

**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
	)	
Petitions for Reconsideration of	)	
Virginia Cellular, LLC and Highland	)	
Cellular, Inc. Designations as Eligible	)	
Telecommunications Carriers	)	
In the Commonwealth of Virginia	)	

**ORDER ON RECONSIDERATION**

**Adopted: November 15, 2012**

**Released: November 26, 2012**

By the Commission:

**I. INTRODUCTION**

1. This order addresses five petitions for reconsideration of the Commission's designations of Virginia Cellular, LLC (Virginia Cellular) and Highland Cellular, Inc. (Highland Cellular) as eligible telecommunications carriers (ETCs) for purposes of receiving federal universal service support in the Commonwealth of Virginia.<sup>1</sup> For the reasons set forth below, we find no reason to reconsider the Commission's orders designating Virginia Cellular and Highland Cellular and affirm the Commission's prior decisions.

**II. BACKGROUND**

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See Virginia Cellular, LLC Petition for Reconsideration, CC Docket No. 96-45, filed Feb. 23, 2004 (Virginia Cellular Petition); N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation, U.S. Cellular Corporation Petition for Reconsideration, CC Docket No. 96-45, filed Feb. 23, 2004 (N.E. Colorado Virginia Cellular Petition); Sprint Corporation Petition for Reconsideration, CC Docket No. 96-45, filed Feb. 23, 2004 (Sprint Petition); Highland Cellular, Inc. Petition for Reconsideration, CC Docket No. 96-45, filed May 12, 2004 (Highland Cellular Petition); N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation, U.S. Cellular Corporation Petition for Reconsideration, CC Docket No. 96-45, filed May 12, 2004 (N.E. Colorado Highland Cellular Petition) (collectively, Petitioners); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in 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 in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

<sup>2</sup> 47 U.S.C. § 254(e).

<sup>3</sup> 47 U.S.C. § 214(e)(1).

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>4</sup> 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.”<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup>

4. *Virginia Cellular and Highland Cellular ETC Designation Orders.* On January 22, 2004, the Commission released an order designating Virginia Cellular as an ETC in the Commonwealth of Virginia.<sup>8</sup> The Commission found that the designation of Virginia Cellular as an ETC in two non-rural study areas and in areas served by five rural telephone companies served the public interest.<sup>9</sup> The Commission found, however, that Virginia Cellular’s designation in the study area of NTELOS Telephone Inc., a rural telephone company, would not be in the public interest.<sup>10</sup>

5. On April 12, 2004, the Commission released an order designating Highland Cellular as an ETC in the Commonwealth of Virginia.<sup>11</sup> The Commission found that the designation of Highland Cellular as an ETC in a wire center served by Verizon Virginia, Inc., a non-rural carrier, and certain areas served by two rural companies served the public interest.<sup>12</sup> However, the Commission found that Highland Cellular’s designation in the study area of Verizon South, Inc. and in a wire center of United Telephone Company-Southeast Virginia would not be in the public interest.<sup>13</sup>

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<sup>4</sup> 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*).

<sup>5</sup> 47 U.S.C. § 214(e)(6); see, e.g., *Virginia Cellular Order*, 19 FCC Rcd 1563; *Highland Cellular Order*, 19 FCC Rcd 6422.

<sup>6</sup> 47 U.S.C. § 214(e)(6); see also 47 U.S.C. § 153(37) (defining the term “rural telephone company”).

<sup>7</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c); see also *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6388-96, paras. 40–57 (2005) (*ETC Designation Order*); *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431–32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44. The Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas. *Id.* at 6389–90, paras. 42–43. See also *Virginia Cellular*, 19 FCC Rcd at 1563, 1564, 1565, 1575–76, 1584–85, paras. 1, 4, 27, 28, 46; *Highland Cellular Order*, 19 FCC Rcd at 6422, 6438, paras. 1, 33.

<sup>8</sup> *Virginia Cellular Order*, 19 FCC Rcd 1563.

<sup>9</sup> *Id.* at 1564, 1580–81, paras. 1, 36–38.

<sup>10</sup> *Id.* at 1581, para. 39.

<sup>11</sup> *Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* United Telephone Company-Southeast Virginia is a rural telephone company.

