LUKAS, NACE,
GUTIERREZ & SACHS, LLP

1650 TYSONS BOULEVARD, SUITE 1500
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX

WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
DAVID A. LAFURIA
PAMELA L. GIST
TODD SLAMOWITZ*
TODD B. LANTOR*
STEVEN M. CHERNOFF*
KATHERINE PATSAS*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ

OF COUNSEL
GEORGE L. LYON, JR.
LEONARD S. KOLSKY*
JOHN CIMKO*
J. K. HAGE III*
JOHN J. MCAVOY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS BROWN*

*NOT ADMITTED IN VA

VIA ELECTRONIC FILING

March 24, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: New York Public Service Commission Order Concurring with Service Area Redefinition
WC Docket No. 05-337; CC Docket No. 96-45

Dear Ms. Dortch:

Attached is an Order adopted by the New York Public Service Commission (NYPSC), issued and effective March 23, 2009, granting the Commission's petition requesting the NYPSC's concurrence to the proposed redefinition of the service area of Citizens Telecommunication Company of New York d/b/a Frontier Communications in relation to New York RSA 2 and St. Lawrence Seaway Cellular Partnerships.[1]

Please let me know if you have any questions regarding the attached Order.

Respectfully submitted,

Todd B. Lantor

Enclosure

cc: Jennifer McKee, Wireline Competition Bureau (via e-mail)

[1] *See In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order, 23 FCC Rcd. 8834, 23 FCC Rcd. 9232, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (rel. May 1, 2008), Appendix B, at ¶¶ 27, 37, 41 & Exhibit 17; *see also In the Matter of High-Cost Universal Service Support*; *Federal-State Joint Board on Universal Service*, Order, WC Docket No. 05-337, CC Docket No. 96-45, DA 08-2704 (rel. Dec. 15 2008, WCB).

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on March 12, 2009

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca

CASE 08-C-1461 - In the Matter of Reviewing a Proposed Redefinition of Citizens Telecommunication Company of New York d/b/a Frontier Communications' Service Area.

ORDER CONCURRING WITH SERVICE AREA REDEFINITION

(Issued and Effective March 23, 2009)

BY THE COMMISSION:

INTRODUCTION

Section 214(e)(5) of 47 U.S.C. requires redefining a designated eligible telecommunications carrier's (ETC) service area, a geographic area used to determine Universal Service Fund (USF) obligations and support, when it differs from the affected rural telephone company's service area.[1] In an order issued on May 1, 2008, the Federal Communications Commission (FCC) granted ETC designations[2] to New York RSA 2

---

[1] Citizens Telecommunication Company of New York d/b/a Frontier Communications is a rural telephone company as defined in 47 U.S.C. §153(37). A rural telephone company's service area means that company's study area unless the Federal Communications Commission and affected state commission establish a different definition of the rural company's service area.

[2] Section 214(e)(2) of 47 U.S.C. gives state commissions primary responsibility for making ETC designations. However, §214(e)(6) directs the FCC, upon request, to designate as an ETC, a common carrier not subject to state commission jurisdiction. The New York State Public Service Commission has stated it lacks jurisdiction over ETC designations for Commercial Mobile Radio Service (CMRS) providers (March 27, 2003 letter to NPCR, Inc. d/b/a Nextel Partners).

Cellular Partnership (NY RSA 2) and St. Lawrence Seaway Cellular Partnership (St. Lawrence Seaway) (collectively Partnerships) as well as Dobson Cellular Systems, Inc. and American Cellular Corp. (Dobson).[3] The FCC subsequently amended the May 1 Order:[4] (1) specifying 13 wire centers in the Citizens Telecommunication Company of New York d/b/a Frontier Communications ("Frontier") service area in which ETC designation was granted to St. Lawrence Seaway rather than Frontier's entire service area as the May 1 Order had designated; (2) granting ETC designation to St. Lawrence Seaway in 9 wire centers in the Frontier service area which had been omitted from the May 1 Order; and (3) accepting Dobson's September 19, 2008 relinquishment of its ETC designation.

Because the service areas for which the Partnerships received ETC designations are smaller than Frontier's service area, section 214 (e)(5) of 47 U.S.C. requires redefining that company's service area. The FCC proposed service area redefinition requires state commission review and agreement.[5] Therefore, the FCC petitioned the Commission to 1) examine the FCC's proposed redefinition of the Frontier service area and 2) decide if the Commission agreed with the proposed service area redefinition.

