

**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.,)	CC Docket No. 96-45
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))	
)	
)	

COMMENTS OF CELLULAR PROPERTIES, INC.

John T. Nakahata
Peter G. Wilson
WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, DC 20036
(202) 730-1337

Counsel for Cellular Properties, Inc.

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SUMMARY

Cellular Properties, Inc. (“Cellular Properties”), a provider of wireless telecommunications services and operator of wireless network infrastructure facilities in rural areas of Illinois, seeks Commission concurrence with the decision of the Illinois Commerce Commission (“Illinois Commission”) to redefine the service area of Wabash Telephone Cooperative, Inc. (“Wabash”), pursuant to Section 54.207(c) of the Commission’s rules. The Commission should do so. The proposed redefinition of the Wabash service area is in the public interest. It furthers Congress’ intent in the Communications Act of 1934 (“the Act”), as amended, to “promote competition and reduce regulation” of telecommunications services and to “encourage the rapid deployment of new telecommunications technologies.” By redefining the Wabash service area, the Illinois Commission’s proposal would permit Cellular Properties to make the network investments necessary to bring competitive wireless service to a historically underserved rural region of Illinois.

The Illinois Commission rightly concluded that the proposed redefinition is in the public interest, and, more specifically, that it does not raise any “creamskimming” concerns. That is so for at least two reasons. First, as a wireless carrier, Cellular Properties is limited to providing service in those areas where it is licensed by the Commission. Second, as the detailed record before the Illinois Commission made clear, the proposed ETC service area has a population density only slightly higher than the areas outside the proposed service area. Such minor discrepancies do not raise plausible concerns of “creamskimming,” which is why the Illinois Independent Telephone

Association – which had originally opposed the proposal – dropped its objections to the draft final order that is the subject of this proceeding.

The proposed redefinition is also consistent with the Act’s special concerns for rural carriers. The Illinois Commission concluded that redefining the Wabash service area would not affect Wabash’s status as a rural telephone company, and would not impose any significant administrative costs on Wabash (which has not opposed this petition).

For all of these reasons, the Commission should concur with the findings of the Illinois Commission and allow Cellular Properties to receive the federal support necessary to provide much-needed competitive wireless services to rural Illinois.

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COMMENTS OF CELLULAR PROPERTIES, INC.

Cellular Properties, Inc. (“Cellular Properties”) submits these comments in response to the Commission’s Public Notice of July 2, 2009, initiating a proceeding to consider Cellular Properties’ request that the Commission concur with the decision of the Illinois Commerce Commission (“Illinois Commission”) to redefine the service area of Wabash Telephone Cooperative, Inc. (“Wabash”). For the reasons explained below, the Commission should grant Cellular Properties’ request and concur with the decision of the Illinois Commission.

I. BACKGROUND.

A. Section 214(e).

Section 214(e) of the Communications Act of 1934 (“the Act”) authorizes state commissions to designate a carrier that satisfies the requirements of the federal universal

service rules “as an eligible telecommunications carrier for a service area designated by the State commission.”¹ In rural regions, a “service area” is generally defined as an ILEC’s study area. However, the Act provides a process whereby an ETC may be designated for a service area that differs from the study area of the relevant ILEC. Specifically, Section 214(e)(5) of the Act provides:

In the case of an area served by a rural telephone company, “service area” means such 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) [47 U.S.C. § 410(c)], establish a different definition of service area for such company.²

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 perfectly symmetrical with a rural ILEC’s study area would raise barriers to competitive entry.³ To solve this problem, the Commission established a procedure permitting the Commission and the states jointly to redefine rural ILEC service areas for certain limited purposes.⁴ This procedure has been used by the Commission and state commissions to redefine rural ILEC service areas along wire center boundaries to facilitate the designation of competitive ETCs in those areas.⁵

¹ 47 U.S.C. § 214(e)(2).

² 47 U.S.C. § 214(e)(5).

³ 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 ¶ 176 (1996).

⁴ See 47 C.F.R. § 54.207(c).

⁵ 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 ¶¶ 7-8.

B. The Illinois Commission Order.

This proceeding was initiated following a petition by Cellular Properties seeking the Commission's concurrence with the Illinois Commission's proposed redefinition of the service area of Wabash, an ILEC that provides services in certain rural areas of downstate Illinois. Cellular Properties applied to the Illinois Commission, seeking a redefinition of Wabash's service area to include only specified wire centers for purposes of its ETC designation and receipt of federal universal service fund support. The Illinois Commission, after discussing the requirements of the Commission's rules and the analysis set forth in the *Federal-State Joint Board on Universal Service Report and Order* ("ETC Report and Order"),⁶ granted Cellular Properties' application, excluding two wire centers – Mt. Erie and Cisne – from those originally sought by Cellular Properties.

