

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

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|-------------------------------------|---|---------------------|
| In the matter of |) | |
| |) | |
| Federal-State Joint Board on |) | |
| Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Highland Cellular, Inc. |) | |
| Petition for Designation as an |) | |
| Eligible Telecommunications Carrier |) | |
| in the Commonwealth of Virginia |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2004

Released: April 12, 2004

By the Commission: Commissioners Copps and Adelstein issuing separate statements;
Commissioner Martin dissenting and issuing a separate statement.

I. INTRODUCTION

1. In this Order, we grant in part and deny in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Highland Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Highland Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Highland Cellular requests ETC designation for a service area that overlaps, among other areas, the study areas of three rural telephone companies.³ We find that the designation of Highland Cellular as an ETC in a wire center served by Verizon Virginia, Inc. (Verizon Virginia), a non-rural carrier, and certain areas served by two of the three rural companies serves the public interest and furthers the goals of universal service. As explained below, with regard to the study area of Verizon South, Inc. (Verizon South) and the Saltville wire center of United Telephone Company – Southeast Virginia (United Telephone) we do not find that ETC designation would be in the public interest.

¹ Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Sep. 19, 2002 (Highland Cellular Petition).

² 47 U.S.C. § 214(e)(1).

³ The remainder of Highland Cellular's requested service area falls within the service area of Verizon Virginia, a non-rural telephone company.

2. Highland Cellular is licensed to serve the entire study area of only one of the three rural companies for which it seeks ETC designation - Burkes Garden Telephone Company, Inc. (Burkes Garden).⁴ Because Highland Cellular is licensed to serve only part of the study areas of the other two incumbent rural telephone companies, Highland Cellular has requested that we redefine the service areas of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act.⁵ We agree to the service area redefinition proposed by Highland Cellular for the service area of United Telephone, subject to agreement by the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements. We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.⁶ Because we do not designate Highland Cellular as an ETC in Verizon South's study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) the Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs.⁷ Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas.⁸ The outcome of that proceeding could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. As we concluded in a recent order granting ETC designation to Virginia Cellular in the Commonwealth of Virginia, this framework shall apply to all ETC designations

⁴ Highland Cellular requests ETC designation in the service areas of the rural telephone companies Burkes Garden Telephone Company, Inc. (Burkes Garden), United Telephone Company – Southeast Virginia (United Telephone), and Verizon South, Inc. – VA (Verizon South). Highland Cellular Petition at 10-13; Highland Cellular, Inc., Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed Oct. 23, 2002, at 1-2 (Highland Cellular Amendment I).

⁵ Highland Cellular Petition at 11-13; Highland Cellular Amendment I at 1-2; Highland Cellular, Inc., Second Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, filed Feb. 26, 2003 (Highland Cellular Amendment II). Specifically, Highland requests redefinition of the service areas of United Telephone and Verizon South. *Id.* In light of our decision to deny ETC designation for the area served by Verizon South, we do not address Highland Cellular's request to redefine that service area.

⁶ If the Virginia Commission does not agree to the proposal to redefine the affected rural service areas, we will reexamine our decision with regard to redefining these service areas.

⁷ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (rel. Nov. 8, 2002) (*Referral Order*); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Process*, CC Docket 96-45, 18 FCC Rcd 1941, Public Notice (rel. Feb. 7, 2003) (*Portability Public Notice*).

⁸ See generally, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, United States Telecom Association's Comments, filed May 5, 2003; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Verizon's Comments, filed May 5, 2003.

for rural areas pending further action by the Commission.⁹ We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Highland Cellular has made on the record in this proceeding.¹⁰ These conditions will ensure that Highland Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

II. BACKGROUND

A. The Act

5. 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."¹¹ 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.¹²

6. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.¹³ 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."¹⁴ Under section 214(e)(6), the Commission may, with respect to an area served

⁹ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, para. 14 (rel. Jan. 22, 2004) (*Virginia Cellular Order*).

¹⁰ See *infra* para. 43.

¹¹ 47 U.S.C. § 254(e).

¹² 47 U.S.C. § 214(e)(1).

¹³ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; 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*).

¹⁴ 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); *Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket 96-45, Memorandum Opinion and Order, 17 FCC Rcd 21435 (Wireline Comp. Bur. 2002). We note that the Wireline Competition Bureau has delegated authority to perform ETC designations. See *Procedures for FCC Designation of Eligible*

(continued....)

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).¹⁵ 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.¹⁶

B. Commission Requirements for ETC Designation and Redefining the Service Area

7. Filing Requirements for ETC Designation. 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 [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.¹⁷

8. Twelfth Report and Order. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, sets forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹⁸ 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.¹⁹ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.”²⁰ 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

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Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, 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.

¹⁵ 47 U.S.C. § 214(e)(6).

¹⁶ *Id.*

¹⁷ See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49. See also *Federal-State Joint Board on Universal Service, 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.

¹⁸ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁹ *Twelfth Report and Order*, 15 FCC at 12255, para. 93.

²⁰ *Twelfth Report and Order*, 15 FCC at 12264, para. 113.

law to regulate certain carriers or classes of carriers.”²¹

9. **Redefining a Service Area.** 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.”²² Section 54.207(d) permits the Commission to initiate a proceeding to consider a definition of a service area that is different from a rural telephone company’s study area as long as the Commission seeks agreement on the new definition with the applicable state commission.²³ Under section 54.207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.²⁴ 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).²⁵ 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 “cream skimming” 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 the 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.²⁶

C. Highland Cellular’s Petition

10. On September 19, 2002, Highland Cellular filed with this Commission a petition pursuant to section 214(e)(6) seeking designation as an ETC throughout its licensed service area in the Commonwealth of Virginia.²⁷ Highland Cellular contends that the Virginia Commission

²¹ *Twelfth Report and Order*, 15 FCC at 12264, para. 113 (citations omitted).

²² 47 U.S.C. § 214(e)(5).

²³ See 47 C.F.R. § 54.207(d). Any proposed definition will not take effect until both the Commission and the state commission agree upon the new definition. See 47 C.F.R. § 54.207(d)(2).

²⁴ See 47 C.F.R. § 54.207(d)(1).

