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Via Hand Delivery

September 6, 2005

Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RECEIVED

SEP 6 6 2005

PUBLIC SERVICE
COMMISSION

Re: *In The Matter Of: American Cellular Corporation Petition For Designation As A
Competitive Eligible Telecommunications Carrier Pursuant To Section 214(e) Of
The Telecommunications Act of 1996, Case No. 2005-00130*

Dear Ms. O'Donnell:

Enclosed herewith please find for filing with the Commission the original and ten (10) copies of American Cellular Corporation's Petition For Rehearing Or Clarification in the above styled matter.

Please do not hesitate to contact the undersigned should you have any questions concerning this filing.

Sincerely,

Holland N. McTyeire, V

HNM/jh

Enclosures

cc: Jim Stevens
Mark J. Ayotte
Matthew A. Slaven

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COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

SEP 9 9 2005

PUBLIC SERVICE OF KENTUCKY

In the matter of:)
)
AMERICAN CELLULAR CORPORATION)
petition for designation as a competitive)
eligible telecommunications carrier pursuant)
to Section 214(e) of the Telecommunications)
Act of 1996)
_____)

Case No. 2005-00130

AMERICAN CELLULAR CORPORATION'S
PETITION FOR REHEARING OR CLARIFICATION

American Cellular Corporation ("ACC") hereby petitions the Public Service Commission ("Commission") pursuant to KRS 278.400 for rehearing or clarification of certain limited findings and conclusions set forth at pages 5-6 of the Commission's August 15, 2005 Order granting ACC's Petition for Designation as an Eligible Telecommunications Carrier ("ETC").¹ Specifically, ACC respectfully 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 the redefinition of Kentucky Alltel, Inc.'s London service area (SAC 269691) from the study area to the individual wire center level.

As discussed below, 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

¹ Verified Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (filed March 29, 2005) ("*ETC Petition*").

area recommendations. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). Accordingly, if a state commission proposes to define a rural telephone company service area as something less than the company's entire study area, the state commission must consider and make findings with respect to each of the three Joint Board factors discussed below.

In this case, although the Commission properly acted in redefining Kentucky Alltel, Inc.'s London service area to enable ACC's designation as a competitive ETC in certain individual wire centers, the Commission's Order does not contain findings or conclusions addressing each of the three Joint Board factors. As a result, ACC respectfully requests that the Commission amend its Order to enter such findings and conclusions so that ACC may comply with the Commission's directive to petition the FCC for concurrence. *Order*, p. 6 ("ACC should petition the FCC for concurrence.")

I. BACKGROUND

As set forth in its ETC Petition in this proceeding, ACC sought designation as a competitive ETC in certain rural telephone company and non-rural telephone company service areas within the Company's FCC-licensed service area in the Commonwealth of Kentucky. For purposes of federal universal service obligations, ACC asserted that Kentucky Alltel, Inc.'s London service area (SAC 269691) may be considered non-rural. The Commission disagreed.

Because the geographic limitations of ACC's FCC-licensed service area prevent it from providing facilities-based service throughout Kentucky Alltel, Inc.'s London service area, ACC alternatively sought to be designated only in those Kentucky Alltel, Inc. – London wire centers encompassed by its FCC-licensed service area subject to Commission and FCC redefinition of the service area requirement. *ETC Petition*, ¶¶ 24 n. 9, 25. Pursuant to ACC's request, the

Commission conditionally designated ACC as a competitive ETC in twenty Kentucky Alltel, Inc.

– London wire centers² pending FCC concurrence with its redefinition determination:

The Commission finds that ACC should be certified as an ETC in the requested service areas served by non-rural telephone companies, as listed in application. The Commission also finds that ACC should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, ACC'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. ACC should petition the FCC for concurrence.

Order, pp. 5-6 (emphasis added).

For the reasons addressed below, the Commission should amend and clarify the portion of its Order redefining Kentucky Alltel, Inc.'s London service area to include findings and conclusions consistent with the requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)-(c).

