

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Kingsgate Telephone, Inc.	)	
Petition for Waiver of the Definition of	)	
“Study Area” in the Appendix-Glossary	)	
of Part 36	)	

**OPPOSITION OF AT&T**

ETS Telephone Company (ETS), f/k/a Kingsgate, is a local exchange carrier that has the dubious distinction of the Commission treating it as an incumbent local exchange carrier (ILEC) for the purpose of its high-cost universal service support receipts even though it is, as the state commission (the Public Utility Commission of Texas) properly concluded, a competitive local exchange carrier (CLEC) that operates entirely in the study areas of unaffiliated ILECs. As a consequence, ETS draws high-cost support from the federal universal service fund (FUSF) as though it were a rate-of-return ILEC, while unaffiliated ILECs serving the same geographic areas (and their customers) receive much less or no high-cost support. The amount of federal high-cost support ETS has received over the years thus is exponentially more than it would have received if, like the Texas Commission, the Commission had appropriately treated ETS as a CLEC.

Understandably, ETS would like to perpetuate this unorthodox arrangement in order to continue obtaining as much money as it can from the FUSF for as long as it can. And so, at the

Wireline Competition Bureau's direction,<sup>1</sup> it recently filed a petition requesting that the Commission waive the study area definition in Part 36 of the Commission's rules.<sup>2</sup> As the Bureau explained in its Order, the Commission froze all study area boundaries in 1984 to prevent carriers from establishing new study areas comprised of high-cost exchanges within their existing study areas in order to maximize their high-cost funding.<sup>3</sup> Thus, to create a new study area after 1984, a carrier must seek a waiver from the Commission of that study area boundary freeze.<sup>4</sup> In its Petition, ETS also requested that the Commission grant it whatever other waivers the Commission deems necessary to ensure that ETS continues to receive high-cost support as though it were a rate-of-return ILEC.

This is the second request that ETS has filed on the subject of its status as an ILEC. In 2008, ETS asked the Commission to clarify that no waiver of the study area definition was necessary for it to continue receiving support as though it were an ILEC and, if the Commission disagreed, ETS asked it to reconsider a 1996 decision involving Kingsgate and grant ETS a waiver of the study area definition in Part 36 retroactive to the date of that 1996 order.<sup>5</sup> The Bureau disagreed with ETS and determined that it must obtain a study area waiver.<sup>6</sup> AT&T

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<sup>1</sup> *Federal-State Joint Board on Universal Service, Kingsgate Telephone, Inc. Petition for Waiver of the Definition of "Study Area" in the Appendix – Glossary of Part 36*, CC Docket No. 96-45, Order, 29 FCC Rcd 5919 (WCB 2014) (Order).

<sup>2</sup> Petition of ETS Telephone Company, CC Docket No. 96-45 (filed Sept. 17, 2014) (Petition). On September 30, 2014, ETS filed an amended petition, correcting Exhibit 1.

<sup>3</sup> Order at ¶ 2.

<sup>4</sup> *Id.*

<sup>5</sup> Request of ETS Telephone, Inc., AAD 96-51, CC Docket No. 96-45 (filed March 12, 2008) (2008 ETS Petition).

<sup>6</sup> Order at ¶ 8.

Services, Inc. (AT&T), on behalf of Southwestern Bell Telephone Company (d/b/a AT&T Texas), opposed ETS's 2008 Petition and likewise opposes ETS's instant Petition.<sup>7</sup>

In its most recent Petition ETS acknowledges that it does not meet – and never has met – the statutory definition of an incumbent local exchange carrier (ILEC).<sup>8</sup> Section 251(h)(1) of the Telecommunications Act of 1996 defines an ILEC as a LEC that “provided telephone exchange service” in an area prior to February 8, 1996 (the date of enactment of the Telecommunications Act) and was a member of NECA by that same date, or is a successor or assign of such a LEC.<sup>9</sup> In 2014, eighteen years after it began providing service, ETS admits that it is not an ILEC as that term is defined in the statute<sup>10</sup> despite having previously told the Commission that it *was* an ILEC under section 251(h)(1).<sup>11</sup> ETS also claimed that, in any event, this statutory ILEC definition had no bearing on whether it is an ILEC for universal service purposes.<sup>12</sup> But that is not correct. By statute, ETS is not an ILEC and, under the Commission's universal service rules, non-ILEC eligible telecommunications carriers (ETCs) are competitive ETCs. Section 54.5 of

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<sup>7</sup> Opposition of AT&T Inc., CC Docket No. 96-45 (filed June 16, 2008) (2008 AT&T Opposition).

