



Holland N. McTyeire, V
Direct (502) 587-3672 Fax (502) 540-2223 E-mail hnm@gdm.com

Via Hand Delivery

October 21, 2005

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

RECEIVED
OCT 21 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 of the Notice
Of Filing Of American Cellular Corporation in the above styled matter.

If the Commission needs additional copies of this filing, or should have any other
questions regarding it, please feel free to contact me.

Sincerely,

Holland N. McTyeire, V

HNM/jh

Enclosures

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

1036623_1

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
OCT 21 2005
PUBLIC SERVICE
COMMISSION

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

NOTICE OF FILING OF
AMERICAN CELLULAR CORPORATION

American Cellular Corporation, (“ACC”), through counsel, pursuant to Paragraph No. 7 of the Commission’s August 15, 2005 Order in this matter, respectfully submits for filing with the Commission its Petition to the FCC for Agreement with Redefinition of the Service Area of a Rural Incumbent Local Exchange Carrier in the Commonwealth of Kentucky, a copy of which is attached hereto.

Respectfully submitted,

Holland N. McTyeire, V

GREENEBAUM DOLL & MCDONALD PLLC
3500 National City Tower
Louisville, KY 40202
Telephone: (502) 587-3672
Facsimile: (502) 540-2223
E-mail: hnm@gdm.com

and

Mark J. Ayotte (MN 166315)
Matthew A. Slaven (MN 288226)

BRIGGS AND MORGAN, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 977-8400
Facsimile: (612) 977-8650
E-mail: mayotte@briggs.com
msslaven@briggs.com

COUNSEL FOR AMERICAN CELLULAR
CORPORATION

1036589_1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

)	
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
American Cellular Corporation Petition for)	
Agreement with Redefinition of the Service)	
Area of a Rural Incumbent Local Exchange)	
Carrier in the Commonwealth of Kentucky)	
Pursuant to 47 C.F.R. § 54.207(c))	

**AMERICAN CELLULAR CORPORATION
PETITION FOR AGREEMENT WITH REDEFINITION OF THE SERVICE AREA
OF A RURAL INCUMBENT LOCAL EXCHANGE CARRIER
IN THE COMMONWEALTH OF KENTUCKY**

L. Charles Keller
WILKINSON BARKER KNAUER, LLP
2300 N Street NW
Suite 700
Washington, D.C. 20037
Telephone: (202) 383-3414
Facsimile: (202)783-5851

Mark J. Ayotte
Matthew A. Slaven
BRIGGS AND MORGAN, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 977-8400
Facsimile: (612) 977-8650

Its Counsel

I.	BACKGROUND	1
II.	DISCUSSION	5
	A. Redefinition of the Service Area Requirement is Consistent with Federal Universal Service Policy.....	5
	B. Redefinition In This Case Satisfies The Three Joint Board’s Factors.....	5
	1. Redefinition Will Not Result in Creamskimming	8
	2. Redefinition Does Not Affect the Unique Regulatory Status of Rural ILECs.....	9
	3. Redefinition Does Not Create Any Administrative Burdens.....	11
III.	CONCLUSION.....	12
	Exhibit A American Cellular Corporation’s March 29, 2005 Verified Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky	
	Exhibit B Kentucky PSC’s August 15, 2005 Order Approving American Cellular Corporation’s Petition for ETC Designation	
	Exhibit C American Cellular Corporation’s September 6, 2005 Petition for Rehearing or Clarification	
	Exhibit D Kentucky PSC’s September 21, 2005 Order Clarifying Redefinition of the Service Area Requirement	

SUMMARY

American Cellular Corporation (“ACC”) respectfully requests the Commission’s concurrence with the Kentucky Public Service Commission’s (“Kentucky PSC”) redefinition of the service area requirement in a single study area in connection with its grant of eligible telecommunications carrier (“ETC”) status to ACC.

ACC filed its verified petition for designation as a competitive federal ETC with the Kentucky PSC on March 29, 2005.¹ No party intervened or opposed ACC’s petition. On August 15, 2005, the Kentucky PSC granted ACC’s unopposed petition and designated the Company as a competitive ETC throughout substantially all of its commercial mobile radio services (“CMRS”) licensed service area.² Finding that ACC’s FCC-licensed service area does not encompass the entire Kentucky Alltel – London study area (SAC 269691) the Kentucky PSC further determined to redefine the service area requirement from the study area to the individual wire center level to facilitate ACC’s designation in this area.³

ACC subsequently petitioned the Kentucky PSC for rehearing or clarification of certain limited findings and conclusions set forth in the *ACC Kentucky Order*.⁴ Specifically, because the

¹ *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, *Verified Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky* (Mar. 29, 2005) (attached hereto as “**Exhibit A**”).

² *Petition of American Cellular Corporation Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Aug. 15, 2005) (“*ACC Kentucky Order*”) (attached hereto as “**Exhibit B**”).

³ *Id.* at pp. 5-6.