With respect to the requirements imposed by this Commission's rules, the Illinois Commission concluded that Cellular Properties "either currently offers and provides or has made a commitment to offer and provide" all of the core services and functions required by Section 54.101(a) of the Commission's rules.⁷ It also concluded that Cellular Properties provides Lifeline and Link-up services, and advertises those services, in accordance with Sections 54.405 and 54.411 of the Commission's rules.⁸

With respect to the analysis set forth in the *ETC Report and Order*, the Illinois Commission made eight specific findings:

⁶ *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) Order, Illinois Commerce Commission Docket No. 07-0154 (Feb. 27, 2008) at 6 (citing *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005)).

⁷ *Id.* at 24.

⁸ *Id.* at 26-27.

- It concluded that Cellular Properties demonstrated its ability to provide service upon reasonable request through its proposed service area, with the exception of two Wabash exchanges;⁹
- It concluded that Cellular Properties had presented a sufficiently detailed five-year network improvement plan;¹⁰
- It found that Cellular Properties had the ability to remain functional in emergency situations;¹¹
- It concluded that Cellular Properties would satisfy appropriate consumer protection and service quality standards;¹²
- It found that Cellular Properties would offer a local usage and rate plan comparable to the service plans offered by incumbent LECs;¹³
- It found that Cellular Properties had acknowledged its responsibility to serve as a carrier of last resort to long distance carriers if all other ETCs withdrew from the market;¹⁴
- It concluded that Cellular Properties had committed to filing annual reports with this Commission;¹⁵
- It concluded that Cellular Properties' designation as an ETC was in the public interest for the ILEC service areas within its proposed ETC Designated Services Areas (again with the exception of two Wabash exchanges which the Commission proposed to exclude from Cellular Properties' service area) and specifically found

⁹ *Id.* at 30-31.

¹⁰ *Id.* at 35-36.

¹¹ *Id.* at 37.

¹² *Id.* at 39.

¹³ *Id.*

¹⁴ *Id.* at 39-40.

¹⁵ *Id.* at 41.

that the proposed redefinition of the Wabash service area raised “no potential creamskimming issues.”¹⁶

These findings, with which Cellular Properties has asked this Commission to concur, were fully aired before the Illinois Commission, and were not challenged during the initial comment period before this Commission. Redefining the Wabash service area to include only certain wire centers for purposes of designating Cellular Properties as an ETC will foster competition in telecommunications services, allowing consumers in rural Illinois to enjoy rates comparable to those currently enjoyed by consumers in Chicago and other urban areas. Because of this Commission’s recent concern with the potential for creamskimming, these comments focus on the Illinois Commission’s conclusion that the proposed redefinition of the Wabash service area raises no creamskimming concerns.

II. THE PROPOSED REDEFINITION OF THE WABASH SERVICE AREA DOES NOT RAISE CREAMSKIMMING CONCERNS.

The proposed redefinition of the Wabash service area does not pose any creamskimming concerns. The Illinois Commission rightly perceived that minor differences in population density between those wire centers that are included in a proposed ETC service area and those that are excluded do not raise such concerns, and that the difference in population density in this case is well within the acceptable margin.

A. Statistical Analysis Of Cellular Properties’ Petition Allays Any Creamskimming Concerns.

This 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 service area.¹⁷ Cellular Properties has not sought such a share. Illinois

¹⁶ *Id.* at 52.

¹⁷ *ETC Report and Order*, 20 FCC Rcd at 6392, ¶ 49 (footnote omitted):

Commission Staff witness Dr. James Zolnierек conducted a thorough analysis of the population densities of the portions of the Wabash service area within and outside of Cellular Properties' proposed ETC service area, as well as the population density of the Wabash service area as a whole. Dr. Zolnierек concluded that the ratio of the population density of the portions of the Wabash service area within and outside of the proposed ETC service area was 1.11:1. The ratio of the population density within the proposed ETC service area and the Wabash service area as a whole was 1.03:1. Dr. Zolnierек concluded, and the Illinois Commission concurred, that such negligible discrepancies – less than 2 persons per square mile – do not give cause for creamskimming concerns.¹⁸

The population density ratio in Cellular Properties' petition (1.44) is slightly higher than the ratio calculated by Dr. Zolnierек; however, that is not of Cellular Properties' choice. The Illinois Commission decided to exclude two additional wire centers from the proposed ETC service area (Mt. Erie and Cisne) because they were on the edge of Cellular Properties' service area, resulting in small increase in the population density ratio between the area to be served by Cellular Properties, and the remainder of the Wabash study area. The revised ratio is still well within acceptable limits. Cellular Properties' proposed ETC service area compares favorably to other proposed ETC service areas in which the Commission recently initiated proceedings. For example, both the US Cellular petition for Nebraska (DA-08-130) and the Triangle Communications Systems petition for Montana (DA-07-3791) involve proposed ETC service areas with

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.

