

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

In the Matter of
Federal-State Joint Board on
Universal Service
RCC Minnesota, Inc., and RCC Atlantic, Inc.
Petition for Designation as an Eligible
Telecommunications Carrier in the
State of New Hampshire
CC Docket No. 96-45

ORDER

Adopted: October 7, 2005

Released: October 7, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of RCC Minnesota, Inc. and RCC Atlantic, Inc. (collectively, RCC) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service areas in New Hampshire, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). We conclude that RCC, a commercial mobile radio service (CMRS) provider, has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated as an ETC.

2. RCC requests ETC designation for its rural and non-rural service areas in New Hampshire as discussed herein. RCC also requests that the Federal Communications Commission (Commission) redefine Granite State Telephone's (Granite) study area in New Hampshire. Specifically, RCC requests that each of Granite's wire centers listed in exhibit D of its petition be classified as a

1 See RCC Minnesota, Inc. and RCC Atlantic, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, filed May 14, 2004 (RCC Petition). RCC's petition was dated March 12, 2004, but was not received by Office of the Secretary until May 14, 2004. On August 26, 2005, RCC supplemented its filing. See RCC Minnesota, Inc. and RCC Atlantic, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire Supplemental Filing, filed Aug. 26, 2005 (RCC Supplement). Later that day, RCC filed a second document. This filing includes a revised Exhibit A to be used in place of Exhibit A in the RCC Supplement. See RCC Minnesota, Inc. and RCC Atlantic, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire Second Supplemental Filing, filed Aug. 26, 2005 (RCC Supplemental Map). RCC also filed a revised list of non-rural wire centers to correct certain wire center names. The revised list does not alter the ETC service area boundary. See RCC Minnesota, Inc. and RCC Atlantic, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire Supplemental Filing, filed Sept. 8, 2005 (RCC Exhibit B (revised)).

2 47 U.S.C. § 214(e)(1).

3 RCC Petition at Exhibits B (revised), C, and D; RCC Supplement at Exhibits C (revised) and D (revised).

4 RCC Petition at 22-25; RCC Supplement at 1-2 and Exhibit D (revised).

separate service area at the wire center level.⁵ We propose to redefine Granite's service area in New Hampshire, subject to agreement by the New Hampshire Public Utilities Commission (New Hampshire PUC). If the New Hampshire PUC does not agree to the proposal to redefine the affected service area, we will reexamine our decision with regard to redefining this service area.

II. BACKGROUND

A. The Act

3. 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."⁶ 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.⁷

4. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.⁸ 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."⁹ Under section 214(e)(6), 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, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹¹ The Wireline Competition Bureau (Bureau) has delegated authority to perform ETC designations.¹²

B. Commission Requirements for ETC Designation

5. An ETC petition must contain the following: (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 or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer 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 "advertise[s] the availability of

⁵ RCC Petition at 22-25; Exhibit D; RCC Supplement at 1-2, Exhibit D (revised).

⁶ 47 U.S.C. § 254(e).

⁷ 47 U.S.C. § 214(e)(1).

⁸ 47 U.S.C. § 214(e)(2). *See also Promoting Deployment and Subscriberhip in Unserved 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, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁹ 47 U.S.C. § 214(e)(6). *See, e.g., Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

¹⁰ 47 U.S.C. § 214(e)(6).

¹¹ *Id.*

¹² *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, CC Docket No. 96-45, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

[supported] services and the charges therefor using media of general distribution;” and (5) 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, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹³

6. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁴ A carrier 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.¹⁵ 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.”¹⁶

7. On January 22, 2004, the Commission released the *Virginia Cellular Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.¹⁷ In that Order, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular.¹⁸ The Commission stated that the framework in the *Virginia Cellular Order* would apply to all ETC designations for rural areas, pending further action by the Commission.¹⁹

8. On April 12, 2004, the Commission released the *Highland Cellular Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.²⁰ In the *Highland Cellular Order*, the Commission concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.²¹ In light of the new ETC designation framework established in the *Virginia Cellular Order*, the Bureau released a public notice inviting all parties to update the record pertaining to pending ETC petitions.²²

¹³ See Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948-49 (1997); 47 U.S.C. § 3(37); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005), (*ETC Designation Order*); pet. for review filed, *Virginia Cellular LLC v. FCC*, No. 05-1807 (4th Cir.). The *ETC Designation Order* and rules became effective on June 24, 2005. See 70 Fed. Reg. 29960 (May 25, 2005) (All rules effective except as noted in the Federal Register Notice). See also *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon. pending.

¹⁴ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁵ *Id.* at 12255, para. 93.

