

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
	)	
Guam Cellular and Paging, Inc. d/b/a Saipancell	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier on the	)	
Islands of Saipan, Tinian, and Rota	)	
in the Commonwealth of the Northern Mariana	)	
Islands	)	
	)	

**ORDER**

**Adopted: July 23, 2004**

**Released: July 23, 2004**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the petition of Guam Cellular and Paging, Inc. d/b/a Saipancell (Saipancell) to be designated as an eligible telecommunications carrier (ETC) for a service area that covers the islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands (CNMI), pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>1</sup> In so doing, we conclude that Saipancell, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated as an ETC.<sup>2</sup>

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<sup>1</sup>Guam Cellular and Paging, Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in Commonwealth of the Northern Mariana Islands, filed Feb. 19, 2002 (Saipancell Petition); Amendment to Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan, filed Apr. 15, 2001; Second Amendment to Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan, filed May 8, 2002 (Saipancell Second Amendment); Third Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed Oct. 15, 2002 (Saipancell Third Amendment); Fourth Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed Jan. 22, 2003 (Saipancell Fourth Amendment); Fifth Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed Feb. 10, 2003 (Saipancell Fifth Amendment); Letter from David A. LaFuria, Counsel for Saipancell to Marlene H. Dortch, FCC, dated March 9, 2004 (Saipancell March 9, 2004 Supplement). *See also* 47 U.S.C. § 214(e)(6). The Commission has jurisdiction over interstate and foreign common carrier communications that originate or terminate in the United States. *See* 47 U.S.C. §§ 151 and 152. CNMI, as a United States territory, is subject to the jurisdiction of the Commission. *See* 47 U.S.C. § 153(51) (defining “United States” to include “the several States and Territories.”).

<sup>2</sup>47 U.S.C. § 214(e)(1).

## II. BACKGROUND

### A. The Act

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>3</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>4</sup>

3. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.<sup>5</sup> 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.”<sup>6</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>7</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>8</sup> We note that the Wireline Competition Bureau has delegated authority to perform ETC designations.<sup>9</sup>

### B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” pursuant to section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the

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<sup>3</sup>47 U.S.C. § 254(e).

<sup>4</sup>47 U.S.C. § 214(e)(1).

<sup>5</sup>47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

<sup>6</sup>47 U.S.C. § 214(e)(6). See, e.g., *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (rel. Jan. 22, 2004) (*Virginia Cellular Order*); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

<sup>7</sup>47 U.S.C. § 214(e)(6).

<sup>8</sup>*Id.*

<sup>9</sup>See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, CC Docket No. 96-45, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

Commission.<sup>10</sup>

5. In 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.<sup>11</sup> Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.<sup>12</sup> The requirement to provide an “affirmative statement” ensures that the state commission has had “a specific opportunity to address and resolve issues involving a state commission’s authority under state law to regulate certain carriers or classes of carriers.”<sup>13</sup>

6. On January 22, 2004, the Commission released the *Virginia Cellular Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia.<sup>14</sup> In that Order, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular.<sup>15</sup> The Commission further stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the Commission.<sup>16</sup> Following the framework established in the *Virginia Cellular Order*, on April 12, 2004, the Commission released the *Highland Cellular Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.<sup>17</sup> In the *Highland Cellular Order*, the Commission concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.<sup>18</sup>

### C. Saipancell Petition

7. Pursuant to section 214(e)(6), Saipancell filed with this Commission a petition and amendments thereto, seeking designation as an ETC on the islands of Saipan, Tinian, and Rota in the CNMI.<sup>19</sup> The Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition.<sup>20</sup> Micronesian Telephone Company (Micronesian Telephone) filed an Opposition to the petition

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<sup>10</sup>See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49 (1997); 47 U.S.C. § 3(37). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (Declaratory Ruling), recon. pending.

<sup>11</sup>See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

<sup>12</sup>*Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

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

<sup>14</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1564, para. 1.

<sup>15</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

<sup>16</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 4.

