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**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION: OMB**

*Control Number:* 3060–0700.

*Title:* Open Video Systems Provisions, FCC Form 1275.

*Form Number:* FCC 1275.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; and State, local, or tribal government.

*Number of Respondents:* 748.

*Estimated Time per Response:* 0.25 to 20 hours.

*Total Annual Burden:* 3,910 hours.

*Total Annual Costs:* None.

*Privacy Impact Assessment:* No impact.

*Needs and Uses:* Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an “Open Video System” (“OVS”). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures. The Commission has made changes and revisions in the header/footer of the form, in the instructions to FCC 1275, and various other administrative edits to update the form and instructions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10680 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL COMMUNICATIONS COMMISSION**

[CC Docket Number 96–45; FCC 04–37]

**Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission grants in part and denies in

part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of 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).

**FOR FURTHER INFORMATION CONTACT:** Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Memorandum Opinion and Order in CC Docket 96–45 released on April 12, 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 12th Street, SW., Washington, DC 20554.

**I. Introduction**

1. In this Order, we grant in part and deny in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of 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 Highland Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) of the Act. Specifically, we conclude that Highland Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Highland Cellular requests ETC designation for a service area that overlaps, among other areas, the study areas of three rural telephone companies. We find that the designation of Highland Cellular as an ETC in a wire center served by Verizon Virginia, Inc. (Verizon Virginia), a non-rural carrier, and certain areas served by two of the three rural companies serves the public interest and furthers the goals of universal service. With regard to the study area of Verizon South, Inc. (Verizon South) and the Saltville wire center of United Telephone Company—Southeast Virginia (United Telephone) we do not find that ETC designation would be in the public interest.

2. Highland Cellular is licensed to serve the entire study area of only one of the three rural companies for which it seeks ETC designation—Burkes

Garden Telephone Company, Inc. (Burkes Garden). Because Highland Cellular is licensed to serve only part of the study areas of the other two incumbent rural telephone companies, Highland Cellular has requested that we redefine the service areas 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 Highland Cellular for the service area of United Telephone, subject to agreement by 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 Highland Cellular as an ETC in Verizon South’s 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 Highland Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive 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. As we concluded in a recent order granting ETC designation to Virginia Cellular in the Commonwealth of Virginia, this framework 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 Highland Cellular has made on the record in this proceeding. These conditions will ensure that Highland 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 Highland Cellular has met all the requirements set forth in sections 214(e)(1) and (e)(6) of the Act, to be designated as an ETC by this Commission for the portions of its licensed service area described herein. First, we find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Highland Cellular's petition under section 214(e)(6) of the Act. Second, we conclude that Highland 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) of the Act. In addition, we find that designation of Highland Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by better ensuring that consumers in high-cost and rural areas of Virginia have access to the services supported by universal service at affordable rates. Pursuant to our authority under section 214(e)(6) of the Act, we therefore designate Highland Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia as set forth below. As explained below, however, we do not designate Highland Cellular as an ETC in the study area of the rural telephone company, Verizon South, and the Saltville wire center of the rural telephone company, United Telephone. In areas where Highland Cellular's proposed service areas do not cover the

entire study area of a rural telephone company, Highland 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, Highland Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding, now before the Joint Board, examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Highland 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 Highland 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 Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and the Commission has authority to consider Highland Cellular's petition under section 214(e)(6) of the Act. Highland Cellular submitted as an "affirmative statement" an order issued by the Virginia Commission addressing an application filed by Virginia Cellular, LLC (Virginia Cellular) seeking ETC designation. In the *Virginia Commission Order*, the Virginia Commission concluded that it "has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation."

7. We find that, as required by the *Twelfth Report and Order*, 65 FR 47941, August 4, 2000, the Virginia Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Virginia Commission Order*. We find it sufficient that the Virginia Commission indicated that it does not have jurisdiction over CMRS carriers and that the Federal Communications Commission is the proper venue for CMRS carriers seeking ETC designation in the Commonwealth of Virginia. Therefore, based on this statement by the Virginia Commission, we find the Virginia Commission lacks jurisdiction to designate Highland Cellular as an ETC and this Commission has authority to perform the requested ETC

designation in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Act.

