

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible to Receive Universal Service Support)	WC Docket No. 09-197
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition of Allied Wireless Communications Corporation for Waiver of Various Sections of The Commission's Universal Service Fund Filing Deadlines)	WC Docket No. 08-71
)	
)	
)	

To: Chief, Wireline Competition Bureau

**ALLIED WIRELESS COMMUNICATIONS CORPORATION
REPLY TO COMMENTS ON PETITION FOR WAIVER**

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SUMMARY

Allied Wireless has shown “good cause” for the requested waiver of procedural deadlines governing the filing of certifications and line counts required for the receipt of high-cost universal service support. Waiver of these deadlines, given the special circumstances that exist in this case, will restore support that was interrupted through no fault of Allied Wireless, and will serve the public interest. In fact, the Georgia PSC already has concluded that special circumstances exist here, and that the public interest will be served by restoring high-cost funding to Allied Wireless. Grant of these waivers will merely allow the state regulatory body’s judgment to be effectuated, ensuring comity with its conclusion.

Grant of the requested waivers will prevent procedural filing deadlines from undermining the public interest goals that motivated the divestitures required by the Commission in the *Verizon Wireless-Alltel Order* and will promote mobile voice and broadband deployment to consumers in rural Georgia. Allied Wireless has diligently pursued the support necessary to support deployment in rural Georgia, and contrary to claims made by Public Service Telephone Company, there is no reason to believe that Allied Wireless could have obtained the Georgia PSC’s decision in time to avoid the need for the waivers.

The facts in this case are sufficiently unique that granting these waivers is unlikely to affect future decisions about the effective date of ETC designations.

Because Allied Wireless must commit to capital budgets for 2011, expeditious grant of the waivers is necessary to advance mobile voice and broadband deployment in rural Georgia and protect jobs.

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Allied Wireless Communications Corporation (“Allied Wireless” or the “Company”) opposes the Comments of Public Service Telephone Company (“PSTC”)¹ challenging the above-captioned petition for waiver.² PSTC’s objections ignore the unique and compelling circumstances supporting the requested waiver, which concerns procedural deadlines requiring the filing of usage certifications and line counts within 60 days of the effective date of Allied Wireless’ eligible telecommunications carrier (“ETC”) designation by the Georgia Public Service Commission (“Georgia PSC”).

¹ Comments of Public Service Telephone Company, WC Docket Nos. 09-197 and 08-71, CC Docket No. 96-45 (filed Dec. 9, 2010) (“Comments”).

² Allied Wireless Communications Corporation, Petition for Waiver, WC Docket Nos. 09-197 and 08-71; CC Docket No. 96-45 (filed Nov. 2, 2010) (“Petition”); *see also Wireline Competition Bureau Seeks Comment on the Allied Wireless Communications Corporation Petition for Waiver of a Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, DA 10-2158 (rel. Nov. 9, 2010).

By expeditiously granting the requested waiver, the Commission will ensure continued deployment of wireless voice and broadband services to residents of rural Georgia and demonstrate respect for the Georgia PSC's determination that the public interest would be served by ensuring that high-cost funding is not interrupted. The requested waiver will simply allow ETC funding that was interrupted on April 26, 2010 as a result of the divestiture transaction ordered in the *Verizon Wireless-Alltel Order* to be restored, and will advance the Commission's goal in that Order to establish a strong and effective competitor in the wireless marketplace.³ The special and unusual circumstances giving rise to this waiver request make it unlikely that similar requests will arise.

I. BACKGROUND

A. Allied Wireless' Purchase Of Certain Alltel Assets And Customers

As a condition to the FCC's approval of the merger of Verizon Wireless and Alltel Corporation ("Alltel"), the FCC and the Department of Justice ("DOJ") required Verizon Wireless to divest all of its assets or all of Alltel's assets in certain markets.⁴ Verizon Wireless offered for sale Alltel assets in a total of 105 markets, including the markets encompassing the relevant service area in Georgia, in order to comply with the divestiture conditions of the *Verizon*

³ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and de Facto Transfer of Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) ("*Verizon Wireless-Alltel Order*").

⁴ *Verizon Wireless-Alltel Order* at 17515-17520; see also Final Judgment, *United States of America et al. v. Verizon Communications Inc., and ALLTEL Corporation*, No. I:OS-cv-O IS7S (D.D.C. Oct. 30, 200S) ("*Verizon-Alltel Final Judgment*"). The Alltel divestitures were required by the *Verizon-Alltel Final Judgment* to be structured as asset sales rather than corporate mergers. See *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Public Notice, DA 09-1515 (rel. July 9, 2009). See *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, DA 10-661 (rel. Apr. 20, 2010) ("*Verizon Wireless-ATN Order*").

Wireless-Alltel Order. On June 9, 2009, Atlantic Tele-Network, Inc. (“ATN”),⁵ through its wholly-owned subsidiary, Allied Wireless, agreed to purchase the Alltel assets in 26 markets in six states (including seven markets in Georgia) from Verizon Wireless.⁶ Following approval by both the DOJ and the FCC, the sale was consummated on April 26, 2010.

The divestiture assets were required to be placed under the control of a Management Trustee approved by the DOJ between the closing of the Verizon Wireless-Alltel merger in January 2009 and the closing of the sale to Allied Wireless in April 2010. While the assets were under the control of the Trustee, the DOJ permitted ATN and Allied Wireless to gain only very limited insight into the Trustee’s operation of the assets. The Trustee, in discharging his duties, made employment decisions, developed and implemented marketing and pricing plans, selected handsets, and, of particular importance here, developed capital and operating budgets, some of which assumed the uninterrupted flow of USF support in Georgia and other markets.

Because the Verizon Wireless divestitures were required to be structured as asset sales, rather than corporate acquisitions,⁷ Allied Wireless did not automatically receive the ETC designations along with these service areas – despite the fact that it was acquiring existing ETC operations already supported by substantial universal service funds. As a result, Allied Wireless was obligated to apply to the Georgia PSC for a new ETC designation, and faced the potential for a gap in USF support for these rural customers in Georgia between the dates that Allied

⁵ Atlantic Tele-Network, Inc., is a publicly held company (NASDAQ: ATNI) that operates domestically and internationally in rural and underserved telecommunications markets.

⁶ ATN also acquired Alltel’s partnership interest in Georgia RSA #8 Partnership, the licensee in an eighth Georgia market area.

