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January 17, 2006

via Federal Express
Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: ***Petition of East Kentucky Network, LLC d/b/a Appalachian Wireless for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky, Case No. 2005-00045***

Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of East Kentucky Network, LLC's Petition for Clarification in the above-styled case.

Please also note the enclosed additional copy of the document to be file-stamped. Please file-stamp the additional copy and return it to me in the enclosed, self-addressed, pre-paid envelope.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

Holly C. Wallace

HCW/rk
Enclosures
cc: Gerald Robinette
John E. Selent, Esq.
96951v1; 33380/1

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of East Kentucky Network, LLC d/b/a Appalachian Wireless For Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky	)))))	**Case No. 2005-00045**

PETITION FOR CLARIFICATION

East Kentucky Network, LLC d/b/a Appalachian Wireless ("AW"), by counsel, submits this Petition for Clarification of certain limited findings and conclusions set forth in the August 11, 2005 Order of the Kentucky Public Service Commission (the "Commission") designating AW as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's rules, 47 C.F.R. § 54.201. Specifically, AW requests that the Commission amend its well-reasoned Order to include certain additional findings required for purposes of seeking Federal Communications Commission ("FCC") concurrence in redefining the service areas of Leslie County Telephone Company, Inc., Mountain Telephone Cooperative, Inc., and Kentucky ALLTEL, Inc. - London ("Rural ILECs"). In support of this Petition, AW states as follows.

I. BACKGROUND

On January 26, 2005, AW submitted to this Commission an application seeking designation as an ETC throughout its Kentucky service area ("Application"). Because Leslie County Telephone Company, Inc., Mountain Telephone Cooperative, Inc., and Kentucky ALLTEL, Inc. - London have portions of their service areas located outside of AW's FCC-

licensed territory, AW requested that the Commission approve the redefinition of those ILECs' service areas such that each of their wire centers constitutes a separate service area.[1] An attachment to the Application listed all of the wire centers in each study area of the Rural ILECs.[2] As AW's Application explained, this reclassification of all wire centers throughout each study area as a separate service area would enable AW to be designated in the portion of each study area within its proposed ETC service area.[3] The Commission granted AW's Application on August 11, 2005, concluding that a grant of ETC status was in the public interest. The Commission also granted AW's request for redefinition, conditioning ETC status in the Rural ILECs' areas on FCC concurrence with the redefinition of those service areas pursuant to the process established under Section 54.207(c) of the Act. 47 C.F.R. § 54.207(c). The Commission's Order directed AW to petition the FCC for concurrence with the redefinition of the affected ILEC service areas.[4] AW submitted its petition for concurrence to the FCC on November 10, 2005.

A petition for FCC concurrence in redefining an ILEC's service area must contain "[t]he state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."[5] In the

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1 Petition at p. 21.

2 *See* Application at Exhibit D. A copy of this list is attached hereto as Appendix A for the Commission's reference.

3 Application at p. 21.

4 *Id.* at p. 6.

5 47 C.F.R. § 54.207(c)(1).

Recommended Decision that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area: (1) whether the proposed redefinition would result in cream-skimming; (2) whether the rural carrier's special status under the 1996 Act was duly considered; and (3) whether the affected rural carrier would be unduly burdened by the proposed redefinition.[6] In this case, although the Commission properly acted in redefining the Rural ILECs' service areas as requested, the Order does not contain findings or conclusions addressing each of the Joint Board factors. AW seeks clarification in the form of a specific redefinition analysis considering the factors enumerated above. Upon its issuance by this Commission, AW will submit the clarification to the FCC in support of its pending petition for concurrence.

II. DISCUSSION

Pursuant to Section 214(e) of the Act, state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs.[7] Part of the state's authority in designating competitive ETCs is the ability to establish the carrier's service area: "The term 'service area' means a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms."[8] In rural areas, service areas are generally defined as the ILEC's study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC. Specifically, Section 214(e) of the Act provides:

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6 *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("*Joint Board Recommended Decision*").

7 47 U.S.C. § 214(e).

8 47 U.S.C. § 214(e)(5).

> ... "service area" means such company's "study area" unless and until the [FCC] and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.[9]

In the Application to this Commission, AW requested that the service area for each of the Rural ILECs be redefined such that each of their wire centers constituted a separate service area.[10] Once redefined, the use of the smaller areas would permit AW's designation to take effect in those areas to the extent of its licensed service area boundaries. In support of its redefinition request, AW set forth an analysis demonstrating how the proposal fulfilled the requirements of Section 214(e) by addressing and satisfying all three factors set forth in the Joint Board's *Recommended Decision*.