BACKGROUND

Frontier's Study Area

NY RSA 2 plans to serve the Adams, Adams Center, Belleville, Constableville, Croghan, Lowville, Lyons Falls, and Mannsville wire centers, consisting of approximately 34,000 households. St. Lawrence Seaway plans to serve Blue

---

[3] In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al.; Petitions for Designation as Eligible Telecommunications Carriers, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd 8834 (May 1, 2008) (May 1 Order).

[4] In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al.; Petitions for Designation as Eligible Telecommunications Carriers, WC Docket No. 05-337, CC Docket No. 96-45, 2008 LEXIS 8339, (December 15, 2008) (December 15 Order).

[5] 47 C.F.R. §54.207(d).

Mountain Lake, Broadalbin, Caroga Lake, Gloversville, Indian Lake, Johnstown, Lake Pleasant, Mayfield, Newcomb, Northville, Raquette Lake, St. Johnsville and Wells wire centers, which serve approximately 43,000 households. These rural wire centers are located in the following counties: Fulton, Hamilton, Herkimer, Jefferson, Lewis, Montgomery, Oneida and Warren counties, consisting of approximately 114,000 households. (See Attachment.)

A large portion of the area NY RSA 2 plans to serve has extensive coverage provided by other wireless providers, Verizon Wireless and AT&T Wireless, while the area St. Lawrence Seaway plans to serve has minimal coverage provided by Verizon Wireless, Rural Cellular Corp and AT&T Wireless. Some of these areas also have cable telephone availability. In the March 4, 2008 Framework Order in Case 07-C-0349, Frontier was deemed a competitive company, i.e., two competitive alternatives existed in at least 69.3% of its territory.[6]

The amount of high-cost funding received by a designated ETC is based on the funding received by the incumbent local exchange company (ILEC) for the area served. The ILEC submits its costs to the Universal Service Administrative Company and a comparison of submitted costs to national average costs determines the amount of USF funds the ILEC receives. An ETC receives the same amount of per-line funding as the ILEC does, regardless of the ETC's costs.

PROCESS

Pursuant to State Administrative Procedure Act §202(1), a notice of proposed rulemaking was published in the State Register on January 7, 2009. In addition, the Secretary to the Commission afforded interested parties an opportunity to submit comments regarding the FCC's proposed redefinition of Frontier's service area.[7] Frontier submitted comments on January 20, 2009, as did the New York State

---

[6] Case 07-C-0349, Examining Framework for Regulatory Relief, Order Adopting Framework (issued March 4, 2008).

[7] Case 08-C-1461, Review of Proposed Redefinition of Citizens/Frontier Study Area, Notice Soliciting Comments (issued January 7, 2009).

Telecommunications Association, Inc. (NYSTA). The Partnerships submitted reply comments on January 30, 2009.

FRONTIER COMMENTS

Frontier opposes redefinition of its service area for several reasons. Frontier disagrees with the FCC finding that redefinition would not cause creamskimming, i.e., service to areas least costly or most profitable while excluding service to high cost areas, because that finding was based on population density analysis only.[8] Frontier claims that "[c]reamskimming in rural areas does not solely depend on population densities, a fact expressly acknowledged in both FCC orders."[9]

To illustrate that creamskimming can occur despite acceptable population density figures, Frontier uses the example of ETC designated carriers building along highway rights-of-way where facility costs are presumed lower than facility costs in rural areas. If these highways run through Frontier high cost areas, Frontier maintains that allowing a wireless ETC to compete in portions of its service area would result in the wireless ETC receiving "greater . . . average high-cost 'support'[10] . . . " than Frontier receives for the full study area.[11]

The second situation Frontier posits to demonstrate likelihood of creamskimming assumes that customers with billing addresses in high-cost areas use cellular service in low-cost areas when higher cellular traffic makes mobile and lower

---

[8] Frontier Comments, p. 1.

[9] Id. Frontier's reference to "both FCC orders" is to the May 1 Order and December 15 Order designating the Partnerships as ETCs and redefining Frontier's study area as a result.

[10] Because the cost of providing telecommunications service to customers is generally higher in rural areas than urban areas, the federal USF provides high-cost support to qualifying carriers in rural areas.

[11] Frontier Comments, p. 2.

cost calling available. Frontier states that this situation also results in disproportionate USF support for the wireless ETC.