⁷ See *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17518, 17519 (explaining that the divestiture must be accomplished through the sale of divestiture assets to third party purchasers, or through transfer to a divestiture trustee “who shall be solely responsible for accomplishing disposal” of the assets).

Wireless acquired the Verizon Wireless assets and when the Georgia PSC granted ETC designation.

An interruption in USF support will cause a direct impact to Allied Wireless' plans to improve mobile voice and broadband service to consumers in rural Georgia. Since initially being designated an ETC in 2004, Alltel relied on high-cost support to fund the expansion and maintenance of the network that Allied Wireless acquired. Allied Wireless essentially stepped into the shoes of Alltel (whose assets it acquired from Verizon Wireless) with regard to the operation of the system and the provision of service to customers. In fact, Allied Wireless is operating, by license, under the Alltel trade name. In stepping into the shoes of Alltel, Allied Wireless also inherited the ambitious plans and budget developed by the Trustee in 2009 to build out and expand the Georgia network in 2010, relying upon uninterrupted USF support to finance the build.

As noted above, the DOJ approval process did not allow Allied Wireless access to the Trustee's build out plans until after the DOJ approved ATN as buyer of the divested assets on April 7, 2010. Based on an assumption of uninterrupted ETC support, the Trustee developed capital and operating budgets for 2010 to expand the Georgia network, including signing tower leases and executing equipment purchase orders, many of which were already in the process of being implemented when the divestiture was consummated in late April 2010. Allied Wireless has since honored the Trustee's planned 2010 build out in Georgia, but unless the Commission grants the requested procedural waiver, Allied Wireless would be denied the millions of dollars of ETC support that served as the foundation for the Trustee's 2010 plans. Without uninterrupted ETC support for 2010, Allied Wireless will be required to scale back or delay its network build plans for Georgia -- in 2011 and beyond -- to recover unanticipated losses

associated with the 2010 network investments that will have been made without the benefit of the anticipated USF funding.

B. Georgia PSC Grant of ETC Designation to Allied Wireless

On April 7, 2010, the DOJ approved ATN as the buyer of the divested assets, and the flow of operational information began – including the Trustee’s build-out plans and the amount of universal service support that Alltel historically had received. On April 15, 2010 -- five days prior to receiving FCC approval for the transfer and/or assignment of the licenses and eleven days prior to the Closing Date -- Allied Wireless filed its ETC designation application with the Georgia PSC. On September 21, 2010, the Georgia PSC voted unanimously to grant Allied Wireless’ application for ETC designation and determined that the designation would be effective as of April 26, 2010 so that USF support for these markets would not be interrupted because of the ownership change. The Georgia PSC released its Order Granting ETC Status on October 14, 2010.⁸ In its *ETC Order*, the Georgia PSC noted that:

The [Georgia PSC] Staff found that Allied, in acquiring divested assets of a carrier designated as an ETC by this Commission should be given unique consideration and therefore recommended approval of Allied’s request for *nunc pro tunc* designation.⁹

The Georgia PSC made the same findings and ultimate determination in its *Corrected Order*.¹⁰

⁸ *Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Docket No. 31734, Order Granting ETC Status, filed Oct. 14, 2010 (“*ETC Order*”). A copy of the ETC Order is attached as Exhibit 1. The Georgia PSC subsequently issued a Corrected Order Granting ETC Status on November 2, 2010 (“*Corrected Order*”). The *Corrected Order* removed certain wire centers from Exhibit 1 that were erroneously included in the *ETC Order*.

⁹ *ETC Order* at p. 5.

¹⁰ *Corrected Order* at pp. 5-6.

PSTC subsequently filed a Petition for Reconsideration of the *ETC Order*, arguing that it was inconsistent with the FCC's rules for the Georgia PSC to grant the Application effective as of April 26, 2010.¹¹ PSTC also filed a Petition for Reconsideration of the Georgia PSC's decision to deny PSTC's Petition for Intervention.¹² PSTC's Petition for Reconsideration on intervention was unanimously denied (by a 4-0 vote) by the Georgia PSC, thereby rendering PSTC's Petition for Reconsideration of the *ETC Order* moot. In rendering its vote, the Georgia PSC specifically rejected the arguments made by PSTC regarding the effective date of Allied Wireless' *ETC Order*.

II. DISCUSSION

Contrary to PSTC's assertions, Allied Wireless has shown "good cause"¹³ for a waiver because "special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest."¹⁴ In fact, the Georgia PSC already has concluded that special circumstances exist, and that grant of these waivers will merely allow the state regulatory body's judgment to be effectuated, ensuring comity with its conclusion. Grant of the requested waivers will prevent procedural filing deadlines from undermining the public interest that motivated the divestitures in the *Verizon Wireless-Alltel Order* and impeding mobile voice and broadband deployment to consumers in rural Georgia. The facts in this case are sufficiently unique that

¹¹ PSTC Petition for Rehearing and Reconsideration, Docket No. 31734, filed Oct. 25, 2010; *see also* Reply of PSTC to Opposition to Petition for Rehearing, Reconsideration and Oral Argument Regarding Order Granting ETC Status, Docket No. 31734, filed Nov. 12, 2010.

¹² Petition of PSTC for Rehearing, Reconsideration and Oral Argument Regarding Order Denying Petition for Intervention, Docket No. 31734, filed Oct. 25, 2010.

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

granting these waivers is unlikely to affect future state decisions about the effective date of ETC designations.

A. The Georgia PSC Has Already Made the Public Interest and Special Circumstances Findings.

The Georgia PSC concluded that this case presents special circumstances and particular public interest concerns. Specifically, in rejecting PSTC's arguments regarding the grant of Allied Wireless' application for ETC designation *nunc pro tunc*, effective April 26, 2010, the Georgia PSC relied on its Staff's explanation, as follows:

The [Georgia PSC] Order explains the unique circumstances surrounding Allied's request and the policy reasons in support of the retroactive effective date. Alltel had been designated as an ETC carrier. Allied's parent company, Atlantic Tele-Network, Inc., acquired the divested assets from Alltel. Alltel had been receiving high cost support in connection with the facilities acquired by Allied's parent company. Interruption in universal service support would diminish the investment that Allied will be able to make in the service area.¹⁵

Georgia PSC Staff concluded that:

In light of the unique circumstances surrounding the request, the potential impact on the service offered in this area if the request was not granted, and the FCC's decision not to direct states away from this practice at this time, the [Georgia PSC] decided to grant the request. Staff recommends that the [Georgia PSC] find these policy reasons are valid.¹⁶

¹⁵ *Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Docket No. 31734, Georgia PSC Staff Recommendation, at p. 4 (internal citations omitted, emphasis added). The Georgia PSC Staff Recommendation is attached as Exhibit 2.

