

**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
)	
North Carolina RSA 3 Cellular Telephone)	
Company)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of North Carolina)	

ORDER

Adopted: August 14, 2006

Released: August 14, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West Wireless (Carolina West) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service area in the state of North Carolina pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Carolina West, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).²

2. Carolina West requests ETC designation for a service area in North Carolina that is entirely within the study area of one non-rural telephone company, BellSouth Telecommunications, Inc. (BellSouth) and two rural telephone companies, Skyline Telephone Membership Corporation (Skyline) and Wilkes Telephone Membership Corporation (Wilkes).³ Further, Carolina West requests that the Commission redefine the service areas of two rural telephone companies, Central Telephone Company – North Carolina (Central) and Surry Telephone Membership Corporation (Surry).⁴

¹ North Carolina RSA 3 Cellular Telephone Company, Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, filed June 8, 2004 (Carolina West Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, filed June 22, 2004 (First Amendment); Letter from David A. LaFuria, Counsel for Carolina West, to Marlene H. Dortch, FCC, filed Sept. 30, 2005) (Second Amendment). Among other things, the Second Amendment revises the list of rural wire centers to remove all partial wire centers within the proposed designation area. A third amendment was filed Nov. 3, 2005. See Letter from David A. LaFuria, Counsel for Carolina West, to Marlene H. Dortch, FCC, filed Nov. 3, 2005 (Third Amendment) (removing two wire centers from the proposed ETC study area).

² 47 U.S.C. § 214(e)(1).

³ Carolina West Petition at Exhibit B; First Amendment at Exhibit C.

⁴ Second Amendment at Exhibit D.

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.”⁵ 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.⁶

4. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁷ Section 214(e)(6) 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.”⁸ 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).⁹ 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.¹⁰ The Wireline Competition Bureau (“Bureau”) has delegated authority to perform ETC designations.¹¹

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 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”; (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution”; and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹²

⁵ 47 U.S.C. § 254(e).

⁶ 47 U.S.C. § 214(e)(1).

⁷ 47 U.S.C. § 214(e)(2). See *Promoting Deployment and Subscriberhip in Unserved 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*).

⁸ 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*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

⁹ 47 U.S.C. § 214(e)(6).

¹⁰ *Id.*

¹¹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

¹² See *id.* at 22948-49.

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.¹³ 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.¹⁴ 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.”¹⁵

7. On January 22, 2004, in the *Virginia Cellular Order*, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements for Virginia Cellular.¹⁶ The Commission stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the Commission.¹⁷

8. On April 12, 2004, 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.¹⁸ 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.¹⁹

9. On March 17, 2005, the Commission released a Report and 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.²⁰ Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service (Joint Board), the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.²¹ These additional requirements are mandatory for all ETCs designated by the Commission. ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* will be required to make such showings when they submit

¹³ *Twelfth Report and Order*, 15 FCC Rcd at 12263-65, paras. 112-24.

¹⁴ *Id.* at 12264, para. 113.

¹⁵ *Id.*

¹⁶ *See Virginia Cellular Order*, 19 FCC Rcd at 1575-76, 1584-85, paras. 27-28, 46.

¹⁷ *See id.* at 1565, para. 4.

¹⁸ *See Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

¹⁹ *See Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket No. 96-45, 19 FCC Rcd 6409 (WCB 2004) (*Bureau Public Notice*).

²⁰ *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

²¹ *See id.* at 6380, para. 20, *citing Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4259, para. 5 (2004) (*Recommended Decision*).

their annual certification filing on October 1, 2006.²²

C. Carolina West Petition

10. Pursuant to section 214(e)(6), Carolina West 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) throughout its licensed service area in North Carolina.²³ In its petition, Carolina West also requests that the services areas of Central and Surry be redefined at the wire center level.²⁴

III. DISCUSSION

A. Commission Authority to Perform the ETC Designation

11. Carolina West has demonstrated that the North Carolina Utilities Commission (North Carolina Commission) lacks authority to perform the requested ETC designation and the Commission has authority to consider Carolina West's petitions under section 214(e)(6) of the Act.²⁵ Carolina West's petition includes an affirmative statement from the North Carolina Commission that designation as an eligible telecommunications carrier should be sought from the Commission.²⁶ Accordingly, we find the North Carolina Commission lacks jurisdiction to designate Carolina West as an ETC and this Commission has authority to perform the requested ETC designation for North Carolina pursuant to section 214(e)(6).²⁷

B. Offering and Advertising the Supported Services

12. Offering the Services Designated for Support. Carolina West 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. As noted in its petition, Carolina West is authorized to provide cellular service throughout its licensed service area in North Carolina.²⁸ Carolina West states that it currently provides or will provide all the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its designated service area in North Carolina.²⁹ Carolina West has also committed that, in compliance with the Commission's Lifeline rules, it will make

²² See *id.*; 47 CFR § 54.202(c).