<sup>17</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

<sup>18</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

<sup>19</sup>See Saipancell Petition at 2-9, 16-17. Saipancell’s initial petition had also requested the Commission to redefine Micronesian Telephone’s service area by island because Saipancell only sought ETC designation on the island of Saipan. See Saipancell Petition at 10-15. Saipancell subsequently requested that the Commission disregard its redefinition request after planning to construct additional facilities to serve the island of Tinian and obtaining authority to serve the island of Rota. See Saipancell Fourth Amendment at 1-2, 4.

<sup>20</sup>See *Common Carrier Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in the Commonwealth of the*

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and the Cellular Telephone & Internet Association filed comments in support of the petition.<sup>21</sup> In light of the new ETC designation framework established in the *Virginia Cellular Order*, on March 9, 2004, Saipancell filed a supplement to its ETC petition.<sup>22</sup> On April 2, 2004, the Bureau released a public notice seeking comment concerning all supplemented ETC petitions, including the petition filed by Saipancell.<sup>23</sup>

### III. DISCUSSION

8. After careful review of the record before us, we find that Saipancell 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 its licensed service area described herein. Saipancell's ETC designation is effective immediately.

#### A. Commission Authority to Perform the ETC Designation

9. Saipancell has demonstrated that the Commission has authority to consider Saipancell's petition under section 214(e)(6) of the Act. Saipancell's original petition had provided a statement from the Commonwealth Utilities Corporation (CUC) stating that the "CUC has no objection to the federal government processing [Saipancell's] Eligible Telecommunications Carrier application."<sup>24</sup> Saipancell amended its original petition after learning that the Commonwealth Telecommunications Commission (CTC), and not the CUC, has regulatory authority over telecommunications in the CNMI.<sup>25</sup> The Second Amended Petition included a letter issued on May 6, 2002, from the Chairman of the CTC, stating that the CTC has not historically asserted jurisdiction over CMRS carriers, that the CTC "does not intend to exercise jurisdiction over CMRS carriers for purposes of ETC designation," and that "[i]t is, therefore, appropriate for [Saipancell] to apply directly to the FCC for ETC designation."<sup>26</sup> Saipancell filed the CTC Letter as an affirmative statement that the Commission is the appropriate authority to consider Saipancell's ETC petition.<sup>27</sup>

10. We reject Micronesian Telephone's contention that Saipancell is obligated to bring its request before the CTC.<sup>28</sup> We find it sufficient that the CTC has stated that it "does not intend to exercise

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*Northern Mariana Islands*, Public Notice, CC Docket No. 96-45, 17 FCC Rcd 4263 (rel. Mar. 4, 2002). *See also Wireline Competition Bureau Seeks Comment on Guam Cellular and Paging, Inc. d/b/a Saipancell Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan in the Commonwealth of the Northern Mariana Islands*, Public Notice, CC Docket No. 96-45, 17 FCC Rcd 8179 (rel. May 1, 2002).

<sup>21</sup>See Opposition of the Micronesian Telephone Company, CC Docket No. 96-45, DA 02-510, filed Apr. 22, 2002 (Micronesian Opposition); Comments of the Cellular Telephone & Internet Association, filed June 17, 2002. Saipancell filed reply comments addressing the Micronesian Opposition. *See Reply Comments of Guam Cellular and Paging, Inc.*, filed Jun. 17, 2002 (Saipancell Reply Comments).

<sup>22</sup>See Saipancell March 9, 2004 Supplement.

<sup>23</sup>See *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket 96-45, 19 FCC Rcd 6405 (rel. Apr. 12, 2004). Verizon filed an opposition to all pending ETC petitions, including Saipancell's, arguing that, among other things, pending ETC petitions should not be acted upon until completion of the Commission's proceeding concerning the ETC designation process and the related rules regarding high-cost universal service support. *See Opposition of Verizon*, CC Docket No. 96-45, filed May 7, 2004, at 1-5 (Verizon Opposition).

<sup>24</sup>Saipancell Petition at 3 & Exhibit A.

<sup>25</sup>See Saipancell Second Amendment at 1-2 & Exhibit A.

<sup>26</sup>See *id.* at Exhibit A.

<sup>27</sup>See Saipancell Second Amendment at 2.

