

**Dinsmore & Shohl** LLP  
ATTORNEYS

John E. Selent  
502-540-2315  
john.selent@dinslaw.com

August 26, 2005

RECEIVED

AUG 29 2005

PUBLIC SERVICE  
COMMISSION

**VIA FEDERAL EXPRESS**

Hon. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

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

Dear Ms. O'Donnell:

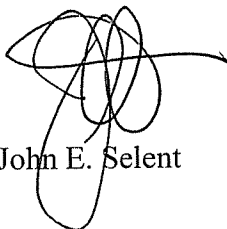
Enclosed for filing in the above-styled cases is an original and ten copies of the motion of East Kentucky Network, LLC d/b/a Appalachian Wireless ("Applicant") asking the Public Service Commission of the Commonwealth of Kentucky to send a letter to the Federal Communications Commission and Universal Service Administrative Company so that the applicant can timely receive substantial ETC funds.

The motion asks the Public Service Commission to act **before** September 6, 2005, for the reasons set forth in the motion.

Thank you, and if you have any question, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosures

Hon. Beth O'Donnell  
August 26, 2005  
Page 2

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cc: Gerald Robinette (w/enclosures)

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33380-1

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

**RECEIVED**

*In the matter of:*

**EAST KENTUCKY NETWORK, LLC D/B/A )  
APPALACHIAN WIRELESS FOR DESIGNATION )  
AS AN ELIGIBLE TELECOMMUNICATIONS )  
CARRIER IN THE COMMONWEALTH OF )  
KENTUCKY )**

AUG 29 2005

PUBLIC SERVICE  
COMMISSION  
**CASE NO. 2005-00045**

**MOTION OF EAST KENTUCKY NETWORK, LLC  
D/B/A APPALACHIAN WIRELESS  
TO SEND LETTER FOR ETC FUNDS  
TO FCC AND UNIVERSAL SERVICE  
ADMINISTRATIVE COMPANY**

East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless") hereby moves the Public Service of the Commonwealth of Kentucky to send the attached letter to the Office of the Secretary of the Federal Communications Commission in Washington, DC and to the Universal Service Administrative Company, also in Washington, DC, along with the attachments to that letter. (Those attachments consist of (1) the one order of the Public Service Commission of the Commonwealth of Kentucky (the "Commission") granting ETC status to the Appalachian Wireless and (2) the high-cost certification of the Appalachian Wireless, for a total of two (2) attachments.

As grounds for this motion, Appalachian Wireless states as follows.

The attached letter, which must be signed and sent by the Commission, so that it is received by September 6, 2005 by its addressees, is necessary so that Appalachian Wireless may begin timely to receive its ETC funds. The order in these matters has already certified Appalachian Wireless as being in compliance with 47 U.S.C. § 254(e), just as does the attached

letter; but, Appalachian Wireless's FCC legal counsel has advised it that the attached letter is nonetheless necessary. (See the Commission's order of August 11, 2005, which determined that:

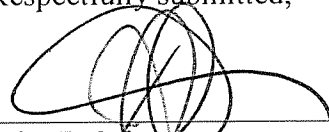
5. Appalachian Wireless is hereby certified as complying with the FCC's criteria, in accordance with 47 U.S.C. § 254(e) [emphasis supplied], and therefore eligible to receive Universal Service Fund support for the current certification period.[.]

These ETC funds are **substantial** and it is in the best interest of Appalachian Wireless and its customers that Appalachian Wireless receive these funds. With these funds, Appalachian Wireless will be able to provide, maintain, and upgrade its wireless telecommunication's infrastructure in its service territories in rural Kentucky. If the attached letter is not timely received by September 6, 2005, East Kentucky will not receive ETC funds for the applicable time period. To put it bluntly, there is a lot of money as stake, and this money will buy a lot of telecommunication infrastructure with which Appalachian Wireless can better serve rural Kentucky.

For these reasons, the motion of Appalachian Wireless should be **GRANTED** and the attached letter should be forwarded, along with the two (2) attachments thereto, so that they are received by the Federal Communications Commission and the Universal Service Administrative Company by September 6, 2005. (Prepaid Federal Express envelopes, along with prepaid envelopes for carbon copying Appalachian Wireless' counsel with the attached letter, and its attachments, are enclosed.)