II. ARGUMENT

Pursuant to KRS 278.400, any party to a proceeding³ before the Commission may, within twenty days after service of an order, seek rehearing and offer any evidence that could not reasonably have been presented earlier in the proceeding. Upon such petition, the Commission may amend or modify its former orders, and make and enter such further orders as it deems necessary. Accordingly, in acting on ACC's instant petition, the Commission may receive

² *Order*, Appendix A, ¶ 1 (AGSTKYXA, BKVLKYXA, BRHDKYXA, DOVRKYXA, EBNKKYXA, EBRNKYAC, FBSHKYXA, FRNLKYXA, GMTWKYXA, JHVLKYXA, LONDKYXA, LVTNKYXA, LWGMKYXA, MTOLKYXA, MTRKYAI, MYLCKYXA, SCHLKYXA, SOVLKYXA, WASHKYXA, WHLLKYXA).

³ Notably, ACC is the only party to the above proceeding as no party sought to intervene or object to ACC's ETC Petition.

additional evidence into the record and amend and clarify its August 15, 2005 Order for purposes of making findings with respect to each of the three Joint Board factors set forth below.

A. The Service Area Requirement

Under 47 U.S.C. § 214(e) and FCC regulations, an applicant for federal ETC designation must demonstrate that it has the capability and commitment to provide the supported services identified in 47 C.F.R. § 54.101(a)(1)-(a)(9) throughout a designated “service area.” Section 214(e)(5) defines “service area” as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In an area served by a rural telephone company, section 214(e)(5) and 47 C.F.R. § 54.207(b) provide that the “service area” is presumed to be the rural telephone company’s “study area,”⁴ unless and until the FCC and state commission establish a different service area definition for such company after considering each of the three Joint Board factors set forth below.⁵

In order to redefine the service area of a rural telephone company, both the Commission and FCC are required to consider the three factors set forth in recommendations made by the Joint Board. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). The three Joint Board considerations include: (1) the risk that an ETC applicant will seek designation only in low-cost, high-support areas — a practice referred to as “creamskimming;” (2) the effect, if any, redefinition may have on the rural telephone company’s unique regulatory status; and (3) the additional administrative burdens, if any, that may result from redefinition.

⁴ A “study area” is generally considered to be all of the rural telephone company’s existing, certificated exchange areas in a given State. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶ 172, n. 434 (rel. May 8, 1997) (“*Universal Service Order*”).

⁵ The FCC specifically encouraged redefinition as a mechanism to allow competitive entry into portions of a rural telephone company study area, particularly where the study area is large or non-contiguous. *Universal Service Order*, ¶ 189.

B. Redefinition In This Proceeding Does Not Present Any Risk Of Creamskimming

1. ACC Is Not Engaged In Intentional Creamskimming

As set forth in its ETC Petition, ACC sought designation in each Kentucky Alltel, Inc. – London wire center located wholly within its FCC-licensed service area.⁶ The FCC has expressly concluded that a wireless carrier seeking ETC designation in the wire centers within its FCC-licensed boundaries is not engaging in intentional creamskimming.⁷ In other words, concerns regarding intentional creamskimming are eliminated because ACC did not specifically pick the areas in which it will serve, but instead will serve only those areas within its FCC-licensed service area.

2. Redefinition Will Not Create The Unintended Effects Of Creamskimming

The FCC has also noted that in certain situations an ETC applicant’s request for redefinition could – through no fault of the applicant – have the unintended effect of creamskimming.⁸ However, the risk of creamskimming has been virtually eliminated by the FCC’s implementation of the disaggregation mechanism set forth in 47 C.F.R. § 54.315. The FCC offered rural telephone companies the option to “disaggregate” – *i.e.*, target – the federal universal service support amounts they receive to the higher-cost portions of their study areas. In so doing, rural telephone companies were given the opportunity to target support to ensure that a competitive ETC would receive less per-line support in low-cost areas and, conversely, to ensure

⁶ ACC is not seeking redefinition to the partial wire center level. The FCC addressed and declined to grant partial wire center redefinition in *In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 04-37 ¶ 33 (rel. Apr. 12, 2004) (“*Highland Cellular*”). Because all of the wire centers for which ACC is seeking redefinition are located entirely within its FCC-licensed service area, the concerns addressed in *Highland Cellular* are not present here.