6. In both the *Virginia Cellular* and *Highland Cellular Orders*, the Commission stated that, if the carriers failed to fulfill the requirements of the statute, the Commission's rules, or the terms of the order, the Commission has authority to revoke the ETC designations.<sup>14</sup>

7. *Petitions for Reconsideration.* Both Virginia Cellular and Highland Cellular filed petitions for reconsideration of their respective orders.<sup>15</sup> A group of carriers (N.E. Colorado Cellular, Midwest Wireless Holdings, L.L.C., Rural Cellular Corporation, U.S. Cellular Corporation, hereinafter, N.E. Colorado) filed petitions for reconsideration of both the *Virginia Cellular Order* and the *Highland Cellular Order*.<sup>16</sup> Sprint Corporation (Sprint) also filed a petition for reconsideration in response to the *Virginia Cellular Order* only.<sup>17</sup> Collectively, Petitioners request that the Commission reconsider the *Virginia Cellular Order* and the *Highland Cellular Order* and designate Virginia Cellular and Highland Cellular throughout the initially requested service areas.<sup>18</sup>

8. Petitioners argue that the *Virginia Cellular Order* and the *Highland Cellular Order* departed from prior Commission decisions without explanation and improperly applied new "rules" and standards without conducting a rulemaking, in violation of the Administrative Procedure Act (APA).<sup>19</sup> Specifically, Highland Cellular, N.E. Colorado, and Virginia Cellular assert that the Commission departed from its prior finding that creamskimming concerns are substantially eliminated by a rural telephone company's option to disaggregate and target high-cost support below the study area level.<sup>20</sup> Additionally, all Petitioners allege that the Commission improperly stated that a public interest analysis must be applied

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<sup>14</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1585, para. 46; *Highland Cellular Order*, 19 FCC Rcd at 6442, para. 43.

<sup>15</sup> Highland Cellular Petition at 1; Virginia Cellular Petition at 1.

<sup>16</sup> N.E. Colorado Virginia Cellular Petition at 2–3; N.E. Colorado Highland Cellular Petition at 2–3. The group includes N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation, and U.S. Cellular Corporation, which had pending petitions for ETC status before the Commission and/or state commissions, or planned to file petitions for ETC status with the Commission, or had pending petitions for redefinition of the service areas of rural incumbent local exchange companies (LECs) at the time the Commission adopted the *Virginia Cellular Order* and the *Highland Cellular Order*. N.E. Colorado Virginia Cellular Petition at 2–3; N.E. Colorado Highland Cellular Petition at 2–3; *see also* 47 C.F.R. § 54.207 (providing requirements for redefinition of service areas).

<sup>17</sup> Sprint Petition at 1.

<sup>18</sup> *See* Highland Cellular Petition at 20–21; N.E. Colorado Highland Cellular Petition at 25; N.E. Colorado Virginia Cellular Petition at 26; Virginia Cellular Petition at 19–20; Sprint Petition at 9; *see also supra* paras. 4–5. We note that Petitioners raised objections concerning the ETC designation process in general. *See* Highland Cellular Petition at 17–20; N.E. Colorado Virginia Cellular Petition at 17–18; N.E. Colorado Highland Cellular Petition at 16–18; Sprint Petition at 2–4. These objections, however, are not specific to the *Virginia Cellular Order* or the *Highland Cellular Order*, and the Commission provided an opportunity to comment on issues regarding the ETC designation process generally in the rulemaking proceeding that culminated in the *ETC Designation Order*. *See ETC Designation Order*, 20 FCC Rcd at 6388, para. 40. We therefore dismiss these general objections as moot.

<sup>19</sup> *See* Highland Cellular Petition at 6–8; N.E. Colorado Highland Cellular Petition at 5; N.E. Colorado Virginia Cellular Petition at 6; Sprint Petition at 5; Virginia Cellular Petition at 2; Sprint Petition at 5–6; *see also* 5 U.S.C. § 551 *et seq.*

<sup>20</sup> Highland Cellular Petition at 9; Virginia Cellular Petition at 4; N.E. Colorado Highland Cellular Petition at 17–18; N.E. Colorado Virginia Cellular Petition at 3–5; *see also Federal-State Joint Board on Universal Service; Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Order on Reconsideration, 16 FCC Rcd 19144, 19149, para. 12 (2001) (*Western Wireless Reconsideration Order*). The Commission stated that "creamskimming" occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area. *See Virginia Cellular Order*, 19 FCC Rcd at 1578, para. 32.