Frontier's additional concerns are that (1) the effect of Partnership support coming from high-cost areas "would create relatively low-cost disaggregated areas ripe for creamskimming by other carriers;"[12] (2) the Partnerships' ETC status will place upward demand on USF support without creating additional services for customers; and (3) the best insurance against creamskimming is requiring that the Partnerships provide cellular service in the entire study area.

Based on Frontier's contentions that redefining its study area will place it at a competitive disadvantage, Frontier urges the Commission to not concur with the FCC's proposed service area redefinition and, instead, require the Partnerships to provide cellular service in the entire service area.

NYSTA COMMENTS

NYSTA contends that redefining the Frontier study area to meet the needs of the Partnerships is not in the public interest because the proposed redefinition places Frontier at a disadvantage and "is in opposition to the spirit and policy reasons and requirements for which universal service was established."[13] NYSTA states that the FCC's creamskimming analysis did not consider "all aspects of wireless services and the potential for creamskimming . . . ."[14] Therefore, NYSTA maintains that the Commission should reject the FCC's proposed redefinition of Frontier's study area and require the Partnerships to provide service throughout the study area.

---

[12] Frontier Comments, p. 2.

[13] NYSTA Comments, p. 2.

[14] Id.

PARTNERSHIPS' REPLY

The Partnerships state that the standard for state commission review of a proposed FCC study area redefinition consists of three factors identified by the Federal-State Joint Board on Universal Service (Federal-State Joint Board): (1) risk of creamskimming; (2) consideration of the special regulatory status accorded rural telephone companies; and (3) recognition of any administrative burdens that might result from disaggregation of the affected study area.[15] The Partnerships maintain that because the FCC already decided that granting ETC status to the Partnerships was in the public interest, redetermination of that issue, as urged by NYSTA, is outside the scope of this study area redefinition analysis.

Creamskimming potential, according to the Partnerships, is not a risk because population density analysis, "a proxy for relative cost of serving a given area,"[16] demonstrates that the lowest population density in the Frontier study area will be served by the Partnerships. According to the Partnerships, redefining Frontier's service area will not change Frontier's regulatory status or impose administrative burdens.

Frontier's claim that creamskimming presents a risk when wireless carriers build along major highways is without merit, the Partnerships maintain, because ETCs receive high-cost support based on billing address line counts, not facilities built to serve roaming traffic. As to Frontier's contention that redefinition leaves study areas vulnerable to creamskimming by other carriers, the Partnership maintains that each additional ETC designation would assess the potential for creamskimming anew and where creamskimming was likely, "that competitor would not likely receive [a] designation."[17]

---

[15] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 12 FCC Rcd. 87 (November 8, 1966) (Federal-State Joint Board Recommended Decision).

[16] Partnership Reply, p. 4.

[17] Ibid., p. 7.

The Partnerships characterize wireless carriers' licensing boundaries as presenting a competitive barrier to entry since these contours seldom match a rural telephone company's service area. Without redefinition, i.e., allowing an ETC to serve an area smaller than an entire service area, the Partnerships maintain that competitive neutrality will not exist. The Partnerships state that the FCC's public interest finding in support of the ETC designations, and the FCC's study area redefinition analysis provide a basis for the Commission concurring with the proposed study area redefinition.

DISCUSSION

Analysis and Review Required for Service Area Redefinition

The universal service provisions of the federal Telecommunications Act of 1996 (1996 Act) were designed to keep rates at affordable levels for "low-income consumers and those in rural, insular, and high cost areas"[18] by subsidizing those rates. Subsidies are available only to carriers who have been designated as ETCs.[19] Federal and state laws govern ETC designations,[20] particularly when a designated ETC elects not to serve the entire service area.[21] When, as in this case, the designated ETCs want to offer service only in areas in which they are licensed and can provide facilities, rather than Frontier's entire service area, the FCC and the Commission must agree to a different definition of Frontier's service area.[22] When the FCC granted ETC designations to NY RSA 2 and St. Lawrence Seaway, it also proposed a redefinition of the Frontier study area and then petitioned the Commission to examine that proposed redefinition.[23]

---

[18] 47 U.S.C. §254(b)(3).

[19] 47 C.F.R. §54.201 (a)(1).

[20] 47 U.S.C. §§254, 214; 47 C.F.R. §54.101.

[21] 47 U.S.C. §214(e)(5).

[22] 47 U.S.C. §214(e)(5).