⁴ *American Cellular Corporation Petition for Designation as a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*,

ACC Kentucky Order did not initially include the findings required under 47 C.F.R. § 54.207(c) for purposes of this Commission’s review, ACC requested that the Kentucky PSC amend the *ACC Kentucky Order* to set forth its findings and conclusions with respect to each of the Joint Board on Universal Service (“Joint Board”) recommendations.⁵ The Kentucky PSC issued the requested clarification on September 21, 2005.⁶

As demonstrated below, the Kentucky PSC’s proposed service area redefinition is consistent with federal law and the Commission’s regulations and decisions. Moreover, redefinition is necessary to further the universal service goals of the Telecommunications Act of 1996 (the “Act”). Accordingly, ACC respectfully requests that the Commission approve the Kentucky PSC’s service area redefinition pursuant to 47 C.F.R. § 54.207(c).

Case No. 2003-00130, *American Cellular Corporation’s Petition for Rehearing or Clarification* (Sept. 6, 2005) (“*Petition for Clarification*”) (attached hereto as “**Exhibit C**”).

⁵ *Id.* at p. 1.

⁶ *Petition of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Sept. 21, 2005) (“*Clarification Order*”) (attached hereto as “**Exhibit D**”).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DRAFT
10/20/2005

Federal-State Joint Board on Universal Service)	
)	
)	
American Cellular Corporation Petition for Agreement with Redefinition of the Service Area of a Rural Incumbent Local Exchange Carrier in the Commonwealth of Kentucky Pursuant to 47 C.F.R. § 54.207(c))	CC Docket No. 96-45
)	
)	

**AMERICAN CELLULAR CORPORATION
PETITION FOR AGREEMENT WITH REDEFINITION OF THE SERVICE AREA
OF A RURAL INCUMBENT LOCAL EXCHANGE CARRIER
IN THE COMMONWEALTH OF KENTUCKY**

American Cellular Corporation (“ACC”) respectfully requests the Commission’s concurrence, pursuant to 47 C.F.R. § 54.207(c), with the Kentucky Public Service Commission’s (“Kentucky PSC”) redefinition of the service area requirement in a single study area in connection with its grant of eligible telecommunications carrier (“ETC”) status to ACC. As demonstrated in this Petition, the Kentucky PSC’s service area redefinition is consistent with federal law and the Commission’s regulations and decisions. Accordingly, the public interest will be served by the Commission’s prompt concurrence.

I. BACKGROUND

A carrier designated as a competitive ETC pursuant to Section 214(e) of the Telecommunications Act of 1996 (the “Act”) is required to provide and advertise certain specified services throughout the “service area” for which it has been designated.¹ The term

¹ 47 U.S.C. § 214(e)(1).

“service area” means a geographic area established by a State commission (or the Commission under Section 214(e)(6) of the Act) for the purpose of determining universal service obligations and support mechanisms.² In an area served by a rural ILEC, a competitive ETC’s service area is defined as the rural ILEC’s “study area,” unless and until the Commission and the State commission both agree to redefine the service area requirement to something other than the study area.³

The Commission has long recognized that requiring a competitive carrier, especially a wireless provider, to conform its designated ETC service area to the study area of a rural ILEC may give the ILEC an unfair competitive advantage.⁴ The Commission promulgated 47 C.F.R. § 54.207 to avoid such anti-competitive results. Pursuant to Section 54.207, a State commission may grant ETC designations for a service area that differs from the rural ILEC’s study area.⁵ Such designations, however, are not effective until this Commission concurs with the State commission’s proposed redefinition.⁶

In granting such designations, the State commission and this Commission are required to consider the Joint Board’s recommendations and explain their rationale for adopting the

² 47 U.S.C. § 214(e)(5).

³ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, ¶ 172 n. 434 (1997) (“*Universal Service First Report and Order*”), *subsequent history omitted*.

⁴ *Universal Service First Report and Order*, ¶ 185.

⁵ *Id.*

⁶ *Id.*

alternative service area.⁷ In recommending that the study area be retained as the presumptive service area for a rural ILEC, the Joint Board identified the following three factors which must be considered when weighing a request to redefine the service area requirement to something other than the study area: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.⁸ As explained below, the Kentucky PSC considered the three Joint Board factors and concluded that granting the proposed redefinition is consistent with each of these factors.

On August 15, 2005, the Kentucky PSC issued an order designating ACC as a competitive ETC and granting redefinition of the Kentucky Alltel – London study area (SAC 269691).⁹ ACC subsequently petitioned the Kentucky PSC for rehearing or clarification and requested that the Kentucky PSC amend the *ACC Kentucky Order* to set forth its specific findings and conclusions regarding the three Joint Board factors.¹⁰ The Kentucky PSC issued the requested clarification on September 21, 2005.¹¹

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service, 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*, 19 FCC Rcd 1563, ¶ 9 (2004) (“*Virginia Cellular*”).

