

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Cellco Partnership d/b/a)	
Bell Atlantic Mobile)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2000

Released: December 26, 2000

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of Cellco Partnership d/b/a Bell Atlantic Mobile (Cellco) to be designated an eligible telecommunications carrier (ETC) in the state of Delaware pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Cellco has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we find that Cellco has demonstrated that it offers and advertises the services supported by the federal universal service support mechanism throughout its designated service area. We conclude that the designation of Cellco as an ETC will benefit consumers in Delaware by promoting universal service to those consumers.

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications

¹ *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, filed September 8, 1999 (Cellco Petition). In the *Twelfth Report and Order*, the Commission dismissed Cellco’s petition for designation as an ETC, in part, as it related to the state of Maryland. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) at paras. 129-30 (*Twelfth Report and Order*). See also *infra* para. 5.

² 47 U.S.C. § 214(e)(1).

carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”³ Section 214(e)(1) requires that a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁴

3. Pursuant to section 214(e)(2), state commissions have the primary responsibility for designating carriers as ETCs.⁵ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”⁶ Under section 214(e)(6), 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 all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).⁷ Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.⁸ On December 29, 1997, the Commission released a Public Notice establishing the procedures that carriers must use when seeking Commission

³ 47 U.S.C. § 254(e).

⁴ Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received --

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

See 47 U.S.C. § 214(e)(1).

⁵ 47 U.S.C. § 214(e)(2).

⁶ 47 U.S.C. § 214(e)(6). See *Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’Odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, CC Docket No. 96-45, 13 FCC Rcd 4547 (Com Car. Bur. 1998); *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, 13 FCC Rcd 22433 (Com. Car. Bur. 1998).

⁷ 47 U.S.C. § 214(e)(6).

⁸ *Id.* No rural telephone company currently provides service in Delaware.

designation as an ETC pursuant to section 214(e)(6).⁹

B. The Cellco Petition and *Twelfth Report and Order*

4. On September 8, 1999, Cellco filed with the Commission a petition pursuant to section 214(e)(6) seeking designation of eligibility to receive federal universal service support for service to be provided in Delaware.¹⁰ On November 16, 1999, the Common Carrier Bureau sought comment on Cellco's petition for designation as an ETC.¹¹ The Delaware Public Service Commission (Delaware Commission) filed comments confirming that it does not have jurisdiction under state law to designate commercial mobile radio service (CMRS) providers, such as Cellco, as ETCs.¹²

5. In the *Twelfth Report and Order*, the Commission concluded that only in those instances where a carrier provides the Commission with an "affirmative statement"¹³ from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation will the Commission consider section 214(e)(6) designation requests from carriers serving non-tribal lands.¹⁴ Applying this framework, the Commission concluded that Cellco is a

⁹ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (rel. Dec. 29, 1997) (*Section 214(e)(6) Public Notice*). In this Public Notice, the Commission delegated to the Chief of the Common Carrier Bureau the authority to designate carriers as ETCs pursuant to section 214(e)(6). The Commission instructed carriers seeking designation to, among other things, set forth the following information in a petition: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission;" (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" and, (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution." In addition, if the petitioner meets the definition of a "rural telephone company" pursuant to section 3(37) of the Act, the petitioner must identify its study area. If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service area for which it requests a designation for eligibility from the Commission.

¹⁰ See Cellco Petition. In addition, Cellco sought designation for service areas within Maryland.

¹¹ *Petition of Cellco Partnership D/B/A Bell Atlantic Mobile for Designation as an Eligible Telecommunications Carrier*, Public Notice, CC Docket No. 96-45, DA 99-2544 (rel. Nov. 16, 1999). The Maryland Public Service Commission (Maryland Commission) filed an *ex parte* letter requesting that the Commission dismiss Cellco's petition, as it related to Maryland, and direct Cellco to file its petition for ETC designation with the Maryland Commission. Letter from Susan Stevens Miller, Maryland Public Service Commission, to Magalie R. Salas, FCC, dated April 18, 2000 (Maryland Commission *ex parte*).

¹² Delaware Commission Comments at 2.

¹³ The Commission defined an "affirmative statement" as "any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier." *Twelfth Report and Order* at para. 113.

¹⁴ *Twelfth Report and Order* at para. 113.

common carrier not subject to the jurisdiction of the Delaware Commission.¹⁵

III. DISCUSSION

6. We find that Cellco has met the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the provision of service throughout the state of Delaware. We conclude that Cellco has demonstrated that it is offering and advertising the services supported by the federal universal service support mechanism throughout the designated service areas using its own facilities. Furthermore, we find that it is consistent with the public interest to designate Cellco as an ETC in Delaware. Pursuant to our authority under section 214(e)(6), we therefore designate Cellco as an ETC for the state of Delaware.

