

TerraCom knows from its experience in markets that there are significant areas within its proposed ETC service area in which its target market, low income subscribers, are underserved by wireless and wireline telephone facilities. Additionally, TerraCom knows from experience that there are pockets of consumers who still do not have basic communications. It is TerraCom's mission to identify and reach out to these disparate groups, regardless of whether they live in a large city or a small town, just like it has done in TerraCom's home state of Oklahoma, in order to bring the benefits of communication to these unserved consumers in the Subject States.

The mobility of TerraCom's prepaid wireless service will assist low-income consumers who often must rely heavily on public or alternate means of transportation in order to reach places of employment, stores, schools, and other critical community locations, and it will provide timely access to emergency services as and when needed. Moreover, unlike other wireless ETC Petitioners, TerraCom is offering low-income customers wireless broadband functionality through free smartphones and affordable data plans—consistent with the Commission's goals of making broadband available to Lifeline customers, *without additional subsidies*.

The public interest benefits of inclusion of the Company's wireless service include larger local calling areas (as compared to traditional wireline carriers), the convenience and security afforded by mobile telephone service, the opportunity for customers to control cost by receiving a preset amount of monthly airtime at no charge, the ability to purchase additional usage in the event that included usage has been exhausted, 9-1-1 service and, where available, E 9-1-1 service in accordance with current FCC requirements.

The inclusion of toll calling as a part of TerraCom's wireless offering, along with the fact that service is provided without a monthly recurring charge, will allow consumers to avoid

the risk of becoming burdened with large and unexpected charges for toll calling and unexpected overage charges. Designation of the Company as an ETC on a wireless basis will also provide other carriers serving the same area an incentive to improve their existing networks and service offerings in order to remain competitive, which will result in improved consumer services and will also benefit consumers by allowing TerraCom to offer the services designated for support at rates that are “just, reasonable, and affordable.”⁶³

B. The Unique Advantages of TerraCom’s Service Offerings

TerraCom will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services. Moreover, as noted, TerraCom offers its customers free smartphones and the ability to purchase affordable wireless broadband data plans.

TerraCom will announce and advertise telecommunications services as an ETC where it provides service in its Service Area and will publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. Accordingly, more low-income residents of the Subject States will be made aware of the opportunities afforded to them under the Lifeline and Link-Up programs and will be able to take advantage of those opportunities by subscribing to TerraCom’s service.

C. Designation of TerraCom as an ETC Will Not Adversely Affect the Fund

Lifeline support is designed to reduce the monthly cost of telecommunication services for eligible consumers, thus the Lifeline program has a natural “cap” in the number of consumers eligible for Lifeline service. Therefore, designation of TerraCom as an ETC will not pose any

⁶³ See 47 U.S.C. § 254(b)(1).

adverse effect in the growth in the low-income portion of the Fund. The only effect designation of TerraCom as an ETC might have on the Fund is that more eligible consumers get the benefits that Congress intended they receive; this can hardly be considered an “adverse effect.”

The FCC has also recognized that the total effect of additional low-income-only ETC designations would have a minimal impact on the fund when it stated that “any increase in the size of the fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline and Link-Up programs, furthering the statutory goal of providing access to low-income consumers.”⁶⁴ It is also vital to recognize that in the case of Lifeline and Link-Up support, an ETC receives USF support *only* for the customers it obtains. In the scenario where a competitive ETC obtains a Lifeline customer from another ETC, only the “capturing” ETC provides Lifeline discounts and as a result, only the “capturing” ETC receives support reimbursement.

1. TerraCom Has Internal Controls in Place to Prevent Subscribers from Receiving More Than One Lifeline Discount

TerraCom requires customers to self-certify at the time of service activation and annually thereafter that they: 1) are the head of household; 2) participate in one of the state-approved means tested programs; 3) will be receiving Lifeline-supported services only from TerraCom ; 4) do not currently receive Lifeline support; and 5) will notify TerraCom in the event that they no longer participate in the qualifying program. Verification of continued eligibility is accomplished on a yearly basis in accordance with state-specific procedures. TerraCom has been actively working on the federal level to advance a national clearinghouse to prevent more than one discount. Until such clearinghouse is established, TerraCom believes that its controls represent best practices available today.

⁶⁴ *TracFone Forbearance Order*, 20 FCC Rcd 15095, 15102 at ¶ 17.

