

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Cellular Properties Petition for Commission Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc. in the State of Illinois Pursuant to 47 C.F.R. Section 54.207(c))	

ORDER

Adopted: March 7, 2011

Released: March 7, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This order addresses a request filed by Cellular Properties, Inc. (Cellular Properties) pursuant to section 54.207 of the Commission’s rules.¹ Cellular Properties requests the Commission’s concurrence with a proposal by the Illinois Commerce Commission (Illinois Commission) to redefine the service area of the Wabash Telephone Cooperative Inc. (Wabash Telephone), a rural telephone company, in Illinois. For the reasons discussed below, we consent to the Illinois Commission’s proposed service area designation, subject to the condition that Wabash Telephone disaggregate and target the universal service high-cost support it receives. We therefore refer to the Illinois Commission the issue of whether Wabash Telephone should be permitted or required to disaggregate and target the support it receives.

II. BACKGROUND

A. Legal Framework

2. The Communications Act of 1934, as amended (Act), requires the Commission to develop universal service policies to ensure, among other things, that consumers in rural and high cost areas have services that are reasonably comparable to those provided in urban areas at reasonably comparable rates.² In order to receive federal universal service support, a telecommunications carrier must be designated an eligible telecommunications carrier (ETC) and must offer the supported services throughout that entire service area.³ If an area is served by a rural telephone company, the Act defines the

¹ See Cellular Properties Petition for Commission Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc. in the State of Illinois Pursuant to 47 C.F.R. Section 54.207(c), CC Docket No. 96-45 (filed Mar. 20, 2009) (Cellular Properties Petition); 47 C.F.R. § 54.207.

² 47 U.S.C. § 254(b).

³ 47 U.S.C. § 254(e) (stating that only an ETC is “eligible to receive specific Federal universal service support”). State commissions have the primary responsibility for performing ETC designations. See 47 U.S.C. § 214(e)(2). The Commission, however, has authority to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction” of a state commission. 47 U.S.C. §214(e)(6).

service area for the purpose of designating an ETC to be the rural telephone company's entire study area.⁴ Recognizing that competitive ETCs might not be able to serve entire rural study areas, the Act allows for the redefinition of rural service areas if the Commission and the appropriate state commission agree on a new definition or set of definitions.⁵

3. Section 54.207 of the Commission's rules sets forth the procedures for considering petitions seeking to redefine a rural service area. If a state commission has proposed to redefine a rural service area, that commission or any interested party may submit that proposed redefinition to the Commission for its approval.⁶ After seeking comment on the proposed redefinition, the Commission evaluates the proposed redefinition and determines whether it should initiate a proceeding to determine if the proposed redefinition should be approved. If the Commission has not initiated a proceeding within 90 days of seeking comment on a proposal, the proposed redefinition is deemed approved.⁷ The Commission may also initiate a proceeding on its own motion to consider redefining a rural service area.⁸ If the Commission ultimately proposes to redefine a rural service area, it then submits its proposed redefinition to the appropriate state commission for approval.⁹ In either case, a proposed redefinition does not take effect until the Commission and the appropriate state commission agree on a single redefinition.¹⁰ The Wireline Competition Bureau has delegated authority to act on redefinition requests.¹¹

4. In evaluating the merits of a proposed redefinition of a rural service area, the Commission historically has primarily focused on minimizing cream-skimming and assessing the impact of any redefinition on the ability of the affected rural incumbent local exchange carrier (LEC) to serve its entire rural service area.¹² Furthermore, as part of its public interest analysis, the Commission requires that proposed service areas encompass "entire communities," which generally correlate to a rural telephone company's individual wire centers, and generally favors redefinition if it will promote other universal service goals.¹³

5. *Cream-skimming.* Cream-skimming occurs when an entity offers service only to those customers who are the least expensive to serve.¹⁴ The Commission has concluded in the past that

⁴ See 47 U.S.C. § 214(e)(5); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880-81, paras. 187-88 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

⁵ See 47 U.S.C. § 214(e)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 8880-81, paras. 187-88.

⁶ 47 C.F.R. § 54.207(c)(1).

⁷ 47 C.F.R. § 54.207(c)(3)(ii).

