

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

In the Matter of

Federal-State Joint Board on  
Universal Service

Petition by Cellular Properties, Inc.,  
for Commission Agreement in  
Redefining the Service Area of  
Wabash Telephone Cooperative, Inc. in the  
State of Illinois Pursuant to  
47 C.F.R. Section 54.207(c)

CC Docket No. 96-45

**PETITION FOR COMMISSION AGREEMENT IN REDEFINING THE  
SERVICE AREAS OF WABASH TELEPHONE COOPERATIVE, INC.**

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## EXECUTIVE SUMMARY

Cellular Properties, Inc. (“Cellular Properties” or “Company”), pursuant to the process set forth in Section 54.207(c) of the Commission’s Rules, 47 C.F.R. § 54.207(c), requests the Commission’s concurrence with the proposal by the Illinois Commerce Commission (“Illinois Commission”) to redefine the service area of Illinois Consolidated Telephone Company (“Wabash”), a rural incumbent local exchange carrier located in the State of Illinois (“ILECs”). This redefinition has already been endorsed by the Illinois Commerce Commission as in the public interest and not raising any creamskimming concerns.

Cellular Properties operates wireless network infrastructure facilities and provides wireless telecommunications services in rural areas of Illinois. The Company was recently designated as an eligible telecommunications carrier (“ETC”) by the Illinois Commission pursuant to Section 214(e) of the Communications Act of 1934 (“Act”), including in parts of the Wabash study area. By granting ETC status to Cellular Properties, the Illinois Commission found that Cellular Properties’ competitive wireless operations would serve the public interest.

Because Cellular Properties’ FCC-licensed service territory does not correlate with rural ILEC service areas, the Act provides Wabash’s service areas must be redefined before the Company’s designation in certain areas may take effect. Accordingly, the Illinois Commission has proposed that Wabash’s service area be redefined so that so that the Bible Grove, Louisville and Xenia wire centers are not included in the same service area as Wabash’s other wire centers. Consistent with the Illinois Commission’s designation order and with previous actions taken by the FCC, Cellular Properties in this Petition requests that each wire center in Wabash’s study area be redefined as a separate service area, for the purposes only of designating Cellular Properties and any future competitive carrier as an ETC.

The proposed redefinition is warranted under the Commission's competitively neutral universal service policies, and constitutes precisely the same relief granted to similarly situated carriers by the Commission and by several states, including in some of the wire centers served by several of the ILECs. Unless Wabash's service area is redefined, Cellular Properties will be unable to use high-cost support to improve and expand service to consumers in its licensed service territories in the Wabash study area, and consumers will be denied the corresponding benefits. As the Commission and several states have consistently held, competitive and technological neutrality demands the removal of these artificial barriers to competitive entry. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service ("Joint Board") by duly recognizing the special status of rural carriers under the Act, does not impose undue administrative burdens on ILECs, and will not result in "creamskimming" opportunities.

The Illinois Commission's proposed redefinition is well-supported by the record before it, and all affected parties were provided ample opportunity to ensure that the Joint Board's recommendations were taken into account. There is no need for the FCC to second-guess the Illinois Commission's judgment as to the public interest in these areas about which the Illinois Commission has greater expertise and knowledge. Accordingly, Cellular Properties requests that the Commission grant the Company's concurrence petition expeditiously and allow the proposed redefinition to become effective without further action.

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Cellular Properties, Inc. (“Cellular Properties” or “Company”), submits this Petition seeking the Commission’s agreement with the decision of the Illinois Commerce Commission (“Illinois Commission”) to redefine the service area of Wabash Telephone Cooperative, Inc. (“Wabash”), a rural incumbent local exchange carrier located and doing business in Illinois.

Cellular Properties provides service in Illinois through authorizations granted by the Commission to provide commercial mobile radio service in Illinois Rural Service Area (“RSA”) 7 and Illinois RSA 9 pursuant to cellular radiotelephone licenses issued by the Commission. Pursuant to Section 214(e)(2) of the Communications Act of 1934 (“Act”),<sup>1</sup> Cellular Properties was recently granted eligible telecommunications carrier (“ETC”) status by the Illinois

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<sup>1</sup> 47 U.S.C. § 214(e)(2).

