

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 12, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *SMC*
RE: Docket Nos. 20030346-TP and 20030413-TP

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2018 SEP 12 AM 8:14
COMMISSION
CLERK

LAW OFFICES
CATALANO & PLACHE, PLLC3221 M Street, N.W.
Washington, DC 20007Telephone (202) 338-3200
Facsimile (202) 338-1700**FACSIMILE**

To: Christiana Moore
Florida Public Service Commission
Fax No. : 850-413-7180.

From: Ronald J. Jarvis *TAV*
Number of Pages: 15 (including cover)

Date: May 27, 2003

Re: *ETC Materials*

Ms. Moore,

Transmitted herewith are materials from states that have declined jurisdiction over wireless ETC designation determinations.

These states make the required determination in-state for *wireline* carriers, but have declined to do so for *wireless* carriers.

As you are doubtless aware, to this date, many states have not even addressed the question of whether they are legally able or willing to accept jurisdiction over CMRS carriers for the purpose of making an ETC determination.

Where a state declines jurisdiction, it can happen in one of three ways: (i) the state commission issues a letter to a requestor declining jurisdiction; (ii) the state commission dismisses a petition for ETC designation filed with it by a wireless carrier for lack of jurisdiction; or (iii) the state commission determines, in response to a petition for declaratory ruling, that it does not possess, or intend to exercise, the relevant jurisdiction.

Included are the following:

1. **Tennessee.** Letter of the Tennessee Regulatory Authority, declining to accept jurisdiction over a petition for wireless ETC and attaching a prior order in which a wireless ETC petition was dismissed for lack of subject matter jurisdiction.

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CATALANO & PLACHE, PLLC

Facsimile
Christiana Moore
May 27, 2003
Page Two

2. **New York**. Department of Public Service letter declining jurisdiction and noting relevant provision of the New York Public Service Law that suspends the application of the Public Service Law to CMRS carriers.
3. **Pennsylvania**. Letter from the Secretary of the Pennsylvania Public Utility Commission noting that the Commonwealth does not exercise jurisdiction over CMRS carriers for purposes of making the ETC determinations.
4. **Alabama**. Order (*Pine Belt Cellular*) indicating that the Commission has determined that it will not regulate CMRS services in any respect.
5. **Virginia**. Order (*Virginia Cellular*) indicating that the Virginia State Corporation Commission has not asserted jurisdiction over CMRS carriers for the purpose of making ETC determinations, and that therefore Section 214(e)(6) of the Act, 47 U.S.C. Section 214(e)(6), is applicable, and that the petitioner should apply to the FCC for a determination.

Let me know if I can be of further service.

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TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

April 28, 2003

Mr. Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007

Re: Request for Advisory Letter Concerning Jurisdiction for Competitive
Eligible Telecommunications Carrier Status

Dear Mr. Jarvis:

Your letter of February 7, 2003, requested an affirmative written statement verifying that NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), a Commercial Mobile Radio Service Provider ("CMRS") in Tennessee, is not subject to the jurisdiction of the Tennessee Regulatory Authority ("TRA") for the purposes of determining Eligible Telecommunications Carrier ("ETC") status pursuant to Section 214(e)(6) of the Communications Act of 1934.

Since your letter was not accompanied by the standard filing fee nor is it a request to be granted ETC status in Tennessee, this matter has not been placed on a regularly scheduled Authority Conference agenda to be deliberated by the Directors of the TRA. As a result, no order will be issued by the TRA in this instance. However, it is my understanding that conversations between your office and Mr. Carsie Mundy of our Staff indicate that you would prefer a letter containing the affirmative statement mentioned above.

In a prior docket, the Authority unanimously ruled that another CMRS provider, Advantage Cellular Systems, Inc., was not subject to the authority of the TRA for purposes of ETC designation for federal universal service support.¹ Lacking the authority to designate the carrier as an ETC in Tennessee, the TRA issued an order dismissing Advantage Cellular System's application for lack of subject matter jurisdiction. A copy of the order is attached.

¹ *Application of Advantage Cellular Systems, Inc. to be Designated as an Eligible Telecommunications Carrier*, Docket No. 02-01245.

Based upon the previous ruling, and compliant with state and federal statutes, NPCR, Inc. d/b/a Nextel Partners is not subject to the authority of the Tennessee Regulatory Authority for the purposes of designation as an Eligible Telecommunications Carrier for federal universal service support. Since the TRA cannot designate NPCR, Inc. d/b/a Nextel Partners as an ETC in Tennessee, Nextel Partners should petition the Federal Communications Commission for ETC status pursuant to 47 U.S.C. § 214 (e)(6).