[23] 47 C.F.R. §54.207(d)(1).

Because the FCC has already granted ETC designations to NY RSA 2 and St. Lawrence Seaway, the scope of this proceeding is review of the FCC's proposed redefinition of Frontier's study area, not review of the FCC's ETC determination.

Federal-State Joint Board Study Area Redefinition Factors

The Federal-State Joint Board on Universal Service recommended that state commissions consider three issues when redefining a study area: (1) potential for creamskimming; (2) special status of rural telecommunications carriers; and (3) administrative cost impact of redefinition on the rural carrier.[24] If these factors are considered, and redefinition presents no demonstrable creamskimming risk or adversely affects the rural ILEC's regulatory status or imposes an administrative burden, then an ETC is not required to service the entire study area of the ILEC.

i. Creamskimming Risk

Creamskimming occurs when a competitor targets customers that are the least costly to serve or the most profitable for the incumbent to serve. The FCC has endorsed population density analysis as a proxy to assess risk of creamskimming. A population density analysis compares population density of wire centers in which ETC designation was requested to wire centers in which ETC designation was not requested. The average population density of the Frontier wire centers within the NY RSA 2 proposed redefined study area is 58.77 persons per square mile, while outside the proposed redefined study area, average population density is 91.11 persons per square mile.[25] Similarly, the average population density of the Frontier wire centers within the St. Lawrence Seaway proposed redefined study area is 35.11 persons per square mile, while outside the proposed redefined study area, average population density is 91.83

[24] In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87, 26 (November 8, 1996) (Federal-State Joint Board Recommended Decision).

[25] NY RSA 2 Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, ¶ 48 (NY RSA 2 Petition).

persons per square mile.[26] In both NY RSA 2's and St. Lawrence Seaway's proposed redefined study areas, population density figures show that the lowest density population will be served. In its May 1 Order, the FCC found that its population density analysis "revealed that . . . [NY RSA 2] will not be serving only low-cost areas to the exclusion of high-cost areas . . . " and concluded that designating NY RSA 2 to serve "below the study area level of the relevant rural telephone companies will not have the effect of creamskimming . . . ."[27] The December 15 Order made the same finding, i.e., that St. Lawrence Seaway's ETC designation would not result in creamskimming in the redefined Frontier area.[28]

Neither Frontier nor NYSTA dispute the FCC's finding that NY RSA 2 and St. Lawrence Seaway will not serve only low-cost areas to the exclusion of high-cost areas. However, Frontier and NYSTA maintain that the FCC's population density analysis was too cursory a review of the potential for creamskimming, which they maintain can occur even with acceptable population density figures. The scenario Frontier uses to illustrate this contention, i.e., ETCs' build-out of facilities along low-cost highway rights-of-way, and targeting least costly and most profitable customers, thereby leaving to Frontier those high-cost customers in low population density areas far removed from major highways, is not supported by fact, and, therefore, not persuasive regarding potential for creamskimming as a result of redefinition. As the Partnerships note, "[c]ompetitive ETCs receive high-cost support based on line counts reported by billing address . . . not . . . for serving [roaming] traffic."[29] Therefore, Frontier's creamskimming scenario is unlikely to occur. While a competitive ETC might use

---

[26] St. Lawrence Seaway Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, ¶ 48 (St. Lawrence Seaway Petition).

[27] May 1 Order, Appendix B, ¶17.

[28] December 15 Order, ¶5.

[29] Partnership Reply, p. 6.

highway rights-of-way to build facilities, especially if such construction costs less, the limitation of basing high-cost support on line counts reported by billing address minimizes the risk that least costly high volume mobile customers will be served to the exclusion of high cost customers in low density areas.

St. Lawrence Seaway and NY RSA 2 propose "to build new cell sites with high-cost support . . . [in areas where coverage] is poor at best and in some areas unavailable."[30] Both St. Lawrence Seaway and NY RSA 2 made commitments to use high-cost support "to expand and improve . . . [their] network coverage in areas where wireless coverage is poor or nonexistent."[31] In addition, St. Lawrence Seaway and NY RSA 2 made commitments to "provide customers with wider local calling areas, mobile communications, a variety of service offerings, high quality service, and competitive rates."[32]

Frontier asserts that redefining its service area for NY RSA 2 and St. Lawrence Seaway will make it vulnerable to creamskimming by other competitive ETCs. However, redefining Frontier's service area in this instance will have no effect regarding the Commission's careful consideration in reviewing future proposed redefinitions.

ii. Frontier's Status as a Rural Telephone Company

The 1996 Act placed rural telephone companies such as Frontier on a different competitive footing than other telecommunications providers with respect to interconnection, unbundling, and resale requirements of 47 U.S.C. §251(c). In deciding whether to grant ETC status to St. Lawrence Seaway and NY RSA 2, the FCC's public interest finding took into account the special status of Frontier as a rural carrier.