¹⁶ *Id.*

¹⁷ See *Virginia Cellular Order*, 19 FCC Rcd at 1564, para. 1.

¹⁸ See *id.* at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

¹⁹ See *id.* at 1565, para. 4.

²⁰ See *Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

²¹ See *id.* at 6438, para. 33.

²² See *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket 96-45, 19 FCC Rcd 6409 (Wireline Comp. Bur. 2004) (*Bureau*

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9. On March 17, 2005, the Commission released the *ETC Designation Order*, generally affirming the holdings of the *Virginia Cellular Order* and *Highland Cellular Order* and adopting additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.²³ All carriers seeking ETC designation from the Commission must satisfy these requirements. ETCs designated by the Commission prior to the *ETC Designation Order* must make such showings when they submit their annual certification filing on October 1, 2006.²⁴ Carriers that had ETC petitions pending before the *ETC Designation Order* took effect, such as RCC, will also be required to make such showings, should they be designated as ETCs, when they submit their annual certification filing no later than October 1, 2006.²⁵

C. RCC's Petition

10. Pursuant to section 214(e)(6) of the Act, RCC filed with this Commission a petition seeking designation as an ETC in study areas served by rural and non-rural incumbent local exchange carriers (LECs) in the state of New Hampshire.²⁶ In its petition, RCC also requests that Granite's study area be redefined so that each wire center is a separate service area.²⁷ On May 21, 2004, the Bureau released a public notice inviting parties to comment on RCC's Petition.²⁸ Several parties filed comments addressing RCC's Petition.²⁹ In addition, Verizon and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) filed comments generally addressing the six ETC petitions, including RCC's Petition, listed on the *May 21 Bureau Public Notice*.³⁰

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Public Notice). Applicants were allowed to supplement their petitions by May 14, 2004. Comments were due on May 28, 2004 and reply comments were due on June 4, 2004.

²³ See *ETC Designation Order*, 20 FCC Rcd 6371.

²⁴ See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20.

²⁵ See *ETC Designation Order*, 20 FCC Rcd at 6418-6421, Appendix A – Final Rules, 47 C.F.R. § 54.202(b); 70 Fed. Reg. 29960 (May 25, 2005).

²⁶ See RCC Petition; RCC Supplement.

²⁷ RCC Petition at 22-25 and Supplement at Exhibit D (revised).

²⁸ See *Parties are Invited to Comment on Petition for Eligible Telecommunications Carrier Designation*, Public Notice, CC Docket No. 96-45, 19 FCC Rcd 9060 (Wireline Comp. Bur. 2004) (*May 21 Bureau Public Notice*). Comments were due on June 21, 2004 and reply comments were due on July 6, 2004.

²⁹ See CTIA Comments, filed June 21, 2004 (CTIA Comments); New Hampshire Rural Carriers Group Comments, filed June 21, 2004 (New Hampshire RCG Comments); TDS Telecommunications, Corp. Comments, filed June 21, 2004 (TDS Comments); RCC Minnesota, Inc. and RCC Atlantic, Inc. Reply Comments, filed July 6, 2004 (RCC Reply Comments).

³⁰ See Verizon Comments, filed June 21, 2004 (Verizon Comments); Organization for the Promotion and Advancement of Small Telecommunications Companies Reply Comments, filed July 6, 2004 (OPASTCO Reply Comments). The Bureau addressed issues raised in Verizon's comments in response to similar comments filed by Verizon in the *ETC Designation Order* and the *NTELOS Order*. See *ETC Designation Order*, 20 FCC Rcd at 6395-96, para. 54; *Virginia PSC Alliance, L.C. and Richmond 20 MHz LLC d/b/a NTELOS*, Order, CC Docket No. 96045, DA 05-1663, paras. 9, 17-18 (Wireline Comp. Bur. Rel. June 14, 2005) (*NTELOS Order*). Several other commenters contend that the Commission should not act on pending ETC petitions until the Commission addresses issues raised in the ETC designation proceeding. See OPASTCO Reply Comments at 1-4; New Hampshire RCG Comments at 1-5; Verizon Comments at 2-7; TDS Comments at 2-7. However, as discussed in the *NTELOS Order*, the Bureau declined to delay ruling on pending ETC petitions. See *NTELOS Order* at para. 17. Similarly, the Bureau has already addressed commenters' concerns that additional competitive ETCs could have a significant impact on the access plan charges established by the *CALLS Order* and determined that the *CALLS* plan is functioning as contemplated. *NTELOS Order* at para. 18. See Verizon Comments at 2-7. See *Access Charge*

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III. DISCUSSION

11. We find that RCC has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC for portions of its licensed service area described herein. We therefore designate RCC as an ETC for the parts of its licensed service area in rural and non-rural service areas of New Hampshire as set forth below. We note, however, that RCC is required to make the additional showings set forth in the *ETC Designation Order* when it submits its annual certification filing on October 1, 2006.³¹ In areas where RCC's proposed service area does not cover the entire study area of a rural telephone company, RCC's ETC designation shall be subject to the New Hampshire PUC's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, RCC's ETC designation is effective immediately.