⁸ *Virginia Cellular*, ¶ 41 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (1996) (“*Joint Board Recommendations*”).

⁹ *Petition of American Cellular Corporation Petition for Designation as an Eligible Telecommunication Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (August 15, 2005) (“*ACC Kentucky Order*”).

¹⁰ *American Cellular Corporation Petition for Designation as a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*,

In the *ACC Kentucky Order*, the Kentucky PSC concluded that ACC was fully qualified to be designated as a competitive ETC and that its designation in areas served by rural ILECs was in the public interest.¹² To effectuate ACC’s ETC designation in the Company’s FCC-licensed portions of the Kentucky Alltel – London study area, the Kentucky PSC further determined that the service area requirement should be redefined to the wire center level in that study area and directed ACC to seek the Commission’s concurrence with the proposed service area redefinition.¹³

Set forth below is a list of the wire centers in which ACC was designated as a competitive ETC by the Kentucky PSC subject to the Commission’s concurrence with the proposed redefinition:

Company Name	Wire Center CILLI Code
Kentucky Alltel, Inc. – London (SAC 269691)	AGSTKYXA
	BKVLKYXA
	BRHDKYXA
	DOVRKYXA
	EBNKKYXA
	EBRNKYXA
	FBSHKYXA
	FRNLKYXA
	GMTWKYXA
	JHVLKYXA
	LONDKYXA

Case No. 2003-00130, *American Cellular Corporation’s Petition for Rehearing or Clarification* (Sept. 6, 2005) (“*Petition for Clarification*”).

¹¹ *Petition of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act*, Case No. 2005-00130, *Order* (Sept. 21, 2005) (“*Clarification Order*”).

¹² *ACC Kentucky Order*, pp. 4-5.

¹³ *ACC Kentucky Order*, pp. 5-7.

Company Name	Wire Center CILLI Code
	LVTNKYXA
	LWGMKYXA
	MTOLKYXA
	MTVRKYXA
	MYLCKYXA
	SCHLKYXA
	SOVLKYXA
	WASHKYXA
	WHLLKYXA

This Commission has held that a State commission’s “first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.”¹⁴ The Kentucky PSC’s first-hand knowledge of the circumstances of Kentucky rural ILECs and other carriers should thus be given significant weight as the Commission addresses the service area redefinition request made herein.

II. DISCUSSION

A. Redefinition of the Service Area Requirement is Consistent with Federal Universal Service Policy

Congress declared its intent in passing the 1996 amendments to the Act:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.¹⁵

Consistent with these goals, the Act specifically contemplates the designation of multiple ETCs, including in areas served by rural ILECs, as being consistent with the public interest. 47 U.S.C. § 214(e)(2). The Commission has long recognized that requiring a competitive carrier,

¹⁴ *Federal-State Joint Board on Universal Service, 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*, 19 FCC Rcd. 6422, 6423, ¶ 2 (rel. Apr. 12, 2004) (“*Highland Cellular*”).

¹⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

especially a wireless provider, to conform its designated service area to the study area of a rural ILEC may act to bar the new telecommunications provider from entering the market, and thus give the ILEC an unfair competitive advantage.¹⁶

That is particularly true in this instance because portions of the Kentucky Alltel - London study area lie outside of ACC's FCC-licensed CMRS boundaries. The proposed redefinition is consistent with federal universal service policy as it will promote local competition and enable ACC to bring new services and technologies to customers in rural and high-cost portions of Kentucky who currently have little or no meaningful choice of universal service providers.¹⁷

Federal universal service policy also favors redefinition in instances where a rural ILEC's study area is large or non-contiguous. The Commission expressly urged State commissions to explore redefinition for purposes of ETC designation where a competitive ETC or wireless carrier might not be able to provide facilities-based service throughout a rural ILEC's entire study area.¹⁸ Accordingly, the Commission cautioned that requiring a new entrant to serve a large or non-contiguous service area as a prerequisite to ETC designation would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to

¹⁶ *Universal Service First Report and Order*, ¶ 185.

¹⁷ *Virginia Cellular*, ¶¶ 40-45; *Highland Cellular*, ¶¶ 37-42; see also *Washington Utilities & Transportation Commission, et al., Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 15 FCC Rcd 9921, ¶ 8 (Com. Car. Bur. 1999).

¹⁸ *Universal Service First Report and Order*, ¶ 190.

competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.”¹⁹

The proposed redefinition in this proceeding will promote competition in the Kentucky Alltel – London study area by offering customers within ACC’s FCC-licensed service areas a choice in universal service providers. This effort at facilitating competition is consistent with the goals of the Act and this Commission.²⁰

Moreover, the Kentucky PSC has employed its unique position and expertise in analyzing the telecommunications market in Kentucky and determined that redefinition of the service area requirement for purposes of ACC’s ETC designation will benefit Kentucky consumers and will not harm Kentucky rural ILECs.²¹ Accordingly, the Commission should concur with the Kentucky PSC’s redefinition determination in this proceeding without delay.