---

[30] NY RSA 2 Petition and St. Lawrence Seaway Petition, ¶44.

[31] Ibid., ¶34.

[32] Ibid., ¶39.

St. Lawrence Seaway and NY RSA 2 maintain that redefining Frontier's service area would not affect Frontier's status as a rural telephone company.[33] Neither Frontier nor NYSTA claim that the proposed service area definition would affect Frontier's regulatory status. We find, therefore, that redefining Frontier's study area will have no effect on the statutory exemptions granted Frontier as a rural telecommunications carrier.

iii. Administrative Burden

St. Lawrence Seaway and NY RSA 2 maintain that redefining Frontier's service area will not impose an undue administrative burden on Frontier. Neither Frontier nor NYSTA contest this assertion.

Redefining Frontier's service area as proposed will not require Frontier to determine costs on other than a study level basis. The proposed redefinition merely allows NY RSA 2 and St. Lawrence Seaway to serve areas smaller than Frontier's entire study area.

Upward Demand on Universal Service Fund

One of Frontier's additional concerns is that the Partnerships' ETC status will place upward demand on USF support without creating additional services for customers. However, St. Lawrence Seaway and NY RSA 2 have committed to "provide customers with wider local calling areas, mobile communications, a variety of service offerings, high quality service, and competitive rates,"[34] and expect that a competitive response to their entry into Frontier's service area "could include improved service quality and customer service; new investments in telecommunications plant; more rapid deployment of high-speed data (DSL) service; wider local calling areas, bundled service offerings; and lower prices overall."[35]

Frontier's concern about the impact of ETC designations on the USF is an issue requiring system reform and remedies that only the FCC can provide, and is,

---

[33] Partnership Reply, p. 4.

[34] NY RSA 2 Petition and St. Lawrence Seaway Petition, ¶39.

[35] Ibid., ¶38.

therefore, more appropriately before the FCC. The FCC has initiated a rulemaking proceeding to consider proposals for comprehensive reform of the high-cost universal service support system.[36] In the interim, the FCC ordered an emergency cap on high-cost support ETCs may receive, pending the outcome of the rulemaking proceeding.[37]

Requirement to Serve Entire StudyArea

The FCC has stated that since most rural carriers serve high-cost customers, rural creamskimming is an issue only when the . . . [ETC] will cover part of the rural ILEC's study area."[38] Frontier and NYSTA maintain that the best insurance against creamskimming is to require a designated ETC to service the entire Frontier study area. However, territorial limits of the service areas in which NY RSA 2 and St. Lawrence Seaway are licensed, not intentional targeting of high-cost areas, drove consideration of which Frontier service areas NY RSA 2 and St. Lawrence Seaway would serve. In any event, ETCs are not required to serve an entire service area so long as the Federal-State Joint Board three factors regarding creamskimming, regulatory status, and administrative cost impact are met.[39] As discussed in preceding paragraphs, we find that the Federal-State Joint Board factors have been met. Moreover, restricting entry into a rural carrier's

---

[36] High-Cost Universal Service Support: Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support Rule NPRM); High-Cost Universal Service Support: Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions NPRM); High-Cost Universal Service Support: Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM).

[37] May 1 Order.

[38] In the Matter of Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (April 20, 2004).

[39] In the Matter of the Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 26 (November 8,1996) (Federal-State Joint Board Recommended Decision).

service area based on ability to serve the entire area could limit competition and, therefore, opportunities for increased consumer choice.

CONCLUSION

After review and analysis, we find that the FCC's proposed redefinition of Frontier's service area presents no demonstrable creamskimming risk, will have no effect on the regulatory status of Frontier and presents no administrative cost impact. We conclude that the concerns raised by Frontier and NYSTA do not preclude redefinition of the Frontier study area. Therefore, we concur with the FCC's proposed redefinition of Frontier's study area for the reasons discussed in this Order.