2. TerraCom Has Internal Policies in Place to Handle Inactive Accounts

TerraCom Wireless subscribers who exceed ninety (90) days without any utilization (defined below), will be de-enrolled from the TerraCom wireless Lifeline Program. "Utilization" is defined as any transaction including, but not limited to, making or receiving a call, making or receiving a text message, checking voicemail message, checking airtime balance, downloading content, data usage or adding airtime. Upon de-enrollment for non-usage, the TerraCom wireless subscriber will have up to thirty (30) days to re-enroll by contacting TerraCom. If a customer does not re-enroll or call a TerraCom customer service representative within thirty (30) days of the de-enrollment, the phone service will be deactivated and any airtime will be lost. A subscriber must provide proof of eligibility and pay an activation fee to re-enroll in the TerraCom wireless Lifeline program.

V. ANTI-DRUG ABUSE CERTIFICATION

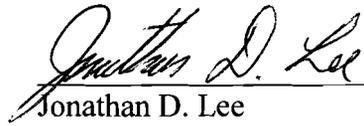
TerraCom certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

* * *

As TerraCom has demonstrated above, grant of this Petition providing TerraCom with limited ETC designation to participate in the USF's low income programs is consistent with the Act, Commission rules, and the public interest. For these reasons, TerraCom respectfully requests that the FCC designate it as an ETC in the Subject States.

Respectfully submitted,

TERRACOM, INC.


Jonathan D. Lee

JD Lee Consulting, LLC
1776 I Street, NW
Suite 900
Washington, DC 20006
(202) 257-8435

Its Attorney

June 13, 2011

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

**DECLARATION OF DALE SCHMICK IN SUPPORT OF THE
PETITION FOR ETC DESIGNATION OF TERRACOM, INC. IN THE STATES OF
ALABAMA, CONNECTICUT, DELAWARE, NEW HAMPSHIRE, NEW YORK, NORTH
CAROLINA, TENNESSEE, THE COMMONWEALTH OF VIRGINIA, AND THE
DISTRICT OF COLUMBIA**

- 1.) My name is Dale Schmick, and I am the Vice President of TerraCom, Inc. My business address is 112 NW 132nd St., Oklahoma City, OK 73114.
- 2.) I have read TerraCom's Petition for ETC Designation in the States of Alabama, Connecticut, Delaware, New Hampshire, New York, North Carolina, Tennessee, the Commonwealth of Virginia, and the District of Columbia. I confirm the information contained herein is true and accurate to the best of my knowledge.
- 3.) To the best of my knowledge, the Petitioner referred to in the foregoing Petition, including all officers, directors, and persons holding more than five percent or more of the stock or shares (voting or non-voting) are not subject to the denial of benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.
- 4.) I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Dale Schmick, Vice President
TerraCom, Inc.

Executed on May 25, 2011.

Exhibit 1



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
SUSAN D. PARKER, PhD, ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

ALLTEL COMMUNICATIONS, INC.,
Applicant

**APPLICATION: For designation as an
eligible telecommunications carrier in
the State of Alabama.**

DOCKET 30263

ORDER DENYING ALLTEL'S PETITION FOR RECONSIDERATION

BY THE COMMISSION:

I. INTRODUCTION AND BACKGROUND

Pursuant to order entered in this cause on January 9, 2007, the Commission determined as a threshold matter that it lacked the jurisdiction necessary to act on the October 12, 2006 Application of Alltel Communications, Inc. ("Alltel") for designation as an eligible telecommunications carrier ("ETC") for certain specified areas of Alabama. Alltel sought ETC designation for the rural telephone company study areas in Alabama located partially in the territory where Alltel is a licensed provider of cellular mobile radio service ("CMRS").¹ Alltel further sought to redefine the study areas of the affected rural telephone companies in Alabama in its October 12, 2006 Petition.

The January 9, 2007 Order concluding that the Commission lacked jurisdiction to act on Alltel's Application for ETC status was based on a number of considerations. In particular, the Commission noted that on March 12, 2002, an order was issued in Docket U-4400 wherein the Commission determined that it did not have jurisdiction over CMRS providers and, therefore, lacked jurisdiction to designate CMRS providers as ETCs pursuant to §214(e) of the Act. The Commission observed that its finding in that regard was based on an earlier conclusion reached

¹ Alltel's request was made pursuant to §214(e)(2) of the Communications Act of 1934, as amended (the "Act").

DOCKET 30263 - #2

by the Commission in an Order entered on March 2, 2000 in Docket 28414 wherein the Commission determined that the provisions of Code §540-21-120(1)(a) and (2) dictate that the Commission has no authority to regulate CMRS providers and other providers of Commercial Mobile Service ("CMS").

