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September 14, 2004

VIA COURIER

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

*undocketed*

Re: **CC Docket No. 96-45, FCC 97-419:** Petition for Designation as an Eligible Telecommunications Carrier

Dear Ms. Dortch:

Enclosed for filing with the Federal Communications Commission, please find an original and 3 copies of the Petition of Southern Communications Services, Inc., d/b/a Southern LINC, for designation as an Eligible Telecommunications Carrier (ETC) in the rural and non-rural areas of its licensed service territory in the State of Florida. An electronic copy of this Petition has been filed with the Commission's ECFS in Docket No. 96-45.

Also enclosed is a duplicate copy of this filing for date stamping. Should you have any questions or require any additional information, please contact the undersigned at (202) 955-9766 or via email at eemott@kelleydrye.com.

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Respectfully submitted,

*Erin W Emmott*

Erin W. Emmott

cc: Qualex (via email)  
Florida Public Service Commission

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

_____	)	
In the Matter of	)	
	)	
Southern Communications Services, Inc.	)	
d/b/a Southern LINC	)	
	)	CC Docket No. 96-45
Petition For Designation as an	)	FCC 97-419
Eligible Telecommunications Carrier	)	
_____	)	

To: Chief, Wireline Competition Bureau

**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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Dated: September 14, 2004

**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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EXHIBIT 4	CTIA CONSUMER CODE
EXHIBIT 5	HIGH COST CERTIFICATION LETTER
EXHIBIT 6	ANTI-DRUG ABUSE DECLARATION

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Southern Communications Services, Inc. d/b/a Southern LINC	)	CC Docket No. 96-45
	)	FCC 97-419
Petition For Designation as an Eligible Telecommunications Carrier in the State of Florida	)	
	)	

**PETITION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

Southern Communications Services, Inc., d/b/a Southern LINC (“Southern LINC” or the “Company”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice on Section 214(e)(6) Procedures*,<sup>2</sup> hereby petitions the Wireline Competition Bureau (“WCB”) to designate Southern LINC as an eligible telecommunications carrier (“ETC”) throughout the rural and non-rural areas in Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington counties in the State of Florida.

As further explained in Section II.A. *infra*, the Florida Public Service Commission (“PSC”) lacks jurisdiction to consider Southern LINC’s request under Section

<sup>1</sup> 47 U.S.C. § 214(e)(6).

<sup>2</sup> *Public Notice, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997) (“*Section 214(e)(6) Procedure Public Notice*”). In the Public Notice, the Commission delegated authority to the WCB’s predecessor to designate carriers as ETCs when the state commission lacks jurisdiction.

214(e)(1) and (2).<sup>3</sup> Therefore the FCC has jurisdiction under Section 214(e)(6) to grant this Petition for Designation (“Petition”). As demonstrated below, Southern LINC meets all statutory and regulatory requirements for ETC designation to serve Florida customers in the designated rural areas. Moreover, designating Southern LINC as an ETC will serve the public interest. Therefore, Southern LINC respectfully requests that the FCC grant this Petition promptly.<sup>4</sup>

## I. SOUTHERN LINC’S UNIVERSAL SERVICE OFFERINGS

Southern LINC is a commercial mobile radio service (“CMRS”) carrier, licensed by the Commission to provide cellular communication services throughout Florida, as illustrated by the map in Exhibit 1 hereto. As an FCC-licensed CMRS carrier, Southern LINC provides service in accordance with the terms of its FCC licenses. Southern LINC, which has provided service since December 1995, is well positioned to bring competitive universal service to Florida consumers. Southern LINC seeks to be designated as an ETC to provide wireless ETC service throughout the rural and non-rural areas in Florida as identified in Exhibit 1. Southern LINC is seeking designation in the following counties in Florida: Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington. Southern LINC does not seek state-wide designation at this time.

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<sup>3</sup> 47 U.S.C. § 214 (e) (1) and (2). See In re: Petition for declaratory statement that NCP, Inc. d/b/a Nextel Partners, commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as “eligible telecommunications carrier”, Order No.PSC-03-1063-DS-TP, p. 3 (2003) (holding “this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status”), attached as Exhibit 2, hereto.

<sup>4</sup> While Southern LINC does not believe it is required to do so under the current rules and regulations, Southern LINC has also included in this Petition, information identified by the Commission in its *Virginia Cellular* decision and the Recommended Decision of the Joint Board on Universal Service. *See In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*. Memorandum and Order, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”); *see also In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, FCC04J-1* (rel. Feb. 27, 2004) (“*2004 Recommended Decision*”).

Southern LINC, upon its designation as an ETC, will be capable of providing all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's Rules,<sup>5</sup> throughout its wireless service area in Florida. Upon grant of this Petition, Southern LINC will make available to consumers in the designated ETC service areas a universal service offering over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities Southern LINC uses to serve existing mobile cellular customers. Southern LINC will provide service to any requesting customer within its designated ETC service area, subject to the criteria set forth in Section II.C. *infra*, and will deploy any additional facilities necessary to do so.

## **II. SOUTHERN LINC SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Southern LINC satisfies each of the five elements required by the Commission for ETC designation, as demonstrated below. In addition, Southern LINC believes it satisfies any additional requirements as may be applicable as a result of the Commission's *Virginia Cellular* decision.

### **A. Southern LINC is not Subject to the Jurisdiction of the Florida Public Service Commission**

Section 254(e) of the Act<sup>6</sup> provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>7</sup> Pursuant to Section 214(e)(6) of the Act, the Commission may, upon request, designate as an ETC "a common carrier providing telephone exchange service and exchange

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<sup>5</sup> 47 C.F.R. §54.101(a).

<sup>6</sup> 47 U.S.C. §254(e).

access that is not subject to the jurisdiction of a State Commission.”<sup>8</sup> The Commission has previously recognized that a commercial mobile radio service (“CMRS”) provider, such as Southern LINC, may seek designation as an ETC.<sup>9</sup>

The Commission has ruled that an ETC applicant must demonstrate that it “is not subject to the jurisdiction of a state commission.”<sup>10</sup> In its *Twelfth Report and Order*, the Commission stated that it will consider requests filed pursuant to Section 214(e)(6) where the carrier provides an affirmative statement from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.<sup>11</sup> As stated above, the Florida PSC does not regulate CMRS carriers such as Southern LINC for the purpose of making ETC determinations. A declaration to this effect, dated September 23, 2003, has been provided by the Florida PSC, and is attached to this Petition as Exhibit 2. This declaratory statement meets the Commission’s specific requirements for such documents, in that it specifies that CMRS carriers in general are not subject to the State of Florida Public Service Law, and therefore Southern LINC is not subject to the jurisdiction of the Florida PSC for the purpose of making Eligible Telecommunications Carrier designations. As stated above, Section 214(e)(6) of the Act directs the Commission to perform the ETC designation for “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission. Accordingly, consideration of this Petition by the Commission is proper.