A. Commission Authority to Perform the ETC Designation

12. We find that RCC has demonstrated that the Commission has authority to consider its petition under section 214(e)(6) of the Act.³² RCC's Petition includes an affirmative statement from the New Hampshire PUC that designation as an ETC should be sought from the Commission.³³

B. Offering and Advertising the Supported Services

13. Offering the Services Designated for Support. RCC has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism.³⁴ RCC is authorized to provide CMRS service throughout the majority of the state of New Hampshire.³⁵ RCC certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission's rules.³⁶ RCC has also certified that, in compliance with rule section 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.³⁷ Specifically, RCC will advertise the availability of Lifeline and Link-Up benefits throughout its service area by advertising and reaching out to community health, welfare, and employment offices to provide

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Reform, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*) (*subsequent history omitted*).

³¹ See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20.

³² 47 C.F.R. § 214(e)(6).

³³ RCC Petition at 3-4 and Exhibit H at 13-14 (citing a December 5, 2004 order by the New PUC stating that it does not have jurisdiction to make ETC designations for cellular providers.).

³⁴ RCC Petition at 4-7; CTIA Comments at 3-4.

³⁵ *Id.* at 2-3. The New Hampshire RCG contends that RCC is not providing required E911 services in New Hampshire. New Hampshire RCG Comments at 5-8. RCC, however, states that it has deployed Phase I and Phase II E-911 in every area of New Hampshire in which it received a request from a public safety answering point. See RCC Reply Comments at 3-4.

³⁶ *Id.* at 4-5 and Exhibit E (Declaration of Elizabeth L. Kohler, Vice President, Legal Services for Rural Cellular Corporation, the parent company of affiliates RCC Minnesota, Inc., and RCC Atlantic, Inc.)

³⁷ *Id.* at 7; 47 C.F.R. § 54.405. ETCs must comply with state requirements in states that have Lifeline programs. See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8320 at para. 29 (2003).

information to those people most likely to qualify for Lifeline and Link-Up benefits.³⁸

14. Furthermore, RCC has committed to comply with the CTIA Consumer Code for Wireless Service.³⁹ RCC also states that it will commit to the conditions outlined in the *Virginia Cellular Order*.⁴⁰ These conditions include, but are not limited to: (1) annual reporting of progress towards build-out plans, unfulfilled service requests, and complaints per 1,000 handsets; and (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage.⁴¹

15. Given the importance of public safety, we condition this ETC designation on RCC's compliance with the E911 requirements. To demonstrate compliance with this condition, RCC must obtain a certification from each Safety Answering Point (PSAP) where it provides service confirming that RCC provides its customers with access to basic and E911 service. RCC must furnish copies of these certifications to the Commission upon request.

16. Offering the Supported Services Using a Carrier's Own Facilities. RCC has demonstrated that it satisfies 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.⁴² RCC states that it will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to service its existing CMRS customers.⁴³

17. Advertising Supported Services. RCC has demonstrated that it satisfies the requirements of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."⁴⁴ Specifically, RCC states that its methods of advertising may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising.⁴⁵ As discussed above, RCC also states that it will advertise the availability and terms and conditions of Lifeline and Link-Up programs targeting eligible consumers in its service area.⁴⁶

C. Public Interest Analysis

18. As explained below, we conclude that it is consistent with the public interest, convenience, and necessity to designate RCC as an ETC throughout its licensed rural and non-rural service areas in the

³⁸ RCC Petition at 7.

³⁹ RCC Petition at 21-22

⁴⁰ *Id.*

⁴¹ *Id. citing Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46. Pursuant to the *ETC Designation Order*, the first report would be filed with the Commission on October 1, 2006, and thereafter annually on October 1 of each year. See *ETC Designation Order*, 20 FCC Rcd at 6401-6403; 47 C.F.R. § 52.209(b). See also RCC Reply Comment at 4-8. Commenters contend that RCC's build-out plan does not meet the standards established in the *Virginia Cellular Order*. See New Hampshire RCG Comments at 11; TDS Comments at 8. RCC, however, has committed to following the conditions outlined in the *Virginia Cellular Order*. See RCC Petition at 21-22; RCC Reply Comments at 4-8.

