elected officials; Native American tribes; newspapers; public libraries; television and radio stations; intervenors to the FERC's proceeding; and individuals who provided scoping comments, commented on the draft EIS, or requested the final EIS.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet website (*http://www.ferc.gov*). Using the ''eLibrary'', select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'', and follow the instructions. You may also search using the phrase ''Cheyenne Plains'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Information concerning the involvement of the FS is available from John Oppenlander at (970) 346–5005. Information concerning the involvement of the FWS is available from Dan Mulhern at (785) 539–3474 (ext. 109).

Magalie R. Salas,

Secretary.

[FR Doc. E4–412 Filed 2–25–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 03–338]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants in part and denies in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC to be designated as an eligible telecommunications carrier throughout its licensed service area in the Commonwealth of Virginia, pursuant to the Communications Act of 1934, as amended. The Commission concludes that Virginia Cellular, LLC has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. The Commission also finds that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 96–45; FCC 03–338 released on January 22, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, we grant in part and deny in part, subject to enumerated conditions, the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In so doing, we conclude that Virginia Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1). Specifically, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. We find that the designation of Virginia Cellular as an ETC in two non-rural study areas serves the public interest. We also find that the designation of Virginia Cellular as an ETC in areas served by five of the six rural telephone companies serves the public interest and furthers the goals of universal service. As explained, with regard to the study area of NTELOS Telephone Inc. (NTELOS), we do not find that ETC designation would be in the public interest.

2. Because Virginia Cellular is licensed to serve only part of the study area of three of six incumbent rural telephone companies affected by this designation, Virginia Cellular has requested that the Commission redefine the service area of each of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act. We agree to the service area redefinition proposed by Virginia Cellular for the service areas of Shenandoah Telephone Company (Shenandoah) and MGW Telephone Company (MGW), subject to the agreement of the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements. We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved. Because we do not designate Virginia Cellular as an ETC in NTELOS' study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) The Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs. Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas. The outcome of that proceeding could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive universal service support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission. We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide

the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

II. Discussion

5. After careful review of the record before us, we find that Virginia Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for portions of its licensed service area. First, we find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Virginia Cellular's petition under section 214(e)(6). Second, we conclude that Virginia Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC in accordance with section 214(e)(1). In addition, we find that the designation of Virginia Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by providing greater mobility and a choice of service providers to consumers in high-cost and rural areas of Virginia. Pursuant to our authority under section 214(e)(6), we therefore designate Virginia Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia, as set forth. As explained, however, we do not designate Virginia Cellular as an ETC in the study area of NTELOS. In areas where Virginia Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Virginia Cellular's ETC designation shall be subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Virginia Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding. We also note that Virginia Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.

A. Commission Authority To Perform the ETC Designation

6. We find that Virginia Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission has authority to consider Virginia Cellular's petition under section 214(e)(6) of the Act. Specifically, Virginia Cellular states that it submitted an application for designation as an ETC with the Virginia Commission, and on April 9, 2002, the Virginia Commission issued an order stating that it had not asserted jurisdiction over CMRS carriers. In its order, the Virginia Commission directed Virginia Cellular to file for ETC designation with the FCC. Based on this statement by the Virginia Commission, we find that the Virginia Commission lacks jurisdiction to designate Virginia Cellular as an ETC and that this Commission has authority to perform the requested ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6).

B. Offering and Advertising the Supported Services

7. *Offering the Services Designated for Support.* We find that Virginia Cellular has demonstrated through the required certifications and related filings, that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service support mechanism. As noted in its petition, Virginia Cellular is an ''A-Band'' cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland, as well as the cities of Harrisonburg, Staunton, and Waynesboro. Virginia Cellular states that it currently provides all of the services and functionalities enumerated in § 54.101(a) of the Commission's rules throughout its cellular service area in Virginia. Virginia Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers. Virginia Cellular also complies with applicable law and Commission directives on providing access to emergency services. In addition, although the Commission has not set a minimum local usage requirement, Virginia Cellular certifies it will comply with ''any and all minimum local usage requirements adopted by the FCC'' and it intends to offer a number of local calling plans as part of its universal service offering. As discussed, Virginia Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under §§ 54.313 and 54.314 of the Commission's rules.

8. Virginia Cellular has also made specific commitments to provide service to requesting customers in the service areas that it is designated as an ETC. Virginia Cellular states that if a request is made by a potential customer within its existing network, Virginia Cellular will provide service immediately using its standard customer equipment. In instances where a request comes from a potential customer within Virginia Cellular's licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) The requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service. In addition, if after following these steps, Virginia Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.