<sup>8</sup> Petition at 4.

<sup>9</sup> 47 U.S.C. § 251(h)(1).

<sup>10</sup> Petition at 4 (noting that ETS's first service date was five months after the Act's enactment in February 1996). Of course, by Commission rule, a LEC may be deemed an “ILEC” under section 251(h)(2). 47 U.S.C. § 251(h)(2). However, the Commission has never issued such a rule applicable to ETS and, to AT&T's knowledge, ETS has never sought such a ruling by the Commission.

<sup>11</sup> 2008 ETS Petition at 1 (citing Exhibit 1, which is a 2007 letter from ETS's President to the Commission stating that “[t]he purpose of this letter is to clarify for the record that ETS is an incumbent local exchange carrier under Section 251(h)(1) of the Telecommunications Act of 1996, and is therefore an ETC rather than a CETC under Section 54.5.”).

<sup>12</sup> ETS 2008 Reply Comments at 5 (“The definition of ILEC in the Act has nothing to do with universal service, but was instead primarily intended to dictate which carriers would be subject to the additional interconnection obligations established by Section 251(c). The Commission simply borrowed the term ILEC for its universal service rules because the term conveniently appeared to work for what the Commission was generally trying to establish at the time. . .”).

the Commission's universal service rules defines "competitive eligible telecommunications carrier" as "a carrier that meets the definition of 'eligible telecommunications carrier' below and does not meet the definition of an 'incumbent local exchange carrier' in § 51.5 of this chapter."<sup>13</sup>

The consequences of the Commission not treating ETS as a competitive ETC are clear. As a competitive ETC, ETS was entitled to receive the same per line federal high-cost support amount as the ILECs in whose study areas it operates.<sup>14</sup> AT&T Texas receives no federal high-cost universal service support and never has for this part of its study area. As such, ETS was never eligible for any federal high-cost support for its operations in AT&T Texas's study area. Of course, the Commission eliminated the so-called "identical support rule" in its 2011 *USF/ICC Transformation Order*<sup>15</sup> and it began phasing down CLEC and other competitive ETC high-cost support in 2012.<sup>16</sup> Thus, to the extent ETS was eligible to receive any federal high-cost support for providing service as a competitive ETC in *other* ILECs' study areas, its current support should be at 60 percent of what it should have received in 2011.<sup>17</sup> Whatever that amount might

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<sup>13</sup> 47 C.F.R. § 54.5. Section 51.5, in turn, mirrors section 251(h)(1) of the 1996 Act. 47 C.F.R. § 51.5. *See also American Samoa Government and the American Samoa Telecommunications Authority*, CC Docket No. 96-45, AAD/USB File No. 98-41, Order, 14 FCC Rcd 9974, ¶ 5 (AAD 1999) (*American Samoa Waiver Order*) ("The Commission's rules essentially adopt section 251(h)(1) of the Act's definition of incumbent LEC for purposes of determining universal service support. The Commission's high cost support rules calculate the amount of support provided to a carrier based on its status as either an incumbent LEC or a competitive eligible telecommunications carrier.").

<sup>14</sup> 47 C.F.R. § 54.307(a).

<sup>15</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, ¶¶ 502-11 (2011).

<sup>16</sup> *See* 47 C.F.R. § 54.307(e).

<sup>17</sup> *Id.*, § 54.307(e)(5). Once the Commission implements Mobility Fund Phase II, it will resume the phase out of legacy competitive ETC high-cost support.

be it surely is less than the \$2.9 million in support ETS received in 2011 as a “rate-of-return ILEC.”<sup>18</sup>

In its latest request, ETS asserts that treating it as an ILEC for universal service purposes despite not being an ILEC under section 251(h) is consistent with Commission precedent. However, the decisions on which it relies are distinguishable.<sup>19</sup> Half of the Commission orders ETS mentions address new LECs that proposed to serve areas that appear to be outside of any ILEC’s study area (i.e., truly “unserved areas” and not simply new suburban developments within an existing ILEC’s study area), which plainly is not the situation with ETS.<sup>20</sup> In the *American Samoa Waiver Order*, another order cited by ETS, the American Samoa Government created American Samoa Telephone Authority in 1998 for the purpose of taking over local