²⁵ See 47 C.F.R. § 54.207(d)(1).

²⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*).

²⁷ See generally, Highland Cellular Petition. On October 2, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Highland Cellular Petition. See *Wireline Competition Bureau Seeks Comment on Highland Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45, Public Notice, DA 02-2487 (rel. Oct. 2, 2002); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of the Cellular Telecommunications and Internet Association, filed Oct. 15, 2002 (CTIA Comments); *In the Matter of Highland Cellular Telephone, Inc., Petition for Designation as and Eligible Telecommunications Carrier in Virginia*, Comments of the Telephone Association of Maine, filed Oct. 15, 2002 (TAM Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of Verizon, filed Oct. 15, 2002 (Verizon Comments); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Reply Comments of Highland Cellular, Inc., filed Oct. 22 (Highland Cellular Reply Comments).

has issued an “affirmative statement” that the Virginia Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Highland Cellular asks the Commission to designate Highland Cellular as an ETC pursuant to section 214(e)(6).²⁸ Highland Cellular also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation and that designating Highland Cellular as an ETC will serve the public interest.²⁹

11. Highland Cellular also requests that the Commission redefine the service areas of two incumbent rural telephone companies, United Telephone and Verizon South, because it is not able to serve the entire study area of each of these companies.³⁰ Highland Cellular states that as a wireless carrier, it is restricted to only providing facilities-based service in those areas where it is licensed by the Commission.³¹ It adds that it is not picking and choosing the “lowest cost exchanges” of the affected rural telephone companies, but instead is basing its requested ETC area solely on its licensed service area and proposes to serve the entirety of that area.³² Highland Cellular further contends that the proposed redefinition of the rural telephone companies’ service areas is consistent with the recommendations regarding rural telephone company study areas, as set forth by the Joint Board in its *Recommended Decision*.³³

III. DISCUSSION

12. After careful review of the record before us, we find that Highland Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the portions of its licensed service area described herein. First, we find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Highland Cellular’s petition under section 214(e)(6). Second, we conclude that Highland Cellular 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 in accordance with section 214(e)(1). In addition, we find that designation of Highland Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by better ensuring that consumers in high-cost and rural areas of Virginia have access to the services supported by universal service at affordable rates. Pursuant to our authority under section 214(e)(6), we therefore designate Highland Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia as set forth below. As explained below, however, we do not designate Highland Cellular as an ETC in the study area of the rural telephone company, Verizon South, and the Saltville wire center of the rural telephone company, United Telephone.³⁴ In areas where Highland Cellular’s proposed service areas do not cover the entire study area of a rural telephone company, Highland Cellular’s ETC designation shall be

²⁸ Highland Cellular Petition at 3-4.

²⁹ Highland Cellular Petition at 4-9, 15-18; Highland Cellular Amendment I at 2.

³⁰ Highland Cellular Petition at 10-13; Highland Cellular Reply Comments at 2-3; Highland Cellular Amendment I at 1-2; Highland Cellular Amendment II at 2.

³¹ Highland Cellular Petition at 13; Highland Cellular Amendment I at 1-2.

³² Highland Cellular Petition at 13.

³³ *Id.* at 13-15. See also *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

³⁴ See *infra* paras. 29-33.

subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Highland Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding, now before the Joint Board, examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Highland Cellular and other ETCs may receive in the future.³⁵ This Order is not intended to prejudge the outcome of that proceeding. We also note that Highland Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.³⁶

A. Commission Authority to Perform the ETC Designation

13. We find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and the Commission has authority to consider Highland Cellular's petition under section 214(e)(6) of the Act. Highland Cellular submitted as an "affirmative statement" an order issued by the Virginia Commission addressing an application filed by Virginia Cellular, LLC (Virginia Cellular) seeking ETC designation.³⁷ In the *Virginia Commission Order*, the Virginia Commission concluded that it "has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation."³⁸

14. We find that, as required by the *Twelfth Report and Order*, the Virginia Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Virginia Commission Order*.³⁹ We find it sufficient that the Virginia Commission indicated that it does not have jurisdiction over CMRS carriers and that the Federal Communications Commission is the proper venue for CMRS carriers seeking ETC designation in the Commonwealth of Virginia. Therefore, based on this statement by the Virginia Commission, we find the Virginia Commission lacks jurisdiction to designate Highland Cellular as an ETC and this Commission has authority to perform the requested ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).⁴⁰

³⁵ See *Portability Public Notice*, 18 FCC Rcd at 1941.

³⁶ See *Declaratory Ruling*, 15 FCC Rcd at 15173; see also 47 U.S.C. § 214(e)(4).

³⁷ See Highland Cellular Petition at Exhibit A (Virginia Corporation Commission, *Virginia Cellular, LLC*, Order, Case Nos. PUC970135 & PUC010263 at 4-5 (Apr. 9, 2002) (*Virginia Commission Order*)).

³⁸ Virginia Commission Order at 4-5. Virginia Cellular's application was the first time a CMRS carrier filed for ETC designation before the Virginia Commission. See *id.* at 2.

³⁹ See *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113. See also *RCC Holdings, Inc. Petition for Designation as and 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, 23537, para. 13 (Wireline Comp. Bur. 2002) (*RCC Holdings ETC Designation Order*) (finding that an order from a prior proceeding involving unaffiliated CMRS providers seeking ETC status constituted an "affirmative statement" for the purposes satisfying section 214(e)(6) of the Act).

⁴⁰ 47 U.S.C. § 214(e)(6).

B. Offering and Advertising the Supported Services

15. Offering the Services Designated for Support. We find that Highland Cellular 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 support mechanism. As noted in its petition, Highland Cellular is an “A2-Band” cellular carrier for the Virginia 2 Rural Service Area, serving the counties of Bland and Tazewell.⁴¹ Highland Cellular states that it currently provides all of the services and functionalities enumerated in section 54.101(a) of the Commission’s rules throughout its cellular service area in Virginia.⁴² Highland Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.⁴³ Highland Cellular also complies with applicable law and Commission directives on providing access to emergency services.⁴⁴ In addition, although the Commission has not set a minimum local usage requirement, Highland Cellular certifies it will comply with “any and all minimum local usage requirements adopted by the FCC” and it intends to offer a number of local calling plans as part of its universal service offering.⁴⁵ As discussed below, Highland Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under sections 54.313 and 54.314 of the Commission’s rules.⁴⁶

16. Highland Cellular has also made specific commitments to provide service to requesting customers in the service areas in which it is designated as an ETC. Highland Cellular states that if a request is made by a potential customer within its existing network, Highland Cellular will provide service immediately using its standard customer equipment.⁴⁷ In instances where a request comes from a potential customer within Highland Cellular’s licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) the requesting customer’s equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier’s facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to

⁴¹ Highland Cellular Petition at 1.