⁴² 47 C.F.R. § 214(e)(1)(A).

⁴³ RCC Petition at 7.

⁴⁴ 47 C.F.R. § 214(e)(1)(B).

⁴⁵ RCC Petition at 7.

⁴⁶ RCC Petition at 7. See also para. 13 *supra*.

state of New Hampshire as specified herein.⁴⁷ In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.⁴⁸ We conclude that RCC has satisfied the burden of proof in establishing that its universal service offering in New Hampshire will provide benefits to rural and non-rural consumers.

19. Non-Rural Study Areas. We conclude it that it is consistent with the public interest, convenience, and necessity to designate RCC as an ETC in New Hampshire for the portion of its requested service area that is served by the non-rural telephone company, Verizon New England, Inc. (Verizon).⁴⁹ In the *Virginia Cellular Order* and the *Highland Cellular Order*, the Commission determined that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act does not necessarily satisfy the public interest in every instance.⁵⁰ We conclude that RCC's public interest showing is sufficient because of the detailed commitments it has made to ensure that it will provide high quality service throughout the proposed rural and non-rural service areas, including its commitments that it will comply with the conditions outlined in the *Virginia Cellular Order*⁵¹ and that it will use high-cost support to construct new facilities and improve existing facilities in New Hampshire.⁵² These commitments are the same or similar to those deemed sufficient for carriers seeking ETC designation in areas served by rural carriers. The public interest standard for designating an ETC in an area served by a rural carrier is at least as stringent as the standard for designating an ETC in an area served by a non-rural carrier.⁵³

20. Rural Study Areas. We conclude that it is consistent with the public interest, convenience, and necessity to designate RCC as an ETC for the portions of its requested service area that is served by rural telephone companies, as described herein.⁵⁴ In considering whether designation of RCC as an ETC in these areas will serve the public interest, we consider whether the benefits of an additional ETC in the wire centers for which RCC seeks designation outweigh any potential harms. Specifically, we weigh the benefits of increased competitive choice, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame, and the impact of the ETC designation on the universal service fund.⁵⁵

⁴⁷ 47 U.S.C. § 214(e)(6). See Appendices A, B, attached (listing wire centers).

⁴⁸ See *Virginia Cellular Order*, 19 FCC Rcd at 1574-75, para. 26; *Highland Cellular Order*, 19 FCC Rcd at 6431, para. 20.

⁴⁹ 47 U.S.C. § 214(e)(6). See Appendix B, attached (listing wire centers).

⁵⁰ See *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21.

⁵¹ RCC Petition at 21-22; *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46.

⁵² RCC Petition at 12, 21.

⁵³ Section 241(e)(6) of the Act provides that, consistent with the public interest, convenience and necessity, the Commission *may* designate more than one carrier as an ETC in an area served by a rural telephone company and *shall* do so in the case of all other areas. See 47 U.S.C § 241(e)(6).

⁵⁴ See RCC Petition at 8-22; RCC Supplement at Exhibit C (revised); Appendix B, attached (listing wire centers).

⁵⁵ See, e.g., *Highland Cellular Order*, 19 FCC Rcd at 6432-35, paras. 22-28; *Virginia Cellular Order*, 19 FCC Rcd at 1575-79, para. 28-34. Although we are concerned about growth of the fund, and ensuring that the fund is sustainable, there is no evidence that designating RCC as an ETC will have a dramatic impact on the fund such that it would justify deviating from prior decisions and practices in this instance. See USAC Federal Universal Support Mechanism, Fund Size Projection for the Fourth Quarter, 2005 (Aug. 2, 2005),

21. We find that RCC's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. Also, the mobility of RCC's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. The availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.⁵⁶ We also find that the commitments RCC has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas, including its plans to bring new and/or improved wireless services to the communities in or around Littleton, Plymouth, Lyme, and Rollinsford, will provide benefits to customers in New Hampshire.⁵⁷ In addition, RCC will comply with CTIA's Consumer Code for Wireless Service.⁵⁸ RCC also agrees to report to the Commission annually on the number of consumer complaints per 1,000 mobile handsets.⁵⁹ RCC will also annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year.⁶⁰