9. Virginia Cellular has further committed to use universal service support to further improve its universal service offering by constructing several new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage. Virginia Cellular estimates that it will construct 11 cell sites over the first year and a half following ETC designation. These 11 cell sites will serve a population of 157,060. Virginia Cellular

notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand.

10. The Virginia Rural Telephone Companies raise several concerns about Virginia Cellular's service offerings. We address each of these concerns, and in so doing, we conclude that Virginia Cellular has demonstrated that it will offer the services supported by the federal universal service support mechanism upon designation as an ETC. Initially, we note that the Commission has held that to require a carrier to actually provide the supported services before it is designated an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service. Instead, ''a new entrant can make a reasonable demonstration * * * of its capability and commitment to provide universal service without the actual provision of the proposed service.''

11. We also reject the argument of the Virginia Rural Telephone Companies that Virginia Cellular does not offer all of the services supported by the federal universal service support mechanisms as required by section 214(e)(1)(A). Specifically, the Virginia Rural Telephone Companies claim that Virginia Cellular: (1) Has not yet upgraded from analog to digital and until this happens, Virginia Cellular cannot effectively implement E–911 or the Communications Assistance for Law Enforcement Act (CALEA); (2) offers no local usage; (3) has stated that its customers will not have equal access to interexchange carriers; (4) states only that it will participate ''as required'' with respect to Lifeline service; and (5) has wireless signals that are sporadic or unavailable in some of the mountainous regions that Virginia Cellular proposes to serve.

12. We find that Virginia Cellular's commitment to provide access to emergency services is sufficient. Virginia Cellular states that it is in compliance with state and federal 911 and E–911 mandates and is upgrading from analog to digital technology. Virginia Cellular states that it is implementing Phase I E–911 services in those areas where local governments have developed E–911 functionality and that upon designation as an ETC, it will be able to effectively implement E–911.

13. We find sufficient Virginia Cellular's showing that it will offer minimum local usage as part of its universal service offering. Therefore, we reject the Virginia Rural Telephone Companies' claim that Virginia Cellular should be denied ETC designation because it does not currently offer any local usage. Although the Commission did not set a minimum local usage requirement, in the *Universal Service Order,* 62 FR 32862, June 17, 1997, it determined that ETCs should provide some minimum amount of local usage as part of their ''basic service'' package of supported services. Virginia Cellular states that it will comply with any and all minimum local usage requirements adopted by the FCC. It adds that it will meet the local usage requirements by including a variety of local usage plans as part of a universal service offering. In addition, Virginia Cellular states that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes. Accordingly, we find that Virginia Cellular's commitment to provide local usage is sufficient.

14. We reject the Virginia Rural Telephone Companies' claim that ETC designation should be denied because Virginia Cellular's customers will not have equal access to interexchange carriers. Section 54.101(a)(7) of the rules states that one of the supported services is access to interexchange services, not equal access to those services. Virginia Cellular states that it provides access to interexchange services. Accordingly, we find sufficient Virginia Cellular's showing that it will offer access to interexchange services.

15. We find that Virginia Cellular's commitment to participate in the Lifeline and Linkup programs is sufficient. In its petition, Virginia Cellular states that it currently has no Lifeline customers, and upon designation as an ETC, it will participate in Lifeline as required. Virginia Cellular also states that it will advertise the availability of Lifeline service to its customers. Although Virginia Cellular does not currently advertise Lifeline to its customers, we note that the advertising rules for Lifeline and Linkup services apply only to already-designated ETCs. Thus, we find sufficient Virginia Cellular's commitment to participate in Lifeline and Linkup.

16. Although the Virginia Rural Telephone Companies claim that Virginia Cellular's wireless signals are sporadic in certain areas, we find that the existence of so-called ''dead spots'' in Virginia Cellular's network does not preclude us from designating Virginia Cellular as an ETC. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC. Moreover, as stated, Virginia Cellular has committed to improve its network. In addition, the Commission's rules acknowledge the existence of dead spots. ''Dead spots'' are defined as ''[s]mall areas within a service area where the field strength is lower than the minimum level for reliable service.'' Section 22.99 of the Commission's rules states that ''[s]ervice within dead spots is presumed.'' Additionally, the Commission's rules provide that ''cellular service is considered to be provided in all areas, including dead spots * * * .'' Because ''dead spots'' are acknowledged by the Commission's rules, we are not persuaded by the Virginia Rural LECs that the possibility of dead spots demonstrates that Virginia Cellular is not willing or capable of providing acceptable levels of service throughout its service area.

