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SECRETARY

IN RE: IMPLEMENTATION OF THE
UNIVERSAL SERVICE
REQUIREMENTS OF SECTION 254
OF THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET 25980

NOTICE:
TO ALL TELECOMMUNICATIONS PROVIDERS
SEEKING DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS
CARRIERS PURSUANT TO SECTIONS 254(e) AND 214(e) OF THE
TELECOMMUNICATIONS ACT OF 1996

I. Introduction/Background

The provisions of 47 U.S.C. §254(e) mandate that only telecommunications providers designated by this Commission as eligible telecommunications carriers ("ETCs") pursuant to the requirements of 47 U.S.C. §214(e) will be eligible to receive high cost, low income, and health care support from the Federal Universal Service Fund effective January 1, 1998. According to §214(e), carriers designated as ETCs shall be eligible to receive Universal Service support in accordance with §254 only if such carriers (1) are common carriers offering the services supported by the Federal Universal Service support mechanisms under §254(c) throughout the service area for which ETC

designation is received; (2) offer such services using their own facilities or a combination of their own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (3) advertise the availability of such services and the charges therefor using media of general distribution.

State commissions are given the latitude under 47 U.S.C. §214(e)(2) to designate ETCs either upon their own motion or upon request. Section 214(e)(2) further provides for the designation of more than one ETC per each service area served by non-rural carriers. The designation of more than one ETC in areas served by rural telephone companies is dependent upon a finding that such designation of an additional ETC for that rural service area is in the public interest. State commissions may not exclude a class of carriers from ETC designation due to the fact that any carrier that meets the criteria of §214(e)(1) is eligible to receive Universal Service support regardless of the technology that carrier utilizes to provide service.

II. Services Supported by Universal Service Funds

In accordance with its statutory duty under 47 U.S.C. §254(c)(1), the FCC has established that the "designated" services that will receive Universal Service support are: single party service; local usage; voice grade access to the public switched network; dual tone multi-frequency (DTMF) signaling or its functional equivalent; access to emergency services including in some circumstances access to 911 and Enhanced 911 (E-911); access to operator services; access to interexchange service; access to directory assistance;

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and toll limitation services for qualifying low income consumers. In order to receive Universal Service support, eligible carriers must offer each of the designated services throughout their service areas.

Carriers that are currently unable to provide single-party service may petition their state commission to permit them to receive Universal Service support for a designated period of time while the network upgrades needed to offer single party service are completed. Similarly, carriers currently incapable of providing access to E-911 service and toll limitation services may petition their state commissions for permission to receive Universal Service support while completing network upgrades required for them to offer E-911 and/or toll limitation services. Accordingly, this Commission will entertain such petitions so that otherwise eligible telecommunications carriers will be permitted to receive Universal Service support while necessary network upgrades are accomplished. The Commission will, however, grant such requests only upon a finding that exceptional circumstances prevent the otherwise eligible telecommunications carriers petitioning for such relief from providing single-party service, access to E-911 service, or toll limitation services. The relief periods granted will extend only as long as the Commission finds that exceptional circumstances exist and will not extend beyond the time that the Commission deems necessary for the eligible telecommunications carriers in question to complete the network upgrades required to provide single-party service, access to E-911 service, or toll limitation services as applicable.

III. The Facilities Required for Eligibility

ETCs must offer the above-noted services designated for Universal Service support using their own facilities or through a combination of their own facilities and resale of another carrier's services. The FCC has concluded that for purposes of §214(e)(1), the term "facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under §254(c)(1). We note, however, that neither the Telecommunications Act of 1996 (the '96 Act) or the FCC's regulations mandate that the facilities utilized to provide the services designated for Universal Service support be physically located in the service area for which Universal Service support is sought.

The FCC has further concluded that when a requesting carrier obtains an unbundled network element from another carrier, that unbundled network element is the requesting carrier's "own facility" for purposes of §214(e)(1)(A) provided such network element otherwise meets the FCC's definition of a facility. Accordingly, the FCC has established that a carrier that offers any of the services designated for Universal Service support either in whole or in part over facilities that are obtained as unbundled network elements pursuant to §251(c)(3), and that meet the definition of facilities established by the FCC, satisfies the facilities requirement of §214(e)(1)(A).

It should be noted, however, that carriers that offer the services designated for Universal Service support solely through resale are precluded from being designated

eligible telecommunications carriers due to §214(e)(1)'s requirement that a carrier provide Universal Service at least in part over its own facilities. It, therefore, follows that a carrier that serves some customers exclusively through the resale of wholesale service may not receive Universal Service support for those customers that it serves through resale alone. Additionally, a carrier utilizing exclusively unbundled network elements to provide the services designated for Universal Service support will only be entitled to receive a level of Universal Service support not exceeding the price of the unbundled network elements to which it purchases access.

IV. Service Areas

As emphasized previously, ETCs must offer the services designated for Universal Service support throughout the entire service area for which they receive ETC designation. Sections 214(e)(2) and 214(e)(5) place the responsibility for designating such service areas with state commissions. States are required to fulfill their obligations in this regard in a manner that promotes the pro-competitive goals of the '96 Act as well as the specific Universal Service principles of §254. With regard to rural telephone companies, §214(e)(5) provides that the term "service area" means the rural telephone company study area unless and until the FCC and the states establish a different definition of such company's service area.

V. Conclusion

The Commission previously considered the matters addressed herein in our July 18, 1997 Second Report and Order and Notice of Proposed Rulemaking in this Docket. We, in fact, sought and received comments from interested parties concerning these matters. We have determined from our review of those comments and the applicable orders of the FCC that the most appropriate method for designating ETCs and their service territories is to require all telecommunications carriers seeking ETC designation to certify their eligibility status and desired service area utilizing the form attached hereto.

Any carrier that desires designation as an ETC in the service area of a rural local exchange company (LEC) must demonstrate compelling circumstances indicating that it is in the public interest to have an ETC other than the incumbent LEC in the study area of that rural incumbent LEC. Further, carriers seeking designation as ETCs in the service areas of rural incumbent LECs must, if so approved, serve the entire service area of the rural LEC absent a compelling demonstration as to why some other lesser service area would better serve the public interest.

All telecommunications providers seeking ETC designation must submit the attached form no later than November 25, 1997. It is anticipated that the Commission will render a determination on all timely received requests at the December 1, 1997 meeting of the Commission. A decision on December 1, 1997, or shortly thereafter, will

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allow the Commission to notify the FCC and the Universal Service Administrative Company prior to the established deadline of December 31, 1997. We note, however, that all carriers which are ultimately designated as ETCs will also have the responsibility of notifying the FCC and the Universal Service Administrative Company of their ETC status in order to be eligible for funding for high cost, low income and health care support beginning January 1, 1998. Such notification must be accompanied by the Commission's Order granting the submitting carrier ETC status.

DONE at Montgomery, Alabama, this 31st day of October, 1997.

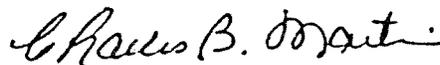
ALABAMA PUBLIC SERVICE COMMISSION



Jim Sullivan, President



Jan Cook, Commissioner



Charles B. Martin, Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary