

**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
)	
Farmers Cellular Telephone, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2003

Released: March 12, 2003

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of Farmers Cellular Telephone, Inc. (Farmers) to be designated as an eligible telecommunications carrier (ETC) for its requested service area in the state of Alabama pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ The area for which Farmers requests ETC designation is currently served by BellSouth, a non-rural telephone company. We conclude that Farmers, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Farmers has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Farmers has provided an affirmative statement that the Alabama Public Service Commission (Alabama Commission) lacks the jurisdiction to perform the designation for Farmers, and that the Federal Communications Commission (Commission) therefore has authority to perform the requested ETC designation under section 214(e)(6) of the Act.³

¹ Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier, filed September 6, 2002 (Farmers Petition). Farmers had filed a Petition for Designation as an Eligible Telecommunications Carrier on July 23, 2002, but withdrew the petition and filed an amended petition in its place on August 19, 2002, with an Errata to the Amended Petition filed August 26, 2002. Subsequently, Farmers withdrew the amended petition and filed the instant petition in its place on September 6, 2002. The instant petition requests that the filing date of the petition be effective September 6, 2002. *See also* 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(1).

³ 47 U.S.C. § 214(e)(6).

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁴ Pursuant to section 214(e)(1), 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.⁵

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁶ Section 214(e)(6), however, directs the Commission, upon request, to perform the ETC designation for “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁷ 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).⁸

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) an “affirmative statement” from the state commission or a court of competent jurisdiction that the petitioner is not subject to the state commission’s jurisdiction; (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 will provide the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services; (4) a description of how the petitioner advertises the availability of supported services and the charges therefor using media of general distribution; and (5) if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service areas for which it requests an ETC designation from the Commission.⁹

5. The *Twelfth Report and Order*, among other things, set forth how a carrier seeking

⁴ 47 U.S.C. § 254(e).

⁵ 47 U.S.C. § 214(e)(1).

⁶ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁷ 47 U.S.C. § 214(e)(6). See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002).

⁸ 47 U.S.C. § 214(e)(6).

⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997) (*Section 214(e)(6) Public Notice*). In this Public Notice, the Commission delegated authority to the Chief of the Common Carrier Bureau to designate carriers as ETCs pursuant to section 214(e)(6). See *Section 214(e)(6) Public Notice* at 22948. The Common Carrier Bureau now is known as the Wireline Competition Bureau.

ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁰ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.¹¹ The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”¹²

C. Farmers’ Petition

6. On September 6, 2002, Farmers filed with this Commission a petition pursuant to section 214(e)(6) seeking designation as an ETC for portions of its licensed service area in the state of Alabama.¹³ The requested service area is currently served by BellSouth Telecommunications (BellSouth), a non-rural telephone company.¹⁴ The Alabama Commission previously had issued a letter on January 15, 2002 indicating that it does not have authority to designate a CMRS carrier as an ETC.¹⁵ Accordingly, Farmers asks the Commission to exercise jurisdiction and designate Farmers as an ETC pursuant to section 214(e)(6).¹⁶ Farmers also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating Farmers as an ETC will serve the public interest.¹⁷

III. DISCUSSION

7. After careful review of the record before us, we find that Farmers has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission. Farmers has provided an affirmative statement from the Alabama Commission that the Alabama Commission lacks the authority to perform the designation. Accordingly, Farmers has demonstrated that we may consider Farmers’ petition under section 214(e)(6). We also conclude that Farmers has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC. Furthermore, we find that the designation of Farmers as an ETC in the area served by BellSouth, a non-rural telephone company, is consistent with the

¹⁰ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹¹ *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹² *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113.

¹³ See generally Farmers Petition. On September 16, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Farmers Petition. See *Wireline Competition Bureau Seeks Comment on Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama*, CC Docket No. 96-45, Public Notice, FCC Rcd 17178 (2002). The Cellular Telecommunications & Internet Association (CTIA) submitted comments in response to the Public Notice. See Comments of CTIA, CC Docket No. 96-45 (filed Sept. 26, 2002).