Commission. In its *Designation Order*,<sup>2</sup> the Illinois Commission proposed to redefine Wabash's service area upon a grant of concurrence by the FCC. As set forth below, the Commission should redefine Wabash's service areas for the purposes of designating ETCs, separating the Bible Grove, Louisville and Xenia wire centers into service areas distinct from Wabash's other service areas. As in past FCC orders, this can be accomplished by classifying each individual Wabash wire center listed in Appendix B<sup>3</sup> as a separate service area. This action will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to consumers in rural Illinois.

## I. BACKGROUND

Pursuant to Section 214(e) of the Act,<sup>4</sup> state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas. In rural areas, a service area is generally defined as an ILEC's study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC involved. Specifically, Section 214(e) of the Act provides that:

“service area” means [a] company's “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>5</sup>

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<sup>2</sup> Cellular Properties, Inc., Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(2), ICC Docket No. 07-0154, Order, adopted Feb. 27, 2008 (“*ICC Designation Order*” or “*Designation Order*”). A copy of the *Designation Order* is attached in Appendix A.

<sup>3</sup> The individual wire centers to be classified as separate service areas are listed as “Covered Exchanges” in ICC Staff Exhibit JZ-1, Docket No. 07-0154, which is included in Appendix B (Direct Testimony of James Zolnierok, Policy Dept., Telecom. Div., ICC, Docket No. 07-0154, June 28, 2007).

<sup>4</sup> 47 U.S.C. § 214(e).

<sup>5</sup> *Id.*

The Commission and the Federal-State Joint Board on Universal Service (“Joint Board”) have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching a rural ILEC’s study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.<sup>6</sup> Therefore, the Commission established a streamlined procedure for the Commission and the states to act together to redefine rural ILEC service areas.<sup>7</sup> Using this procedure, the Commission and state commissions have applied the analysis contained in Section 214(e) and concluded that it is necessary and appropriate to redefine the ILEC service areas along wire center boundaries to permit the designation of competitive ETCs in those areas.<sup>8</sup> This process, as well as the underlying necessity of redefinition, was reaffirmed in the Commission’s *ETC Report and Order*.<sup>9</sup>

On February 28, 2007, Cellular Properties filed an Application with the Illinois Commission seeking ETC status for purposes of receiving high-cost support from the federal

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<sup>6</sup> See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9921, 9927 n. 40 (1999) (“*Washington Redefinition Order*”), citing *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 181 (1996) (“*Joint Board Recommended Decision*”).

<sup>7</sup> See 47 C.F.R. § 54.207(c). See also *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8881 (1997) (“*First Report and Order*”).

<sup>8</sup> See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and Century Tel of the Southwest, Inc. on Tribal Lands Within the State of Arizona*, DA 01-409 at 2 (rel. Feb. 15, 2002) (effective date May 16, 2002); *Washington Redefinition Order*, 15 FCC Rcd 9927-28.

<sup>9</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (“*ETC Report and Order*”).

universal service fund.<sup>10</sup> The Application proposed designated ETC service areas that included a portion of the service areas of three non-rural telephone companies, and all or portions of wire centers served by nine rural ILECs.<sup>11</sup> Cellular Properties did not seek any service area redefinition in the case of the rural ILECs whose rural study areas were entirely encompassed by the Company's FCC-licensed service area.<sup>12</sup> For the rural ILEC areas that were only partially within Cellular Properties' proposed ETC service area, the Company requested that the Illinois Commission approve the redefinition of those ILECs' service areas to include only specified wire centers for purposes of the Company's ETC designation and the receipt of federal universal service fund support.<sup>13</sup> As Cellular Properties' Application explained, this proposed reclassification would enable the Company to be designated in the portion of each study area within its proposed ETC service area.<sup>14</sup>

After receiving testimony and conducting a hearing, the Illinois Commission granted Cellular Properties' Application, on February 27, 2008. In the case of all but two of the wire centers included in the proposed designated ETC service area,<sup>15</sup> the Illinois Commission concluded that "Cellular Properties had made the necessary showings contemplated in Section 214(e) and the FCC ETC order and rules."<sup>16</sup> The Illinois Commission specifically found that

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<sup>10</sup> Application of Cellular Properties, Inc., for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, 47 U.S.C. § 214(e)(2), ICC Docket No. 07-0154 ("Application").