In conclusion, Appalachian Wireless very much appreciates the Commission's accommodation in this most urgent matter.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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John E. Selent  
Holly C. Wallace  
DINSMORE & SHOHL LLP  
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500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 540-2300  
(502) 585-2207 (facsimile)  
john.selent@dinslaw.com  
holly.wallace@dinslaw.com  
**Counsel to Applicant**

**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 26<sup>th</sup> day of August, 2005 on the following:

Steve Mowery  
Kentucky Alltel, Inc. - London  
230 Lexington Green Circle  
Lexington, Kentucky 40588-1650

Steve Mowery  
Kentucky Alltel, Inc. - Lexington  
230 Lexington Green Circle  
Lexington, Kentucky 40588-1650

Paul R. Gearheart  
Gearheart Communications Co., Inc.  
5 Laynesville Road  
P.O. Box 160  
Harold, Kentucky 41635

Otto Ingram  
Mountain Telephone Cooperative, Inc.  
405 Main Street  
P.O. Box 399  
West Liberty, Kentucky 41472-0399

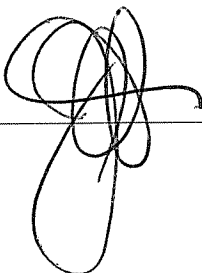
Robert C. Thacker  
Thacker-Grigsby Telephone Company, Inc.  
9500 Communications Lane  
P.O. Box 789  
Hindman, Kentucky 41822

Dorothy Chambers  
Bellsouth Telecommunications, Inc.  
601 W. Chestnut Street  
Louisville, Kentucky 40232

Thomas E. Preston  
Foothills Rural Telephone Cooperative  
Corporation, Inc.  
1631 Kentucky Route 40 W  
P.O. Box 240  
Staffordsville, Kentucky 41256

Edward A. Mattingly  
Leslie County Telephone Company, Inc.  
P.O. Box 969  
Hyden, Kentucky 41749-0969

R. Bruce Hays  
Peoples Rural Telephone Cooperative  
Corporation, Inc.  
P.O. Box 159  
McKee, Kentucky 40447



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*[Kentucky Public Service Commission Letterhead]*

August 26, 2005

**VIA FEDERAL EXPRESS**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**VIA FEDERAL EXPRESS**

Ms. Lisa Zaina, President  
Universal Service Administrative Company  
2000 L Street, N.W.  
Washington, D.C. 20037

***Re: CC Docket No. 96-45, USF Certification as Required by 47 C.F.R.  
Sections 54.313, 54.314***

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Dear Ms. Dortch and Ms. Zaina:

Pursuant to 47 C.F.R. Sections 54.313 and 54.314 and on the basis described below, the Kentucky Public Service Commission (the "Kentucky Commission") has received an affidavit from a representative of East Kentucky Network d/b/a Appalachian Wireless ("Appalachian Wireless") certifying that federal high-cost support funds will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, as required by 47 U.S.C. Section 254(e).

The Kentucky Commission granted Appalachian Wireless' petition for ETC designation on September 6, 2005. A copy of the order is enclosed, as is a copy of the certification received from Appalachian Wireless. The Kentucky Commission certifies Appalachian Wireless' compliance with 47 U.S.C. Section 254(e) and 47 C.F.R. Sections 54.314 and 54.314 based entirely on the corporate e-mailed officer certification.

This certification is timely provided within 60 days of the ETC grant to permit Appalachian Wireless to receive high-cost support retroactive to the date of its grant as provided in 47 C.F.R. Sections 54.313 and 54.314, as amended in the FCC's Report and Order, FCC 05-46 (released March 17, 2005). Accordingly, this certification applies to support received in calendar year 2005.

Ms. Marlene H. Dortch  
Ms. Lisa Zaina  
August 26, 2005  
Page 2 of 2

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If you have any questions regarding this letter, please contact J.E.B. Pinney.

Very truly yours,

KENTUCKY PUBLIC SERVICE COMMISSION

By: Beth O'Donnell  
Executive Director



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 26, 2005, East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless") filed an application seeking Eligible Telecommunications Carrier ("ETC") status within the territory of which it is licensed to operate. This company is owned by three telephone cooperatives and two investor-owned telephone companies.<sup>1</sup> The operating management is separate from the ownership of the company.