¹⁶ Georgia PSC Staff Recommendation at p. 4 (emphasis added). The reference to the FCC refers to the FCC order granting Allied ETC status in North Carolina. In similar circumstances, Allied had requested retroactive designation there, too, but withdrew the request to expedite consideration of the petition by the FCC. The Wireline Competition Bureau wrote: "Given that we do not address the merits of ATN's request for a retroactive designation, our decision here should have no bearing on pending state proceedings regarding the appropriate effective date of any ETC designation." *Telecommunications Carriers Eligible to Receive Universal Service Support, Federal-State Joint Board on Universal Service, Allied Wireless Communications Corporation, Petition for Eligible Telecommunications Carrier Designation in the State of North Carolina*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 12577, 12580 n.24 (WCB 2010).

PSTC's assertions to the contrary notwithstanding,¹⁷ the Georgia PSC's conclusions echo the special circumstance and public interest findings of the Commission and DOJ in ordering the divestitures, which "reflect[ed] the settlement between the DOJ and Verizon Wireless and Alltel Corporation designed to eliminate the anticompetitive effects of the Verizon-Alltel merger in certain markets."¹⁸ Particularly to address this concern, the DOJ consent decree required that the buyer should have the "capability (including the ... financial capability) of competing effectively in the provision of mobile wireless telecommunications services."¹⁹ In its Order approving ATN's purchase of the divestiture markets, the Commission recognized that it was "authoriz[ing] a new operator in the U.S." in order "to promote mobile wireless competition."²⁰ Unless the Petition is granted, Allied Wireless – the new entrant that the FCC and DOJ sought to foster – must compete without the support that is necessary to its capital expenditure plans, in 2010 and in future years, but that is enjoyed by its much larger rivals.

The Commission should not allow procedural filing deadlines that were impossible for Allied Wireless to meet to take precedence over the public interest goals that led the Commission and DOJ to order the Alltel divestitures on terms that permit a new competitor to step into Alltel's shoes and compete effectively. Allied Wireless was expected to compete effectively beginning April 26, 2010, the closing date of the divestiture and the date determined appropriate by the Georgia PSC for Allied Wireless' ETC designation. The Commission should not disturb

¹⁷ Comments at 6.

¹⁸ *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, DA 10-661 (rel. April 20, 2010) ("*Verizon Wireless-AWCC Order*") at ¶ 18.

¹⁹ *Verizon-Alltel Final Judgment* at 11-12 (emphasis added).

²⁰ *Verizon Wireless-ATN Order* at ¶ 1.

the Georgia PSC's decision that special circumstances in this case require restoring USF support back to the date of its interruption.

B. Allied Wireless Has Diligently Pursued the Support Necessary to Support Deployment in Rural Georgia.

PSTC is incorrect in asserting that Allied Wireless cannot demonstrate special circumstances justifying a waiver because the unique timing considerations present in this case were somehow in Allied Wireless' control.²¹ Although Allied Wireless lacked basic information about the Trustee's build plans and the value of existing universal service support in the build plans until DOJ approved the transaction, Allied Wireless has diligently sought to retain the much-needed support for the benefit of its rural Georgia customers. Allied Wireless filed its initial ETC application on April 15, 2010, within days of DOJ approval and before the transaction closed on April 26, 2010.²²

PSTC's assertion that Allied Wireless might somehow have obtained its *nunc pro tunc* designation within 60 days of the effective date if it had prosecuted its application more diligently is simply baseless. Due to the inherent complexity of applications for ETC designation, the Georgia PSC understandably and routinely takes more than 12 months to act on ETC applications and some ETC applications have taken much longer to process. Here, the Georgia PSC recognized the need for prompt action and reached a decision in only five months.

²¹ Comments at 3-5.

²² Allied Wireless has otherwise acted diligently in pursuing this support, filing the Petition for Waiver on November 3, 2010, *one day* after the Georgia PSC issued the *Corrected Order*; and filing the Form 525 with USAC on September 29, 2010, merely eight days after the Georgia PSC voted to grant Allied ETC designation at its September 21, 2010 meeting. Allied Wireless also is filing this Reply 11 days before its due date, demonstrating its urgent desire for the Commission to act quickly on its waiver petition.

There is no reason to believe that any greater diligence on Allied Wireless' part would have obviated the need for these waivers.

C. The Commission Should Respect the Georgia PSC's Decision By Granting the Requested Waivers.

Granting the requested waivers will merely acknowledge the Georgia PSC's clear authority to designate ETCs in Georgia (including the effective date of such designations), while denial of the waivers would undermine that authority.

After careful consideration, the Georgia PSC, operating under the statutory authority granted to it in Section 214(e)(2),²³ determined that Allied Wireless should be granted ETC status. PSTC has cited no basis to challenge the authority of a state commission to make such a determination. Moreover, PSTC has not alleged any harm to itself or any other party from grant of the waiver. Viewed in this light, PSTC's Comments are more of a collateral attack on the authority of the Georgia PSC than a response to the merits of the Petition for Waiver.

For this reason, it is irrelevant whether "the Wireline Competition Bureau (WCB) has designated [sic] authority to grant the retroactive receipt of high cost support."²⁴ WCB has no role in designating ETC status for common carriers in Georgia or in determining the effective date of such ETC designations. The only issue before the Bureau is whether Allied Wireless has shown special circumstances justifying a deviation from procedural filing deadlines in order to effectuate the express public interest determination of the Georgia PSC, operating under its statutory authority under Section 214(d)(2). There is no question that it has.

²³ 47 U.S.C. § 214(e)(2). The FCC has further ruled that Section 214(e)(2) of the Act "provides state commissions with the primary responsibility for designating ETCs." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 20 FCC Rcd 6371, 6372 n.2 (2005).

²⁴ Presumably, PSTC meant to say "delegated" authority. Comments at p. 4.

In this regard, the Bureau’s *Centennial USVI Order* is not a relevant precedent.²⁵ There, the petitioner sought waiver of the filing deadlines as a new applicant for ETC status. Unlike this case, there was no issue regarding the interruption of preexisting support. In addition, in the *Centennial USVI Order*, the USVI Public Services Commission had specified an effective date for the ETC designation that pre-dated its own authority to rule on such petitions – a factor that may have influenced the Bureau’s public interest determination. No such concerns are raised in this case.