7. Offering the Services Designated for Support. We conclude that Cellco has demonstrated that it is offering the supported services throughout the designated service areas.¹⁶ As noted in its petition, Cellco currently provides CMRS within the state of Delaware.¹⁷ Cellco asserts that it has the ability to provide all of the supported services using its cellular service.¹⁸ No party disputes that Cellco has the capability to offer single-party service, voice-grade access to the public network, the functional equivalent to DTMF signaling, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.¹⁹ Similarly, no party disputes that Cellco complies with state law and Commission directives on providing access to emergency services.²⁰ In addition, Cellco currently offers varying amounts of local usage in its monthly service plans, and agrees to comply with any local usage requirements that the Commission may set in the future.²¹ Finally, Cellco indicates that it will make available its universal service offering over its existing cellular network infrastructure and spectrum. Cellco indicates that it currently provides service throughout its

¹⁵ Consistent with this framework, the Commission dismissed Cellco's request for designation as an ETC in Maryland. *Twelfth Report and Order* at para. 130.

¹⁶ See 47 U.S.C. § 214(e)(1)(A).

¹⁷ Cellco Petition at 5 (noting that Cellco's cellular geographic service areas in Delaware cover the entire state).

¹⁸ Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanism to include: (1) single-party service; (2) voice grade access to the public switched network; (3) local usage; (4) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator service; (7) access to interexchange services; (8) access to directory assistance; and, (9) toll limitation for qualifying low-income customers.

¹⁹ See 47 C.F.R. § 54.101(a).

²⁰ See 47 C.F.R. § 54.101(a)(5) (stating that access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems).

²¹ Cellco Petition at 9.

cellular service area, which includes the entire state of Delaware.²² Thus, we conclude that Cellco has demonstrated that it offers each of the supported services.²³

8. We reject the contention that Cellco lacks the “requisite quality and reliability” because it relies on a “handheld” cellular technology.²⁴ In the *Universal Service Order*, the Commission adopted the principle of competitive neutrality in the determination of eligibility to receive universal service funds.²⁵ In so doing, the Commission concluded that a policy of technological neutrality will foster competition by including providers, such as wireless providers, that may otherwise have been excluded from participation in the federal universal service mechanisms.²⁶ We therefore reject the suggestion that service offered by CMRS providers is ineligible for universal service support due to alleged technological limitations of mobile service. No credible evidence has been provided to support this contention.²⁷

9. We also reject US West’s contention that it is necessary to adopt eligibility criteria beyond those set forth in section 214(e) to prevent Cellco from attracting only the most profitable customers or providing substandard service.²⁸ As the Commission noted in the *Universal Service Order*, section 214(e) prevents eligible carriers from attracting only the most desirable customers

²² Cellco Petition at 8. Because Cellco is currently providing service throughout Delaware, we do not need to address US West’s (now Qwest) argument that Cellco must actually “provide” rather than merely “offer” the supported services prior to designation. See US West Comments at 4-8. In addition, we note that section 214(e)(1)(A) requires a common carrier designated as an ETC to “offer” the supported services throughout the designated service area. See 47 U.S.C. § 214(e)(1)(A).

²³ See, e.g., AT&T Comments at 3; CTIA Comments at 4.

²⁴ US West Comments at 4. See also US West Comments at 2 (“mobility inherent in a handheld cellular phone is an expensive enhancement that should not be supported by public funds.”).

²⁵ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8802, paras 48-49 (1997) (*Universal Service Order*) (“We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms”) *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000).

²⁶ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49.

²⁷ We note that several state commissions have designated wireless carriers as ETCs. See, e.g., *Minnesota Cellular Corporation’s Petition for Designation as an Eligible Telecommunications Carrier*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285 (Minn. PUC 1999); *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418*, Order, Docket No. 22289 (Texas PUC 2000).

²⁸ US West Comments at 12-15.

by limiting eligibility to “common carriers”²⁹ and by requiring eligible carriers to offer and advertise the supported services “throughout the service area.”³⁰ We also note that Delaware currently receives no federal high-cost universal service support.³¹ Therefore, designation as an ETC in Delaware will allow Cellco to receive support only for serving low-income consumers that qualify for the Lifeline or Link-Up support programs. Designating Cellco as an ETC merely increases the likelihood that qualified low-income subscribers have a choice of service providers. In addition, because support is provided to ETCs only to the extent that lines are acquired, we believe that the forces of competition will provide additional incentives to maintain affordable rates, particularly in efforts to acquire low-income subscribers.³²

10. We decline to adopt US West’s suggestion that we impose a “landline substitutability” requirement to protect consumers from the possibility that the incumbent carrier may relinquish its ETC designation upon designation of an additional ETC.³³ There is no basis in the record before us for finding that the incumbent carrier may relinquish its ETC designation or withdraw service altogether in the event that Cellco is designated as an ETC in Delaware. The incumbent carrier at issue in this case has not indicated any intention to do so.³⁴ In addition, we note that section 214(e)(1) requires Cellco, as a common carrier designated as an ETC, to offer the supported services throughout the designated service area. We also emphasize that a carrier’s ETC designation may be revoked if the carrier fails to comply with its statutory ETC eligibility criteria.

11. We also decline to adopt a requirement that Cellco must offer the supported

²⁹ The Communications Act requires common carriers to furnish “communications services upon reasonable request,” 47 U.S.C. § 201(a), and states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services. . . .” 47 U.S.C. § 202(a).

³⁰ See *Universal Service Order*, 12 FCC Rcd 8855-56, paras. 142-43.

³¹ See Delaware Commission Comments at 5. We note that Delaware does receive a small amount of Interstate Access Support.

³² In the *Universal Service Order*, the Commission concluded that a competitive ETC shall receive universal service support to the extent that it captures subscribers’ lines formerly served by an incumbent local exchange carrier receiving support or new customer lines in that incumbent carrier’s study area. *Universal Service Order*, 12 FCC Rcd at 8932, para. 287.

³³ US West Comments at 16-18 (contending that a competitive ETC must demonstrate that it can provide service throughout the designated service area equivalent to the incumbent carrier due to the possibility that the incumbent may relinquish its ETC designation).

³⁴ Even if the incumbent determined that it no longer desired to provide service as an ETC, section 214(e)(4) requires the ETC seeking to relinquish its ETC designation to give advance notice to the Commission. Prior to permitting the ETC to cease providing universal service in an area served by more than one ETC, section 214(e)(4) requires that the Commission “ensure that all customers served by the relinquished carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.” The Commission may grant a period, not to exceed one year, within which such purchase or construction shall be completed. See 47 U.S.C. § 214(e)(4).

services on an unbundled basis due to the possibility that more expensive services may be combined with the supported services in an effort to “cream skim” those consumers that can afford the more expensive services.³⁵ As explained above, ETC designation in Delaware will allow Cellco to receive support only for serving low-income consumers. We believe that it is unlikely that Cellco will be successful in obtaining low-income consumers if its service package is not affordable to those consumers.

12. Offer the Supported Service Using a Carrier’s Own Facilities. We conclude that Cellco has satisfied the requirement of section 214(e)(1)(A) that it offer the supported services using either “its own facilities or a combination of its own facilities and resale of another carrier’s services.” Specifically, Cellco states that it is a facilities-based common carrier that provides services through its own facilities, and intends to use its own facilities for its universal service offerings.”³⁶

13. Advertising the Supported Services. We conclude that Cellco has demonstrated that it satisfies the requirements of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution. Cellco commits to use advertising techniques designed to reach all of the residents in its service area.³⁷ In fact, Cellco states that it currently advertises the availability of its services and charges using radio, television, newspapers, and other media of general distribution, and it will use the same types of advertising to promote its universal service offering.³⁸ We have no reason to believe that it will not continue to do so in the future. Moreover, given that ETCs receive universal service support only to the extent that they obtain and serve customers, we believe that strong economic incentives exist, in addition to the statutory obligations, to encourage Cellco to advertise the universal service offering in Delaware. For these reasons, we conclude that Cellco has satisfactorily complied with this requirement.

14. Consistent with the Public Interest. For those areas served by non-rural telephone companies, such as the state of Delaware, we believe that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest.³⁹ The carrier need make no further showing to satisfy this requirement. We therefore disagree with US West that the public interest analysis requires an additional demonstration of affordability, service quality, or landline

³⁵ US West Comments at 13-15. We note that section 254(e) requires that a carrier receiving universal service support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which support is intended.” This statutory requirement ensures that universal service support is applied only to the provision of supported services. *See* 47 U.S.C. § 254(e).

³⁶ Cellco Petition at 12.

³⁷ Cellco Petition at 13.

³⁸ Cellco Petition at 12.

³⁹ *See* US West Comments at 10-12 (contending that the public interest is a relevant factor in both rural and non-rural service areas).

substitutability in areas served by non-rural carriers.⁴⁰ We note that an important goal of the Act is to open local telecommunications markets to competition.⁴¹ In requiring the Commission to designate, upon request and where the state commission lacks jurisdiction, more than one common carrier in areas served by non-rural carriers, we believe Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.⁴²

15. Designated Service Area. We designate Cellco as an ETC for a service area encompassing the entire state of Delaware. This designation is consistent with Cellco's request.⁴³ Cellco's cellular geographic service area covers the entire state and Cellco currently provides cellular service throughout Delaware. We find no reason to otherwise modify Cellco's designated service area.

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

16. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁴⁴ Cellco has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁴⁵ We find that Cellco has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Cellco Partnership

⁴⁰ See *supra* paras. 11-14.

⁴¹ According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designated to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . ." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

⁴² See 47 U.S.C. § 214(e)(6).

⁴³ Cellco Petition at 5.

⁴⁴ 47 C.F.R. § 1.2002(a); 21 U.S.C. § 862. Section 1.2002(b) provides that a party to the application shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁴⁵ See Cellco Petition – Certification at 2.

d/b/a Bell Atlantic Mobile IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for a service area in the state of Delaware, as discussed herein.

18. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Common Carrier Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau