

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

In the Matter of)	
)	
Telecommunications Carriers Eligible to Receive)	WC Docket No. 09-197
Universal Service Support)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Allied Wireless Communications Corporation)	
)	
Petition for Eligible Telecommunications Carrier)	
Designations in the State of North Carolina)	

ORDER

Adopted: August 30, 2010

Released: August 30, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the petition of Allied Wireless Communications Corporation (AWCC or the company) to be designated as an eligible telecommunications carrier (ETC) in the state of North Carolina.¹ We find that AWCC meets the eligibility requirements of section 214(e)(6) of the Communications Act of 1934, as amended (the Act), and the Commission’s rules to be designated as an ETC in North Carolina.²

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”³ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.⁴

¹ Petition of Allied Wireless Communications Corporation for ETC Designation in the State of North Carolina, WC Docket No. 09-197 (filed Apr. 13, 2010) (AWCC Petition). AWCC is a wholly owned subsidiary of Atlantic Tele- Network, Inc. (ATN). See AWCC Petition at ii.

² 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202.

³ 47 U.S.C. § 254(e).

⁴ 47 U.S.C. § 214(e)(1).

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs in their states.⁵ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁶ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).⁷ Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.⁸ The Wireline Competition Bureau (Bureau) has delegated authority to consider ETC designation requests.⁹

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is “not subject to the jurisdiction of a state commission”; (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution”; and (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹⁰

5. In addition, an ETC applicant must demonstrate: (1) a commitment and ability to provide service, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent local exchange carrier (LEC); and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.¹¹

6. Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.¹² In determining the public interest, the

⁵ 47 U.S.C. § 214(e)(2).

⁶ 47 U.S.C. § 214(e)(6).

⁷ *Id.*

⁸ *Id.*

⁹ *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

¹⁰ *See id.*

¹¹ *See Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, 4261, para. 5 (Fed-State Jt. Bd. 2004)). These requirements are mandatory for all ETCs designated by the Commission. *See* 47 C.F.R. § 54.202(a), (b).

¹² 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c); *see also ETC Designation Order*, 20 FCC Rcd at 6388–96, paras. 40–57; *Virginia Cellular, LLC., Petition for Designation as an Eligible Telecommunications Carrier in Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1575, para. 27 (2005) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the*

(continued....)

Commission considers the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.¹³ As the Commission noted in the *ETC Designation Order*, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is served by a rural or a non-rural telephone company.¹⁴ In particular, the Commission limits its creamskimming analysis to designations in areas served by rural telephone companies.¹⁵

C. AWCC Petition

7. On April 13, 2010, AWCC filed a request seeking designation as an ETC in certain North Carolina markets previously served by Alltel.¹⁶ AWCC's North Carolina service area is part of the former Alltel territory that Verizon Wireless was required to divest in partial satisfaction of both a court-approved consent decree and conditions placed by the Commission on its approval of Verizon Wireless's acquisition of Alltel.¹⁷ AWCC states that its proposed service area is identical to the service area previously designated for Alltel in three North Carolina study areas.¹⁸ In addition, AWCC states that it meets all of the eligibility requirements for ETC designation.¹⁹ AWCC also states that it will: (1) offer the services designated for support by the Commission pursuant to section 254(c) of the Act; (2) offer the supported services using its own facilities; and (3) advertise the availability of the supported services and

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Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6431-32, para. 21 (2004) (*Highland Cellular Order*). The Commission places the burden on the ETC applicant to demonstrate that designation will serve the public interest. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44. The Commission adopted a single set of criteria for evaluating the public interest for ETC designations for areas served by both rural and non-rural carriers. *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43. See also *Virginia Cellular Order*, 19 FCC Rcd at 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46; *Highland Cellular Order*, 19 FCC Rcd at 6438, paras. 1, 33.

¹³ 47 C.F.R. § 54.202(c).

¹⁴ *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. Section 3 of the Act defines the term "rural telephone company." See 47 U.S.C. § 153(37).

¹⁵ *Id.* at 6389-90, paras. 42-43. The term "creamskimming" refers to an entity offering service only to those customers who are the least expensive to serve. See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881-82, para. 189 (1997) (subsequent history omitted). If an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission conducts a creamskimming analysis to compare the population density of the wire centers in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. *ETC Designation Order*, 20 FCC Rcd at 6392-95, paras. 48-53.

¹⁶ See AWCC Petition at 9.

¹⁷ See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) (*Merger Order*). The Commission required Verizon Wireless to divest business units in 105 markets as a condition of consent for Verizon to acquire licenses and authorizations held by Alltel. *Id.*

¹⁸ AWCC Petition at 9-10.