<sup>11</sup> See *ICC Designation Order* at 12. Cellular Properties included a map showing the location of its proposed designated ETC service area and the ILEC wire centers included within this proposed service area. See Application, Exhibit 1.1.

<sup>12</sup> *ICC Designation Order* at 13.

<sup>13</sup> *Id.* at 46.

<sup>14</sup> Application at 18-19.

<sup>15</sup> *ICC Designation Order* at 57.

<sup>16</sup> *Id.* at 53.

redefining the ILEC service areas to include only specified wire centers for purposes of Cellular Properties' ETC designation and receipt of universal service support presented "no potential creamskimming issues" in the Wabash service area.<sup>17</sup> The Illinois Commission approved the proposed redefinition of the Wabash service area, certified to the FCC that this redefinition is appropriate, and accompanied its approval with an authorization for Cellular Properties to take the necessary steps to seek FCC concurrence in these service area redefinitions for ETC designation purposes.<sup>18</sup> Cellular Properties now petitions the Commission for concurrence with the redefinition of the Wabash service area.

## II. DISCUSSION

The Illinois's Commission's approval of Cellular Properties' proposal to redefine Wabash's service area is consistent with the FCC's rules, the recommendations of the Joint Board, and the competitively neutral universal service policies embedded in the Act. Redefining the ILEC service areas to include only certain wire centers for purposes of designating Cellular Properties as an ETC will promote competition and the ability of rural consumers to have similar choices among telecommunications services and at rates that are comparable to those available in urban areas.<sup>19</sup> The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and the Illinois Commission fully considered and addressed the parties' arguments on this subject. The record at the state level, including Cellular Properties' Application and the *ICC Designation Order*, demonstrates that the requested

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<sup>17</sup> *Id.* at 52.

<sup>18</sup> *Id.* at 58.

<sup>19</sup> *See* 47 U.S.C. § 254(b)(3).

redefinition fully comports with federal requirements and provides the FCC with ample justification to concur.

**A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.**

Congress, in passing the 1996 amendments to the Act, declared its intent to “promote competition and reduce regulation” and to “encourage the rapid deployment of new telecommunications technologies.”<sup>20</sup> As part of its effort to further these pro-competitive goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.<sup>21</sup> In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms must be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged by the administration of those mechanisms.<sup>22</sup>

Consistent with this policy, the Commission and many state commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.<sup>23</sup> In 2002, for example, the FCC granted a petition of the Colorado Public Utilities Commission (“Colorado PUC”) for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.<sup>24</sup> In support of redefining CenturyTel’s service area

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<sup>20</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble) (“1996 Act”).

<sup>21</sup> See 47 U.S.C. § 214(e)(2).

<sup>22</sup> See *First Report and Order*, 12 FCC Rcd 8801, Competitive neutrality is a “fundamental principle” of the Commission’s universal service policies; *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 at ¶ 7 (Tel. Acc. Pol. Div. rel. April 17, 2003).

<sup>23</sup> See, e.g., *First Report and Order*, 12 FCC Rcd 8880-81; Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c), Petition, at 4 (filed with the FCC Aug. 1, 2002) (“Colorado PUC Petition”).

<sup>24</sup> See Colorado PUC Petition at 5 (“Petitioner requests agreement to redefine CenturyTel’s

along wire-center boundaries, the Colorado PUC emphasized that “in CenturyTel’s service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . . [T]his constitutes a significant barrier to entry.”<sup>25</sup> The Commission agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.<sup>26</sup> The Commission similarly approved a petition by the Washington Utilities and Transportation Commission (“Washington UTC”) and approximately twenty rural ILECs for the redefinition of the ILECs’ service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners’ request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area designation.<sup>27</sup>

In Washington, several competitive ETCs have been designated in various service areas without any apparent adverse consequences to date. No ILEC in Washington has ever introduced any evidence that they, or consumers, have been harmed by the Washington UTC’s service area redefinition.<sup>28</sup>

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service area to the wire center level.”).