22. We conclude that the designation of RCC as an ETC in the study areas served by the rural telephone companies does not raise concerns about creamskimming. Rural creamskimming occurs when competitors seek to serve only the low cost, high revenue customers in a rural telephone company's study area.⁶¹ RCC, however, requests ETC designation in all but one rural service area in New Hampshire.⁶² Thus, RCC will not be serving only low-cost areas to the exclusion of high cost areas.⁶³ Because RCC seeks to serve the vast majority of the state, designation of RCC as an ETC in New Hampshire does not create creamskimming concerns. Thus, we find that designation of RCC as an ETC in New Hampshire is in the public interest.⁶⁴

D. Designated Service Areas

23. We designate RCC as an ETC in the state of New Hampshire in the requested areas served by the non-rural telephone company Verizon, as listed in Appendix A. We designate RCC as an ETC in the State of New Hampshire for the requested areas served by the rural telephone companies, as listed in Appendix B. Subject to the New Hampshire PUC's agreement on redefining the service areas served by the rural telephone company Granite we also designate RCC as an ETC for the wire centers in Appendix C.

⁵⁶ See *Virginia Cellular Order*, 19 FCC Rcd at 1576, para. 29; RCC Petition at 13-14; CTIA Comments at 5.

⁵⁷ RCC Petition at 12.

⁵⁸ RCC Petition at 21-22.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-180, para. 172 (1996) ("*1996 Recommended Decision*").

⁶² RCC Petition at 18.

⁶³ CTIA Comments at 6.

⁶⁴ See *Public Service Cellular, Inc.*, CC Docket No. 96-45, Order, 20 FCC Rcd 4258, 5864, para. 28 (Wireline Comp. Bur. 2005) (*PSC Order*); *Advantage Cellular Systems, Inc.*, CC Docket No. 96-45, Order, 19 FCC Rcd 20985, 20994, para. 22 (Wireline Comp. Bur. 2004) (*Advantage Cellular Order*).

E. Redefining Rural Company Service Areas

24. In order to designate RCC as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service area of the rural telephone company in accordance with section 214(e)(5) of the Act.⁶⁵ Under section 214(e)(5), “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”⁶⁶ Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.⁶⁷ In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Federal-State Joint Board on Universal Service (Joint Board).⁶⁸ When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for creamskimming is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area; (2) the Act, in many respects, places rural telephone companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than the study area level.⁶⁹

25. In this case, however, we find that redefining Granite’s service area as proposed will not impose administrative burdens on the rural LEC because it will not require it to determine its costs on any basis other than the study area level.⁷⁰ Moreover, as discussed above, we conclude that redefining Granite’s service area at the wire center level should not result in opportunities for creamskimming.⁷¹ RCC is not picking and choosing which Granite exchanges it will serve. Rather, RCC will be serving all of Granite’s wire centers in RCC’s licensed study area.⁷² We also note that the redefinition of this service area, and designation of RCC as an ETC, will allow RCC to provide services to the least densely populated areas at issue and thus RCC is unlikely to compete with the incumbent LEC only in the lowest cost areas.⁷³ Finally, we find no evidence that the proposed redefinition will harm the incumbent carrier’s service area because redefining Granite’s service area will not change the amount of universal service support that is available to the incumbents.⁷⁴ Thus, consistent with prior rural service area redefinitions and with the recommendations of the Joint Board, we redefine each wire center as requested by RCC as a

⁶⁵ 47 U.S.C. § 214(e)(5).

⁶⁶ *Id.*

⁶⁷ 47 C.F.R. § 54.207(d)(1).

⁶⁸ *Id.*

⁶⁹ See *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

⁷⁰ See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 44.

⁷¹ See *Virginia Cellular Order*, 19 FCC Rcd at 1582-83, para. 42. We note that any future competitive ETC designation for Granite’s redefined service would continue to require a finding that such designation is in the public interest, including an analysis of whether such designation would result in creamskimming. See para 21, *supra*.

⁷² RCC Petition at 23.

⁷³ RCC Petition at 24-25 and Exhibit I. RCC serves the three least populous of Granite’s four rural wire centers.

⁷⁴ See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 43.

separate service area.⁷⁵

26. Our decision to redefine the Granite's service area is subject to the review and final agreement of the New Hampshire PUC in accordance with applicable requirements under section 54.207 of our rules. Accordingly, we submit our redefinition proposal to the New Hampshire PUC and request that it examine such proposal based on its unique familiarity with the rural areas in question. Upon the effective date of the agreement of the New Hampshire PUC with our redefinition of Granite's service area, our designation of RCC as an ETC in the areas served by Granite, as set forth herein, shall also take effect. If, after its review, the New Hampshire PUC determines that it does not agree with the redefinition proposal herein, we will reexamine RCC's Petition with regard to redefining new service areas of Granite.