### B. Offering and Advertising the Supported Services

8. *Offering the Services Designated for Support.* We find that Highland 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, Highland Cellular is an "A2-Band" cellular carrier for the Virginia 2 Rural Service Area, serving the counties of Bland and Tazewell. Highland 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. Highland 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. Highland 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, Highland 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 below, Highland 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.

9. Highland Cellular has also made specific commitments to provide service to requesting customers in the service areas in which it is designated as an ETC. Highland Cellular states that if a request is made by a potential customer within its existing network, Highland Cellular will provide service immediately using its standard customer equipment. In instances where a request comes from a potential customer within Highland 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, Highland 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.

10. Highland Cellular has further committed to use universal service support to further improve its universal service offering by constructing new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage. Highland Cellular states that it will modify its construction plans based on the areas where ETC designation is granted. Highland Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand. In connection with its annual reporting obligations, Highland Cellular will submit detailed information on its progress toward meeting build-out plans.

11. *Offering the Supported Services Using a Carrier's Own Facilities.* Highland Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) of the Act, 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. Highland 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) of the Act.

12. *Advertising the Supported Services.* We conclude that Highland Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) of the Act, to advertise the availability of the supported services and the charges therefor using media of general distribution. Highland 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, Highland Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Highland Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Highland Cellular's service offerings and learn about Lifeline and Linkup discounts. Highland 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 Highland Cellular's certification and its additional commitments to advertise its service offerings satisfy section 214(e)(1)(B) of the Act. 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

13. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We also conclude that it is in the public interest to designate Highland Cellular as an ETC in Virginia in the study area served by the rural telephone company, Burkes Garden and the Bland and Ceres wire centers served by the rural telephone company, United Telephone. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Highland 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 Highland Cellular as an ETC, however, for the study area of Verizon South and the Saltville wire center of United Telephone because we find that Highland Cellular has not satisfied its burden of proof in this instance.

14. *Non-Rural Study Areas.* We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We note that the Common Carrier Bureau previously 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 Highland Cellular's public interest showing here is sufficient based on the detailed commitments Highland Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Highland Cellular has satisfied the more rigorous public interest analysis for certain rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas. We also note that no parties oppose Highland Cellular's request for ETC designation in the study area of this non-rural telephone company. We therefore conclude that Highland Cellular has demonstrated that its designation as an ETC in the study area of this non-rural telephone company, is consistent with the public interest, as required by section 214(e)(6) of the Act. We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate both non-rural and rural ETCs 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.

15. *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 Highland 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 Highland 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 prejudice the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

16. Highland Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Highland Cellular has committed to serve residences that do not have access to the public switched network through the incumbent telephone company. Also, the mobility of Highland 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. Highland Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Highland Cellular's customers will be subject to fewer toll charges.

17. We acknowledge arguments made in the record that wireless telecommunication offerings may be subject to dropped calls and poor coverage. In addition, wireless carriers often are not subject to mandatory service quality standards. Highland Cellular has committed to mitigate these concerns. Highland 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, Highland 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, Highland 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 Highland 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.

18. 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 the number of 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 received 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, Verizon Telephone Companies (Verizon) argues that the Commission should not rule on the Highland Cellular ETC petition until after it has had an opportunity to initiate a broader rulemaking on high-cost fund issues. In particular, Verizon contends that the Commission should reexamine the rules concerning portability of support for ETCs and the designation of ETCs for areas different from those served by the incumbent LEC. We recognize that Verizon raises important issues regarding universal service high-cost support. As discussed above, 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 Highland 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.