¹⁹ AWCC Petition at 3.

associated charges using media of general distribution.²⁰ On April 16, 2010, the Bureau released a public notice seeking comment on the AWCC Petition.²¹

III. DISCUSSION

8. In this order, we consider whether AWCC meets the requirements under the Act and the Commission's rules to be designated as an ETC in its licensed service areas in North Carolina. Although AWCC received the transfer and control of licenses and other authorizations held by Verizon Wireless,²² neither this Commission nor the relevant state commission have previously determined whether AWCC meets the requirements of the Act to be designated an ETC.²³ After review of the record, we conclude that AWCC meets the requirements to be designated as an ETC, and that the designation shall be effective upon release of this order.²⁴

A. Commission Authority to Perform the ETC Designation

9. AWCC provided as an "affirmative statement" an order from the North Carolina Commission stating that it lacks jurisdiction to perform the requested ETC designation and that the Commission has authority to consider AWCC's petition under section 214(e)(6) of the Act. AWCC therefore has demonstrated that it is not subject to the jurisdiction of the North Carolina Utilities Commission (North Carolina Commission).²⁵ Accordingly, we find that the state commission lacks jurisdiction to designate AWCC as an ETC and this Commission has authority to perform the requested ETC designation in North Carolina.²⁶

²⁰ Allied Petition at 4–6.

²¹ *Comment Sought on Allied Wireless Communications Petition for Eligible Telecommunications Carrier Designation in North Carolina*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 3712 (Wireline Comp. Bur. 2010).

²² On April 26, 2010, the Commission granted the applications of ATN and Cellco to assign or transfer control of certain licenses and authorizations held by Verizon Wireless subsidiaries to ATN (and ultimately to AWCC). *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Rcd 3763 (Wireless Tel. Bur. & Int'l Bur. 2010).

²³ *Id.*

²⁴ On June 16, 2010, ATN submitted an ex parte letter in which it noted that high-cost support to AWCC would be interrupted because the Verizon divestitures were required to be structured as asset sales, rather than corporate mergers. See Letter from Douglas J. Minster, ATN, to Carol Matthey, FCC (dated June 16, 2010). ATN, therefore, requested that AWCC's ETC designation be effective as of April 26, 2010, the date on which AWCC received control of the relevant Verizon Wireless licenses and authorizations. *Id.* Because ATN voluntarily withdrew this request on August 26, 2010 in order to expedite resolution of this matter, the issue is no longer pending before us. See Letter from Jonathan V. Cohen, Counsel to AWCC, to Marlene H. Dortch, FCC Secretary, WC Docket No. 09-197 (filed August 26, 2010). We therefore do not rule on this aspect of AWCC's petition; AWCC's ETC designation shall be effective upon release of this order. Given that we do not address the merits of ATN's request for a retroactive designation, our decision here should have no bearing on pending state proceedings regarding the appropriate effective date of any ETC designation.

²⁵ AWCC Petition at 2, Attachment B.

²⁶ 47 U.S.C. § 214(e)(6).

B. Analysis of the Eligibility Requirements

10. AWCC has also established through the required certifications and related filings that it offers the services supported by the federal universal service support mechanisms.²⁷ In addition, AWCC certifies that it offers the supported services using its own facilities.²⁸ Consistent with the requirements of section 214(e)(1)(A), AWCC has committed to advertise the availability of the supported services and the related charges “using media of general distribution.”²⁹ Finally, AWCC satisfies the eligibility requirements set forth in the *ETC Designation Order*, as described above, or has committed to make such showings in its first annual report under section 54.209 of the Commission rules.³⁰

C. Public Interest Analysis

11. The Commission previously conducted public interest analyses, including cost-benefit and creamskimming analyses in the requested service area in North Carolina, and found that designating Alltel would serve the public interest.³¹ Because AWCC proposes to serve the same service area in which Alltel was designated, we conclude that the public interest analyses conducted in the Alltel ETC designation proceeding apply in this instance as well. We find that AWCC’s universal services offerings in these service areas will provide a variety of benefits to consumers including high-quality services offerings and mobility. Moreover, when the Commission granted Alltel’s ETC designation, the Commission excluded from the Alltel ETC designation any service areas in which creamskimming might have been a concern.³² Because AWCC is not seeking ETC designation outside of areas in which Alltel was designated, creamskimming similarly is not a concern in this instance.

D. Designated Service Area

12. We designate AWCC as an ETC in North Carolina for the wire centers listed in the Appendix.

E. Regulatory Oversight

13. We note that AWCC is required under section 254(e) of the Act to use high-cost support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended” and must, under sections 54.313 and 54.314 of the Commission’s rules, certify annually that it is in compliance with this requirement.³³ In addition, AWCC must report certain information to the

²⁷ AWCC Petition at 4–7.

²⁸ AWCC Petition at 6; *see* 47 C.F.R. § 294(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

²⁹ 47 U.S.C. § 214 (e)(1)(B); *see* AWCC Petition at 7.