B. Redefinition In This Case Satisfies The Three Joint Board’s Factors

As noted above, the Commission has adopted the three Joint Board factors which should be considered when weighing a request for service area redefinition.²² The Commission recently reiterated its adherence to these three factors in the March 17, 2005 *ETC Criteria Order*.²³ The Kentucky PSC properly considered each of these factors and correctly determined that

¹⁹ *Id.*

²⁰ *See Virginia Cellular*, ¶ 38.

²¹ *ACC Kentucky Order*, pp. 4-6; *Clarification Order*, pp. 2-4.

²² *See, e.g., Highland Cellular*, ¶¶ 38-41 (applying Joint Board’s recommended factors).

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 20 FCC Rcd. 6371, 6403, ¶¶ 73-75 (2005) (“*ETC Criteria Order*”).

redefinition of the service area requirement to the wire center level in this instance is consistent with these factors.²⁴

1. Redefinition will not Result in Creamskimming

The first factor to consider is whether an ETC applicant is selectively seeking designation in only the low-cost, high-support portion of a rural ILEC's study area, a process known as "creamskimming." The Commission has noted that if a competitor were required to serve a rural ILEC's entire study area, the risk of "creamskimming" would be eliminated because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchanges of the rural ILEC's study area.²⁵ As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.²⁶

In this case, the Kentucky PSC's determination to redefine the service area requirement expressly took into account any creamskiimming concerns. The Kentucky PSC reviewed the record before it and concluded "ACC is not intentionally creamskiimming. ACC seeks to be designated within its entire FCC-licensed service area. It has not picked only certain areas within its licensed service area."²⁷ Accordingly, the Kentucky PSC found no evidence of

²⁴ *Clarification Order*, pp. 2-4.

²⁵ *Universal Service Order*, 12 FCC Rcd at 8881-82.

²⁶ *Joint Board Recommendations*, ¶ 172.

²⁷ *Clarification Order*, p. 2.

intentional creamskimming. The Kentucky PSC further concluded that no effects of unintentional creamskimming would result from the proposed redefinition:

The risk of unintentional creamskimming has been virtually eliminated by the FCC's implementation of the disaggregation mechanisms set forth in 47 C.F.R. § 54.315. Rural telephone companies have the option to disaggregate federal universal service support to higher cost portions of their study areas. Kentucky Alltel has elected to forgo disaggregation within its study area.²⁸

Moreover, ACC conducted a population density analysis, as endorsed by this Commission, to assess the risk of unintended creamskimming.²⁹ Upon reviewing ACC's population density analysis – showing a population of 57.94 persons per square mile in the areas in which ACC sought ETC designation and a population of 50.49 persons per square mile in the areas in which ACC did not seek ETC designation – the Kentucky PSC concluded that “[t]he difference in these two results does not present any risk of unintentional creamskimming.”³⁰

Thus, as the Kentucky PSC concluded, the proposed redefinition will not result in creamskimming.

2. Redefinition does not Affect the Unique Regulatory Status of Rural ILECs

The second factor to consider is the impact on the rural ILEC whose service area is to be redefined.³¹ The Kentucky PSC's determination to redefine the service area requirement in this proceeding will not affect the unique regulatory status of the rural ILEC. As the Commission concluded in *Virginia Cellular*:

²⁸ *Id.*

²⁹ *Petition for Clarification*, pp. 5-7.

³⁰ *Id.*

³¹ Importantly, it should be noted that no rural ILEC objected to ACC's petition before the Kentucky PSC, nor did any rural ILEC choose to intervene in the state proceeding.

[O]ur decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas. Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives. Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second 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. Similarly, 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.³²

Nothing in the service area redefinition process affects a rural ILEC's statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c) of the Act. Further, redefining the rural ILEC's service area as requested herein will not compromise or impair the incumbent's unique regulatory treatment under Section 251(f) of the Act. Even after the service area requirement is redefined for purposes of designating ACC as a competitive ETC, the rural ILEC will still retain the statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c).

Additionally, the redefinition process does not affect the way in which a rural ILEC calculates its embedded costs or the amount of per-line support it receives. "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."³³ Rather, the redefinition process only modifies the service area requirement for purposes of designating a

³² *Virginia Cellular*, ¶ 43 (internal footnotes omitted).

³³ *Virginia Cellular*, ¶ 43; *see also Highland Cellular*, ¶ 40.

competitive ETC. Thus, the incumbent will retain its unique regulatory status as a rural ILEC under the Act consistent with the Joint Board's recommendations.

Consistent with this analysis, the Kentucky PSC determined that the proposed redefinition would not affect Kentucky Alltel – London's unique regulatory status.³⁴ Accordingly, the Commission's concurrence with the Kentucky PSC's proposed redefinition will have no effect on the unique regulatory status enjoyed by this rural ILEC.