The Georgia PSC, acting within its clear statutory authority, reached a valid decision regarding the effective date of Allied Wireless’ ETC designation, based on unique public interest considerations in this case. Granting the requested waivers will merely ensure comity with this decision.

D. Grant of the Petition Will Not Encourage State Commissions to Inappropriately Award Retroactive ETC Designations.

Granting waivers in this case will not encourage other states to grant retroactive ETC status. As discussed above, the circumstance of this case – where a government-ordered divestiture results in the potential interruption for long-standing and substantial ETC support – are highly unusual. Furthermore, ensuring uninterrupted support here will further the objective, articulated by the FCC and DOJ, that the divestiture acquirer be able to offer meaningful competition to the largest wireless carrier, Verizon Wireless, in the divestiture markets. The facts of this case are unique and compelling, and a Commission Order granting the waiver will presumably be based on all of these considerations. It is unlikely that another waiver applicant could present these special circumstances. Thus, there is no reason to expect that favorable

²⁵ *Centennial USVI Operations Corp. Petition for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71 and CC Docket No. 96-45, Order, 24 FCC Rcd 4821 (WCB 2009) (“*Centennial USVI Order*”).

action on the pending petition would have any impact on future state commission decisions regarding the effective date of ETC status.

E. The Commission Should Act Promptly on the Waiver Petition.

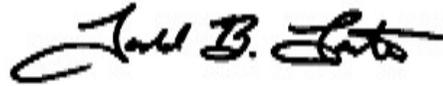
Allied Wireless is late in the process of developing its capital budgets for 2011, and the sooner it can be assured that it will have access to uninterrupted ETC support for 2010, the sooner it will be able to continue to make aggressive capital investment plans, which will benefit the economy and protect jobs. Allied Wireless will be unable to make robust investment plans while uncertainty lingers regarding its waiver petition. Accordingly, Allied Wireless respectfully asks that the Commission act on the pending waiver petition as quickly as possible.

III. CONCLUSION

Prompt FCC action is needed to allow the Georgia PSC's grant of ETC designation to Allied Wireless effective as of April 26, 2010 to be implemented. Allied Wireless urges the FCC to respect and defer to the Georgia PSC's decision on this matter by granting Allied Wireless' Petition. Moreover, expedited grant of the Allied Wireless' Petition is in the public interest because it will restore the level of high-cost support to the Company's ETC designated area to the direct benefit of the rural customers served by Allied Wireless and will fulfill the goal of the *Verizon Wireless-Alltel Order* of establishing strong and effective competition in the wireless marketplace in rural Georgia.

Respectfully submitted,

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EXHIBIT 1

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OCT 14 2010

Docket No. 31734

EXECUTIVE SECRETARY
G.P.S.C.

In Re: **Application of Allied Wireless Communications Corporation for Designation as an Eligible Telecommunication Carrier in the State of Georgia**

ORDER GRANTING ETC STATUS

I. Introduction and Jurisdiction

This matter is before the Georgia Public Service Commission ("Commission") as a result of the Application of Allied Wireless Communications Corporation ("Allied") for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Georgia ("Application").

Pursuant to Section 254(e) of the Federal Telecommunications Act of 1996 (the "Act"), "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support." 47 U.S.C. § 254(e). Section 214(e)(2) of the Act gives state commissions the primary responsibility for ETC designations. 47 U.S.C. § 214(e)(2). Further, O.C.G.A. §46-5-222 expressly provides that "[t]his Code section shall not be construed to affect any authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission, including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements." O.C.G.A. § 46-5-222(b)(3).

Allied seeks ETC designation in order to receive support from the Federal Universal Service Fund ("USF") for use within Allied's requested ETC service area in Georgia. Under the terms of 47 U.S.C. § 214(e)(2) and O.C.G.A. § 46-5-222, the Commission has the necessary jurisdiction to designate Allied as an ETC.

II. Background

On April 15, 2010, Allied filed its Application with the Commission. Allied provided evidence that it offers all of the following services supported by the federal high-cost universal service program (Application, pp. 6-10):

1. Voice-grade access to the public switched telephone network;
2. Local Usage;
3. Dual-tone, multi-frequency (“DTMF”) 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.

Allied also asserted that it meets the additional eligibility criteria adopted by the Federal Communications Commission (“FCC”) in its March 17, 2005 Report and Order establishing additional criteria that ETC applicants must satisfy in order to be granted ETC status. The FCC found that ETC applicants must demonstrate: (1) a commitment and ability to provide the supported services throughout the designated area; (2) the ability to remain functional in emergency situations; (3) that it will satisfy consumer protection and quality of service standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an acknowledgement that it may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act. (Application, p. 11)

Although the Commission had, in the past, elected not to exercise jurisdiction over wireless carriers (and consequently, not to designate wireless carriers as ETCs), the Commission elected in Docket No. 10396, Application of Alltel Communications, Inc. (“Alltel”) for Designation as an Eligible Telecommunications Carrier in the State of Georgia, to assert jurisdiction over wireless carriers for the purpose of ETC designation and approve Alltel’s application.

III. Staff Recommendation

The Commission Staff (“Staff”) found that Allied has met all statutory and regulatory requirements for designation as an ETC. The Staff also concluded that the Commission has the authority to grant ETC status to a wireless carrier. Consistent with the Commission’s decision in Docket No. 10396, the Commission has authority to designate a wireless carrier as an ETC. 47 U.S.C. § 214(e)(2) states that a state commission “may” designate a requesting carrier if it meets the requirements outlined in the law. Although it addresses Commission authority over the setting of rates or terms and conditions for wireless service, the Georgia Competitive Emerging Communications Technologies Act of 2006 specifically states that it has no effect on “(a)ny

authority of the Public Service Commission to act in accordance with federal laws or regulations of the Federal Communications Commission.” O.C.G.A. §46-5-222(b)(3). Therefore, the Staff recommended that the Commission approve Allied’s Application with the same conditions and filing requirements imposed upon Alltel, except as described herein:

- The Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.
- Allied’s ETC designation may at any time be suspended or revoked by order of the Commission.
- Allied shall make all service offerings, including Lifeline/ Link-Up available on its internet website.
- The Commission’s order designating Alltel as an ETC required Alltel to file within 30 days of approval of its ETC application its terms and conditions of service, and rate plans including its Link-Up and Lifeline discounts available to qualifying low-income customers. Further, Alltel was required to to notify the Commission of any future changes to its rates, terms, or conditions. The Staff concluded it was no longer necessary to require ETC applicants to file rates, terms, and conditions of services not associated with Lifeline or Link-Up. Therefore, the Staff recommended that the Commission decline to impose this requirement on Allied for services not associated with Lifeline and Link-Up. In addition, as part of its review, the Staff required Allied to file its Lifeline and Link-Up rates, terms, and conditions prior to approval of the Application by the Commission. Therefore, the Lifeline and Link-Up materials do not need to be refiled by Allied. However, the Staff recommended that the Commission require Allied to file, 30 days in advance, notice of any proposed changes to (1) increase the price of its Lifeline plan, (2) increase the price of Lifeline equipment, (3) increase the activation fee applicable to Lifeline customers, (4) decrease the Lifeline discount to eligible customers, (5) increase the charge for non-roaming overage rates, or (6) reduce the minimum monthly allowance of minutes provided to Lifeline customers. Allied has agreed to this condition in its trade secret Supplemental Filing made September 13, 2010. (Supplemental Filing, pp. 1-2)
- The Commission’s order designating Alltel as an ETC required Alltel to file within 30 days of approval of its ETC application proposed language to be used in all advertising of Lifeline/ Link-Up services and on its website for the Staff to review. As part of its review, the Staff requested, and Allied provided, sample advertising, customer sign-up forms, eligibility verification forms, and other materials that indicate that the company is already compliant with the language previously approved by Staff for other ETCs previously designated by the Commission. However, consistent with its recommendation above, Staff recommended that the Commission require Allied to file, 30 days in advance, (1) notice of any proposed substantive changes to the language used in promotional materials to notify customers of their right to contact the Commission with

complaints about the Lifeline program, (2) notice of any proposed substantive changes to the addendum to their standard customer agreement specific to the Lifeline program, and (3) notice of any proposed substantive changes to the verification form used to verify the eligibility of Lifeline subscribers. Allied has agreed to this condition in its trade secret Supplemental Filing made September 13, 2010. (Supplemental Filing, p. 2)

- Allied shall file the following information on March 31, 2011 (and updated information every March 31 thereafter, unless otherwise ordered by the Commission):
 1. A map showing Allied's actual January 2010 service area, and a map showing the January 2011 estimated service area *increase or decrease*. Additionally, the map should include locations of all new facilities constructed.
 2. In accordance with 47 C.F.R. § 54.209(a)(3), Allied shall report all instances in which the company refuses to serve a customer. Allied shall be required to provide information regarding the specific location of the customer (street address), the company's rationale for refusal of service, and the company's progress with establishing interconnection arrangements which permit resale of either wireless or Incumbent Local Exchange Carrier ("ILEC") services in the customer's location.
 3. Estimated total 2010 federal funds (from trade secret filing made with the Application), actual total federal funds received in 2010, and estimated total funds to be received in 2011.
 4. A spreadsheet listing each wire center, the name of the ILEC associated with that wire center, estimated 2010 expenses (from trade secret filing made with the Application), actual 2010 expenses, and estimated 2011 expenses.

The Commission imposed the following additional requirement upon Tracfone Wireless, Inc. in Docket No. 26282:

ORDERED FURTHER, that TracFone's ETC designation shall also be conditioned upon the satisfactory resolution of complaints filed with the Commission's Consumer Affairs Unit.

The Staff recommended application of the additional Tracfone requirement upon Allied.

In its September 13, 2010 filing, Allied included trade secret information pertaining to its Lifeline product including rates, connection charges, equipment costs, minutes of use provided, and overage charges, as well as a sample Lifeline advertisement, customer service agreement, customer sign-up form, eligibility form, and customer program addendum.

Consistent with FCC rule 47 C.F.R. 54.403(b), Allied's Lifeline product is based on its lowest-priced service offering. Allied has agreed to contribute \$3.50 in addition to the federal

Lifeline discount of \$6.50 in order to acquire an additional 50% federal match of \$1.75, which results in a total Lifeline discount of \$13.50 per customer per month. Allied's standard connection charge will be discounted by \$30 or 50% (whichever is less), consistent with federal Link-Up credit guidelines. Allied will offer at least one low-cost phone to Lifeline customers.

In a filing made on August 9, 2010, Allied requested that its ETC designation be granted *nunc pro tunc*, in order that "none of the universal service high-cost support that would have otherwise been provided to these areas under the ETC designation granted to [Alltel], is lost as a result of the transfer of control of the assets formerly held by Alltel in these areas to Atlantic Tele-Network, Inc., Allied Wireless' parent company." Allied further states that, "Any loss of USF support will inherently diminish the near-term investment that the Allied Wireless will be able to make in its proposed ETC service area, thereby affecting the level of coverage and services that Allied Wireless would otherwise be able to provide to its customers." Allied requested that the designation be made retroactive to April 26, 2010. (August 9, 2010 Letter to Reece McAlister, p. 1)

In granting Allied's North Carolina application for ETC, the FCC included the following footnote¹:

24 On June 16, 2010, ATN submitted an ex parte letter in which it noted that high-cost support to AWCC would be interrupted because the Verizon divestitures were required to be structured as asset sales, rather than corporate mergers. *See* Letter from Douglas J. Minster, ATN, to Carol Matthey, FCC (dated June 16, 2010). ATN, therefore, requested that AWCC's ETC designation be effective as of April 26, 2010, the date on which AWCC received control of the relevant Verizon Wireless licenses and authorizations. *Id.* Because ATN voluntarily withdrew this request on August 26, 2010 in order to expedite resolution of this matter, the issue is no longer pending before us. *See* Letter from Jonathan V. Cohen, Counsel to AWCC, to Marlene H. Dortch, FCC Secretary, WC Docket No. 09-197 (filed August 26, 2010). We therefore do not rule on this aspect of AWCC's petition; AWCC's ETC designation shall be effective upon release of this order. Given that we do not address the merits of ATN's request for a retroactive designation, our decision here should have no bearing on pending state proceedings regarding the appropriate effective date of any ETC designation.

While the FCC did not address the merits of Allied's request for retroactive (or *nunc pro tunc*) designation, the Staff interpreted the footnote to permit retroactive designation upon a finding by the Commission. The Staff found that Allied, in acquiring divested assets of a carrier designated as an ETC by this Commission should be given unique consideration and therefore recommended approval of Allied's request for *nunc pro tunc* designation.