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<sup>7</sup> 47 U.S.C. §214(e).

<sup>8</sup> 47 U.S.C. §214(e)(6).

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, 8858-59, ¶ 145 (1997) (“*Universal Service First Report and Order*”); See also *Federal-State Joint Board on Universal Service; Access Charge Reform*, 14 FCC Rcd 8078, ¶ 72 (1999).

<sup>10</sup> *Section 214(e)(6) Procedure Public Notice*, 12 FCC Rcd at 22947.

**B. Southern LINC Provides all of the Services Supported by the Federal High-Cost Universal Service Program.**

To be designated an ETC, a petitioner must be a common carrier and must offer and advertise the supported services throughout the designated service area.<sup>12</sup> The Commission requires carriers to certify that they provide each of the supported services.<sup>13</sup> Attached as Exhibit 3 is a sworn declaration that Southern LINC offers, “or will be able to offer, all of the services designated for support by the Commission.”<sup>14</sup> Southern LINC currently, and upon designation as an ETC, will be capable of providing a universal service offering that includes all supported services for consumers in its designated ETC service areas in Florida.<sup>15</sup> Southern LINC is committed to providing quality universal service offerings in Florida and will commit the necessary financial resources in order to ensure the service offering is made available throughout the designated service area to all customers who make a reasonable request for service.

1. Voice-Grade Access to the Public Switched Network. The Commission has concluded that voice-grade access means the ability to make and receive phone calls, within

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<sup>11</sup> *Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Underserved and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208, 12264 (2000) (“*Twelfth Report and Order*”).

<sup>12</sup> 47 U.S.C. §214(e)(1).

<sup>13</sup> *See, e.g.*, 47 U.S.C. § 254(c).

<sup>14</sup> *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd. 4547, 4552, ¶ 11 (1998) (“*Fort Mojave*”). In *Fort Mojave*, the Commission makes it clear that it will designate carriers as ETCs, pursuant to Section 214(e)(6), upon finding that they “offer or will be able to offer” the supported services throughout the service area. A Declaration attesting to Southern LINC’s ability and commitment to offer each of the supported services is attached hereto at Exhibit 3.

<sup>15</sup> 47 C.F.R. § 54.101(a). The Commission has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualifying low-income consumers.



a bandwidth of approximately 2700-Hertz within 300 to 3000 Hertz frequency range.<sup>16</sup> As an existing cellular service provider in Florida, Southern LINC provides voice-grade access to the public switched network. Through interconnection agreements with competitive local exchange carriers (“CLECs”), Southern LINC is able to originate and terminate telephone service for all of its subscribers. All customers of Southern LINC are able to make and receive calls on the public switched network within the specified bandwidth.

2. Local Usage. Southern LINC’s service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. Southern LINC currently offers several service options that include varying amounts of local usage in monthly service plans. Information regarding Southern LINC’s service plans is available on Southern LINC’s website at [www.southernlinc.com](http://www.southernlinc.com). To date, the Commission has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.<sup>17</sup> Southern LINC will comply with any and all minimum local usage requirements subsequently adopted by the Commission. Therefore, Southern LINC satisfies the local usage criterion for ETC designation.

3. Functional Equivalent of Touch-Tone (“DTMF”) Signaling. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the Commission permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.<sup>18</sup> Southern LINC currently uses out-of-band digital signaling and in-

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<sup>16</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8810-11.

<sup>17</sup> See *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 21252 (1998).

<sup>18</sup> 47 C.F.R. § 54.101(a)(3).

band multi-frequency signaling that is functionally equivalent to DTMF signaling.<sup>19</sup> Southern LINC, therefore, meets the requirements of providing DTMF signaling or its functional equivalent.

4. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.<sup>20</sup> The Commission has concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. Southern LINC meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.<sup>21</sup>

5. Access to Emergency Service. The ability to reach a public emergency service provider through dialing 911 is a required universal service offering. Customers can reach an emergency dispatch, or public safety answering point (“PSAP”), by dialing “911.” Upon dialing “911,” the customer’s emergency call will be routed to the appropriate PSAP.

a. Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements with the local provider for delivery of such information. A wireless carrier such as Southern LINC is not required to provide E911 services until a local emergency provider has made arrangements for delivery of ALI and ANI from carriers.<sup>22</sup> Southern LINC has implemented Phase I of the Commission’s requirement for access to emergency services. Southern LINC currently provides

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<sup>19</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8815, ¶ 71.

<sup>20</sup> *Id.* at 8810.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8815-17.

all of its customers with access to emergency services by dialing 911. To date, fourteen (14) public emergency service providers in the State of Florida have requested Phase II service from Southern LINC and have made arrangements for delivery of the Lat/Long of the A-GPS subscriber unit placing a 911 call by ordering extended ALI services through the local exchange company. The Commission has designated other wireless providers as ETCs despite the current unavailability of E911.<sup>23</sup> By providing 911 service and anticipating capability to provide E911 service upon request, Southern LINC meets the Commission's requirement to provide access to emergency service.

6. Access to Operator Services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Southern LINC, upon designation as an ETC, will be capable of offering its subscribers access to operator services provided either by Southern LINC or other entities (e.g., LECs, IXC, etc.). Moreover, Southern LINC will make such services available throughout its designated service area. Therefore, Southern LINC will meet this requirement by providing all of its customers with access to operator services.

7. Access to Interexchange Service. An ETC providing universal service must offer consumers access to interexchange service to make or receive toll or interexchange calls. Specifically, customers must have access to live or automatic operator assistance for the placement and billing of telephone calls, including collect calls, calling card calls, credit card

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<sup>23</sup> See, e.g., *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502 (2002) (designating Guam Cellular and Paging, Inc. ("Guamcell") as an ETC, even though Guamcell provided no E911 service to its subscribers; at the time of the subject ETC Petition, no public emergency service provider had requested that Guamcell provide Phase I or Phase II E911.) See *Guamcell Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, filed Jul. 26, 2001 at 6.

calls, person-to-person calls, and third party calls, as well as obtaining related information. Southern LINC's indirect connections with IXCs provide end users with the required access to interexchange services. As a result, Southern LINC meets the requirement to provide all of its customers with the ability to make and receive interexchange or toll calls.