17. *Offering the Supported Services Using a Carrier's Own Facilities.* Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. Virginia Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes ''the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers.'' We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A).

18. *Advertising the Supported Services.* We conclude that Virginia Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution. Virginia Cellular certifies that it ''will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission.'' In addition, Virginia Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Virginia Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Virginia Cellular's service offerings and learn about Lifeline and Linkup discounts. Virginia Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service. We find that Virginia Cellular's certification and its additional

commitments to advertising its service offerings satisfy section 214(e)(1)(B). In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.

C. Public Interest Analysis

19. We conclude that it is ''consistent with the public interest, convenience, and necessity'' to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies Bell Atlantic and GTE South, Inc. We also conclude that it is in the public interest to designate Virginia Cellular as an ETC in Virginia in the study areas served by five of the six affected rural telephone companies. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Virginia Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Virginia Cellular as an ETC, however, for the study area of NTELOS because we find that Virginia Cellular has not satisfied its burden of proof in this instance.

20. *Non-Rural Study Areas.* We conclude that it is ''consistent with the public interest, convenience, and necessity'' to designate Virginia Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone companies of Bell Atlantic and GTE South. We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Virginia Cellular's public interest showing here is sufficient based on the detailed commitments Virginia Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Virginia Cellular has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas. We also note that no parties oppose Virginia Cellular's request for ETC designation in the study areas of these non-rural telephone companies. We therefore conclude that Virginia Cellular has demonstrated that its designation as an ETC in the study areas of these non-rural telephone companies, is consistent with the public interest, as required by section 214(e)(6). We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

21. *Rural Study Areas.* Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

22. Virginia Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Virginia Cellular has committed to serve residences to the extent that they do not have access to the public switched network through the incumbent telephone company. Also, the mobility of Virginia Cellular's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Virginia Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Virginia Cellular's customers will be subject to fewer toll charges.

23. We acknowledge arguments made in the record that wireless telecommunications offerings may be subject to dropped calls and poor coverage. Parties also have noted that wireless carriers often are not subject to mandatory service quality standards. Virginia Cellular has committed to mitigate these concerns. Virginia Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage. As evidence of its commitment to high service quality, Virginia Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service. In addition, Virginia Cellular has committed to provide the Commission with the number of consumer complaints per 1,000 handsets on an annual basis. Therefore, we find that Virginia Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

24. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs. Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs

is growing at a dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately $2 million or 0.4 percent of high-cost support. In the fourth quarter of 2003, 112 competitive ETCs are projected to receive approximately $32 million or 3.7 percent of high-cost support. This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, commenters argue that designation of competitive ETCs will place significant burdens on the federal universal service fund without any corresponding benefits. We recognize these commenters raise important issues regarding universal service support. As discussed, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

25. Additionally, we conclude that, for most of the rural areas in which Virginia Cellular seeks ETC designation, such designation does not raise the rural creamskimming and related concerns alleged by commenters. Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area. In this case, because the contour of its CMRS licensed area differs from the existing rural telephone companies' study areas, Virginia Cellular will be unable to provide facilities-based service to the entirety of the study areas of three of the six affected rural telephone companies—Shenandoah, MGW, and NTELOS. Generally, a request for ETC designation for an area less than the entire study area of a rural telephone company might raise concerns that the petitioner intends to creamskim in the rural study area. In this case, however, Virginia Cellular commits to provide universal service throughout its licensed service area. It therefore does not appear that Virginia Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

26. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier's license covers. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.

27. We have analyzed the record before us in this matter and find that, for the study areas of Shenandoah and MGW, Virginia Cellular's designation as an ETC is unlikely to undercut the incumbents' ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers reveals that, for the study areas of MGW and Shenandoah, Virginia Cellular will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other factors that define high-cost areas, a low population density typically indicates a high-cost area. Our analysis of population density reveals that Virginia Cellular is serving not only the lower cost, higher density wire centers in the study areas of MGW and Shenandoah. The population density for the Shenandoah wire center for which Virginia Cellular seeks ETC designation is approximately 4.64 persons per square mile and the average population density for Shenandoah's remaining wire centers is approximately 53.62 persons per square mile. The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile.