19. We further conclude that designation of Highland Cellular as an

ETC in the Burkes Garden study area and the Bland and Ceres wire centers served by United Telephone does not create rural creamskimming concerns. As discussed below, however, we conclude that designation of Highland Cellular as an ETC in the study area of Verizon South and the Saltville wire center does raise creamskimming and other concerns, and therefore would be inconsistent with the public interest. Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area. Because Highland Cellular requests ETC designation in the entire study area of Burkes Garden, designation of Highland Cellular as an ETC in this portion of its licensed service area does not create creamskimming concerns. We note, however, that because the contours of Highland Cellular's CMRS licensed area differ from United Telephone's and Verizon South's service areas, Highland Cellular will be unable to provide facilities-based service to the entire study areas of these two companies. In this case, however, Highland Cellular commits to provide universal service throughout its licensed service area. It therefore does not appear that Highland Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

20. 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 is licensed to serve. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming.

21. We have analyzed the record before us in this matter and find that, for the study area of United Telephone, Highland Cellular's designation as an ETC is unlikely to undercut the incumbent's ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers for United Telephone reveals that Highland 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 lower population density indicates a higher cost area. The average population density for the United Telephone wire centers for which we grant Highland Cellular ETC designation is 19.5 persons per square mile and the average population density for United

Telephone's remaining wire centers is 73.21 persons per square mile.

22. We conclude, however, that it would not be in the public interest to designate Highland Cellular as an ETC in the study area of Verizon South. Highland Cellular's licensed CMRS service area covers only certain wire centers in the study area of Verizon South. Based on our examination of the population densities of the wire centers in Verizon South's study area, and using the same analysis used by the Commission in the *Virginia Cellular Order*, we find that designating Highland Cellular as an ETC in Verizon South's study area would not be in the public interest.

23. In the *Virginia Cellular Order*, the Commission granted in part and denied in part the petition of Virginia Cellular LLC (Virginia Cellular) to be designated as an ETC throughout parts of its licensed service area in the Commonwealth of Virginia. In that proceeding, Virginia Cellular requested ETC designation for the study areas of six rural telephone companies. The Commission found that the designation of Virginia Cellular as an ETC in certain areas served by five of the six rural telephone companies served the public interest by promoting the provision of new technologies to consumers in high-cost and rural areas of Virginia. However, the Commission denied designation of Virginia Cellular as an ETC in one rural incumbent LEC's study area because Virginia Cellular would only have served the lowest-cost, highest-density wire center within the incumbent LEC's study area.

24. In this case, we find that the ETC designation of Highland Cellular in the portion of its licensed service area that covers only certain wire centers of Verizon South raises creamskimming concerns similar to those identified by the Commission in the *Virginia Cellular Order*. We agree with the arguments of Verizon that Highland Cellular should not be allowed to serve only the low-cost customers in a rural telephone company's study area. Our analysis of the population data for each of the affected rural wire centers, including the wire centers in Verizon South's study area that are not covered by Highland Cellular's licensed service area, reveals that Highland Cellular would be primarily serving customers in the low-cost and high-density portion of Verizon South's study area. Specifically, although the wire centers in Verizon South's study area that Highland Cellular would be able to serve includes two low density wire centers, approximately 94 percent of Highland Cellular's potential customers in

Verizon South's study area would be located in the four highest-density, and thus presumably lowest-cost, wire centers in Verizon South's study area. The population in these four wire centers represents approximately 42,128 customers. In contrast, the remaining approximately six percent of Highland Cellular's potential customers in Verizon South's study area, which are located in the two lowest-density, highest-cost wire centers, represent only approximately 2,800 customers.

25. As we discussed in the *Virginia Cellular Order*, when a competitor serves only the lowest-cost, highest-density wire centers in a study area with widely disparate population densities, the incumbent may be placed at a sizeable unfair disadvantage. Universal service support is calculated on a study-area-wide basis. Although Verizon South 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 Highland Cellular as an ETC in these requested wire centers potentially could undermine Verizon South's ability to serve its entire study area. Specifically, because Verizon South's study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially. We therefore reject arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area.