to non-rural areas in contravention of the Act.<sup>21</sup> Some Petitioners allege that the Commission also violated the Commission's competitive neutrality policy by protecting incumbent local exchange carriers because the *Virginia Cellular Order* and *Highland Cellular Order* drew inferences in favor of the incumbent local exchange companies and placed the burden of proof on the petitioning parties to prove the benefits of their designation and the absence of countervailing harms.<sup>22</sup> In particular, N. E. Colorado argues that the Commission's decision to consider the impact that an ETC designation will have on the overall federal universal service fund is not competitively neutral.<sup>23</sup> Finally, N.E. Colorado alleges that the Commission lacks statutory authority to revoke an ETC designation.<sup>24</sup>

### III. DISCUSSION

9. We deny the five petitions for reconsideration of the Commission's orders designating Virginia Cellular and Highland Cellular as ETCs for purposes of receiving federal universal service support in the Commonwealth of Virginia.<sup>25</sup> In so doing, we conclude that the orders complied with requirements of the Administrative Procedure Act. We also affirm the Commission's conclusion that the designations of Virginia Cellular and Highland Cellular were consistent with the statutory eligibility requirements of section 214(e) of the Act and conclude that the Commission appropriately analyzed whether it was in the public interest to designate both carriers. Moreover, we conclude that the Commission's actions also complied with the requirements of section 254 of the Act. We thus decline to expand the ETC designation of either Virginia Cellular or Highland Cellular.

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<sup>21</sup> Highland Cellular Petition at 8; N.E. Colorado Highland Cellular Petition at 12; N.E. Colorado Virginia Cellular Petition at 14–18; Sprint Petition at 2.

<sup>22</sup> See Highland Cellular Petition at 13; N.E. Colorado Virginia Cellular Petition at 21; Virginia Cellular Petition at 6, 8, 11–19.

<sup>23</sup> N.E. Colorado Virginia Cellular Petition at 18–20.

<sup>24</sup> *Id.* at 23. N.E. Colorado argues that a state commission may have the authority under state law to revoke an ETC designation, but that the Commission is fully subject to the APA, which limits the power of an administrative agency to impose sanctions for statutory violations. *Id.* N.E. Colorado further states that nothing in the Act or any other statute expressly authorizes the Commission to revoke an ETC designation. *Id.* at 25.

<sup>25</sup> We note that the Commission recently took action to comprehensively reform and modernize the universal service high-cost program, including the manner in which ETC support is determined, by creating the Connect America Fund (CAF), which will ultimately replace all existing high-cost support mechanisms. As part of this reform, existing support to competitive ETCs will be phased out over a five-year period beginning July 1, 2012, with limited exceptions. Competitive mobile ETCs receiving existing support, as well as any new mobile ETCs, will be eligible to compete for support offered in the CAF's Mobility Fund, which will offer support to ensure the availability of mobile broadband networks in areas where it might not be offered absent such support. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*), *pets. for review pending sub nom*, In re: FCC 11-161, No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 8, 2011). The *USF/ICC Transformation Order* amended our rules for federal ETC designations, and the subsequent *USF/ICC Clarification Order* eliminated the disaggregation rule in light of the elimination of the identical support rule. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Order, 27 FCC Rcd 605, 609, para. 16 (Wireline Comp. Bur. and Wireless Telecom. Bur. 2012) (*USF/ICC Clarification Order*). This Order on Reconsideration upholding past decisions by the Wireline Competition Bureau does not prejudice how the Commission will evaluate ETC applications in the future under the newly amended rules for ETC designations.

10. *APA Challenges.* We disagree with Petitioners that the Commission violated the Administrative Procedure Act.<sup>26</sup> Under the APA, an administrative agency's decisions may be issued as "rules" adopted through rulemaking, which requires notice and comment, or as "orders" adopted through adjudication, which does not require notice and comment.<sup>27</sup> The designation of an ETC is an adjudication.<sup>28</sup> As such, there is no requirement for the Commission to propose rules or invite comment on those proposals before determining whether to designate an entity as an ETC, as would be required in the context of a rulemaking.<sup>29</sup> Indeed, until the Commission adopted rules for federal ETC designations in 2005 in the *ETC Designation Order*, standards for evaluating ETC designations evolved through the adjudicative process.<sup>30</sup>

11. *Statutory Requirements for ETC Designations.* Under section 214(e)(6) of the Act, the Commission must determine that an ETC designation is consistent with the "public interest, convenience and necessity."<sup>31</sup> These terms are not defined in the Act, and the Commission has discretion to determine the specific factors to be considered under the public interest standards in section 214. The Act sets forth minimum eligibility requirements,<sup>32</sup> but does not prohibit the Commission from considering additional factors in determining whether the designation of an ETC is in the public interest.<sup>33</sup> Thus, the Commission reasonably determined at the time that the provision of supported services by itself does not always demonstrate that an ETC designation is in the public interest.

12. Consistent with its statutory authority, in the *Virginia Cellular Order* and *Highland Cellular Order*, the Commission concluded that a rigorous public interest analysis was appropriate. This decision was based on the Commission's experience with the ETC process at that time. The Commission determined that each request merited a thoughtful analysis of how a particular ETC designation would affect service in the relevant area. The Commission engaged in a fact-specific public interest analysis.<sup>34</sup> It concluded that "the value of increased competition, by itself, is not sufficient to satisfy the public

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<sup>26</sup> See *Highland Cellular Petition* at 6–8; *N.E. Colorado Highland Cellular Petition* at 5; *N.E. Colorado Virginia Cellular Petition* at 6; *Sprint Petition* at 5; *Virginia Cellular Petition* at 2; *Sprint Petition* at 5–6; see also 5 U.S.C. § 551 *et seq.*

<sup>27</sup> 5 U.S.C. § 551. "An administrative agency can, of course, make legal-policy through rulemaking or by adjudication." *Kidd Communications v. FCC*, 427 F.3d 1, 5 (D.C. Cir. 2005) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202–03 (1947) ("[T]he choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency")).

<sup>28</sup> See 5 U.S.C. §§ 551(7), 554.

<sup>29</sup> See 5 U.S.C. § 553.

<sup>30</sup> *ETC Designation Order*, 20 FCC Rcd 6371. We note that the Commission created a procedural framework for filing requests for ETC designation with the Commission in 1997. *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997). In addition, prior to the *ETC Designation Order*, the Commission established a framework for determining from which designating entity a carrier should seek designation when jurisdiction was in question. *Twelfth Report and Order*, 15 FCC Rcd 12208.

<sup>31</sup> 47 U.S.C. § 214(e)(6) ("Upon request and consistent with the public interest, convenience and necessity . . .").

<sup>32</sup> 47 U.S.C. § 214(e)(6) (requiring an ETC to "meet[] the requirements of paragraph (1)," *i.e.*, the requirements that it offer the supported services using its own facilities at least in part and that it advertises the availability and price of such services).

<sup>33</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417–18 (5th Cir. 1999).

<sup>34</sup> See *Virginia Cellular Order*, 19 FCC Rcd at 1574–81, paras. 26–39; *Highland Cellular Order*, 19 FCC Rcd at 6431–38, paras. 20–35.

interest test in rural areas.”<sup>35</sup> The Commission evaluated the merits of designating Virginia Cellular and Highland Cellular based on the information before it. We therefore disagree with Petitioners and find that the Commission did in fact explain its reasons for adopting a more rigorous public interest standard.<sup>36</sup>

13. The Commission’s analysis included a detailed review of whether the designations of Virginia Cellular and Highland Cellular raised creamskimming concerns.<sup>37</sup> The Commission found in both the *Virginia Cellular Order* and the *Highland Cellular Order* that there was potential for creamskimming even where the incumbent LECs had disaggregated. The Commission therefore declined to designate Virginia Cellular and Highland Cellular in those areas in which designation would have undercut the ability of the incumbent LECs to serve the entire service area.<sup>38</sup> We find nothing in the record to justify revisiting the Commission’s creamskimming analysis. Contrary to Petitioners’ assertions, the Commission had not previously determined that disaggregation eliminated creamskimming concerns, although the Commission had recognized that disaggregation might be able to alleviate such concerns in certain circumstances.<sup>39</sup> As part of its public interest analysis, the Commission was justified in considering the impact on service to all affected parts of the service area under the rules that existed at the time. Petitioners have not demonstrated that the Commission’s concern was unfounded.