⁴² *Id.* at 2. 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).

⁴³ Highland Cellular Petition at 4-8 and Exhibit B.

⁴⁴ See 47 C.F.R. § 54.101(a)(5); Highland Cellular Petition at 7.

⁴⁵ Highland Cellular Petition at 5-6 and Exhibit B.

⁴⁶ See *infra* para. 43; Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, FCC, filed Nov. 19, 2003 (Highland Cellular November 19 Supplement).

⁴⁷ Highland Cellular November 19 Supplement, at 3.

provide service.⁴⁸ In addition, if after following these steps, Highland Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.⁴⁹

17. Highland Cellular has further committed to use universal service support to further improve its universal service offering by constructing new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage.⁵⁰ Highland Cellular states that it will modify its construction plans based on the areas where ETC designation is granted.⁵¹ Highland Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.⁵² In connection with its annual reporting obligations, Highland Cellular will submit detailed information on its progress toward meeting build-out plans.⁵³

18. Offering the Supported Services Using a Carrier's Own Facilities. Highland Cellular 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.⁵⁴ Highland Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers."⁵⁵ We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

19. Advertising the Supported Services. We conclude that Highland Cellular 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.⁵⁶ Highland Cellular certifies that it will "use media of general distribution that it currently employs

⁴⁸ Highland Cellular November 19 Supplement, at 3-4.

⁴⁹ Highland Cellular November 19 Supplement at 4, n. 7 (agreeing to follow the service provisioning commitments made by Virginia Cellular during its ETC designation proceeding). *See Virginia Cellular Order*, FCC 03-338, at para. 14.

⁵⁰ Supplement to Highland Cellular, Inc. Petition for Designation as an ETC in the Commonwealth of Virginia, filed April 8, 2003 at 3-4 (Highland Cellular April 8 Supplement).

⁵¹ *See* Highland Cellular December 12 Supplement at 5. For example, to date Highland Cellular has committed to construct cell sites only in areas for which we deny ETC designation – notably in the Jewell Ridge, Richlands, and Tazewell wire centers in the Verizon South rural study area. *See* Highland Cellular November 19 Supplement at 4-5. In a subsequent filing, Highland Cellular described alternative build-out plans should the Commission limit Highland Cellular's ETC designation to complete wire centers. *See* Highland Cellular December 12 Supplement at 5 (proposing cell sites in the Verizon South and Burkes Garden rural study areas). We assume that Highland Cellular's build-out plans will change as a result of this Order.

⁵² *See* Highland Cellular November 19 Supplement at 5; Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, FCC, filed Dec. 12, 2003 (Highland Cellular December 12 Supplement).

⁵³ *See infra* para. 43.

⁵⁴ 47 U.S.C. § 214(e)(1)(A).

⁵⁵ Highland Cellular Petition at 8-9.

⁵⁶ 47 U.S.C. § 214(e)(1)(B).

to advertise its universal service offerings throughout the service areas designated by the Commission.”⁵⁷ In addition, Highland Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Highland Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Highland Cellular’s service offerings and learn about Lifeline and Linkup discounts.⁵⁸ Highland Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service.⁵⁹ We find that Highland Cellular’s certification and its additional commitments to advertise its service offerings satisfy section 214(e)(1)(B). In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.⁶⁰

C. Public Interest Analysis

20. We conclude that it is “consistent with the public interest, convenience, and necessity” to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We also conclude that it is in the public interest to designate Highland Cellular as an ETC in Virginia in the study area served by the rural telephone company, Burkes Garden and the Bland and Ceres wire centers served by the rural telephone company, United Telephone. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Highland Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Highland Cellular as an ETC, however, for the study area of Verizon South and the Saltville wire center of United Telephone because we find that Highland Cellular has not satisfied its burden of proof in this instance.⁶¹

21. Non-Rural Study Areas. We conclude that it is “consistent with the public interest, convenience, and necessity” to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia.⁶² We note that the Common Carrier Bureau previously found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act.⁶³ We do not believe that designation of an additional ETC in a non-rural telephone company’s study area based merely upon a showing that the requesting carrier

⁵⁷ Highland Cellular Petition at 9.

⁵⁸ Highland Cellular November 19 Supplement at 5.

⁵⁹ Highland Cellular November 19 Supplement at 5.

⁶⁰ See *Western Wireless Pine Ridge Order*, 16 FCC Rcd at 18137, para. 10.

⁶¹ See *infra* paras. 29-33.

⁶² See 47 U.S.C. § 214(e)(6). See also Appendix A.

⁶³ See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 39 (Com. Car. Bur. 2000).

complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Highland Cellular's public interest showing here is sufficient based on the detailed commitments Highland Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Highland Cellular has satisfied the more rigorous public interest analysis for certain rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.⁶⁴ We also note that no parties oppose Highland Cellular's request for ETC designation in the study area of this non-rural telephone company. We therefore conclude that Highland Cellular has demonstrated that its designation as an ETC in the study area of this non-rural telephone company, is consistent with the public interest, as required by section 214(e)(6).⁶⁵ We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate both non-rural and rural ETCs under section 214(e) of the Act.⁶⁶ The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

22. Rural Study Areas. Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Highland Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Highland Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudice the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

23. Highland Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Highland Cellular has committed to serve residences that do not have access to the public switched network through the incumbent telephone company.⁶⁷ Also, the mobility of Highland Cellular'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 critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural

⁶⁴ See Highland Cellular November 19 Supplement at 1-7.

⁶⁵ See 47 U.S.C. § 214(e)(6).

