

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF T-MOBILE CENTRAL LLC AND)	
POWERTEL/MEMPHIS, INC. FOR)	CASE NO.
DESIGNATION AS ELIGIBLE)	2010-00050
TELECOMMUNICATIONS CARRIERS)	
PURSUANT TO SECTION 214(E)(2) OF THE)	
COMMUNICATIONS ACT OF 1934)	

O R D E R

On February 9, 2010, T-Mobile Central LLC and PowerTel/Memphis, Inc. (collectively, "T-Mobile"), a Commercial Mobile Radio Service ("CMRS") provider, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") to receive federal universal service support, including high-cost support, for service offered throughout its service area in the state of Kentucky.¹

The petition states that: (1) T-Mobile meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) T-Mobile requests designation throughout each of the designated areas within its service coverage;³ (3) in accordance with 47 U.S.C. § 214(e)(2), T-Mobile seeks to be

¹ T-Mobile requests ETC designation throughout its entire licensed service territory. Petition at 4 and Exhibit A.

² Id. at 2 - 13.

³ Id. at 4 - 5.

designated as an ETC in rural and non-rural wirecenters;⁴ and (4) designation of T-Mobile as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

On March 10, 2010, the Commission set forth a procedural schedule that included opportunity for public comment, discovery, and opportunity to request a hearing. The procedural schedule is now complete. No request for a public hearing in this matter has been received by the Commission. For these reasons, the Commission finds that this matter is now ripe for a decision.

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 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.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, 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, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1).

⁴ Id. at 4 and Exhibit A.

⁵ Id. at 13 -15.

Also, 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.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) 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”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore [sic] using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), 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 Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

T-Mobile 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. T-Mobile certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in 47 C.F.R. § 54.101(a). T-Mobile has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

T-Mobile is a facilities-based wireless telecommunications carrier with its own switching, transport, cell sites, and associated telecommunications facilities in its proposed designated ETC service area. T-Mobile states that it intends to provide the supported services using its existing network infrastructure. As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”⁶ The Commission finds that T-Mobile has demonstrated that it satisfies the requirement of 47 U.S.C. § 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.

ADVERTISING SUPPORTED SERVICES

T-Mobile has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(b) to advertise the availability of the supported services and the charges

⁶ See, e.g., 47 C.F.R. §§ 51.307–51.318, which outline the requirements for carrier access to and use of unbundled network elements.

therefor using media of general distribution. In its petition, T-Mobile states that it will publicize the availability of Lifeline and Link-Up in a manner reasonably designed to reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d). T-Mobile shall also advertise each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

RURAL AND NON-RURAL STUDY AREAS

The Federal Communications Commission (“FCC”) has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).⁷

Rural Study Areas

In considering whether designation of T-Mobile as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company’s service area is in the public interest, the Commission must 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

⁷ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

The Commission finds that T-Mobile's universal service offering will provide a variety of benefits to customers. For instance, T-Mobile has committed to provide customers access to telecommunications and data services when they do not have access to a wireline telephone. In addition, the mobility of T-Mobile'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. Moreover, T-Mobile states that it offers larger local calling areas than those of the Incumbent Local Exchange Carriers it competes against, which could result in fewer toll charges for T-Mobile's customers.

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.⁸ T-Mobile asserts that granting ETC designation to T-Mobile will provide rural consumers the benefits of competition through increased choices and further the deployment of new telecommunications services. It also asserts that granting the request will not harm consumers. T-Mobile has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

Designated Service Areas

The Commission finds that T-Mobile should be certified as an ETC in the requested service areas served by rural and non-rural telephone companies, as listed in

⁸ See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

the Appendix to this Order. However, T-Mobile's service area for each rural telephone company does not encompass the entire study area of each rural telephone company. Therefore, the study areas of the affected rural carriers must be redefined to smaller study areas so that they will correspond to the wireless carrier's service area.

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 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.⁹ 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."¹⁰ T-Mobile is not intentionally "cream-skimming." T-Mobile 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

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

¹⁰ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46, paragraphs 41 and 48-53, released March 17, 2005.

universal service support to higher-cost portions of their study areas. The rural companies, with the exception of Windstream Kentucky West, LLC, have elected to forgo disaggregation within their study areas.

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 the rural telephone companies. 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.¹¹

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 that redefinition of the study area does not affect the calculation of support or create any additional burdens for the rural telephone company.¹²

The Commission finds that the study areas of the affected rural telephone companies should be redefined as necessary to match the licensed service area of the applicant. T-Mobile should petition the FCC for concurrence.

¹¹ 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, paragraphs 41 and 43, released January 23, 2004.

¹² Id. at paragraph 44.

