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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Pine Belt Cellular, Inc. and	)	
Pine Belt PCS, Inc.	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 2002 **Released: May 24, 2002**

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the joint petition of Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (referred to collectively hereinafter as the Pine Belt companies) to be designated as eligible telecommunications carriers (ETCs) in Alabama, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).[1] In so doing, we conclude that the Pine Belt companies have provided an affirmative statement that the Alabama Public Service Commission (Alabama Commission) lacks the jurisdiction to perform the designation for them, and that the Federal Communications Commission (Commission) therefore has authority to perform the requested ETC designations under section 214(e)(6) of the Act.[2] We also find that the Pine Belt companies have satisfied the statutory eligibility requirements of section 214(e)(1).[3] Specifically, we conclude that the Pine Belt companies have demonstrated that they will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service areas.

II. BACKGROUND

2. *The Act.* Section 254(e) of the Act provides that "only an eligible

[1] Petition for Designation as an Eligible Telecommunications Carrier by Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., filed November 26, 2001 (Pine Belt Petition). *See* 47 U.S.C. § 214(e)(6). Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., are both affiliated with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama. Pine Belt Petition at 2. Both companies seek designation as eligible telecommunications carriers for the same service areas, and submit a certification by John C. Nettles, President of both companies. *See* Pine Belt Petition at 2, Exhibits 1, 3. We therefore consider their requests together.

[2] 47 U.S.C. § 214(e)(6).

[3] 47 U.S.C. § 214(e)(1).

telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[4] 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 areas.[5]

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.[6] Section 214(e)(6), however, 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."[7] Under section 214(e)(6), 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 all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).[8]

4. *Filing Requirements for ETC Designation.* On December 29, 1997, the Commission released a Public Notice establishing the procedures for carriers seeking Commission designation as an ETC under section 214(e)(6).[9] In the *Section 214(e)(6) Public Notice*, the Commission delegated authority to the Chief of the Common Carrier (now Wireline Competition) Bureau to designate carriers as ETCs pursuant to section 214(e)(6).[10] The Commission instructed carriers seeking ETC designation to set forth in a petition several items in compliance with the statute. First, petitioners must submit a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission."[11] Second, petitioners must submit a certification that the petitioner offers all

[4] 47 U.S.C. § 254(e).

[5] Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received --

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e)(1).

[6] 47 U.S.C. § 214(e)(2). *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

[7] 47 U.S.C. § 214(e)(6). *See, e.g., Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Memorandum Opinion and Order, 13 FCC Rcd 4547 (Com. Car. Bur. 1998).

[8] 47 U.S.C. § 214(e)(6).

[9] *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997) (*Section 214(e)(6) Public Notice*).

[10] *Id.* at 22948.

[11] *Id.*

services designated for support by the Commission pursuant to section 254(c).[12] Third, petitioners must provide 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."[13] Fourth, petitioners must offer a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution."[14] If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service areas for which it requests an ETC designation from the Commission.[15]

5. Pursuant to the *Twelfth Report and Order*, a carrier seeking designation as an ETC for service provided on non-tribal lands must first consult with the appropriate state regulatory commission, even if the carrier contends that the state commission lacks jurisdiction over the carrier.[16] While a carrier may assert that state law precludes the state commission from exercising jurisdiction over the carrier for purposes of ETC designation under section 214(e)(2), the principle of federal-state comity dictates that the state commission be afforded an opportunity to interpret state law.[17] Accordingly, the Commission will only consider a section 214(e)(6) designation request from a carrier serving non-tribal lands where a carrier provides the Commission with an "affirmative statement" from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform ETC designations over a particular carrier.[18] An "affirmative statement" from a state commission may consist of any duly authorized letter, comment, or state commission order indicating that the body lacks jurisdiction to perform the requested designation for a particular carrier.[19]

6. *Pine Belt Petition*. The Pine Belt companies submitted to the Alabama Commission a request for ETC designation and request for clarification regarding jurisdiction on September 11, 2001.[20] The application sought clarification regarding the Alabama Commission's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services in connection with the Pine Belt companies' efforts to obtain ETC designation in Alabama.[21] On March 12, 2002, the Alabama Commission issued an order stating:

> . . . [The Alabama Commission] has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial

[12] *Id.*

[13] *Id.* at 22949.