⁸ 47 C.F.R. § 54.207(d).

⁹ 47 C.F.R. § 54.207(d)(1).

¹⁰ 47 C.F.R. §§ 54.207(c)(3)(i), 54.207(d)(2).

¹¹ 47 C.F.R. § 54.207(e).

¹² When initially implementing section 254, the Commission concluded that requiring competitors to serve an entire rural study area would prevent them from targeting only the least expensive customers to serve, thereby undermining the ability of the incumbent LEC to provide service to entire study area. *Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189; see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6392, para. 48 (2005) (*ETC Designation Order*); *id.* at 6404, para. 74. The concept of serving only the least expensive customers to serve has been described as "cream-skimming."

¹³ *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, 6438, para. 33 (2004) (*Highland Cellular Order*).

¹⁴ See *Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

population density is a good metric for approximating the costs of serving an area—an area of high population density usually has lower average costs, whereas an area of low population density usually has higher average costs.¹⁵ Thus, one means of evaluating a proposed redefinition to guard against cream-skimming has been to compare the population density of the wire centers in which the competitive ETC seeks to provide service against that of the wire centers in the study area in which the competitive ETC does not seek to provide service.¹⁶ The Commission has considered the resulting density ratio as one factor in deciding whether to approve the redefinition request. In addition to the density ratio, the Commission has considered whether a proposed redefinition comes from a competitive ETC “deliberately seeking to enter only certain portions of these companies’ study areas in order to cream-skim,”¹⁷ whether the rural LEC has disaggregated (i.e., targeted) high-cost universal service support to its high-cost areas,¹⁸ and the disparity between the population densities of the wire centers in a rural service area.¹⁹

6. *Impact on Rural Service.* In assessing the impact of a proposed redefinition on a rural telephone company’s ability to serve its entire rural service area, the Commission has considered the costs of competitive entry on the rural incumbent as well as the administrative burden caused by redefinition.²⁰ The Commission has noted that competitive entry has no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve under the current rules²¹ and that disaggregating (i.e., targeting) high-cost universal service support to a rural incumbent’s highest-cost areas further shields the company from harmful cream-skimming.²² The Commission has also noted that because redefinition “merely enables competitive ETCs to serve areas

¹⁵ See *ETC Designation Order*, 20 FCC Rcd at 6392–95, paras. 48–53.

¹⁶ *Id.*; see also *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, 1578–79, para. 34 (2004) (*Virginia Cellular Order*).

¹⁷ *Virginia Cellular Order*, 19 FCC Rcd at 1578, para. 32.

¹⁸ See, e.g., *Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 23532, 23543–44, paras. 28, 31 (Wireline Comp. Bur. 2002) (*RCC Holdings Order*); *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support Washington Utilities and Transportation Commission; Asotin Telephone Co.; Century Tel of Cowiche; Ellensburg Tele. Co.; Century Tel of Washington; Hat Island Telephone Co.; Hood Canal Telephone Co., Inc.; Inland Telephone Co.; Kalama Telephone Co.; Lewis River Telephone Co.; Mashell Telecom, Inc.; McDaniel Telephone Co.; Pend Oreille Telephone Co.; Pioneer Telephone Co.; St. John, Co-operative Telephone and Telegraph Co.; Tenino Telephone Co.; The Toledo Telephone Co., Inc.; United Telephone Co. of the Northwest; Western Wahkiakum County Telephone Co.; Whidbey Telephone Co.; and Yelm Telephone Co.*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 9921 (Common Carrier Bur. 1999) (*Washington Redefinition Order*). The Commission adopted rules regarding how carriers may disaggregate and target their support in 2001. See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking and Report and Order, 16 FCC Rcd 11244, 11299–309, paras. 136–64 (2001); 47 C.F.R. § 54.315.

¹⁹ *Virginia Cellular Order*, 19 FCC Rcd at 1579 n.110.

²⁰ See 1996 *Recommended Decision*, 12 FCC Rcd at 179–80, paras. 172–74.

²¹ See, e.g., *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 43.

