

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133C
DOCKET NO. P-100, SUB 133E

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 133C

In the Matter of)	
Designation of Carriers Eligible for)	
Universal Service Support)	
)	
DOCKET NO. P-100, SUB 133E)	ORDER DESIGNATING WILKES
)	COMMUNICATIONS, INC. AS AN
In the Matter of)	ELIGIBLE TELECOMMUNICATIONS
Designation of Carrier Eligible for)	CARRIER
Universal Service Support – Petition by)	
NCUC for FCC Concurrence in)	
Redefining Specific Rural Service Area)	

BY THE COMMISSION: On November 19, 2014, Wilkes Communications, Inc. (Wilkes), filed an application seeking designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving both high cost and low-income support from the federal Universal Service Fund (USF). Since filing its application, Wilkes submitted responses to the North Carolina Utilities Commission - Public Staff (Public Staff) data requests on October 30, 2015, and January 6, 2016.

In its January 6, 2016, response, Wilkes clarified that it is seeking ETC designation in certain wire centers served by Central Telephone Company d/b/a CenturyLink (Central). These wire centers are associated with the exchanges of Elkin, Hays, Mulberry, North Wilkesboro, and State Road. While Central's study area consists of 45 wire centers, Wilkes is seeking ETC designation in only five wire centers. Central is classified as a rural telephone company for purposes of federal USF support.

Wilkes is a competing local provider (CLP) and was granted a certificate of public convenience and necessity to provide local exchange and exchange access service within North Carolina on October 2, 2003, in Docket No. P-1280, Sub 0. Wilkes provides service in its designated service area using its own fiber optic network and does not offer prepaid service.

Under 47 U.S.C. § 214(e)(2), state commissions have the primary responsibility for making ETC designations. Section 214(e)(2) also specifies that “[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone

company, the State commission shall find that the designation is in the public interest.” The Public Staff filed comments on March 22, 2016, in Docket No. P-100, Sub 133c, concluding that the designation of Wilkes as an ETC in the five Central wire centers serving the Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges is in the public interest. The Commission issued an order on March 24, 2016, requesting comments from interested parties on the Public Staff’s filing. No comments were filed in response to the Commission’s order.

PUBLIC STAFF’S MARCH 22, 2016 COMMENTS

The Public Staff noted in its March 22, 2016 comments that Section 254(e) of the Telecommunications Act of 1996 (Act)¹ provides that “only an eligible telecommunications carrier designated under section 214(e)² of this title shall be eligible to receive specific Federal universal service support.” The Public Staff stated that Section 214(e)(1)³ provides that a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area and advertise the availability of, as well as the charges to be imposed for, such services.

The Public Staff maintained that, under 47 U.S.C. § 214(e)(2), state commissions have the primary responsibility for making ETC designations. The Public Staff commented that Section 214(e)(2) also specifies that “[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”

The Public Staff stated that the Federal Communications Commission (FCC) released an order (*Report and Order*) in CC Docket No. 96-45 on March 17, 2005,⁴ setting forth guidelines for its analytical framework to be used in determining whether the public interest is served by an applicant’s designation as an ETC in an area served by a rural telephone company. The Public Staff noted that the FCC concluded that Congress did not establish specific criteria to be applied under the public interest test, but that the public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act. The Public Staff maintained that this includes the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.

¹ 47 U.S.C. § 254(e).

² 47 U.S.C. § 214(e).

³ 47 U.S.C. § 214(e)(1).

⁴ 20 FCC Rcd 6388-6395, paras. 40-53.

The Public Staff noted that in the *Report and Order*, the FCC adopted a fact-specific analysis of the public interest issue that it had used in previous orders regarding ETC designation in rural service areas.⁵ Further, the Public Staff noted that the FCC placed the burden of proof upon the ETC applicant. The Public Staff commented that, although the FCC recognized that state commissions are not prohibited from using other factors in a public interest analysis, it did encourage states to apply its analysis in reviewing the public interest issue.⁶

The Public Staff stated that the FCC concluded in the *Report and Order* that determining whether an ETC designation serves the public interest should include a cost-benefit analysis that takes into account the benefits of increased consumer choice as well as the advantages and disadvantages of the potential service offerings.⁷

The Public Staff noted that, additionally, the FCC found that the public interest analysis should include the potential for cream-skimming, i.e., the possibility that by serving a disproportionate share of the higher-density wire centers, an ETC may receive more USF support than the rural incumbent local exchange carrier (LEC), as the rural incumbent LEC's costs of serving that particular wire center are based upon the average costs for serving the entire service area. The Public Staff noted that while there is no potential for cream-skimming when a competitive carrier requests ETC designation for an entire rural service area, the issue comes into play when a carrier seeks designation in only a portion of the rural incumbent LEC's service area that constitutes a disproportionate share of its higher-density wire centers.⁸

The Public Staff stated that the FCC urged state commissions to apply its cream-skimming analysis when determining whether to designate an ETC in a rural service area. The Public Staff noted that, however, the FCC rejected a rigid standard that does not take into account individual factors such as population distributions and geographic areas of the rural incumbent LEC's service area under review.⁹

The Public Staff noted that it does not have access to the current data that may be available to the FCC. Therefore, the Public Staff stated that it is unable to perform the same public interest analysis the FCC did in the Virginia Cellular and Highland Cellular cases. However, the Public Staff stated that it believes it has performed an analysis that adequately assesses the public interest aspect of the ETC designation requested by Wilkes.

⁵ See *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574-81, paras. 26-39; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431-38, paras. 20-35.

⁶ See *Report and Order*, 20 FCC Rcd at 6373, para. 3.

⁷ See *supra*, at 6390-92, paras. 44-47.

⁸ See *supra*, at 6392-93, paras. 48-49.

⁹ See *supra*, at 6394-95, para. 53.

With respect to the cost-benefit analysis of Wilkes's ETC request, the Public Staff noted that Wilkes intends to offer both stand-alone and bundled services to its potential customers at a rate equivalent to \$18.50 for residential local exchange service.¹⁰ The Public Staff opined that this is competitive with Central's current rate of \$20.46 in the affected wire centers. The Public Staff also noted that Wilkes has been adding fiber to its overall network and suggests that its voice telecommunications are often of higher quality than those provided by competitors in areas in which it is currently serving. Further, the Public Staff noted that Wilkes intends to offer high-speed broadband services to its customers.¹¹

The Public Staff maintained that while it does not have access to current population density data for Central's wire centers, it has reviewed data filed with the FCC in 2004 as part of a request by North Carolina RSA Cellular Telephone Company d/b/a Carolina West Wireless (Carolina West) for ETC designation in some of Central's wire centers. The Public Staff noted that data submitted as an amendment to the original petition¹² shows that the average population density of the five wire centers at issue exceeds the average density for the remaining wire centers.

The Public Staff stated that it has attempted to review more current population data in its review of Wilkes's request and has located publically available information regarding the population densities for the counties in which Central's wire centers either wholly or partially reside. The Public Staff attached an analysis of this information as Exhibit B to its comments. The Public Staff noted that as part of its review, the Public Staff eliminated counties in which Central's wire centers comprise only a small area as well as those counties in which the population densities may be skewed due to the effect of the population densities of another carrier's wire centers within the county. The Public Staff noted that, as can be seen from the exhibit, the overall population densities of the three affected counties are less than the densities calculated for other counties, with or without the Public Staff's adjustments.

The Public Staff noted that the FCC uses population density as a surrogate for the cost of providing service, recognizing that population density is an important driver in determining the cost of providing service. However, the Public Staff commented that the FCC has recognized that population density is not the sole factor that defines high-cost areas.¹³

¹⁰ See Response to Public Staff Data Request, Item 7, filed January 6, 2016, Docket No. P-100, Sub 133c.

¹¹ See Response to Public Staff Data Request, Item 24, filed January 6, 2016, Docket No. P-100, Sub 133c.

¹² See North Carolina RSA 3 Cellular Telephone Company, Petition for Designation As An Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, Amendment filed June 22, 2004.

¹³ See *North Carolina RSA 3 Cellular Tel. Co.*, CC Docket No. 96-45, Order, 21 FCC Rcd 9151, 9157-58, para. 23 (August 14, 2006).

The Public Staff stated that it believes that the geography of a company's service area should also be taken into account. Based on its review of past cost studies involving various telephone companies operating in North Carolina, the Public Staff stated that it has found that the mountain areas are generally more costly to serve than those in other regions of North Carolina. Moreover, the Public Staff asserted that the Central wire centers in which Wilkes seeks ETC designation are in the mountains of North Carolina. The Public Staff noted that, further, the majority of Central's other wire centers are located in the foothills or Piedmont areas of North Carolina, areas with geography that is not as rugged as the five affected wire centers.

The Public Staff noted that it also has cost data from a prior Commission proceeding on determining the cost of providing universal service. The Public Staff stated that this data is derived from the Commission's proceeding in Docket No. P-100, Sub 133b, that was established for the purpose of determining the forward-looking economic cost of providing universal service in North Carolina and was filed with the FCC. The Public Staff stated that it believes that this cost data, while dated, still provides a suitable basis for determining, if not the actual cost, the relationship of per line costs between Central's various wire centers. The Public Staff further noted that this information provides actual cost information as found by the Commission in an evidentiary proceeding, rather than a proxy for cost data, as does the population density data.

The Public Staff maintained that a review of the data shows that the average cost per line for the five affected wire centers is just slightly higher than the average of the excluded wire centers. The Public Staff noted that the relationship of the per line density for the affected wire centers to the excluded wire centers is similar to the population density analysis using the data from the Carolina West ETC request filed with the FCC; that is, the average per line density for the affected wire centers is higher than the average per line density for the excluded wire centers. The Public Staff stated that, as a result, it does not believe population density is necessarily the best indicator to use in determining the cost of providing service in Central's affected wire centers in this particular instance.

Based on its analysis, the Public Staff reached the following conclusions as to whether it is in the public interest for the Commission to grant the petition of Wilkes for ETC designation:

- a. Wilkes has provided sufficient information in its petition and responses to Public Staff data requests to demonstrate that the benefits of Wilkes's ETC designation request outweigh the potential costs of designating it as an ETC.
- b. The proposed rates and range of services should provide users in the five affected wire centers of Central with more competitive and quality choices of service as well as providing these customers with more choice of broadband services.

- c. Designation of Wilkes as an ETC in the affected Central wire centers does not raise concerns about cream-skimming. While the average population density of the affected Central wire centers do appear to have a higher density, the cost data adopted by the Commission in Docket No. P-100, Sub 133b, demonstrates that population density is not the predominant factor in determining the cost in Central's wire centers. Based on this information, the per line cost of providing service in the affected Central wire centers is comparable to the per line cost of providing service in Central's remaining wire centers.

The Public Staff concluded in its comments that it believes the designation of Wilkes as an ETC in a service area comprising the wire centers served by Central in the Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges is in the public interest. The Public Staff noted that a formal recommendation on the request by Wilkes would be made in a subsequent Staff Conference.

APRIL 18, 2016 COMMISSION CONFERENCE

The Public Staff presented this matter at the Commission's Regular Commission Conference on April 18, 2016.

The Public Staff stated that it has investigated Wilkes's application and has determined that Wilkes satisfies the requirements for designation as an ETC, including the provision of the supported services using its own facilities or a combination of its own facilities and the resale of another carrier's services. The Public Staff noted that Wilkes will advertise the availability of its services, including Lifeline/Link-Up, in its proposed ETC designated service area. Furthermore, the Public Staff stated that it has determined that Wilkes is current with all Commission filing requirements to operate as a CLP in North Carolina.

The Public Staff recommended that the Commission issue an order finding that Wilkes has met the requirements to serve as an ETC in the service area comprising the wire centers serving Central's Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges; finding that it is in the public interest for Wilkes to be designated as an ETC in this service area; and designating Wilkes as an ETC for these wire centers as requested. In addition, the Public Staff recommended that the Commission inform Wilkes of the requirement of filing Lifeline/Link-Up reports every six months ending June and December and that Self-Certification is the sole procedure authorized by the Commission for enrollment in Lifeline/Link-Up. The Public Staff further recommended that the Commission inform the FCC that Wilkes is seeking a modified service area that consists of five Central wire centers, that the Commission has concluded that providing high cost support in the modified service area is in the public interest, and that the Commission requests the FCC's concurrence.

FCC Rule §54.207(c) specifies that, "[i]f a state commission proposes to define a service area served by a rural telephone company to be other than such company's study

area”, the state commission (or other party seeking the FCC’s agreement) shall submit a petition to the FCC seeking the FCC’s agreement.

WHEREUPON, based upon the entire record on this matter, the Commission concludes that good cause exists to designate Wilkes Communications, Inc. as an ETC in the service area comprising the wire centers serving Central’s Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges. The Commission concludes that Wilkes has met the requirements to serve as an ETC in the Elkin, Hays, Mulberry, North Wilkesboro, and State Road exchanges and that it is in the public interest for Wilkes to be designated as an ETC in this service area. In addition, the Commission finds it appropriate to inform Wilkes of the Commission requirement to file Lifeline/Link-Up reports every six months ending June and December and to inform Wilkes that Self-Certification is the sole procedure authorized by the Commission for enrollment in Lifeline/Link-Up.

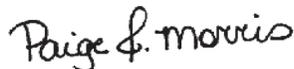
The Commission further concludes that it is appropriate to petition the FCC in accordance with FCC Rule §54.207(c) to seek the FCC’s concurrence with the proposed service area redefinition. The Commission’s decision to redefine the service area noted herein is subject to the review and final agreement of the FCC. Accordingly, the Commission will file a petition with the FCC and request the FCC to concur in the service area redefinition. Upon the effective date of the agreement by the FCC with the redefinition of the service area of Central, our designation of Wilkes as an ETC in the areas served by Central, as set forth herein, shall also take effect. If, after its review, the FCC determines that it does not agree with the redefinition proposal herein, the Commission will reexamine Wilkes’s petition with regard to redefining the service area.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of April, 2016.

NORTH CAROLINA UTILITIES COMMISSION



Paige J. Morris, Deputy Clerk