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25 April 2007

Hand Delivered

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: EDG-T-07-1, Edge Wireless, LLC Application for ETC
Designation

Dear Ms. Jewell:

I am enclosing an original and seven (7) copies of EDGE WIRELESS, LLC'S
COMMENTS REGARDING FURTHER PROCEEDINGS.

Also enclosed is a copy to be date-stamped and returned for our files.

Sincerely,


Molly O'Leary
Richardson & O'Leary, PLLC

Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	Case No. EDG-T-07-01
OF EDGE WIRELESS, LLC)	
FOR DESIGNATION AS AN ELIGIBLE)	COMMENTS OF EDGE
TELECOMMUNICATIONS CARRIER)	WIRELESS, LLC
PURSUANT TO THE)	REGARDING FURTHER
TELECOMMUNICATIONS ACT OF 1996)	PROCEEDINGS
(RURAL AND NON-RURAL AREAS))	

Applicant Edge Wireless, LLC (“Edge”), by and through its attorneys of record Davis Wright Tremaine LLP and Richardson & O’Leary, P.L.L.C., files these Comments pursuant to the schedule established in Commission Order No. 30286, in which the Commission ordered that “within twenty-eight (28) days of the service date of this Order Edge and ITA shall inform the Commission as to whether it believes a hearing is necessary in this matter or if the matter may continue to be processed by Modified Procedure.”¹ For the reasons set forth below, Edge respectfully requests that the Commission continue to process this matter by Modified Procedure

¹ Order No. 30286, p. 3.

and that it reject any request from the Idaho Telephone Association (“ITA”) for further investigation or hearings. Edge also respectfully requests that the Commission issue an order granting Edge’s Petition for designation as an Eligible Telecommunications Carrier (“ETC”) as soon as practicable.

BACKGROUND

On January 22, 2007, Edge filed its Petition seeking designation as an ETC. On February 14, 2007, the Commission issued notice that modified procedure would be used and established a comment period that ended on March 13, 2007.² Comments were filed on March 13, 2007 by Commission Staff (“Staff Comments”) and by ITA (“ITA Comments”).

The Staff Comments describe in detail the extensive review of Edge’s Petition that Staff had performed. The Staff Comments also commend Edge on the thoroughness of its Petition and state that “the attention to detail demonstrated in [Edge’s] two-year network plan indicates a serious commitment to provide reliable, state-of-the-art telecommunications to the rural wire center consumers.”³ In conclusion, the Staff Comments find that “Edge meets all federal and state requirements to be granted ETC designation in both the non-rural and rural wire centers” and recommends that the Commission “approve the Application.”⁴

ITA, on the other hand, argued that it needed an opportunity to review the confidential exhibits that had been submitted as part of the Petition. In its Reply Comments, Edge pointed out that ITA had *never requested* of Edge nor of the Commission a copy of any of the

² See Order No. 30240.

³ Staff Comments, pp. 9-10.

⁴ Staff Comments, p. 10.

confidential exhibits to the Petition, opting instead to wait until the final day of the comment period to raise this issue, an obvious delay tactic.⁵

In response to ITA's request, the Commission ordered Edge and ITA to enter into a confidentiality agreement to allow ITA to review Edge's two-year network plan. The parties entered into such an agreement and confidential documents were exchanged, including the confidential exhibits to the Petition as well as additional confidential information requested by ITA. The parties also convened a conference call in order to permit ITA to ask clarifying questions regarding the material that had been provided.

COMMENTS

Based upon representations of counsel⁶, it is Edge's understanding that ITA will recommend to the Commission that it order Commission Staff to conduct a field audit to confirm that Edge's two-year plan will result in improved wireless coverage in rural wire centers as shown in Confidential Exhibit D-4.⁷ The Commission should reject this unprecedented request. The Commission Staff has already conducted an exhaustive review of the Petition and Exhibits, and has concluded that Edge's thorough and detailed two-year plan "indicates to Staff that Edge has made an effort to understand the rural wire centers' deficiencies and has determined how they plan to improve these wire centers."⁸ Furthermore, the Staff Comments correctly point out that "the annual submission of the Two-Year Network Improvement Plan and Progress Report

⁵ Edge Reply Comments, p. 4 (filed March 22, 2007).

⁶ Edge reserves the right to reply to ITA's Comments if necessary.

⁷ Confidential Exhibit D-4 contains two maps that show anticipated wireless signal strength related to the infrastructure investment contemplated in Edge's two-year network plan.

⁸ Staff Comments, p. 8.

will hold the Company accountable for making a reasonable effort to implement the network improvement plan.”⁹

The Commission should see the ITA proposal for what it really is – yet another delay tactic.¹⁰ The Commission should reject such obvious delay tactics and process the Petition by Modified Procedure. Further delay in granting Edge’s Petition will result in Edge missing the limited building season in many of the mountainous areas in which it intends to invest universal support funds. It is in the public interest for the Commission to approve the Petition now in order for Edge to receive USF support in time to complete the contemplated construction. If the Commission, instead, permits ITA to unduly delay Edge’s ETC designation, Edge will be forced to move a number of the projects scheduled for this year to the 2008 construction season. The Commission should not allow ITA’s delay tactics to impede the expansion of needed wireless coverage in rural areas. Other states are reaping the benefits of federal universal service support for competitive ETCs.¹¹ Idaho is one of only a handful of states that has not designated a competitive ETC for rural ILEC areas. The practical effect is that Idaho communications consumers who pay into the fund are subsidizing infrastructure build-out in other states. It would be in the public interest to ensure that these Idaho consumer contributions to the fund find their way back to Idaho.