<sup>25</sup> *Id.* at 4.

<sup>26</sup> CenturyTel has petitioned the Commission to reconsider its decision. However, as of this date CenturyTel’s service area redefinition is effective.

<sup>27</sup> *Washington Redefinition Order*, 15 FCC Rcd at 9927-28 (footnotes omitted).

<sup>28</sup> *See* Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at 22 (emphasis in original) (Wash. UTC, Jan. 13, 2005) (stating that the Washington UTC’s designation of multiple competitive ETCs, “if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non-rural*, wireline ETC was not providing service. No Rural ILEC

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act, and this Commission has concurred with those states. For example, the Minnesota Public Utilities Commission (“Minnesota PUC”) approved the proposal by WWC Holding Co., Inc., d/b/a CellularOne, to redefine certain rural ILEC service areas to the wire center level.<sup>29</sup> Addressing the concerns expressed by ILEC commenters, the Minnesota PUC concluded that the proposed redefinition would neither harm the affected rural ILECs nor create significant creamskimming opportunities.<sup>30</sup> This Commission agreed, and allowed the proposed redefinition to enter into effect. Similar conclusions were reached by other states with this Commission’s concurrence, including in Arizona, Colorado, New Mexico, Kansas, Maine, Michigan, North Dakota, Oklahoma, Oregon, Kentucky, Nebraska, Mississippi, South Dakota, and West Virginia.<sup>31</sup> The Illinois Commission and the FCC have also acted together twice previously to redefine rural ILEC service areas in Illinois.<sup>32</sup>

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has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs. This record supports our practice of not seeking commitments or adding requirements as part of the ETC designation process.”).

<sup>29</sup> WWC Holding Co., Inc., d/b/a CellularOne, MPUC Docket No. P-5695/M-04-226, Order Approving ETC Designation (Minn. PUC, Aug. 19, 2004) (FCC concurrence granted Dec. 28, 2004).

<sup>30</sup> *Id.* at 9.

<sup>31</sup> *See, e.g.*, Bluegrass Wireless, LLC, *et al.*, Case Nos. 2005-00017 *et al.* (Ky. PSC, July 8, 2005) (FCC concurrence granted Feb. 15, 2006); N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Application No. C-3324 (Neb. PSC, Oct. 18, 2005) (FCC concurrence granted Apr. 11, 2006); Centennial Tri-State Operating Partnership *et al.*, Case No. 2003-UA-0234 (Miss. PSC, Aug. 10, 2004) (FCC concurrence granted Sept. 21, 2005); NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005); Brookings Municipal Utilities d/b/a Swiftel, Case No. TCO4-213 (S.D. PUC, Feb. 10, 2006) (FCC concurrence granted June 8, 2006); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003), *aff’d* by Final Order, Aug. 27, 2004 (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 UM 1084 (Oregon PUC, June 24, 2004) (FCC concurrence

As in those cases, the redefinition requested in the instant proceeding will enable Cellular Properties to make the network investments necessary to bring competitive service to people throughout its licensed service areas. Redefinition will therefore benefit rural consumers in Illinois, who will begin to see a variety in pricing packages and service options comparable to those available in urban and suburban areas.<sup>33</sup> They will see infrastructure investment in areas formerly controlled solely by ILECs, which will bring improved wireless service and important health and safety benefits associated with increased levels of radiofrequency coverage.<sup>34</sup>

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granted Oct. 11, 2004); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (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 (N.M. Pub. Reg. Comm'n Aug. 14, 2001), adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm'n, Nov. 12, 2004) (FCC concurrence granted May 23, 2005); RCC Minnesota, Inc. *et al.*, Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence granted Mar. 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 granted Sept. 15, 2004); RCC Minnesota, Inc., and Wireless Alliance, L.L.C. d/b/a Unicef, TC 03-193 (S.C. PUC June 6, 2005) (FCC concurrence granted Nov. 14, 2005); Dobson Cellular Systems, Inc. and American Cellular Corp., Cause No. PUD 200500122 (July 5, 2006), approved with modifications by Final Order, Jan. 18, 2007 (FCC concurrence granted Sept. 3, 2007); Application of N.E. Colorado Cellular, Inc., to Re-define the Service Area of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; and Sunflower Telephone Co., Inc., Docket No. 02A-444T (ALJ, May 23, 2003), *aff'd* by Colo. PUC Oct. 2, 2003 (FCC concurrence granted May 23, 2005).

<sup>32</sup> Illinois Valley Cellular RSA 2-I Partnership *et al.*, Docket Nos. 04-0454, *et al.* (Ill. Commerce Comm'n, Apr. 19, 2006) (FCC concurrence granted Nov. 27, 2006) ("IVC Illinois Order"); Public Notice, Comment Sought on a Petition by USCOC of Illinois RSA #1, LLC, USCOC of Illinois RSA #4, USCOC of Rockford, LLC and USCOC of Central Illinois, LLC for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Illinois, CC Docket No. 96-45 (rel. March 31, 2008) ("US Cellular Illinois Petition") (noting that the definitions proposed by the Illinois Commission would be deemed approved if the Federal Communications Commission did not act by June 29, 2008, which it did not do).

<sup>33</sup> See 47 U.S.C. § 254(b)(3).

<sup>34</sup> See *ICC Designation Order* at 42-44 (summarizing information presented in the Application).

Redefinition will also remove a major obstacle to competition, consistent with federal telecommunications policy.<sup>35</sup>

**B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.**

A petition requesting the Commission to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."<sup>36</sup> In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine an ILEC's service area.

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.<sup>37</sup> As a wireless carrier, Cellular Properties is restricted to providing service in those areas where it is licensed by the Commission. Cellular Properties is not picking and choosing the lowest-cost exchanges.<sup>38</sup> On the contrary, the Illinois Commission designated Cellular Properties for an ETC service area that, to the extent possible, is based on the geographic limitations of its licensed service territory, and therefore is not based on support levels.<sup>39</sup>

The Commission has clarified that creamskimming opportunities arise when an ETC seeks designation in a "disproportionate share of the higher-density wire centers" in an ILEC's

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<sup>35</sup> See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening *all telecommunications markets* to competition . . . ") (emphasis added).

<sup>36</sup> See 47 C.F.R. § 54.207(c)(1).

<sup>37</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>38</sup> See *ICC Designation Order* at 52.

service area.<sup>40</sup> Opportunities for receiving uneconomic levels of support are substantially diminished, however, by the Commission's decision to allow rural ILECs to disaggregate support below the study-area level – which the ILECs can undertake at any time with the approval of the Illinois Commission even if they have made a previous election.<sup>41</sup> The Commission has concluded that the availability of disaggregation enables ILECs to protect themselves and substantially removes the ability of competitors to cream-skim:

We . . . also note that rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. *Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.*<sup>42</sup>

In this case, the Illinois Commission utilized weighted wire center population density in its creamskimming analysis, concluding that no creamskimming will result from designation in the proposed areas.<sup>43</sup> Illinois Commission Staff witness Dr. James Zolnierek showed that the

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<sup>39</sup> See *id.* at 12, 52.

<sup>40</sup> *ETC Report and Order*, 20 FCC Rcd at 6392 (footnote omitted):

By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support.

<sup>41</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, 11302-09 (2001) ("*Fourteenth Report and Order*"). See also 47 C.F.R. §§ 54.315(b)(4), 54.315(c)(5), 54.315(d)(5).

<sup>42</sup> *Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, 16 FCC Rcd 18133, 18141 (2001) (emphasis added) (footnote omitted). See *ETC Report and Order*, 20 FCC Rcd at 6393-94.

<sup>43</sup> See *ICC Designation Order* at 46-51, 52. "Weighted" population density is calculated by dividing the total population within the portion of the rural ILEC study area that is within the