8. Access to Directory Assistance. The ability to place a call to directory assistance is a required service offering of an ETC. Southern LINC meets this requirement by providing all of its customers with access to information contained in directory listings by dialing "411" or "555-1212."

9. Toll Limitation for Qualifying Low-Income Customers (Lifeline and Link-Up Services). An ETC must offer toll restriction, which can be in the form of "toll control" or "toll blocking" services to qualifying Lifeline universal service customers at no charge. Toll blocking allows customers to block the completion of outgoing toll calls. Toll control allows the customer to limit the toll charges a subscriber can incur during a billing period. The Commission's current rules require an ETC to provide either toll control or toll blocking as part of the toll limitation services required under 47 C.F.R. § 54.101(a)(9).<sup>24</sup> Certain low-income consumers will be eligible to pay reduced connect charges and monthly fees under the Federal Link-Up and Lifeline programs, and customers may contact Southern LINC for more information on eligibility criteria. If enrolled in Lifeline, a customer can choose to have Southern LINC block all attempted toll calls originating from the customer's phone. Upon designation as an ETC, Southern LINC will provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

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<sup>24</sup> See *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 5318 (1997).

### **C. Southern LINC is Committed to Provisioning Service in Florida**

In addition to the above identified services, Southern LINC makes the following commitment with respect to requests for service within the designated ETC Service Areas:

In response to requests for service at a residence or business located within the ETC Service Areas, Southern LINC will take the following steps:

1. If a request comes from a customer for service within its ETC Service Areas, Southern LINC will immediately provide service using its standard customer equipment and service offerings where available.
2. If a request comes from a customer residing in any area within the ETC Service Areas where Southern LINC does not provide service at the time of the request, Southern LINC will evaluate the feasibility of a number of means to provide service, including the following:
  - Whether the customer's wireless handset equipment can be modified or replaced to provide acceptable service;
  - Whether a roof-mounted antenna or other network equipment can be deployed at the customer's premises to provide service;
  - Whether adjustments at the nearest Southern LINC cell site can be made to provide service;
  - Whether there are other available adjustments to network or customer equipment/handsets to provide service;
  - Whether an additional cell site, a cell-extender, or repeater can be employed or could be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service; and
  - Whether resold service should be offered to the customer's location in order to provide immediate service.

If, after evaluating the various options described above, Southern LINC determines that it must deny a service request, Southern LINC will notify the customer and provide the Commission with an annual report of how many requests for service were refused following the foregoing evaluation. Southern LINC agrees that the Commission will retain authority to resolve any customer complaints that may arise from Southern LINC's refusal to respond to a reasonable request for service. Southern LINC believes these service provisioning commitments will ensure

that Southern LINC will be responsive to consumers' needs in the ETC Service Areas, while acting as a proper steward of available high-cost support funds.

**D. Southern LINC Provides the Supported Services Using its Own Facilities**

Southern LINC provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Southern LINC's existing cellular network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network and should it become a requirement, through the resale of another carrier's service. Southern LINC has the technical capability to maintain its facilities in emergencies. Upon designation as an ETC, Southern LINC will report annually any expansions and enhancements to the network at the same time it submits its annual certification required under sections 54.313 and 54.314 of the Commission's rules.

**E. Southern LINC will Continue to Enhance and Improve its Facilities**

Southern LINC has allocated significant construction funds to improve and expand its coverage in the requested ETC Service Areas. These improvement plans represent substantially greater levels of financial commitment in excess of the amount Southern LINC expects to receive from the high-cost fund. In addition, Southern LINC will continue to incur operation and maintenance expense associated with the upgrading of existing plant in the requested ETC Service Areas that are equally appropriate uses of high-cost funds. As Southern LINC develops construction budget estimates annually for a five year period, actual construction plans are only developed for the first budget year. Thus, Southern LINC is currently just beginning to develop specific plans for projects to be completed in 2005 and does not currently have specific construction plans in place for implementation after obtaining ETC designation. The priority under which the construction plan is to be undertaken is subject to change



depending upon requests for service and other market factors. Southern LINC remains committed to continue to enhance and improve its facilities in Florida.

**F. Southern LINC will Advertise its Universal Service Offering**

Southern LINC will advertise the availability of its universal service offering, and the charges associated, using media of general distribution. Southern LINC currently advertises and informs customers of its services through a variety of means, including newspapers, television, radio, its website, and other direct advertising methods. Southern LINC will expand upon these media, as necessary, to insure that consumers within its ETC designated service areas are fully informed of its universal service offering. Southern LINC commits to continue to advertise the availability of its services throughout its ETC Service Areas and will also provide notices at local unemployment, social security and welfare offices. Therefore, consumers can learn about Southern LINC's service and determine that Lifeline and Linkup discounts are available. In addition, Southern LINC commits to locally publicize the construction of new facilities so that consumers are informed when new facilities are added to provide improved service in their specific area of interest. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investment Southern LINC plans to make to enhance its network to fully serve the universal service needs of consumers in Florida, Southern LINC will have strong economic incentives, reinforcing its statutory obligations, to promote its universal service offering in Florida.

**G. Southern LINC Supports the Commission's Efforts to Collect Service Quality Data**

Southern LINC fully supports the Commission's efforts to collect service quality data that will permit it to develop meaningful service quality rules, to the extent necessary. If

designated, Southern LINC shall provide the Commission with an annual report providing the number of consumer complaints per 1000 handsets in service.

**H. Southern LINC will Comply with CTIA's Consumer Code**

Southern LINC has committed to abide by the CTIA Consumer Code for Wireless Services, as it may be amended from time to time. Southern LINC commits that, as an ETC, Southern LINC will abide by the CTIA Consumer Code for Wireless Services with respect to its ETC Service Areas. A copy of the CTIA Consumer Code is attached at Exhibit 4.

**I. Designating Southern LINC as an ETC will Advance the Public Interest**

Southern LINC requests designation as an ETC in the areas identified in Exhibit 1. Southern LINC is seeking designation in the rural and non-rural portions following counties in Florida: Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington. Southern LINC does not seek state-wide designation at this time. Southern LINC will make available its universal service offering, including all of the services and functionalities set forth by the Commission in 47 C.F.R. § 54.101, throughout its ETC designated service areas. Because Southern LINC is seeking designation in areas served by rural LECs, the Commission must consider public-interest factors prior to designating Southern LINC as an ETC.<sup>25</sup> In addition, although the public interest factors outlined in the *Virginia Cellular* decision apply exclusively to the public interest analysis for rural service areas and not non-rural services areas, Southern LINC nonetheless provides the following information to the Commission for its ETC designation in the non-rural portions of the above-identified counties.