F. Regulatory Oversight

27. We note that RCC is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under section 54.313 of the Commission's rules to certify annually that it is in compliance with this requirement.⁷⁶ RCC has certified to the Commission that, consistent with section 54.313 of the Commission's rules, all federal high-cost support will be "used for the provision, maintenance and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e)" of the Act in the area for which RCC is designated as an ETC.⁷⁷

28. Separate and in addition to its annual certification filing under rule section 54.313, RCC has committed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year.⁷⁸ We require RCC to submit these additional data to the Commission and the Universal Service Administrative Company (USAC) on October 1 of each year, beginning October 1, 2006.⁷⁹ We find that reliance on RCC's commitments is reasonable and is consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.⁸⁰ We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that RCC satisfies its ongoing obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

29. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for

⁷⁵ See *Federal State Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532, 23547, para. 37 (2002). See also RCC Petition at 22-25; RCC Supplement at 1-2 and Exhibit D (revised). The New Hampshire RCG contends that in its premature for RCC to seek redefinition of Granite's service area because it does not yet serve that area. See New Hampshire RCG Comments at 14-15. RCC, however, is properly seeking redefinition before entering Granite's service area.

⁷⁶ 47 C.F.R. § 54.313.

⁷⁷ RCC Petition at 10 and Exhibit F.

⁷⁸ See RCC Petition at 21-22.

⁷⁹ RCC's initial submission concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from the date ETC designation is granted through June 30, 2006. Future submissions concerning consumer complaints and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

⁸⁰ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

the provision, maintenance, and upgrading of facilities and services” in the areas where it is designated as an ETC.⁸¹ RCC will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if RCC fails to fulfill the requirements of the statute, the Commission’s rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁸² The Commission also may assess forfeitures for violations of Commission rules and orders.⁸³

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

30. 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.⁸⁴ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission’s rules.⁸⁵ RCC has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁸⁶ We find that RCC’s certification satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission’s rules.⁸⁷

V. ORDERING CLAUSES

31. 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, RCC Minnesota, Inc. and RCC Atlantic, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for portions if its licensed service are in the state of New Hampshire, to the extent described herein.

32. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. § 214(e)(5), and sections 54.207(d) and (e) of the Commission’s rules, 47 C.F.R. §§ 54.207(d) and (e), the request of RCC Minnesota, Inc. and RCC Atlantic, Inc. to redefine the service area of Granite State Telephone, Inc. IS GRANTED to the extent described herein and SUBJECT TO the agreement of the New Hampshire Public Utilities Commission with the Commission’s redefinition of the service area.

33. IT IS FURTHER ORDERED that RCC Minnesota, Inc. and RCC Atlantic, Inc. will submit additional information in support of its ETC status, consistent with the *ETC Designation Order*, with its annual certification filing on October 1, 2006.

34. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted by the

⁸¹ 47 U.S.C. §§ 220, 403; 47 C.F.R. § 54.313.

⁸² See *Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. See also 47 U.S.C. § 254(e).

⁸³ See 47 U.S.C. § 503(b).

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

⁸⁵ See *ETC Procedures PN*, 12 FCC Rcd at 22949. 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).

⁸⁶ See RCC Petition at 25 and Exhibit G.

⁸⁷ 47 C.F.R. §§ 1.2001-2003.

Wireline Competition Bureau to the New Hampshire Public Utilities Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

Appendix A

Non-Rural Wire Centers for Inclusion in RCC's New Hampshire ETC Service Area

Service Area	Wire Center Name	Wire Center Code
Verizon New England, Inc.	Alstead	ALSTNHLI
Verizon New England, Inc.	Ashland	ASLDNHHI
Verizon New England, Inc.	Barrington (partial)	BNTONHPR
Verizon New England, Inc.	Bartlett	BRTLNHGE
Verizon New England, Inc.	Bedford	BDFRNHAM
Verizon New England, Inc.	Belmont	BLMTNHMA
Verizon New England, Inc.	Berlin	BRLNNHHE
Verizon New England, Inc.	Bethlehem	BHLHNSCR
Verizon New England, Inc.	Berwick (partial)	SMRSNHHI
Verizon New England, Inc.	Bristol	BRSTNHSP
Verizon New England, Inc.	Campton	CMTNNHOW
Verizon New England, Inc.	Campton	WVYNNHMR
Verizon New England, Inc.	Canaan	CANNNHYA
Verizon New England, Inc.	Candia (partial)	CANDNHDE
Verizon New England, Inc.	Canterbury	CNTRNHSH
Verizon New England, Inc.	Center Harbor	CNHRNHPL
Verizon New England, Inc.	Charleston	CHTWNHBR
Verizon New England, Inc.	Claremont (partial)	CLMTNHBR
Verizon New England, Inc.	Concord	CNCRNHSSO
Verizon New England, Inc.	Conway	CNWNHNYA
Verizon New England, Inc.	Center Ossipee	CNOSNHFO
Verizon New England, Inc.	Center Sandwich	MLBONHNYA
Verizon New England, Inc.	Center Sandwich	CNSWNHSL
Verizon New England, Inc.	Danbury	DNBRNHDB
Verizon New England, Inc.	Dover/Eliot	DOVRNHHTH
Verizon New England, Inc.	Dublin	DBLNNHMO
Verizon New England, Inc.	Durham	DRHMNHMC
Verizon New England, Inc.	Enfield	ENFDNHNM

