

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Federal-State Joint Board on
Universal Service
NEP Cellcorp, Inc.
Petition to Amend Designation as an
Eligible Telecommunications Carrier in the
State of Pennsylvania
CC Docket No. 96-45

ORDER

Adopted: April 29, 2010

Released: April 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the request of NEP Cellcorp, Inc. (NEP) to amend its eligible telecommunications carrier (ETC) designation in Pennsylvania to include the rural study area of North-Eastern Pennsylvania Telephone Company (NE PAT).1

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."2 Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.3

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.4 Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange and exchange access that is not subject to the jurisdiction of a State commission."5 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.6 Before designating an additional ETC for an area served

1 Petition of NEP Cellcorp, Inc. to Amend Designation as an Eligible Telecommunications Carrier in the State of Pennsylvania, CC Docket No. 96-45 (filed July 17, 2008) (NEP Amendment Petition).

2 47 U.S.C. § 254(e).

3 47 U.S.C. § 214(e)(1).

4 47 U.S.C. § 214(e)(2).

5 47 U.S.C. § 214(e)(6).

6 Id.

by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>7</sup> The Commission has concluded that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest.<sup>8</sup> Therefore, prior to designating an additional ETC in a rural telephone company's service area, the competitor must commit to provide the supported services to customers throughout the rural telephone company's wire center, which the Commission has concluded to be an appropriate minimum geographic area for ETC designation.<sup>9</sup>

4. NEP Petition. On May 1, 2008, the Commission designated NEP as an ETC in certain portions of its licensed service area in Pennsylvania.<sup>10</sup> Consistent with the Commission's findings in the *ETC Designation Order* and the *Highland Cellular Order*, the Commission found that designating NEP as an ETC in the rural study area of NE PAT would not be in the public interest because NEP only provided partial coverage in the Clifford and Forest City wire centers within NE PAT's study area.<sup>11</sup>

5. On July 17, 2008, NEP filed a petition asking the Commission to amend its decision to deny NEP's request for ETC designation in the NE PAT study area.<sup>12</sup> In its petition, NEP notes that at the time that it filed its petition for ETC designation in Pennsylvania, NEP and Omnipoint NY MTA License, LLC (T-Mobile) had informally agreed to allow NEP's signal to extend into T-Mobile's licensed service area.<sup>13</sup> NEP further states that on June 19, 2008, it executed a formal agreement with T-Mobile that allows its radio signals to cover the Clifford and Forest City wire centers using its own facilities (T-Mobile Extension Agreement).<sup>14</sup> NEP therefore requests, that the Commission amend its ETC designation in Pennsylvania to include the entire study area of NE PAT.<sup>15</sup>

### III. DISCUSSION

6. We grant NEP's request to amend its ETC designation in Pennsylvania to include the NE PAT study area. As discussed above, on June 19, 2008, NEP executed the T-Mobile Extension Agreement.<sup>16</sup> The T-Mobile Extension Agreement allows NEP to offer the services supported by the federal universal service fund throughout NE PAT's entire rural study area, including the Clifford and

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<sup>7</sup> *Id.*

<sup>8</sup> *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd at 6438, 6378 para. 33 (2004) (*Highland Cellular Order*); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd at 6378, para. 15 (2005) (*ETC Designation Order*).

<sup>9</sup> *Highland Cellular Order*, 19 FCC Rcd at 6378, para. 33.

<sup>10</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc. et al., Petitions for Designation as Eligible Telecommunications Carriers*, WC Docket Nos. 05-337, 96-45, Order, 23 FCC Rcd 8834, 8866 (2008) (*2008 ETC Order*).

<sup>11</sup> *Id.* at 8864.

<sup>12</sup> NEP Amendment Petition at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 2, Exhibit 2. NEP states that at the time it filed its ETC application and throughout the time its application was pending, it had been working to obtain permission from T-Mobile to annex the Clifford and Forest City wire centers to its existing license or, alternatively, to obtain an extension agreement. *Id.* at 3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> NEP Amendment Petition at 2, 3. Pursuant to the agreement T-Mobile and NEP "consent to field strengths in excess of 47 dBuV/m . . . at locations within the New York Major Trading Area . . . by NEP via modifications of its personal communications service radiotelephone system," which include the Clifford and Forest City wire centers in Pennsylvania. See *id.* at Exh. 2.

Forest City wire centers.<sup>17</sup> We conclude that NEP is now able to provide the required services in an appropriate minimum geographic area for ETC designation. Accordingly, consistent with section 214(e)(6) of the Act, we find that designating NEP as an ETC in NE PAT's study area is in the public interest, and grant NEP's request to amend its ETC designation in Pennsylvania to include the additional wire centers listed in the appendix of this order.<sup>18</sup>

#### IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of the 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the ETC designation of NEP Cellcorp, Inc. in Pennsylvania IS AMENDED as described herein.

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

9. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted to the Pennsylvania Public Utility Commission and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

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<sup>17</sup> *Id.* at 3.

<sup>18</sup> When NEP filed its petition to expand the ETC designation conferred by this Commission under section 214(e)(6) of the Act, the relevant state commission had not exercised its authority to make such designations. In February 2009, however, the Pennsylvania Public Utility Commission (Pennsylvania PUC) began exercising its authority to designate wireless ETCs under section 214(e)(2) of the Act. *See* Response of Pennsylvania Public Utility Commission to FCC Request for Review and Approval of Proposed Redefinition of Service Areas, WC Docket No. 05-337, CC Docket 96-45 (filed Feb. 2, 2010). In its filing concurring with the Commission's proposed reclassification of certain exchanges under the *2008 ETC Order*, the Pennsylvania PUC indicated that, based on the length of time that NEP's petition has been pending and the Commission's familiarity with the record, the Commission should address NEP's petition. *Id.* at 2 (citing *2008 ETC Order*, 23 FCC Rcd 8834). We therefore grant NEP's petition to amend the ETC designation conferred by this Commission in the *2008 ETC Order*, but note that, pursuant to the Pennsylvania PUC's assertion of jurisdiction over wireless ETC designations, wireless carriers seeking ETC designation in Pennsylvania must seek such designation from the Pennsylvania PUC pursuant to section 214(e)(2) of the Act.

**Appendix****Rural Wire Centers for Inclusion in NEP's Pennsylvania ETC Service Area**

<b>LEC NAME</b>	<b>WIRE CENTER</b>	<b>CLLI</b>
North-Eastern Pennsylvania Telephone Co.	CLIFFORD	CLIFPAXC
North-Eastern Pennsylvania Telephone Co.	FOREST CITY	FRCYPAXF
North-Eastern Pennsylvania Telephone Co.	HARFORD	HARDPAXF
North-Eastern Pennsylvania Telephone Co.	JACKSON	JKSNPAXJ
North-Eastern Pennsylvania Telephone Co.	NEW MILFORD	NMFRPAXN
North-Eastern Pennsylvania Telephone Co.	PLEASANT MOUNT	PLMTPAXP
North-Eastern Pennsylvania Telephone Co.	THOMPSON	THSNPAXT
North-Eastern Pennsylvania Telephone Co.	UNION DALE	UNDLPAXU