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<sup>18</sup> See USAC, FCC Filings, App. HC01 (providing total high-cost monthly support amounts by provider), available at <http://www.usac.org/about/tools/fcc/filings/default.aspx>. Because it is a CLEC, ETS draws high-cost support from the Texas universal service fund (TUSF) based on the same per line support as the underlying ILECs where it operates (i.e., based on an identical support rule). Although AT&T Texas does not receive high-cost support from the TUSF – and never did for the areas in which ETS operates – other ILECs where ETS operates do, which has enabled ETS to receive about \$915,000 in the past two years from the TUSF. Until recently, carriers’ TUSF disbursement amounts were confidential so AT&T does not know how much ETS received in TUSF high-cost support prior to fiscal year 2013.

<sup>19</sup> Petition at 5-6.

<sup>20</sup> See *Westgate Communications LLC D/B/A WeavTel Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission’s Rules; Beaver Creek Telephone Company Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission’s Rules*, WC Docket Nos. 05-58, 05-69, Order, 20 FCC Rcd 13573, ¶ 13 (WCB 2005) (finding that the areas in which WeavTel and Beaver Creek intend to provide service are not within the study area of any ILEC and thus no study area waiver is necessary); *South Park Telephone Petition for Waiver of Sections 36.611 and 36.612 of the Commission’s Rules*, AAD 97-41, Order, 13 FCC Rcd 198, ¶¶ 5, 7, 14 (AAD 1997) (Colorado Commission determined that absent certification of South Park to provide service in this unserved area, it is unlikely that telephone service would be provided by the adjacent ILECs; the two ILEC trade associations, USTA and NTCA, supported South Park’s petition; and the Bureau concluded that a waiver of the definition of “study area” was unnecessary for South Park because the territory it will serve was not previously served); *Wilderness Valley Telephone Company, Inc. Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission’s Rules*, AAD 96-99, Order on Reconsideration, 13 FCC Rcd 6573 (AAD 1998) and *Wilderness Valley Telephone Company, Inc. Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission’s Rules*, AAD 96-99, Order, 13 FCC Rcd 4511, ¶¶ 1, 5 (AAD 1998) (Wilderness Valley represents that none of the surrounding ILECs exhibited interest in serving the area and no party filed comments in this proceeding).

exchange service operations from a government agency. Unlike ETS, which initiated operations in other carriers' study areas, American Samoa Telephone was the *sole* local exchange carrier on the island and the sole successor to the original local exchange carrier (i.e., the government).<sup>21</sup>

ETS also relies on a 2005 Bureau decision that deemed Sandwich Isles an ILEC for universal service purposes.<sup>22</sup> In that decision, the Bureau granted Sandwich Isles a waiver of the study area boundary freeze covering areas on the Hawaiian home lands that Sandwich Isles claimed were unserved in 1997, even though such areas were in the study area of Hawaiian Telcom.<sup>23</sup> Hawaiian Telcom is appealing this 2005 Bureau order, asserting that the Bureau ignored evidence that it provided service to the Hawaiian home lands and, as the carrier of last resort, it was required to do so by Hawaiian Administrative Rules.<sup>24</sup> Even though the status of *Sandwich Isles II* remains unsettled, there are facts that distinguish Sandwich Isles from ETS. First, Sandwich Isles claims that the Department of Hawaiian Home Lands granted it an exclusive license to serve the Hawaiian home lands.<sup>25</sup> By contrast, the Texas Commission

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<sup>21</sup> *American Samoa Waiver Order* at ¶ 17.

<sup>22</sup> *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 8999 (WCB 2005) (*Sandwich Isles II*).

<sup>23</sup> *Id.* at ¶ 15.

<sup>24</sup> Hawaiian Telcom Communications, Inc. Application for Review, CC Docket No. 96-45, at 8-9 (filed June 15, 2005) (noting that at the time of filing, it served more customers on the Hawaiian home lands than did Sandwich Isles) (Hawaiian Telcom Appeal).