Verizon New England, Inc.	Epping (partial)	EPNGNHMA
Verizon New England, Inc.	Epsom	EPSMNHBH
Verizon New England, Inc.	Farmington	FRTNNHMG
Verizon New England, Inc.	Fitzwilliam	FTZWNHUT
Verizon New England, Inc.	Franconia	FRNCNHWH
Verizon New England, Inc.	Franklin	FKLNNHFR
Verizon New England, Inc.	Glendale	GLDLNHAB
Verizon New England, Inc.	Goffstown	GFTWNHWH
Verizon New England, Inc.	Gorham (partial)	GRHMNHMA
Verizon New England, Inc.	Greenfield	GNFDNHMA
Verizon New England, Inc.	Greenville	GNVLNHAD
Verizon New England, Inc.	Groveton (partial)	GVTNNHST
Verizon New England, Inc.	Hancock	HNCCNHSC
Verizon New England, Inc.	Hanover (partial)	HNVRNHSC
Verizon New England, Inc.	Harrisville	HRVLNHMA
Verizon New England, Inc.	Hinsdale	HNDLNHMA
Verizon New England, Inc.	Jackson	JCSNNHTH
Verizon New England, Inc.	Jaffrey	JFRYNHRI
Verizon New England, Inc.	Jefferson	JFSNNHYA
Verizon New England, Inc.	Keene	KEENNHWA
Verizon New England, Inc.	Kittery (partial)	PTMONHIS
Verizon New England, Inc.	Laconia	LACNNHNM
Verizon New England, Inc.	Lancaster	LNCSNHHI
Verizon New England, Inc.	Lebanon	LBNNNHBA
Verizon New England, Inc.	Lemington	CLBKNHMA
Verizon New England, Inc.	Lisbon	LSBNNHMA
Verizon New England, Inc.	Littleton	LTTNNHPL
Verizon New England, Inc.	Lyme (partial)	LYMENHYA
Verizon New England, Inc.	Madison	MDSNNHYA
Verizon New England, Inc.	Manchester (partial)	MNCHNHCO
Verizon New England, Inc.	Marlborough	MRBONHYA

Verizon New England, Inc.	Marlow	MRLWNHYA
Verizon New England, Inc.	Meredith	MRDTNHWA
Verizon New England, Inc.	Merrimack	MRMCNHYA
Verizon New England, Inc.	Milan (partial)	MILNNHPL
Verizon New England, Inc.	Milford	MLFRNHHSO
Verizon New England, Inc.	Milton Mall	MTMLNHWE
Verizon New England, Inc.	Barnet (partial)	BARNVTCH
Verizon New England, Inc.	Nashua	NASHNHGR
Verizon New England, Inc.	Nashua	NASHNHWP
Verizon New England, Inc.	New Boston	NBTNNHHP
Verizon New England, Inc.	New Market (partial)	NWMRNHGE
Verizon New England, Inc.	Newport	NWPTNHMA
Verizon New England, Inc.	North Conway	NCWYNHKE
Verizon New England, Inc.	North Haverhill	NHHLNHDL
Verizon New England, Inc.	North Stratford (partial)	NSFRNHMA
Verizon New England, Inc.	Bellows Falls (partial)	BLFLVTHE
Verizon New England, Inc.	North Woodstock	NWDSNHMA
Verizon New England, Inc.	Fairlee (partial)	FARLVTML
Verizon New England, Inc.	Pelham	PLHMNHBR
Verizon New England, Inc.	Penacook	PNCKNHCH
Verizon New England, Inc.	Peterborough	PTRBNHCO
Verizon New England, Inc.	Bradford (partial)	BRFRVTPG
Verizon New England, Inc.	Pike	PIKENHPI
Verizon New England, Inc.	Pittsburg (partial)	PSBGNHMA
Verizon New England, Inc.	Pittsfield	PTFDNHBR
Verizon New England, Inc.	Plainfield (partial)	PLFDVTYA
Verizon New England, Inc.	Plymouth	PLMONHLH
Verizon New England, Inc.	Rindge	RNDGNHCE
Verizon New England, Inc.	Rochester/So. Lebanon (partial)	ROCHNHWE
Verizon New England, Inc.	Rumney	RMNYNHSL
Verizon New England, Inc.	Sanbornville	SBVLNHCS