The Commission further noted in its January 9, 2007 Order that Congress expressly enacted §214(e)(6) of the Act to provide carriers like Alltel who are not subject to a particular state's jurisdiction an identifiable means of being designated as an ETC in such states. The Commission also determined that, contrary to the arguments of Alltel, the Alabama Legislature's 2005 passage of the Communications Reform Act² and §37-2A-7 thereof did not authorize the Commission to assume jurisdiction over CMRS providers for the purposes of administering federal Universal Service requirements in Alabama. The Commission accordingly advised Alltel to submit its application for ETC designation to the FCC pursuant to §214(e)(6) of the Act.

On or about February 13, 2007, Alltel filed a Petition for Reconsideration in this cause urging the Commission to revisit the conclusions reached in its January 9, 2007 Order and to thereafter grant the application of Alltel for designation as an ETC in Alabama. As in its original petition, Alltel again asserted in its Petition for Reconsideration that Code §37-2A-7 requires the Commission to exercise jurisdiction over Alltel's application. Alltel further asserted that the Commission's reliance on its previous orders in Dockets 28414 and U-4400 was misplaced given the change in law brought about by the enactment of Code §37-2A-7.

Alltel additionally noted that staff from the Florida Public Service Commission had recently opined to the Florida Public Service Commissioners that a newly enacted provision in Florida law very similar to Alabama Code §37-2A-7 authorized the Florida Commission to

² See Code of Alabama 1975 §37-2A-1-11, as amended (the "CRA").

exercise jurisdiction over CMRS providers for Universal Service purposes.³ Just as in Alabama, Alltel noted that the Florida Commission did not have jurisdiction over CMRS providers for such purposes prior to the enactment of the cited Florida statute. On or about April 26, 2007, Alltel provided as supplemental authority an April 3, 2007 Order of the Florida Public Service Commission adopting the foregoing logic of the Florida staff and finding that the Florida Commission could indeed exercise jurisdiction over wireless carrier ETC matters based on the language of the cited Florida statute.⁴

II. FINDINGS AND CONCLUSIONS ON RECONSIDERATION

We have again reviewed the arguments of Alltel regarding the jurisdiction of the Commission over CMS providers for purposes of administering federal Universal Service requirements. We herein reaffirm our previous determination that no provision of Alabama law, including Code §37-2A-7, provides the Commission with jurisdiction over CMRS providers or any other provider of CMS with respect to Universal Service matters. Although §37-2A-7 does provide the Commission with broad jurisdiction over telecommunications carriers for purposes of administering federal Universal Service requirements, a closer review of the definitions and scope of the CRA reveals that providers of CMRS service such as Alltel and providers of other commercial mobile services do not meet the CRA's definition of a telecommunications carrier and are thus excluded from the coverage of the CRA.

In particular, §37-2A-5 of the CRA provides that only incumbent local exchange carriers, local exchange carriers and interexchange carriers may elect to be regulated under the CRA. The definitional provisions of the CRA found at §37-2A-2 thereof further specify that for purposes of the CRA, telecommunications carriers shall be treated as subject to the CRA only to the extent that they are engaged in the provision of "telecommunications service." The

³ See Florida Statutes at §384.001.

⁴ In Re: *Petition of Alltel Communications Inc. for Designation as an Eligible Telecommunications Provider*, Docket No. 050582-TP, Order No. PSC-07-0288-PAA-TP (Florida Public Service Comm'n, April 3, 2007).

DOCKET 30263 - #4

definition of "telecommunications service" is set forth in §37-2A-2(19) which expressly excludes providers of commercial mobile service under §332(c) of the Federal Communications Act of 1934 from said definition. Providers of commercial mobile service like Alltel are accordingly excluded by definition from the coverage of the CRA including §37-2A-7 thereof. As such, the Commission's prior determination regarding its lack of jurisdiction to designate CMS providers as ETCs was not affected by the CRA.⁵

We further note that the action recently taken by the Florida Public Service Commission with respect to Alltel's application for ETC status in that state is unpersuasive. Unlike the Florida statute cited by Alltel and relied upon by the Florida Commission to assume jurisdiction over Alltel's application for ETC designation in Florida, the Alabama statutes do not provide an express or implied exemption to the Alabama Legislature's prior statutory determination in Code §§40-21-120(1)(a) and (2) that wireless carriers like Alltel are exempt from the jurisdiction of the Commission.