¹ WC Docket No. 09-197; CC Docket No. 96-45

IV. Requirements for Designation

The Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience and necessity, so long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(2). Accordingly, under section 214 of the Act and corresponding FCC rules, an ETC application must demonstrate the following: (1) the applicant's capability and commitment to offer all services that are supported by the USF; (2) the capability and commitment to offer the supported services "using its own facilities or a combination of its own facilities and resale of another carrier's services"; (3) a description of how the applicant will "advertise the availability of the services and the charges therefore using media of general distribution"; and (4) a detailed description of the geographic service area for which it requests ETC designation from the Commission. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(d).

V. Discussion

A. Basic Qualifications

1. Offering the Services Designated for Support

Allied demonstrated in its Application that it, as a common carrier, currently offers, or will offer immediately upon designation as ETC, the services supported by the federal universal service mechanisms.² Additionally, Allied is able to offer and support the federally supported services utilizing its own facilities. (Application, pp. 18-19)

2. Advertising

Allied has demonstrated that it currently advertises, and will continue to advertise after ETC designation, the supported services throughout its requested ETC service area through several different media, including newspaper, radio, its website, and other direct advertising methods. Finally, Allied stated that it will provide notices at local unemployment, social security, and welfare offices and will implement its outreach program detailed in the application upon certification by the Commission. (Application, pp. 19-21)

B. Additional ETC Requirements

Allied demonstrated in its Application, its compliance with the additional ETC requirements identified in 47 C.F.R. § 54.202 and 54.209 as follows:

1. Commitment to Provide Service

Allied committed to offer and provide service in response to all reasonable requests for service pursuant to the six-step process set forth in 47 C.F.R. § 54.202(a). (Application, pp. 11-13)

2. Service Improvement Plan

Allied filed, on September 7, 2010, details of its network service improvement that demonstrated the appropriate use of support. Allied also committed to the submission of detailed progress reports on its service improvement plan. (Application, pp. 13-14)

3. Ability to Remain Functional in Emergency Situations

Allied demonstrated that its network is designed to remain functional in emergency situations. Specifically, Allied has adequate amounts of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. (Application, pp. 14-17)

4. Satisfaction of Applicable Consumer Protection Standards

In satisfaction of applicable consumer protection standards, Allied is committed to annual compliance with the CTIA Consumer Code for Wireless Service. (Application, p. 17)

5. Local Usage

Allied demonstrated that all of its service offerings are comparable to the incumbent offerings available in its requested ETC service area. (Application, pp. 17-18)

6. Equal Access Requirement

Allied acknowledged that the FCC may require it to provide equal access to interexchange services in the event that no other ETC is providing equal access within its ETC designated area. (Application, p. 18)

C. Public Interest

Allied demonstrated in the application that it is consistent with the public interest, convenience and necessity to designate Allied as an ETC for its requested ETC service area. Under section 214 of the Act, state commissions must determine whether an ETC designation is consistent with the public interest, convenience and necessity. 47 U.S.C. §214(e)(2). Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254; However, the FCC's March 17, 2005 Order addressing ETC designation criteria clearly addresses the appropriate public-interest analysis to be undertaken. *In the Matter of*

Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, March 17, 2005. (“ETC Order”). Specifically the FCC provided that:

The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.

ETC Order, ¶ 40.

Beyond the principles articulated within the Act, the FCC identified additional factors to analyze whether the designation of an additional ETC is in the public interest. Other factors to consider on a fact-specific basis are the benefits of increased consumer choice and the unique advantages and disadvantages of the competitor’s service offering. ETC Order, ¶ 41. In considering “consumer choice” the FCC stated “granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high cost-areas. Likewise, in considering the “advantages of a particular service offering” the FCC examines “the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting and other premium services.” ETC Order, ¶ 44(2).

Furthermore, the apparent intent of the additional designation/certification requirements established in the FCC’s ETC Order is to ensure that each ETC designation would serve the public interest. For example, the additional requirement of a service quality improvement plan and the commitment to respond to any reasonable request for service will benefit the public as a result of the designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC’s designated service area. ETC Order, ¶ 45. Allied provided a detailed five-year plan in its Supplemental Filing to Support ETC Application made September 7, 2010. Allied has also committed to serve all customers making a reasonable request for service. (Application, pp. 11-13)

Consistent with the FCC analysis, the Commission finds Allied has demonstrated the numerous public interest benefits which will accrue to Georgia consumers as a result of Allied’s designation:

- Improved coverage and service quality
- Significant health and safety benefits
- No current burden on the Federal Universal Fund.

- Increased competition
- No “cream-skimming” of low-cost customers from ILECs, due to applicant’s willingness to serve the affected ILECs’ entire study areas (Application, pp. 23-30)

The Commission concludes that the designation of Allied as an ETC throughout its requested ETC service area is within the public interest, convenience, and necessity.

WHEREFORE, it is

ORDERED, that the Commission has jurisdiction to designate Allied as an ETC pursuant to 47 U.S.C. § 214(e)(2) and O.C.G.A. § 46-5-222(b)(3).

ORDERED FURTHER, that Allied is designated as an ETC, as of April 26, 2010, in the requested rural and non-rural wire centers identified in Exhibit 1 of this Order and that, in accordance with 47 C.F.R. §§ 54.313 and 54.314 of the FCC’s Rules, the Commission hereby certifies that all federal high-cost support provided to Allied Wireless in this State will be used only for the provision, maintenance and upgrading of facilities and services necessary to offer and advertise the federally supported services in the rural and non-rural wire centers where Allied has been designated as an ETC consistent with Section 254(e) of the Communications Act of 1934, as amended.

ORDERED FURTHER, that all federal low-cost support provided to Allied Wireless in this State shall be used only to provide Lifeline and Link-Up credits for qualifying low-income customers

ORDERED FURTHER, that Allied shall abide by the FCC’s ETC designation criteria and rules set forth in 47 C.F.R. §§ 54.202, 54.209 and the Staff Recommendation in this matter as set forth above.

ORDERED FURTHER, that this Order shall remain in full force and effect until further Order of the Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

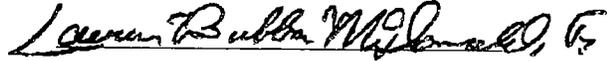
The above by action of the Commission in Administrative Session on the 21st day of September 2010.