²² See *RCC Holdings Order*, 17 FCC Rcd at 23543–44, paras. 28, 31.

that are smaller than the entire [rural] study area,” redefinition does not in and of itself increase the administrative burdens of rural incumbents.²³

7. *Entire Communities.* To deter cream-skimming and ensure that a competitive ETC is “less likely [to] relinquish its ETC designation at a later date,” the Commission has held that competitive ETCs should commit to serve a “minimum geographic area” within a rural service area.²⁴ In the vast majority of cases, this minimum geographic service area is a rural telephone company’s individual wire center, which typically corresponds to town or county boundaries and thus ensures that competitive ETCs will serve entire communities.²⁵

8. *Other Universal Service Goals.* The Commission also historically has considered whether a proposed redefinition would further other universal service goals in assessing the public interest. For example, smaller, contiguous service areas promote the goal of competitive neutrality between incumbents and competitive entrants; accordingly, in the *Universal Service First Report and Order*, the Commission stated that it favored proposals that redefine a large, non-contiguous service area as several smaller, contiguous service areas.²⁶ Similarly, the Commission has recognized that some areas may be so sparse and costly to serve that few, if any, carriers would build out their networks to those areas absent universal service support.²⁷

B. Request to Redefine a Rural Service Area

9. On February 27, 2008, the Illinois Commission designated Cellular Properties an ETC for portions of its licensed service area in Illinois.²⁸ As part of that designation, the Illinois Commission proposed to redefine the service area of the Wabash Telephone, a rural telephone company.²⁹ On March 20, 2009, Cellular Properties filed a petition asking the Commission to consent to the redefinition of the service area of the Wabash Telephone Cooperative in Illinois.³⁰ Cellular Properties seeks to serve the Bible Grove, Louisville, and Xenia wire centers in the Wabash Telephone rural service area.³¹ The average population density for these wire centers is 19.89. The average population density for the remaining wire centers in Wabash Telephone’s service area is 13.76.³² The served-to-unserved density ratio for this proposed redefinition is 1.45. The Commission initiated a proceeding on Cellular Properties’ request on July 2, 2009.³³ Wabash Telephone did not file comments.

²³ *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 44.

²⁴ *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

²⁵ *Id.*; *ETC Designation Order*, 20 FCC Rcd at 6406, paras. 78–79.

²⁶ *Universal Service First Report and Order*, 12 FCC Rcd at 8882, para. 190.

²⁷ See *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33 (noting that “consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas”).

²⁸ See Cellular Properties, Inc., Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(2), ICC Docket No. 07-0154, Order (Feb. 27, 2008) (*Illinois Redefinition Order*).

²⁹ *Id.* at 57. Wabash Telephone’s study area code is 341088.

³⁰ Cellular Properties Petition at 1. The Appendix contains the proposed wire-center level redefinition of Wabash Telephone’s service area.

³¹ *Id.* at 12.

³² *Id.*

³³ *Initiation of a Proceeding to Consider a Petition Filed by Cellular Properties, Inc. for Agreement in Redefining the Service Area of Wabash Telephone Cooperative, Inc.*, Public Notice, CC Docket 96-45, 24 FCC Rcd 8968 (Wireline Comp. Bur. 2009). Cellular Properties was the only party to comment on its petition.

III. DISCUSSION

10. We conditionally consent to the proposed redefinition of Wabash Telephone's service area. As explained below, the proposed redefinition may pose cream-skimming concerns unless Wabash Telephone disaggregates the high-cost support that it is currently receiving.³⁴ We find, however, the Illinois Commission is best suited to determine whether Wabash Telephone should be permitted or required to disaggregate support. We therefore refer to the Illinois Commission the issue of whether Wabash Telephone should be permitted or required to disaggregate high-cost support and condition our consent to the proposed redefinition on Wabash Telephone actually disaggregating and targeting the universal service high-cost support it receives.