3. Redefinition Does Not Create Any Administrative Burdens

The third and final factor to consider is whether any administrative burdens may result from the redefinition of the service area requirement. A rural ILEC's universal service support payments are currently based on the company's embedded costs determined at the study area level.³⁵ As the FCC concluded in *Virginia Cellular*:

[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. 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.³⁶

For the same reasons, redefinition of the service area requirement in this case will not impose any administrative burdens on the rural ILEC. The Kentucky PSC expressly noted that "redefinition of the study area does not affect the calculation of support or create any additional

³⁴ *Clarification Order*, p. 3.

³⁵ *Universal Service First Report and Order*, ¶ 189.

³⁶ *Virginia Cellular*, ¶ 44.

Exhibit A

**American Cellular Corporation's March 29, 2005
Verified Petition for Designation as an Eligible Telecommunications
Carrier in the Commonwealth of Kentucky**

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED
MAR 29 2005
PUBLIC SERVICE
COMMISSION

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

VERIFIED PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE COMMONWEALTH OF KENTUCKY

BRIGGS AND MORGAN, P.A.

Mark J. Ayotte
Matthew A. Slaven
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: (651) 808-6600
Facsimile: (651) 808-6450
E-mail: mayotte@briggs.com
msslaven@briggs.com

**GREENEBAUM DOLL &
MCDONALD PLLC**

Holland N. McTyeire, V
3500 National City Tower
Louisville, KY 40202
Telephone: (502) 587-3672
Facsimile: (502) 540-2223
E-mail: hnm@gdm.com

Its Counsel

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	JURISDICTION	3
IV.	FEDERAL CRITERIA FOR ETC DESIGNATION.....	3
V.	ACC SATISFIES EACH OF THE REQUIREMENTS FOR DESIGNATION AS A COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIER	5
	A. ACC is a Common Carrier.....	5
	B. ACC Provides Each of the Nine Supported Services	5
	C. ACC Will Offer and Advertise the Availability of, and Changes for, the Supported Services Throughout Its ETC Service Areas	9
	D. ACC Will Provide the Supported Services Throughout Its Designated ETC Service Areas.....	9
VI.	DESIGNATING ACC AS A COMPETITIVE FEDERAL ETC WILL SERVE THE PUBLIC INTEREST	10
	A. Benefits of Increased Competitive Choice	11
	C. Impact of ACC's Designation on the Universal Service Fund	15
	D. ACC's Commitment to Service Quality	16
	E. ACC's Commitment to the Extension of Service	17
VII.	HIGH-COST CERTIFICATION.....	18
VIII.	CONCLUSION.....	19

I. INTRODUCTION

1. American Cellular Corporation (“ACC”), submits this Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to 807 KAR 5:001, Section 8, 47 U.S.C. § 214(e) of the Communications Act of 1996 (the “Act”), 47 U.S.C. § 151, *et. seq.*, and Part 54 of the Federal Communications Commission’s (“FCC”) rules and regulations governing universal service (“FCC Rules”).

2. ACC seeks designation as a competitive ETC for purposes of qualifying to receive federal universal service support in the non-rural telephone company wire centers and rural telephone company study areas set forth on the attached **Exhibit A**.

3. Upon designation as a competitive federal ETC, ACC will undertake to offer and advertise the services and functionalities supported by the federal universal service support mechanisms, set forth in 47 C.F.R. § 54.101(a)(1)-(a)(9) (the “Supported Services”), throughout the areas in which ACC is designated as a competitive ETC (“ETC Service Areas”). A map depicting ACC’s FCC-licensed service areas in Kentucky and the incumbent telephone companies’ wire center boundaries is attached as **Exhibit B**.

4. As demonstrated below, ACC meets all of the statutory and regulatory prerequisites for designation as a competitive federal ETC throughout its requested ETC Service Areas. The Commission should, therefore, grant ACC’s Petition without delay.

II. BACKGROUND

5. ACC is an Oklahoma based corporation that maintains its principal place of business at 14201 Wireless Way, Oklahoma City, Oklahoma 73134-2512.

6. ACC is registered to conduct business in the Commonwealth of Kentucky (Organization No. 0576718) and does so under the CellularOne® brand name within its FCC-licensed markets.

7. ACC is licensed by the FCC to provide commercial mobile radio service (“CMRS”). Nationally, ACC provides CMRS in portions of Kentucky, Michigan, Minnesota, New York, Ohio, Oklahoma, Pennsylvania, West Virginia and Wisconsin. As of September 30, 2004, ACC provided service to more than 719,000 subscribers. In August 2003, ACC became a wholly owned subsidiary of Dobson Communications, and the consolidated company now serves 1.6 million wireless subscribers in 16 states. ACC has also been designated by the Wisconsin Public Service Commission to serve as a competitive ETC throughout portions of that state.

