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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
ALLIED WIRELESS COMMUNICATIONS) CASE NO. ALL-T-10-01
CORPORATION, D/B/A ALLTEL WIRELESS,)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER.)
) COMMENTS OF THE
) COMMISSION STAFF
)**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32167 on January 26, 2011, in Case No. ALL-T-10-01, submits the following comments.

BACKGROUND

On December 16, 2010, Allied Wireless Communications Corp. dba Alltel Wireless (Allied Wireless or Company) filed an Application seeking designation as an eligible telecommunications carrier (ETC) pursuant to the federal Telecommunications Act and this Commission's Order No. 29841. 47 U.S.C. § 214(e)(1-2); 47 C.F.R. § 54.201. Allied Wireless is a commercial mobile radio services (CMRS) carrier licensed to provide mobile services as defined in 47 U.S.C. § 153(27) "throughout portions of Idaho." Application at 2. Designation as an ETC would allow Allied Wireless to receive monetary support from the federal Universal

Service Fund (USF) and participate in the federal Lifeline program as well as the Idaho Telephone Service Assistance Program (ITSAP).¹

Allied Wireless is a full-service wireless carrier that offers universal services throughout its licensed service area and will provide the supported services using the existing network infrastructure of Allied Wireless. This infrastructure consists of (1) switching, trunking, cell sites, and network equipment together with any expansion and enhancements to the network; and (2) as necessary, through the resale of another carrier's service or through roaming arrangements. *Id.* at 16.

Allied Wireless seeks ETC designation in the non-rural wire centers served by Qwest Corporation and in the rural wire centers served by Cambridge Telephone Company, CenturyTel of Idaho, Inc., Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Co., and Midvale Telephone Exchange, Inc. *Id.* at Exhibit 4.

Allied Wireless is a wholly-owned subsidiary of Atlantic Tele-Network, Inc. (ATNI), a publicly-traded corporation headquartered in Beverly, Massachusetts. ATNI, and ultimately Allied Wireless, recently acquired certain wireless assets, licenses and accompanying authorizations in six states, including Idaho, from subsidiaries of Verizon Wireless. *Id.* at 2-3. Allied Wireless states it is authorized to use the Alltel Wireless (Alltel) brand name in the acquired areas and intends to continue using the Alltel name going forward. *Id.* at 3. Most existing Alltel Customers that were acquired by Allied Wireless will see no substantive changes to their existing wireless service, and new customers will have access to wireless plans, features, handsets and service that are similar to what has historically been provided by Alltel. *Id.*

STAFF ANALYSIS

Staff has reviewed the Allied Wireless Application and has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996 ("the Act") and of

¹ The Federal Communications Commission's Lifeline program is intended to promote universal service by using USF revenues to make telecommunications service more affordable. Idaho participates in the residential ITSAP program pursuant to *Idaho Code* § 56-901 and Order No. 21713.

Commission Order No. 29841. In addition, Staff has analyzed the merits of awarding ETC designation for rural wire center service areas.²

In the Application, Allied Wireless states it will offer the federally designated universal services which are supported by the federal USF program. These universal services include: (1) voice grade access to the public switched telephone network; (2) a certain amount of local usage; (3) dual tone multi-frequency signaling; (4) single-party service; (5) access to emergency services; (6) operator services; (7) long-distance services; (8) directory assistance; and (9) long-distance limitation (i.e., toll blocking) for qualifying low-income customers. *Id.* at 5-8.

Allied Wireless will comply with all applicable Idaho service quality standards and consumer protection rules, and will abide by the Consumer Protection Standards established by the Cellular Telephone Industry Association (CTIA) consumer code. *Id.* at 15.

Allied Wireless states that grant of ETC designation is in the public interest. More specifically, Allied Wireless asserts that use of high cost support will provide consumers with “improved coverage, service quality, and reliability” and “will lead to significant health and safety benefits.” *Id.* at 22-23. Allied Wireless also maintains that there is no possibility for cream-skimming, and it “is only seeking ETC designation in areas that cover the entirety of the incumbent LEC service area.” *Id.* at 28.

Allied Wireless believes that its designation as an ETC will “impose no burden on the federal Universal Service Fund and only a negligible burden if the CETC cap is lifted.” *Id.* at 24.