Based on the foregoing, we again emphasize that Alltel has requested relief that this Commission cannot jurisdictionally provide. Alltel's Motion for Reconsideration is accordingly denied and Alltel is again advised to seek ETC designation before the FCC pursuant to §214(e)(6) of the Act.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That, for the foregoing reasons, the Petition of Alltel Communications, Inc. for Reconsideration is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as this Commission may find just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

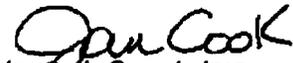
⁵ See §37-2A-11(b)(1) and (2).

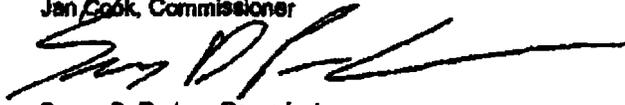
DOCKET 30263 - #5

DONE at Montgomery, Alabama, this 23rd day of May, 2007.

ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


Susan D. Parker, Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

August 10, 2010
In reply, please refer to:
UR:PAP

Lance J.M. Steinhart, Esquire
1720 Windward Concourse
Suite 115
Atlanta, Georgia 30005

Re: Request for Letter Clarifying Jurisdiction Over Wireless CETC Petitions

Dear Mr. Steinhart:

The Department of Public Utility Control (Department) acknowledges receipt of your July 23, 2010 letter filed on behalf of i-wireless, LLC (i-wireless) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, i-wireless seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the Federal Communications Commission for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, i-wireless is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

K. Santopietro (initials)
Kimberley J. Santopietro
Executive Secretary



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904
September 28, 2007

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

Debra McGuire Mercer, Esquire
Greenberg Traurig, LLP
800 Connecticut Avenue NW
Suite 500
Washington, DC 20006

RE: TracFone Wireless, Inc.

Dear Ms. Mercer:

In your letter dated September 25, 2007, you asked for a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate a common carrier as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You noted that such a statement would allow TracFone Wireless, Inc. to seek ETC designation from the Federal Communications Commission ("FCC"), which, if granted, would make TracFone Wireless, Inc. eligible to receive universal service support in Delaware in accordance with 47 U.S.C. § 254.

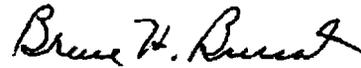
Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers, including TracFone Wireless, Inc. 26 Del. C. § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 Del. C. § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service").

In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rod. 39 (2000) at paras. 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

Debra McGuire Mercer, Esq
September 28, 2007
Page 2

For these reasons, I hereby confirm that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as TracFone Wireless, Inc., as an ETC.

Sincerely,



Bruce H. Burcat
Executive Director



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsec.org

July 28, 2010

Mr. Lance J.M. Steinhart
Counsel for i-wireless, LLC
Lance J.M. Steinhart, PC
1720 Windward Concourse, Suite 115
Alpharetta, GA 30005

Dear Mr. Steinhart:

Thank you for your July 23, 2010 letter stating i-wireless LLC's ("i-wireless") intent to be designated as an eligible telecommunications carrier in the District of Columbia. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate i-wireless as an eligible telecommunications carrier.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Beverly".

Richard A. Beverly
General Counsel

Enclosure



LEXSTAT D.C. CODE 34-2006

LEXIS DISTRICT OF COLUMBIA CODE ANNOTATED
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*** CURRENT THROUGH DECEMBER 28, 2010 AND THROUGH D.C. ACT 18-676 ***
*** ANNOTATIONS CURRENT THROUGH NOVEMBER 18, 2010 ***

DIVISION V. LOCAL BUSINESS AFFAIRS
TITLE 34. PUBLIC UTILITIES
SUBTITLE V. TELECOMMUNICATIONS
CHAPTER 20. TELECOMMUNICATIONS COMPETITION

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 34-2006 (2011)

§ 34-2006. Exemptions [Formerly § 43-1456]

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

D.C. Code § 34-2006

HISTORY: 1981 Ed., § 43-1456; Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.

NOTES: EFFECT OF AMENDMENTS. --D.C. Law 17-165 added (c).

LEGISLATIVE HISTORY OF LAW 11-154. --See note to § 34-2001.

LEGISLATIVE HISTORY OF LAW 17-165. --See note to § 34-2001.