8. In Kentucky, ACC is currently licensed to provide CMRS in the following FCC-licensed Rural Service Areas (“RSAs”): RSA 4 – Spencer, RSA 5 – Barren, RSA 6 – Madison and RSA 8 - Mason (“Licensed Service Areas”).¹ The telecommunications services provided by ACC in Kentucky include mobile telephony, data, facsimile, 911, voicemail and other features and services.

9. ACC offers digital voice and digital feature services to its customers through its existing Time Division Multiple Access (“TDMA”) digital network. In addition, ACC recently upgraded to a Global System for Mobile Communications (“GSM”) and General Packet Radio Service (“GPRS”) digital network, which enables ACC to offer enhanced data services to its customers.

10. ACC offers its customers high-quality wireless telecommunications services and is committed to providing exceptional customer service as demonstrated by its adoption of the

¹ ACC’s FCC-licensed service areas encompass the following counties in Kentucky: RSA 4 - Anderson, Green, Hardin, Larue, Marion, Mercer, Nelson, Spencer, Taylor, Washington; RSA 5 – Adair, Barren, Clinton, Cumberland, Hart, McCreary, Metcalfe, Monroe, Russell, Wayne; RSA 6 – Boyle, Casey, Garrard, Laurel, Lincoln, Madison, Pulaski, Rockcastle; RSA 8 – Bath, Bracken, Fleming, Lewis, Mason, Menifee, Montgomery, Nicholas, Robertson, Rowan. *Public Notice Report No. CL-92-40, Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties*, DA 92-109, 7 FCC Rcd 742 (Jan. 24, 1992).

Cellular Telecommunications Industry Association (“CTIA”) Consumer Code for Wireless Service, which sets forth certain principles, disclosures and practices for the provision of wireless services.²

III. JURISDICTION

11. As a CMRS provider, ACC’s provision of wireless telecommunications services is licensed and regulated by the FCC. However, under 47 U.S.C. § 214(e)(2), the Commission has the jurisdiction and authority to designate ACC as an ETC within the Commonwealth of Kentucky.³

IV. FEDERAL CRITERIA FOR ETC DESIGNATION

12. To qualify for ETC designation under 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201, the Commission must find that ACC meets the following requirements:

- (a) That the Company is a “common carrier” under federal law;
- (b) That the Company offers or will be able to offer the Supported Services using its own facilities, or a combination of its own facilities and resale of another carrier’s services;
- (c) That the Company will advertise the availability and charges for the Supported Services using media of general distribution; and
- (d) That the Company will provide the Supported Services throughout its designated ETC Service Areas upon reasonable request.

13. Section 54.101(a)(1)-(a)(9) of the FCC’s Rules require that an ETC provide the following services or functionalities:

² See www.ctia.org/wireless_consumers/consumer_code/index.cfm.

³ See *In the Matter of Petition of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the State of Kentucky*, Case No. 2003-00143, Order (Dec. 16, 2004) (“Nextel Partners Order”).

- (a) voice-grade access to the public switched telephone network;
- (b) local usage;
- (c) dual-tone multi-frequency (“DTMF”) signaling or its functional equivalent;
- (d) single-party service or its functional equivalent;
- (e) access to emergency services;
- (f) access to operator services;
- (g) access to interexchange service;
- (h) access to directory assistance;
- (i) toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a)(1)-(a)(9).

14. The Act and the FCC’s Rules define “service area” as a geographic area established by the Commission for purposes of determining universal service obligations and support. In an area served by an incumbent non-rural telephone company, the Commission may designate a competitive ETC for a service area that is smaller than the contours of the incumbent carrier’s service area.⁴

15. In an area served by an incumbent rural telephone company, “service area” is defined as the incumbent carrier’s entire “study area,” unless and until the Commission and FCC cooperatively redefine the service area requirement to something less than the study area.

47 U.S.C. § 214(e)(5), 47 C.F.R. § 207(b).

16. Consistent with the public interest, convenience, and necessity, a competitive ETC may be designated in any area served by a non-rural telephone company so long as the applicant meets the requirements of 47 U.S.C. § 214(e)(1). Before designating a competitive ETC in an area served by a rural telephone company, the Commission must also find that the designation satisfies the “public interest” requirement set forth in 47 U.S.C. § 214(e)(2).

⁴ *In the Matter of Federal-State Joint Board on Universal Service, 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, ¶ 39 n.114 (rel. Jan. 22, 2004) (“*Virginia Cellular Order*”); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶¶ 184-185 (rel. May 8, 1997) (“*Universal Service Order*”).

V. ACC SATISFIES EACH OF THE REQUIREMENTS FOR DESIGNATION AS A COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIER

17. A telecommunications carrier utilizing any technology, including wireless technology, is eligible to be designated as an ETC provided the carrier meets the requirements established under 47 U.S.C. § 214(e)(1). As demonstrated below, ACC satisfies each of these requirements. ACC operates as a common carrier, provides each of the nine Supported Services established by the FCC, and will offer and advertise the availability of, and charges for, such services throughout its designated ETC Service Areas. Finally, ACC's designation as a competitive ETC is consistent with the public interest, convenience, and necessity and, in areas served by a rural telephone company, will serve the public interest.