<sup>28</sup>Micronesian Telephone claims that even though Saipancell is a wireless carrier, 4 CMC § 8325(1) of the CNMI Public Law gives the CTC explicit authority to act on Saipancell's petition. *See Micronesian Opposition* at 3. We

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jurisdiction over CMRS carriers for purposes of ETC designation,” and that the CTC has stated that it is “appropriate for [Saipancell] to apply directly to the FCC for ETC designation.”<sup>29</sup> Although we agree with Micronesian Telephone that the CTC is authorized under section 8325(1) of the CNMI statutes to designate additional ETCs, it is clear from the CTC Letter that the CTC will not exercise such jurisdiction over CMRS carriers like Saipancell.<sup>30</sup> We find that Saipancell is “not subject to the jurisdiction of a State commission” and that this Commission has authority to consider Saipancell’s petition under section 214(e)(6) of the Act.<sup>31</sup>

## B. Offering and Advertising the Supported Services

11. Offering the Services Designated for Support. Saipancell 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 mechanism. As noted in its petition, Saipancell is authorized to provide cellular radiotelephone service on frequency block A on the islands of Saipan, Tinian, and Rota in CNMI Rural Service Area, Cellular Market Area 734.<sup>32</sup> Saipancell certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission’s rules.<sup>33</sup> Saipancell has also committed to commitments that closely track those set forth in the *Virginia Cellular Order* and the *Highland Cellular Order*, including: (1) annual reporting of progress towards buildout plans, unfulfilled service requests, and complaints per 1,000 handsets; (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage; and (3) specific commitments to construct new cell sites in areas outside its network coverage.<sup>34</sup>

12. Offering the Supported Services Using a Carrier’s Own Facilities. Saipancell 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.<sup>35</sup> Saipancell states that it intends to provide the supported services using its existing 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

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note, however, that Micronesian Telephone filed its opposition before Saipancell filed the CTC Letter with its Second Amendment stating that the CTC has no intention to exercise jurisdiction over CMRS carriers for purposes of ETC designation.

<sup>29</sup>See Saipancell Petition at Exhibit A.

<sup>30</sup>*Id.*

<sup>31</sup>See 47 U.S.C. § 214(e)(6). See also Saipancell Reply Comments at 2-3.

<sup>32</sup>Saipancell Petition at 1 and 10. See also Saipancell Third Amendment; Saipancell Fourth Amendment.

<sup>33</sup>*Id.* See also Saipancell Petition at Exhibit B, Declaration Under Penalty of Perjury, Mark Chamberlain, Senior Vice President, Guam Cellular and Paging, Inc. (executed Feb. 12, 2002) (Saipancell Declaration).

<sup>34</sup>Saipancell will use universal service support to construct 3 to 5 cell sites on the island of Rota which are expected to serve an estimated 5,000 people and 1 to 2 cell sites on the island of Tinian which are expected to serve an estimated 2,000 people. See Saipancell March 9 Supplement at 4-5; Letter from David A. LaFuria, Counsel for Saipancell to Marlene H. Dortch, FCC, dated June 14, 2004. Based on USAC’s universal service support projections for Third Quarter 2004, Saipancell plans to use support to construct one site per year. See Letter from David A. LaFuria, Counsel for Saipancell to Marlene H. Dortch, FCC, dated June 17, 2004. See also Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004 (Universal Service Administrative Company, April 30, 2004). We recognize that these plans may change over time depending on consumer demand, fluctuation in universal service support, and related factors. See e.g., *Virginia Cellular Order*, 19 FCC Rcd at 1571, para. 16; *Highland Cellular Order*, 19 FCC Rcd at 6429, para. 16.

<sup>35</sup>See Saipancell Petition at 9.

customers.”<sup>36</sup>

13. Advertising Supported Services. Saipancell 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.<sup>37</sup> In addition to its current advertising, Saipancell has committed to specific methods to publicize the availability of Lifeline and Link-up service and improved service in unserved or underserved areas.<sup>38</sup>

### C. Public Interest Analysis

14. We conclude that it is “consistent with the public interest, convenience, and necessity” to designate Saipancell as an ETC in the study area served by the rural telephone company, Micronesian Telephone. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant.<sup>39</sup> We conclude that Saipancell has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

15. In considering whether designation of Saipancell as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the study area for which Saipancell seeks designation outweigh any potential harms. 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.<sup>40</sup>