LexisNexis 50 State Surveys, Legislation & Regulations

Telecommunications & Telephones

THE STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2064

Website:
www.puc.nh.gov

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland

July 28, 2010

Lance J.M. Steinhart, P.C.
1720 Windward Course
Suite 115
Alpharetta, GA 30005

RE: i-wireless, LLC ETC designation

Dear Mr. Steinhart:

This is in response to your letter to the Commission, received on July 27, 2010, concerning the above referenced telecommunications carrier. You requested a statement from the Commission that i-wireless is not subject to the jurisdiction of the Commission, inasmuch as this will affect how i-wireless proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the Telecommunications Act.

Your attention is directed to a published order of the Commission, *RCC Minnesota Inc.*, 88 NH PUC 611 (2003 (Order No. 24,245)). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that it also lacks jurisdiction to consider a request for ETC designation from the carrier. As a user of cellular spectrum to provide commercial mobile radio service, i-wireless may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, rather than the New Hampshire Public Utilities Commission, is the appropriate agency to consider i-wireless' bid for ETC status.

Sincerely,

A handwritten signature in cursive script that reads "Debra A. Howland".

Debra A. Howland
Executive Director

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN
Chairman
PATRICIA L. ACAMPORA
MAUREEN F. HARRIS
ROBERT E. CURRY JR.
JAMES L. LAROCCA
Commissioners



PETER MCGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstated under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

Maureen J. McCauley
Maureen J. McCauley
Assistant Counsel

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) **ORDER GRANTING PETITION**

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-8(23), enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(a)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Append. Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:)	
)	
APPLICATION OF ADVANTAGE CELLULAR)	DOCKET NO.
SYSTEMS, INC. TO BE DESIGNATED AS AN)	02-01245
ELIGIBLE TELECOMMUNICATIONS CARRIER)	

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier ("Application")* filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of DeKalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case, Docket 97-0888, Interim Order on Phase I of Universal Service*, pp. 33-37 (May 20, 1998), in which the Authority required interstate telecommunications carriers to contribute to the interstate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-0888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides interstate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

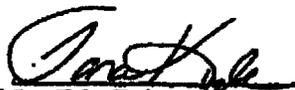
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, 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 eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tait, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.R. 12208, 12264, ¶ 113 (June 29, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 9, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation
of Requirements of § 214(e) of the
Telecommunications Act of 1996

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC010263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER

On September 15, 1997, the State Corporation Commission ("Commission") established the docket in Case No. PUC970135 to consider the requests of local exchange carriers ("LECs") to be designated as eligible telecommunications carriers ("ETC designation") to receive universal service support pursuant to § 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., ("Act") and associated Federal Regulations.¹ The Commission's exercise of its jurisdiction under § 214(e) (2) of the Act has been to establish a simple and streamlined process for telecommunications carriers to certify their eligibility with a minimum of regulatory burden placed upon each applicant.

¹ 47 C.F.R. § 54.201-207.

All Virginia carriers receiving an ETC designation have merely been required to file an affidavit which, among other matters, certifies that all requirements of the Act for designation are met.²

Until the above-captioned Application was filed in Case No. PUC010263 by Virginia Cellular LLC ("Virginia Cellular" or "Applicant") for ETC designation, these proceedings have been uncontested. This is the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.³ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association ("VTIA") and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002.⁴

The comments of NTELOS and VTIA both contest the sufficiency of the Application and claim Virginia Cellular has

² See Order issued November 21, 1997, in Case No. PUC970135, pp. 2-4 ("November 21, 1997, Order"). Also, the annual certification procedure to comply with 47 C.F.R. §§ 54.313 and 314 has been reduced to filing a form affidavit approved by the Commission in a Preliminary Order, issued August 29, 2001, in Case No. PUC010172.

³ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

⁴ On March 4, 2002, Virginia Cellular filed a Consent Motion requesting until March 6, 2002, to file Reply Comments. There being no objection, we now grant the Consent Motion.

failed to demonstrate how the public interest will be served.⁵ NTELOS and VTIA each allude in their comments to other expected applications for ETC designation by wireless and CLEC carriers to follow this case of first impression. For that reason, we are asked by VTIA and NTELOS to convene a hearing and establish certain standards for the provisioning of the nine services specified in 47 C.F.R. § 54.101.⁶ Each applicant is required to provide these nine services to be eligible for ETC designation.

