

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED
1111 NINETEENTH STREET, N.W.
SUITE 1200
WASHINGTON, DC 20036
(202) 857-3500

WRITER'S DIRECT DIAL
(202) 828-9475

November 12, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

FILED³

FEB 19 2004

**Missouri Public
Service Commission**

Attn: Wireline Competition Bureau

Re: Virginia Cellular, LLC
Petition for ETC Status
Docket No. 96-45

Dear Madam Secretary:

Virginia Cellular, LLC ("Virginia Cellular") hereby amends its above-referenced petition for ETC status in the Commonwealth of Virginia to provide additional information requested by the Commission, through its Wireline Competition Bureau ("WCB").

1. CTIA's Consumer Code for Wireless Services.

The Commission has requested Virginia Cellular to abide by the CTIA's Consumer Code for Wireless Services.¹

If designated as an ETC, Virginia Cellular commits to abide by the CTIA Consumer Code for Wireless Services, as it may be amended from time to time, for all of its operations in the Commonwealth of Virginia.

¹ http://www.wow-com.com/pdf/The_Code.pdf

Exhibit No. 11
Case No(s). 70-2003-0531
Date 1-28-04 **Rptr** TUT

2. Consumer Complaint Reporting.

The Commission has indicated that as a condition of obtaining ETC status, Virginia Cellular must file with the Commission an annual report of its customer complaints. Virginia Cellular fully supports the Commission's efforts to collect service quality data that will permit it to develop meaningful service quality rules, to the extent necessary. If designated, Virginia Cellular shall provide the FCC with an annual report providing the number of consumer complaints per 1000 handsets in service.

Collection of quality of service data is consistent with the Commission's determination in 1997 to monitor service quality standards so that rules may be developed if trends in service quality reveal the need for regulation.² Virginia Cellular believes that collection of data on customer complaints of all CMRS carriers, irrespective of their status as ETCs, will enable the Commission to determine whether rules should be adopted, and encourages the Commission to collect such data from all CMRS carriers operating in Virginia.

Based on our review of comments filed in the ongoing Joint Board proceeding in CC Docket No. 96-45, we are constrained to note that some parties have launched a misguided attack on competitive ETCs ("CETCs") over the past year, claiming that competitive neutrality requires all ETCs to have similar regulatory obligations, including service quality standards similar to those applicable to ILECs. This view was squarely rejected by the Commission in 1997 when it ruled:

Several ILECs assert that the Joint Board's recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.

Further complicating designation of CETCs is the assertion that service quality standards should be imposed by states (or the FCC) *as a condition of designation*. Once again, the Commission could not have been more clear in ruling that "states may adopt and enforce service quality *rules* that are competitively neutral, pursuant to section 253(b), and that are not otherwise inconsistent with rules adopted herein."³ Rules must be adopted in the course of rulemaking proceedings, not imposed *ad hoc* in the course of individual ETC designation proceedings.

² Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8857-8 (1997).

³ Id., at 8833.

It scarcely bears mention that service quality rules were not enacted as a *quid pro quo* for ILECs being designated as ETCs. Service quality rules are in place across the country for ILECs because almost without exception they are monopoly carriers. Consumers require appropriate protection from monopoly business practices. The discipline that is applied by robust marketplace competition is far preferable to regulation. Introduction of effective competition will lessen the need for full monopoly regulation on ILECs in Virginia.

If service quality is a problem for wireless carriers, then the problem is best addressed in a rulemaking proceeding of general applicability wherein all interested parties and stakeholders may participate. The Commonwealth of Virginia is fully empowered to enact statutes and conduct rulemaking proceedings to impose service quality standards on CMRS carriers should it so choose. Moreover, this Commission is permitted to adopt necessary rules to advance the goals of universal service and see that consumers receive high quality services as mandated by the Act.

Virginia Cellular believes its customer service to be superior to its wireless and wireline competition. It looks forward to providing the Commission with the requested data and to participating in any rulemaking proceedings which address this important issue.

3. Service Provisioning Commitment.

As an ETC, Virginia Cellular must take on federal carrier of last resort obligations which require the company to respond to all reasonable requests for service within its ETC service area.⁴ The Commission requested Virginia Cellular to describe specifically how it will provision service to requesting customers. Upon review of service provisioning commitments made and approved in other states,⁵ Virginia Cellular is pleased to make the following commitment to provision service to requesting customers:

In response to such requests for service at a residence or business, Virginia Cellular will take the following steps:

1. If a request comes from a customer within its existing network, Virginia Cellular will provide service immediately using its standard customer equipment.

2. If a request comes from a customer residing in any area where Virginia Cellular does not provide service, Virginia Cellular will take a series of steps to provide service.