As a wireless carrier, Southern LINC brings many significant advantages to universal service beneficiaries in Florida. The FCC has recognized the advantages wireless

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<sup>25</sup> 47 U.S.C. § 214(6)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.



carriers can bring to the universal service program. One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>26</sup> Congress recognized that competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer’s business. The Commission has recognized the importance of these benefits to rural areas, finding that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower cost than traditional wireline service.”<sup>27</sup> Likewise, the Commission has promoted wireless E911 as an important public policy goal, particularly since many accidents, particularly in rural areas, occur away from home where a wireless service is the only means available to place an emergency call.

The public-interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In granting the petition of Western Wireless Corporation for ETC designation, the Commission emphasized its belief that “competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better services to its consumers.”<sup>28</sup> Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.”<sup>29</sup>

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<sup>26</sup> Telecommunications Act of 1996, Public Law 104-104, 100 Stat. 56 (1996).

<sup>27</sup> See *Universal Service First Report and Order*, 12 FCC Rcd. at 8881-82.

<sup>28</sup> *Western Wireless Corporation*, 16 FCC Rcd. at 57.

<sup>29</sup> See 47 U.S.C. § 253(b).

Designating Southern LINC as an ETC would give advanced telecommunications options to those living in Florida's rural areas. In its *Guamcell* ETC designation decision, the Commission found that the designation of Guamcell as an ETC in the areas served by the rural telephone company in Guam would promote "competition and the provision of new technologies to consumers in high-cost and rural areas of Guam."<sup>30</sup> Southern LINC has already implemented a variety of service offering and rate plans that will be competitive with incumbent service offerings and affordable to Florida's consumers. Southern LINC commits that its local calling area will be at least as large as that of the ILECs in Southern LINC's designated service territories, identified in Exhibit 1, and in most cases its local calling area will be substantially larger, which will reduce intra-LATA toll charges typically associated with wireline service. Southern LINC has already implemented 911 services in compliance with all state and Federal requirements, which will improve public safety in rural Florida. Southern LINC will also offer Lifeline services to qualifying low-income consumers consistent with Federal and state rules, regulations and guidelines. Southern LINC will comply with any applicable consumer protection requirements subsequently imposed.

Designation of Southern LINC as an additional ETC is clearly in the public interest. First, designating Southern LINC as an ETC will facilitate competition in the provision of universal service to the benefit of consumers in Florida.<sup>31</sup> Second, designating Southern LINC as an ETC will advance universal service by bringing consumers in Florida new telecommunications services. Third, designating Southern LINC as an ETC in the requested

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<sup>30</sup> See *Guamcell Order* 17 FCC Rcd 1502, ¶ 15.

<sup>31</sup> See *Universal Service First Report and Order*, 12 FCC Rcd. at 8781, ¶ 4 (quoting *Joint Explanatory Statement* recital that goal of 1996 Act is to establish "a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all* Americans by opening *all* telecommunications markets to competition") (*emphasis added*).

areas of Florida will promote rapid development of new technologies in those areas. With a choice of service providers, the consumer is able to select a provider based on service quality, service availability and rates. The benefits of increased competitive choices afforded consumers by the offerings of wireless ETCs are well known to the Commission and have previously served as the basis for grants of ETC status. As previously stated, these benefits include the additional benefit of mobility and the enhanced utility of a mobile E-911 service offering, as well as the benefits of an alternative technology platform. Southern LINC is well positioned to bring the economies and broader local calling scopes to subscribers in the pending ETC Service Areas. The financial impact of granting Southern LINC's ETC applications for the rural service areas as proposed herein on the universal service fund is minimal. Therefore, Southern LINC's ETC designation should be granted.

### **III. HIGH COST CERTIFICATIONS**

Under Sections 54.313 and 54.314 of the Commission's Rules, carriers seeking high-cost support must either be certified by the appropriate state commission, or where the state commission does not exercise jurisdiction, must self-certify with the FCC and the Universal Service Administration Company ("USAC") their compliance with Section 254(e) of the Act. As previously explained, the Florida PSC has declined jurisdiction over CMRS carriers like Southern LINC. Therefore, in accordance with Sections 54.313 and 54.314, Southern LINC will make its high-cost certifications with the Commission and with USAC. A copy of the letter being provided to USAC and the Commission is attached as Exhibit 5.

#### IV. ANTI-DRUG ABUSE CERTIFICATION

Southern LINC certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862.<sup>32</sup>

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<sup>32</sup> 21 U.S.C. § 862. *See* attached Certification at Exhibit 6.

**V. CONCLUSION**

For the foregoing reasons, Southern LINC respectfully requests the Commission to designate it as an ETC for the requested designated rural and non-rural areas within the identified counties in Florida on an expedited basis.

Respectfully Submitted,

**SOUTHERN COMMUNICATIONS SERVICES, INC.,  
D/B/A SOUTHERN LINC**



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*Its Attorneys*

Dated: September 14, 2004

**EXHIBIT 1**

**ETC DESIGNATION SERVICE AREA MAP**



**EXHIBIT 2**

**FLORIDA PUBLIC SERVICE COMMISSION DECLARATION  
ORDER No. PSC-03-1063-DS-TP**



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement that NPCR, Inc. d/b/a Nextel Partners, commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."

DOCKET NO. 030346-TP

In re: Petition for declaratory statement that ALLTEL Communications, Inc., commercial mobile radio service provider in Florida, is not subject to jurisdiction of Florida Public Service Commission for purposes of designation as "eligible telecommunications carrier."

DOCKET NO. 030413-TP  
ORDER NO. PSC-03-1063-DS-TP  
ISSUED: September 23, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

DECLARATORY STATEMENT

BY THE COMMISSION:

I. INTRODUCTION

A. The Parties

By petitions filed April 16, 2003, and April 29, 2003, respectively, NPCR, Inc., d/b/a Nextel Partners (Nextel), and ALLTEL Wireless Holdings, L.L.C. and New York NEWCO Subsidiary, Inc., subsidiaries of ALLTEL Communications, Inc. (ALLTEL), both of which are commercial mobile radio service (CMRS) providers, requested declaratory statements pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, that the Florida Public Service Commission (Commission) lacks jurisdiction to designate CMRS carriers eligible

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telecommunications carrier (ETC) status for the purpose of receiving federal universal service support.<sup>1</sup>

Northeast Florida Telephone Company (Northeast Florida) and GTC, Inc. d/b/a GT COM (GT Com) filed petitions to intervene in these dockets on May 22, 2003. TDS TELECOM/Quincy Telephone (Quincy) filed a petition to intervene on May 29, 2003. ALLTEL filed a response but did not oppose the intervention. The petitions were granted by Order Nos. PSC-03-0712-PCO-TP and PSC-03-0713-PCO-TP, respectively, on June 16, 2003.