[14] *Id.*

[15] *Id.*

[16] *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

[17] *Id.* at 12264, para. 113.

[18] *Id.*

[19] *Id.*

[20] *See Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for ETC Status and/or Clarification Regarding the Jurisdiction of the Commission to Grant ETC Status to Wireless Carriers, Docket U-4400*, Order, Alabama Public Service Commission (March 12, 2002) (*Alabama Commission Order*).

[21] *Id.*

> mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the [Alabama] Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 U.S.C. § 214(e)(6).[22]

7. On November 26, 2001, the Pine Belt companies filed with the Commission a joint petition pursuant to section 214(e)(6) seeking designation of eligibility to receive federal universal service support for service in Alabama.[23] On December 7, 2001, the Wireline Competition Bureau released a Public Notice seeking comment on the Pine Belt Petition.[24] No comments were submitted in response to the Public Notice.

III. DISCUSSION

8. We find, as discussed in more detail below, that the Pine Belt companies have met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as ETCs by this Commission for the provision of service in the designated area of Alabama. We conclude that the Pine Belt companies have demonstrated that the Alabama Commission lacks the jurisdiction to perform the designation, and that the Commission therefore may consider the Pine Belt companies' petition under section 214(e)(6). We also conclude that the companies have demonstrated that they now offer and advertise, or will offer and advertise, the services supported by the federal universal service support mechanisms throughout the designated service areas upon designation as ETCs. Furthermore, we find that the designation of the Pine Belt companies as ETCs serves the public interest because it will benefit consumers in Alabama by promoting competition and new technologies in the area and universal service to those consumers. Pursuant to our authority under section 214(e)(6), we therefore designate the Pine Belt companies as ETCs in Alabama.

9. *Commission Authority to Perform the ETC Designation.* We find that the Pine Belt companies have demonstrated that the Alabama Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission therefore has authority to consider their petition under section 214(e)(6) of the Act. We deem the Alabama Commission Order of March 12, 2002 to constitute the affirmative statement required under our rules.[25]

10. *Offering the Services Designated for Support.* We find that the Pine Belt companies have demonstrated through the required certifications that they now offer, or will offer, the services supported by the federal universal service mechanisms upon designation as ETCs. The Pine Belt companies are CMRS carriers serving, in accordance with licenses granted by the Commission, wireless service territories that include Alabama Rural Service Area 3B2 for cellular services and the Selma basic trading area (FCC Market B415) for personal

[22] *Alabama Commission Order* at 2 (emphasis in the original).

[23] *See generally* Pine Belt Petition.

[24] *See Common Carrier Bureau Seeks Comment on Pine Belt Cellular and Pine Belt PCS Petition for Designation as an Eligible Telecommunications Carrier in Alabama*, CC Docket No. 96-45, Public Notice, DA 01-2841 (rel. December 7, 2001). *See also* 66 Fed. Reg. 65210 (December 18, 2001).

[25] *See Alabama Commission Order*; *Twelfth Report and Order* at 12264.

communications services.[26] The Pine Belt companies certify that they currently provide all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout their cellular service areas in Alabama.[27] The Pine Belt companies certify that they have the capability to offer single-party service, voice-grade access to the public switched network, the functional equivalents to DTMF signaling, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.[28] The Pine Belt companies comply with applicable law and Commission directives on providing access to emergency services.[29] In addition, although the Commission has not set a minimum local usage requirement, the Pine Belt companies certify that they currently offer several service options including varying amounts of local usage, and intend to offer their universal service customers a rate plan that includes unlimited local usage.[30] The Pine Belt companies indicate that, upon designation as ETCs, they will make available "universal service offerings" that include all of the supported services.[31] Finally, the Pine Belt companies commit to provide service to any requesting customer within the designated service areas.[32] We therefore conclude that the Pine Belt companies comply with the requirement of section 214(e)(1)(A) to "offer the services that are supported by Federal universal service support mechanisms under section 254(c) . . ."[33]

