

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF Foothills Rural	)	
Telephone Cooperative Corporation, Inc.	)	
for a Certificate of Public Convenience	)	CASE NO.
and Necessity to Construct New	)	2008-00163
Facilities, Upgrade Facilities, and	)	
Borrow Funds to Assist in Same	)	

O R D E R

On June 17, 2008, Foothills Rural Telephone Cooperative Corporation, Inc. ("Foothills RTCC") filed an application seeking a Certificate of Public Convenience and Necessity to construct new facilities, upgrade facilities, and borrow funds to assist in the same.<sup>1</sup> Foothills RTCC is a non-stock, non-profit membership cooperative corporation with its main office in Staffordsville, Johnson County, Kentucky. As of December 31, 2007, Foothills RTCC had a total of 15,232 access lines providing telephone service to subscribers in parts of Breathitt, Johnson, Lawrence, and Magoffin counties of eastern Kentucky.

Description of Proposed Construction

Foothills RTCC states that the purpose of the new construction is to expand upon its fiber-to-the-home ("FTTH") facilities which currently serves more than 7,500 homes. Additionally, Foothills RTCC plans to replace its Siemens Class 5 EWSD switch for

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<sup>1</sup> The original application was submitted on May 2, 2008. The application was supplemented and deemed filed on June 17, 2008.

which support is being phased out by the manufacturer. According to Foothills RTCC, over 2,800 additional homes will benefit from the proposed construction. Foothills RTCC claims that its FTTH product enables the rural customers served to conduct business from their homes, and home businesses, and that there is a benefit to the public with every additional home where fiber is deployed.

There will be two phases to the new construction proposed in Foothills RTCC's application. The proposed construction will begin in Oil Springs and should be completed this year. The Oil Springs area encompasses portions of the Salyersville and Staffordsville exchanges. Foothills RTCC plans to complete the next phase of the proposed construction in the Lowmansville area to bring the FTTH product to the customers in that area by the summer of the following year. The Lowmansville area encompasses portions of the Blain, Chapman, Flat Gap, and Staffordsville exchanges. Foothills RTCC estimates that upon completion, FTTH will be deployed to over two-thirds of its customers and all the main corridors in its serving area. Foothills RTCC estimates the cost of both phases to be \$6,000,000, bringing the total cost of the proposed construction to approximately \$12,000,000.

In addition to the major outside plant projects included in the proposed construction, Foothills RTCC will be adding a new central office switch. The new switch will be a "soft switch." The soft switch utilizes Internet protocol technologies which allow more efficient call routing and updated special calling features and functions for customers. Given the fact that the manufacturer has issued a notice phasing out support for the existing switch, Foothills RTCC feels it necessary to replace the old switch in order to continue to provide reliable and updated service to the public.

Foothills RTCC estimates the change-out to cost \$2,000,000. While not all costs will be associated with the switch itself, additional costs will arise in the replacement of old remotes in the field so that they may interface the new switch.

Foothills RTCC does not anticipate that the proposed construction will compete with any public utility, corporation, or persons providing telecommunications services within its service area. However, Foothills RTCC does expect the proposed construction to compete with cablevision firms within the service area.

#### Financing

The proposed construction of new facilities throughout Foothills RTCC's exchanges and the replacement of the main central office switch will have a total estimated project cost of \$14,000,000. Foothills RTCC proposes to finance the cost of the construction of these new facilities through a private loan with CoBank in the amount of \$8,500,000, with the rest to come from general funds. The interest rate of the loan will be 5.29 percent. Additionally, Foothills RTCC does not anticipate seeking any rate adjustments as a result of the construction expenditures associated with the proposed construction.