The Commission set a procedural schedule in this case that allowed for any public comments, data requests, and requests for a hearing. No comments on the application have been filed and no request for a hearing has been made.

Discussion

47 U.S.C. § 254(e) provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support." Pursuant to Section 214(e)(1), a common carrier designated as an

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<sup>1</sup> Cellular Services Inc. (a subsidiary of Foothills Rural Telephone Cooperative, Inc.), Mountain Telecommunications Inc. (a subsidiary of Mountain Rural Telephone Cooperative, Inc.), Peoples Rural Telephone Cooperative Corporation, Inc., Thacker-Grigsby Telephone Company, Inc., and Gearheart Communications, Inc.

ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>2</sup>

Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations. Under Section 214(e)(6), 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, so long as the requesting carrier meets the requirements of Section 214(e)(1).<sup>3</sup> 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.<sup>4</sup>

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 Section 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 therefor using media of general distribution"; and (4) if the petitioner meets the definition of a "rural telephone company" pursuant to Section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a

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<sup>2</sup> 47 U.S.C. § 214(e)(1).

<sup>3</sup> 47 U.S.C. § 214(e)(6).

<sup>4</sup> Id.

detailed description of the geographic service area for which it requests an ETC designation from the Commission.

#### Offering the Services Designated for Support

Appalachian Wireless 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. As noted in its petition, Appalachian Wireless is authorized to provide cellular mobile radiotelephone service ("CMRS"). Appalachian Wireless certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in Section 54.101(a) of the Federal Communications Commission's ("FCC") rules. Appalachian Wireless has also certified that, in compliance with Section 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

Appalachian Wireless states that it intends to provide the supported services using its existing network infrastructure. Appalachian Wireless currently provides the service using its facilities-based digital network infrastructure and licensed CMRS spectrum in Kentucky.

The Commission finds that Appalachian Wireless has demonstrated that it satisfies the requirement of Section 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

Appalachian Wireless has demonstrated that it satisfies the requirement of Section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, Appalachian Wireless states that it currently advertises the availability of its services, and will do so for each of the supported services on a regular basis, in newspapers, magazines, television, and radio in accordance with Section 54.201(d)(2) of the FCC's rules.

### Non-Rural Study Areas

The FCC previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of Section 214(e)(1) of the Act.<sup>5</sup> The Commission finds that Appalachian Wireless's public interest showing here is sufficient, based on the detailed commitments Appalachian Wireless has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; that is, if Appalachian Wireless has satisfied the more rigorous public interest analysis for the rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas.

### Rural Study Areas

In considering whether designation of Appalachian Wireless as an ETC in areas served by rural telephone companies will serve the public interest, the Commission

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<sup>5</sup> 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).

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

The Commission finds that Appalachian Wireless's universal service offering will provide a variety of benefits to customers. For instance, Appalachian Wireless has committed to provide customers access to telecommunications and data services where they do not have access to a wire-line telephone. In addition, the mobility of Appalachian Wireless'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, Appalachian Wireless 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 Appalachian Wireless's customers.

#### Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.<sup>6</sup> Appalachian Wireless asserts that granting ETC designation to

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<sup>6</sup> See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

Appalachian Wireless 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. Appalachian Wireless 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 Appalachian Wireless 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 Appalachian Wireless should be certified as an ETC in the requested service areas served by rural telephone companies, as listed in the application. However, 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. Appalachian Wireless should petition the FCC for concurrence.

#### Regulatory Oversight

In addition to its annual certification filing under rule 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 towards 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.<sup>7</sup> The Commission finds that Appalachian Wireless should be required to file this information and make any other information as it relates to service available to the Commission.

IT IS THEREFORE ORDERED that:

1. Appalachian Wireless shall be designated an ETC in the geographic areas requested and as listed in Appendix A, attached hereto and incorporated herein.

2. Appalachian Wireless shall offer universal support services to consumers in its service area.

3. Appalachian Wireless shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including services offered by another.

4. Appalachian Wireless shall advertise the availability of and charges for these services using media of general distribution.