* First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

⁴ See, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, FCC 00-248 (Aug. 10, 2000) ("A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request").

⁵ See, e.g., Highland Cellular, Inc. (West Virginia), Case No. 02-1453-T-PC (Recommended Decision, Sept. 15, 2003); Alaska DigiTel, LLC (Alaska), Docket U-02-39, Order No. 10 (August 28, 2003).

* Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

* Third, it will determine whether adjustments at the nearest cell site can be made to provide service.

* Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

* Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.

* Sixth, Virginia Cellular will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using scarce high-cost support to serve the number of customers requesting service. If there is no possibility of providing service short of these measures, Virginia Cellular will notify the customer and provide the Commission with an annual report of how many requests for service could not be filled. The Commission will retain authority to resolve any customer complaints that Virginia Cellular has refused to respond to a reasonable request for service.

Virginia Cellular believes these service provisioning commitments will ensure that the company is responsive to consumers' needs while acting as a proper steward of available high-cost support funds.

4. Construction Plans

The Commission requested Virginia Cellular to provide plans for using high-cost funds to improve its facilities and reach out to areas that it does not currently serve. Virginia Cellular is pleased to provide this information with the understanding that, in the absence of a specific request for service, general consumer demand often shifts which can cause a planned cell site to be relocated. In connection with its annual certification, Virginia Cellular will also provide the Commission with information on how high-cost support funds are used so that any changes in construction plans can be properly explained.

As Virginia Cellular has mentioned previously, there are areas within its proposed ETC service area that are unserved and underserved. The company has identified twelve projects that will not be constructed in the near future, if ever, in the absence of high-cost support being provided. Eleven of the twelve proposed sites contain some area that is unserved by Virginia Cellular's facilities and/or wireline networks. All but two of the sites contain substantial areas that can be considered underserved by wireless carriers. Two sites fill poorly covered areas within the network.

The company is aware of areas which will be served by the Bergton, Mustoe, and McDowel cell sites that are unserved by wireline networks. In addition, the proposed Crimora,

Churchville, Middlebrook, Central Nelson, Hinton, Afton, and West Augusta cell sites, all contain substantial areas that are underserved (one wireless carrier or no wireless carriers). These construction plans, projected to be carried out in the first year and a half following designation, represent significantly greater levels of financial commitment than the company projects to receive from the high-cost fund. In addition, none of these projected expenses include maintenance or upgrading of existing plant in high-cost areas.

For the Commission's reference, Virginia Cellular has prepared a spread sheet, attached hereto, that sets forth the twelve site names, locations, populations covered, and estimated budget amounts. The order in which cell sites are to be constructed is tentative, and subject to change depending up on where requests for service come from within the ETC service area. The company anticipates that initial construction will proceed at a pace of approximately two cell sites per quarter following designation.

The company has also prepared a map, also attached hereto, showing the predicted 32 dBu contours of each of the twelve proposed cell sites. Although it is very difficult to plan cell site construction more than one year in advance, Virginia Cellular hopes that these exhibits demonstrate the need for substantial additional facilities within high-cost areas in its service territory.

5. Advertising Commitment.

Virginia Cellular specifically commits to advertise the availability of its services throughout its ETC service area. The company will provide notices at local unemployment, social security and welfare offices so that consumers who may not have telephone service can learn about Virginia Cellular's service and that Lifeline and Linkup discounts are available. In addition, the company commits to locally publicize the construction of all new facilities in unserved or underserved areas so that consumers understand that the new facilities provide improved service in their area of interest.

We trust that you will find this information to be useful. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

