

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Dobson Cellular Systems, Inc.	)	
Petition for Agreement with Redefinition	)	
of Service Areas of Certain Rural ILECs	)	
in the State of Michigan	)	

**COMMENTS OF TDS TELECOMMUNICATIONS CORP.**

TDS Telecommunications Corp. (TDS Telecom), parent company of rural local exchange carrier (RLEC) Wolverine Telephone Company (Wolverine), submits these comments in response to the Petition of Dobson Cellular Systems, Inc. (Dobson) for Agreement with Redefinition of Service Areas of Certain Rural ILECs in the State of Michigan (Petition), including the Wolverine service area.<sup>1</sup> TDS Telecom urges the Commission to deny the Petition with respect to Wolverine on the ground that, under the standards set forth in *Virginia Cellular*<sup>2</sup>

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<sup>1</sup> In August 2003, the Michigan Public Service Commission (MPSC) granted NPI-Omnipoint Wireless, LLC, (NPI) ETC status for certain portions of rural telephone company study areas it serves in Michigan. *In re application of NPI-Omnipoint Wireless, LLC., for designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Case No. U-13714 (Mich. PSC Aug. 26, 2003) (NPI Order). In December 2003, Dobson purchased substantially all of NPI's assets. In September 2004, Dobson petitioned the MPSC for ETC status and study area redefinition consistent with the earlier NPI Order. The MPSC granted this petition. *In re application of Dobson Cellular Systems, Inc., for designation as an eligible telecommunications carrier*, Case No. U-14257 (Mich. PSC Sept. 21, 2004) (Dobson Order). Dobson then petitioned the Commission for approval of the MPSC redefinition decisions. *Federal-State Joint Board on Universal Service, Petition of Dobson Cellular Systems, Inc. for Agreement with Redefinition of Service Areas of Certain Rural ILECs in the State of Michigan*, CC Docket No. 96-45 (Oct. 26, 2004) (Petition).

<sup>2</sup> Memorandum Opinion and Order, *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, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular*).

and *Highland Cellular*,<sup>3</sup> redefining Wolverine's service area as proposed would allow Dobson to "cream-skim" and could undermine Wolverine's ability to serve its study area. Alternatively, the Commission should delay consideration of the Petition until after the Commission has issued its order resolving the issues raised in the pending Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) relating to per-line support benchmarks for designating eligible telecommunications carriers (ETCs).<sup>4</sup>

**I. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANTING THE SERVICE AREA REDEFINITION REQUESTED IN THE PETITION**

In *Virginia Cellular* and *Highland Cellular*, the Commission affirmed that decisions concerning redefinition of a rural telephone company's service area to allow a competitive ETC to serve only a portion of that area should continue to take into account the concerns of the Joint Board in (1) minimizing creamskimming;<sup>5</sup> (2) recognizing that the Telecommunications Act of 1996 places rural telephone companies on a different competitive footing than other local exchange carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than the study area level.<sup>6</sup> The Commission also provided additional guidance concerning the circumstances in which creamskimming concerns are implicated.

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<sup>3</sup> 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*).

<sup>4</sup> Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (Recommended Decision). The FCC issued its Notice of Proposed Rulemaking seeking comment on the Recommended Decision in June 2004. Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (Notice).

<sup>5</sup> "Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area." *Virginia Cellular* ¶ 32; *Highland Cellular* ¶ 26.

<sup>6</sup> See *Virginia Cellular* ¶ 41; *Highland Cellular* ¶ 38.

In its original NPI Order (concerning Dobson’s predecessor-in-interest), the MPSC discounted any creamskimming concerns because “NPI has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC’s wireless licensing process.”<sup>7</sup> However, *Virginia Cellular* and *Highland Cellular* looked to the effect, rather than merely the purpose, of the petitioner’s request. The Commission made clear that the mere fact that the area in which a petitioner seeks ETC designation is determined by the petitioner’s wireless service area does not by itself support a conclusion that the public interest would be served by granting ETC designation in the requested partial service area.<sup>8</sup> Instead, the Commission examined both the population density of the wire center(s) in which the petitioner sought to be designated as an ETC and the disparity between the density of the designated wire center(s) and the other wire centers in the RLEC’s service area.<sup>9</sup> The Commission relied on this comparative density information to determine whether designating the petitioner as an ETC in the specified wire center(s) – and redefining the RLEC’s service area to permit such designation – could potentially undermine the RLEC’s ability to serve its entire study area.<sup>10</sup> In *Highland Cellular*, the Commission further noted that where the RLEC’s “study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially.”<sup>11</sup> Accordingly, the Commission “reject[ed] arguments that incumbents can,

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<sup>7</sup> NPI Order at 15.

<sup>8</sup> *Highland Cellular* ¶¶ 26-27.

<sup>9</sup> *Virginia Cellular* ¶ 35; *Highland Cellular* ¶¶ 29-31.

<sup>10</sup> *Virginia Cellular* ¶ 35; *Highland Cellular* ¶ 32.

<sup>11</sup> *Highland Cellular* ¶ 32.

in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area."<sup>12</sup>

Before applying the *Virginia Cellular* and *Highland Cellular* creamskimming tests to the Petition, TDS Telecom suggests one slight modification to ensure that the tests reflect more accurately the cost characteristics of the relevant wire centers. Specifically, we respectfully suggest that the Commission examine *access line density* – calculated by dividing the number of access lines served by a wire center by the square mileage of the area served – rather than population density when evaluating the potential creamskimming effect of a partial ETC designation and related service area redefinition. In the experience of TDS Telecom, access line density reflects much more accurately the costs of serving a wire center than the density of the population living in that area.

Applying this modified test to the Petition, the potential creamskimming effect is apparent. The access line densities of Wolverine's wire centers are shown in the following table. The center in which Dobson sought ETC designation is indicated in bold:

TDS RLEC	Wire Center	Access Line Density (lines/sq. mile)
Wolverine	<b>Sanford</b>	<b>71.923</b>
	Millington	43.580
	Fostoria	32.874
	Munger	17.753

The disparity is stark. Dobson seeks to serve only Wolverine's highest density wire center, which is almost twice as dense as the next densest wire center. This is exactly the kind of creamskimming the Commission sought to avoid under *Virginia Cellular* and *Highland Cellular*.

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<sup>12</sup> *Id.*

Even if the disparity in the densities of the wire centers Dobson seeks to serve is not motivated by an *intent* to engage in rural creamskimming, the *effect* on Wolverine of limiting Dobson's ETC designation to the high-density Sanford wire center while excluding low-density wire centers is the same and could place Wolverine at "a sizeable unfair disadvantage."<sup>13</sup> Indeed, the Commission expressly noted in *Highland Cellular* that even where a competitive carrier is simply seeking ETC designation in its own licensed service area, and thus is not "deliberately seeking to enter only certain portions of [rural telephone] companies' study areas in order to creamskim," "granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming" and would be inconsistent with the public interest.<sup>14</sup>

Although Wolverine could choose to disaggregate universal service support to the wire center, the Commission has acknowledged that disaggregation cannot always protect against the effects of creamskimming, particularly where the incumbent's wire centers exhibit highly variable population densities and therefore highly variable cost characteristics.<sup>15</sup> These characteristics are present in the Sanford wire center. 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 Sanford wire center.<sup>16</sup> The densities of the CBGs do not reflect exactly the density within the wire center 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

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<sup>13</sup> See *Highland Cellular* at ¶ 32; *Virginia Cellular* at ¶ 35.

<sup>14</sup> *Highland Cellular* ¶¶ 26-27.

<sup>15</sup> *Highland Cellular* ¶ 32.

<sup>16</sup> 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.

densities of the CBGs that are partially or entirely within the Sanford wire center can serve as a useful indicator of how population and access lines are grouped within the wire center.

An examination of the access line densities in the CBGs within the Sanford wire center shows significant variation in access line density. There are seven CBGs in the Sanford wire center, and access line densities range from as high as 223.5 lines/sq. mile to as low as 31 lines/sq. mile. Since the Sanford wire center has “highly variable population densities, and therefore highly variable cost characteristics,”<sup>17</sup> disaggregation is less viable for reducing creamskimming opportunities.<sup>18</sup>

In sum, the redefinition of the Wolverine service area sought in the Petition would be inconsistent with the public interest under *Virginia Cellular* and *Highland Cellular* because the redefinition would implicate creamskimming concerns and potentially undermine Wolverine’s ability to serve its entire study area. Accordingly, the Petition must be denied and referred to the MPSC for reconsideration of the underlying decision to designate Dobson as an ETC in only portions of Wolverine’s study area.

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<sup>17</sup> *Highland Cellular* ¶ 32.

<sup>18</sup> Even where the wire centers within a study area do not exhibit highly variable population densities, disaggregation of universal service support 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 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. Thus, disaggregation alone does not ensure that the public interest will be served by the designation of Dobson as a competitive ETC in the Sanford wire center.