³⁰ *See supra* para. 5; *see ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; *see also* AWCC Petition at 8–9.

³¹ *RCC Holdings Order*, 17 FCC Rcd 23540–44; *Alltel Order*, 19 FCC Rcd at 20502–03; *Interim Cap Order*, 23 FCC Rcd at 8862–63.

³² *See Interim Cap Order*, 23 FCC Rcd at 8863, para. 19 (concluding that designating Alltel as an ETC in the Butler Telephone Co., Inc. and Frontier Communications of the South study areas in Alabama; the Alltel Carolina-North Inc. and Sprint Mid Atlantic study areas in North Carolina; and the Central Telephone Co.-Virginia, NTELOS Telephone Inc., United Inter-Mountain Telephone, and Verizon South Inc.-VA study areas of Virginia would not be in the public interest). The Commission noted that its proposed redefinition of certain service areas in Alabama and North Carolina were subject to the approval of the relevant state commissions. *Id.* at 8864, 8865, paras. 24, 31. The Alabama Commission has not acted on the proposed redefinitions. *See* Cello Alabama Petition at 5 n.17; *see also Interim Cap Order* at 8866 and Exh. 2, 3, 19, 20.

³³ 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314; *see* AWCC Petition at 14, Attachment D.

Commission and the Universal Service Administrative Company (USAC) for the area in which it is designated as an ETC pursuant to section 54.209 of our rules.³⁴

14. We find that reliance on AWCC's commitments to meet these requirements is reasonable and consistent with the public interest and the Act.³⁵ We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that AWCC satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

15. The Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC.³⁶ AWCC will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if AWCC fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.³⁷ The Commission also may assess forfeitures for violations of Commission rules and orders.³⁸

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

16. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it nor any party to its application is subject to a denial of federal benefits, including Commission benefits.³⁹ AWCC has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁴⁰ We find that AWCC has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001–1.2003 of the Commission's rules.

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91

³⁴ See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400–02, paras. 68–69. See also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC's designated service areas). AWCC is required to submit these additional data to the Commission and USAC on October 1 of each year, beginning October 1, 2010.

³⁵ See generally AWCC Petition.

³⁶ 47 U.S.C. §§ 220, 403.

³⁷ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd, 15168, 15174, para. 15 (2000), *recon. pending*; see also 47 U.S.C. § 254(e).

³⁸ See 47 U.S.C. § 503(b).

³⁹ 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)–(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); see *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

⁴⁰ AWCC Petition at Attachment E.

and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 AWCC Wireless Communications Corporation IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER in North Carolina to the extent described herein.

18. IT IS FURTHER ORDERED that AWCC Wireless Communications Corporation WILL SUBMIT additional information pursuant to sections 54.209(a) and (b) of the Commission's rules, 47 C.F.R. § 54.209(a) and (b), no later than October 1, 2010, as part of its annual reporting requirements.

19. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted by the Office of the Secretary to the North Carolina Utilities Commission and the Universal Service Administrative Company.

20. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.02(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

Appendix A

Company Name	Wire Center
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	CLMTNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	DNVRNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	DVSNNCPO
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	GBSNNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	GRVRNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	HMLTNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	KGMTNCNA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LENRNCHA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LENRNCHU
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LNTNNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LNTNNCVA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LRBGNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LTMRNCCE
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	LWDLNCCE
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	MADNNCCE
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	MGTNNCGL
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	MGTNNCGR
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	NWTNNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	RCHMNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	SHLBNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	SSVLNCJE
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	SSVLNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	STPNNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	TRMNNCMA
BELLSOUTH TELECOMM INC DBA SOUTHERN BELL TEL & TEL	TYVLNCMA
CENTRAL TEL. CO. OF NC	BHLHNCXA
CENTRAL TEL. CO. OF NC	BISCNCXA
CENTRAL TEL. CO. OF NC	CNDRNCXA
CENTRAL TEL. CO. OF NC	CTWBNCXA
CENTRAL TEL. CO. OF NC	GRFLNCXA
CENTRAL TEL. CO. OF NC	HCKRNCXA
CENTRAL TEL. CO. OF NC	HCKRNCXB
CENTRAL TEL. CO. OF NC	HLDBNCXB
CENTRAL TEL. CO. OF NC	MTGLNCXA
CENTRAL TEL. CO. OF NC	MTVWNCXA
CENTRAL TEL. CO. OF NC	SEGVNCXA
CENTRAL TEL. CO. OF NC	SHFRNCXA
CENTRAL TEL. CO. OF NC	TROYNCXA
CENTRAL TEL. CO. OF NC	VLDSNCXA
CENTRAL TEL. CO. OF NC	WENDNCXB
ELLERBE TELEPHONE CO., INC.	ELRBNCXA