Rural Wire Centers

The Allied Wireless Application includes 20 rural wire centers in Idaho currently served by five incumbent local exchange carriers (ILEC). These rural wire centers are: Cambridge, Council, Cuprum, Lowman, and Indian Valley served by Cambridge Telephone Company; Leadore, North Fork, and Salmon served by CenturyTel of Idaho, Inc.; Challis, Clayton, Elk Bend, and May served by Custer Telephone Cooperative, Inc.; Fruitland and Nu Acres served by Farmers Mutual Telephone Co.; and Lakeview, Midvale, Stanley, Warm Lake, Warren, and Yellow Pine served by Midvale Telephone Exchange, Inc. *Id.*, Exhibit 4.

² The term “service area” denotes a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms. In the case of a rural telephone company, service area is defined as a company's study area unless and until the FCC and the State Commission, 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. 47 U.S.C. § 214(e)(5)

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the statutory ETC requirements and requests designation in a rural area served by an ILEC, the Act gives the State Commission more discretion than in the non-rural areas. The Act states that the State Commission *may* grant ETC designation to the additional carrier provided that ETC designation of the additional carrier is in the public interest. 47 U.S.C. § 214(e)(2).

Under the Act and Order No. 29841, greater emphasis is placed on scrutinizing the public interest issues for ETC Applications in rural service areas. Rural wire centers often have widely disparate population densities, and therefore, highly disparate cost characteristics. As such, Staff believes the public interest analysis plays a more important role when reviewing an ETC designation in rural service areas.

Public Interest Analysis

Under Section 214 of the Act, the State Commission must determine that an ETC designation is consistent with the public interest, convenience and necessity. 47 U.S.C. § 214(e)(2). In accordance with the Act, and the ETC requirements of the FCC rules, the Commission has stated:

In adopting the FCC's proposed public interest analysis, this Commission adopts an analytical framework for making a public interest determination. This framework necessarily involves the consideration of certain enumerated factors, such as the benefits to consumer choice, the unique advantages and disadvantages of the applicant's service offering, and, where applicable, consideration of creamskimming. However, the Commission may consider other relevant public interest determinations in its public interest determination. Order No. 29841 at 15-16.

This Commission has consistently applied the public interest analysis in previous decisions. The Commission denied the ETC Applications of wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-08). In addition, the Commission partially denied, Inland Cellular Telephone Company (Case No. INC-T-06-02) and CTC Telecom, Inc. (Case No. CTL-T-09-01), because the applicants failed to carry out their burden of demonstrating that their Applications for rural areas were in the public interest. *See* Order Nos. 29541, 30212 and 30867. These Applications failed the public interest test by partial service area coverage or by placing too much emphasis on competition and relying on approved state and federal applications in very different service areas rather than explaining

STAFF COMMENTS

how the particular applicant's ETC designation would benefit *all* customers in its ETC service area.

Applicants have the burden of proof to demonstrate that the public interest is served by designating them as an ETC in these rural areas. Order No. 29541 at 6 (citing Virginia Cellular, LLC Petition/or Designation as an ETC, 19 F.C.C.R. 1563 (2004)). The Allied Wireless Application makes five primary public interest arguments.

1. Improved Coverage, Service Quality and Reliability. Allied Wireless states that with USF high-cost support, it will operate, maintain, and expand its communications infrastructure in Idaho to “improve signal coverage, enhance wireless call quality, and provide more advanced services to Idaho consumers.” Application at 22. The Company also intends to bring third generation (3G) wireless services to the area. *Id.* Citing the *Virginia Cellular Order*, 19 FC Rcd at 1576 (para.29), Allied Wireless states the expansion of its network “will assist consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.” *Id.*

Staff believes that the implicit benefits of the Company’s two-year network improvement plan will provide consumers with additional services not currently available.

2. High-cost Support Will Lead to Significant Health and Safety Benefits. The Company states that ETC designation will provide “additional consumer choice and a potential solution to health and safety risks associated with the rural nature of these areas.” *Id.* at 23. Allied Wireless maintains that the mobility of wireless service when compared to wireline service will offer “important health and safety benefits so that people in need are not required to travel long distances to find a telephone in an emergency or other important health and safety situation[s].” *Id.* at 24.

Staff does not advocate one technology over another, but instead recognizes that each has unique advantages and disadvantages depending upon the geography, demographics, and technological needs of the community. Staff, however, agrees that mobility of wireless service will provide health and safety benefits for consumers.

3. Impact on the Federal USF. Allied Wireless believes that grant of this Application will impose no burden on the federal USF and only a negligible burden if the CETC cap is lifted. *Id.* at 24. Citing the Universal Service Administrative Company’s (USAC) most recent quarterly filing projections to the FCC, the Company states that even if it were to capture every incumbent LEC subscriber, it would not cause undue strain on the USF high-cost fund. *Id.* at 26. Allied

Wireless argues that “the Commission should follow the FCC’s guidance and find that the

analysis of any individual ETC designation's effect on the federal USF is inconclusive and, therefore, need not be undertaken." *Id.*

This topic is examined in greater detail in the High-Cost Federal Funding discussion.

4. Benefits of Competition. Allied Wireless asserts that designation as an ETC "will promote competition and facilitate the provision of high-quality communications service to those living and working within the proposed service area." *Id.* at 27. The Company states, "[r]esidents in many rural areas have long trailed urban areas in receiving competitive local exchange service[s] and advanced telecommunications services, and in some rural areas no meaningful choice of local exchange carrier exists." Allied Wireless further notes, "it is also evident that deployment of high-quality wireless telecommunications infrastructure is essential to economic development in rural areas." *Id.*

Staff notes that there are other wireless providers in the service area that Allied Wireless proposes to serve and, therefore, Staff does not believe the benefits of competition to be a compelling argument to satisfy the public interest requirement.

5. Likelihood of Cream Skimming. Allied Wireless states that there is no possibility for cream-skimming, because it is not targeting particular areas based on the possibility of receiving "uneconomic levels of support." Rather, the Company states it is only seeking ETC designation "in areas that cover the entirety of the incumbent LEC service area." *Id.* at 28.

Staff notes that Allied Wireless is not seeking ETC designation in partial wire centers and is proposing to serve some of the more sparsely populated and more costly study areas in Idaho. This is supported by a wire center population density chart. *Id.* Confidential Exhibit 3. Staff agrees that an Application for ETC designation that includes an entire service area avoids the appearance of cream skimming.

Other Public Interest Considerations

When applying the public interest test in an Application for ETC designation, Staff believes there are other considerations that have not been mentioned, but merit discussion.

1. Contributions to Idaho Programs. As in the more recent Applications for Certificate of Public Convenience and Necessity (CPCN), the Commission grants a CPCN subject to certain conditions. One of these conditions is contribution to the Idaho Universal Service Fund (USF), Idaho Telephone Relay Service (TRS), and Idaho Telephone Service Assistance Program (ITSAP), and any future reporting deemed appropriate for competitive communications providers.

Staff believes that if this requirement is appropriate for a CPCN then it must also be appropriate

for an ETC designation that is subject to greater scrutiny than a CPCN. Staff believes that these conditions, pursuant to *Idaho Code*, also apply to an ETC designated company.

2. FCC Requirement of Access to Emergency Service. Access to emergency service is one of the federal requirements for designation as an ETC. 47 U.S.C. § 54.10(a). The FCC requirement also applies to enhanced 911 access, which includes the capability of providing automatic number identification (ANI) and automatic location information (ALI). Allied Wireless avers that its customers will be able to reach an emergency dispatch, or public safety answering point (PSAP), by dialing 9-1-1. Application at 6-7. Staff believes a public interest test must include the Company's commitment to adhere to *all* requirements of the E911 Idaho Emergency Communications Commission as outlined in *Idaho Code* §§ 31-4801 through -4819.

Public Interest Summary

In evaluating the public interest portion of an ETC Application, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is whether the Applicant is committed to providing universal service throughout the rural areas or, if not, whether the potential for cream skimming exists. Staff believes the Company avoids the appearance of cream skimming where the Application includes all wire centers in a designated service area. Staff notes that the Allied Wireless Application includes a 2011 and 2012 network improvement plan (Application, Confidential Exhibit D), with wire center specific details.

In addition to the information contained in the Allied Wireless Application, Staff believes the Company is required to meet the public interest tests discussed in Other Public Interest Considerations even when they are not explicitly stated in the Application.

In sum, the Staff believes the Allied Wireless Application presents an acceptable argument to support the Company's public interest position.

Network improvement Plan

The two-year network improvement plan must describe with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Order No. 29841 at 18.

As mentioned earlier, Allied Wireless presents detailed information outlining its network improvement plan for years 2011 and 2012. The plan includes details such as affected wire

centers, expenditures, dates, and a narrative description of the planned improvements.

Application, at Confidential Exhibit 3.

Staff believes Allied Wireless provides a reasonable improvement plan. Additionally, with grant of ETC designation, companies must annually submit a Two-Year Network Improvement Plan and Progress Report to maintain the ETC designation. This annual requirement will hold the Company accountable for making a reasonable effort to implement the network improvement plan. *See* Appendix Reporting Requirement, Order No. 29841.