In the Order, the Commission granted AW's request for redefinition, concluding that:

> Appalachian Wireless'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 such that they will correspond to the wireless carrier's service area. 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.[11]

AW now requests that the Commission clarify this portion of the Order by issuing a follow-up order with a detailed analysis of the Joint Board factors.[12] AW's recently-submitted petition for FCC concurrence contains such an analysis, which was based on the analysis in its Application to this Commission. This analysis is set forth below.

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9 *Id.*

10 *See* Application at para. 44.

11 Order at p. 6.

12 The Commission recently took such action in response to a similar request from American Cellular Corporation. *See* Petition of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier, Order, Case No. 2005-00130 (Dec. 21, 2005).

A. Cream Skimming.

In its Recommended Decision, the Joint Board noted that redefining ETC service areas below the study area level may create the potential for "cream skimming," a competitor proposing to only serve the lowest-cost exchanges in a study area might receive uneconomically high levels of support.[13] There is no possibility for cream skimming in this case because AW is restricted to providing service in those areas where it is licensed by the FCC. AW is not picking and choosing among the rural LECs' exchanges. On the contrary, AW has based its requested ETC area solely on its licensed service area. Moreover, as of May 2002, all rural ILECs, including those referenced above, were required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive to enter into incumbent LEC service territories in an uneconomic manner, minimizing or eliminating even unintentional cream skimming.[14]

In its *Virginia Cellular* order,[15] the FCC introduced another layer of analysis into the cream-skimming discussion. Specifically, based upon the FCC's assumption in *Virginia Cellular* that "a low population density typically indicates a high-cost area," a redefinition proposal should take into consideration whether a competitor would serve only, or primarily, the more

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13 *Recommended Decision*, 12 FCC Rcd at 179-80.

14 [14] *See WWC Wyoming Recon. Order, supra,* 16 FCC Rcd at 19149 ("[T]he primary objective in retaining the rural telephone company's study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier's ability to provide service to high-cost customers. Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding 'cream-skimming' of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.")(footnotes omitted). *See also Fourteenth Report and Order, supra,* 16 FCC Rcd at 11302.

15 *See Virginia Cellular, supra,* 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*") at 1578-79.

densely populated – and, presumably, lower-cost – wire centers in a given study area. Here, AW has provided population density figures to demonstrate that no cream skimming will result from designation in the proposed areas.[16] Therefore, AW submits that in this instance it meets the FCC's criteria in its analysis of population density as a means of determining the likelihood of AW receiving uneconomic levels of support. As indicated in the table attached as Exhibit A, AW is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

- Leslie County Telephone Company, Inc. The average population density of the wire centers within AW's proposed ETC service area is 54.27 persons per square mile ("psm"). The population density for the Leslie County wire centers outside of AW's proposed ETC service area is 32.61 psm. While the average population density is higher inside the proposed ETC service area than outside, the disparity is not nearly as great as the more than eightfold differential that led the FCC to disapprove the designation of Virginia Cellular in a portion of its requested service area (approximately 273 psm inside and 33 psm outside).[17] Moreover, AW is proposing to cover two of the three lowest-density wire centers in the study area. Additionally, while there is one relatively high-density wire center in the portion of Leslie County's service area AW proposes to cover, that wire center represents only a small percentage of AW's potential subscribers within Leslie County's study area. In the *Highland Cellular* order, the FCC declined to designate a competitive ETC in Verizon South's study area where 94% of Highland's potential customers resided in

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16 *Id.*

17 *Id.* at 1579-80.

the highest-density wire centers.[18] Here, by contrast, the population of the highest-density Leslie County wire center comprises slightly under 22% of AW's potential customers in Leslie County's study area. Therefore, under the applicable FCC analytical framework, AW is not proposing to serve "primarily" the highest-density wire centers in Leslie County's service area.

- Mountain Telephone Cooperative, Inc. The average population density of the Mountain wire centers AW proposes to cover is approximately 31.28 psm, while the population density of the sole wire center outside of AW's proposed ETC service area is 30.56. The difference between these two population densities is so small as to be insignificant for purposes of this analysis.[19] Accordingly, there is no risk of cream skimming in Mountain's study area.
- Kentucky ALLTEL, Inc. – London. The average population density of the two Kentucky ALLTEL – London wire centers AW proposes to cover is approximately 99.69 psm, while the average population density of the remaining wire centers in that study area is 43.88. As with Leslie County's service area, the disparity of roughly 2.3 to 1 is nowhere near the 8 to 1 differential the FCC disapproved of in *Virginia Cellular*. Moreover, as shown in Appendix C, the weighted population density of the areas covered by AW's ETC service area – that is, total population divided by total square miles – is 67.79, and the corresponding figure for the excluded areas is 49.32.

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[18] *See Highland Cellular, supra,* 19 FCC Rcd at 6436-37.

