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February 17, 2015

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PUBLIC SERVICE
COMMISSION

Via Federal Express

Hon. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort KY 40601-8294

Re: *Petition of Bluegrass Wireless LLC for a Partial Relinquishment of Its Eligible Telecommunications Carrier Designation*

2015-55

Dear Mr. Derouen:

On behalf of Bluegrass Wireless LLC, enclosed for filing with the Public Service of the Commonwealth of Kentucky are one (1) original and ten (10) copies of the Petition of Bluegrass Wireless LLC for a Partial Relinquishment of Its Eligible Telecommunications Carrier Designation.

Thank you, and if you have any questions with regard to this matter, please call me.

Sincerely,

DINSMORE & SHOHL LLP

Edward T. Depp / DDB with permission
Edward T. Depp

ETD/bmt
Enclosures

cc: John E. Selent, Esq.
Daniel D. Briscoe Jr., Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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FEB 18 2015

PUBLIC SERVICE
COMMISSION

In the Matter of:

PETITION OF BLUEGRASS WIRELESS)	
LLC FOR A PARTIAL RELINQUISHMENT)	CASE NO.
OF ITS ELIGIBLE TELECOMMUNICATIONS)	[]
CARRIER DESIGNATION)	

**PETITION OF BLUEGRASS WIRELESS LLC FOR PARTIAL RELINQUISHMENT
OF ITS ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION**

Bluegrass Wireless LLC (d/b/a “Bluegrass Cellular”) hereby petitions the Public Service Commission of the Commonwealth of Kentucky (the “Commission”) for authorization to partially relinquish its designation as an eligible telecommunications carrier (“ETC”) in its Somerset, London, and Corbin markets (“SLC Markets”) pursuant to 47 U.S.C. § 214(e)(4).¹ The Commission granted Bluegrass Cellular ETC designation on July 8, 2005. *See In the Matter of Bluegrass Wireless LLC’s Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Ky P.S.C. Case No. 2005-00017, Order (July 8, 2005). However, Bluegrass Cellular now respectfully requests that the Commission grant Bluegrass Cellular a partial relinquishment of its ETC designation for the SLC Markets. Bluegrass Cellular requests that its ETC status elsewhere throughout Kentucky remain otherwise unaffected.

I. Background

Bluegrass Wireless LLC is a member of a larger group of telecommunications entities, collectively referred to as Bluegrass Cellular, which serves the Commonwealth of Kentucky.² Bluegrass Wireless LLC (hereafter referred to as “Bluegrass Cellular”) is an ETC that serves the

¹ The SLC Markets are comprised of the following counties: Pulaski, Laurel, Whitley and Knox.

² These entities are: Bluegrass Wireless LLC, Kentucky RSA #3 Cellular General Partnership, Kentucky RSA #4 Cellular General Partnership, and Cumberland Cellular Partnership (collectively, d/b/a “Bluegrass Cellular.”).

SLC Markets, among other areas in Kentucky. Bluegrass Cellular made the decision to discontinue service in the SLC Markets effective March 31, 2015, and sent notice of that decision to the Commission on October 24, 2014. Bluegrass Cellular has approximately 4,500 customers in the SLC Markets, of which forty-four are Lifeline customers. The SLC Markets are currently served in their entirety by the Incumbent Local Exchange Carriers (“ILECs”) AT&T Kentucky and Windstream Kentucky East. Additionally, the SLC Markets are served by Verizon Wireless, AT&T Mobility, and Sprint Corporation, as well as other wireless and landline telecommunications service providers.

The attached Exhibits 1, 2, and 3 identify cell sites in the SLC Markets that are either owned by Bluegrass Cellular or upon which Bluegrass Cellular co-locates with another entity that owns the facility. Bluegrass Cellular will discontinue wireless service from all of these sites on March 31, 2015.

II. Legal Authority and Discussion

47 USC § (e)(4) requires that a state commission shall permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. The statute requires that the ETC provide advance notice to the state commission. *Id.* The statute also requires that the other ETCs in the area possess sufficient facilities to accommodate the new Lifeline customers. *Id.* Finally, the company requesting relinquishment must provide sufficient notice to its Lifeline customers to enable those customers to seek alternative service providers. *See In the Matter of Petition of Cincinnati Bell Wireless LLC for Relinquishment of Eligible Telecommunications Carrier Designation*, Case No. 2014-00140, Order (May 16, 2014).