¹⁸ See Direct Testimony of James Zolnierек, Policy Dept., Telecom. Div., ICC, Docket No. 07-0154 (June 8, 2007) at 11-12.

higher population density ratios (1.77 and 3.40, respectively) than the service area proposed in this case.

It also bears mention that the total number of consumers within the Wabash service area but excluded from Cellular Properties' proposed ETC service area is far smaller than the total number of consumers impacted in other cases where the Commission has considered possible creamskimming concerns. Thus, the absolute difference in population density between served and unserved regions of Cellular Properties' proposed ETC service area is 6.13 persons per square mile, which is far less than the corresponding absolute difference in Alltel's petitions regarding the Central Telephone Company (22.52 persons per square mile) and Verizon South (20.76 persons per square mile).

Applicant – Study Area	Served pop. density	Unserved pop. density	Ratio	Absolute Difference
Alltel – Central Tel. Co. – VA	88.04	65.52	1.34	22.52
Alltel – Verizon South – VA	74.65	53.89	1.39	20.76
Triangle – Central Montana	6.12	1.80	3.40	4.32
US Cellular Nebraska - Hartmann	2.70	1.50	1.77	1.20
Cellular Properties - Wabash	19.89	13.76	1.44	6.13

In any event, on the question of whether there is a significant risk of creamskimming, this Commission should defer to the judgment of the Illinois Commission in the absence of clear contrary evidence. The Illinois Commission knows the territory of the state of Illinois, and is in the best position to judge whether creamskimming is an actual possibility. Here, the Illinois Commission concluded that it was not – and in fact it was a decision by the Illinois Commission to exclude two wire centers that slightly elevated the served to unserved average population density ratio. No party has appeared before the FCC to suggest that the Illinois Commission was wrong, and these statistics certainly do not suggest that the Illinois Commission’s judgment was unreasonable.

B. The Proposed ETC Service Area Is Based On The Geographic Limits of Cellular Properties’ Licensed Service Territory And The Commission’s “Minimum Geographic Area” Policy.

There is also no evidence to suggest that Cellular Properties designed its proposed ETC service area to pick and choose the lowest-cost exchanges available in rural Illinois. As a wireless carrier, Cellular Properties is entitled to provide services only in those areas where the Commission licenses it to operate. The ETC service area proposed in this case is modeled to the extent possible on the geographic region in which this Commission has licensed Cellular Properties to provide such services.

The proposed ETC service area was also designed to be consistent with the Commission’s “Minimum Geographic Area” policy, which precludes ETC service areas that divide rural ILEC wire centers.¹⁹ Cellular Properties’ proposed ETC service area

¹⁹ See *Federal-State Joint Board on Universal Service; 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).

does not include any partial rural ILEC wire centers, consistent with the Minimum Geographic Area policy.

Wabash will not be placed at a competitive disadvantage with respect to the amount of universal service support it can receive if Cellular Properties' petition is granted. As a rural ILEC, Wabash has "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."²⁰ Thus, even assuming that the redesignation of the Wabash service area raised creamskimming concerns (which it does not), Wabash remains free to offset any perceived competitive advantage by disaggregating and targeting its own support.

CONCLUSION

Cellular Properties has proposed to provide reliable, affordable telecommunications services to residents of rural Illinois by investing federal support in building and maintaining wireless infrastructure throughout its licensed service territories. The Illinois Commission gave Cellular Properties' application a fair and thorough review. The concerns of the Illinois Commission and of interested parties were addressed at the state level, and the final application was approved without opposition. This Commission should concur.

The proposed redefinition of the Wabash service area for purposes of Cellular Properties' application does not raise any creamskimming concerns. After a detailed statistical analysis, neither the Illinois Commission nor any interested party identified any creamskimming concerns in Cellular Properties' final application. The minor

²⁰ *Federal-State Joint Board on Universal Service, Western Wireless Corporation 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, ¶ 20 (2001) (footnote omitted).

discrepancy in the population densities of the served and unserved regions of the proposed ETC service area reflects geographic limitations, not a calculated effort to peel off those customers that are easiest to serve. In any event, Wabash (which has not opposed this application) is protected through its ability to disaggregate for purposes of its own support levels.

Accordingly, the Commission should grant Cellular Properties' concurrence with the decision of the Illinois Commission 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 Commission, the Commission should thus define each wire center in Wabash's study area to be a separate service area.

Respectfully submitted,



John T. Nakahata

Peter G. Wilson

WILTSHIRE & GRANNIS, LLP

1200 18th Street, N.W., Suite 1200

Washington, DC 20036

(202) 730-1337

Counsel to Cellular Properties, Inc.

July 16, 2009

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