⁶⁶ See *Portability Public Notice*, 18 FCC Rcd at 1954-55, para. 33.

⁶⁷ Highland Cellular November 19 Supplement at 3-4.

communities.⁶⁸ Highland Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Highland Cellular's customers will be subject to fewer toll charges.⁶⁹

24. We acknowledge arguments made in the record that wireless telecommunication offerings may be subject to dropped calls and poor coverage. In addition, wireless carriers often are not subject to mandatory service quality standards. Highland Cellular has committed to mitigate these concerns. Highland Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage.⁷⁰ As evidence of its commitment to high service quality, Highland Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service.⁷¹ In addition, Highland Cellular has committed to provide the Commission with the number of consumer complaints per 1,000 handsets on an annual basis.⁷² Therefore, we find that Highland Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

25. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in the number of competitive ETCs.⁷³ Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs is growing at a

⁶⁸ Highland Cellular Petition at 16 (*citing Smith Bagley, Inc.*, Order, Decision No. 63269, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2001) (finding that competitive entry provides a potential solution to "health and safety risks associated with geographic isolation"). *See also Twelfth Report and Order*, 15 FCC Red at 12212, para. 3.

⁶⁹ *See* Highland Cellular Petition at 16, 17; Highland Cellular April 8 Supplement at 1-3.

⁷⁰ *See supra* para 17.

⁷¹ Highland Cellular November 19 Supplement, at 1; *CTIA, Consumer Code for Wireless Service*, available at http://www.wow-com.com/pdf/The_Code.pdf. Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. *See id.*

⁷² *See infra* para. 43 (requesting that Highland Cellular provide consumer complaint data on October 1 of each year).

⁷³ For example, assuming, that Highland Cellular captures each and every customer located in the two affected study areas, the overall size of the high-cost support mechanisms would not significantly increase because the total amount of high-cost universal service support available to incumbent carriers in the rural study areas where we grant Highland Cellular ETC designation is only approximately 0.04 percent of the total high-cost support available to all ETCs. *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2003, Appendix HC 1 (Universal Service Administrative Company, January 31, 2002) (determining that the total amount of high-cost universal service support available to incumbent carriers in the affected rural study areas is projected to be \$360,030 out of a total of \$857,903,276 in the fourth quarter of 2003). We note, however, in light of the rapid growth in competitive ETCs, discussed above, comparing the impact of one competitive ETC on the overall fund may be inconclusive.

dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately \$2 million or 0.4 percent of high-cost support.⁷⁴ In the fourth quarter of 2003, 112 competitive ETCs received approximately \$32 million or 3.7 percent of high-cost support.⁷⁵ This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, Verizon Telephone Companies (Verizon) argues that the Commission should not rule on the Highland Cellular ETC petition until after it has had an opportunity to initiate a broader rulemaking on high-cost fund issues.⁷⁶ In particular, Verizon contends that the Commission should reexamine the rules concerning portability of support for ETCs and the designation of ETCs for areas different from those served by the incumbent LEC.⁷⁷ We recognize that Verizon raises important issues regarding universal service high-cost support.⁷⁸ As discussed above, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines.⁷⁹ We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

26. We further conclude that designation of Highland Cellular as an ETC in the Burkes Garden study area and the Bland and Ceres wire centers served by United Telephone does not create rural creamskimming concerns. As discussed below, however, we conclude that designation of Highland Cellular as an ETC in the study area of Verizon South and the Saltville wire center does raise creamskimming and other concerns, and therefore would be inconsistent with the public interest. Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area.⁸⁰ Because Highland Cellular requests ETC designation in the entire study area of Burkes Garden, designation of Highland Cellular as an ETC in this portion of its licensed service area does not create creamskimming

⁷⁴ See Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter of 2001 (Universal Service Administrative Company, January 31, 2002)

⁷⁵ At the same time, we acknowledge that high-cost support to incumbent ETCs has grown significantly in real and percentage terms over the same period. See generally, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Cellular Telecommunications Industry Association's Comments, filed May 5, 2003.

⁷⁶ See Verizon Comments at 2.

⁷⁷ See *id.* at 4.

⁷⁸ In addition, the Telephone Association of Maine (TAM) filed comments requesting that the Commission use this proceeding to indicate how wireless ETCs should be regulated by states after receiving ETC designation. See TAM Comments at 1. Specifically, TAM requests that the Commission expressly designate state commissions as the appropriate regulatory agencies to oversee consumer protection matters and service offerings supported by universal service for all ETCs, including wireless carriers. See TAM Comments at 3. We decline to address this issue because it is outside the scope of the ETC petition.

⁷⁹ See *Portability Public Notice*.

⁸⁰ See *1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172. "Creamskimming" refers to instances in which a carrier serves only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., *Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

concerns. We note, however, that because the contours of Highland Cellular's CMRS licensed area differ from United Telephone's and Verizon South's service areas, Highland Cellular will be unable to provide facilities-based service to the entire study areas of these two companies. In this case, however, Highland Cellular commits to provide universal service throughout its licensed service area.⁸¹ It therefore does not appear that Highland Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

27. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier is licensed to serve. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming.

28. We have analyzed the record before us in this matter and find that, for the study area of United Telephone, Highland Cellular's designation as an ETC is unlikely to undercut the incumbent's ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers for United Telephone reveals that Highland Cellular will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other factors that define high-cost areas, a lower population density indicates a higher cost area.⁸² The average population density for the United Telephone wire centers for which we grant Highland Cellular ETC designation is 19.5 persons per square mile and the average population density for United Telephone's remaining wire centers is 73.21 persons per square mile.⁸³

29. We conclude, however, that it would not be in the public interest to designate Highland Cellular as an ETC in the study area of Verizon South.⁸⁴ Highland Cellular's licensed

⁸¹ See Highland Cellular Petition at 9.

⁸² See *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) (*MAG Order*), *recon. pending* (discussing Rural Task Force White Paper # 2 at <http://www.wutc.wa.gov/rtf>).

⁸³ Letter from David LaFuria and Steven M. Chernoff, Lukas, Nace, Gutierrez & Sachs to Marlene H. Dortch, FCC, filed Jan. 23, 2004 (Highland Cellular January 23 Supplement).