26. Finally, we conclude that designating Highland Cellular as an ETC in a portion of United Telephone's Saltville wire center would not serve the public interest. Although the Wireline Competition Bureau previously designated an ETC for portions of a rural telephone company's wire center, we conclude that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. In particular, we conclude, that 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 a minimum geographic area. A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond

with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation. Highland Cellular has stated that, should the Commission impose a requirement that competitive ETCs serve complete rural telephone company wire centers, it would not seek designation in the Saltville wire center. We, therefore, do not designate Highland Cellular as an ETC in the Saltville wire center.

#### D. Designated Service Area

27. Highland Cellular is designated an ETC in the requested areas served by the non-rural telephone company, Verizon Virginia, as listed in Appendix A. We designate Highland Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 2 Rural Service Area. Highland Cellular is designated as an ETC in the area served by the rural telephone company, Burkes Garden, whose study area Highland Cellular is able to serve completely, as listed in Appendix B. Subject to the Virginia Commission's agreement on redefining the service area of United Telephone, we also designate Highland Cellular as an ETC for the entire Bland and Ceres wire centers as listed in Appendix C. Finally, we do not designate Highland Cellular as an ETC in the study area served by Verizon South or the Saltville wire center served by United Telephone.

28. We designate Highland Cellular as an ETC in the Bland and Ceres wire centers in the study area of United Telephone. We find that because the Bland and Ceres wire centers are low-density, high-cost wire centers, concerns about undermining United Telephone's ability to serve the entire study area are minimized. Accordingly, we find that denying Highland Cellular ETC status for United Telephone's Bland and Ceres wire centers simply because Highland Cellular is not licensed to serve the twenty-five remaining wire centers would be inappropriate. Consequently, we conclude that it is in the public interest to designate Highland Cellular as an ETC in United Telephone's Bland and Ceres wire centers and include those wire centers in Highland Cellular's service area, as redefined below.

29. Finally, for the reasons described above, the service area we designate for Highland Cellular does not contain any

portion of Verizon South's study area or United Telephone's Saltville wire center.

#### *E. Redefining Rural Company Service Areas*

30. We redefine the service area of United Telephone pursuant to section 214(e)(5) of the Act. Consistent with prior rural service area redefinitions, we redefine each wire center in the United Telephone study area as a separate service area. Our decision to redefine the service area of United Telephone 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.

31. In order to designate Highland Cellular as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service areas of the rural telephone company in accordance with section 214(e)(5) of the Act. We redefine the affected service area only to determine the portions of the rural service area in which to designate Highland Cellular and future competitive carriers seeking ETC designation in the same rural service area. In defining United Telephone's service area to be different than its study area, 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*, FCC 96J-1, June 19, 1996, are as follows: (1) Minimizing creamskimming; (2) recognizing that the 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.

32. First, we conclude that redefining United Telephone's service area at the wire center level should not result in opportunities for creamskimming. We have analyzed the population densities of the wire centers in United Telephone's study area where Highland Cellular will and will not receive support and conclude that this redefinition does not raise creamskimming concerns. 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 area of United Telephone.

33. Second, our decision to redefine the service area includes special consideration for the affected rural carrier. We find no evidence that the proposed redefinition will harm United Telephone. Although no parties have opposed the specific redefinition of United Telephone's service area, Verizon has raised general concerns that the designation of Highland Cellular as a competitive ETC will result in inefficient investment or will strain the universal service fund. We find no evidence that the proposed redefinition will harm United Telephone. We note that redefining the service area of the affected rural telephone company will not change the amount of universal service support that is available to the incumbents.

34. Third, we find that redefining United Telephone's service area as proposed will not require United Telephone to determine its costs on any 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 area 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 United Telephone will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas might impose additional administrative burdens on affected rural telephone companies is not at issue here.

35. In accordance with § 54.207(d) of the Commission's rules, we submit this Order to the Virginia Commission, and 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. Highland Cellular's ETC designation in the service area of United Telephone 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 proposed redefinition because of its familiarity with the rural service area in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service area of United Telephone, our designation of Highland Cellular as an ETC in the area served by

United Telephone as set forth herein, shall also take effect. In all other areas for which this Order grants ETC status to Highland 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 Highland Cellular's petition with regard to redefining United Telephone's service area.

