

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

In the Matter of)	
)	
Petition of SunCom Wireless, Inc,)	CC Docket No. 96-45
For Designation as an Eligible Telecommunications)	
Carrier in Georgia, North Carolina, Tennessee,)	
And Virginia)	
)	
Federal-State Joint Board on Universal Service)	

**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 filed by SunCom Wireless, Inc. f/k/a Triton PCS, Inc. (“SunCom”) throughout the non-rural and rural areas of its licensed service territory in the States of Georgia, North Carolina, Tennessee, and Virginia.²

INTRODUCTION

On June 23, 2005, SunCom filed an application (“SunCom Petition”) seeking ETC designation for areas within its licensed service area. CTIA supports SunCom’s Petition, which demonstrates that SunCom meets the requirements for designation as an ETC. Section 214(e)(6)

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 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 Petitions for Eligible Telecommunications Carrier Designation, Public Notice*, CC Docket No. 96-45, DA 05-1952 (rel. July 6, 2005).

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 two 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 SunCom is a commercial mobile radio service (“CMRS”) provider not subject to the authority of the Georgia Public Service Commission (“Georgia PSC”), North Carolina Utilities Commission (“NCUC”), Tennessee Regulatory Authority (“TRA”) nor the Virginia State Corporation Commission (“Virginia SCC”), the FCC has the authority to grant ETC status to SunCom pursuant to 47 U.S.C. § 214(e)(6).

DISCUSSION

A. Suncom Is Not Subject To The Jurisdiction Of The State Commissions

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 state commissions for each of the states subject to SunCom’s Petition have issued generic rulings that they do not have jurisdiction over ETC applications by CMRS providers.⁶

B. Suncom Offers All Of The Services Supported By Universal Service Support Mechanisms

SunCom 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 SunCom’s universal service offering will be provided in the requested service areas of Georgia, North Carolina, Tennessee, and Virginia primarily over its existing cellular network infrastructure using existing and soon-to-be-constructed antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing personal communications service (“PCS”) customers.⁸ SunCom further states that it will advertise its new universal service offering to ensure that consumers within the designated service areas of the proposed states are aware of the service.⁹ Accordingly, SunCom 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.

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 See *SunCom Petition for Designation as an Eligible Telecommunications Carrier in Georgia, North Carolina, Tennessee, and Virginia*, CC Docket 96-45 at 4 (filed June 23, 2005) (“*SunCom Petition*”).

⁷ See *id.* at 5-9.

⁸ See *id.* at 9.

⁹ *Id.*

C. Designating Suncom As An ETC Will Advance The Public Interest

CTIA agrees with SunCom that the grant of SunCom'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 SunCom, 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 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,

¹⁰ See *id.* at 11-22.

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

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*").

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, SunCom 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. Consistent with the Commission’s recent *ETC Designation Report & Order*, SunCom has demonstrated that it satisfies recently adopted certification requirements, including a detailed five-year plan for the provision of service throughout the designated service areas.¹⁶ SunCom has also committed to comply with all provisions of CTIA’s Consumer Code for Wireless Services, maintain essential telecommunications services in times of emergency, and provide service to all potential customers within its requested ETC service area upon reasonable request.¹⁷

Accordingly, designating SunCom as an ETC in covered areas in Georgia, North Carolina, Virginia, and Tennessee would serve the public interest by increasing the availability of new, competitively priced services and technologies in the states’ communities.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46 (released Mar. 17, 2005) (“*ETC Designation Report & Order*”); *see SunCom Petition* at 17-21.

¹⁷ *See SunCom Petition* at 15.

CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to SunCom for its requested service territories in the States of Georgia, North Carolina, Virginia, and Tennessee.

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

Marlo Go
Staff Counsel

Its Attorneys

Dated: July 20, 2005