<sup>25</sup> *Sandwich Isles Communications, Inc. Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification*, AAD 97-82, Memorandum Opinion and Order, 19 FCC Rcd 22268, ¶ 3 (2004). *See also*, *Sandwich Isles II* at ¶ 20 (Sandwich Isles claiming that GTE had no authority to operate in any area of the Hawaiian home lands not authorized by the Department of Hawaiian Home Lands and, thus, GTE's study area could not have included the entire Hawaiian home lands).

expressly granted ETS the authority to operate as a competitor *in other carriers' study areas*.<sup>26</sup>

This also is reflected in the Texas Commission's order designating Kingsgate as an ETC within other carrier's study areas.<sup>27</sup> Moreover, the Bureau stated in its 2005 decision that if the areas identified by Sandwich Isles in 1997 were served by another provider, that fact likely would have affected the prior Bureau and Commission decisions.<sup>28</sup> According to ETS, AT&T Texas was providing service to about 250 customers in the area ETS proposed to serve.<sup>29</sup> Finally, much of

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<sup>26</sup> See, e.g., 2008 AT&T Opposition, Exh. 2 at 5 (ETS describing its proposed service area as "fall[ing] exclusively within an area certificated to SWBT").

<sup>27</sup> See *Order No. 3, Approving/Denying Applications for Designation as Eligible Telecommunications Carrier*, Project No. 18100, at 7 (Dec. 10, 1997) (footnotes omitted & emphases added), available at [http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TX\\_CNTR\\_NO=18100&TXT\\_ITEM\\_NO=198](http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TX_CNTR_NO=18100&TXT_ITEM_NO=198):

Kingsgate Telephone, Inc. (Kingsgate) requested ETC designation in the exchanges included in its three certificates of operating authority, No. 50001, encompassing the Kingsgate Forest subdivision in Harris County, Texas, *within SWB's service territory*; 50002, encompassing approximately 31.6 square miles *within SWB's service territory in Houston, Texas*; and 50009, encompassing more than 27 square miles in the Sienna Plantation and surrounding Fort Bend and Brazoria counties, *within GTE-SW's service area* (collectively, the requested exchanges). Noting that none of the requested exchanges is served by a rural carrier, ORA recommended granting this request. Consistent with that recommendation, Kingsgate's request is granted. Pursuant to C.F.R. § 54.201(c), Kingsgate is additionally granted ETC designation for the requested exchanges.

It also is clear from this excerpt that ETS's service area described above is in non-rural carrier study areas ("Noting that none of the requested exchanges is served by a rural carrier . . ."). If ETS proposed to provide service as an ETC in a rural carrier's study area, the Texas Commission would be required to determine that it is in the public interest to designate ETS as an ETC in such areas. 47 U.S.C. § 214(e)(2).

<sup>28</sup> *Sandwich Isles II* at ¶ 15.

<sup>29</sup> See *Application of Kingsgate Telephone, Inc. for Facilities-Based Certificate of Operating Authority*, PUC Docket No. 14651, Proposal for Decision at 3, n.4 (Oct. 4, 1995), available at [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/14651\\_100\\_804550.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/14651_100_804550.PDF) (p. 25 of 50 of this document) ("Currently there are approximately 250 access lines served by SWB in the proposed service area. Kingsgate Ex. 3 at 4.").

the acreage comprising the Hawaiian home lands is unpopulated and, possibly, uninhabitable.<sup>30</sup> Again, this is in contrast to the areas where ETS provides service, which are in and around Houston, the fourth largest city in the United States.<sup>31</sup>

The last decision that ETS cites in support of its request is *Rural Telephone Service Company*.<sup>32</sup> In that proceeding, Rural Telephone Service Company (Rural) sought to expand its existing Kansas study area to include an adjacent exchange serving Bogue and Hill City, Kansas, where United Telephone Company (United) already provided service.<sup>33</sup> Importantly, the Kansas Corporation Commission (Kansas Commission) issued both Rural and United a Certificate of Convenience and Necessity (CCN) on the same day to provide service in the contested exchange and it did not object to Rural's requested waiver of the study area freeze.<sup>34</sup> However, as discussed in AT&T's 2008 Opposition, the Texas Commission awarded AT&T Texas a CCN and it awarded ETS a Certificate of Operating Authority. This latter designation carries with it fewer regulatory obligations, including no carrier of last resort requirements in AT&T Texas's and other ILECs' exchanges. For most of the period of time during which ETS has provided service, AT&T Texas had the carrier of last resort obligation to provide service to requesting customers in the ETS-served developments<sup>35</sup> and AT&T Texas deployed facilities near or abutting these developments.<sup>36</sup>

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<sup>30</sup> Hawaiian Telcom Appeal at 10. *See also Sandwich Isles II* at n.4 (describing the Hawaiian home lands as 70 non-contiguous parcels of land that total 203,500 acres on the six major Hawaiian Islands).