#### Discussion and Findings

The proposed construction will result in a significant expansion of the services available to subscribers and enhance Foothills RTCC's ability to maintain its facilities and provide service to customers. However, the planned construction is extensive, with substantial costs, and is designed primarily for Foothills RTCC to support services that

may be beyond the jurisdiction of the Commission.<sup>2</sup> The Commission recognizes that the General Assembly has found that the provision of broadband and other state-of-the-art telecommunications technologies are an “essential element to the Commonwealth’s initiative to improve the lives of Kentucky citizens...”<sup>3</sup> Nevertheless, the Commission remains obligated to ensure that Foothills RTCC’s ability to offer safe, adequate, and reasonable basic local exchange service is not adversely affected.<sup>4</sup> Foothills RTCC should carefully account for the costs associated with the construction of these facilities and properly allocate those costs to jurisdictional and non-jurisdictional services, respectively.<sup>5</sup>

As to the proposed financing, this case is complicated by the passage of House Bill 337 in the 2006 session of the Kentucky General Assembly. Prior to enactment of House Bill 337, all assumptions of liability by telephone companies required the pre-approval of the Commission pursuant to KRS 278.300. With passage of House Bill 337, however, a distinction has been drawn between financing used for basic service and

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<sup>2</sup> KRS 278.5462 provides, in part, that the provision of broadband services is not subject to state administrative regulation. However, the Commission retains authority to investigate and resolve complaints stemming from broadband service and authority to arbitrate and enforce interconnection agreements. Interconnection agreements may include provisions related to remote terminals and central office facilities which may incorporate broadband services.

<sup>3</sup> KRS 278.546(1).

<sup>4</sup> KRS 278.542(1)(n).

<sup>5</sup> The Commission retains the authority to review the reasonableness of such accounting procedures when considering adjustments of rates for basic local exchange service.

financing used for non-basic service.<sup>6</sup> Under current law, “nonbasic services are exempt from action or review by the commission under . . . KRS 278.300. . . .”<sup>7</sup> Basic service, however, remains subject to KRS 278.300.

The Commission, of course, must give effect to the plain and ordinary meaning of both KRS 278.300 and KRS 278.544(4).<sup>8</sup> Any construction which avoids a conflict between the two statutes while giving effect to both is preferred.<sup>9</sup> In cases such as this, where it is impractical or impossible to accurately allocate the debt proposed to be assumed and where at least some of the debt is clearly to be used by the telephone company to aid in the provision of basic service, KRS 278.300 should apply. In other words, only in cases where the proposed assumption of debt may be specifically and completely allocated to the provision of non-basic service will KRS 278.544(4)’s exemption from review under KRS 278.300 apply. The application confirms that is not the case here.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the \$8.5 million of new debt is for a lawful purpose within Foothills RTCC’s corporate purposes, is necessary and appropriate for and consistent with the proper performance of its service to the public, is reasonably necessary and

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<sup>6</sup> See KRS 278.544(4).

<sup>7</sup> Id.

<sup>8</sup> See KRS 446.080.

<sup>9</sup> See Commonwealth v. Phon, 17 S.W.3d 106, 108 (Ky. 2000) (“...statutes should be construed in such a way that they do not become meaningless or ineffectual”).

appropriate for such purposes, and will be used to facilitate the provision of basic service. Accordingly, the application should be approved.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that Foothills RTCC should be authorized to proceed with the proposed construction as set forth in its application and described herein.

IT IS THEREFORE ORDERED that:

1. Foothills RTCC is granted a Certificate of Public Convenience and Necessity to construct new facilities and upgrade existing facilities as set forth in its application and as described in this Order.

2. Should the costs of the construction authorized herein exceed by more than 10 percent the estimated costs contained in the application, Foothills RTCC shall immediately notify the Commission in writing of the adjustment and include an explanation of the additional costs for the Commission's approval.

3. As provided for in this Order, Foothills RTCC shall maintain records that clearly and sufficiently document the proper allocation of costs for jurisdictional and non-jurisdictional services provided as a result of this construction project.

4. Foothills RTCC is authorized to borrow \$8.5 million in new debt as described in the application.

5. The proceeds shall be used to fund construction, as set forth herein.

6. Foothills RTCC shall agree only to such terms and prices that are consistent with parameters set out in its application.


7. The proceeds from the transactions authorized herein shall be used only for the lawful purpose set out in the application.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of July, 2008.

By the Commission

ATTEST:

  
Executive Director *for Stephanie Stumbo*  
*by permission*