

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

RECEIVED

In the Matter of:

Petition For Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky of)	
)	JAN 18 2006
)	PUBLIC SERVICE COMMISSION
Bluegrass Wireless LLC)	Case No. 2005-00017
)	
Kentucky RSA #3 Cellular General Partnership)	Case No. 2005-00018
)	
Kentucky RSA #4 Cellular General Partnership)	Case No. 2005-00019
)	
Cumberland Cellular Partnership)	Case No. 2005-00020

PETITION FOR CLARIFICATION

Bluegrass Wireless LLC, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA #4 Cellular General Partnership, and Cumberland Cellular Partnership (collectively, "Bluegrass Cellular"), by counsel, hereby submit this Petition for Clarification of certain limited findings and conclusions set forth in the July 8, 2005 Order of the Kentucky Public Service Commission (the "Commission") designating Bluegrass Cellular 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, Bluegrass Cellular 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 ALLTEL Kentucky, Inc., and Kentucky ALLTEL, Inc. - London ("Rural ILECs"). In support of its Petition, Bluegrass Cellular states as follows.

I. BACKGROUND

On January 4, 2005, Bluegrass Cellular submitted to this Commission an application seeking designation as an ETC throughout its Kentucky service area ("Application"). The Commission granted Bluegrass Cellular's Application on July 8, 2005, concluding that a grant of ETC status was in the public interest. Because ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. - London, have portions of their service areas located outside of Bluegrass Cellular's FCC-licensed territory, Bluegrass Cellular's ETC designation in those areas cannot become effective until those incumbent local exchange carriers' ("ILECs") service areas are redefined such that each of their wire centers constitutes a separate service area. Accordingly, the Commission approved the redefinition of each Rural ILEC's service area, 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 Bluegrass Cellular to petition the FCC for concurrence with the redefinition of the affected ILEC service areas.¹ Bluegrass Cellular 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."² In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint

¹ *Id.* at p. 6.

² 47 C.F.R. § 54.207(c)(1).

Board enumerated three factors to be considered when reviewing a request to redefine a local exchange carrier's ("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.³ 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. Bluegrass Cellular seeks clarification in the form of a specific redefinition analysis considering the factors enumerated above. Upon its issuance by this Commission, Bluegrass Cellular will submit the clarification to the FCC in support of its pending petition for concurrence.

II. BLUEGRASS CELLULAR REQUESTS COMMISSION CLARIFICATION OF THE REASONS FOR REDEFINING THE RURAL ILECS' SERVICE AREAS

Pursuant to Section 214(e) of the Communications Act of 1934, as amended (the "Act"), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs.⁴ 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."⁵ 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

³ *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("*Joint Board Recommended Decision*").

⁴ 47 U.S.C. § 214(e).

⁵ 47 U.S.C. § 214(e)(5).

ILEC. Specifically, Section 214(e) of the Act provides:

... “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.⁶

Bluegrass Cellular’s combined licensed service area covers only portions of the Rural ILECs’ study areas. Accordingly, the Commission ruled that the Rural ILECs’ service areas should be redefined into smaller areas. Once redefined, the use of the smaller areas would permit Bluegrass Cellular’s designation to take effect in those areas to the extent of its licensed service area boundaries.

In the Order, the Commission specifically concluded that:

Bluegrass Cellular’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.⁷

Bluegrass Cellular 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.⁸ Bluegrass Cellular’s recently-submitted petition for FCC concurrence contains such an analysis, which is set forth below.

⁶ *Id.*

⁷ Order at pp. 6-7.

⁸ 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.⁹ There is no possibility for cream skimming in this case because Bluegrass Cellular is restricted to providing service in those areas where it is licensed by the FCC. Bluegrass Cellular is not picking and choosing among the rural LECs’ exchanges. On the contrary, Bluegrass Cellular 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.¹⁰ As discussed below, one of the affected Rural ILECs has already disaggregated support in this manner. The ILEC that did not disaggregate support may petition this Commission to disaggregate support in the event it believes it to be necessary notwithstanding the lack of cream-skimming opportunities in its service area.

⁹ *Recommended Decision*, 12 FCC Rcd at 179-80.

¹⁰ *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.