<sup>31</sup> *See* <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>32</sup> Petition at 5 (citing *Petition for Waiver Filed by Rural Telephone Service Company*, AAD 96-38, Memorandum Opinion and Order, 12 FCC Rcd 785 (CCB 1997) (*Rural Telephone Service Company*)).

<sup>33</sup> *Id.* at ¶ 4.

<sup>34</sup> *Id.* at ¶ 12 & n.24.

<sup>35</sup> *See infra* n.48.

None of the pleadings from the *Rural Telephone Service Company* docket appears to be available from the Commission's Office of the Secretary (either through ECFS or the Reference Information Center) so AT&T cannot review all of the information presented by the parties, including the Kansas Commission. However, it is clear from other Commission orders that United and the carrier to which it was attempting to sell the contested exchange, Classic Telephone, Inc., had a contentious relationship with Bogue and Hill City. Both cities granted Rural a franchise agreement but refused to grant a similar request by Classic.<sup>37</sup> The cities claimed that United's service was deficient and, as a result, Hill City terminated United's franchise agreement.<sup>38</sup> After much litigation before the Commission, the Kansas Commission, and the courts, the Kansas Commission issued the CCNs to both Rural and Classic for the same exchange and it appears the Commission permitted both entities to be treated as ILECs in that exchange for universal service purposes. This one exchange had a storied history with the Commission, including a section 253 preemption decision issued against the cities, and thus it would be a mistake to liken the backdrop of *Rural Telephone Service Company* to ETS's circumstances. With ETS, municipalities where the new developments were constructed were not complaining about AT&T Texas's service. Instead, the developers selected a CLEC to

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<sup>36</sup> 2008 AT&T Opposition at 3.

<sup>37</sup> *Classic Telephone, Inc. Petition for Emergency Relief, Sanctions and Investigation*, CCB Pol. 96-10, Memorandum Opinion and Order, 12 FCC Rcd 15619, ¶ 2 (1997).

<sup>38</sup> *See Classic Telephone, Inc. Petition for Preemption, Declaratory Rule and Injunctive Relief*, CCB Pol., Memorandum Opinion and Order, 11 FCC Rcd 13082, at ¶ 3 (1996).

provide service to these suburban greenfields because the CLEC and/or its parent had some arrangement with the developers.<sup>39</sup>

For the Commission to waive its study area freeze, it must determine that doing so is in the public interest.<sup>40</sup> In support of its public interest showing, ETS argues that it would be unfair for the Commission to upset ETS's "long-settled expectations" of receiving an undue amount of federal high-cost support and it points to the millions it has invested in its network.<sup>41</sup> "If you give ETS money, ETS will spend it" is an unremarkable proposition and one that fails to meet a public interest showing. AT&T estimates that ETS has received \$46 million in federal high-cost universal service payments since 1998,<sup>42</sup> a questionable low-interest RUS loan worth \$22.7 million in 2004,<sup>43</sup> and, in the past two years, about \$915,000 in TUSF support (as noted above, prior year disbursements were deemed confidential). ETS has used this \$70+ million to provide service to around 12,000 residential and business customers in and around Houston.<sup>44</sup>

In terms of the cost of providing telephone service, there is nothing exceptional about the developments in AT&T Texas's study area where ETS offers service. They are neither remote

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<sup>39</sup> See *infra* n.47 (quoting a Texas Commission Proposal for Decision that discusses Kingsgate's relationship with a developer).

<sup>40</sup> See Order at n.19. Additionally, the Commission also evaluates whether the state commission having regulatory authority over the transferred exchanges does not object to the transfer. *Id.*

<sup>41</sup> Petition at 6-7.

<sup>42</sup> See USAC, FCC Filings, App. HC01.

<sup>43</sup> See Eric Hanson, John C. Henry, *Some Officials Question Rural Internet Service Deal*, Houston Chronicle, Oct. 16, 2004, available at 2004 WLNR 20933413.