Verizon New England, Inc.	Spofford	SPFRNHMS
Verizon New England, Inc.	Sullivan	SLLVNHYA
Verizon New England, Inc.	Sunapee	SUNPNHMC
Verizon New England, Inc.	Suncook	SNCKNHPA
Verizon New England, Inc.	Tamworth	TMWONHWH
Verizon New England, Inc.	Tilton	TLTNNHPR
Verizon New England, Inc.	Troy	TROYNHPR
Verizon New England, Inc.	Twin Mount	TWMTNHYA
Verizon New England, Inc.	Walpole (partial)	WLPLNHWP
Verizon New England, Inc.	Warren	WRRNNHMA
Verizon New England, Inc.	West Stewart Station	WSTWNHBS
Verizon New England, Inc.	Windsor	WNDSVTPI
Verizon New England, Inc.	Weirs	WERSNHST
Verizon New England, Inc.	Wellsriver	WDVLNHJL
Verizon New England, Inc.	Westmoreland	WMLDNHWE
Verizon New England, Inc.	Brattleboro (partial)	BRBOVTMA
Verizon New England, Inc.	West Lebanon (partial)	MLTNNHSI
Verizon New England, Inc.	White River Junction	WRJTVTGA
Verizon New England, Inc.	Whitefield	WHFDNHPL
Verizon New England, Inc.	Winchester	WNCHNHMI
Verizon New England, Inc.	Wilson's Mill (partial)	ERRLNHYA
Verizon New England, Inc.	Wolfboro	WLBNHGS

APPENDIX B

Rural Wire Centers for Inclusion in RCC's New Hampshire ETC Service Area

Service Area	Wire Center Name	Wire Center Code
Bretton Woods Tel Co	Bretton Woods	BTWDNHXA
Dixville Tel Co	Dixville Notch	DXNTNHXA
Dunbarton Tel Co	Dunbarton	DNTNNHXA
Hollis Tel Co	Hollis	HLLSNHXA
Kearsarge Tel Co	Andover	ANDVNHXA
Kearsarge Tel Co	Boscawen	BSCWNHXA
Kearsarge Tel Co	Chichester	CHCHNHXA
Kearsarge Tel Co	New London	NWLNNHXA
Kearsarge Tel Co	Salisbury	SLBRNHXA
Merrimack County Tel Co d/b/a Contoocook Valley	Antrim	ANTRNHXA
Merrimack County Tel Co d/b/a Contoocook Valley	Henniker	HNKRNHXA
Merrimack County Tel Co d/b/a Contoocook Valley	Hillsboro	HLBONHXA
Merrimack County Tel Co d/b/a Contoocook Valley	Melvin Village	MLVGNHXA
Merrimack County Tel Co	Bradford	BRFRNHXA
Merrimack County Tel Co	Contoocook	CNTCNHXA
Merrimack County Tel Co	Sutton	STTNNHXA
Merrimack County Tel Co	Warner	WRNRNHXA
Northland Telephone of Maine, Inc.	Fryeburg	FRBGMEXA
Northland Telephone of Maine, Inc.	North Fryeburg	NFBGMEXA
Union Tel Co - New Hampshire	Alton	ALTNNHXA
Union Tel Co - New Hampshire	Barnstead	BRNSNHXA
Union Tel Co - New Hampshire	Center Barnstead	CNBNNHXA
Union Tel Co - New Hampshire	Ctr. Sandwich	GLTNNHXA

Union Tel Co - New Hampshire	New Durham	NWDRNHXA
Wilton Tel Co	Wilton	WLTONHXA

APPENDIX C

RURAL SERVICE AREAS REQUIRING RECLASSIFICATION ALONG WIRE CENTER BOUNDARIES

Service Area	Wire Center Name	Wire Center Code	Inside Proposed ETC Area (Y/N)
Granite State Telephone, Inc.	Hillsburg Village	HUVGNHXA	Y
Granite State Telephone, Inc.	Chester	CHESNHXA	N
Granite State Telephone, Inc.	Weare	WEARNHXA	Y
Granite State Telephone, Inc.	Washington	WASHNHXA	Y