

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Petition by RCC Minnesota, Inc.,	)	DA 05-464
Pursuant to 47 C.F.R. Section 54.207(c),	)	
For Commission Agreement in Redefining	)	
The Service Areas of Rural Telephone	)	
Companies in the State of Kansas	)	

**REPLY COMMENTS OF RCC MINNESOTA, INC.**

RCC Minnesota, Inc. (“RCC”) hereby replies to comments submitted by TCA, Inc. – Telcom Consulting Associates (“TCA”) regarding RCC’s petition for FCC concurrence in redefining the service areas of several Kansas incumbent local exchange carriers (“ILECs”) pursuant to Section 54.207(c) of the FCC’s rules (“Petition”). As set forth below, TCA’s comments leave the substance of the Petition unchallenged, and its arguments against redefinition are without merit.

**I. DISCUSSION**

**A. The Petition Demonstrates That There Is No Significant Risk of Cream-Skimming, a Fact That TCA Makes No Serious Attempt to Refute.**

Using the framework established by the FCC in *Virginia Cellular*<sup>1</sup> and *Highland Cellular*,<sup>2</sup> RCC’s Petition makes it clear that the proposed redefinition does not present a significant cream-skimming risk. It emphasized that RCC seeks to serve as an ETC throughout

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<sup>1</sup> See *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”).

<sup>2</sup> See *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) (“*Highland Cellular*”).

its licensed service area and is not picking and choosing areas based on preference. *See* Petition at p. 9. The Petition further emphasized that even unintentional cream-skimming opportunities are minimized. Two of the affected rural ILECs have elected to disaggregate high-cost support down below the study-area level so that costs are more accurately targeted to relatively high- and low-cost portions of their study areas. Thus, it matters not where RCC is designated within those carriers' study areas: if it serves only the lower-cost wire centers, it will not receive high levels of support; if it serves only the higher-cost wire centers, it will be compensated appropriately. With respect to those ILECs that did not disaggregate support, the Petition noted that their Path One election signified their belief that costs did not vary significantly enough within its study area to warrant protection in the form of disaggregation.<sup>3</sup> *See id.* at p. 12. The Petition also emphasized that any cream-skimming concerns that remain despite those ILECs' disaggregation plans can be addressed in a proceeding initiated by the KCC or any interested party wishing to propose the modification of those disaggregation plans. *See id.* at p. 10.

In addition, the Petition referenced the population density analysis upon which the KCC relied in its determination that no cream-skimming will result from the proposed redefinition. *See id.* This analysis, developed by KCC staff, conclusively demonstrated that RCC is not proposing to serve primarily the higher-density, lower-cost portions of the affected ILECs' service areas.

TCA makes no serious attempt at refuting the cream-skimming analysis set forth in the Petition. Nowhere does TCA suggest that RCC is proposing to serve primarily low-cost portions of their study areas to the exclusion of high-cost areas. Nor does it argue that the disaggregation

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<sup>3</sup> *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, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11303 (2001) ("*Fourteenth Report and Order*") (establishing Path One for limited instances "where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational").

of support by Pioneer Communications (“Pioneer”) and Rural Telephone Service Company (“Rural Telephone”) is anything less than a complete solution to any cream-skimming concerns that once might have existed in their study areas.

Instead, TCA takes issue with the FCC’s decision to rely on population density as a means of determining whether a risk of cream-skimming exists. *See* TCA Comments at p. 4. Quite simply, however, the matter of using population density is settled; indeed, the FCC reaffirmed its policy in last week’s *2005 Report and Order*.<sup>4</sup> Moreover, TCA offers no meaningful alternative to population density, other than quoting then-Commissioner Kevin J. Martin’s dissent to *Virginia Cellular* urging the use of cost data in determining whether cream-skimming will occur. However, the FCC’s standard, as applied in its decisions since *Virginia Cellular*, does not require petitioners to provide cost data, and the FCC declined to alter this standard in its *2005 Report and Order*. TCA’s argument that wireless carriers “generally site their towers in areas of relatively high population density” is similarly unavailing. TCA Comments at p. 4. Given the FCC’s clearly-stated intent to rely on individualized analysis to determine the likelihood of cream-skimming,<sup>5</sup> TCA’s conclusory objections must be rejected in favor of the highly fact-specific data relied on by the KCC.<sup>6</sup>

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<sup>4</sup> *Federal-State Joint Board on Universal Service, Report and Order*, FCC 05-46 (rel. March 17, 2005) (“*2005 Report and Order*”) at ¶ 50 (“Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.”).