5. Appalachian Wireless is hereby certified to be in compliance with the FCC's criteria, in accordance with 47 U.S.C. § 254(e), and therefore eligible to receive Universal Service Fund support for the current certification period.

6. By September 1, 2006, and each September 1 thereafter, Appalachian Wireless shall make its annual certification filing in Administrative Case No. 381<sup>8</sup> and shall submit additional records as described herein.

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<sup>7</sup> 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, December 16, 2004.

<sup>8</sup> Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.

7. Appalachian Wireless shall file with the Commission a copy of its petition to the FCC seeking concurrence in the redefinition of its service area.

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

Done at Frankfort, Kentucky, this 11<sup>th</sup> day of August, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Executive Director



APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2005-00045 DATED AUGUST 11, 2005 \

Designated areas for which East Kentucky Network, LLC d/b/a Appalachian Wireless is granted ETC Designation

1. Rural Telephone Company Study Areas

- 260406 Foothills Rural Telephone Company
- 260408 Gearheart Communications Co. Inc. dba Coalfields Telephone Co.
- 260415 Peoples Rural Telephone Cooperative Corporation, Inc.
- 260419 Thacker-Grigsby Telephone Company
- 260411 Leslie County Telephone Company, Inc.<sup>1</sup>
- 260414 Mountain Telephone Cooperative, Inc.<sup>2</sup>
- 269691 Kentucky Alltel, Inc. London<sup>3</sup>

2. Non-Rural ILEC Wire Centers

- 265182 BellSouth -- KY

ALLNKYMA	INEZKYMA	MCWLKYMA	PRBGKYES	VIRGKYMA
BYVLKYMA	JCSNKYMA	NEONKYES	SWSNKYMA	WRFDKYMA
ELCYKYES	MARTKYMA	PNVLKYMA	SNTNKYMA	WYLDKYES
FDCKKYES	MCCRKY	PKVLKYMA	STONKYMA	WHBGKYMA
FEBRKYMA				

- 269690 Kentucky ALLTEL, Inc. - Lexington

HZRDKYXA	LTWDKY	VICCKYXA		
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<sup>1</sup> East Kentucky Network, LLC only requests designation as an ETC in the wire centers CANOKYXA and BCKHKYXE. Subject to concurrence of the FCC the request is granted.

<sup>2</sup> East Kentucky Network, LLC only requests designation as an ETC in the wire centers JPTHKYXA, HZGRKYXA, EZELKYXA, SNDHKYXA, CMTNKYXA, and WLBTKYXA. Subject to concurrence of the FCC the request is granted.

<sup>3</sup> East Kentucky Network, LLC only requests designation as an ETC in the wire centers IRVNKYXA and JNKNKYXA. Subject to concurrence of the FCC the request is granted.

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

*In the matter of:*

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

**HIGH-COST CERTIFICATION**

East Kentucky Network, LLC d/b/a Appalachian Wireless, pursuant to 47 C.F.R. §§54.313 and 54.314, hereby submits the following high-cost certification in support of its Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (the "Petition"), and in order to begin receiving high-cost support in its designated eligible telecommunications carrier area.

I, the undersigned Gerald Robinette, do hereby declare under penalty of perjury as follows.

1. I am the authorized representative of East Kentucky Network, LLC d/b/a Appalachian Wireless.
2. East Kentucky Network, LLC d/b/a Appalachian Wireless filed its Petition with the Public Service Commission of the Commonwealth of Kentucky on January 26, 2005.
3. All high-cost support provided to East Kentucky Network, LLC d/b/a Appalachian Wireless will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, pursuant to Section 254(e) of the Telecommunications Act of 1996, codified at 47 U.S.C. § 254(e).



Gerald Robinette  
Authorized Representative  
East Kentucky Network, LLC  
d/b/a Appalachian Wireless

COUNTY OF FLOYD     )  
                                  )  
STATE OF KENTUCKY    )

Subscribed and sworn to before me by Gerald Robinette, on this 24 day of August, 2005.

My Commission expires: June 22, 2009.

Teresa M. Opel  
NOTARY PUBLIC, STATE AT LARGE, KY