A. ACC is a Common Carrier

18. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. § 214(e)(1). A common carrier is defined by the Act as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio" 47 U.S.C. § 153(10). The FCC has determined that wireless telecommunications is a common carrier service. *See* 47 C.F.R. § 20.9(a). Therefore, ACC meets the federal definition of common carrier for purposes of ETC designation.

B. ACC Provides Each of the Nine Supported Services

19. The second requirement for ETC designation is that the applicant be capable of and committed to providing each of the nine Supported Services upon designation. 47 U.S.C. § 214(e)(1)(A). ACC is capable of, and currently does provide, the Supported Services over its existing network infrastructure in Kentucky as follows:

(a) Voice Grade Access: The FCC has determined that voice grade access to the public switched telephone network means the ability to make and receive calls with a

minimum bandwidth of 300 to 3500 Hertz. 47 C.F.R. § 54.101(a)(1). Through its interconnection agreements with various ILECs – specifically including Bellsouth d/b/a/ South Central Bell, Duo County Telephone Coop., Kentucky Alltel, Inc. Highland Telephone Coop, and South Central Rural Telephone Coop. – ACC’s customers are currently able to make and receive calls on the public switched telephone network within the FCC’s specified frequency range.

(b) Local Usage: “Local usage” means an amount of minutes of use of exchange service, as prescribed by the FCC, provided free of charge to end users. 47 C.F.R. § 54.101(a)(2). An ETC must include an amount of free local usage as part of a universal service offering. 47 C.F.R. 54.101(a)(2). Unlimited local usage is not required of any ETC.⁵ The FCC has determined that a wireless carrier’s inclusion of local usage in a variety of service offerings satisfies the obligation to provide local usage.⁶ ACC will include local usage in all of its universal service offerings within ACC’s defined local service areas as part of its monthly service package. In addition, ACC will comply with any specific local usage requirements adopted by the FCC and required of federal ETCs in the future.

(c) Dual Tone Multi-Frequency Signaling or Its Functional Equivalent: “Dual Tone Multi-Frequency” (“DTMF”) is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). The FCC has recognized that “wireless carriers use out-of-band signaling mechanisms [It] is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.”⁷ ACC currently uses out-

⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order and Order on Reconsideration*, FCC 03-170, ¶ 14 (rel. July 14, 2003) (“*July 2003 Order*”).

⁶ *Virginia Cellular Order*, ¶ 20

⁷ *Universal Service Order*, ¶ 71.

of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent of DTMF signaling, in accordance with the FCC's requirements.

(d) Single-Party Service or its Functional Equivalent: The FCC has determined that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user's particular transmission. 47 C.F.R. § 54.101(a)(4). ACC meets the requirement of single-party service by providing a dedicated message path for the length of a user's wireless transmission in all of its service offerings.

(e) Access to Emergency Service: "Access to emergency service" means the ability to reach a public service answering point ("PSAP") by dialing "911." The FCC also requires that a carrier provide access to enhanced 911 or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), when the PSAP is capable of receiving such information and the service is requested from the carrier. 47 C.F.R. § 54.101(a)(5). ACC currently provides all of its customers with the ability to access emergency services by dialing "911." ACC has received thirty-five requests from local PSAPs for deployment of Phase II E911 service in Kentucky. ACC expects to deploy Phase II E911 in response to fourteen of these PSAP requests on approximately April 9, 2005. ACC is continuing to work with the twenty-one remaining PSAPs to deploy Phase II E911 in accordance with the federal requirements.

(f) Access to Operator Services: "Access to operator services" means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). ACC meets this requirement by providing all of its customers with access to operator services provided either by ACC or third parties.

(g) Access to Interexchange Service: “Access to interexchange service” means the ability to make and receive toll or interexchange calls. 47 C.F.R. § 54.101(a)(7). Equal access to interexchange service, *i.e.*, the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required.⁸ ACC currently meets this requirement by providing all of its customers with the ability to make and receive interexchange calls.

(h) Access to Directory Assistance: “Access to directory assistance” means the ability to provide access to a service that makes directory listings available. 47 C.F.R. § 54.101(a)(8). ACC currently meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

(i) Toll Limitation Services: An ETC must offer “toll limitation” services to qualifying low-income consumers at no charge. FCC Rule 54.400(d) defines “toll limitation” as either “toll blocking” or “toll control” if a carrier is incapable of providing both, but as both “toll blocking” and “toll control” if a carrier can provide both. Toll blocking allows consumers to elect not to allow the completion of outgoing toll calls. Toll control allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. 47 C.F.R. § 54.500(b)-(c). ACC is not, at this time, capable of providing toll control. However, ACC is capable of providing toll blocking and provides toll blocking to Lifeline customers in other states in which the Company has been designated an ETC consistent with the FCC’s rules. ACC will utilize its existing toll-blocking technology to provide the service to its Lifeline customers in the ETC Service Areas, at no charge, as part of its service offerings.