Regulatory Oversight

In addition to its annual certification filing under Sections 54.513 and 54.314 NPCR, Inc. d/b/a Nextel Partners, the first wireless carrier to qualify as an ETC, agreed to submit records and documentation on an annual basis detailing: (1) its progress toward 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.¹³ T-mobile stated in the application that it is prepared to make similar compliance filings.¹⁴ The Commission finds that T-Mobile should be required to file this information and make any other information as it relates to service available to the Commission.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, makes the following findings:

1. Redefinition of the study areas of the rural telephone companies identified in the Appendix to this Order to permit T-Mobile's designation as a competitive ETC poses no risk of "cream-skimming."

2. Redefinition of the study area of the rural telephone companies identified in the Appendix to this Order to permit T-Mobile's designation as a competitive ETC will not affect their regulatory status under the Telecommunications Act of 1996.

¹³ Case No. 2003-00143, Petition of NPCR, Inc. D/B/A Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (Ky. PSC Dec. 16, 2004).

¹⁴ Petition at 13.

3. Redefinition of the study area of the rural telephone companies identified in the Appendix to this Order to permit ACC's designation as a competitive ETC will not create any additional administrative burdens.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. T-Mobile is designated as an ETC for the exchanges of the non-rural telephone companies identified in the Appendix to this Order.

2. T-Mobile shall petition the FCC for concurrence of the Commission's determination that the rural telephone companies' study areas be disaggregated to match the service area of T-Mobile for the purpose of receiving federal Universal Service Fund support.

3. During the current certification period, T-Mobile shall be eligible to receive federal and state Universal Service Fund support.

4. T-Mobile shall offer low-income universal support services to consumers in its service area.

5. T-Mobile shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

6. Pursuant to 47 C.F.R. § 54.201(i), T-Mobile shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

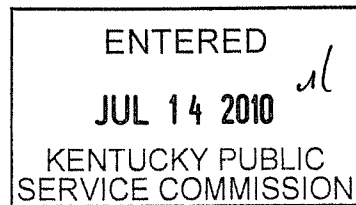
7. T-Mobile shall advertise the availability of and charges for these services using media of general distribution.

8. T-Mobile shall file its annual certification with the Commission by September 1 of each year in accordance with the requirements of Administrative Case No. 381.¹⁵

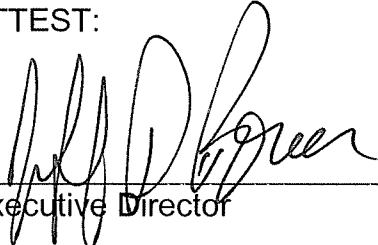
9. T-Mobile shall comply with the Commission's annual certification process for Lifeline customers in accordance with the requirements of Administrative Case No. 360.¹⁶

10. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

By the Commission



ATTEST:



Executive Director

¹⁵ Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support (Ky. PSC Sept. 24, 2008).

¹⁶ Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues (Ky. PSC May 24, 2007).

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2010-00050 DATED JUL 14 2010

Designated Areas for which T-Mobile is Granted ETC Designation

1. Rural Telephone Company Study Areas¹

260396 Ballard Rural Telephone Cooperative Corporation, Inc.

260398 Brandenburg Telephone Company

260401 Duo County Telephone Cooperative Corporation, Inc.

JMTWKYXA	RSSPKYXA			
----------	----------	--	--	--

260413 Logan Telephone Cooperative, Inc.

AIVLKYXE	AUBNKYXA	DNMRKYXA	LWBGKYXL	ROCHKYXA
----------	----------	----------	----------	----------

290573 North Central Telephone Cooperative

SCVLKYXA				
----------	--	--	--	--

260418 South Central Rural Telephone Cooperative Corporation,
Inc.

BFLOKYXA	CNMRKYXA	CNTRKYXA	CVCYKYXA	EDTNKYXA
FNRNKYXA	GLSGKYXR	GMLLKYXA	HRCVKYXA	HSLVKYXA
LUCSKYXA	MFVLKYXA	MGNLKYXA	SMSHKYXA	TMHLKYXA

260402 Windstream Kentucky West, LLC

¹ T-Mobile only requests designation as an ETC in the wire centers listed in the tables for Duo County Telephone Cooperative Corporation, Inc., Logan Telephone Cooperative, Inc., North Central Telephone Cooperative, South Central Rural Telephone Cooperative Corporation, Inc, and West Kentucky Rural Telephone. The request is granted subject to concurrence of the FCC.