Reece McAlister
Executive Secretary

10-13-10

DATE



Lauren "Bubba" McDonald, Jr.
Chairman

10-13-10

DATE

Exhibit 1

BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL
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BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL

WGVLGAES
WRNSGAMA
WRNGAMA
WYBOGAES
ZBLNGAMA

Rural Wire Centers

Company

BULLOCH COUNTY RURAL TELEPHONE COOP., INC.
CAMDEN TELEPHONE & TELEGRAPH CO., INC.
CITIZENS TELEPHONE CO., INC.
CITIZENS TELEPHONE CO., INC.
CITIZENS TELEPHONE CO., INC.
CITIZENS TELEPHONE CO., INC.
COMSOUTH TELECOM
DARIEN TELEPHONE CO., INC.
DARIEN TELEPHONE CO., INC.
DARIEN TELEPHONE CO., INC.
FRONTIER COMMUNICATIONS OF GEORGIA, LLC
FRONTIER COMMUNICATIONS OF GEORGIA, LLC
FRONTIER COMMUNICATIONS OF GEORGIA, LLC
GLENWOOD TELEPHONE CO.
PINELAND TELEPHONE COOPERATIVE, INC.
PINELAND TELEPHONE COOPERATIVE, INC.
PINELAND TELEPHONE COOPERATIVE, INC.
PROGRESSIVE RURAL TELEPHONE COOPERATIVE, INC.
PUBLIC SERVICE TELEPHONE CO.
QUINCY TELEPHONE CO.
WAVERLY HALL TELEPHONE, LLC
WINDSTREAM ACCUCOMM TELECOMMUNICATIONS, INC.
WINDSTREAM ACCUCOMM TELECOMMUNICATIONS, INC.
WINDSTREAM ACCUCOMM TELECOMMUNICATIONS, INC.
WINDSTREAM GEORGIA TELEPHONE, INC.
WINDSTREAM GEORGIA TELEPHONE, INC.

Wire Center

ARSNGAXA
BRLTGAXA
CLTOGAXA
NVLSGAXA
PRTLGAXA
STSNGAXA
STMYGAXA
LESLGAXA
LKBLGAXA
PLNSGAXA
VINNGAXA
HWVLGAXA
DARNGAXA
EULNGAXA
SPISGAXA
RGSTGAXA
STBOGAXA
STBOGAXB
GLWDGAXA
ADRNGAXA
MTTRGAXA
TWCYGAXA
CDGVGAXA
CDWLGAXA
CHESGAXA
DDLYGAXA
DXTRGAXA
RNTZGAXA
BTLRGAXA
CUDNGAXA
GENVGAXA
LZLLGAXA
RBRTGAXA
RYNLGAXA
TLTNGAXA
ATPLGAXA
WVHLGAXA
GRDNGAXA
IRTNGAXA
TMBOGAXA
BLKLGAXA
CDSPGAXA

Exhibit 1

WINDSTREAM GEORGIA TELEPHONE, INC.
WINDSTREAM GEORGIA TELEPHONE, INC.

OCHLGAXA
WHGHGAXA

EXHIBIT 2

Docket No. 31734

In Re: Application of Allied Wireless Communication Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia (Consideration of Public Service Telephone's Petition for Reconsideration of the Commission Order Granting Allied Wireless Communication Corporation's Application for ETC Designation)

**STAFF RECOMMENDATION ON PUBLIC SERVICE TELEPHONE COMPANY'S
PETITION FOR REHEARING, RECONSIDERATION AND ORAL ARGUMENT
OF THE COMMISSION ORDER GRANTING ALLIED WIRELESS
COMMUNICATION CORPORATION ETC STATUS IN THE STATE OF
GEORGIA**

On October 14, 2010, the Georgia Public Service Commission issued two separate orders in this docket. The Commission denied the Petition for Intervention of Public Service Telephone Company ("PSTC"), and granted the Application of Allied Wireless Communication Corporation ("Allied") for Designation as an Eligible Telecommunications Carrier in the State of Georgia. On October 25, PSTC petitioned for reconsideration of both of these orders. On November 4, Allied responded in opposition to both petitions. PSTC filed a reply on November 12, 2010.

The Commission issued a Corrected Order on November 2, 2010, to correct inadvertent errors in the identification of wire centers in Exhibit 1 to the order. PSTC filed a Petition for Reconsideration of the Corrected Order on November 12, 2010.

I. Commission Order

The Commission found that Allied demonstrated that it would be able to meet the basic qualifications regarding the offering of services designated for support and advertising for the supported services throughout its requested ETC service area. (Corrected Order, p. 6). The Commission also found that Allied committed to offer and provide service in response to all reasonable requests for service pursuant to the six-step process set forth in 47 C.F.R. § 54.202(a). *Id.* at 7. The Commission found that Allied provided a service improvement plan that demonstrated the appropriate use of support. *Id.* In addition, the Commission found that Allied demonstrated the ability to remain functional in emergency situations and satisfied applicable consumer protection standards. *Id.* Furthermore, the Commission found that Allied demonstrated that its service offerings are comparable to the incumbent offerings available in its requested ETC area. *Id.* The Commission recognized that Allied acknowledged that the FCC may require it to provide equal access to interexchange services in the event that no other ETC is providing equal access within its ETC designated area. *Id.* The Commission also found that the designation of Allied as an ETC for its requested service area was in the public interest. *Id.* at 7-8.

The Commission also addressed Allied's August 9, 2010 request that its ETC designation be granted retroactively to the date on which Allied Wireless' parent company acquired the assets that were previously receiving high-cost support for Alltel Communications, Inc. ("Alltel") under its ETC designation. *Id.* at 5-6. The Commission determined that it was in the public interest to grant Allied's request to have its ETC designation granted *nunc pro tunc*. *Id.* at 9.

II. PSTC's Petition for Reconsideration

On October 25, 2010, PSTC petitioned for rehearing, reconsideration and oral argument of the Commission Order Granting ETC Status. PSTC raised two grounds in its petition. First, PSTC argued that Allied had not demonstrated that it would serve throughout its designated service area. (PSTC Petition, p. 2). This argument is based on PSTC's position that Allied cannot rely upon a roaming agreement in order to serve those wire centers within Lizella for which it does not have a license. *Id.* at 3. Second, PSTC argued that it was arbitrary for the Commission to grant the application retroactive to April 26, 2010. *Id.* at 5. PSTC stated that the retroactive application was inconsistent with the Federal Communications Commission's rule that requires an applicant to file line counts within sixty days of ETC designation in order to receive USF support from the date of designation. *Id.*

PSTC requested oral argument on its petition. *Id.* at 6.