The Commission orders:

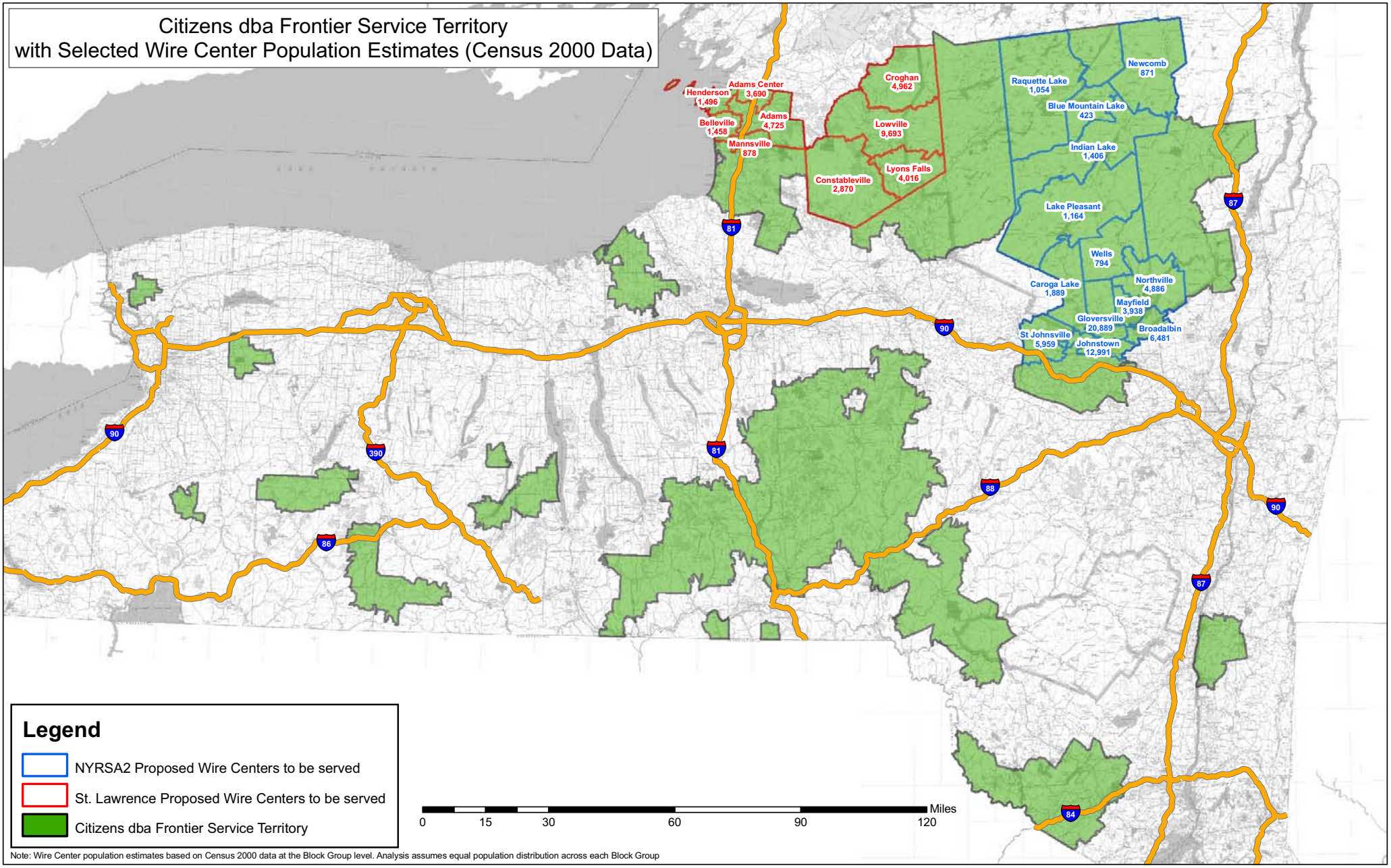
1. The petition of the Federal Communications Commission for concurrence with its proposed redefinition of the service area of Citizens Telecommunication Company of New York d/b/a Frontier Communications in relation to New York RSA 2 Cellular Partnership and St. Lawrence Cellular Partnership is granted.

2. This proceeding is closed.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

Attachment



Note: Wire Center population estimates based on Census 2000 data at the Block Group level. Analysis assumes equal population distribution across each Block Group

NYS DPS GIS Unit/MPC March 2009