<sup>44</sup> See 2008 AT&T Opposition, Exh. 1. According to its most recent NECA filing, ETS has approximately 10,647 subscribers. See <https://www.neca.org/PublicInterior.aspx?id=1190> (USF 2014 Cost Data, Line 610, Col. S).

nor located in challenging terrain.<sup>45</sup> Instead, as ETS has stated, they are “quality, master-planned communities” “throughout the Houston, Texas area.”<sup>46</sup> The fact that ETS may have been the first to provide service to a new development is a reflection of some financial association it had with the developer<sup>47</sup> and/or an exclusive marketing agreement and not of AT&T Texas’s failure or refusal to offer service to the development. Indeed, until September 2011, the Texas Commission required AT&T Texas to be the carrier of last resort to consumers residing in this part of its study area.<sup>48</sup>

Although never mentioned by ETS, a factor that *does* seem relevant to the public interest analysis is whether the elimination of ETS’s support would leave ETS’s customers without service. According to the Commission’s own data, the answer is clearly no. Not only will its customers not lose access to voice telephony service, they also will not lose access to broadband service that exceeds at least 3 Mbps downstream. Using the Commission’s broadbandmap.gov search tool, it is clear that in the developments where ETS provides service (based on Exhibit 2

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<sup>45</sup> Indeed, based on AT&T’s review of the Commission’s latest version of the Connect America Model, none of the census blocks where ETS provides service in AT&T Texas’s study area is eligible for Connect America Fund Phase II support.

<sup>46</sup> 2008 AT&T Opposition, Exh. 1.

<sup>47</sup> According to a Texas Commission document, Kingsgate’s parent company, Mid-South, “is an equity partner in the development of Kingsgate Forest. As part of its investment contract, Mid-South acquired the option to develop various utilities, including telephone service. Kingsgate is a subsidiary of Mid-South that will provide telecommunications services within and outside of the development.” *Application of Kingsgate Telephone, Inc. for Facilities-Based Certificate of Operating Authority*, Proposal for Decision, SOAH Docket No. 473-95-1200, PUC Docket No. 14651, p. 28, ¶¶ 10-11 (Oct. 4, 1995) (p. 1 of the pdf), available at [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/14651\\_100\\_804551.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/14651_100_804551.PDF).

<sup>48</sup> Section 65.151(b) of the Texas Public Utility Regulatory Act became effective on September 1, 2011. This subsection states: “A transitioning company is not required to fulfill the obligations of a provider of last resort in a deregulated market.” At the time, AT&T Texas was classified as a “transitioning company,” and the exchanges in which ETS operate were classified as “deregulated markets.” Therefore, effective September 2011 AT&T Texas no longer had provider of last resort obligations in the areas in which ETS operated.

attached to ETS's Petition), there are multiple broadband providers. Again, this is not surprising given that these developments are in and around suburban Houston, the country's fourth largest city. Attached to these comments are the results of AT&T's queries using the community name, city, and zip code supplied by ETS in Exhibit 2. We list the providers in the order in which they are listed on broadbandmap.gov. While participation in the Commission's broadband reporting effort is voluntary, we note that of the 33 communities named by ETS as ones that it serves as an "ILEC," it listed itself as a provider offering broadband service at advertised speeds in excess of 3 Mbps downstream in only 20 of those communities.

For the reasons provided above, the Commission should deny ETS's Petition requesting that the Commission waive its definition of "study area" found in Part 36 of the Commission's rules.

Respectfully Submitted,

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October 22, 2014

Its Attorneys

**ATTACHMENT**

**Broadband Providers in Communities Listed by ETS in Exh. 2 of its Petition**

<b>Community Name</b>	<b>Service Date</b>	<b>City</b>	<b>Zip Code</b>	<b>Broadband Providers</b>
Aliana	5/18/2008	Richmond	77407	Incomplete data set as per NBM: GHz Wireless, Verizon Wireless, AT&T Mobility, T-Mobile, Cricket, Sprint. Per the NBM, the following providers offer broadband in this zip code: Comcast, GHz Wireless, AT&T Mobility, Verizon Wireless, T-Mobile, JAB Wireless, Cricket, Sprint, Platinum Equity
Blackhorse	12/1/2000	Cypress	77433	Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Platinum Equity, Sprint
Berkshire	5/1/2002	Houston	77084	Comcast, GHz Wireless, Verizon Wireless, ETS, AT&T Mobility, T- Mobile, JAB Wireless, Cricket, Sprint, Platinum Equity
Coles Crossing	1/20/1998	Cypress	77433	Level 3, Comcast, Verizon Wireless, AT&T Mobility, T-Mobile, Cricket, Sprint, Platinum Equity
Cardiff Ranch	4/6/2010	Katy	77494	Comcast, ETS, Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Cypress Creek Lakes	3/5/2004	Cypress	77433	Comcast, AT&T Texas, Charter, Verizon Wireless, ETS, T-Mobile, Cricket, Sprint, Platinum Equity, tw telecom
Cinco Northwest	5/3/2012	Katy	77494	Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Cypress Creek Ranch	5/18/2001	Cypress	77433	Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Platinum, Sprint
Cinco Southwest	1/26/2007	Katy	77494	Comcast, GHz Wireless, Consolidated, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, JAB, Cricket, Sprint
Cinco West at Seven Meadows	7/20/2005	Katy	77494	GHz, Consolidated, Verizon Wireless, ETS, Mobility, T-Mobile, JAB Wireless, Cricket, Sprint

Gleannloch Farms	2/3/1998	Spring	77379	Comcast, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Sprint, Platinum Equity
Village at Gleannloch Farms	5/1/2008	Spring	77379	Comcast, Verizon Wireless, AT&T Mobility, T-Mobile, Cricket, Sprint, Platinum Equity
Grayson Lakes	6/28/2002	Katy	77494	Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Imperial Sugarland	6/13/2014	Sugar Land	77479	Level 3, GHz Wireless, Verizon Wireless, AT&T Mobility, T-Mobile, Cricket, Sprint
Long Meadow Farm	10/20/2004	Richmond	77406	Comcast, GHz, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Sprint, Platinum Equity
Lone Oak	8/6/2002	Cypress	77433	Comcast, Verizon Wireless, AT&T Mobility, T-Mobile, Sprint, Platinum Equity
Katy North Commercial	7/24/2013	Katy	77449	Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Katy South Commercial	7/19/2013	Katy	77494	Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
La Centerra	3/22/2011	Katy	77494	Comcast, Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Riverstone Missouri City	6/29/2006	Missouri City	77459	Comcast, GHz Wireless, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Skynet Communications, Sprint
Riverstone Sugarland	1/27/2006	Sugar Land	77479	Comcast, ETS, GHz Wireless, Verizon Wireless, Windstream, AT&T Mobility, T-Mobile, Cricket, Skynet Communications, Sprint, Platinum Equity
Riverpark West	5/27/2002	Richmond	77469	Comcast, GHz, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Sprint, Platinum Equity
Stablegate	8/31/2000	Cypress	77429	Comcast, AT&T Texas, Verizon Wireless, ETS, T-Mobile, Cricket, Sprint, Platinum Equity, tw telecom

Sterling Lakes South	7/11/2007	Rosharon	77583	ETS, GHz Wireless, Verizon Wireless, AT&T Mobility, T-Mobile, Cricket, Skynet, Sprint
Seven Meadows	1/15/2004	Katy	77479	Comcast, GHz Wireless, Consolidated, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint
Sienna Plantation	6/17/1997	Missouri City	77459	Comcast, GHz Wireless, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Skynet, Sprint
Spring Trails	5/23/2008	Spring	77386	Comcast, Verizon Wireless, AT&T Mobility, T-Mobile, Sprint, Platinum Equity
Summerwood	7/8/1996	Houston	77044	Verizon Wireless, ETS, AT&T Mobility, T-Mobile, Cricket, Sprint
Telfair	5/26/2006	Sugar Land	77479	Comcast, ETS, GHz Wireless, Verizon Wireless, Windstream, AT&T Mobility, T-Mobile, Cricket, Skynet, Sprint
Westgate	9/24/1999	Cypress	77433	Comcast, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint, Platinum Equity
Westheimer Lakes	2/14/2005	Richmond	77406	GHz, Consolidated, Verizon Wireless, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint, Platinum Equity
Westheimer Lakes North	1/4/2006	Katy	77494	Consolidated, Verizon Wireless, ETS, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint, Platinum Equity
Williams Ranch	8/30/2007	Richmond	77469	Comcast, Verizon Wireless, tw telecom, AT&T Mobility, T-Mobile, JAB Wireless, Cricket, Sprint, Platinum, Internet America, Inc.

## CERTIFICATE OF SERVICE

I, Marquita Goins, hereby certify that on this 22nd day of October 2014, I caused a copy of the foregoing Opposition of AT&T in CC Docket No. 96-45 to be served by U.S. first-class mail, postage prepaid, on ETS's outside counsel at the following address:

Paul B. Hudson  
Davis Wright Tremaine LLP  
Counsel for ETS Telephone, Inc.  
1919 Pennsylvania Ave., NW, Suite 800  
Washington, DC 20006

/s/ Marquita Goins