**B. Summary of Ruling**

After careful consideration and as discussed, *infra*, the Commission grants Nextel's and ALLTEL's petitions for declaratory statements.

ETC status is a prerequisite for a carrier to be eligible to receive universal service funding. The Federal Communications Commission (FCC) has determined that CMRS carriers, such as Nextel and ALLTEL, may be designated as ETCs. Section 214(e)(6) of the federal 1996 Telecommunications Act (1996 Act) provides that where a carrier is not subject to the jurisdiction of a state commission, then the FCC shall make the ETC determination. The FCC has ruled that, in order for it to consider requests for ETC status, the requesting carrier must provide an "affirmative statement" from the state commission or a court of competent jurisdiction that the state commission lacks the jurisdiction to make the designation.<sup>2</sup> See *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (released June 30, 2000) at ¶ 93.<sup>3</sup>

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<sup>1</sup> Notice of receipt of Nextel's Petition for Declaratory Statement was published in the May 2, 2003, issue of the Florida Administrative Weekly. Notice of receipt of ALLTEL's Petition was published in the May 16, 2003, issue. The petitioners agreed to toll the statutory time for disposition in order for us to consider their petitions at our August 19, 2003, agenda conference.

<sup>2</sup> We note that numerous state commissions have held that they do not have jurisdiction to designate CMRS carriers ETC status.

<sup>3</sup> See also FCC 01-283, *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, 16 FCC Rcd 18133; 2001 FCC LEXIS 5313, fn. 46 (released October 5, 2001); FCC 97-419, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to § 214(e)(6) of the Telecommunications Act* (released December 29, 1997).

As discussed, *infra*, this Commission does not have jurisdiction over CMRS carriers for purposes of determining eligibility for ETC status. Indeed, the Florida Legislature has expressly excluded CMRS providers from the jurisdiction of the Commission. As the Commission lacks jurisdiction over CMRS providers, the FCC is the appropriate venue for Nextel and ALLTEL to seek ETC status.

## II. THE COMMISSION LACKS JURISDICTION OVER CMRS PROVIDERS

### A. Lack of Jurisdiction Over CMRS Providers

As a legislatively created body, the jurisdiction of the Commission is that conferred by statute – but no more than that. Chapter 364, Florida Statutes, governs our resolution of this threshold, and dispositive, jurisdictional issue. For present purposes, Chapter 364 expressly limits our jurisdiction to jurisdiction over “telecommunications companies” as set forth in that chapter.<sup>4</sup> A telecommunications company does not include a CMRS provider. Indeed, the Legislature specifically provided to the contrary in Section 364.02(12), Florida Statutes, which expressly states that:

The term “telecommunications company” *does not include*:

- ...  
(c) A commercial mobile radio service provider;

§ 364.02(12)(c), Fla. Stat. (emphasis added).<sup>5</sup>

The Commission has previously recognized, correctly so, that it lacks jurisdiction over CMRS providers. Specifically, in *In re: Application for certificate to provide pay telephone service by Radio Communications Corporation, and request for waiver of Rule 25-24.515(6), (10), and (14), F.A.C.*, the Commission noted that, pursuant to Section 364.02(12)(c), Florida Statutes, CMRS providers are “not regulated by this Commission” and that CMRS providers are “not subject to

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<sup>4</sup> Section 364.01, Florida Statutes, titled “Powers of commission, legislative intent,” states that “(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.”

<sup>5</sup> The one exception, not applicable here, is that CMRS providers along with intrastate interexchange telecommunications companies (also not regulated by the Commission) shall continue to be liable for any taxes imposed by the State pursuant to Chapters 202, 203, and 212, Florida Statutes, and any fees assessed pursuant to Chapter 364, Florida Statutes. See § 364.02(12), Fla. Stat.

Commission rules.” See Order No. PSC-00-1243-PAA-TC, Docket No. 991821-TC (July 10, 2000).<sup>6</sup>

**B. The Arguments of the Intervenor**

Intervenors’ reliance on the Commission’s Order in *In re: Establishment of Eligible Telecommunications Carriers Pursuant to Section 214(e) of the Telecommunications Act of 1996* is misplaced. See Commission Order No. PSC-97-1262-FOF-TP, issued October 14, 1997, in Docket No. 970644-TP. That order states, in pertinent part:

We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECS (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status . . .

*Id.* at 4. In that order, the Commission also opined that “mobile carriers may serve those areas [where ALECs were prohibited from offering basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the small LEC has elected price regulation], and may apply for ETC status.” *Id.* at 4.

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<sup>6</sup> Numerous state commissions have likewise held that they lack jurisdiction to designate ETC status for CMRS carriers. See, e.g., *In the Matter of Designation of Carriers Eligible for Universal Carrier Support*, Docket No. P-100, SUB 133c, 2003 WL 21638308, 2003 N.C. PUC LEXIS 686 (N.C.U.C., June 24, 2003) (“...the Commission ...lacks jurisdiction to designate ETC status for CMRS carriers.... [North Carolina statute] G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission’s jurisdiction”); *In re Telecommunications Act of 1996*, 2002 WL 1277821, 2002 Va. PUC LEXIS 315, (Va. S.C.C., April 9, 2002) (“The Commission finds that § 214(e) (6) of the Act is applicable to Virginia Cellular’s Application as this Commission has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation”); *In re Pine Belt Cellular, Inc.*, Docket U-4400, Alabama Public Service Commission, 2002 WL 1271460, 2002 Ala. PUC LEXIS 196 (March 12, 2002) (“it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC § 214(e)(6)”).

Reliance on this statement to conclude that this Commission has jurisdiction to designate CMRS carriers as having ETC status is misguided. Simply put, the Commission cannot by fiat simply declare its own jurisdiction where, as the Florida Legislature has made clear, no jurisdiction exists.<sup>7</sup> See, e.g., *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982) (noting that even if an agency's policy concerns might be valid, "[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.").

Intervenors' public interest argument must likewise fail. Intervenors argue that Florida's public interest would not be served by having competitive carriers, including CMRS providers such as petitioners, designated as ETCs in rural areas. They continue that this Commission is best situated to make the public interest inquiry. This argument is fundamentally flawed. It is only if this Commission has jurisdiction over CMRS carriers in the first instance that the Commission could exercise that jurisdiction to perform the inquiry proposed by Intervenors.