⁷ *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 Opinion and Order*, FCC 03-338, ¶ 32 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

⁸ *Virginia Cellular*, ¶ 33.

that a competitive ETC would only receive higher per-line support in truly high-cost portions of their study areas. The FCC has concluded that the disaggregation mechanism has “substantially eliminated” any creamskimming concerns.⁹ A rural telephone company’s voluntary election to forgo disaggregation – like Kentucky Alltel, Inc.’s decision in Kentucky - indicates that the company does not perceive the risk of creamskimming to be of concern within its study area.¹⁰

The FCC has also endorsed conducting a “population density” analysis as a proxy to assess the risk of unintended creamskimming. A population density analysis compares the population density of the wire centers where ETC designation is requested to the population density of the wire centers where ETC designation is not requested.¹¹

In this case, the results of a population density analysis confirm that redefinition of the Kentucky Alltel, Inc. – London service area for purposes of designating ACC in the twenty wire centers identified at Appendix A of the Commission’s Order will not create the unintended effects of creamskimming. Using publicly available data regarding the geographic size and population of each wire center, ACC has calculated the population density per square mile of the wire centers in which the Company was conditionally designated as an ETC and the wire centers areas in which the Company did not seek ETC designation. A table summarizing this analysis is attached here as **Exhibit D**.¹²

⁹ *In the Matter of Federal-State Joint Board on Universal Service Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Order on Reconsideration*, FCC 01-311 ¶ 12 (rel. Oct. 19, 2001).

¹⁰ *See In The Matter of the Application of N.E. Colorado Cellular, Inc. to Re-Define the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc. and Sunflower Telephone Co., Inc.*, Docket No. 02A-444T, *Decision Denying Exceptions and Motion to Reopen Record*, Decision No. C03-1122, ¶ 38 (Aug. 27, 2003) (decision of rural carriers not to target support “is probative evidence of the carriers’ lack of concern with creamskimming.”)

¹¹ *Virginia Cellular*, ¶ 34; *Highland Cellular*, ¶ 28.

¹² Exhibits A through C were previously filed with ACC’s ETC Petition.

The population density analysis set forth in **Exhibit D** confirms that no effects of creamskimming will result from the Commission's designation of ACC in the Kentucky Alltel, Inc. – London service area in this proceeding. As demonstrated on **Exhibit D**, the population density of the wire centers in which the Commission conditionally designated ACC (57.94 persons per square mile) is only slightly higher than the population density of wire centers in which ACC did not seek designation (50.49 persons per square mile). Indeed, there is only a difference of 7 people per square mile at an overall population density exceeding 50 people per square mile. This does not present the kind of service disparity the FCC is concerned with. Therefore, the Commission's designation of ACC in Kentucky Alltel, Inc.'s London service area does not present any risk of creamskimming.¹³

C. Redefinition Does Not Impact A Rural Telephone Company's Regulatory Status

The second Joint Board factor that must be considered is whether redefinition will impact the unique regulatory status enjoyed by a rural telephone company under the Telecommunications Act of 1996. There is none. Nothing in the service area redefinition process affects a rural telephone company's statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c) of the Act. Nor does it compromise or impair the company's unique treatment as a rural telephone company under 47 U.S.C. § 251(f).

Additionally, as the FCC recently confirmed, the redefinition process does not affect the way in which a rural telephone company calculates its embedded costs or the amount of federal universal service support it receives:

¹³ Even if there were any concerns regarding the potential effects of creamskimming in this proceeding, the FCC has observed that a state commission may order the incumbent rural telephone company to disaggregate its federal universal support and target the support to the higher-cost portions of its study area. *Virginia Cellular*, ¶ 35 n. 112.

(1) the high-cost universal service mechanisms support all lines served by ETCs in rural areas; (2) receipt of high-cost support by [the applicant] will not affect the total amount of high-cost support that the incumbent rural telephone company receives; (3) to the extent that [the applicant] or any future competitive ETC captures incumbent rural telephone company lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve; and (4) redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

* * *

Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives.¹⁴

Rather, the redefinition process only modifies the service area requirement for purposes of designating a competitive ETC. Thus, nothing in the redefinition process will impact Kentucky Alltel, Inc.'s regulatory status.