III. Allied's Response

Allied opposed PSTC's Petition for Reconsideration. Allied stated that the FCC has made clear that ETC carriers can satisfy their statutory obligations by providing services supported by universal service mechanisms through a combination of their own facilities and resale or roaming agreements with other carriers. (Response, p. 3). Allied relies upon decisions of the FCC Wireline Competition Bureau in *Advantage Cellular, Public Service Cellular, United States Cellular, and Corr Wireless*.¹ *Id.* at 3-4.

¹ *Federal-State Joint Board on Universal Service, Advantage Cellular Systems, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 19 FCC Rcd 20985, 20990 (para. 13) (Wireline Comp. Bur. 2004) ("*Advantage Cellular*") (emphasis added). *Federal-State Board on Universal Service, Public Service Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd. 6854, 6857, 6860 (paras. 12, 20) (Wireline Comp. Bur. 2005) (finding that it was sufficient for the carrier to meet its obligations regarding the provision of supported services in small portions of a study area through the use of resale or roaming agreements). *Federal-State Joint Board on Universal Service, United States Cellular Corporation, Petition To Amend Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 25 FCC Rcd 4410, 4413 (para. 6) (Wireline Comp. Bur. 2010) *Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Order, 21 FCC Rcd 1217, 1222 (para. 15) (Wireline Comp. Bur. 2006)

Allied also rebuts PSTC's contention that its application should not be given retroactive effect. Allied states that the Commission's order includes justification for its decision. *Id.* at 5. In addition, Allied states that it has petitioned the FCC for a waiver of the universal service filing deadlines. *Id.* at 5-6.

Allied opposed PSTC's request for oral argument. *Id.* at 6.

III. PST's Reply

PSTC states that the Commission's order does not mention that Allied is not licensed to provide service throughout the requested study area, and that Allied did not inform the Commission that it was relying upon a roaming agreement in its initial application. (Reply, p. 4). PSTC states that federal law requires that a provider offer services throughout the study area using its own facilities or a combination of its own facilities and resale of another carrier's services. *Id.* at 5, *citing to* 47 U.S.C. § 214(e)(1).

PSTC also argues that the Commission did not have adequate support for its decision to grant the application retroactively. (Reply, p. 6). PSTC renews its arguments that the retroactive effective date is inconsistent with FCC rules. *Id.*

IV. Staff Recommendation

If the Commission denies PSTC's Petition for Reconsideration of the Commission Order denying its application for intervention, then the Commission should find that its Petition for Reconsideration on the merits is moot. However, if the Commission grants PSTC's Petition for Reconsideration, then Staff recommends that it deny reconsideration on the merits.

The first ground raised by PSTC on reconsideration is whether Allied has demonstrated that it will serve throughout its designated area. The designated area includes Lizella, Georgia. The federal licenses held by Allied do not cover all of Lizella. Allied has stated that it will resell service in the area in question through an existing roaming agreement. (Allied Response, p. 2). Allied states that the roaming agreement will ensure that service will be available to all consumers in the Lizella wire center. *Id.*

The FCC has held on numerous occasions that an ETC carrier satisfies its statutory obligation to provide service throughout the designated service territory if it offers the supported services using a combination of its own facilities and roaming or resale agreements with other carriers. In rejecting claims that Advantage Cellular failed to commit to serve the entirety of the study area and/or wire centers for which it sought designation, the FCC reasoned that:

where Advantage Cellular's licensed service area does not fully cover the rural study areas and/or wire centers in which we designate it as an ETC, Advantage Cellular has committed to offer service to customers in the entirety of these wire

centers and/or study areas through a combination of its own facilities and roaming or resale agreements with other carriers.

(*Advantage*, ¶ 13). The FCC also granted ETC designation to a carrier, based in part on the commitment that the applicant would serve those portions of its designated area for which it was not licensed “through roaming or resale of another carrier’s service.” (*United States Cellular*, ¶ 6). Similarly, in *Corr Wireless*, the FCC held that the applicant satisfied the statutory requirement of service through a combination of its own facilities and roaming or resale agreements with other carriers. (*Corr Wireless*, ¶ 15).

Allied has committed to serve the entirety of the study areas and/or wire centers for which it has been granted ETC designation through a combination of its own facilities and roaming agreements. Pursuant to the FCC decisions discussed herein, Allied has made the necessary demonstration to satisfy its obligation to provide service throughout its territory. PSTC has not provided any authority that would indicate that a carrier cannot rely upon a combination of its facilities and roaming agreements. The Commission should find that Allied has met its statutory requirement under 47 U.S.C. § 214(e)(1).

PSTC also charges that the Commission should not approve the application with an effective date of April 26, 2010. The Commission Order explains the unique circumstances surrounding Allied’s request and the policy reasons in support of the retroactive effective date. Alltel had been designated as an ETC carrier. Allied’s parent company, Atlantic Tele-Network, Inc., acquired the divested assets from Alltel. (Corrected Order, p. 5). Alltel had been receiving high cost support in connection with the facilities acquired by Allied’s parent company. Interruption in the universal service support would diminish the investment that Allied will be able to make in the service area. *Id.*

The Commission cited to the FCC’s order in which it considered Allied’s North Carolina application for ETC designation.² In a footnote to the decision, the FCC stated that it would not address the merits of Allied’s request for a retroactive designation, but that such decision should not impact pending state proceedings regarding the appropriate effective date of ETC designation. WC Docket No. 09-0197; CC Docket No. 96-45 (footnote 24). In light of the unique circumstances surrounding the request, the potential impact on the service offered in this area if the request was not granted, and the FCC’s decision not to direct states away from this practice at this time, the Commission decided to grant the request. Staff recommends that the Commission find these policy reasons are valid.

Allied has requested that the FCC waive rules requiring the filing of certification with the FCC within 60 days of the effective date of the carrier’s ETC designation regarding the use of federal high-cost support. (Allied Response, p. 5). PSTC will have the opportunity to contest that waiver petition before the FCC. The Commission may monitor the FCC’s action in response to that petition, and take any necessary action in response to whatever decision the FCC renders.

² WC Docket No. 09-0197; CC Docket No. 96-45.

For the above-reasons, Staff recommends denial of PSTC's Petition for Reconsideration on the merits.

Finally, Staff's position is that oral argument is not warranted to consider PSTC's reconsideration. The Commission has the discretion to hold oral argument if it determines that such argument will be of assistance in deciding this matter.