11. *Offering the Supported Services Using a Carrier's Own Facilities.* We conclude that the Pine Belt companies have demonstrated that they satisfy the requirement of section 214(e)(1)(A) that they offer the supported services using either their own facilities or a combination of their own facilities and resale of another carrier's services.[34] The Pine Belt companies state that they provide the supported services "using [their] existing network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network."[35] We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

[26] Pine Belt Petition at 2.

[27] *Id.* at 2. Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

[28] Pine Belt Petition at 4-7.

[29] *See* 47 C.F.R. § 54.101(a)(5) (stating that access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems). The Pine Belt companies currently provide access to emergency services throughout their cellular service areas by dialing 911. Pine Belt Petition at 5. The Pine Belt companies indicate that they have completed Phase I E911 implementation in all jurisdictions that have requested it (four of the five counties they serve), and that no public emergency service provider in their service area has requested Phase II compliance. *Id.* at 6.

[30] Pine Belt Petition at 5.

[31] *Id.* at 2-4.

[32] *Id.* at 3.

[33] 47 U.S.C. §214(e)(1)(A).

[34] *Id.*

[35] Pine Belt Petition at 7.

12. *Advertising the Supported Services.* We conclude that the Pine Belt companies have demonstrated that they satisfy 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.[36] The Pine Belt companies certify that they will advertise the availability of their universal service offerings, and the charges therefor, using media of general distribution.[37] The Pine Belt companies currently advertise their wireless services through various media, including television, radio, newspaper, and billboards, as well as targeted advertising.[38] The Pine Belt companies state that they will expand upon these media, as necessary, to ensure that customers within their designated service areas are fully informed of their universal service offerings.[39] We find this certification sufficient to satisfy the requirements of section 214(e)(1)(B). Moreover, because ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal service offerings in Alabama.[40]

13. *Public Interest Analysis.* We conclude that it is "consistent with the public interest, convenience, and necessity" to designate the Pine Belt companies as ETCs in the requested non-rural service area that is served by Verizon and BellSouth.[41] As the Commission has previously stated, for those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest.[42] An important goal of the Act is to open local telecommunications markets to competition, and Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.[43] Additionally, we note that no parties filed oppositions to the Pine Belt Petition. We conclude that the Pine Belt companies have demonstrated that their service offerings fulfill the underlying federal policies favoring competition.

14. *Designated Service Areas.* Consistent with the Pine Belt companies' request, we designate the Pine Belt companies as ETCs for the requested service areas in Alabama.[44] These service areas encompass the current service areas of Verizon and BellSouth as indicated in Exhibit 3 of the Pine Belt Petition.[45]

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[36] 47 U.S.C. § 214(e)(1)(B).

[37] Pine Belt Petition at 7.

[38] *Id.*

[39] *Id.*

[40] *See id.* (asserting that the Pine Belt companies will have economic incentives to advertise).

[41] *See* 47 U.S.C. § 214(e)(6).

[42] *See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 39 (Com. Car. Bur. 2000).

[43] *See* 47 U.S.C. § 214(e)(6).

[44] *See* Pine Belt Petition at 1-2, Exhibit 3. Under section 214(e)(5) of the Act, "service area" connotes a geographic area established by a state commission, or the Commission under section 214(e)(6), for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

[45] Pine Belt Petition at Exhibit 3.

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

15. 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.[46] This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.[47] The Pine Belt companies have provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.[48] We find that the Pine Belt companies have 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

16. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. ARE DESIGNATED ELIGIBLE TELECOMMUNICATIONS CARRIERS for the designated service areas in Alabama, as discussed herein.

17. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

[46] 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

[47] Section 1.2002(b) provides that a certification pursuant to that section 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 non-voting) of the petitioner; and (3) If the applicant 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).

[48] *See* Pine Belt Petition, Exhibit 1.