¹⁴ See Farmers Petition at 10. See also “Federal Universal Service Support Mechanism Fund Size Projections for First Quarter 2003,” available at <<http://www.universalservice.org/overview/filings>>, at Appendix HC1, filed Nov. 1, 2002.

¹⁵ Farmers Petition, Exhibit 1.

¹⁶ See Farmers Petition at 3-4 and Exhibits 1, 2.

¹⁷ See Farmers Petition at 3, 5-11.

public interest. Pursuant to our authority under section 214(e)(6), we therefore designate Farmers as an ETC for the requested service area in Alabama.

A. Commission Authority to Perform the ETC Designation

8. We find that Farmers has demonstrated that the Alabama Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission therefore has authority to consider Farmers' petition under section 214(e)(6) of the Act. Farmers states that it petitioned the Alabama Commission concerning the Alabama Commission's jurisdiction over CMRS carriers seeking ETC designation.¹⁸ In response, the Alabama Commission issued a statement concluding that it "has no authority to regulate, *in any respect*, cellular services, broadband personal communications services, and commercial mobile radio services in Alabama."¹⁹ The Alabama Commission advised Farmers to pursue its ETC designation request with the FCC as provided by 47 U.S.C. § 214(e)(6).²⁰ The Alabama Commission's decision is consistent with the Code of Alabama and a March 2000 declaratory ruling issued by the Alabama Commission.²¹

B. Offering and Advertising the Supported Services

9. Offering the Services Designated for Support. We find that Farmers has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. We therefore conclude that Farmers complies with the requirement of section 214(e)(1)(A) to "offer the services that are supported by Federal universal service support mechanisms under section 254(c)."²² As noted in its petition, Farmers is a CMRS carrier for the Alabama Rural Service Area 308B2, serving Dekalb and Cherokee counties, and parts of Jackson County.²³ Farmers states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules

¹⁸ See Farmers Petition at 4.

¹⁹ See Farmers Petition, Exhibit 1 (Alabama Public Service Commission Letter at 2, dated January 15, 2002 (emphasis in original)). See also Farmers Petition, Exhibit 2.

²⁰ See Farmers Petition, Exhibit 1.

²¹ Farmers Petition, Exhibit 2 (Alabama Public Service Commission, *BellSouth Mobility, Inc. Petition for Declaratory Ruling*, Order, Docket No. 26414 (Mar. 2, 2000) (Alabama Declaratory Ruling)). The Alabama Code definition of "cellular telecommunications services" includes all cellular services, broadband personal communications services and CMRS. Alabama Declaratory Ruling at 2. See also Ala. Code § 40-21-120(1)a (2002). The Alabama Code definition of "cellular telecommunications provider" includes all licensees of the Federal Communications Commission to provide cellular telecommunication services, broadband personal communications services, CMRS, and all resellers of such services. See Alabama Declaratory Ruling at 2. See also Ala. Code § 40-21-120(1)b (2002).

²² 47 U.S.C. § 214(e)(1)(A). The Commission has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a). A proceeding to reexamine the services within the definition of supported services is pending before this Commission. See *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 03-13 (February 25, 2003).

²³ Farmers Petition at 2.

throughout its cellular service area in Alabama.²⁴ Farmers states that it has the capability to offer, in accordance with section 54.101(a) of the Commission's rules, voice-grade access to the public switched network, local usage, the functional equivalent of DTMF signaling, single-party service, access to emergency service, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers.²⁵ Farmers indicates that, upon designation as an ETC, it will make available a universal service offering that includes all of the supported services.²⁶ In addition, although the Commission has not set a minimum local usage requirement, Farmers certifies that it currently offers several service options including varying amounts of local usage, as well as a service that includes unlimited local usage.²⁷ Finally, Farmers commits to provide service to any requesting customers within its designated service area.²⁸ We therefore conclude that Farmers complies with the requirement of section 214(e)(1)(A) to offer the services that are supported by the federal universal service support mechanisms under section 254(c).²⁹