²³ The Bureau released a public notice seeking comment on these petitions. *Parties are Invited to Comment on Carolina West Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina*, Public Notice, 19 FCC Rcd 12838 (2004).

²⁴ Carolina West Petition at 22-25.

²⁵ 47 C.F.R. § 214 (e)(6).

²⁶ Carolina West Petition at 3-4 and Exhibit H.

²⁷ 47 U.S.C. § 214(e)(6).

²⁸ Carolina West Petition at 2. North Carolina RSA 3 Cellular Telephone Company is authorized as the Cellular Radiotelephone Service provider in North Carolina Rural Service Area (RSA) 3 and RSA 2. *Id.*

²⁹ *Id.* at 2-8. 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).

available and advertise Lifeline service to qualifying low-income consumers.³⁰ Carolina West has also committed to comply with the commitments set forth in the *Virginia Cellular Order* and the *Highland Cellular Order*, including: (1) annual reporting of unfulfilled service requests³¹ and of complaints per 1,000 handsets;³² (2) specific commitments to provide service to requesting customers in the area for which it is designated;³³ and (3) specific commitments to improve its existing network.³⁴

13. Offering the Supported Services Using a Carrier's Own Facilities. Carolina West has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.³⁵ Carolina West states that it intends to provide the supported services using its cellular network infrastructure, which includes its "antenna, cell-site tower, trunking, mobile switching, and interconnection facilities."³⁶

14. Advertising Supported Services. Carolina West has committed to 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."³⁷ These methods may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising.³⁸ In addition to its current advertising methods, Carolina West has committed to publicizing the availability of Lifeline and Link-Up services by including these services in its future advertising and by reaching out to community health, welfare, and employment offices to provide information to people who are likely to qualify.³⁹ Thus, Carolina West plans to use advertising to insure that consumers within its designated service area are fully informed of its universal service offering.

C. Public Interest Analysis

15. As explained below, we conclude that it is consistent with the public interest, convenience, and necessity to designate Carolina West as an ETC in North Carolina for the portion of its requested service area that is served by the non-rural telephone company, BellSouth, as listed in Appendix A. We conclude that it is in the public interest to designate Carolina West as an ETC in North Carolina for a portion of its requested service area that is served by the rural telephone companies,

³⁰ Carolina West Petition at 8. See *Advantage Cellular Systems Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 19 FCC Rcd 20985, n.35 (2004) (*Advantage Cellular Order*).

³¹ Second Amendment at 2-3.

³² *Id.* at 2.

³³ *Id.* at 2-3.

³⁴ Carolina West Petition at 20-21; Second Amendment at 4. Carolina West will submit annual progress reports to the Commission and USAC. See Second Amendment at 2. 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 6400, para. 68. See also 47 C.F.R. § 52.209(b).

³⁵ 47 C.F.R. § 214(e)(1)(A). Carolina West Petition at 7-8.

³⁶ Carolina West Petition at 3, 4-8.

³⁷ 47 C.F.R. § 214(e)(1)(B). Carolina West Petition at 8.

³⁸ See Carolina West Petition at 8.

³⁹ Carolina West Petition at 8. We note that ETCs must comply with state requirements in states that have their own Lifeline programs. See *Lifeline and Link Up*, WC Docket No. 03-104, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8320, para. 29 (2004).

Skyline and Wilkes. We also conclude that it is the public interest to designate Carolina West as an ETC in North Carolina in the requested wire centers in the area served by the rural telephone companies, Central and Surry, as listed in Appendix C. We conclude that Carolina West has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural and non-rural consumers.

16. Prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.⁴⁰ In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for rural and non-rural areas.⁴¹ The Commission, however, noted that the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.⁴² In determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.⁴³ The creamskimming analysis, however, continues to be limited to designations in rural service areas.⁴⁴ Thus, when an ETC applicant seeks designation below the study area of a rural telephone company, a creamskimming analysis is conducted to compare the population density of the wire centers in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.⁴⁵

17. We find Carolina West's universal service offering will provide a variety of benefits to customers including consumer choice and advantageous service offerings. For instance, universal service support will enable Carolina West to construct facilities to improve quality of service and extend telephone service to people who have no choice of telephone provider.⁴⁶

18. In addition, Carolina West will use support to offer a basic universal service package to subscribers who are eligible for Lifeline support and Carolina West has made detailed commitments to provide high quality service throughout the proposed service areas for which it seeks designation.⁴⁷ The mobility of Carolina West's wireless service will provide further benefits to consumers, such as access to emergency services in geographically isolated areas.⁴⁸ Carolina West's designation as an ETC also will

⁴⁰ 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). See also *ETC Designation Order*, 20 FCC Rcd at 6388-6396, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. In determining whether the public interest is served in an ETC petition, the Commission also places the burden on the ETC applicant. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

⁴¹ *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

⁴² *Id.* at 6390, para. 43.

⁴³ 47 C.F.R. § 54.202(c).

⁴⁴ *ETC Designation Order*, 20 FCC Rcd at 6390, para. 42.

⁴⁵ *Id.* at 6392-95, paras. 48-53.

⁴⁶ Carolina West Petition at 13.

⁴⁷ See generally Carolina West Petition.

⁴⁸ The benefit of wireless service has been discussed in other ETC designation orders. See, e.g., *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Order, DA 06-286, para. 26 (Wireline Comp. Bur. rel. February 3, 2006). As noted in the *PSC Alabama Order* the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *PSC Alabama Order* at 6861, para. 25. As further noted, 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. *Id.*

potentially allow its customers to be subject to fewer toll charges and provide customer access to premium services such as numeric paging, call forwarding, and call waiting.⁴⁹

19. Further, Carolina West will comply with the CTIA Consumer Code for Wireless Service.⁵⁰ Carolina West will use support to offer a basic universal service package to subscribers who are eligible for Lifeline support.⁵¹ Carolina West also agrees to provide the number of consumer complaints per 1,000 mobile handsets on an annual basis.⁵² Carolina West will annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year.⁵³ On balance, therefore, we find that the advantages of designating Carolina West an ETC in these rural and non-rural areas in North Carolina outweigh any disadvantages.

20. We conclude that the designation of Carolina West as an ETC in the rural and non-rural study areas identified in Appendices A and B is in the public interest. Because Carolina West requests ETC status in the entire study area of each of the rural telephone companies listed in Appendix B, we are not concerned about the potential for creamskimming.⁵⁴

21. Conversely, because Carolina West's service area differs from the study area of the rural incumbent LECs identified in Appendix C we must perform a creamskimming analysis for these service areas.

22. Carolina West's CMRS licensed area differs from the Central and Surry study areas. Carolina West will be unable to provide service to the entire study areas of these companies.⁵⁵ For the reasons explained below and consistent with the Commission's findings in the *Virginia Cellular Order* and the *Highland Cellular Order*, we find it appropriate to designate Carolina West below the study area level of these rural telephone companies to the extent that such designation is unlikely to create creamskimming concerns.⁵⁶

23. We find that designation of Carolina West as an ETC in certain wire centers in the Central and Surry study areas does not raise concerns about creamskimming and therefore is in the public interest.⁵⁷ Our analysis of the population density of each of the affected wire centers reveals that Carolina West will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other

⁴⁹ *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44. See *Highland Cellular Order*, 19 FCC Rcd at 6432-33, para. 23; *Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, Order, CC Docket No. 96-45, 19 FCC Rcd 20985, 20992-3, para. 19 (2004).

⁵⁰ Carolina West Petition at 21; Second Amendment at 2.

⁵¹ Carolina West Petition at 13.

⁵² Second Amendment at 2.

⁵³ *Id.* at 2-3.

⁵⁴ Because Carolina West's requested service area includes the entire study area of these rural incumbent LECs, we do not have creamskimming concerns. *ETC Designation Order*, 20 FCC Rcd at 6392, para. 49; *Virginia Cellular Order*, 19 FCC Rcd at 1578, para. 32; *Highland Cellular Order*, 19 FCC Rcd at 6434-35, para. 26.

⁵⁵ See Second Amendment at Exhibit D.

⁵⁶ See *ETC Designation Order*, 20 FCC Rcd at 6392-95, paras. 48-53; *Virginia Cellular Order*, 19 FCC Rcd at 1578-580, paras. 32-35; *Highland Cellular Order*, 19 FCC Rcd at 6434-38, paras. 26-32.