D. Redefinition Does Not Create Any Administrative Burdens

The third and final Joint Board factor to consider is whether any administrative burdens will result from redefinition of the service area requirement. A rural telephone company's universal service support payments are currently based on the carrier's embedded costs determined at the study area level.¹⁵ The FCC has recently confirmed that redefinition does not affect this calculation or create any additional administrative burdens for the rural telephone company:

[R]edefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules.

¹⁴ *Virginia Cellular*, ¶¶ 41, 43; *see also Highland Cellular*, ¶ 40.

¹⁵ *Universal Service Order*, ¶ 189.

Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.¹⁶

Just as in *Virginia Cellular*, the Commission's redefinition determination in this proceeding will not impact Kentucky Alltel, Inc.'s universal service support calculations and will not create any additional burdens.

Accordingly, the Commission should amend its Order to reflect its consideration of each of the three Joint Board factors. The Commission should further amend its Order to enter the following findings and conclusions:

1. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC poses no risk of creamskimming;
2. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC will not affect Kentucky Alltel, Inc.'s unique regulatory status under the Telecommunication Act of 1996; and
3. Redefinition of the Kentucky Alltel, Inc. – London service area to permit ACC's designation as a competitive ETC will not create any administrative burdens.

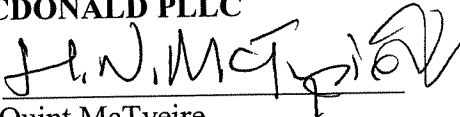
III. CONCLUSION

For the forgoing reasons, the Commission should amend its August 15, 2005 Order to include findings and conclusions consistent with the requirements of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)-(c).

¹⁶ *Virginia Cellular*, ¶ 44 (emphasis added).

Dated: September 6, 2005

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EXHIBIT D

AMERICAN CELLULAR CORPORATION

Case No. 2005-00130

Summary of Study Area Population Density - Kentucky				
The following table depicts the population density per square mile for those areas in which American Cellular Corporation (ACC) was granted designation as a federal eligible telecommunications carrier (ETC) subject to redefinition of the service area requirement with those areas in which ACC did not seek ETC designation.				
Company Name	Service Area	Total Area (sq. mi.)	Total Population	Population Density (sq. mi.)
KENTUCKY ALTEL, INC. - LONDON (SAC 269691)	Wire Centers In Which ACC Was Granted ETC Designation	1,763.30	102,172.00	57.94
	Wire Centers In Which ACC Did Not Seek Designation	2,523.37	127,409.00	50.49