⁸⁴ Verizon opposes the designation of Highland Cellular as an ETC in Verizon South's study area because, among other things, Highland Cellular wrongly classified six of the seven wire centers for which it seeks ETC designation as non-rural and therefore failed to make the necessary showing for ETC designation for these areas. See Verizon Comments at 2-3. Specifically, because these wire centers are served by rural telephone companies, Verizon notes that Highland Cellular was required to describe the geographic area for these wire centers for which it seeks ETC designation and demonstrate that granting ETC status in these areas would serve the public interest. See Verizon Comments at 3; 47 U.S.C. § 214(e)(6). In response to the arguments raised by Verizon in its comments, Highland Cellular amended its petition in order to correctly reclassify Verizon South as a rural telephone company. See Highland Cellular Amendment I at 1-2, revised Exhibit D, and revised Exhibit F. Moreover, Highland Cellular stated in its amendment that the public interest analysis in its original petition was applicable to the study area of Verizon South. See Highland Cellular Amendment I at 2. Although we find that Highland's amendment sufficiently resolves these specific concerns raised by Verizon, as explained in the text, however, it would not be in the public interest to designate Highland Cellular as an ETC in Verizon South's study area.

CMRS service area covers only certain wire centers in the study area of Verizon South.⁸⁵ Based on our examination of the population densities of the wire centers in Verizon South's study area, and using the same analysis used by the Commission in the *Virginia Cellular Order*,⁸⁶ we find that designating Highland Cellular as an ETC in Verizon South's study area would not be in the public interest.

30. In the *Virginia Cellular Order*, the Commission granted in part and denied in part the petition of Virginia Cellular LLC (Virginia Cellular) to be designated as an ETC throughout parts of its licensed service area in the Commonwealth of Virginia.⁸⁷ In that proceeding, Virginia Cellular requested ETC designation for the study areas of six rural telephone companies.⁸⁸ The Commission found that the designation of Virginia Cellular as an ETC in certain areas served by five of the six rural telephone companies served the public interest by promoting the provision of new technologies to consumers in high-cost and rural areas of Virginia.⁸⁹ However, the Commission denied designation of Virginia Cellular as an ETC in one rural incumbent LEC's study area because Virginia Cellular would only have served the lowest-cost, highest-density wire center within the incumbent LEC's study area.⁹⁰

31. In this case, we find that the ETC designation of Highland Cellular in the portion of its licensed service area that covers only certain wire centers of Verizon South raises creamskimming concerns similar to those identified by the Commission in the *Virginia Cellular Order*. We agree with the arguments of Verizon that Highland Cellular should not be allowed to serve only the low-cost customers in a rural telephone company's study area.⁹¹ Our analysis of the population data for each of the affected rural wire centers, including the wire centers in Verizon South's study area that are not covered by Highland Cellular's licensed service area, reveals that Highland Cellular would be primarily serving customers in the low-cost and high-density portion of Verizon South's study area.⁹² Specifically, although the wire centers in Verizon South's study area that Highland Cellular would be able to serve includes two low density wire centers, approximately 94 percent of Highland Cellular's potential customers in Verizon South's study area would be located in the four highest-density, and thus presumably

⁸⁵ Verizon South's study area consists of the Jewell Ridge, Richlands, Bluefield, Pocahontas, Rocky Gap, Tazewell, Big Prater, Big Rock, Dwight, Grundy, Hurley, Maxie, and Oakwood wire centers. Highland Cellular is licensed to completely serve the Bluefield, Pocahontas, Rocky Gap, and Tazewell wire centers. In addition, Highland Cellular is licensed to partially serve the Jewell Ridge and Richlands wire centers. See Highland Cellular Amendment I at Exhibit F.

⁸⁶ See *Virginia Cellular Order*, FCC 03-338, at paras. 33-35.

⁸⁷ See *Virginia Cellular Order*, FCC 03-338, at para. 1-2.

⁸⁸ See *Virginia Cellular Order*, FCC 03-338, at para. n. 3.

⁸⁹ See *Virginia Cellular Order*, FCC 03-338, at para. 29.

⁹⁰ See *Virginia Cellular Order*, FCC 03-338, at para. 35.

⁹¹ Verizon argues that allowing ETCs, such as Highland Cellular, "to receive high cost support by serving only the lowest cost customers would waste universal service funds, increasing the burden on those who contribute to the universal service program, and potentially taking funds away from places where the funding is more needed." Verizon Comments at 7.

⁹² See *Virginia Cellular Order*, FCC 03-338, at para. 35.

lowest-cost, wire centers in Verizon South's study area.⁹³ The population in these four wire centers represents approximately 42,128 customers. In contrast, the remaining approximately six percent of Highland Cellular's potential customers in Verizon South's study area, which are located in the two lowest-density, highest-cost wire centers, represent only approximately 2,800 customers.⁹⁴

32. As we discussed in the *Virginia Cellular Order*, when a competitor serves only the lowest-cost, highest-density wire centers in a study area with widely disparate population densities, the incumbent may be placed at a sizeable unfair disadvantage.⁹⁵ Universal service support is calculated on a study-area-wide basis. Although Verizon South did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower cost area,⁹⁶ we find on the facts here that designating Highland Cellular as an ETC in these requested wire centers potentially could undermine Verizon South's ability to serve its entire study area. Specifically, because Verizon South's study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities.⁹⁷ This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially.⁹⁸ We therefore reject arguments that incumbents can, in every instance, protect

⁹³ The four highest-density areas that Highland Cellular proposes to serve are the Tazewell wire center (98 persons per square mile), the Pocahontas wire center (100 persons per square mile), the Bluefield wire center (101 persons per square mile), and the Richlands wire center (143 persons per square mile). See Highland Cellular January 14 Supplement.

⁹⁴ The Rocky Gap wire center has a population density of 18 persons per square mile and the Jewell Ridge wire center has a population density of 22 persons per square mile.

⁹⁵ See *Virginia Cellular Order*, FCC 03-338, at para. 35.

⁹⁶ In the *Rural Task Force Order*, the Commission provided incumbent LECs with certain options for disaggregating their study areas, determining that universal service support should be disaggregated and targeted below the study area level to eliminate uneconomic incentives for competitive entry caused by the averaging of support across all lines served by a carrier within its study area. Under disaggregation and targeting, per-line support is more closely associated with the cost of providing service. There are fewer issues regarding inequitable universal service support and concerns regarding the incumbent's ability to serve its entire study area when there is in place a disaggregation plan for which the per-line support available to a competitive ETC in the wire centers located in "low-cost" zones is less than the amount a competitive ETC could receive if it served in one of the wire centers located in the "high-cost" zones. See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, para. 145 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001), *recon. pending*. Although the deadline (May 15, 2002) for carriers to file disaggregation plans has passed, the relevant state commission or appropriate regulatory authority may nonetheless require a carrier to disaggregate, either on its own motion or that of an interested party. See USAC's website, <http://www.universalservice.org/hc/disaggregation>. See also *Rural Task Force Order*, 16 FCC Rcd at 11303, para. 147.

⁹⁷ The population densities of the requested Verizon South wire centers are: Rocky Gap (18 persons per square), Jewell Ridge (22 persons per square mile), Tazewell (98 persons per square mile), Pocahontas (100 persons per square mile), Bluefield (101 persons per square mile), and Richlands (143 persons per square mile). We note that these figures do not take into account cost variability within specific wire centers, which may be particularly acute in rural areas.

⁹⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Montana Universal Service Task Force's Reply Comments, filed June 3, 2003, at 8; *Federal-State Joint Board on Universal Service*, CC Docket No.

(continued...)

against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area.⁹⁹

33. Finally, we conclude that designating Highland Cellular as an ETC in a portion of United Telephone's Saltville wire center would not serve the public interest. Although the Wireline Competition Bureau previously designated an ETC for portions of a rural telephone company's wire center,¹⁰⁰ we conclude that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. In particular, we conclude, that prior to designating an additional ETC in a rural telephone company's service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area. A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation.¹⁰¹ Highland Cellular has stated that, should the Commission impose a requirement that competitive ETCs serve complete rural telephone company wire centers, it would not seek designation in the Saltville wire center.¹⁰² We, therefore, do not designate Highland Cellular as an ETC in the Saltville wire center.

D. Designated Service Area

34. Highland Cellular is designated an ETC in the requested areas served by the non-rural telephone company, Verizon Virginia, as listed in Appendix A. We designate Highland Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 2 Rural Service Area.¹⁰³ Highland Cellular is designated as an ETC in the area served by the rural telephone company, Burkes Garden, whose study area Highland Cellular is able to serve completely, as listed in Appendix B.¹⁰⁴ Subject to the Virginia Commission's agreement on redefining the service area of United Telephone, we also designate Highland Cellular as an ETC for the entire Bland and Ceres wire centers as listed in Appendix C.¹⁰⁵ Finally, we do not designate Highland Cellular as an ETC in the study area served by Verizon South or the Saltville

(...continued from previous page)

96-45, Organization for the Advancement and Promotion of Small Telephone Companies' Reply Comments, filed June 3, 2003, at 5.

⁹⁹ See Highland Cellular Reply Comments at 7-8.

¹⁰⁰ *RCC Holdings ETC Designation Order*, 17 FCC Rcd at paras. 34-35, 37.

¹⁰¹ See *In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, Report and Order, 16 FCC Rcd 22668, 22684-85, para. 34 (2001).

¹⁰² See Highland Cellular December 12 Supplement at 4. In contrast, Virginia Cellular amended its petition for ETC designation in the Commonwealth of Virginia to cover the entirety of the Williamsville, Virginia wire center, although its CMRS licensed service area in Virginia only covered a portion of that wire center. See *Virginia Cellular Order*, FCC 03-338, at para. 37.

¹⁰³ Highland Cellular Petition at 1.

¹⁰⁴ See Appendix B.

¹⁰⁵ See Appendix C.

wire center served by United Telephone.

35. We designate Highland Cellular as an ETC in the Bland and Ceres wire centers in the study area of United Telephone.¹⁰⁶ We find that because the Bland and Ceres wire centers are low-density, high-cost wire centers, concerns about undermining United Telephone's ability to serve the entire study area are minimized. Accordingly, we find that denying Highland Cellular ETC status for United Telephone's Bland and Ceres wire centers simply because Highland Cellular is not licensed to serve the twenty-five remaining wire centers would be inappropriate. Consequently, we conclude that it is in the public interest to designate Highland Cellular as an ETC in United Telephone's Bland and Ceres wire centers and include those wire centers in Highland Cellular's service area, as redefined below.

36. Finally, for the reasons described above, the service area we designate for Highland Cellular does not contain any portion of Verizon South's study area or United Telephone's Saltville wire center.¹⁰⁷

E. Redefining Rural Company Service Areas

37. We redefine the service area of United Telephone pursuant to section 214(e)(5). Consistent with prior rural service area redefinitions, we redefine each wire center in the United Telephone study area as a separate service area.¹⁰⁸ Our decision to redefine the service area of United Telephone is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

38. In order to designate Highland Cellular as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service areas of the rural telephone company in accordance with section 214(e)(5) of the Act.¹⁰⁹ We redefine the affected service area only to determine the portions of the rural service area in which to designate Highland Cellular and future competitive carriers seeking ETC designation in the same rural service area.¹¹⁰ In defining United Telephone's service area to be different than its

¹⁰⁶ We note that the study area of United Telephone is composed of a contiguous block of twenty-eight wire centers which include the Abingdon, Austinville, Bland, Bristol, Cana, Ceres, Chilhowie, Comers Rock-Elk Creek, Cripple Creek, Damascus, Fries, Galax, Glade Spring, Gate City, Hillsville, Independence, Konnarock, Laurel Fork, Marion-Atkins, Meadowview, Mouth of Wilson, Max Meadows, Rich Valley, Rural Retreat, Saltville, Sugar Grove, Sylvatus, and Wytheville wire centers. See Highland Cellular Amendment I at Exhibit F; Highland Cellular Amendment II at 1-2. Within this contiguous block, the Bland wire center, Ceres wire center, and a portion of the Saltville wire center fall within Highland Cellular's licensed service area, and the remaining twenty-five wire centers fall outside Highland Cellular's licensed service area. Highland Cellular Amendment II at 2.