16. Saipancell’s universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Saipancell has committed to serve residences that do not have access to the public switched network through the incumbent telephone company.<sup>41</sup> Also, the mobility of Saipancell’s wireless service will provide benefits such as access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.<sup>42</sup> Moreover, Saipancell states that it will provide CNMI residents with new services comparable to those provided in urban areas, including mobility, basic voicemail, voice message notification, numeric paging, call forwarding, three-way calling, call waiting, premium voice mail, voice dial, and two-way Short Message Service.<sup>43</sup> Saipancell has also made service quality commitments comparable to those made by petitioners in the *Virginia Cellular* and *Highland Cellular Orders*, including compliance with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for

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<sup>36</sup>*Id.*

<sup>37</sup>47 C.F.R. § 214(e)(1)(B).

<sup>38</sup>See Saipancell March 9 Supplement at 5.

<sup>39</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6431, para. 20; *Virginia Cellular Order*, 19 FCC Rcd at 1574-75, para. 26.

<sup>40</sup>See e.g., *Highland Cellular Order*, 19 FCC Rcd at 6435, para. 28; *Virginia Cellular Order*, 19 FCC Rcd at 1573, para. 22.

<sup>41</sup>See Saipancell March 9, 2004 Supplement at 3-4.

<sup>42</sup>See Saipancell Fifth Amendment at 3-4; *Virginia Cellular Order*, 19 FCC Rcd at 1576, para. 29. See also *Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

<sup>43</sup>See Saipancell Fifth Amendment at 5.

Wireless Service.<sup>44</sup>

17. We note that the Commission is seeking comment on the *Recommended Decision* of the Federal Joint-Board on Universal Service (Joint-Board) concerning the process for designation of ETCs and the Commission's rules regarding high-cost universal service support.<sup>45</sup> Verizon Telephone Companies (Verizon) argues that, in light of the impact that ETC designations have on the universal service fund, the Commission should not rule on any pending ETC petitions until the completion of the rulemaking proceeding.<sup>46</sup> We do not agree with this argument. We believe that grant of this ETC designation will not dramatically burden the universal service fund. Specifically, assuming that Saipancell captures each and every customer located in the affected study area, the overall size of the high-cost support mechanisms would not significantly increase.<sup>47</sup> Nevertheless, we continue to be mindful of the potential impact on the universal service fund due to the rapid growth in the number of competitive ETCs. We note that the outcome of the rulemaking proceeding could potentially impact, among other things, the support that Saipancell and other competitive ETCs receive in the future.<sup>48</sup>

18. We further conclude that designation of Saipancell as an ETC in the Micronesian Telephone study area does not create rural creamskimming concerns. Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.<sup>49</sup> Because Saipancell requests ETC designation in the entire study area of Micronesian Telephone, designation of Saipancell as an ETC in this study area does not create creamskimming or related concerns.<sup>50</sup>

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<sup>44</sup>See Saipancell March 9 Supplement at 1-2; *CTIA, Consumer Code for Wireless Service*, available at [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf). Under the CTIA Consumer Code, wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. *See id.*

<sup>45</sup>*Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC High-Cost NPRM*); *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Joint-Board Recommended Decision*). Among other things, the Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider when designating ETCs under section 214 of the Act. *Joint-Board Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

<sup>46</sup>See Verizon Comments at 1-5.

<sup>47</sup>The total amount of high-cost support available to the incumbent carrier in the rural study area where we grant Saipancell ETC designation is only approximately 0.02 % of the total high-cost support available to all ETCs. *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, April 30, 2004) (determining that the total amount of high-cost universal service support available to the incumbent carrier in the affected rural study area is projected to be \$236,829 out of a total of \$946,366,557 in the third quarter of 2004).

<sup>48</sup>See *ETC High-Cost NPRM*, FCC 04-127, at para. 3; *Joint-Board Recommended Decision*, 19 FCC Rcd at 4279-80, paras. 56, 58.

<sup>49</sup>See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87, 180, para. 172 (1996). "Creamskimming" refers to instances in which a carrier serves only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881-2, para. 189 (1997).

<sup>50</sup>See e.g., *Highland Cellular Order*, 19 FCC Rcd at 6434-35, para. 26; *Virginia Cellular Order*, 19 FCC Rcd at 1578, para. 32.