14. Further, we disagree with Petitioners that the Commission’s decisions violated the pro-competitive policy of the Act and the principle of competitive neutrality.<sup>40</sup> Section 254 mandates that the Commission base its policies for the preservation and advancement of universal service on several principles, including such other principles that it “determine[s] necessary and appropriate for the protection of the public interest.”<sup>41</sup> In both the *Virginia Cellular Order* and *Highland Cellular Order*, the Commission evaluated the record and considered a variety of factors in determining whether the designations were consistent with the public interest. The Commission’s decision at that time to consider the impact of designating ETCs reflects a reasonable and proper interpretation of the Commission’s obligation to evaluate whether such designation would serve the public interest.<sup>42</sup>

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<sup>35</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 4; *see also Highland Cellular Order*, 19 FCC Rcd at 6424, para. 4.

<sup>36</sup> *See Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 4; *Highland Cellular Order*, 19 FCC Rcd at 6423–24, para. 4. We note that, when an agency changes course, “it need not demonstrate to a court’s satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.” *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009).

<sup>37</sup> *See Virginia Cellular Order*, 19 FCC Rcd at 1578–80, paras. 32–35; *Highland Cellular Order*, 19 FCC Rcd at 6434–38, paras. 26–33.

<sup>38</sup> *Virginia Cellular Order*, 19 FCC Rcd at 1579–80, para. 35; *Highland Cellular Order*, 19 FCC Rcd at 6437–38, para. 32.

<sup>39</sup> *See Highland Cellular Petition* at 9; *Virginia Cellular Petition* at 4; *see also Western Wireless Reconsideration Order*, 16 FCC Rcd at 19149, para. 12 (finding that creamskimming concerns may be “substantially eliminated” now that rural telephone companies have the option of disaggregating and targeting high-cost support below the study area level).

<sup>40</sup> *See Highland Cellular Petition* at 13; *N.E. Colorado Virginia Cellular Petition* at 21; *Virginia Cellular Petition* at 6, 8, 11–19.

<sup>41</sup> 47 U.S.C. § 254(b)(1)–(7).

<sup>42</sup> *See Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (holding that the Commission “enjoys broad discretion” when balancing the goals of universal service against one another).

15. N.E. Colorado argues that that the Commission lacks statutory authority to revoke an ETC designation.<sup>43</sup> We disagree. We find that inherent in the Commission's authority to designate a carrier as an ETC is the authority to revoke such designation. This conclusion is supported by the obligation to ensure that ETC designation is consistent with the public interest. If a carrier no longer meets the statutory requirements of section 214(e)(1)(A), and our implementing regulations, the condition for ETC designation is no longer met. This condition appears central to ETC designation, and thus, if a carrier no longer complies, it is reasonable for the Commission to have the authority to revoke the ETC designation.<sup>44</sup>

16. Petitioners also object to the fact that the Commission designated Virginia Cellular and Highland Cellular while awaiting a recommended decision from the Federal-State Joint Board on Universal Service (Joint Board).<sup>45</sup> The Commission was not bound to suspend consideration of pending matters until it received or acted upon the Joint Board recommendation. For the foregoing reasons, we deny the petitions for reconsideration and affirm the decisions in the *Virginia Cellular Order* and the *Highland Cellular Order*.

#### IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration of the *Virginia Cellular Order* filed by Virginia Cellular, LLC IS DENIED.

18. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration of the *Virginia Cellular Order* filed by N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation, and U.S. Cellular Corporation IS DENIED.

19. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration of the *Virginia Cellular Order* filed by Sprint Corporation IS DENIED.

20. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration of the *Highland Cellular Order* filed by Highland Cellular, Inc. IS DENIED.

21. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214(e), 254, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration of the *Highland Cellular Order* filed by N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation, and U.S. Cellular Corporation IS DENIED.

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<sup>43</sup> N.E. Colorado Virginia Cellular Petition at 23.

<sup>44</sup> We note that in the recent *USF/ICC Transformation Order and FNPRM*, we recognized that ETC revocation should only occur in the most egregious circumstances, and we sought comment on the specific circumstances that would warrant revocation of ETC status. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17863, para. 618; *id.* at 18068, para. 1114.

<sup>45</sup> Consistent with section 254(b) of the Act, the Commission had requested that the Joint Board "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the goals of preserving universal service and fostering competition continue to be fulfilled." See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 22642, 22642, para. 1 (2002).

22. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order on reconsideration SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary