

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
American Cellular Corporation Petition for)	
Agreement in Redefining the Service Area)	
Requirement for Certain Rural Telephone)	
Company Study Areas in the State of)	
Wisconsin pursuant to 47 C.F.R. § 54.207(c))	
)	
To: Wireless Competition Bureau)	

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (TDS Telecom), parent company of Central State Telephone Company (Central State), a Wisconsin rural local exchange carrier (RLEC), submits these comments to oppose the Petition of American Cellular Corporation (ACC) for Agreement with Redefinition of Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin (Petition).¹ The Petition seeks Commission agreement with a decision by the Public Service Commission of Wisconsin (Wisconsin PSC) to redefine the Central State service area below the wire center level to permit ACC to be designated as a competitive eligible telecommunications carrier (CETC) in only portions of four of the six Central State wire centers. This type of redefinition is expressly foreclosed by the

¹ See *Federal-State Joint Board on Universal Service, American Cellular Corporation Petition for Agreement in Redefining the Service Area Requirement for Certain Rural Telephone Company Study Areas in the State of Wisconsin pursuant to 47 C.F.R. § 54.207(c)*, CC Docket No. 96-45 (filed July 14, 2004, Public Notice rel. July 21, 2004) (Petition).

Commission's recent decision in *Highland Cellular*.² Moreover, even redefining the Central State service area to the wire center level would be inconsistent with the public interest.

I. THE COMMISSION HAS CONCLUDED THAT THE PUBLIC INTEREST IS NOT SERVED BY REDEFINING RURAL SERVICE AREAS BELOW THE WIRE CENTER LEVEL

In *Highland Cellular*, the Commission addressed a request by the petitioner to serve only a portion of a rural carrier's wire center. Although the Commission acknowledged that the Wireline Competition Bureau had previously designated an ETC for portions of a rural carrier's wire center, the Commission concluded categorically that "making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest."³ The Commission elaborated:

In particular, we conclude, that prior to designating an additional ETC in a rural company's service area, the competitor must commit to provide supported services to customers throughout a geographic area. A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date.⁴

Given the Commission's categorical statement, ACC's claim that the *Highland Cellular* decision was based "on public interest grounds as developed in that case with respect to that carrier," Petition at 9, is patently incorrect. The Commission's statements in *Highland Cellular* were *not* limited to Highland Cellular's request to serve only a portion of United

² Memorandum Opinion and Order, *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, FCC 04-37 (rel. April 12, 2004) ("*Highland Cellular*").

³ *Id.* ¶ 33.

⁴ *Id.*

Telephone's Saltville wire center. The Commission's conclusion clearly spoke to the public interest harm arising from *any* designation of a CETC to serve a portion of a rural telephone company's wire center.

The Wisconsin PSC's "finding that sub-wire center designation in the Wisconsin telecommunications market is in rural consumers' interests and causes no harm to Wisconsin LECs," Petition at 9, cannot stand in the face of the Commission's decision in *Highland Cellular*. In *Highland Cellular*, the Commission found that in *all* circumstances in which a CETC is unwilling to commit to serve at least a full wire center within a rural community, there is an increased likelihood that the CETC will be willing and able to relinquish its ETC status in the partial wire center in the future (because the CETC will not have invested much in the market). For example, a CETC might be willing to relinquish its ETC status if it is unable to win as much business in the rural market as it had expected. This could leave the CETC's subscribers scrambling for replacement service where few alternatives are available. To protect rural consumers against this vulnerability, the Commission concluded that *all* carriers seeking ETC designation in a rural service area must demonstrate sufficient commitment to the local community that they are willing to serve a full wire center.

Because the Petition proposes to redefine the Central State (and other) wire centers in a manner the Commission has found would be inconsistent with the public interest, the Commission should deny the Petition at least with respect to these wire centers and refer it to the Wisconsin PSC for reconsideration of the underlying decision to designate ACC as a CETC in certain partial rural wire centers.

II. REDEFINING THE CENTRAL STATE SERVICE AREAS AT THE WIRE CENTER LEVEL WOULD ALSO BE INCONSISTENT WITH THE PUBLIC INTEREST

In the event the Commission denies ACC's request to redefine the Central State and other rural service areas below the wire center level, ACC asks the Commission "nevertheless [to] proceed to agree with the Wisconsin PSC's decision to redefine the service areas on a wire center basis."⁵ The Commission should deny this request for three reasons.

First, the Wisconsin PSC did not make a "decision to redefine the service areas on a wire center basis" with which the Commission could agree. Section 54.207(c) of the Commission's Rules prescribes the procedures pursuant to which the Commission reviews and evaluates petitions for agreement with state commission decisions to define rural telephone company service areas below the study area level.⁶ These procedures make clear that the subject of such proceedings is "*the* definition proposed by the state commission,"⁷ not some alternative definition suggested by the purported CETC. In this proceeding, the Wisconsin PSC Order with which the Petition seeks the Commission's agreement proposed to redefine the Central State service area below the wire center.⁸ Any decision by the Commission in this proceeding must either agree or disagree with "that proposed definition."⁹ Because *Highland Cellular* precludes the Commission from agreeing with that proposed redefinition, the Petition must be denied.

⁵ Petition at 9 n.9.

⁶ 47 C.F.R. § 54.207(c) ("If 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 Commission will consider *that proposed definition* in accordance with the procedures set forth in this paragraph.") (emphasis added).

⁷ *Id.* § 54.207(c)(1)(i) (emphasis added).