[19] *See Virginia Cellular, supra,* 19 FCC Rcd at 1579 and n.110 ("The average population density for the MGW wire centers for which Virginia Cellular seeks ETC designation is approximately 2.30 persons per square mile and the average population density for MGW's remaining wire centers is approximately 2.18 persons per square mile. . . Although the average population density of the MGW wire centers which Virginia Cellular proposes to serve is slightly higher than the average population density of MGW's remaining wire centers, the amount of this difference is not significant enough to raise cream skimming concerns.")

This is a significantly smaller differential, roughly 1.37 to 1, and therefore does not create cream-skimming opportunities.[20] Additionally, only 25.9% of AW's potential customers live in the higher-density wire center within its proposed ETC service area, in contrast to the 94% figure that led to partial denial in the FCC's *Highland Cellular* order.

In sum, AW is not proposing to serve the lower-cost, higher-density portions of the affected rural ILECs' service areas

B. Rural Carrier Status.

Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.[21] In deciding whether to designate AW as an ETC, the Commission weighed numerous factors and determined that the public interest was served in this case by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, the special status of the rural carriers has been considered as required for redefinition. Further, AW notes that redefinition will not affect or prejudge any future action this Commission or FCC may take with respect to the Rural ILECs' status as rural telephone companies, or disturb the "rural exemption" contained in Section 251 of the Act.

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[20] This served-to-unserved ratio of 1.37 to 1 is well within the FCC's acceptable range, as evidenced by several recent FCC concurrences. For example, on May 23, 2005, the FCC concurred with a redefinition proposal by the Kansas Corporation Commission that had areas with larger differentials, including South Central Telephone (1.43:1), and United Telephone Association (1.40:1). *See* Public Notice, DA 05-464 (rel. Feb. 22, 2005) (effective May 23, 2005 by operation of FCC rules). On February 1, 2005, the FCC concurred with the Michigan Public Utilities Commission's proposal to redefine the service areas of several rural ILECs, including Upper Peninsula Telephone Company (1.63:1) and Wolverine Telephone Company (1.60:1). *See* Public Notice, DA 04-3506 (rel. Nov. 3, 2004) (effective Feb. 1, 2005).On December 28, 2004, the FCC concurred with a redefinition proposal by the Minnesota Public Utilities Commission, which included KMP Telephone Company (1.52:1). *See* Public Notice, DA 04-3137 (rel. Sept. 29, 2004) (effective Dec. 28, 2004). None of the rural ILECs in those cases had disaggregated support.

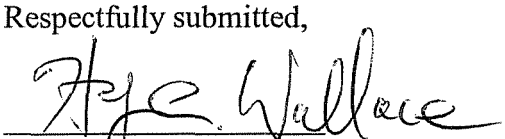
[21] *See Recommended Decision*, 12 FCC Rcd at 180.

C. Administrative Burden.

Finally, the Joint Board recommended that the FCC and state commissions consider whether a rural LEC would face an undue administrative burden as a result of service area redefinition.[22] In the instant case, AW proposed the redefinition of rural LEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes does not impact the way the affected rural ILECs calculate their costs, but it is solely to determine the area in which the competitor is to be designated as an ETC. [23] Accordingly, redefinition of rural ILEC service areas will not impose any additional burdens on the affected ILECs.

WHEREFORE, AW respectfully requests that the Commission amend its Order designating AW as an ETC as set forth above.

Respectfully submitted,



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22 *Id.*

23 ILECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order. See Fourteenth Report and Order, supra,* 16 FCC Rcd at 11304 n.377.

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served, via United States mail, first class, postage pre-paid, this 17th day of January, 2006 on the following:

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Population Density Analysis

Kentucky ALLTEL, Inc. - London

Wire Centers Inside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Irvine	Kentucky ALLTEL, Inc. - London	15,347	267.80	57.31
Jenkins	Kentucky ALLTEL, Inc. - London	5,370	37.80	142.07
			Average:	99.69
	Weighted Population Density:	20,717	305.60	67.79