VTIA further comments that "[i]t is not clear how the designation of Virginia Cellular as an ETC will affect the distribution of Universal Funds to the existing carriers in any given rural exchange area." Virginia Cellular replies that this "macroeconomic concern" need not be addressed with this Application. Rather, the Federal Communications Commission ("FCC") and the Federal State Joint Board on Universal Service

⁵ § 214(e)(2) of the Act requires that an ETC designation in areas served by a rural telephone company be based upon a finding that the designation is in the public interest. The Commission did recognize in its November 21, 1997, Order that any carrier seeking ETC designation in a rural area would have the burden of proving that such designation is in the public interest if challenged. Virginia Cellular is seeking ETC designation in the service territories of the following rural telephone companies: Shenandoah Telephone Company ("Shenandoah"), Clifton Forge Waynesboro Telephone Company ("NTELOS"), New Hope Telephone Company, North River Cooperative, Highland Telephone Cooperative, and Mountain Grove-Williamsville Telephone Company ("MGW").

⁶ The nine services required to be offered include: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. Also, the services must be advertised in appropriate media sources. See In Re: Federal-State Joint Board of Universal Service, Report and Order, CC Docket No. 96-45, ¶ 145 (May 8, 1997) ("Universal Service Report & Order").

are reported by Virginia Cellular to be conducting ongoing proceedings to ensure the solvency of the high-cost support fund.⁷ Presumably, VTIA views any public interest served by Virginia Cellular's ETC designation to depend upon whether there would be a consequent diminution of universal service funds.

Virginia Cellular cites the authority of § 214(e)(6) of the Act for this Commission to send Applicant to the FCC for ETC designation if this Commission declines to act on its Application.⁸ In its Reply Comments, Virginia Cellular reports that the "FCC has been actively processing ETC applications on behalf of states which have declined to exercise jurisdiction [over CMRS carriers]. Its internal processing time has been six months, and it has met that timeline in almost all of its proceedings [and] . . . most, if not all of the issues raised by the commenters have been previously addressed by the FCC in its prior orders involving applications for ETC status."⁹

The Commission finds that § 214(e)(6) of the Act is applicable to Virginia Cellular's Application as this Commission has not asserted jurisdiction over CMRS carriers and that the

⁷ Reply Comments at p. 5.

⁸ Pursuant to § 332(c)(3), 47 U.S.C. § 332(c)(3), state regulation of the entry of or the rates charged by any commercial mobile service or any private mobile service is preempted. The Commission has deregulated all Virginia radio common carriers and cellular mobile radio communications carriers. See Final Order issued October 23, 1995, Case No. PUC950062.

⁹ Reply Comments at p. 3.

Applicant should apply to the FCC for ETC designation.¹⁰ The Applicant points out that if Virginia Cellular is designated as an ETC carrier, then the Commission must redefine the service areas of NTELOS and Shenandoah, pursuant to 47 C.F.R. § 54.207(c).¹¹ The Applicant has indicated a willingness to propose a plan to redefine these companies' service areas and may submit such a plan with its application to the FCC for ETC designation.

If necessary, this Commission will participate with the FCC and Federal-State Joint Board in redefining the service areas of NTELOS and Shenandoah for "the purpose of determining universal service obligations and support mechanisms." (47 C.F.R.

§ 54.207(a))¹² Although the FCC will make the final determination on Virginia Cellular's requests, we need to leave this docket open in case there is additional action we must take with respect to defining the service areas of NTELOS and Shenandoah.¹³

¹⁰ The action is similar to that taken by the Commission in Case No. PUC010172 in its August 29, 2001, Order that required cooperatives to certify directly with the FCC.

¹¹ The Commission believes that the service area of MGW does not necessarily need to be redefined if Virginia Cellular is designated as an ETC in that territory. However, if the FCC determines otherwise, the Commission will consider additional action if necessary.

¹² Pursuant to 47 C.F.R. § 54.207(c), if the Applicant proposes to redefine these two companies' service areas, the FCC's procedures require the Commission's agreement on the definitions.

¹³ At this juncture, it is unclear whether the Commission will need to address the redefinitions once disaggregation plans are filed at the FCC pursuant to 47 C.F.R. § 54.315(a).

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that Virginia Cellular should request the FCC to grant the requested ETC designation, pursuant to 47 U.S.C. § 214(e)(6).

Accordingly, IT IS ORDERED THAT Case No. PUC010263 will remain open for further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all LECs certified in the Commonwealth of Virginia, as set out in Appendix A of this Order; David A. LaFuria, Esquire, Lukas Nace Gutierrez & Sachs, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; William F. Caton, Acting Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554; and the Commission's Office of General Counsel and Division of Communications.

Exhibit 3



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