⁸ *Application of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8206-TI-100, Final Decision, at 10 (June 18, 2004) (Wisconsin PSC Order).

⁹ *See* 47 C.F.R. § 54.207(c).

There is no state commission decision with which the Commission could agree to redefine the service areas at the wire center level.¹⁰

Second, the Commission should not agree to redefine the Central State service area to permit ACC to be designated as a CETC in wire centers in which it does not meet the statutory eligibility requirements for ETC designation. Section 214(e)(1) of the Communications Act requires any carrier designated as an ETC to provide and advertise the supported services throughout the designated service area.¹¹ In seeking redefinition of the Central State service area below the wire center level, ACC has already represented to the Wisconsin PSC that it is incapable of serving the entire Central State wire centers. Accordingly, ACC is not eligible to be designated as an ETC in the Central State wire centers with respect to which it has requested alternative redefinition. If ACC were so designated, it might engage in rural “creamskimming” within those wire centers by serving only the lower-cost, higher-density areas. It would be inappropriate, therefore, for the Commission to agree to redefine the Central State service area to permit ACC to be designated as an ETC in circumstances in which ACC clearly does not meet the statutory eligibility requirements.

Third, the cost characteristics of the Central State wire centers in which ACC has sought ETC designation create a risk of creamskimming *within* the wire centers even where the creamskimming effect may not be apparent across the wire centers in the Central State study area. The Commission recognized the risk of creamskimming within wire centers when it acknowledged in *Highland Cellular* that disaggregation does not always protect against the

¹⁰ At a minimum, any Commission decision approving redefinition at the wire center level would need to be referred back to the Wisconsin PSC for agreement with the proposed alternative definition. *See* 47 C.F.R. § 54.207(d)(2).

¹¹ 47 U.S.C. § 214(e)(1).

effects of rural creamskimming. There, the Commission found that disaggregation (which can otherwise minimize the effects of creamskimming *across* wire centers) was “a less viable alternative” for reducing the risk of creamskimming where the “study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics.”¹² These characteristics are present in the Central State wire centers covered by the Petition.

As a proxy to demonstrate the variation in access line density across its wire centers, TDS Telecom calculated the access line density in each Census Block Group (“CBG”) within the wire centers in which ACC has conditionally been designated an ETC by the Wisconsin PSC.¹³ An examination of the access line densities in these CBGs shows significant variation in density across all four wire centers. For example, there are nine CBGs in the Auburndale/Mill Creek wire center (ABDLWIXA). One of these CBGs has an access line density of 31.6 lines/sq. mile; five have densities between 19 and 29 access lines/sq. mile, and three have access lines densities of fewer than 9 lines/sq. mile, including one CBG with less than one line/sq. mile. The other three Central State wire centers at issue reflect similarly variable access line densities and cost characteristics. The seven CBGs in the Junction City/Cranmoor wire center (JNCYWIXA) have access line densities ranging from as high as 68.8 lines/sq. mile to as low as 7.8 lines/sq. mile; the densities of the seven Lindsey CBGs (LNDSWIXA) range from 18.1 access lines/sq. mile to only 4.2 lines/sq. mile; and the eleven Pittsville wire center

¹² *Highland Cellular* ¶ 32.

¹³ Census Block Groups are established by the U.S. Census Bureau for purposes of compiling and analyzing census information. The CBG figures used here are from the 2002 Census.

The densities of the CBGs do not reflect exactly the densities within the wire centers because the boundaries of the CBGs do not correspond precisely with wire center boundaries (*i.e.*, part of a CBG may be in one wire center while another part is in another wire center). Nonetheless, we believe that the access line densities of the CBGs that are partially or entirely within the relevant Central State wire centers can serve as a useful indicator of how population and access lines are grouped within the wire centers.

(PTSVWIXA) CBGs include one with access line density of 28.8 lines/sq. mile, one with density of 15.9 lines/sq. mile, and the remaining nine CBGs with densities of fewer than 10 lines/sq. mile (including three with less than one access line/sq. mile). These figures show that the Central State “study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics,”¹⁴ making disaggregation “a less viable alternative for reducing creamskimming opportunities.”¹⁵ This vulnerability to creamskimming within the Central State wire centers is heightened where ACC already has acknowledged its inability to serve the entire wire center.

¹⁴ *Highland Cellular* ¶ 32.

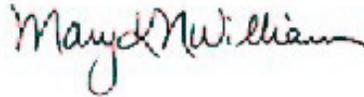
¹⁵ Even where the wire centers within a study area do not exhibit highly variable population densities, disaggregation does not fully protect against the potential harm caused to the incumbent by creamskimming. Although disaggregation and targeting of universal service support can ensure that rural telephone companies continue to recover some of the direct costs of serving their most high-cost wire centers (which are not subject to competition), certain cross-wire-center network and overhead costs may not be fully reflected in disaggregation plans. If universal service payments for lower-cost areas subject to competition eventually decline, those cross-wire-center costs (which will persist as the rural incumbent continues to maintain its network as the “carrier of last resort” throughout its service area) may not be fully recovered.

CONCLUSION

For the foregoing reasons, the Commission should deny the Petition and refer it to the Wisconsin PSC for reconsideration of the decision to redefine the Central State service areas and designate ACC as a competitive ETC in portions of four Central State wire centers. The public interest would not be served by the proposed redefinition of the Central State service area either below or at the wire center level.

Respectfully submitted,

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August 4, 2004