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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
CUSTER TELEPHONE BROADBAND)	CASE NO. CTB-T-14-01
SERVICES LLC FOR DESIGNATION AS AN)	
ELIGIBLE TELECOMMUNICATIONS)	
CARRIER FOR LOW-INCOME SUPPORT.)	COMMENTS OF THE
)	COMMISSION STAFF
)	

The Staff of the Idaho Public Utilities Commission comments as follows on Custer Telephone Broadband Services LLC's Application for designation as an eligible telecommunications carrier ("ETC").

BACKGROUND

On January 6, 2014, Custer Telephone Broadband Services LLC ("CTBS" or "Company") filed an Application seeking ETC designation under 47 U.S.C. § 214(e) (1)-(2), 47 C.F.R. § 54.201 of the Rules of the Federal Communications Commission ("FCC"), and the rules and regulations of the Idaho Public Utilities Commission (the "Commission") as outlined in Order No. 29841. CTBS seeks ETC designation so it can receive federal Universal Service Fund low-income support in the Salmon, Idaho exchange ("Designated Service Area"). Application at 1.

The Application

CTBS is a wholly owned subsidiary of Custer Telephone Cooperative, Inc. with its principal place of business in Challis, Idaho. The Company received a Certificate of Public Convenience and Necessity (“CPCN”) issued on October 14, 2011 under Order No. 32383 authorizing it to provide local exchange and interexchange services in Idaho. *Id.* at 2. The Company is a full-service wireline carrier that provides facilities-based, local exchange services in the Designated Service Area. CTBS says the Designated Service Area is part of CenturyTel of Idaho, Inc. dba CenturyLink’s service area, and does not include any areas served by rural telephone companies. *Id.* at 1-2, 4, and 7.

The Company says it meets all statutory and regulatory requirements to be designated as an ETC, including those outlined in the federal *Lifeline and Link Up Reform and Modernization, Order* (“*Lifeline Reform Order*”), released on February 6, 2012 (FCC 12-11) and the Commission’s eligibility requirements as specified in Commission Order No. 29841. *Id.* at 1, 3-4. *Id.* at 3-7.

CTBS says that granting its Application will serve the public interest and the market by promoting additional choices for Lifeline service to qualifying consumers in the Designated Service Area. *Id.* at 8.

STAFF ANALYSIS

Staff has reviewed CTBS’s Application and has conducted an analysis of the Company’s fulfillment of the federal Telecommunications Act of 1996, the *Lifeline Reform Order* and of Commission Order No. 29841. Specific state and federal requirements for ETC designation are discussed in more detail as follows.

Public Interest Considerations

Staff typically applies a two-prong test when analyzing whether a company’s ETC application is in the public interest. First, Staff determines whether the Company contributes to Idaho Funds. Second, Staff analyzes whether the Company’s application raises “cream skimming” concerns. Here, Staff believes the first prong is satisfied because CTBS’s CPCN subjects the Company to the following conditions: (1) Compliance with the Number Pool Administrator and Order No. 30425 mandating number resource utilization forecast reporting; (2) Contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay System,

Idaho Telephone Assistance Program and any future reporting requirements deemed appropriate for competitive telecommunications providers. *See* Order No. 32383 at 3.

Staff also believes the second, "cream skimming" prong is satisfied. The Commission explained its "cream skimming" concerns in Order No. 29541. In summary, a request for ETC designation for an area less than the entire study area of a rural telephone company generally raises concerns that an Applicant intends to "cream skim" in the rural study area.¹ Order No. 29541 at 16. Rural cream skimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area. This is a concern because universal service support is calculated based on a study area-wide average of a rural telephone company that serves customers in both high cost and low cost areas throughout its study area. *Id.* As the FCC's Federal-State Joint Board on Universal Service noted in 1996:

Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.

Id. at 16-17, quoting 12 F.C.C.R. 87, 108 at ¶ 172 (emphasis added).

Here, the Company requests ETC designation for an entire exchange currently served by a non-rural incumbent local exchange carrier. Thus, no cream skimming concerns arise.

For these reasons, Staff believes CTBS satisfies the public interest considerations.

Network Improvement Plan

In the Idaho ETC Designation Order, the two-year network improvement and progress report is required of all ETCs receiving high-cost support. *See* Commission Order No. 29841 at 18. With Cricket Communications, Inc.'s ETC Application, the Commission determined that a two-year network improvement plan was not applicable for Lifeline-only (low-income support) ETCs and granted Cricket's ETC designation. *See* CRI-T-11-01, Order No. 32501.

¹ *Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service* CC Docket No. 96-45, 12 F.C.C.R. 87, 180 at ¶ 172 (1996) (stating that potential cream skimming is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company study area). *See also Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, 19 F.C.C.R. 1563, 1578 (2004).

In the *USF/ICC Transformation Order*, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. Because Lifeline-only ETCs are not receiving funds to improve or extend its networks, the FCC stated that it “saw little purpose in requiring such plans as part of the ETC designation process.”² In the Application, CTBS’s states that, “because CTBS is requesting only low-income [USF] support, the requirement to submit the [Commission’s 2-year or the FCC’s 5-year] service improvement plan is not applicable.” Application at 4. Staff agrees that a network improvement plan is not a requirement for CTBS’s ETC Application.

Ability to Remain Functional in Emergencies

CTBS confirms that it has the ability to remain functional in emergency situations in accordance with the Idaho ETC Order and Section 54.202(a)(2) of the FCC’s Rules, 47 C.F.R. § 54.202(a)(2). CTBS asserts that because it is using its own redundant facilities, the Company will provide functionality in emergency situations to its customers, including access to a reasonable amount of back-up power during external power outages, it will reroute traffic around damaged facilities and manage traffic spikes during emergency situations. *Id.* at 5. Staff believes the Company satisfies this requirement.

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

1. Common Carrier Status. CTBS is a common carrier as defined in U.S.C. Title 47. *Id.* at 4.
2. Provide the Universal Services. CTBS will provide each of the supported services identified in Section 54.101 and Section 54.202(a) of the FCC’s Rules (47 C.F.R. § 54.101(a) and 47 C.F.R. § 54.202(a). *Id.* at 4-6.
3. Advertising. CTBS will advertise the availability and rates for its services described in the Application through media of general distribution. *Id.* at 7.

² See *Lifeline and Link up Reform and Modernization et al*, WC Dkt no. 11-42 *et al*. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

4. The Commitment and Ability to Provide Supported Services. CTBS will provide the supported services. *Id.* at 3.

5. A commitment to Consumer Protection and Service. CTBS commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. *Id.* at 7.

6. Description of the Local Usage Plan. CTBS's rate plans will provided local usage consistent with Section 54.101(a)(2). *Id.* at 4-5.

7. Tribal Notification. The Company will provide Tribal notifications. *Id.* at 7.

Staff believes CTBS meets the aforementioned requirements where applicable for ETC designation as a provider of low income support.

STAFF RECOMMENDATION

Based on its review of the Company's Application, Staff believes that the Company has the requisite technical, financial and managerial expertise as well as the commitment to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its Designated Service Area; it has addressed all public interest questions that accompany an ETC Application; and CTBS will provide service plans in accordance with its CPCN. Thus, Staff believes CTBS's Application for designation as an ETC is in the public interest and should be approved for the Designated Service Area.

Respectfully submitted this 25th day of March 2014.



Karl T. Klein
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25TH DAY OF MARCH 2014, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. CTB-T-14-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

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