In its *Virginia Cellular* order,¹¹ 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 densely populated – and, presumably, lower-cost – wire centers in a given study area. Here, Bluegrass Cellular has provided population density figures to demonstrate that no cream skimming will result from designation in the proposed areas.¹² Therefore, Bluegrass Cellular 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 Bluegrass Cellular receiving uneconomic levels of support. As indicated in the table attached as Exhibit A, Bluegrass Cellular is not proposing to serve only, or even primarily, the more densely populated rural ILEC wire centers.

- ALLTEL Kentucky, Inc. ("ALLTEL"). ALLTEL has disaggregated support below the study area level so that support is more accurately matched with the cost of serving customers in higher- or lower-cost portions of its study area. Accordingly, the risk of cream-skimming is minimized, if not eliminated altogether. Even if ALLTEL's support were not disaggregated, cream-skimming would not be a concern because Bluegrass Cellular is proposing to serve the less densely populated – and presumably higher-cost – portions of ALLTEL's study area. The population density of the Sheperdsville wire center – the only ALLTEL wire center within Bluegrass Cellular's proposed ETC service area – is 110.32 persons per square mile ("psm"), while the population density for the ALLTEL wire centers outside of Bluegrass

¹¹ See *Virginia Cellular, supra*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*") at 1578-79.

¹² *Id.*

Cellular’s proposed ETC service area is 456.10 psm. Because Bluegrass Cellular is proposing to serve by far the less densely populated, higher-cost portions of ALLTEL’s study area, there is no risk that cream-skimming will result here.

- Kentucky ALLTEL, Inc. – London (“ALLTEL – London”). The average population density of the ALLTEL – London wire centers Bluegrass Cellular proposes to cover is 46.65 psm, while the average population density of the remaining wire centers in that study area is 46.35. The difference between these two population densities is so small as to be insignificant for purposes of this analysis.¹³ Moreover, only 28.24% of Bluegrass Cellular’s potential customers in ALLTEL – London’s service area live in the highest-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.¹⁴

In sum, Bluegrass Cellular 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.¹⁵ In deciding whether to designate Bluegrass Cellular 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

¹³ See *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1579 and n.110 (2004) (“*Virginia Cellular*”) (“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.”)

¹⁴ See *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6436-37 (2004) (“*Highland Cellular*”).

¹⁵ See *Recommended Decision*, 12 FCC Rcd at 180.

carriers has been considered as required for redefinition. Further, Bluegrass Cellular notes that redefinition will not affect or prejudice 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.

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.¹⁶ In the instant case, Bluegrass Cellular 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.¹⁷ Accordingly, redefinition of rural ILEC service areas will not impose any additional burdens on the affected ILECs.

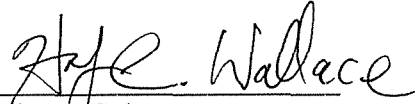
III. CONCLUSION.

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

¹⁶ *Id.*

¹⁷ 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.

Respectfully submitted,



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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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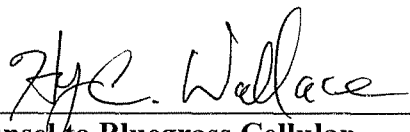
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Population Density Analysis

ALLTEL Kentucky, Inc.

Wire Centers Inside ETC Service Area:

<u>Exchange Name</u>	<u>Company</u>	<u>Pop.</u>	<u>Area (mi²)</u>	<u>Pop. Density</u>
Sheperdsville	ALLTEL Kentucky, Inc.	16,834	152.60	110.32

Wire Centers Outside ETC Service Area:

<u>Exchange Name</u>	<u>Company</u>	<u>Pop.</u>	<u>Area (mi²)</u>	<u>Pop. Density</u>
Mt. Washington	ALLTEL Kentucky, Inc.	14,329	36.80	389.37
Zoneton	ALLTEL Kentucky, Inc.	25,671	49.10	522.82

Average: 456.10

Kentucky ALLTEL, Inc. - London

Wire Centers Inside ETC Service Area:

<u>Exchange Name</u>	<u>Company</u>	<u>Pop.</u>	<u>Area (mi²)</u>	<u>Pop. Density</u>
Bee Spring	Kentucky ALLTEL, Inc. - London	8,160	191.10	42.70
Caneyville	Kentucky ALLTEL, Inc. - London	6,366	240.10	26.51
Clarkson	Kentucky ALLTEL, Inc. - London	8,559	200.90	42.60
East Bernstadt	Kentucky ALLTEL, Inc. - London	8,699	112.50	77.32
Eubank	Kentucky ALLTEL, Inc. - London	6,502	117.20	55.48
Faubush	Kentucky ALLTEL, Inc. - London	2,709	88.10	30.75
Flat Lick	Kentucky ALLTEL, Inc. - London	2,930	75.00	39.06
London	Kentucky ALLTEL, Inc. - London	34,840	290.20	120.06
Mammoth Cave	Kentucky ALLTEL, Inc. - London	378	60.40	6.25
Manchester	Kentucky ALLTEL, Inc. - London	22,129	401.40	55.13
Oneida	Kentucky ALLTEL, Inc. - London	2,429	69.50	34.95
Park City	Kentucky ALLTEL, Inc. - London	3,041	61.80	49.21
Science Hill	Kentucky ALLTEL, Inc. - London	7,749	115.60	67.03
Shopville	Kentucky ALLTEL, Inc. - London	2,356	93.60	25.18
Smiths Grove	Kentucky ALLTEL, Inc. - London	3,838	75.70	50.71
White Lily	Kentucky ALLTEL, Inc. - London	2,705	115.30	23.46
		123,389		

Average: 46.65

Wire Centers Outside ETC Service Area:

<u>Exchange Name</u>	<u>Company</u>	<u>Pop.</u>	<u>Area (mi²)</u>	<u>Pop. Density</u>
Arlington	Kentucky ALLTEL, Inc. - London	925	30.50	30.33
Augusta	Kentucky ALLTEL, Inc. - London	3,122	55.40	56.35
Bardwell	Kentucky ALLTEL, Inc. - London	2,010	91.70	21.92
Bradfordsville	Kentucky ALLTEL, Inc. - London	1,255	70.20	17.87
Brodhead	Kentucky ALLTEL, Inc. - London	4,673	67.30	69.44
Brooksville	Kentucky ALLTEL, Inc. - London	2,332	68.30	34.15
Burkesville	Kentucky ALLTEL, Inc. - London	3,436	65.00	52.86
Calvert City	Kentucky ALLTEL, Inc. - London	6,758	53.80	125.62
Columbus	Kentucky ALLTEL, Inc. - London	432	14.90	29.02
Cumberland	Kentucky ALLTEL, Inc. - London	5,694	75.00	75.92
Dover	Kentucky ALLTEL, Inc. - London	872	25.70	33.92
Evarts	Kentucky ALLTEL, Inc. - London	6,032	100.10	60.25
Fernleaf	Kentucky ALLTEL, Inc. - London	1,434	43.60	32.90
Germantown	Kentucky ALLTEL, Inc. - London	1,072	30.70	34.91

Population Density Analysis

<u>Exchange Name</u>	<u>Company</u>	<u>Pop.</u>	<u>Area (mi²)</u>	<u>Pop. Density</u>
Irvine	Kentucky ALLTEL, Inc. - London	15,347	267.80	57.31
Jenkins	Kentucky ALLTEL, Inc. - London	5,370	37.80	142.07
Johnsville	Kentucky ALLTEL, Inc. - London	1,746	54.30	32.15
Lewisburg	Kentucky ALLTEL, Inc. - London	973	31.50	30.89
Livingston	Kentucky ALLTEL, Inc. - London	1,340	49.60	27.02
Mays Lick	Kentucky ALLTEL, Inc. - London	1,224	37.20	32.92
Milburn	Kentucky ALLTEL, Inc. - London	714	23.70	30.12
Mt. Olivet	Kentucky ALLTEL, Inc. - London	2,266	100.10	22.64
Mt. Vernon	Kentucky ALLTEL, Inc. - London	10,511	200.00	52.56
Smithland	Kentucky ALLTEL, Inc. - London	4,488	158.20	28.37
Uniontown	Kentucky ALLTEL, Inc. - London	1,833	59.40	30.86
Washington	Kentucky ALLTEL, Inc. - London	2,567	59.90	42.86
		88,427		
			Average:	46.35