C. Intervenors Run Afoul of Cape Coral and its Progeny

The arguments of the Intervenors run counter to the clear teachings of *Cape Coral* and its progeny. Florida law makes clear that the Commission does not have jurisdiction over CMRS carriers. Even if there was doubt about that proposition, which the Florida Legislature has made clear there is not, such doubt would have to be resolved against finding jurisdiction. As the Florida Supreme Court made clear in *City of Cape Coral v. GAC Utilities, Inc., of Florida*:

All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission.... As such, the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State.... Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof,... and the further exercise of the power should be arrested.

281 So. 2d 493, 495-96 (Fla. 1973). See also *Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2002) ("any reasonable doubt regarding its regulatory power compels the PSC to resolve

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<sup>7</sup> We also note that the issue of the Commission's jurisdiction to determine ETC status for CMRS providers was not raised, litigated, or relevant to the holding in Order No. PSC-97-1262-FOF-TP, which designated local exchange companies in Florida as ETCs. We also note that in the time since that holding, Congress, through the enactment of Section 214(e)(6) to the 1996 Act, expressly authorized the FCC to make ETC designations of CMRS providers when states like Alabama, Florida, North Carolina, Virginia, and others lack jurisdiction over such carriers.

that doubt against the exercise of jurisdiction"); *Dept. of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977) ("any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it"); *Schiffman v. Dept. of Professional Regulation, Board of Pharmacy*, 581 So. 2d 1375, 1379 (Fla. 1<sup>st</sup> DCA 1991) ("An administrative agency has only the authority that the legislature has conferred it by statute"); *Lewis Oil Co., Inc. v. Alachua County*, 496 So. 2d 184, 189 (Fla. 1<sup>st</sup> DCA 1986) ("Administrative agencies have only the powers delegated by statute").

The Commission has previously (and correctly) recognized the limited nature of its jurisdiction. See *In re: Complaint Against Florida Power & Light Company Regarding Placement of Power Poles and Transmission Lines*, Docket No. 010908-EI, Order No. PSC-02-0788-PAA-EI, Florida Public Service Commission, June 10, 2002; *In re: Complaint and Petition by Lee County Electric Cooperative, Inc. for an Investigation of the Rate Structure of Seminole Electric Cooperative, Inc.*, Docket No. 981827-EC, Order No. PSC-01-0217-FOF-EC, Florida Public Service Commission, January 23, 2001 (recognizing that any doubt as to the Commission's jurisdiction must be resolved against an exercise of jurisdiction).

The authority of this Commission is derived from state law as written by the Florida Legislature, and that authority is expressly limited as it pertains to CMRS providers. Regardless of the merits of the debate of state versus federal designation of ETC status for wireless providers, the Commission must remain cognizant of our role and not regulate beyond our specific mandate. Despite good intentions, we should avoid even the appearance that we are replacing the Legislature's judgment with our own.

Florida as a state certainly has an interest in universal service issues. That interest, however, does not create jurisdiction in this Commission to determine whether CMRS carriers should be granted ETC status (a status, we note, that is one of federal creation),<sup>8</sup> especially where the Legislature has specifically provided that the Commission does not have jurisdiction over CMRS providers.<sup>9</sup> As a creature of statute, this Commission is not free to operate according to its "own inscrutable wisdom, 'an administrative Frankenstein, once created, (acting) beyond the control of its Legislature creator.'" *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1<sup>st</sup> DCA 1980) (discussing the

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<sup>8</sup> We note that other states have an interest in universal service issues, notwithstanding that their utility commissions do not regulate CMRS providers. See, e.g., *N.C. Gen. Stat. A. § 62-110, § 105-164.4c and § 143B-437.40 (North Carolina)*; *Virginia's Universal Service Plan (Va. S.C.C. Case Nos. PUC970135 and PUC970063)* and *Va. Code Ann. § 56-468*.

<sup>9</sup> Section 364.025, Florida Statutes, provides for alternative local exchange companies (now known as competitive local exchange companies by virtue of Chapter 2003-32, § 3, Laws of Fla., amending Section 364.02, Florida Statutes), which are "telecommunications companies" subject to Commission jurisdiction, to apply to the Commission for universal service provider and carrier of last resort status. Notably, no similar provision exists regarding CMRS providers.

Parole Commission). Indeed, “[a]rguments concerning the potential effect of the legislation or questioning the wisdom of such legislation are matters which should be presented to the Legislature itself.” *Gulf Coast Hospital, Inc. v. Dept. of Health and Rehabilitative Services*, 424 So. 2d 86, 91 (Fla. 1<sup>st</sup> DCA 1982).

**D. Conclusion**

Based on the foregoing, the Commission does not have jurisdiction over CMRS providers for purposes of determining eligibility for ETC status pursuant to 47 U.S.C. § 214(e).

**III. A DECLARATORY JUDGMENT OF “NO JURISDICTION” IS PROPER**

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement. In pertinent part, that section provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, Florida Administrative Code, further explains that: “a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.” The purpose of a declaratory statement by an administrative agency is to allow a petitioner to select a proper course of action in advance. *Novick v. Dept. of Health, Bd. of Medicine*, 816 So. 2d 1237 (Fla. 5<sup>th</sup> DCA 2002).

Petitioners have satisfied the requirements for the issuance of a declaratory statement by the Commission. At issue is the applicability of Chapter 364, Florida Statutes, which excludes CMRS providers from Commission jurisdiction. As CMRS providers seeking ETC status, which status is a prerequisite to being eligible to receive federal universal service funds, petitioners are “substantially affected persons” within the meaning of Section 120.565, Florida Statutes. Petitioners have stated with particularity their circumstances and have identified the statutory provision that applies to their circumstances.

Intervenors urge us to deny the petitions for declaratory statement. Intervenors first assert that to receive ETC status in the service area of a rural LEC, a non-ILEC must file a petition proposing an appropriate service area and demonstrating that designation as an ETC is in the public interest, a determination that they assert can properly be made only after a formal administrative

hearing and not in a declaratory statement proceeding. They next assert that the petitions require a response that amounts to a rule stating that CMRS providers are not subject to the jurisdiction of the Commission for purposes of designation as an ETC. Finally, Intervenor asserts that the petitions fail to allege an uncertainty about a Commission statute, rule, or order and thus, fail to meet the pleading requirements of Rule 28-105.001, Florida Administrative Code.