#### *F. Regulatory Oversight*

36. We note that Highland 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, Highland Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans. Highland 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, Highland Cellular will annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year. We require Highland Cellular to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004. We find that reliance on Highland 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 Highland Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. 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. Highland Cellular will be required to provide such records and documentation to the Commission and

USAC upon request. We further emphasize that if Highland 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

37. 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. Highland Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988. We find that Highland 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

38. Pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), Highland Cellular, Inc. is designated an eligible telecommunications carrier for portions of its licensed service area in the Commonwealth of Virginia to the extent described herein.

39. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and § 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d) and (e), the request of Highland Cellular, Inc. to redefine the service area of United Telephone Company—Southeast Virginia in Virginia is granted to the extent described herein and subject to the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service area. For United Telephone Company—Southeast Virginia, upon the effective date of the agreement of the Virginia State Corporation Commission with the Commission's redefinition of such service area, this designation of Highland Cellular, Inc. as an ETC for such area as set forth herein shall also take effect.

40. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and § 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d)

and (e), the request of Highland Cellular, Inc. to redefine the service area of Verizon South, Inc.—Virginia in Virginia is denied.

41. It is further ordered that 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 Telephone Company Wire Centers for Inclusion in Highland Cellular's ETC Service Area

**Verizon Virginia Inc.**  
 Honaker (wire center code HNKRVVHK)

#### Appendix B—Virginia Rural Telephone Company Study Areas for Inclusion in Highland Cellular's ETC Service Area

**Burkes Garden Telephone Company, Inc.**  
 (Study Area Code 190220)

#### Appendix C—Virginia Rural Telephone Company Wire Centers for Inclusion in Highland Cellular's ETC Service Area

**United Telephone Company—Southeast Virginia**

Bland (wire center code BLNDVAXA)  
 Ceres (wire center code CERSVAX)

[FR Doc. 04–10675 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

### FEDERAL COMMUNICATIONS COMMISSION

[Report Nos. AUC–04–37–I (Auction No. 37); DA 04–1020 and AUC–04–37–J (Auction No. 37); DA 04–1275]

#### Revised Inventory and Auction Start Date for FM Broadcast Construction Permits, Auction Rescheduled for November 3, 2004; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures; and Auction for FM Broadcast Construction Permits; Deadlines Extended for Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** By this document, the Wireless Telecommunications Bureau (WTB) and the Media Bureau (MB) (collectively referred to as the Bureaus) reschedule the postponed FM Broadcast auction (Auction No. 37) for November 3, 2004, and seek comment on previously announced procedures for

Auction No. 37. Also this document announces the revised auction inventory for Auction No. 37.

**DATES:** Comments are due on or before May 17, 2004, and reply comments are due on or before May 24, 2004.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: [auction37@fcc.gov](mailto:auction37@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For legal questions: Kenneth Burnley at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2851. For legal and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of two public notices, DA 04–1020 (“Auction No. 37 Comment Public Notice”) and DA 04–1275 (“Auction No. 37 Comment Extension Public Notice”) released on April 15, 2004 and May 5, 2004 respectively. The complete text of the Auction No. 37 Comment Public Notice and the Auction No. 37 Comment Extension Public Notice, including the attachments, 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–B402, Washington, DC 20554. The Auction No. 37 Comment Public Notice 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](mailto:qualexint@aol.com).

1. By the Auction No. 37 Comment Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively referred to as the “Bureaus”) reschedule the postponed auction for FM broadcast construction permits (Auction No. 37) for November 3, 2004, and seek comment on previously announced procedures for Auction No. 37. In addition, the Auction No. 37 Comment Public Notice announces the revised auction inventory for Auction No. 37. As discussed in greater detail herein, Auction No. 37 will be composed of 290 construction permits in the FM broadcast service as listed in Attachment A of the Auction No. 37 Comment Public Notice.

2. Specifically, Attachment A of the Auction No. 37 Comment Public Notice lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's