¹⁰⁷ See *supra* paras. 29-33.

¹⁰⁸ See *RCC Holdings ETC Designation Order*, 17 FCC Rcd at 23547, para. 37. See also Highland Cellular Amendment II at 2. Highland Cellular initially requested that the Commission designate United Telephone's Bland, Ceres, and Saltville wire centers as one individual service area. See Highland Cellular Petition at 12. Highland Cellular subsequently amended its petition to request that each wire center be defined as separate service areas. See Highland Cellular Amendment II at 2.

¹⁰⁹ See 47 U.S.C. § 214(e)(5).

¹¹⁰ See 47 U.S.C. § 214(e)(2), (6).

study area, we are required to act in concert with the relevant state commission, “taking into account the recommendations” of the Joint Board.¹¹¹ The Joint Board’s concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision* are as follows: (1) minimizing creamskimming; (2) recognizing that the Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.¹¹² We find that the proposed redefinition properly addresses these concerns.

39. First, we conclude that redefining United Telephone’s service area at the wire center level should not result in opportunities for creamskimming. We have analyzed the population densities of the wire centers in United Telephone’s study area where Highland Cellular will and will not receive support and conclude that this redefinition does not raise creamskimming concerns.¹¹³ We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent’s ability to serve its entire study area. Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service area of United Telephone.

40. Second, our decision to redefine the service area includes special consideration for the affected rural carrier. We find no evidence that the proposed redefinition will harm United Telephone. Although no parties have opposed the specific redefinition of United Telephone’s service area, Verizon has raised general concerns that the designation of Highland Cellular as a competitive ETC will result in inefficient investment or will strain the universal service fund.¹¹⁴ We find no evidence that the proposed redefinition will harm United Telephone.¹¹⁵ We note that redefining the service area of the affected rural telephone company will not change the amount of universal service support that is available to the incumbents.

41. Third, we find that redefining United Telephone’s service area as proposed will not require United Telephone to determine its costs on any basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service area does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which United Telephone will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas might impose additional administrative burdens on affected rural telephone companies is not at issue here.

42. In accordance with section 54.207(d) of the Commission’s rules, we submit this Order to the Virginia Commission,¹¹⁶ and request that the Virginia Commission treat this Order as a petition to redefine a service area under section 54.207(d)(1) of the Commission’s rules. Highland Cellular’s ETC designation in the service area of United Telephone is subject to the

¹¹¹ See 47 U.S.C. § 214(e)(5).

¹¹² See *1996 Recommended Decision*, 12 FCC Rcd at 179-80, paras. 172-74.

¹¹³ See *supra* paras. 26-28.

¹¹⁴ See Verizon Comments at 3-5.

¹¹⁵ See *supra* para. 25.

¹¹⁶ 47 C.F.R. § 54.207(d).

Virginia Commission's review and agreement with the redefinition proposal herein.¹¹⁷ We find that the Virginia Commission is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural service area in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service area of United Telephone, our designation of Highland Cellular as an ETC in the area served by United Telephone as set forth herein, shall also take effect. In all other areas for which this Order grants ETC status to Highland Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Highland Cellular's petition with regard to redefining United Telephone's service area.

F. Regulatory Oversight

43. We note that Highland Cellular 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 sections 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement.¹¹⁸ Separate and in addition to its annual certification filing under sections 54.313 and 54.314 of our rules, Highland Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans. Highland Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis.¹¹⁹ In addition, Highland Cellular will annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year.¹²⁰ We require Highland Cellular to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004.¹²¹ We find that reliance on Highland Cellular'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*.¹²² We

¹¹⁷ We note that, in the *Universal Service Order*, the Commission decided to minimize any procedural delays caused by the need for the federal-state coordination on redefining rural service areas. See *Universal Service Order*, 12 FCC Rcd at 8880-1, para. 187. Therefore, the Commission adopted section 54.207 of the Commission's rules by which the state commissions may obtain agreement of the Commission when proposing to redefine a rural service area. *Id.* at 8881. Similarly, the Commission adopted a procedure in section 54.207 to address the occasions when the Commission seeks to redefine a rural service area. *Id.* at 8881, para. 188. The Commission stated that "in keeping with our intent to use this procedure to minimize administrative delay, we intend to complete consideration of any proposed definition of a service area promptly." *Id.*

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

¹¹⁹ See *supra* para 24; Highland Cellular November 19 Supplement, at 2.

¹²⁰ See *supra* para. 16; at 4, Highland Cellular November 19 Supplement at 4, n.7.

¹²¹ Highland Cellular's additional submissions concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

¹²² *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.

conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Highland Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. 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.¹²³ Highland Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Highland Cellular 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.¹²⁴ The Commission also may assess forfeitures for violations of Commission rules and orders.¹²⁵

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

44. 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.¹²⁶ Highland Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.¹²⁷ We find that Highland Cellular 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

45. 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), Highland Cellular, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for portions of its licensed service area in the Commonwealth of Virginia to the extent described herein.

46. 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 Highland Cellular, Inc. to redefine the service area of United Telephone Company – Southeast Virginia in Virginia to IS GRANTED to the extent described herein and SUBJECT TO the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service area. For United Telephone Company – Southeast Virginia, upon the effective date of the agreement of the Virginia State Corporation Commission with the Commission's redefinition of such service area, this designation of Highland Cellular, Inc. as an ETC for such area as set forth herein shall also take effect.

¹²³ 47 U.S.C. §§ 220, 403; 47 C.F.R. § 54.313, 54.314.

¹²⁴ See *Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. See also 47 U.S.C. § 254(e).

¹²⁵ See 47 U.S.C. § 503(b).

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

¹²⁷ See Highland Cellular Petition at 19.

47. 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 Highland Cellular, Inc. to redefine the service area of Verizon South, Inc. – Virginia in Virginia IS DENIED.

48. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

**VIRGINIA NON-RURAL TELEPHONE COMPANY WIRE CENTERS FOR
INCLUSION IN HIGHLAND CELLULAR'S ETC SERVICE AREA**

Verizon Virginia Inc.

Honaker (wire center code HNKRV AHK)

APPENDIX B

**VIRGINIA RURAL TELEPHONE COMPANY STUDY AREAS FOR INCLUSION IN
HIGHLAND CELLULAR'S ETC SERVICE AREA**

Burkes Garden Telephone Company, Inc. (study area code 190220)

APPENDIX C

**VIRGINIA RURAL TELEPHONE COMPANY WIRE CENTERS
FOR INCLUSION IN HIGHLAND CELLULAR'S ETC SERVICE AREA**

United Telephone Company – Southeast Virginia

Bland (wire center code BLNDVAXA)

Ceres (wire center code CERSVAXA)

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*

The long-term viability of universal service depends on a more rigorous review process for ETC applications. Today's decision, like the decision in *Virginia Cellular* that preceded it, represents a step in the right direction. During the coming year, as we consider the Joint Board's guidance, we need to seize the opportunity to improve it further. We must give serious consideration to the consequences that flow from using the fund to support several competitors in truly remote areas. We also need to bear in mind that when we do fund competition, our rules must provide the right level of support.

I look forward to this important dialogue at the Commission. To keep the country well-connected, we must ensure that all Americans enjoy comparable services at comparable rates.

**DISSENTING STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia

Today's decision designates Highland Cellular, Inc. (Highland Cellular) as an eligible telecommunications carrier (ETC) in areas served by two rural telephone companies and one non-rural telephone company in the Commonwealth of Virginia. The Commission finds the designation of Highland Cellular as an ETC to be in the public interest and furthers the goals of universal service by providing greater mobility and a choice of providers in high-cost and rural areas of Virginia. I object to this Order's finding that the goals of universal service are to provide greater mobility and a choice of providers in rural areas. Rather, I believe the main goals of the universal service program are to ensure that all consumers—including those in high cost areas have access at affordable rates.

During the past two years, I have continued to express my concerns with the Commission's policy of using universal service support as a means of creating "competition" in high cost areas.¹ As I have stated previously, I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. The Commission's policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in rural areas.

I am troubled by today's decision because we fail to require ETCs to provide the same type and quality of services throughout the same geographic service area as a condition of receiving universal service support. In my view, competitive ETCs seeking universal service support should have the same "carrier of last resort" obligations as incumbent service providers in order to receive universal service support. Adopting the same "carrier of last resort" obligation for all ETCs is fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers.

Today's decision also fails to require CETCs to provide equal access. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. As I have stated previously, I believe an equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.²

¹ Separate Statement of Commissioner Kevin J. Martin, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket (No. 00-256)(rel. October, 11, 2002).

² Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service*, CC Docket No.96-45, (rel. July 10, 2002); Separate Statement of Commissioner Kevin J. Martin, *Federal-State Joint Board on Universal Service, FCC 03-170*, CC Docket No. 96-45, (rel. July 14, 2003).

The Commission also redefines the service area of United Telephone where Highland Cellular's proposed service area does not cover the entire service area of the incumbent rural telephone company. I am concerned with the redefining of service areas of incumbent rural telephone companies. I am also concerned that the Commission did not sufficiently consider the cost data to verify whether or not Highland Cellular is serving only low-cost, high revenue customers in the rural telephone company's area.

Finally, I remain concerned that the Commission's recent decisions on pending CETC applications may prejudge the Commission's upcoming decision regarding the framework for high-cost universal service support. These decisions now provide a template for approving the numerous CETC applications currently pending at the Commission, and I believe may ultimately push the Commission to take more aggressive steps to slow the growth of the universal service fund such as primary line restrictions and caps on the amount of universal service support available for service providers in rural America.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Federal-State Joint Board on Universal Service; Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia

Late last year, I had the opportunity to further outline my thoughts on the Commission's eligible telecommunications carrier (ETC) designation process and the role of the public interest in that process.¹ For the reasons discussed then, I support this Order responding to the petition of Highland Cellular to be designated as an ETC in the Commonwealth of Virginia. This Order, along with the recently released *Virginia Cellular Order*,² marks a significant improvement from past Commission decisions by more fully embracing the statutory public interest mandate.

Through these orders, we have provided a more stringent examination of the public interest and acknowledged that competition alone cannot satisfy the public interest analysis. Instead, we have weighed a variety of factors to assess the overall benefits and costs. We considered whether the applicant has made a commitment to service quality and will provide essential services in its community. We have also improved the accountability of the process by requiring ETCs to submit regularly documentation detailing their progress towards meeting their build-out plans and other commitments.

On February 27, 2004, after adoption of this *Highland Cellular Order*, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision that further clarifies and strengthens the standards for designating ETCs and for assessing the public interest. I was pleased that the Joint Board recognized that establishing a meaningful public interest test and providing meaningful guidance on ETC designations will help limit federal universal service funding to those providers who are committed to serving rural communities. I have been pleased to hear reports that state commissions and other parties are using the new *Virginia Cellular Order* template in many state ETC proceedings. I am also encouraging the FCC and state commissions to embrace the Joint Board's approach as soon as possible.

Establishing a more meaningful public interest test is a critical first step in a larger effort to manage responsibly the growth of the universal service fund overall. I believe there are constructive actions we can take to make sure our universal service mandate is upheld while still ensuring that the fund does not grow dramatically. First, reforming the process for designating ETCs is essential. Second, funding new entrants based on their own costs, rather than the costs of the incumbent, would more correctly align our rules with the statutory requirement that funds be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. And third, the Commission should explore frameworks to identify those

¹ Commissioner Jonathan S. Adelstein, *Accessing the Public Interest: Keeping America Well-Connected*, Address Before the 21st Annual Institute on Telecommunications Policy & Regulation (Dec. 4, 2003) (<http://www.fcc.gov/commissioners/adelstein/speeches2003.html>).

² *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular Order*).

very high-cost areas where it may be prohibitive to fund more than one ETC. These three key reforms, if carried out together, would measurably reduce fund growth without shortchanging Rural America.