<sup>5</sup> *See id.* at ¶ 49 (“...the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the [study] area (*e.g.*, at the wire center level).”)

<sup>6</sup> TCA attempts to make an issue out of the fact that the population density analysis relied upon by the KCC was prepared by KCC staff and not by RCC. *See* TCA Comments at p. 3. The population density study was part of the record, was subjected to the rigors of an evidentiary hearing, and was explicitly referenced in the KCC’s cream-skimming discussion. *See* KCC Order at pp. 29-31 (attached as Appendix B to the Petition). TCA fails to cite any rule requiring that the state commission base its cream-skimming analysis solely on data prepared by the applicant.

In sum, TCA has failed to challenge the analysis set forth in the Petition demonstrating that there is no significant risk of cream-skimming. For this reason alone, the FCC should grant the Petition without further action.

**B. TCA Chooses the Wrong Forum to Raise Its Broad Policy Arguments, Which Have Been Decisively Rejected by the FCC and the Kansas Corporation Commission.**

As RCC explained in its Petition, the proposed redefinition is warranted under the Act and the Commission's competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states.<sup>7</sup> Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service. RCC's proposal also satisfies the Commission's analysis set forth in *Virginia Cellular*<sup>8</sup> and reaffirmed in the *2005 Report and Order* released last week,<sup>9</sup> in that RCC is not proposing to serve primarily densely-populated areas or portions of rural ILEC wire centers.

Rather than focus on the merits of the instant Petition, TCA attempts to reverse both pre- and post-*Virginia Cellular* policies by arguing that redefining service areas "is not necessary", and "turns the concept of universal service on its head." TCA Comments at pp. 2-3. Time and time again, however, the FCC has affirmed that redefinition is fully warranted to promote

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The requirement, of course, is that the state commission's reasoning – regardless of the authorship of its sources – must be presented to the FCC, which RCC has done.

<sup>7</sup> See Petition at pp. 5-8.

<sup>8</sup> *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1578-79 (2004) ("*Virginia Cellular*") ("Although there are other factors that define high-cost areas, a low population density typically indicates a high-cost area. Our analysis of population density reveals that Virginia Cellular is serving not only the lower cost, higher density wire centers in the study areas of MGW and Shenandoah.") (footnote omitted).

<sup>9</sup> *2005 Report and Order, supra*, at ¶ 50 ("Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas.").

universal service and remove barriers to competition in rural areas.<sup>10</sup> Most recently, in the *2005 Report and Order*, the FCC declined to “adopt rules prohibiting redefinition below the study area level”, noting that such a proposal “ignores the provision in section 214(e)(5) that allows redefinition to occur”.<sup>11</sup> In the same order, the FCC granted nine pending pre-*Virginia Cellular* petitions for redefinition that had been held up during the FCC’s conduct of a proceeding to change and clarify its policies on competitive ETCs.<sup>12</sup> While the FCC noted that future petitions for redefinition would be subjected to rigorous scrutiny under the policies and standards applied since *Virginia Cellular*, the application of those standards have resulted in several grants of petitions for redefinition filed since *Virginia Cellular*.<sup>13</sup> The FCC has made clear its intent to grant concurrence with redefinition proposals that meet specified criteria, and TCA offers no persuasive reason for the FCC to reverse course.

TCA’s disquisition urging the FCC to force competitive ETCs to provide service via resale is similarly without merit and completely misapprehends the purpose of permitting ETCs to serve through a combination of facilities-based and resold service.<sup>14</sup> Generally, a wireless

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<sup>10</sup> See Petition at pp. 5-8.

<sup>11</sup> *2005 Report and Order*, *supra*, at ¶ 75.

<sup>12</sup> See *id.* at ¶¶ 78-79.

<sup>13</sup> See, e.g., NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) (“NPI-Omnipoint Michigan Order”); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003) (FCC concurrence granted Jan. 24, 2005) (“Highland W.V. Order”); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004); RCC Minnesota, Inc., Docket No. 1083 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004).

<sup>14</sup> TCA’s citation of the recent ALLTEL and Nex-Tech proceedings before the KCC as examples of carriers that “satisfy CETC criteria without requesting service area redefinition” is inapposite. See TCA Comments at p. 2. As TCA notes, ALLTEL’s exclusion of partially-covered rural study areas was voluntary, not imposed by the state. Moreover, TCA fails to explain how the public interest was advanced by narrowing the area in which ALLTEL can invest high-cost dollars to expand and improve service and offer discounts to low-income consumers. As for Nex-Tech, that company was designated only in areas served by a non-rural ILEC, so service area redefinition would not have been required in any event. Furthermore, TCA fails to state whether Nex-Tech, a CLEC with some wireless

carrier can obtain small contour extensions from its neighbors or resell in an area near its existing facilities to respond to customer requests. However, committing to resell throughout large areas where a carrier does not have a license is a non-starter. Inside the licensed area, if a consumer is being served by resale, the carrier has every incentive to migrate them to a facilities-based service whenever possible, because a competitor receives no support for resold service. In areas halfway across the state, where a competitive carrier has no license or facilities, resale provides no consumer benefit, and the carrier has no way to either migrate customers to its own network or control the service quality being provided by the carrier actually providing the service. These are some of the reasons why most every state and the FCC have not required competitors to serve throughout an ILEC study area.<sup>15</sup>

TCA has previously emphasized that the FCC's time should not be wasted with arguments that are "duplicative of other proceedings before the Commission."<sup>16</sup> Had TCA heeded its own advice, it might have refrained from devoting the majority of its comments to

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holdings, is constrained by its service authorizations to the same extent RCC is. It is quite possible that Nex-Tech is authorized to provide service throughout the ILEC's entire study area and is merely committing to use resale to cover "areas not served by its facilities". That situation is quite different from RCC's, as the requirement envisioned by TCA would require RCC – which cannot build facilities beyond its licensed service area – to serve large numbers of customers via resale in perpetuity, and all without receiving a dime in support.

<sup>15</sup> See, e.g., NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003) (FCC concurrence granted Jan. 24, 2005); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004); United States Cellular Corp., Docket No. 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004); Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 CFR § 207(c) at p. 4 (filed Aug. 1, 2002, FCC concurrence granted Oct. 30, 2002) ("COPUC Petition"); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) ("SBI Arizona Order") (FCC concurrence granted May 16 and July 1, 2001); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (Aug. 14, 2001) *aff'd*, Final Order (N.M. Pub. Reg. Comm. Feb. 19, 2002) ("SBI N.M. Order") (FCC concurrence granted June 11, 2002); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) ("RCC Maine Order") (FCC concurrence granted March 17, 2005); ALLTEL Communications, Inc. et al., Docket No. 7131-T1-101 (Wisc. PSC, Sept. 30, 2003) (FCC concurrence granted March 17, 2005); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending).

arguing for changes in the FCC's rules and policies – *e.g.*, urging the Commission to require resale to cover entire rural ILEC study areas, and arguing for the use of cost data in examining the potential for cream-skimming. TCA has had ample opportunity to comment on these issues to the FCC and to the Joint Board, and indeed it has participated extensively in past and ongoing rulemaking proceedings concerning these matters. The Commission should not be distracted by TCA's inappropriate airing of broad concerns with FCC policies, which do nothing to challenge the sufficiency of the analysis presented in the Petition.

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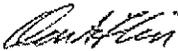
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<sup>16</sup> See Reply Comments of TCA, Inc. in CC Docket No. 96-45 and RM No. 10822, Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers (filed Feb. 13, 2004).

## II. CONCLUSION

As the Petition makes clear, the relief proposed by RCC is exactly the same as the relief granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. TCA has failed to challenge the cream-skimming analysis or any other element of RCC's Petition on their merits, instead raising a host of broad policy concerns that are wholly inappropriate in the context of applying the FCC's redefinition standards to an individual case. Accordingly, RCC requests that the Commission dismiss TCA's objections and grant its concurrence by allowing the proposed redefinition to take effect without further action.

Respectfully submitted,



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David A. LaFuria  
Steven M. Chernoff  
Lukas Nace Gutierrez & Sachs, Chartered  
1650 Tysons Boulevard  
Suite 1500  
McLean, VA 22102

Attorneys for RCC Minnesota, Inc.

March 24, 2005