28. We conclude, however, for the following reasons, that it would not be in the public interest to designate Virginia Cellular as an ETC in the study area of NTELOS. Virginia Cellular's licensed CMRS area covers only the Waynesboro wire center in NTELOS' study area. Based on our examination of the population densities of the wire centers in NTELOS' study area, we find that Waynesboro is the lowest-cost, highest-density wire center in the study area of NTELOS, and that there is a great disparity in density between the Waynesboro wire center and the NTELOS wire centers outside Virginia Cellular's service area. The population density in the Waynesboro wire center is approximately 273 persons per square mile, while the average population density of the remaining wire centers in NTELOS' study area is approximately 33 persons per square mile. Universal service support is calculated on a study-area-wide basis. Although NTELOS did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower-cost area, we find on the facts here that designating Virginia Cellular as an ETC only for the Waynesboro wire center could potentially significantly undermine NTELOS' ability to serve its entire study area. The widely disparate population densities in NTELOS' study area and the status of Waynesboro as NTELOS' sole low-cost, high-density wire center could result in such an ETC designation placing NTELOS at a sizeable unfair competitive disadvantage. In addition, we believe that, if NTELOS had disaggregated, the low costs of service in the Waynesboro wire center would have resulted in little or no universal service support targeted to those lines. Therefore, our decision not to designate Virginia Cellular as an ETC in the study area of NTELOS is unlikely to impact consumers in the Waynesboro wire center because Virginia Cellular will make a business decision on whether to provide service in that area without regard to the potential receipt of universal service support.

D. Designated Service Area

29. Virginia Cellular is designated an ETC in the areas served by the non-rural carriers Bell Atlantic and GTE South, as listed in Appendix A. We designate Virginia Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 6 Rural Service Area. Virginia Cellular is designated an ETC in the areas served by the three rural telephone companies whose study areas Virginia Cellular is able to serve completely, as listed in Appendix B. As discussed, and subject to the Virginia Commission's agreement on redefining the service areas of MGW and Shenandoah, we also designate Virginia Cellular as an ETC for the entire Bergton, McDowell, Williamsville, and Deerfield wire centers.

30. We designate Virginia Cellular as an ETC in the entire Deerfield, McDowell, and Williamsville wire centers in the study area of MGW. We note that, although the boundaries of its CMRS licensed service area in Virginia exclude a small part of MGW's Williamsville wire center, Virginia Cellular has committed nevertheless to offer service to customers in the entirety of the Williamsville wire center through a combination of its own facilities and

resale of either wireless or wireline services.

31. We also designate Virginia Cellular as an ETC for the Bergton wire center in Shenandoah's study area. We note that the study area of Shenandoah is composed of two non-contiguous areas. One such area is composed solely of the Bergton wire center, which falls within Virginia Cellular's licensed service area, and the other area is composed of eight remaining wire centers, which fall outside of Virginia Cellular's licensed service area. We find that, because the Bergton wire center is a low-density, high-cost wire center, concerns about undermining Shenandoah's ability to serve the entire study area are substantially minimized. We further note that the Commission has previously expressed concern about requiring competitive ETCs to serve non-contiguous areas. In the *Universal Service Order,* the Commission concluded that requiring a carrier to serve a non-contiguous service area as a prerequisite of eligibility might impose a serious barrier to entry, particularly to wireless carriers. The Commission further concluded that ''imposing additional burdens on wireless entrants would be particularly harmful in rural areas * * *.'' Accordingly, we find that denying Virginia Cellular ETC status for Shenandoah's Bergton wire center simply because Virginia Cellular is not licensed to serve the eight remaining wire centers would be inappropriate. Thus, we conclude that it is appropriate to designate Virginia Cellular as an ETC for the Bergton wire center within Shenandoah's study area.

32. Finally, for the reasons described, we do not designate Virginia Cellular as an ETC in any portion of NTELOS' service area.

E. Redefining Rural Telephone Company Service Areas

33. We redefine the service areas of MGW and Shenandoah pursuant to section 214(e)(5). Consistent with prior rural service area redefinitions, we redefine each wire center in the MGW and Shenandoah study areas as a separate service area. Our decision to redefine the service areas of these telephone companies is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

34. In order to designate Virginia Cellular as an ETC in a service area that is smaller than the affected rural telephone company study areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act. We define the affected service areas only to determine the portions of rural service areas in which to designate Virginia Cellular and future competitive carriers seeking ETC designation in the same rural service areas. Any future competitive carrier seeking ETC designation in these redefined rural service areas will be required to demonstrate that such designation will be in the public interest. In defining the rural telephone companies' service areas to be different than their study areas, we are required to act in concert with the relevant state commission, ''taking into account the recommendations'' of the Joint Board. The Joint Board's concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision* are as follows: (1) Minimizing creamskimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level. We find that the proposed redefinition properly addresses these concerns.