## **II. THE COMMISSION SHOULD NOT CONSIDER THE PROPOSED SERVICE AREA REDEFINITION UNTIL AFTER THE COMMISSION HAS RESOLVED THE PER-LINE SUPPORT ISSUES RAISED IN THE RECOMMENDED DECISION**

The Commission is currently evaluating a number of proposals to revise the rules relating to High-Cost universal service support and the criteria and procedures for designating ETCs eligible to receive that support.<sup>19</sup> One of the issues raised in the Recommended Decision and Notice is the potential use of specific benchmarks, based on per-line support, to guide state and federal regulators deciding whether the public interest would be served by designating one or more competitive ETCs in a rural service area.<sup>20</sup> As the Joint Board noted, per-line support can serve as a useful marker for determining whether the line density, population density, distance between wire centers, loop lengths and levels of investment in a particular rural service area can appropriately support the entry of one or more competitive carriers.<sup>21</sup> Although the Joint Board was unable to reach a consensus to recommend specific per-line support benchmarks, the Recommended Decision does recognize the value of adopting per-line support benchmarks and recommends that the Commission solicit comment on whether such benchmarks merit

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<sup>19</sup> The Joint Board issued a request for comments on these issues in February 2003. Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) (High Cost/ETC Notice). After considering numerous comments encouraging the Joint Board to adopt stricter ETC designation criteria, the Joint Board issued the Recommended Decision. The Commission released the Notice seeking comment on the Recommended Decision in June, and comments and reply comments have been filed. A majority of the comments support imposing additional criteria on petitioners seeking ETC designation.

<sup>20</sup> Recommended Decision ¶ 44.

<sup>21</sup> *Id.* ¶ 43. The Joint Board concluded that “[i]f the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund. Moreover, if the Commission were to cap per-line support upon entry of a competitive ETC and impose a primary-connection restriction, as discussed [in the Recommended Decision], designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier’s ability to provide universal service might be jeopardized. *Id.*

consideration by the Commission.<sup>22</sup> The Commission did request comment on this issue,<sup>23</sup> and a number of commenters supported either adopting rigid per-line support benchmarks or requiring state regulators to take per-line support amounts into consideration in determining whether the public interest would be served by designating an additional ETC in a rural service area.<sup>24</sup>

To the extent that the Commission adopts some sort of per-line support benchmark or guideline, this could affect determinations of whether the public interest is served by redefining a rural service area to designate a CETC in only a portion of the rural carrier's study area. For example, a competitive carrier's request for ETC designation in a rural carrier's higher cost wire centers, while not implicating creamskimming concerns, could result in multiple carriers drawing support from the Universal Service Fund in circumstances in which the economies of scale are particularly unsuited to support multiple carriers. In those circumstances, it would be appropriate for the Commission to decline to agree with the proposed service area redefinition on the ground that designating a CETC in a wire center in which the per-line benchmark or guideline is exceeded would not serve the public interest.

Because of the potential impact of its decision in the rulemaking proceeding on this and other petitions to redefine rural service areas, the Commission should defer consideration of Dobson's request for agreement with the proposed redefinition of rural service areas in Michigan until after the Commission has addressed the possibility of adopting per-line support benchmarks to guide decisionmakers considering designating competitive ETCs in rural service areas (and partial rural service areas). This would not entail a significant delay because

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<sup>22</sup> *Id.*

<sup>23</sup> *Notice* ¶ 2.

<sup>24</sup> *See, e.g.,* Comments of AT&T, CC Docket No. 96-45, at 31-35 (Aug. 6, 2004); Comments of CenturyTel, Inc., CC Docket No. 96-45, at 17-18 (May 5, 2003).

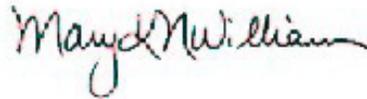
the Commission must issue a decision on the Recommended Decision by February of next year.<sup>25</sup>

**CONCLUSION**

For the foregoing reasons, the Commission should reject the Petition and refer it to the MPSC for reconsideration of its decision to redefine the Wolverine service area and designate Dobson as a competitive ETC in the Sanford wire center. Alternatively, the Commission should delay consideration of the Petition until after the Commission has resolved the issues related to per-line support raised in the pending Joint Board Recommended Decision.

Respectfully submitted,

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November 17, 2004

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<sup>25</sup> See 47 U.S.C. § 254(a)(2).