average population density of the Wabash wire centers that Cellular Properties had originally proposed to cover was approximately 15.79 persons per square mile, while the population density of the wire centers outside of Cellular Properties' proposed ETC service area was only slightly lower, 14.72 persons per square mile.<sup>44</sup> The Illinois Commission, however, as part of its overall consideration, excluded two wire centers that Wabash had proposed to serve, Cisne and Mt. Erie.<sup>45</sup> With these two wire centers excluded, the density of the wire centers within Cellular Properties' proposed ETC service area rose slightly to 19.89 per square mile, while the density of the areas outside Cellular Properties' ETC service area is 13.76 persons per square mile, for a density ratio of 1.44:1. Notwithstanding these changes, the Illinois Commission found "that there are no potential creamskimming issues related to Cellular Properties' proposal to redefine the service area[] of Wabash Telephone Co...for purposes of its designation as an ETC."<sup>46</sup> Indeed, the Illinois Independent Telephone Association, which had initially raised creamskimming concerns with respect to the Wabash service area, did not oppose the draft final order which incorporated the Wabash's wire centers that are the subject of this Petition.<sup>47</sup>

There is no reason for the FCC to disregard the Illinois Commission's conclusion that Cellular Properties' proposed service area in the Wabash study area presented no potential for

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competitor's proposed ETC service area by the total area (in square miles) of that portion of the ILEC's study area. This figure is then compared to the corresponding figure for the portion of the rural ILEC's study area that is outside the proposed ETC service area to produce a ratio of population densities. *See id.*, ICC Staff Exhibit 2.0 ("Zolnierrek Direct Testimony") at 7-9. The Zolnierrek Direct Testimony is attached to this Petition in Appendix B. The analysis undertaken by Dr. Zolnierrek also compared the weighted population density included as part of the proposed designated ETC service area to the weighted population density of the entire ILEC service area. *See Zolnierrek Direct Testimony* at 8-9.

<sup>44</sup> Zolnierrek Direct Testimony at 9 and ICC Staff Exhibit JZ-1.

<sup>45</sup> *ICC Designation Order*, at 30-31 (excluding the Cisne and Mt. Erie wire centers because they lay mostly outside of Cellular Properties' FCC license area and have limited coverage).

<sup>46</sup> *ICC Designation Order* at 52.

<sup>47</sup> *Id.* at 49.

creamskimming. As the Commission made clear, the creamskimming analysis is not a bright-line test, and must take into account “variations in population distributions, geographic characteristics and other individual factors that could affect the outcome of a rural service area creamskimming analysis.”<sup>48</sup> The Illinois Commission is much better situated than the FCC to evaluate the potential for creamskimming in these specific areas, as it is familiar with the local markets in question. Although the Commission has, in its *2008 ETC Designation Order*, declined to grant ETC designations for which there were slightly lower served to unserved population density ratios, in those cases, the State Commission had not found that there was no potential creamskimming effect, and the absolute disparities in population density between the served and unserved portions of the ILEC study area were four time larger than here.<sup>49</sup> Here, the absolute disparity in population density between the served and unserved areas is small – only 6.13 persons per square mile – and the density ratio appears higher only because all wire centers have low population densities.

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<sup>48</sup> *ETC Report and Order*, 20 FCC Rcd. at 6394-5.

<sup>49</sup> See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and FCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, FCC 08-122, 23 FCC Rcd.8834, 8863 Appendix B ¶¶ 18-21 (2008)(“*2008 ETC Designation Order*”). For those areas for which weighted population densities were available, the lowest served to unserved ratio of served to unserved weighted average population densities for which ETC designation was denied because of creamskimming concerns was Alltel in the Central Telephone Co.-Virginia study area, which had a ratio of 1.34:1, but the difference in population densities between the served and unserved areas was 22.52 persons per square mile (88.04 per square mile for served, 65.52 per square mile for unserved). See Alltel Communications, Inc. Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Exhibit H (Filed Nov. 21, 2008). Similarly, in the Verizon South, Inc. – VA study area, which the Commission also denied with respect to Alltel, the served to unserved population density ratio was 1.39, but the difference in population densities between the served and unserved areas was 20.76 persons per square mile (74.65 per square mile for served, 53.89 per square mile for unserved). *Id.*

In sum, Cellular Properties is not proposing to serve “only the low-cost, high revenue customers in a rural telephone company’s study area.”<sup>50</sup> This fact demonstrates that creamskimming will not result from a grant of this Petition.

