

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO RELOCATION OF THE)
SERVICE BOUNDARY LINE BETWEEN SOUTH) CASE NO.
CENTRAL RURAL TELEPHONE AND) 2009-00115
WINDSTREAM COMMUNICATIONS)

O R D E R

On March 16, 2009, South Central Rural Telephone Cooperative Corporation, Inc. ("South Central") filed with the Commission a petition on behalf of approximately 108 residents in northern Hart County, Kentucky. Within the Petition, South Central states that those particular residents have ongoing issues related to the provision of certain services within their area. Specifically, South Central's petition states:

One of the problems for these folks is 911 service. Although they live in Hart County, if they have an emergency they have to call Elizabethtown [Hardin County] and it then gets rerouted to Munfordville [Hart County]. This is not a good situation and according to them may have even cost someone their life. They are also complaining vehemently about no provisions of broadband services by their present provider. While we sympathize with these folks and their pleas for broadband services we are bound by the exchange boundary.

In the petition, South Central further states that the Commission should consider "reallocating the boundary between the current boundary to the county line in north Hart County." South Central states that the territory in question is serviced by Windstream Communications.

South Central is a rural incumbent local exchange carrier providing service for all areas within Metcalf County and in certain portions of Monroe, Barren, LaRue, and Hart

counties. Windstream Communications is the parent company of Windstream Kentucky East, LLC. (“Windstream East”). Windstream East is an incumbent local exchange provider and serves a number of Kentucky counties, including certain portions of Barren, LaRue, and Hart counties. Incumbent local exchange providers all have defined service boundaries that outline the territories to which they are obligated to provide basic telephone services. This territorial boundary obligation was solidified by the enactment of the federal 1996 Telecommunications Act on February 8, 1996.¹ The geographic areas served by an incumbent carrier as of February 8, 1996 are to be continually served by that incumbent, unless otherwise ordered.

In reviewing South Central’s petition, the Commission has discerned that South Central would like for the Commission to determine whether the geographic service boundary line between South Central and Windstream East within the northern section of Hart County should be moved. The Commission has also discerned that a problem may exist in the routing of 911 emergency calls by residents living within northern Hart County. The emergency calls from within that area are being sent to the Public Safety Answering Point (“PSAP”) in Elizabethtown and then to the PSAP in Munfordville, which, due to the time delay for facilitating the transfer of information, may delay the deployment of emergency personnel. From the petition, the Commission discerns that several Hart County residents dislike the level of available broadband services in their area. By submitting the petition, South Central is requesting that the Commission

¹ Telecommunications Act of 1996, Pub. L. No. 104104, 110 Stat. 56 (amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*).

address issues related to incumbent responsibilities for PSAPs and the responsibilities for the deployment of broadband services.

To begin with the issue of broadband, the Commission finds that it does not have the jurisdiction to compel any carrier to specifically extend or provide broadband services in a particular territory. This prohibition against Commission action is outlined in KRS 278.5462, which provides that the provision of broadband services shall be market-based and not subject to state regulation. State agencies are prohibited from imposing requirements upon broadband providers regarding the availability of facilities or equipment or the rates, terms, and conditions for the provision of broadband. Given this statutory restriction, the Commission is not able to go forward with an investigation into the concerns of the residents of northern Hart County, as enumerated in the petition.

As to the remaining issues concerning the routing of emergency calls to PSAPs and the relocation of incumbent territory boundaries, the Commission finds that the petition, in its present form, lacks sufficient specificity to enable the Commission to move forward with an investigation into these particular issues. To begin, the Commission notes that, since the passage of the 1996 Telecom Act, it has not addressed the potential *involuntary relocation* of service boundaries for any Kentucky incumbent.² As this issue would be one of first impression, South Central (or any petitioning party) would need to satisfactorily outline the basis for invoking the

² The Commission has previously addressed incumbent boundary disputes and formally resolved the locations of incumbent boundaries. The Commission has also previously addressed cases in which incumbents have voluntarily exchanged territories, thereby changing their boundaries. However, the questions in the petition, as currently styled, have not been addressed by prior Commission Orders.

Commission's jurisdiction to resolve that issue. The petition, in its present form, fails to provide that information. Additionally, as the petition alleges that the boundary line issue concerns another incumbent, South Central would need to specifically file a complaint against that incumbent or plead the necessity of making that incumbent a party to the action. The petition, in its present form, does not make such a declaration. Lastly, South Central's statement that the Commission should consider "reallocating the boundary between the current boundary to the county line in north Hart County" is not sufficiently clear in meaning to direct the Commission on South Central's prayer for relief.

As to the issue of the routing of 911 calls to local PSAPs, the Commission has authority to address 911 telephone services of landline and wireless providers.³ The Commission's authority over this issue includes investigating the routing of emergency calls to local PSAPs. However, the substance of South Central's petition, in its current form, does not plead with sufficient specificity, for example, the exact discrepancy in emergency response time for residents of northern Hart County, as compared to other residents within the South Central or Windstream East service areas. Details about this type of information are crucial for the Commission's analysis of how to proceed with an investigation.

Although the petition outlines at least two issues that could be addressed by the Commission, significant amendments are needed to properly frame the legal basis for any Commission decisions by final Order, particularly if a final Order would drastically affect any incumbent's provision of service within a county; and amendments are

³ See KRS 278.542(1)(d).

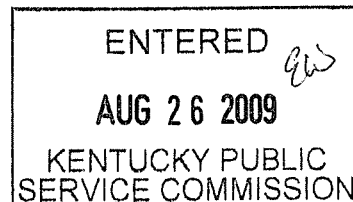
needed to provide enough detail about the emergency service complications being experienced within the geographic area concerned.

The petition will therefore be dismissed without prejudice. South Central may file a new complaint or petition with the Commission and should, at the very least, incorporate the Commission's findings as outlined within this Order.⁴

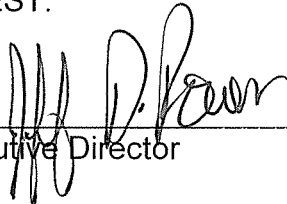
IT IS HEREBY ORDERED that:

1. The petition is dismissed without prejudice.
2. South Central shall have leave to file a new petition or complaint on this issue, in accordance with the Commission's decision provided herein.
3. This matter is closed and removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

⁴ South Central may expand the substance of its future petition or complaint to add issues not addressed within its current filing. The Commission also notes that it has previously adopted the position requiring that those representing the interests of others before the agency be licensed attorneys. Any future petition or complaint would need to be filed by an attorney licensed to practice in Kentucky. Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. PSC June 15, 1981) at 2. See also Case No. 2004-00348, Howard Keen v. Carroll County Water District #1 (Ky. PSC Oct. 15, 2004).

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