35. First, we conclude that redefining the affected rural telephone company service areas at the wire center level for MGW and Shenandoah should not result in opportunities for creamskimming. Because Virginia Cellular is limited to providing facilities-based service only where it is licensed by the Commission and because Virginia Cellular commits to providing universal service throughout its licensed territory in Virginia, concerns regarding creamskimming are minimized. In addition, we have analyzed the population densities of the wire centers Virginia Cellular can and cannot serve to determine whether the effects of creamskimming would occur. We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent's ability to serve its entire study area. Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service areas of MGW and Shenandoah as proposed.

36. Second, our decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas. Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives. Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve. Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

37. Third, we find that redefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

38. In accordance with § 54.207(d) of the Commission's rules, we submit this order to the Virginia Commission. We request that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the Commission's rules. Virginia Cellular's ETC designation in the service areas of Shenandoah and MGW is subject to the Virginia Commission's review and agreement with the redefinition proposal herein. We find that the Virginia Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service areas of Shenandoah and MGW, our designation of Virginia Cellular as an ETC for these areas as set forth herein shall also take effect. In all other areas for which this

Order grants ETC status to Virginia Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Virginia Cellular's petition with regard to redefining the affected rural service areas.

F. Regulatory Oversight

39. We note that Virginia Cellular is obligated 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 support is intended'' and is required under §§ 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement. Separate and in addition to its annual certification filing under §§ 54.313 and 54.314 of our rules, Virginia Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the service areas it is designated as an ETC. Virginia Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis. In addition, Virginia Cellular will annually submit information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year. We require that Virginia Cellular submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004. We find that reliance on Virginia Cellular's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel* v. *FCC.* We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Virginia Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. We adopt the commitments that Virginia Cellular has made as conditions on our approval of its ETC designation for the Commonwealth of Virginia. We note that 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 where it is designated as an ETC. Virginia Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Virginia Cellular fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders.

III. Anti-Drug Abuse Act Certification

40. 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. Virginia Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988. We find that Virginia Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in §§ 1.2001–1.2003 of the Commission's rules.

IV. Ordering Clauses

41. Pursuant to the authority contained in section 214(e)(6) of the Communications Act, Virginia Cellular, LLC is designated an eligible telecommunications carrier for specified portions of its licensed service area in the Commonwealth of Virginia subject to the conditions described herein.

42. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, § 54.207(d) and (e) of the Commission's rules, the request of Virginia Cellular, LLC to redefine the service areas of Shenandoah Telephone Company and MGW Telephone Company in Virginia is granted, subject to the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for these rural telephone companies. Upon the effective date of the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service areas for those rural telephone companies, this designation of Virginia Cellular, LLC as an ETC for such areas as set forth herein shall also take effect.

43. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, and § 54.207(d) and (e) of the Commission's rules, the request of Virginia Cellular, LLC to redefine the service area of NTELOS Telephone Inc. in Virginia is denied.

44. A copy of this Memorandum Opinion and Order shall be transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Appendix A

Virginia Non-Rural Wire Centers for Inclusion in Virginia Cellular's ETC Service Area

Bell Atlantic (Verizon)	GTE South, Inc. (Verizon)
Staunton (STDRVASD)*.	Broadway.
Staunton (STTNVAST).	Edom.
Staunton (STTNVAVE).	Hinton.
Craigsville	Dayton.
Lovingston (NLFRVANF).	Keezletown.
Lovingston (LVTNVALN).	Harrisonburg.
Lovingston (WNTRVAWG).	McGaheysville.
Greenwood	Bridgewater.
Pine River	Weyerscave.
	Grottoes.
	Elkton.
	Amherst.
	Gladstone.

*Because the wire center locality names are the same in some instances, the Wire Center Codes are listed in parentheses.

Appendix B

Virginia Rural Telephone Company Study Areas for Inclusion in Virginia Cellular's ETC Service Area

New Hope Telephone Company
North River Telephone Company
Highland Telephone Cooperative

Appendix C

Virginia Rural Telephone Company Wire Centers for Inclusion in Virginia Cellular's Etc. Service Area

Shenandoah Telephone Company
Bergton
MGW Telephone Company
McDowell
Williamsville
Deerfield

[FR Doc. 04–4266 Filed 2–25–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 04–8]

Auction of Direct Broadcast Satellite Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission affirms that its authority to auction licenses for Direct Broadcast Satellite service channels at orbit locations to which the United States is assigned by the International Telecommunication Union has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. This action will enable the Commission to proceed expeditiously with the auction of these three DBS licenses.