260421 West Kentucky Rural Telephone

CNHNKYXA	FNFMKYXA	FRNGKYXA	FRTNKYXA	HAZLKYXA
HRDNKYXA	KRKSXYXA	LOWSKYXA	LYGVKYXA	LYVLKYXA
NWCNKYXA	SDLIKYXA	WINGKYXA		

2. Non-Rural Incumbent Local Exchange Carrier Wire Centers

265182 BellSouth – KY

BDFRKYMA	BGDDKYMA	BLFDKYMA	BNTNKYMA	BRGNKYMA
BRMNKYMA	BRTWKYES	BVDMKYMA	BWLGKYMA	CADZKYMA
CHPLKYMA	CLHNKYMA	CMBGKYMA	CNCYKYMA	CNTWKYMA
COTNKYMA	CRBNKYMA	CRBOKYMA	CRTNKYMA	CYDNKYMA
CYNTKYMA	DAVLKYMA	DWSPKYES	EDVLKYMA	EKTNKYMA
EMNKNYES	EMNKNYPL	ENSRKYMA	ERTNKYMA	FKLNKYMA
FLTNKYMA	FNVLYKYMA	FORDKYMA	FRFTKYES	FRFTKYMA
GBVLKYMA	GHNTKYMA	GNVLKYMA	GRACKYMA	GRTWKYMA
HABTKYMA	HANSKYMA	HBVLKYMA	HDBGKYMA	HNSNKYMA
HPVLKYMA	HRFRKYMA	HRLNKYMA	KKVLKYMA	LBJTKYMA
LGRNKYES	LRBGKYMA	LSVLKY26	LSVLKYAN	LSVLKYAP
LSVLKYBE	LSVLKYBR	LSVLKYCW	LSVLKYFC	LSVLKYHA
LSVLKYJT	LSVLKYOAO	LSVLKYSH	LSVLKYSL	LSVLKYSM
LSVLKYTS	LSVLKYVS	LSVLKYWE	LVMRKYMA	MACEKYMA
MDVIKYMA	MGTWKYMA	MLTNKYMA	MRGPKYMA	MRRYKYMA
MTEDKYMA	MTSTKYMA	MYFDKYMA	NEBOKYMA	NRVLKYMA
OKGVKYES	OWBOKYMA	PARSKYMA	PDCHKYIP	PDCHKYLO
PDCHKYMA	PDCHKYRL	PIVLKYMA	PLRGKYMA	PNTHKYMA
PNVLKYMA	PRBGKYES	PRTNKYES	RBRDKYMA	RCMDKYMA
RLVLKYMA	RSTRKYES	SDVLKYMA	SEBRKYMA	SHVLKYMA
SLGHKYMA	SLPHKYMA	SLVSKYMA	SPFDKYMA	SRGHKYMA
SSVLKYMA	STCHKYMA	STRGKYMA	STNLKYMA	TYVLKYMA
WACOKYMA	WDDYKYMA	WLBGKYMA	WLVLKYMA	WXCHKYMA
WSPNKYMA				

ALBYKYXA	ASLDKYXA	BEREKYXA	BRSDKYXA	BRVLKYXA
BSVLKYXA	BTVLKYXA	CECLKYXA	CLMAKYXA	CMVLKYXA
CTBGKYXA	EWNGKYXA	EZTWKYXA	FMBGKYXA	GLSGKYXA
GNBGKYXB	GNUPKYXA	GRSNKYXA	GYSNKYXA	HGVLKYXA
HLBOKYXA	HTVLKYXE	HZRDKYXA	LBNNKYXA	LBRTKYXA
LNCSKYXA	LRTTKYXA	LTFDKYXA	LXTNKYUK	LXTNKYXA
LXTNKYXB	LXTNKYXC	LXTNKYXD	LXTNKYXE	LXTNKYXF
LXTNKYXG	MDWYKYXA	MEDSKYXA	MNTIKYXA	MRHDKYXA
NANCKYXA	NCVLKYXA	OLHLKYXA	OWVLKYXA	PNLCKYXE
RSSLKYXB	SCVLKYXA	SHBGKYXA	SHDNKYXA	SLLCKYXA
SMRTKYXA	SSHRKYXA	TLBOKYXA	TMVLKYXA	VICCKYXA
VNBGKYXA	VRSLKYXA	WLMRKYXA		

26501 Cincinnati Bell Telephone

ALXNKYAL	BURLKYBN	CRTDKYCT	CVTNKYCT	FLRNKYFT
FTTHKYFT	GLCOKYGC	INDPKYIN	LKPKKYLP	WLTNKYWL
WLTWKYWT	WRSWKYWR			

Honorable Douglas F Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

Garnet M Hanly
Sr. Corporate Counsel
T-Mobile
401 9th Street, NW, Suite 550
Washington, DC 20004

Garnet Hanly
Senior Corporate Counsel
T-Mobile Central, LLC dba T-Mobile
401 9th Street NW, Suite 550
Washington, DC 20004