In the present situation, and as discussed in more detail below, there are multiple wireline and wireless ETC providers in the SLC Markets. These providers possess sufficient facilities to

accommodate Bluegrass Cellular's forty-four Lifeline customers in the SLC Markets. Finally, Bluegrass Cellular has provided and will continue to provide sufficient notice to the affected Lifeline customers. Therefore, the Commission should grant Bluegrass Cellular's request for a partial relinquishment of its ETC designation.

A. The Commission should grant the partial relinquishment of Bluegrass Cellular's ETC designation because there are alternative ETCs in the SLC Markets.

Under 47 U.S.C. § 214(e)(4), a state commission shall permit a carrier to relinquish its ETC designation in any area served by more than one ETC. 47 USC § (e)(4); *See also, In the Matter of Petition of Cincinnati Bell Wireless LLC for Relinquishment of Eligible Telecommunications Carrier Designation*, Case No. 2014-00140, Order (May 16, 2014). There are alternative wireline and wireless ETC providers that cover the entire service area over which Bluegrass Cellular is partially relinquishing its ETC designation. Therefore, pursuant to 47 U.S.C. § 214(e)(4), Bluegrass Cellular respectfully requests that the Commission grant a partial relinquishment of Bluegrass Cellular's ETC designation over the SLC Markets.

The SLC Markets are covered in their entirety by the ILECs AT&T Kentucky and Windstream Kentucky East. Both of these wirelines providers are qualified ETCs. There are also other ETC-qualified Competitive Local Exchange Carriers ("CLECs") that cover all of or parts of the SLC Markets. *See, e.g., In the Matter of TVD Broadband Services, LLC's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Ky. P.S.C. Case No. 2007-00388, Order (January 29, 2008) (granting TVD broadband, a competitive local exchange carrier, ETC designation for the service areas of AT&T Kentucky and Windstream Kentucky East).

There are also additional wireless ETC providers in the SLC Markets. For example, the Commission recently approved the ETC application of Blue Jay Wireless over the entire service areas of Sprint, T-Mobile, and Verizon Wireless, as well as the rural and non-rural exchanges of the incumbent carriers throughout Kentucky. *In the Matter of Application of Blue Jay Wireless for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Ky. P.S.C. Case No. 2013-00377, Order (May 19, 2014). As referenced earlier, the SLC Markets are currently served by both Sprint and Verizon Wireless. Blue Jay Wireless is a wireless company specializing in Lifeline service that already successfully operates in Arizona, Colorado, Missouri, Nevada, Oklahoma, Puerto Rico, Rhode Island, South Carolina, Texas, Utah, and Wisconsin. *Petition of Blue Jay Wireless, LLC for Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service on a Wireless Basis*, Ky. P.S.C. Case No. 2013-00377, Petition (October 16, 2013). Following its ETC designation, Blue Jay Wireless now offers free 250 minute-per-month plans and free phones to qualified Lifeline customers in Kentucky.³ There are also several other qualified ETCs in the SLC Markets.⁴

47 U.S.C. § 214(e)(4) requires that a state commission grant a carrier an ETC designation relinquishment provided there are alternative ETCs in the relevant service area. The SLC Markets are well served by both wireline and wireless ETC providers other than Bluegrass

³ Bluejay Wireless Enrollment Information, BLUEJAYWIRELESS.COM, <http://www.bluejaywireless.com/enroll/> (last visited February 13, 2015).

⁴ **Boomerang Wireless.** *In the Matter of Application of Boomerang Wireless, LLC for Designation as an Eligible Telecommunications Carrier on a Wireless Basis (Low-Income Only)*, Ky. P.S.C., Case No. 2012-00422, Order (January 22, 2013) (granting Boomerang Wireless ETC designation over the areas served by Sprint and Verizon Wireless); **American Broadband and Telecommunications Company.** *In the Matter of Application of American Broadband and Telecommunications Company for Limited Designation as an Eligible Wireless Telecommunications Carrier*, Ky. P.S.C. 2013-00175, Order (November 5, 2013) (granting American Broadband ETC designation over the non-rural exchanges of AT&T Kentucky and Windstream Kentucky East, LLC); **Budget Prepay, Inc.** (d/b/a “Budget Phone”). *In the Matter of Application of Budget Prepay, Inc. for Designation as a Non-Rural Wireless Eligible Telecommunications Carrier*, Ky. P.S.C., Case No. 2011-00169 (December 8, 2011) (granting Budget Prepay ETC designation throughout the areas served by AT&T Kentucky and Windstream Kentucky East, LLC).

Cellular. Bluegrass Cellular's exit from these markets will not leave its existing forty-four Lifeline customers without available alternative Lifeline alternatives. Therefore, Bluegrass Cellular respectfully requests that the Commission grant Bluegrass Cellular a partial relinquishment of its ETC designation over the SLC Markets. Bluegrass Cellular does not request that its ETC status elsewhere throughout the state be otherwise affected.

B. The Commission need not require Bluegrass Cellular to provide notice to other ETCs in the relevant area because the other ETCs already sufficiently cover and provide for the relevant area.

47 U.S.C. § 214(e)(4) requires that prior to a state commission granting an ETC relinquishment, the state commission:

“[S]hall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.”

Furthermore, the Kentucky Public Service Commission has held that if:

“[O]ther ETCs currently serve the entire area in which [an exiting carrier] is designated an ETC in Kentucky, notice need not be provided to those carriers to permit them to purchase or construct facilities to ensure that [the exiting carrier] customers will continue to receive service.”

See, e.g., supra, Case No. 2014-00140.

The Commission need not require notice to the other ETCs in the service area in the present situation. In 2009, the Commission granted EveryCall Communications Inc. a relinquishment of its ETC designation. *In the Matter of Petition of Everycall Communications Inc. DBA All American Home Phone and D/B/A Local USA for Relinquishment of Eligible*

Telecommunications Carrier Designation, Ky. P.S.C. Case No. 2014-00148, Order (June 9, 2014). In EveryCall's situation, twenty-two Lifeline customers were affected by EveryCall's ETC designation relinquishment. *Id.* The Commission held that "because other ETCs currently serve the entire area in which EveryCall is designated an ETC in Kentucky, notice need not be provided to these carriers to permit them to purchase or construct facilities to ensure that EveryCall's customers will continue to receive service." *Id.* In Bluegrass Cellular's situation, a similarly low amount of Lifeline users (forty-four) will be affected. Additionally, in EveryCall's situation AT&T Kentucky was the underlying ETC that the Commission cited as a sufficient alternative to justify relinquishment. *Id.* AT&T Kentucky is one of the underlying ILEC providers in parts of the SLC Markets. As stated previously, there are also other wireline and wireless ETCs that cover the entire SLC Markets area.

Finally, there are no practical reasons to believe that the existing wireline and wireless ETC providers in the SLC markets will be unable to accommodate forty-four additional Lifeline customers. *In the Matter of Application of NCPCR, Inc. D/B/A Nextel Partners to Relinquish Eligible Telecommunications Carrier Designation*, Ky. P.S.C. 2011-00273, Order (August 8, 2011). In *Nextel Partners*, the Commission found it sufficient that the exiting ETC could state that "[t]o the best of Sprint Nextel's knowledge, none of the remaining ETCs will be required to purchase or construct additional facilities to continue providing service within the study areas." *Id.* This fact, in addition to the presence of at least one other ETC in the relevant area, provided sufficient grounds for the authorization of ETC relinquishment. *Id.* Likewise, Bluegrass Cellular has no reason to believe that the alternative ETCs in the SLC Markets would be unable to accommodate forty-four additional Lifeline customers.

If Bluegrass Cellular exits the SLC Markets, the affected Lifeline customers will have several ETCs to choose from for continued Lifeline service. The Commission has held that, in this situation, the relinquishing company need not provide notice to the other ETCs. Therefore, Bluegrass Cellular respectfully requests that the Commission authorize the partial relinquishment of Bluegrass Cellular's ETC designation without requiring Bluegrass Cellular to provide notice to the other ETCs in the SLC Markets.

C. Bluegrass Cellular has provided, and will continue to provide, sufficient notice to its Lifeline customers so that they may make alternative service arrangements.