⁵⁷ See Appendix C.

factors that define high-cost areas, a lower population density generally indicates a higher cost area.⁵⁸ The average population density for the Surry wire centers for which we grant Carolina West ETC designation is 69.21 persons per square mile and the average population density for the remaining wire centers is 68.54 persons per square mile. The average population density for the Central wire centers for which we grant Carolina West ETC designation is 157.00 persons per square mile and the average population density for the remaining wire centers is 156.77 persons per square mile. Thus, the wire centers that Carolina West will serve have approximately the same population density and likely per line costs as the wire centers that Carolina West will not serve. We find such an ETC designation will not have the effect of creamskimming, and is therefore in the public interest.⁵⁹

D. Designated Service Area

24. We designate Carolina West as an ETC in the requested areas served by the non-rural telephone company BellSouth, as listed in Appendix A. We designate Carolina West as an ETC in the state of North Carolina for the entire study area served by the rural telephone companies Skyline and Wilkes, as listed in Appendix B. Subject to the North Carolina Public Service Commission's agreement with our redefinition of service areas, we also designate Carolina West as an ETC for the wire centers listed in Appendix C.

E. Redefining Rural Company Service Areas

25. In order to designate Carolina West 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.⁶⁰ 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."⁶¹ Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission's procedures.⁶² 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 Joint Board.⁶³ 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

⁵⁸ See *Advantage Cellular Order*, 19 FCC Rcd at 20994, n.67, citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19628, para. 28 (2001), *recon. pending* (discussing Rural Task Force White Paper # 2 at <http://www.wutc.wa.gov/rtf>).

⁵⁹ See *Advantage Cellular Order*, 19 FCC Rcd at 20994, para. 22.

⁶⁰ 47 U.S.C. § 214(e)(5).

⁶¹ *Id.*

⁶² 47 C.F.R. § 54.207(d)(1).

⁶³ *Id.*

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.⁶⁴

26. We find that redefining the Central and Surry service areas as proposed will not impose administrative burdens on the rural telephone companies because it will not require them to determine their costs on any basis other than the study area level.⁶⁵ Moreover, as discussed above, we conclude that redefining the Central and Surry service areas along wire center boundaries should not result in opportunities for creamskimming.⁶⁶ We also note that the redefinition of these service areas, and designation of Carolina West as an ETC, will allow Carolina West to provide services to the least densely populated areas at issue and thus Carolina West is unlikely to compete with the incumbent LEC only in the lowest cost areas. Finally, we find no evidence that the proposed redefinition will harm the Central and Surry companies because redefining the service area of the affected rural telephone companies will not change the amount of universal service support that is available to the incumbents.⁶⁷ Thus, consistent with prior rural service area redefinitions and with the recommendations of the Joint Board, we redefine the requested wire centers in the study areas of Central and Surry as a separate service area.⁶⁸

27. Our decision to redefine the service areas of Central and Surry is subject to the review and final agreement of the North Carolina Commission in accordance with applicable requirements under section 54.207 of our rules. Accordingly, we submit our redefinition proposal to the North Carolina Commission 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 North Carolina Commission with our redefinition of the service areas of Central and Surry, our designation of Carolina West as an ETC in the areas served by these carriers, as set forth herein, shall also take effect. If, after its review, the North Carolina Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Carolina West's petition with regard to redefining these service areas.

F. Regulatory Oversight

28. We note that Carolina West is required 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 the support is intended" and must, under sections 54.313 and 54.314 of the Commission's rules, certify annually that it is in compliance with this requirement.⁶⁹ Carolina West also agrees to provide the number of consumer complaints per 1,000 mobile handsets on an annual basis.⁷⁰ In addition, Carolina West will

⁶⁴ See *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

⁶⁵ See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 44. Rather, the redefinition enables competitive ETCs to serve areas that are smaller than the entire incumbent LEC study area. *Id.*

⁶⁶ See *id.* at 1582-83, para. 42. We note that any future competitive ETC designation for the redefined service areas of these two study areas 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.

⁶⁷ See *id.* at 1583, para. 43.

⁶⁸ 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 (Wireline Comp. Bur. 2002) (*RCC Alabama ETC Designation Order*).

⁶⁹ 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

⁷⁰ *Id.*

annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year.⁷¹ We require Carolina West to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2006, in accordance with the *ETC Designation Order*. As noted above, Carolina West also has committed to become a signatory to the CTIA Consumer Code for Wireless Service.⁷²

29. We find that reliance on Carolina West's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.⁷³ We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Carolina West satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

30. 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 the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.⁷⁴ Carolina West will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Carolina West fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.⁷⁵ The Commission also may assess forfeitures for violations of Commission rules and orders.⁷⁶

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

31. 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.⁷⁷ Carolina West has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁷⁸ We find that Carolina West has satisfied the requirements of the Anti-Drug Abuse Act of

⁷¹ *Id.*

⁷² Second Amendment at 2.