Ability to Remain Functional in Emergencies

The Commission explains in Order No. 29841 that it “understands different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements, especially in an emergency.” Order No. 29841 at 10. To demonstrate the ability to remain functional during emergencies, the ETC applicant must show that it has a “reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing different traffic spikes resulting from emergency situations.”

In the Application, Allied Wireless describes the components that make up its fault-tolerant network. Application at 12-14. These components are, generator backups that include backup batteries that provide at least four hours of back-up power; portable generators that can be moved to individual cell sites, as needed; remote monitoring by the company’s 24/7 Network Operations Center; connectivity to the public switched voice network using a microwave backup for areas where landline facilities are unavailable; and redundant ring topology. *Id.*

Staff believes the fault-tolerant network, as described in this Application, provides adequate support to demonstrate the Company’s ability to remain functional in an emergency.

Other ETC Designation Requirements

Additional requirements for ETC designation, not previously discussed, are detailed in the Appendix 1 of Order No. 29841 and discussed more fully below.

1. Common Carrier Status. Allied Wireless Telecom is a Commercial Mobile Radio Services (CMRS) carrier providing “mobile service” as defined in 47 U.S.C. § 153(27). Application at 2-3.

2. Provide the Universal Services. Allied Wireless offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 5-8.

3. Advertising. Allied Wireless plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area, by media of general distribution. *Id.* at 17.

4. The Commitment and Ability to Provide Supported Services. Allied Wireless is committed to answering all reasonable requests for service within its proposed ETC service area. *Id.* at 10.

5. A Commitment to Consumer Protection and Service. Allied Wireless will comply with all applicable Idaho service quality standards and consumer protection rules, and will also abide by the Consumer Protection Standards established by the Cellular Telephone Industry Association (CTIA) consumer code. *Id.* at 15.

6. Description of the local Usage Plan. Allied Wireless submits its rate plan brochures in Exhibit 2.

7. Tribal Notification. Allied Wireless provided a copy of a notification letter to the Nez Perce Tribe advising the tribe of the Company's intent to seek designation as an ETC. *Id.* Exhibit 5.

Staff believes Allied Wireless meets the aforementioned ETC designation requirements.

HIGH-COST FEDERAL FUNDING

The original goal of the federal Universal Service Fund, under the Telecommunications Act of 1934, was to provide at least one access line for basic telephone service to every household in the U.S., and at a reasonable, subsidized cost.

Staff is aware of the high-cost federal funding issues for rural areas. Staff recognizes and is concerned about the growth of high-cost funds, particularly as it relates to Competitive ETCs (CETC). The escalating high-cost fund is an ongoing concern that is being addressed at the federal level. On April 29, 2008, the FCC adopted the Federal-State Joint Board on Universal Service's recommendation to impose an interim emergency cap on the amount of high-cost support that CETCs may receive. *See* FCC 08-122. Specifically, effective May 1, 2008, total annual CETC support for each state will be capped at the level of support that CETCs in that state were eligible to receive during March 2008 on an annualized basis. All newly designated and existing CETCs in Idaho will share the high-cost USF support in the amount that was distributed to Idaho CETCs in March 2008. The only exception to this interim cap is if a CETC: (1) Files cost data demonstrating that its costs meet the support threshold in the same manner as the ILEC;

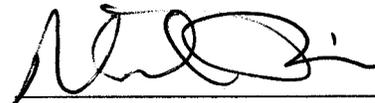
or (2) Serves tribal lands or Alaska Native regions. The interim cap will remain in place until the FCC adopts comprehensive reform measures. *Id.*

The Commission is not in a position to alter public policy regarding the federal USF draw. The Commission must follow the rules and regulation even if troubled by the outcome. In the meantime, Staff does not believe it should recommend denial of an ETC Application that reasonably meets all of the statutory requirements for an ETC designation. Denial of an ETC Application also denies the rural consumers the benefit of Idaho Telephone Service Assistance Program (ITSAP), federal Lifeline and Linkup support, as well as other potential technological and safety benefits that may be offered by the CETC. Staff wishes to note, however, that to the extent the areas are already served, these benefits are available to the consumers through the ILECs or other wireless carriers.

STAFF RECOMMENDATION

Staff is satisfied that the Application meets the minimal requirements for ETC designation in Idaho and recommends that the Commission approve the Application of Allied Wireless Communications, LLC for designation as an eligible telecommunications Carrier.

Respectfully submitted this 16th day of February 2011.



Neil Price
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 16TH DAY OF FEBRUARY 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. ALL-T-10-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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