Wire Centers Outside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Mammoth Cave	Kentucky ALLTEL, Inc. - London	378	60.40	6.25
Bradfordsville	Kentucky ALLTEL, Inc. - London	1,255	70.20	17.87
Bardwell	Kentucky ALLTEL, Inc. - London	2,010	91.70	21.92
Mt. Olivet	Kentucky ALLTEL, Inc. - London	2,266	100.10	22.64
White Lily	Kentucky ALLTEL, Inc. - London	2,705	115.30	23.46
Shopville	Kentucky ALLTEL, Inc. - London	2,356	93.60	25.18
Caneyville	Kentucky ALLTEL, Inc. - London	6,366	240.10	26.51
Livingston	Kentucky ALLTEL, Inc. - London	1,340	49.60	27.02
Smithland	Kentucky ALLTEL, Inc. - London	4,488	158.20	28.37
Columbus	Kentucky ALLTEL, Inc. - London	432	14.90	29.02
Milburn	Kentucky ALLTEL, Inc. - London	714	23.70	30.12
Arlington	Kentucky ALLTEL, Inc. - London	925	30.50	30.33
Faubush	Kentucky ALLTEL, Inc. - London	2,709	88.10	30.75
Uniontown	Kentucky ALLTEL, Inc. - London	1,833	59.40	30.86
Lewisburg	Kentucky ALLTEL, Inc. - London	973	31.50	30.89
Johnsville	Kentucky ALLTEL, Inc. - London	1,746	54.30	32.15
Fernleaf	Kentucky ALLTEL, Inc. - London	1,434	43.60	32.90
Mays Lick	Kentucky ALLTEL, Inc. - London	1,224	37.20	32.92
Dover	Kentucky ALLTEL, Inc. - London	872	25.70	33.92
Brooksville	Kentucky ALLTEL, Inc. - London	2,332	68.30	34.15
Germantown	Kentucky ALLTEL, Inc. - London	1,072	30.70	34.91
Oneida	Kentucky ALLTEL, Inc. - London	2,429	69.50	34.95
Flat Lick	Kentucky ALLTEL, Inc. - London	2,930	75.00	39.06
Clarkson	Kentucky ALLTEL, Inc. - London	8,559	200.90	42.60
Bee Spring	Kentucky ALLTEL, Inc. - London	8,160	191.10	42.70
Washington	Kentucky ALLTEL, Inc. - London	2,567	59.90	42.86
Park City	Kentucky ALLTEL, Inc. - London	3,041	61.80	49.21
Smiths Grove	Kentucky ALLTEL, Inc. - London	3,838	75.70	50.71
Mt. Vernon	Kentucky ALLTEL, Inc. - London	10,511	200.00	52.56
Burkesville	Kentucky ALLTEL, Inc. - London	3,436	65.00	52.86
Manchester	Kentucky ALLTEL, Inc. - London	22,129	401.40	55.13
Eubank	Kentucky ALLTEL, Inc. - London	6,502	117.20	55.48
Augusta	Kentucky ALLTEL, Inc. - London	3,122	55.40	56.35
Evarts	Kentucky ALLTEL, Inc. - London	6,032	100.10	60.25
Science Hill	Kentucky ALLTEL, Inc. - London	7,749	115.60	67.03
Brodhead	Kentucky ALLTEL, Inc. - London	4,673	67.30	69.44
Cumberland	Kentucky ALLTEL, Inc. - London	5,694	75.00	75.92
East Bernstadt	Kentucky ALLTEL, Inc. - London	8,699	112.50	77.32
London	Kentucky ALLTEL, Inc. - London	34,840	290.20	120.06
Calvert City	Kentucky ALLTEL, Inc. - London	6,758	53.80	125.62
			Average:	43.81
	Weighted Population Density:	191,099	3,874.50	49.32

Population Density Analysis

Leslie County Telephone Company, Inc.

Wire Centers Inside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Canoe	Leslie County Telephone Company, Inc.	1,796	65.30	27.50
Buckhorn	Leslie County Telephone Company, Inc.	3,154	99.50	31.70
			Average:	29.60
	Weighted Population Density:	4,950	164.80	30.04

Wire Centers Outside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Stinnett	Leslie County Telephone Company, Inc.	2,326	121.10	19.21
Hyden	Leslie County Telephone Company, Inc.	5,195	151.30	34.34
Wooton	Leslie County Telephone Company, Inc.	4,877	131.70	37.03
Bledsoe	Leslie County Telephone Company, Inc.	3,691	92.60	39.86
Dwarf	Leslie County Telephone Company, Inc.	1,378	13.30	103.62
			Average:	46.81
	Weighted Population Density:	17,467	510.00	34.25

Mountain Telephone Cooperative, Inc.

Wire Centers Inside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Jeptha	Mountain Telephone Cooperative, Inc.	2,119	81.10	26.13
Hazel Green	Mountain Telephone Cooperative, Inc.	2,373	88.10	26.93
Ezel	Mountain Telephone Cooperative, Inc.	1,343	48.40	27.74
Sandy Hook	Mountain Telephone Cooperative, Inc.	6,757	235.20	28.73
Campton	Mountain Telephone Cooperative, Inc.	4,889	138.50	35.30
West Liberty	Mountain Telephone Cooperative, Inc.	10,235	238.80	42.86
			Average:	31.28
	Weighted Population Density:	27,715	830.10	33.39

Wire Centers Outside ETC Service Area:

Exchange Name	Company	Pop.	Area (mi^2)	Pop. Density
Frenchburg	Mountain Telephone Cooperative, Inc.	7,838	256.50	30.56