⁸ July 2003 Order, ¶¶ 14-15; Universal Service Order, ¶ 78.

C. ACC Will Offer and Advertise the Availability of, and Changes for, the Supported Services Throughout Its ETC Service Areas

20. The third requirement for ETC designation is that an applicant advertise the availability of, and charges for, the Supported Services using media of general distribution. 47 U.S.C. § 214(e)(1)(B).

21. ACC currently offers and advertises its wireless telecommunications services to customers in Kentucky using media of general distribution, including radio, television, billboard, print advertising, and the Internet at www.celloneusa.com. ACC also maintains various retail store locations and sales agents throughout its Licensed Service Areas, which provide an additional source of advertising.

22. As a federal ETC, ACC will advertise the availability of its service offerings and the corresponding rates for those services throughout its ETC Service Areas through media of general distribution. ACC's advertisements of its service offerings will be part of and integrated into its current advertising for its existing array of services and offerings in a manner that fully complies with federal requirements, and ACC commits to such advertisements in the future.

D. ACC Will Provide the Supported Services Throughout Its Designated ETC Service Areas

23. Consistent with the obligations of a competitive federal ETC, ACC commits to provide the Supported Services to any customer within its designated ETC Service Areas upon reasonable request. Further, ACC will provide Lifeline and Link Up assistance to qualified, low-income consumers consistent with the requirements of 47 C.F.R. § 54.400, *et seq.*

24. As set forth in **Exhibits A and B** attached hereto, ACC is requesting designation as a competitive ETC only in those areas that are wholly contained within the geographic limits of the Company's licensed Service Areas in Kentucky.⁹

25. To the extent the Commission were to find that the limits of ACC's FCC-licensed Service Area prevents it from providing service throughout a rural telephone company study area, ACC requests redefinition of the study area requirement pursuant to 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207.¹⁰

**VI. DESIGNATING ACC AS A COMPETITIVE FEDERAL ETC
WILL SERVE THE PUBLIC INTEREST**

26. In an area served by a non-rural telephone company, the Commission must find that the designation of a competitive ETC is consistent with the public interest, convenience and necessity. This standard is met where the applicant satisfies the prerequisites of 47 U.S.C. § 214(e)(1) and can offer consumers a competitive alternative to the incumbent carrier. As discussed above, ACC fully satisfies each of the requirements of 47 U.S.C. § 214(e)(1). In addition, ACC's unique service offerings will provide Kentucky consumers with a true

⁹ In the event any non-rural telephone company service area is determined to be served by a rural telephone company, ACC requests that the service area requirement be redefined from the study area to the individual wire center level to facilitate its designation as a competitive ETC in the wire centers identified on Exhibit A.

¹⁰ Redefinition of the service area requirement is not required to designate ACC as a competitive ETC in the Stearns-Whitley and Pine Knot exchanges of Highland Telephone Cooperative, Inc. – KY. Although the two wire centers are included in Highland's Tennessee study area, the Commission may designate ACC in the portion of the study area that is contained within the boundaries of the Commonwealth of Kentucky, and the redefinition procedures set forth in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207 are not applicable. *In the Matter of Federal-State Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 00-2896, ¶¶ 23-24 n.71 (rel. Dec. 26, 2000); *see also In the Matter of Federal-State Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier on Reconsideration*, CC Docket 96-45, *Order*, FCC 01-311, ¶¶ 7-13 (rel. Oct. 19, 2001).

competitive alternative to the incumbent carriers by increasing customer choice and access to innovative services and new technologies.

27. In an area served by a rural telephone company, the Commission must separately find that the designation of a competitive ETC will also satisfy the “public interest” requirement of 47 U.S.C. § 214(e)(2).

28. In *Virginia Cellular*, the FCC identified five factors to consider in determining whether the designation of a competitive ETC in a rural telephone company’s service area is in the public interest.¹¹ These factors include: (1) the benefits of increased competitive choice, (2) the unique advantage and disadvantages of the competitor’s service offering, (3) the impact of multiple designation on the universal service fund, (4) any commitments made regarding quality of telephone service provided by competing providers, and (5) the competitive ETC’s ability to provide the Support Services throughout the designated service area within a reasonable time frame.¹² As demonstrated below, designating ACC as a competitive ETC in Kentucky is consistent with each of the public interest considerations articulated by the FCC in *Virginia Cellular*.

A. Benefits of Increased Competitive Choice

29. The FCC has repeatedly acknowledged the inherent consumer benefits of increased competition in the telecommunications market. In sum, increased competition drives down prices, improves service quality, and promotes the development of advanced communications services:

We note that an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer

¹¹ *Virginia Cellular Order*, ¶ 4.

¹² *Virginia Cellular Order*, ¶ 28; see also *Nextel Partners Order*, p. 7-10.