**D. Designated Service Areas**

19. Effective immediately, we designate Saipancell as an ETC for a service area that covers the islands of Saipan, Tinian, and Rota. This service area encompasses the entire study area of the incumbent rural carrier, Micronesia Telephone.<sup>51</sup>

**E. Regulatory Oversight**

20. We note that Saipancell 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 section 54.314 of the Commission’s rules to certify annually that it is in compliance with this requirement.<sup>52</sup> On February 19, 2002, Saipancell certified to the Commission that, consistent with section 54.314(b) of the Commission’s rules, all federal high-cost support will be “used only for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e)” of the Act in the area for which Saipancell is designated as an ETC.<sup>53</sup> Saipancell further requested that the Commission find that Saipancell has met the appropriate certification filing deadline in order for it to begin receiving support as of its ETC designation date.<sup>54</sup> Accordingly, we treat Saipancell’s certification as timely so that it can begin receiving universal service support as of the date of its ETC designation.<sup>55</sup>

21. Separate and in addition to its annual certification filing under section 54.314, Saipancell has committed to submit records and documentation on an annual basis detailing: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year.<sup>56</sup> We require Saipancell to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2005.<sup>57</sup> We find that reliance on Saipancell’s commitments is reasonable and consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility*

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<sup>51</sup>The designated “service area” for an ETC in an area served by a rural telephone company must be the rural telephone company’s study area unless a different definition of the rural telephone company’s service area is established by the Commission and the states as provided under the Act. *See* 47 U.S.C. § 214(e)(5).

<sup>52</sup>47 C.F.R. § 54.314.

<sup>53</sup>*See* Supplement to Petition for Designation as an Eligible Telecommunications Carrier on the Island of Saipan, filed March 8, 2002.

<sup>54</sup>*See id.* at 2.

<sup>55</sup>Section 54.314 provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. 47 C.F.R. § 54.314(d)(3). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. *See id.* In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e). *See* 47 C.F.R. § 54.314(b). Moreover, although we accept Saipancell’s certification as timely so that it can receive support as of its ETC designation date, consistent with the Commission’s rules, the CTC is not precluded from filing future certifications on behalf of Saipancell stating that universal service support is being used for its intended purposes. *See* 47 C.F.R. § 54.314.

<sup>56</sup>*See* Saipancell March 9, 2004 Supplement, at 1-4; *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46.

<sup>57</sup>Saipancell’s initial submission concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from the date ETC designation is granted through June 30, 2005. Future submissions concerning consumer complaints and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

*Counsel v. FCC*.<sup>58</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Saipancell satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.<sup>59</sup> 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.<sup>60</sup> Saipancell will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Saipancell fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.<sup>61</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>62</sup>

#### IV. ANTI-DRUG ABUSE ACT CERTIFICATION

22. 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.<sup>63</sup> This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.<sup>64</sup> Saipancell has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>65</sup> We find that Saipancell has 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

23. 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, Guam Cellular and Paging, Inc. d/b/a Saipancell IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER throughout its licensed service area on the islands of Saipan, Tinian, and Rota in the Commonwealth of the Northern Mariana Islands to the extent described herein.

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<sup>58</sup>*Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5<sup>th</sup> Cir. 1999) In *TOPUC v. FCC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. *See id.* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under its jurisdiction. *See also Highland Cellular Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46.

<sup>59</sup> 47 U.S.C. § 214(e).

<sup>60</sup> 47 U.S.C. §§ 220, 403; 47 C.F.R. § 54.313, 54.314.

<sup>61</sup> *See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15; *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para. 43; *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46. *See also* 47 U.S.C. § 254(e).

<sup>62</sup> *See* 47 U.S.C. § 503(b).

<sup>63</sup> 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

<sup>64</sup> *See ETC Procedures PN*, 12 FCC Rcd at 22949. Section 1.2002(b) provides that a "party to the application" 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).

<sup>65</sup> *See Saipancell Petition* at 17-18 and Exhibit C. *See also Letter from David A. LaFuria, Counsel for Saipancell to Cara E. Voth, FCC*, dated Feb. 21, 2003.

24. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Commonwealth Telecommunications Commission of the Commonwealth of the Northern Mariana Islands and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief  
Wireline Competition Bureau