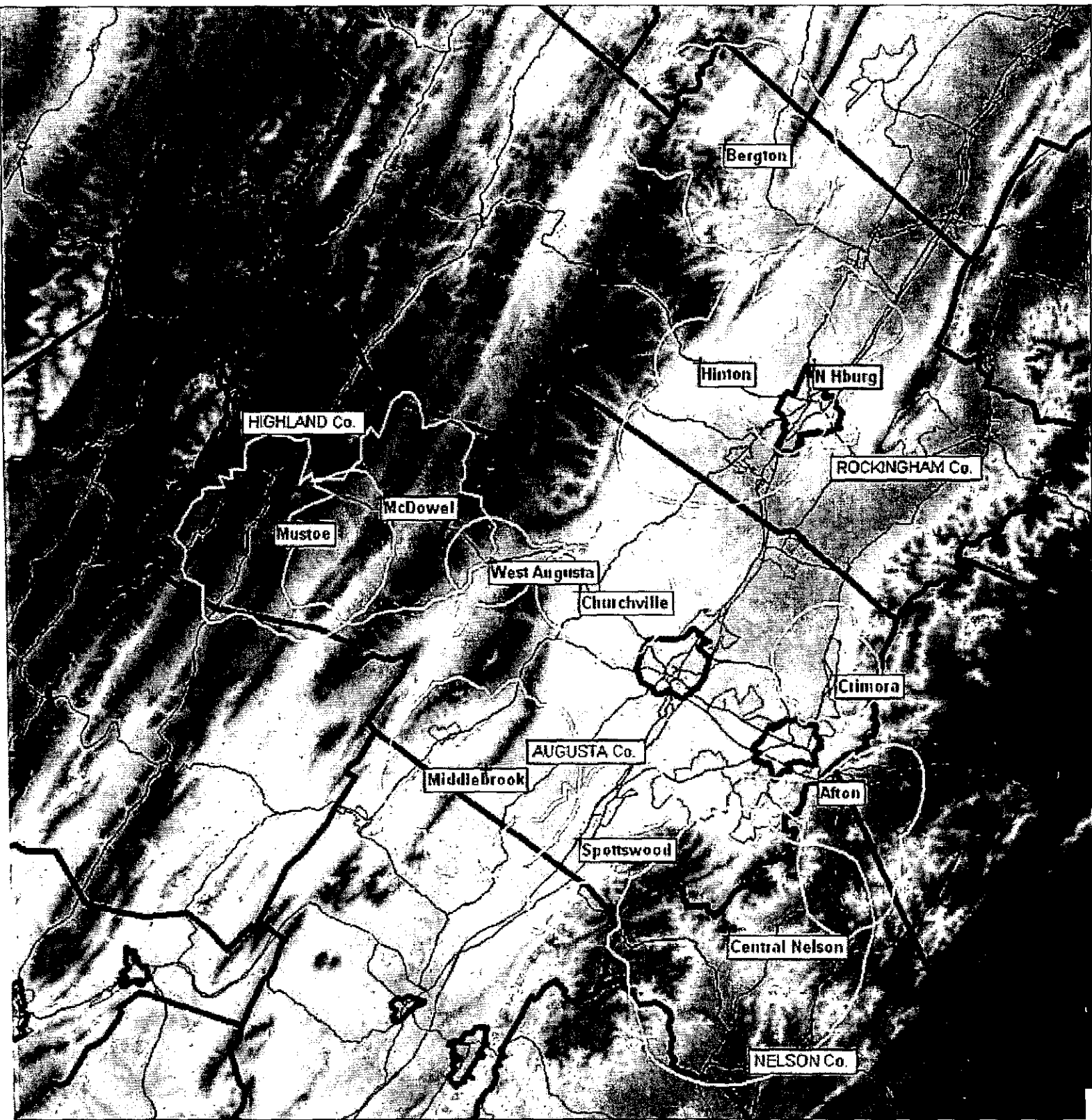
VIRGINIA CELLULAR, LLC

By: _____/s/_____
David LaFuria
Its Counsel

Enclosures

Virginia Cellular LLC
Proposed Sites Constructed with ETC funds

1st Qtr			
Site Name	Location	Population within contour	Budget*
Crimora	Augusta County	7,019	\$ 250,000.00
Hinton	Rockingham County	65,027	\$ 250,000.00
Total (estimate)		72,046	\$ 500,000.00
2nd Qtr			
Site Name	Location	Population within contour	Budget*
North Harrisonburg	Rockingham County	52,750	\$ 250,000.00
Churchville	Augusta County	5,865	\$ 250,000.00
Total (estimate)		58,615	\$ 500,000.00
3rd Qtr			
Site Name	Location	Population within contour	Budget*
Spottswood	Augusta County	7,114	\$ 250,000.00
Central Nelson	Nelson County	9,354	\$ 250,000.00
Total (estimate)		16,468	\$ 500,000.00
4th Qtr			
Site Name	Location	Population within contour	Budget*
Middlebrook	Augusta County	4,749	\$ 250,000.00
Bergton	Rockingham County	2,987	\$ 250,000.00
Total (estimate)		7,736	\$ 500,000.00
5th Qtr			
Site Name	Location	Population within contour	Budget*
Afton	Nelson County	7,064	\$ 250,000.00
McDowel	Highland County	731	\$ 250,000.00
Total (estimate)		7,795	\$ 500,000.00
6th Qtr			
Site Name	Location	Population within contour	Budget*
Mustoe	Highland County	1,094	\$ 250,000.00
West Augusta	Augusta County	325	\$ 250,000.00
Total (estimate)		1,419	\$ 500,000.00
* Estimate based on current network costs.			



Bergton

Hinton

N Hburg

HIGHLAND Co.

ROCKINGHAM Co.

McDowel

Mustoe

West Augusta

Churchville

Climora

AUGUSTA Co.

Middlebrook

Afton

Spottswood

Central Nelson

NELSON Co.