DATES: Effective February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0786; Douglas Webbink, International Bureau, (202) 418–1494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Auction of Direct Broadcast Satellite Licenses Order (''*DBS Order*''), released on January 15, 2004. The complete text of the *DBS Order* as well as related Commission documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *DBS Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 04–8 for the *DBS Order*). The *DBS Order* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/52/.*

I. Introduction

1. In the *DBS Order,* the Commission affirms that its authority to auction licenses for Direct Broadcast Satellite (''DBS'') service channels at orbit locations to which the United States is assigned by the International Telecommunication Union (''ITU'') has not been altered by regulatory and statutory actions taken since DBS auctions were last held in 1996. The Commission also declines to impose eligibility restrictions on the three available DBS licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. The Commission does not address in the *DBS Order* the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead defers the resolution of this matter to a subsequent order.

II. Background

2. Eight orbit positions were assigned to the United States for DBS, under the auspices of the ITU, at the 1983 Regional Administrative Radio Conference for the Planning in Region 2 of the Broadcasting-Satellite Service in the Frequency Band 12.2–12.7 GHz and Associated Feeder Links in the Frequency Band 17.3–17.8 GHz. Under this Region 2 Band Plan for Ku-band DBS satellites (''ITU Region 2 Band Plan''), which was agreed upon by the nations present, the orbit slots assigned to the United States are for coverage of the United States.

3. The Commission first adopted competitive bidding rules for the DBS service in 1995. Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order,* 60 FR 65587, December 20, 1995. In 2002, the Commission released Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order* (''*Part 100 R&O*''), 67 FR 51110, August 7, 2002, in which it streamlined the regulation of DBS and moved the DBS rules from part 100 to part 25.

4. On March 3, 2003, the Commission issued a public notice announcing an auction of DBS licenses (the *Auction No. 52 Comment Public Notice,* 68 FR 12906, March 18, 2003), in which it sought comment on its conclusion that the Commission has the authority to auction the DBS licenses included in Auction No. 52 and on a number of questions regarding whether eligibility restrictions are warranted for any of the licenses to be offered in Auction No. 52.

5. Pursuant to its delegated authority, the Wireless Telecommunications Bureau will resolve all the procedural issues relating to Auction No. 52 on which the Commission sought comment in the *Auction No. 52 Comment Public Notice* will adjust the license inventory of Auction No. 52 to reflect the Commission's resolution of the eligibility issue for three licenses in the *DBS Order,* and will announce a new start date for the auction.

III. Discussion

A. The Commission's Authority To Auction DBS Licenses

6. The Commission concludes that it has the authority to auction the DBS licenses included in Auction No. 52, as well as any other licenses for DBS channels at the eight orbit locations assigned to the United States under the current ITU Region 2 Band Plan that may become available in the future. The Commission concludes that section 647 of the Open-Market Reorganization for the Betterment of International Telecommunications Act (''ORBIT Act''), 47 U.S.C. 765f, which prohibits the use of competitive bidding to assign orbit locations or spectrum used ''for the provision of international or global satellite communications services,'' does not prohibit the use of auctions to assign licenses for DBS channels at the eight orbit locations assigned to the United States under the ITU Region 2 Band Plan. This is because the Commission finds that the DBS service authorized under such licenses is not an ''international or global satellite communications service.'' Under the technical parameters of the ITU Region 2 Band Plan, these licenses are designed to provide service almost exclusively to the United States, and they must be used to provide a service delivered almost exclusively to U.S. consumers.

7. The Commission does not read the ORBIT Act auction prohibition to bar the use of the competitive bidding process for any service that provides incidental transborder service. Moreover, visibility of areas outside the United States from orbit locations assigned to the United States does not make service provided from these locations an international service. For coverage beyond that described in the ITU Region 2 Band Plan, a modification to the Plan, including further modifications of allocations currently in the Plan, would be required, and modifications of the ITU Region 2 Band Plan are not obtained as a matter of routine. The Commission also disagrees with the argument that the ORBIT Act prohibits auctions of DBS licenses because DBS service is provided on spectrum that is used for the provision of non-geostationary satellite orbit fixed-satellite service.

8. The Commission also concludes that, although it removed its own regulatory obstacles to the provision of DBS service outside the United States