SAC	INCUMBENT CARRIER	WIRE CENTER CLLI CODE	LICENSE COVERAGE	POPULATION	AREA (sq. mi.)	POPULATION DENSITY
269691	KENTUCKY ALLTEL, INC. - LONDON	AGSTKYXA	100.00%	2,587.00	50.21	51.53
269691	KENTUCKY ALLTEL, INC. - LONDON	ARTNKYXA	0.00%	616.00	9.79	62.89
269691	KENTUCKY ALLTEL, INC. - LONDON	BBVLKYXA	0.02%	19,259.00	223.42	86.20
269691	KENTUCKY ALLTEL, INC. - LONDON	BESPKYXA	0.01%	6,125.00	187.68	32.64
269691	KENTUCKY ALLTEL, INC. - LONDON	BKVLKYXA	100.00%	2,971.00	78.38	37.91
269691	KENTUCKY ALLTEL, INC. - LONDON	BRHDKYXA	100.00%	4,523.00	60.73	74.48
269691	KENTUCKY ALLTEL, INC. - LONDON	BRWLKYXA	0.00%	1,949.00	86.56	22.52
269691	KENTUCKY ALLTEL, INC. - LONDON	BWVLKYXA	0.00%	4,880.00	70.32	69.40
269691	KENTUCKY ALLTEL, INC. - LONDON	CKSNKYXA	0.29%	8,369.00	184.10	45.46
269691	KENTUCKY ALLTEL, INC. - LONDON	CLCTKYXA	0.00%	5,178.00	40.96	126.42
269691	KENTUCKY ALLTEL, INC. - LONDON	CLMBKYXA	0.00%	582.00	59.27	9.82
269691	KENTUCKY ALLTEL, INC. - LONDON	CMLDKYXA	0.00%	5,353.00	97.28	55.02
269691	KENTUCKY ALLTEL, INC. - LONDON	CYVLKYXA	0.00%	6,676.00	233.72	28.56
269691	KENTUCKY ALLTEL, INC. - LONDON	DOVRKYXA	100.00%	641.00	15.46	41.46
269691	KENTUCKY ALLTEL, INC. - LONDON	EBNKKYXA	100.00%	6,539.00	117.31	55.74
269691	KENTUCKY ALLTEL, INC. - LONDON	EBRNKYAC	100.00%	7,363.00	92.41	79.68
269691	KENTUCKY ALLTEL, INC. - LONDON	EVRSKYXA	0.00%	7,158.00	96.79	73.96
269691	KENTUCKY ALLTEL, INC. - LONDON	FBSHKYXA	100.00%	2,640.00	83.64	31.56
269691	KENTUCKY ALLTEL, INC. - LONDON	FLLCKYXA	0.00%	5,993.00	138.52	43.27
269691	KENTUCKY ALLTEL, INC. - LONDON	FRNLKYXA	100.00%	1,361.00	45.85	29.69
269691	KENTUCKY ALLTEL, INC. - LONDON	GMTWKYXA	100.00%	927.00	25.18	36.82
269691	KENTUCKY ALLTEL, INC. - LONDON	IRVNKYXA	0.05%	15,439.00	255.25	60.49
269691	KENTUCKY ALLTEL, INC. - LONDON	JHVLKYXA	100.00%	1,876.00	54.97	34.13
269691	KENTUCKY ALLTEL, INC. - LONDON	JNKNKYXA	0.00%	4,115.00	27.90	147.51
269691	KENTUCKY ALLTEL, INC. - LONDON	LONDKYXA	100.00%	37,429.00	308.09	121.49
269691	KENTUCKY ALLTEL, INC. - LONDON	LVTNKYXA	100.00%	3,389.00	135.18	25.07
269691	KENTUCKY ALLTEL, INC. - LONDON	LWGMKYXA	100.00%	1,499.00	41.70	35.94
269691	KENTUCKY ALLTEL, INC. - LONDON	MLBNKYXA	0.00%	951.00	39.38	24.15
269691	KENTUCKY ALLTEL, INC. - LONDON	MMCKYXA	0.01%	13.00	31.58	0.41
269691	KENTUCKY ALLTEL, INC. - LONDON	MNCHKYXA	0.04%	17,734.00	225.58	78.62
269691	KENTUCKY ALLTEL, INC. - LONDON	MTOLKYXA	100.00%	2,309.00	99.85	23.12
269691	KENTUCKY ALLTEL, INC. - LONDON	MTVRKYAI	100.00%	8,639.00	114.39	75.52
269691	KENTUCKY ALLTEL, INC. - LONDON	MYLCKYXA	100.00%	1,621.00	57.47	28.21
269691	KENTUCKY ALLTEL, INC. - LONDON	ONEDKYXA	0.00%	4,767.00	201.19	23.69
269691	KENTUCKY ALLTEL, INC. - LONDON	PRCYKYXA	56.07%	2,708.00	55.07	49.17
269691	KENTUCKY ALLTEL, INC. - LONDON	SCHLKYXA	100.00%	7,257.00	109.59	66.22
269691	KENTUCKY ALLTEL, INC. - LONDON	SMGVKYXA	0.00%	4,304.00	87.12	49.40
269691	KENTUCKY ALLTEL, INC. - LONDON	SMLDKYXA	0.00%	3,375.00	112.93	29.89
269691	KENTUCKY ALLTEL, INC. - LONDON	SOVLKYXA	100.00%	2,714.00	99.08	27.39
269691	KENTUCKY ALLTEL, INC. - LONDON	UNTWKYXA	0.00%	1,865.00	58.98	31.62
269691	KENTUCKY ALLTEL, INC. - LONDON	WASHKYXA	100.00%	3,559.00	53.22	66.87
269691	KENTUCKY ALLTEL, INC. - LONDON	WHLLKYXA	100.00%	2,328.00	120.61	19.30
Wire Centers In Which ACC Did Not Seek Designation				127,409.00	2,523.37	50.49
Wire Centers In Which ACC Was Granted ETC Designation				102,172.00	1,763.30	57.94