If you have any questions concerning this matter, please call C. D. Mundy at 615-741-2791 ext. 166 or myself at 615-741-2791 ext. 175.

Yours truly,


Joe Werner
Telecommunications Chief

Attachment: 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴


The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

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DAWN K. JABLONSKI
General Counsel

JANET HAND DEIXLER
Secretary

March 27, 2003

TO WHOM IT MAY CONCERN:


Re: Nextel CMRS Jurisdiction

We have received a letter request from NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 *et seq.* In response to this request, please be advised that the New York State Public Service Law (PSL) §5 provides that:

Applications of the provisions of this chapter [*i.e.*, the PSL] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the commission [*i.e.*, the NYS Public Service Commission] . . . makes a determination, after notice and hearing, that regulation of such services should be reinstated to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstated under PSL §5. Consequently, based on the representation by Nextel Partners that it is a CMRS provider, Nextel Partners would not be subject to the application of the PSL, and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.

Sincerely,


Elizabeth H. Liebschutz
Assistant Counsel



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 28, 2003

Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M. Street, NW
Washington, DC 20007

Dear Mr. Jarvis;

In response to your letter request filed on February 7, 2003 as legal counsel for NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), the Pennsylvania Public Utility Commission hereby affirmatively states that the Commonwealth of Pennsylvania does not exercise jurisdiction over commercial mobile radio service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. Section 2214(e) and 47 C.F.R. Section 54.201, *et. seq.* See 66 Pa. C.S. §102.

In particular, the Pennsylvania Public Utility Commission affirms that Nextel Partners is not subject to regulation in the Commonwealth of Pennsylvania for purposes of the foregoing determination.

Sincerely,

James J. McNulty
Secretary

1 of 1 DOCUMENT

PINE BELT CELLULAR, INC. and PINE BELT PCS, INC., Joint Petitioners
PETITION: For ETC status and/or clarification regarding the jurisdiction of the
Commission to grant ETC status to wireless carriers.

DOCKET U-4400

Alabama Public Service Commission

2002 Ala. PUC LEXIS 196

March 12, 2002

[*1] Jim Sullivan, President; Jan Cook, Commissioner; George C. Wallace, Jr., Commissioner

OPINION: ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the [*2] Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC § 214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, § 214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of § 214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to § 214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies [*3] enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket: 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 § 40-21-120(2) and (1)(a) effectuated

2002 Ala. PUC LEXIS 196, *

in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt [*4] 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).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant **Eligible Telecommunications Carrier** status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking **Eligible Telecommunications Carrier** status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 9, 2002

COMMONWEALTH OF VIRGINIA, ex rel.¹

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation
of Requirements of § 214(e) of the
Telecommunications Act of 1996

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC010263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e)(2)

ORDER

On September 15, 1997, the State Corporation Commission ("Commission") established the docket in Case No. PUC970135 to consider the requests of local exchange carriers ("LECs") to be designated as eligible telecommunications carriers ("ETC designation") to receive universal service support pursuant to § 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., ("Act") and associated Federal Regulations.¹ The Commission's exercise of its jurisdiction under § 214(e)(2) of the Act has been to establish a simple and streamlined process for telecommunications carriers to certify their eligibility with a minimum of regulatory burden placed upon each applicant

¹ 47 C.F.R. § 54.201-207



All Virginia carriers receiving an ETC designation have merely been required to file an affidavit which, among other matters, certifies that all requirements of the Act for designation are

2

Until the above-captioned Application was filed in Case PUC010263 by Virginia Cellular LLC ("Virginia Cellular" or "Applicant") for ETC designation, these proceedings have been uncontested. This is the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.³ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24 2002, the Virginia Telecommunications Industry Association ("VTIA") and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002.⁴

The comments of NTELOS and VTIA both contest the sufficiency of the Application and claim Virginia Cellular has

² See Order issued November 21, 1997, in Case No. PUC970135, pp. 2-4 ("November 21, 1997, Order"). Also, the annual certification procedure to comply with 47 C.F.R. §§ 54.313 and 314 has been reduced to filing a form affidavit approved by the Commission in a Preliminary Order, issued August 29, 2001, in Case No. PUC010172.

³ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

⁴ On March 4, 2002, Virginia Cellular filed a Consent Motion requesting until March 6, 2002, to file Reply Comments. There being no objection, we now grant the Consent Motion.

failed to demonstrate how the public interest will be served.⁵ NTELOS and VTIA each allude in their comments to other expected applications for ETC designation by wireless and CLEC carriers to follow this case of first impression. For that reason, we are asked by VTIA and NTELOS to convene a hearing and establish certain standards for the provisioning of the nine services specified in 47 C.F.R. § 54.101.⁶ Each applicant is required to provide these nine services to be eligible for ETC designation.

VTIA further comments that "[i]t is not clear how the designation of Virginia Cellular as an ETC will affect the distribution of Universal Funds to the existing carriers in any given rural exchange area." Virginia Cellular replies that this "macroeconomic concern" need not be addressed with this Application. Rather, the Federal Communications Commission ("FCC") and the Federal State Joint Board on Universal Service

⁵ § 214(e)(2) of the Act requires that an ETC designation in areas served by a rural telephone company be based upon a finding that the designation is in the public interest. The Commission did recognize in its November 21, 1997, Order that any carrier seeking ETC designation in a rural area would have the burden of proving that such designation is in the public interest if challenged. Virginia Cellular is seeking ETC designation in the service territories of the following rural telephone companies: Shenandoah Telephone Company ("Shenandoah"), Clifton Forge Waynesboro Telephone Company ("NTELOS"), New Hope Telephone Company, North River Cooperative, Highland Telephone Cooperative, and Mountain Grove-Williamsville Telephone Company ("MGW").

⁶ The nine services required to be offered include: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. Also, the services must be advertised in appropriate media sources. See In Re: Federal-State Joint Board of Universal Service, Report and Order, CC Docket No. 96-45, ¶ 145 (May 8, 1997) ("Universal Service Report & Order").

are reported by Virginia Cellular to be conducting ongoing proceedings to ensure the solvency of the high-cost support fund.⁷ Presumably, VTIA views any public interest served by Virginia Cellular's ETC designation to depend upon whether there would be a consequent diminution of universal service funds.

Virginia Cellular cites the authority of § 214(e)(6) of the Act for this Commission to send Applicant to the FCC for ETC designation if this Commission declines to act on its Application.⁸ In its Reply Comments, Virginia Cellular reports that the "FCC has been actively processing ETC applications on behalf of states which have declined to exercise jurisdiction [over CMRS carriers]. Its internal processing time has been six months, and it has met that timeline in almost all of its proceedings [and] . . . most, if not all of the issues raised by the commenters have been previously addressed by the FCC in its prior orders involving applications for ETC status."⁹

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

Reply Comments at p.

⁷ Pursuant to § 332(c)(3), 47 U.S.C. § 332(c)(3), state regulation of the entry of or the rates charged by any commercial mobile service or any private mobile service is preempted. The Commission has deregulated all Virginia radio common carriers and cellular mobile radio communications carriers. See Final Order issued October 23, 1995, Case No. PUC950062.

⁹ Reply Comments at p. 3

Applicant should apply to the FCC for ETC designation.¹⁰ The Applicant points out that if Virginia Cellular is designated as an ETC carrier, then the Commission must redefine the service areas of NTELOS and Shenandoah, pursuant to 47 C.F.R. § 54.207(c).¹¹ The Applicant has indicated a willingness to propose a plan to redefine these companies' service areas and may submit such a plan with its application to the FCC for ETC designation.

If necessary, this Commission will participate with the FCC and Federal-State Joint Board in redefining the service areas of NTELOS and Shenandoah for "the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a).¹² Although the FCC will make the final determination on Virginia Cellular's requests, we need to leave this docket open in case there is additional action we must take with respect to defining the service areas of NTELOS and Shenandoah.

¹⁰ The action is similar to that taken by the Commission in Case No. PUC010172 in its August 29, 2001, Order that required cooperatives to certify directly with the FCC.

¹¹ The Commission believes that the service area of MGW does not necessarily need to be redefined if Virginia Cellular is designated as an ETC in that territory. However, if the FCC determines otherwise, the Commission will consider additional action if necessary.

¹² Pursuant to 47 C.F.R. § 54.207(c), if the Applicant proposes to redefine these two companies' service areas, the FCC's procedures require the Commission's agreement on the definitions.

¹³ At this juncture, it is unclear whether the Commission will need to address the redefinitions once disaggregation plans are filed at the FCC pursuant to 47 C.F.R. § 54.315(a).

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that Virginia Cellular should request¹ the FCC to grant the requested ETC designation, pursuant to 47 U.S.C. § 214(e)(6).

Accordingly, IT IS ORDERED THAT Case No. PUC010263 will remain open for further order of the Commission.