Intervenor's arguments fail. Regarding their first assertion, where the Commission lacks jurisdiction, as it does here, it would be illogical for a party to seek to have the Commission exercise jurisdiction to do something it does not have the power to do. To exercise jurisdiction, the Commission would have to determine that the petitioners are telecommunications companies, a determination that is expressly precluded by the statute. As the Commission does not have jurisdiction to make the ETC designation for CMRS providers, it is not necessary for Nextel or ALLTEL to file an application that addresses the eligibility requirements to be designated an ETC.

We also disagree that we should deny the petitions for declaratory statement because the statement requested would amount to a rule. On numerous occasions, the Commission has resolved controversies about the scope of our jurisdiction in declaratory statement proceedings. *See In re: Petition of St. Johns Service Company for declaratory statement on applicability and effect of 367.171(7), Florida Statutes*, Order No. PSC-99-2034-DS-WS, issued October 18, 1999, in Docket No. 982002-WS; *In re: Petition of PW Ventures, Inc., for declaratory statement in Palm Beach County*, Order No. 18302, issued October 16, 1987, in Docket No. 870446-EU, *aff'd on other grounds, PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988).

Intervenor confuses the notion of a rule with the issue of jurisdiction. Commission jurisdiction over a matter either exists or it does not. It cannot be created or denied by a rule. Indeed, the Commission could only issue a rule where it has jurisdiction over the subject matter of the rule. Further, determining whether the Legislature has vested the Commission with jurisdiction is typically a one-time determination, whereas rulemaking is more appropriate for such matters as recurring issues, implementation of statutes, and codification of policy.

Finally, we dismiss the assertion that the petitions should be denied for failing to allege an uncertainty about a Commission statute, rule, or order. The petitions seek a statement that our statutes, rules, and orders are not applicable to ALLTEL or Nextel as CMRS providers, for the purposes of determining whether they are eligible to receive federal universal service funding. As set forth herein, we agree. And on the facts presented, this determination is properly made in a declaratory statement proceeding. We therefore conclude that the petitions satisfy the requirements for a declaratory statement.

Based on the foregoing, we grant the petitions and declare that Nextel and ALLTEL, as commercial mobile radio service providers, are not subject to the jurisdiction of the Florida Public Service Commission for purposes of designation as an eligible telecommunications carrier under 47 U.S.C. § 214(e).



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Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions for a Declaratory Statement filed by Nextel & ALLTEL are granted. It is further

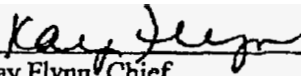
ORDERED that the substance of the Declaratory Statement is as set forth in the body of this Order. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission this 23rd Day of September, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
\_\_\_\_\_  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

(SEAL)

CTM

Commissioner Baez dissents. Chairman Jaber dissents from the majority's decision with the following opinion:

Rule 28-105.001, Florida Administrative Code, states in part: "A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency." The circumstances brought before us in these two cases are not limited to the two wireless providers that have filed petitions for declaratory statement. Rather, our decision will impact not only all of the wireless carriers and other telecommunications service providers in Florida, but, more importantly, will impact the state's overall universal service policy. This is a case of first impression, and will result in a policy of general applicability. I do not believe a declaratory statement is the appropriate mechanism for

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deciding this very important issue. I would rather establish an expedited proceeding that allows us to hear from other providers in the form of testimony, if appropriate, or legal briefs on federal and state law regarding ETC status and the impact of such on Florida's stance on universal service. In making a decision regarding the jurisdictional issues in this matter, it is critical to fully understand the ramifications of our decision on the size and applicability of the federal universal service fund to Florida's ratepayers. The declaratory statement process does not allow an opportunity for that critical review. Without input from all affected parties on the legal and policy implications of this decision, I am uncomfortable with the conclusion that we do not have jurisdiction in this matter. For these reasons alone, I dissent.

#### NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**EXHIBIT 3**

**SERVICE COMMITMENT DECLARATION**

## DECLARATION UNDER PENALTY OF PERJURY

I, Robert G. Dawson, do hereby declare under penalty of perjury as follows:

1. I am the President and Chief Executive Officer of Southern Communications Services, Inc. d/b/a Southern LINC ("Southern LINC").
2. This Affidavit is submitted in support of Southern LINC's Petition for Designation as an Eligible Telecommunications Carrier ("ETC").
3. Southern LINC currently provides cellular services in Florida, and is seeking ETC designation in only Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington Counties. Southern LINC does not seek state-wide designation at this time.
4. As a carrier not subject to state commission jurisdiction in the State of Florida, Southern LINC is seeking designation as an ETC under Section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6).
5. Southern LINC meets the criteria for ETC designation as explained herein.
6. Southern LINC is a "common carrier" for purposes of obtaining ETC designation pursuant to 47 U.S.C. § 214(e)(1). A "common carrier" is generally defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications by wire or radio. Section 20.9(a)7 of the Commission's Rules provide that cellular service is a common carrier service. *See* 47.C.F.R § 20.9(a)(7).
7. Southern LINC currently offers and is able to provide, within its designated service areas, the services and functionalities identified in 47 C.F.R. § 54.101(a). Each of these services and functionalities is discussed more fully below.
  - a. Voice-grade access to the public switched telephone network. The FCC concluded that voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 2700 Hz within the 300 to 3000 Hz frequency range. *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Red 8776, 8810-11 (1997) ("Universal Service Order")*. Southern LINC meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with local telephone companies, all customers of Southern LINC are able to make and receive calls on the public switched telephone network within the specified bandwidth.
  - b. Local Usage. Beyond providing access to the public switched network, an ETC must include local usage as part of a universal service offering. To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address the issue. *See Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed*

*Rulemaking*, 13 FCC Rcd 21252 (1998) (“*October 1998 NPRM*”). As it relates to local usage, the NPRM sought comments on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comments on how much, *if any*, local usage should be required to be provided to customers as part of a universal service offering. *October 1998 NPRM*, 13 FCC Rcd at 21277-21281. In the *Universal Service Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide. *Universal Service Order*, 12 FCC Rcd at 8813. Any minimum local usage requirement established by the FCC as a result of the *October 1998 NPRM* will be applicable to all designated ETCs, not simply wireless service providers. Southern LINC will comply with any and all minimum local usage requirements adopted by the FCC. Southern LINC will meet the local usage requirements by including local usage as part of a universal service offering.

c. Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent.

DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement. 47 C.F.R § 54.101(a)(3). Southern LINC currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling. Southern LINC therefore meets the requirement to provide DTMF signaling or its functional equivalent.

d. Single-party service or its functional equivalent.

“Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line. *Universal Service Order*, 12 FCC Rcd at 8810. The FCC concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user’s particular transmission. *Id.* Southern LINC meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

e. Access to emergency services.

The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Enhanced 911 or E911, which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is only required if a public emergency service provider makes arrangements with the local provider for delivery of such information. *See id.* at 8815-17. Southern LINC currently provides all of its customers with access to emergency service by dialing 911 in satisfaction of this requirement. Southern LINC will comply with all Phase II E-911 requirements.

f. Access to operator services.

Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. *Id.* at 8817-18. Southern LINC meets this requirement by providing all of its customers with access to operator services provided by either Southern LINC or other entities (*e.g.*, LECs, IXC, etc.).

g. Access to interexchange service.

A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Equal access, however, is not required. “The FCC do[es] not include equal access to

interexchange service among the services supported by universal service mechanisms.” *Id.* at 8819. Southern LINC presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements Southern LINC has with several IXCs. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

h. Access to directory assistance. The ability to place a call to directory assistance is a required service offering. *Id.* at 8821. Southern LINC will meet this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212”.

i. Toll limitation for qualifying low-income consumers. An ETC must offer either “toll control” or “toll blocking” services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R § 54.101(a)(9), *See Universal Service Fourth Order on Reconsideration*, FCC 97-420 (Dec.30, 1997). In particular, all ETCs must provide toll blocking, which allows customers to block the completion of outgoing toll calls. *Universal Service Order*, 12 FCC Rcd at 8821-22. Southern LINC currently has no Lifeline customers in Florida because only carriers designated as an ETC can participate in Lifeline. *See* 47 C.F.R. § 54.400-415. Once designated as an ETC, Southern LINC will participate in Lifeline as required, and will provide its current toll blocking capabilities in satisfaction of the FCC’s requirement. Southern LINC currently has the technology to provide toll blocking and will use this technology to provide the service to its Lifeline customers, at no charge, as part of its universal service offering.

8. Southern LINC will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by Southern LINC to serve its existing conventional mobile cellular service customers.

9. I declare under penalty of perjury that the foregoing is true and correct. Executed on September 13, 2004.



Robert G. Dawson, President and Chief Executive Officer  
Southern Communications Services, Inc.  
d/b/a Southern LINC

**EXHIBIT 4**

**CTIA CONSUMER CODE**

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# CTIA

## Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

### THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

#### ONE

#### DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

**F**or each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

#### TWO

#### MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

**W**ireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map



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usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

### T H R E E

#### PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

**W**hen a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

### F O U R

#### ALLOW A TRIAL PERIOD FOR NEW SERVICE

**W**hen a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

### F I V E

#### PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

**I**n advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

### S I X

#### SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

**O**n customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

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SEVEN

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE  
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

EIGHT

**PROVIDE READY ACCESS TO CUSTOMER SERVICE**

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

NINE

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS  
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

TEN

**ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY**

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

**EXHIBIT 5**

**HIGH COST CERTIFICATION LETTER**

Robert G. Dawson  
President and  
Chief Executive Officer

Southern LINC.  
5555 Glenridge Connector  
Suite 500  
Atlanta, Georgia 30342  
Tel 678.443.1545

September 13, 2004



**VIA OVERNIGHT MAIL**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Ms. Irene M. Flannery  
Vice President – High Cost and Low Income Division  
Universal Service Administrative Company  
2000 L Street, NW, Suite 200  
Washington, DC 20036

Re: Southern Communications Services, Inc. d/b/a Southern LINC  
Certification for High Cost Loop Support, CC Docket No. 96-45

Dear Ms. Dortch and Ms. Flannery:

This certification is submitted on behalf of Southern Communications Services, Inc. d/b/a Southern LINC (“Southern LINC”) in accordance with Federal Communications Rules 54.314 (47 C.F.R §§ 54.313, 54.314). On behalf of Southern LINC, I hereby certify under penalty of perjury that all high-cost support provided to Southern LINC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996 (47 U.S.C. § 254(e)).

Southern Communication Services Inc.

A handwritten signature in black ink, appearing to read "Robert G. Dawson".

Robert G. Dawson  
President and Chief Executive Officer

**SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED** before me this 13<sup>th</sup> day of  
September, 2004.

A handwritten signature in black ink, appearing to read "Julie Fenton".  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

~~NOTARY PUBLIC COBB COUNTY GEORGIA~~  
MY COMMISSION EXPIRES JULY 10TH 2007

**EXHIBIT 6**

**ANTI-DRUG ABUSE ACT DECLARATION**

## SOUTHERN LINC ETC Designation Declaration

I, Robert G. Dawson, after first being sworn on oath, and pursuant to 47 C.F.R § 1.16, states as follows:

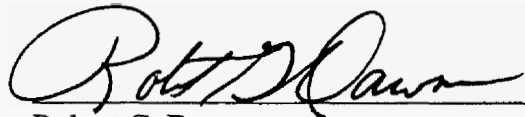
1. I am President and Chief Executive Officer of Southern Communications Services, Inc. d/b/a Southern LINC ("Southern LINC"). My business address is 5555 Glenridge Connector, Suite 500, Atlanta, Georgia 30342.

2. In my capacity as President and Chief Executive Officer of Southern Communications Services, Inc. d/b/a Southern LINC, I am an authorized representative of the Company. I have read Southern LINC's Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida (Petition) and confirm the information contained therein to be true and correct to the best of my present knowledge.

3. To the best of my knowledge, no party to the Petition, nor any of their officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) as specified in Section 1.2002(b) of the Commission's rules, are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.


I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 13, 2004.



Robert G. Dawson  
President and Chief Executive Officer

Subscribed and sworn to before me  
This the 13<sup>th</sup> day of September, 2004.

  
Notary Public

NOTARY PUBLIC COBB COUNTY GEORGIA  
MY COMMISSION EXPIRES JULY 10TH 2007

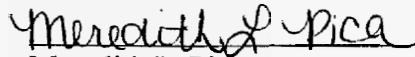
**CERTIFICATE OF SERVICE**

I, Meredith L. Pica, hereby certifies that on this 14<sup>th</sup> day of September 2004, a true and correct copy of the foregoing "Petition" was sent to the following persons as indicated below:

Marlene H. Dortch, Secretary (Via Hand Delivery)  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Qualex International (Via Electronic Mail)  
Portals II  
445 12th Street, S.W.  
Washington, D.C. 20554

Ms. Blanco S. Bayo, Director (Via UPS)  
Bureau of Records and Reporting  
& Administrative Services Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

  
Meredith L. Pica