10. Offering the Supported Services Using a Carrier's Own Facilities. We conclude that Farmers has demonstrated that it satisfies the requirement of section 214(e)(1)(A) to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.³⁰ Farmers states that it provides the supported services "using [its] existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network."³¹ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

11. Advertising the Supported Services. We conclude that Farmers has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor, using media of general distribution.³² Farmers certifies that it will advertise the availability of its universal service offerings, and the charges therefor, using media of general distribution.³³ Farmers states that it currently advertises its wireless services through various media, including television, radio, newspaper, and billboard advertising.³⁴ Farmers states that it will expand upon these media, as necessary, to ensure that customers within its designated service area are fully informed of its universal service offerings.³⁵ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(B). Moreover, because ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the

²⁴ Farmers Petition at 5.

²⁵ Farmers Petition at 5-9.

²⁶ Farmers Petition at 4-5.

²⁷ Farmers Petition at 6.

²⁸ Farmers Petition at 5.

²⁹ 47 U.S.C. §214(e)(1)(A).

³⁰ See Farmers Petition at 10.

³¹ Farmers Petition at 10.

³² See 47 U.S.C. § 214(e)(1)(B).

³³ See Farmers Petition at 10.

³⁴ See Farmers Petition at 10.

³⁵ See Farmers Petition at 10.

statutory obligation, to advertise the universal service offerings in the requested service area in Alabama.³⁶

C. Public Interest Analysis

12. We conclude that it is in the public interest to designate Farmers as an ETC in the requested non-rural service area that is served by BellSouth.³⁷ The statute requires that the Commission shall designate more than one ETC in areas served by non-rural carriers, consistent with the public interest.³⁸ As the Bureau has previously stated, for those areas served by non-rural telephone companies, the 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 Additionally, we note that no parties filed oppositions to the Farmers Petition. We therefore conclude that Farmers has demonstrated that its designation as an ETC is consistent with the public interest, as required by section 214(e)(6).

D. Designated Service Area

13. Consistent with Farmers' request, we designate Farmers as an ETC for the requested service area in Alabama.⁴⁰ This service area includes part of the study area of the non-rural telephone company BellSouth, as indicated in Appendix A.⁴¹ We note that Farmers is not requesting ETC designation throughout its entire licensed service area. Farmers only requests ETC designation for the parts of its licensed service area that are in the study area of BellSouth, a non-rural telephone company.⁴²

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

14. 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.⁴³ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁴⁴ Farmers has provided a certification

³⁶ See Farmers Petition at 10 (asserting that Farmers will have strong economic incentives to advertise).

³⁷ 47 U.S.C. § 214(e)(6).

³⁸ 47 U.S.C. § 214(e)(6).

³⁹ See *Cellco Order*, 16 FCC Rcd at 45, para.14.

⁴⁰ See Farmers Petition at 1-2, Exhibit 4. Under section 214(e)(5) of the Act, "service area" connotes a geographic area established by a state commission, or the Commission under section 214(e)(6), for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

⁴¹ See Farmers Petition at Exhibit IV. We note that, when designating a service area served by a non-rural carrier, the Commission may designate a service area that is smaller than the contours of the incumbent carrier's study area. See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8879-90 (1997) (*Universal Service Order*) (subseq. history omitted).

⁴² Farmers Petition, Exhibit IV.

⁴³ See 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

⁴⁴ Section 1.2002(b) provides that a certification pursuant to that section 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

consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁴⁵ We find that Farmers 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

15. 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, Farmers Cellular Telephone, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for the designated service area in Alabama, as discussed herein.

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

(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 Farmers Petition at 11 and Exhibit 3. See also Supplement to Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier, filed March 4, 2003.

APPENDIX A

ALABAMA NON-RURAL WIRE CENTERS FOR INCLUSION IN
THE ETC SERVICE AREA OF FARMERS CELLULAR TELEPHONE, INC.

BellSouth

Bridgeport
Fort Payne
Piedmont
Stevenson