended purposes – the construction, maintenance and upgrading of facilities serving the high-costs and rural areas for which support is intended. In addition, Carolina West has also committed to comply with all provisions of CTIA’s Code of Conduct for Wireless Services,

¹² *Western Wireless Corporation, Petition for Designation as and Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000) (hereinafter “*Wyoming Memorandum Opinion and Order*”), *aff’d*, 16 FCC Rcd 19144, 19151 (2001).

¹³ *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, FCC 03-338, at ¶ 29 (2004) (hereinafter “*Virginia Cellular Order*”).

¹⁴ *Id.*

¹⁵ *Id.*

maintain essential telecommunications services in times of emergency, and provide service to all potential customers within its requested ETC service area upon reasonable request.¹⁶

Because section 54.315 of the Commission’s rules provides rural telephone companies ample opportunities to target support to only the highest-cost lowest-density portions of a study area, CTIA does not believe it is appropriate for the Commission to use “cream skimming” concerns as grounds for denying ETC petitions.¹⁷ CTIA also does not believe it is appropriate to penalize CMRS providers when their licensed service areas do not happen to follow the contours of rural telephone company study area boundaries—especially when wireless licensed service area boundaries typically are determined by the FCC. Even if it was appropriate for the Commission to consider “cream skimming” as a grounds for denying ETC designations, there is no evidence here that Carolina West is attempting to “cream skim” by only proposing ETC designation for the lowest-cost highest density exchanges in a rural telephone company study area with highly population densities.¹⁸

Accordingly, designating Carolina West as an ETC in covered areas in the State of North Carolina would serve the public interest by increasing the availability of new, competitively priced services and technologies in North Carolina communities.

¹⁶ See Carolina West Petition at 21.

¹⁷ See 47 C.F.R. § 54.315.

¹⁸ See Carolina West Petition at 22; see also *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, FCC 04-37 at para. 32 (2004).

CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to Carolina West for its requested service territories in the State of North Carolina.

Respectfully submitted,

 /s/ Michael Altschul

CTIA – THE WIRELESS ASSOCIATION™

1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

Michael Altschul
Senior Vice President & General Counsel

Paul Garnett
Director, Regulatory Policy

Its Attorneys

Dated: August 13, 2004