

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF EAST KENTUCKY)
NETWORK, LLC D/B/A APPALACHIAN)
WIRELESS FOR DESIGNATION AS AN) CASE NO. 2005-00045
ELIGIBLE TELECOMMUNICATIONS)
CARRIER)

O R D E R

On January 18, 2006, East Kentucky Network, LLC d/b/a Appalachian Wireless (“Appalachian”) filed a petition for clarification of the Commission’s Order in this matter dated August 11, 2005. At issue is how the Commission came to the conclusion to redefine the study area of Leslie County Telephone Company, Inc. (“Leslie County”), Mountain Telephone Cooperative, Inc. (“Mountain”) and Kentucky ALLTEL, Inc. London (“ALLTEL London”). Appalachian agrees with the Commission’s determination to redefine the study area but requests clarification of the rationale. Appalachian believes that the Commission must make a finding or conclusion addressing three factors. The Commission herein will grant the motion for clarification and address the matters raised by Appalachian.

For purposes of federal universal service obligations, a rural telephone company’s study area is presumed to be its service area unless and until the Federal Communications Commission (“FCC”) and state commission cooperatively establish a different service area definition for such company after considering the Federal-State Joint Board on Universal Service’s (“Joint Board”) service area recommendations.¹

¹ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

Therefore, if a state commission proposes to define a rural telephone company study area as something less than the company's entire service area, the state commission must consider and make findings with respect to each of the three Joint Board factors discussed below.

The first factor to consider is whether redefinition of the study area will present any risk of cream skimming. Appalachian is not intentionally cream skimming. Appalachian seeks to be designated within its entire FCC-licensed service area. It has not picked only certain areas within its licensed service area.

Also redefinition of the study area will not produce the unintended effects of cream skimming. The risk of unintentional cream skimming has been virtually eliminated by the FCC's implementation of the disaggregation mechanisms set forth in 47 C.F.R. § 54.315. Rural telephone companies have the option to disaggregate federal universal service support to higher cost portions of their study areas. Leslie County, Mountain, and ALLTEL London have elected to forgo disaggregation within its study areas.

The FCC also endorsed conducting a population density analysis as a proxy to assess the risk of unintended cream skimming. A population density analysis compares the population density of the wire centers where the ETC designation is requested to the wire centers where the ETC designation is not requested. Appalachian completed a population density survey of each of the study areas comparing the areas in which it will operate and the area in which it will not operate. The population density study shows that the area in which it seeks designation in Leslie County's territory contains 54.27 persons per square mile and the area in which it does not seek designation contains 32.61 persons per square mile. While the average population density is greater in the proposed ETC Service area, it is not such that it should cause concern and there is no risk that cream skimming will result here. The population density study shows that the

area in which it seeks designation in Mountain's territory contains 31.28 persons per square mile and the area in which it does not seek designation contains 30.56 persons per square mile. Because the difference is so small here, there is no risk that cream skimming will result. The population density study shows that the area in which it seeks designation in ALLTEL London's territory contains 99.69 persons per square mile and the area in which it does not seek designation contains 43.88 persons per square mile. While the average population density is greater in the proposed ETC Service area, it is not such that it should cause concern and there is no risk that cream skimming will result here.

The second Joint Board factor that must be considered is whether redefinition will impact the regulatory status of the rural telephone company under the Telecommunications Act of 1996. There is nothing that would affect the regulatory treatment of Leslie County, Mountain, or ALLTEL London. Also, the FCC has made the determination that redefinition of the study area does not affect embedded costs of the company or the amount of universal service support that it receives.²

The third Joint Board factor to be considered is whether any administrative burdens will result from the redefinition of the service area. The FCC confirmed in the Virginia Cellular, LLC order the redefinition of the study area does not affect the calculation of support or create any additional burdens for the rural telephone company.³

² In the matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum and Opinion and Order, FCC 03-338 Paragraph 41 and 43, released January 23, 2004.

³ Id. at Paragraph 44.

IT IS THEREFORE ORDERED that:

1. Appalachian's motion for clarification of the August 11, 2005 Order is granted.
2. Redefinition of the study area of Leslie County, Mountain, and ALLTEL London to permit Appalachian's designation as a competitive ETC poses no risk of cream skimming.
3. Redefinition of the study area of ALLTEL London to permit Appalachian's designation as a competitive ETC will not affect Leslie County's, Mountain's or ALLTEL London's, regulatory status under the Telecommunications Act of 1996.
4. Redefinition of the study area of Leslie County, Mountain, and ALLTEL London to permit Appalachian's designation as a competitive ETC will not create any additional administrative burdens.

Done at Frankfort, Kentucky, this 17th day of February, 2006.

By the Commission

ATTEST:



Executive Director