⁷³ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) In *TOPUC v. FCC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

⁷⁴ 47 U.S.C. §§ 220, 403.

⁷⁵ *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd, 15168, 15174, para. 15 (2000), recon. pending. *See also* 47 U.S.C. § 254(e).

⁷⁶ *See* 47 U.S.C. § 503(b).

⁷⁷ 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). 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 nonvoting) of the petitioner; and (3) If the application 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). *See Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

⁷⁸ Carolina West Petition at 25.

1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

32. 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, North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West Wireless IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for portions of its licensed service area in the State of North Carolina to the extent described herein.

33. IT IS FURTHER ORDERED that Carolina West WILL SUBMIT additional information pursuant to sections 54.202(a) and (b) of the Commission's rules, 47 C.F.R. §§ 54.202(a) and (b), no later than October 1, 2006, as part of its annual reporting requirements.

34. 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 North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West Wireless to redefine the service areas of Central Telephone Company – North Carolina and Surry Telephone Membership Corporation IS GRANTED to the extent described herein and is SUBJECT TO the agreement of the North Carolina Utilities Commission with the Commission's redefinition of the service area.

35. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted by the Office of the Secretary to the North Carolina 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 Carolina West's ETC service area

<u>Company Name</u>	<u>Wirecenter Code</u>	<u>Locality</u>
BellSouth Telecommunications, Inc. dba Southern Bell Tel	BLRKNCCE	Blowing Rock
BellSouth Telecommunications, Inc. dba Southern Bell Tel	SPPNNCMA	Spruce Pine
BellSouth Telecommunications, Inc. dba Southern Bell Tel	NWLDNCCE	Newland
BellSouth Telecommunications, Inc. dba Southern Bell Tel	BOONNCY1	Boone

APPENDIX B

Rural wire centers for inclusion in Carolina West's ETC service area

<u>Company Name</u>	<u>Wirecenter Code</u>	<u>Locality</u>
Skyline Telephone Membership Corporation	BEMTNCXA	Beech Mount
Skyline Telephone Membership Corporation	BLDWNCXA	Baldwin
Skyline Telephone Membership Corporation	BNELNCXA	Banner Elk
Skyline Telephone Membership Corporation	CETNNCXA	Creston
Skyline Telephone Membership Corporation	GLCKNCXA	Glade Creek
Skyline Telephone Membership Corporation	LNNGNCXA	Lansing
		Nathans
Skyline Telephone Membership Corporation	NTCKNCXA	Creek
		Laurel
Skyline Telephone Membership Corporation	SCVLNCXA	Springs
Skyline Telephone Membership Corporation	SGGVNCXAX	Sugar Grove
Skyline Telephone Membership Corporation	SPRTNCXA	Sparta
Skyline Telephone Membership Corporation	WATGNCXA	Watauga
Wilkes Telephone Membership Corp.	BOMRNCXA	Boomer
Wilkes Telephone Membership Corp.	CHMPNCXA	Champion
Wilkes Telephone Membership Corp.	CLNGNCXA	Clingman
Wilkes Telephone Membership Corp.	LOMXNCXA	Lomax

APPENDIX C

Rural service areas requiring reclassification along wire center boundaries

Company Name	Wirecenter Code	Locality
Central Telephone Co. – North Carolina	BNVLNCXA	Booneville
Central Telephone Co. – North Carolina	DBSNNCXB	Dobson
Central Telephone Co. – North Carolina	ELKNNCXA	Elkin
Central Telephone Co. – North Carolina	HAYSNCXA	Hays
Central Telephone Co. – North Carolina	MLBYNCXB	Mulberry
Central Telephone Co. – North Carolina	PLMTNCXA	Pilot Mt
Central Telephone Co. – North Carolina	RRGPNCXA	Roaring Gap
Central Telephone Co. – North Carolina	STRDNCXA	State Road
Central Telephone Co. – North Carolina	WJSNNCXA	West Jefferson
Surry Telephone Membership Corp.	BELHNCXA	Beulah
Surry Telephone Membership Corp.	LVCRCNCA	Level Cross
Surry Telephone Membership Corp.	RDBSNCXA	Red Brush
Surry Telephone Membership Corp.	SHLSNCXA	Shoals
Surry Telephone Membership Corp.	ZPHYNCXA	Zephyr