The Commission requires that an exiting ETC must provide sufficient notice to its Lifeline customers to enable those customers to seek alternative service providers. *Supra*, Case No. 2014-00140. Bluegrass Cellular has taken reasonable steps to ensure its SLC Markets customers receive notice of service discontinuation. These notices will include were sent beginning as early as October of 2014, and have not been limited to, the following

1. Written notices, the first of which was mailed on October 20, 2014.
2. Consistent with the Telephone Consumer Protection Act (the "TCPA") and other applicable laws, periodic text messages (at no charge), to which electronic acknowledgment is required in order to continue using the handheld device; and
3. Consistent with the TCPA and other applicable laws, automatic and manual phone calls to the customer's wireless number.

In addition, Bluegrass Cellular kept its retail stores in the SLC Markets open and staffed until December 31, 2014, in order to assist customers with transition to an alternative service provider. Bluegrass Cellular is also maintaining until July 1, 2015 a toll-free number customers may call for assistance with service discontinuation in the SLC Markets. Finally, Bluegrass Cellular will

ceased activating any new Lifeline subscribers in the SLC Markets, as of October 2014. *Supra*, Case No. 2014-00140.

Bluegrass Cellular has complied with the Commission's requirement that all affected Lifeline customers receive notice of service discontinuance so that these customers may seek alternative service providers.

III. Conclusion

Bluegrass Cellular satisfies the statutory and regulatory requirements for a partial relinquishment of its ETC designation for the SLC Markets. There is more than one ETC in the SLC Markets. The alternative SLCs have sufficient facilities for the provision of service to Bluegrass Cellular's Lifeline customers in the SLC Markets. And, Bluegrass Cellular has provided sufficient notice to its Lifeline customers. For these reasons, Bluegrass Cellular respectfully requests that the Commission grant Bluegrass Cellular a partial relinquishment of its ETC designation for the SLC Markets. Bluegrass Cellular requests that its ETC status throughout the rest of the Commonwealth remain otherwise unaffected.

Respectfully submitted this 17th day of February, 2015.

 / *DDB* with permission
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COUNSEL TO BLUEGRASS WIRELESS, LLC

Exhibit 1

Cell sites owned by Bluegrass Cellular which are to be decommissioned, that is, taken out of service.

Cell Site	County	Address	Approved in Case:
Corbin Station	Knox	14889A S. U.S. 25E	2007-00011
Siler	Knox	155 Old Barbourville Road	2007-00042
Whitley West	Whitley	351 Ernest Alsip Road	2009-00145
Woodbine	Whitley	341 Sutton Mill Road	2008-00080
Dabney	Pulaski	952 Coleman Rd.	2009-00363
Elrod	Pulaski	2508 Old Mt. Vernon Road	2005-00283
Floyd	Pulaski	772 Floyd Switch Road	2005-00281
Ruth	Pulaski	4832 Hwy. 192	2008-00013

Exhibit 2

Cell sites owned by another entity on which Bluegrass Cellular co-locates and from which sites Bluegrass Cellular will discontinue its service.

Cell Site	County	Address
Bernstadt	Laurel	719 Industrial Blvd.
Cold Hill	Laurel	1821 Cold Hill Road
Hazel Patch	Laurel	7339 N US Hwy. 25
Laurel West	Laurel	7847 Somerset Rd.
London DT	Laurel	613 West 13th Street
London SE	Laurel	102 Stonehenge Lane
Mt. Salem	Laurel	Laurel 1250 Lick Fork Road
North Corbin	Laurel	961 S Old Whitley Road
North London	Laurel	230 Robinson Road
South London	Laurel	175 Old Whitley Road
Corbin DT	Whitley	400 West Third Street
Saxton	Whitley	1048 Wolfcreek Road
South Corbin	Whitley	3319 Cumberland Falls Hwy
Walden	Whitley	4497 Highway 511
Whitley South	Whitley	100 Bunker Hill Road
Williamsburg	Whitley	1000 Cell Tower Road
East Somerset	Pulaski	66 Kingview Drive
Price Valley	Pulaski	549 Farmer Road
Pulaski East	Pulaski	100 Laddie Road
Science Hill	Pulaski	317 Ware Road
Shopville	Pulaski	150 Hansford Lane
Somerset Bypass East	Pulaski	1654 Rose Road

Exhibit 3

The cell site owned by Bluegrass Cellular from which Bluegrass Cellular will discontinue its service, but which will continue to be used, to the best of Bluegrass Cellular's knowledge, by Verizon Wireless as a co-locator.

Cell Site	County	Address	Approved in Case:
Laurel Lake	Whitley	1250 Whippoorwill Road	2008-00039

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