Second, the Joint Board recommended that the Commission and the states consider rural carriers’ special status under the 1996 Act.<sup>51</sup> In reviewing Cellular Properties’ Application, the Illinois Commission weighed numerous factors in ultimately determining that such designation was in the public interest. Congress mandated this public interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>52</sup> No action in this proceeding will affect or prejudice any future action the Illinois Commission or the FCC may take with respect to any ILEC’s status as a rural telephone company, and nothing about service area redefinition will diminish an ILEC’s status as such.<sup>53</sup>

Third, the Joint Board recommended that the Commission and the states consider the administrative burden rural ILECs would face.<sup>54</sup> In the instant case, Cellular Properties’ request to redefine the affected Wabash’s service areas along wire center boundaries is made solely for ETC designation purposes. Defining the service area in this manner will in no way impact the way the affected rural ILECs calculate their costs, but is solely to enable Cellular Properties to begin receiving high-cost support in those areas in the same manner as the ILEC (subject to the

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<sup>50</sup> See *Virginia Cellular*, 19 FCC Rcd at 1578 (footnote omitted).

<sup>51</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>52</sup> See *id.*

<sup>53</sup> See *ICC Designation Order* at 46, 52.

<sup>54</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

interim CETC cap). Wabash may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.<sup>55</sup>

Should Wabash choose to disaggregate support out of concerns about creamskimming by Cellular Properties or any other carrier, this disaggregation of support will not represent an undue administrative burden. In any event, the Commission placed that burden on rural ILECs in its *Fourteenth Report and Order* independent of service area redefinition and made no mention of this process being a factor in service area redefinition requests. To the extent those ILECs may find this process burdensome, the benefit of preventing creamskimming and the importance of promoting competitive neutrality will outweigh any administrative burden involved.

In sum, the proposed redefinition fully satisfies both the Joint Board's recommendations and the *Virginia Cellular* analysis.

**C. The Proposed Redefinition Along Wire-Center Boundaries Is Consistent With the FCC's "Minimum Geographic Area" Policy.**

In its *Highland Cellular* decision, the Commission declared that an entire rural ILEC wire center "is an appropriate minimum geographic area for ETC designation . . . ."<sup>56</sup> The Commission reiterated this finding in the *ETC Report and Order*.<sup>57</sup> As set forth in the attached *ICC Designation Order*, Cellular Properties' designated ETC service area does not include any partial rural ILEC wire centers. Accordingly, the instant request for concurrence with redefinition to the wire-center level, and not below the wire center, is consistent with Commission policy.

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<sup>55</sup> See *ICC Designation Order* at 12.

<sup>56</sup> *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438 (2004).

### III. CONCLUSION

Cellular Properties stands ready to provide reliable, high-quality telecommunications service to consumers in rural Illinois by investing federal high-cost support in building, maintaining, and upgrading wireless infrastructure throughout its licensed service territories, thereby providing facilities-based competition in many of those areas for the very first time. The Illinois Commission has found that Cellular Properties' use of high-cost support will increase the availability of additional services and increase investment in rural Illinois and therefore serve the public interest. Yet, without the Commission's concurrence with the Wabash service area redefinition proposed herein, Cellular Properties will not be able to bring those benefits to consumers in many areas in which the Company is authorized by the Commission to provide service. The redefinition requested in this Petition will enable Cellular Properties' ETC designation to take effect throughout its requested ETC service area in Illinois.

The relief proposed herein is exactly the same in all material respects as that granted by the Commission and state commissions to numerous other carriers throughout the country, and the Commission is well within its authority to grant its prompt concurrence. Cellular Properties submits that the benefits of permitting its ETC designation to take effect throughout its proposed service area are substantial, and those benefits will inure to rural consumers who desire Cellular Properties' service, particularly those consumers who are eligible for Lifeline and Link-Up benefits and currently have no choice of service provider.

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<sup>57</sup> See *ETC Report and Order*, 20 FCC Rcd at 6405.

Accordingly, Cellular Properties requests that the Commission grant its concurrence with the Illinois Commission's decision to redefine Wabash's service area so that the Bible Grove, Louisville and Xenia wire centers are not included in the same service area as Wabash's other wire centers. Consistent with the Illinois Commission's designation order and with previous actions taken by the FCC, the Commission should thus define each wire center in Wabash's study area to be a separate service area.

Respectfully submitted,



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