11. The density ratio of Cellular Properties' proposed redefinition is 1.45.³⁵ We acknowledge that the Commission has denied several redefinition requests for which there were slightly lower served to unserved population density ratios than the 1.45 ratio presented here.³⁶ We agree with Cellular Properties, however, that the Commission's redefinition analysis has never been so rigid as to focus only on the density ratio.³⁷ In this instance, we focus on the potential for disaggregation to limit our concerns about potential cream-skimming. If Wabash Telephone were to disaggregate its support, we believe that this would guard against any potential cream-skimming concerns and insulate the Wabash Telephone from any impact that Cellular Properties' entry might have on its ability to continue to serve its rural populace.³⁸

12. The Illinois Commission can permit (or even require) Wabash Telephone to disaggregate its universal service support.³⁹ In the *Washington Redefinition Order*, the Bureau approved the redefinition of all rural service areas in the state of Washington so long as the affected rural carriers disaggregated high-cost support.⁴⁰ We think similarly conditioning our approval here is appropriate. The Illinois Commission, however, has not yet had an opportunity to determine whether Wabash Telephone should disaggregate and target its universal service support to its highest-cost wire centers. Consistent with precedent, we believe disaggregation in the context of the instant redefinition request would minimize cream-skimming concerns, and we thus refer this issue to the Illinois Commission.

13. Turning to the other factors we must consider before consenting to a proposed redefinition, we do not believe that redefining Wabash Telephone's service area at the wire-center level would adversely impact its ability to serve its rural community (assuming, as discussed above, that Wabash Telephone disaggregates its support) or that redefinition would increase the administrative burdens on Wabash Telephone.⁴¹ We note that Wabash did not file comments in response to Cellular

³⁴ Wabash Telephone has not disaggregated its high-cost universal service support. See Universal Service Administrative Company, Disaggregation Checklist: IL, <http://www.usac.org/hc/tools/disaggregation/checklist/illinois.xls> (noting that Wabash Telephone chose path "1" regarding disaggregation—i.e., that it chose not to disaggregate).

³⁵ See *supra* paras. 5, 9.

³⁶ Cellular Properties Petition at 13.

³⁷ *Id.*

³⁸ See *supra* paras. 6–7.

³⁹ Cellular Properties Petition at 11; see also 47 C.F.R. § 54.315(b)(4) ("A state commission may require . . . upon petition by an interested party . . . the disaggregation and targeting of support . . .").

⁴⁰ *Washington Redefinition Order*, 15 FCC Rcd at 9927–28, paras. 7, 9 (finding the requests to redefine rural service areas and disaggregate support "inextricably intertwined" and finding redefinition appropriate only because the disaggregation request was "designed to address opportunities for 'cream-skimming' by competitors").

⁴¹ See *supra* para. 6.

Properties' petition for redefinition. We also note that Cellular Properties proposes to serve three complete wire centers, therefore comporting with the Commission's "entire communities" policy.⁴²

14. Accordingly, we grant the petition for redefinition filed by Cellular Properties conditioned on Wabash Telephone disaggregating and targeting its universal service support as permitted or required by the Illinois Commission. We will forward this order to the Illinois Commission and ask that it treat this petition as a request for disaggregation under section 54.315(b)(4) of our rules.

IV. ORDERING CLAUSES

15. IT IS ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207 of the Commission's rules, 47 C.F.R. § 54.207, and the authority delegated by section 54.207(e) of the Commission's rules, 47 C.F.R. § 54.207(e), the request filed by Cellular Properties, Inc. to redefine the service area of the Wabash Telephone Cooperative, Inc. IS CONDITIONALLY GRANTED to the extent discussed herein.

16. IT IS FURTHER ORDERED that this order SHALL BE transmitted to the Illinois Commerce Commission and the Universal Service Administrative Company.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

⁴² See *supra* para. 7.

APPENDIX

Proposed Redefinition of Wabash Telephone Cooperative

Wire Center	CLLI Code	Population	Land Area (sq. miles)	Density
Bible Grove*	BBGVILXE	968	69.46	13.94
Louisville*	LSVLILXE	2303	82.04	28.07
Xenia*	XENIILXE	1147	70.63	16.24
Browns	BRNSILXE	945	58.51	16.15
Cisne	CISNILXE	1976	97.88	20.19
Crisp	CRSPILXE	532	50.1	10.62
Geff	GEFFILXE	1211	72.02	16.81
Mount Erie	MTERILXE	1097	140.22	7.82
Orchardville	OCVLILXE	406	29.55	13.74

* Wire centers that Cellular Properties has been conditionally designated to serve.