It is also Edge’s understanding, based upon representations from ITA counsel, that ITA will recommend to the Commission that it “carve out” the Challis wire center (and perhaps other wire centers) from Edge’s ETC area because ITA believes Edge’s current wireless coverage is

⁹ *Id.*

¹⁰ ITA member companies have a two-fold interest in delaying Edge’s ETC designation because they compete with Edge both as rural ILECs and as members of the wireless consortium known as Syringa Wireless, LLC. *See* Edge Reply Comments, pp. 4-5.

¹¹ See Attachment A hereto, Universal Service Administrative Company 2006 Annual Report, p. 41.

insufficient there. This recommendation is flawed both on a legal basis and as a matter of public policy, and should be rejected. First and foremost, ITA's argument is based on a fundamental misunderstanding of the Commission's requirements. ITA appears to believe that Edge must show that it is currently providing ubiquitous service throughout its proposed ETC area. This is simply not the legal standard adopted by this Commission, or the Federal Communications Commission ("FCC"). The relevant eligibility requirement is certification by the applicant:

that it will: (a) provide service on a timely basis to requesting customers within applicant's service area where the applicant's network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed area but outside its existing network coverage, if service can be provided at reasonable cost by (i) modifying or replacing the requesting customer's equipment; (ii) deploying roof-mounted antenna or other equipment; (iii) adjusting the nearest cell tower; (iv) adjusting network or customer facilities; (v) reselling services from another carrier's facilities to provide service; or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.¹²

The extent of Edge's current coverage is, therefore, irrelevant. Edge has made the required commitment to provide service consistent with the Commission's requirements. The rules also require Edge to report annually the number of requests for service from potential customers within its ETC service areas that were unfulfilled in the previous year along with an explanation of how it attempted to provide service to those potential customers. Thus, the Commission has a means in place for holding Edge accountable to its commitment.

ITA's request to carve out the Challis wire center is also contrary to the public interest. Edge's two-year plan specifies that it intends to spend significant universal service funds to improve coverage in the Challis wire center.¹³ In fact, Edge intends to spend substantially more than the USF support available from that wire center because Edge would not otherwise be able

¹² Order No. 29841, Appendix p. 2 (Case No. WST-T-05-1, Aug. 4, 2005)

¹³ See Petition Confidential Exhibit D, Narrative, p. 2.

to provide needed services.¹⁴ Carving out the Challis wire center from Edge's ETC area would be counter-intuitive and contrary to the entire purpose of designating a wireless ETC, namely making funds available to improve service in rural areas where coverage needs improvement. The need for more cellular service and the benefits of introducing more competitive wireless service in the Challis wire center is detailed in the attached April 17, 2007 article from the Challis Messenger, in which Dennis Thornock, manager of the Custer Telephone Cooperative¹⁵, is quoted stating that "Custertel is in favor of competing cellphone companies [in Challis] because if people can't get cellular coverage or high-speed wireless Internet in the future, they'll probably move elsewhere."¹⁶ Thornock also notes that growth in wireless communications fuels economic growth. The ITA carve out proposal would have the exact opposite effect, and should be rejected.

CONCLUSION

For the foregoing reasons, Edge urges the Commission to process this matter by Modified Procedure and approve its Petition as soon as practicable. The Commission should reject ITA's unprecedented request for a Staff field audit. The Commission should also reject ITA's carve out recommendation as it is based on a misreading of the law and is contrary to the public interest.

Dated this 25th day of April, 2007.

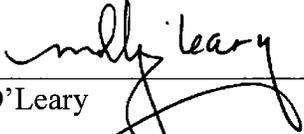
¹⁴ *Id.*

¹⁵ Custer Telephone Cooperative, Inc., a member of the ITA, operates an affiliate cell phone service in the Challis area in cooperation with Alltel.

¹⁶ See Attachment B, "City of Challis sets May hearing for tower zone", by Todd Adams, The Challis Messenger, April 17, 2007.

Respectfully submitted,

RICHARDSON & O'LEARY, PLLC

By 
Molly O'Leary

Attorneys for Edge Wireless, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of April, 2007 a true and correct copy of the within and foregoing COMMENTS OF EDGE WIRELESS, LLC REGARDING FURTHER PROCEEDINGS was filed with the Idaho Public Utilities Commission and served on the parties as indicated below:

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Commission Secretary
Idaho Public Utilities Commission
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Boise ID 83720-0074

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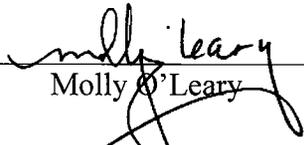
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Molly O'Leary

ATTACHMENT A

**HIGH COST PROGRAM - DISBURSEMENTS BY INCUMBENT V. COMPETITIVE ETC,
2006 - UNAUDITED (in thousands)**

State	Incumbent ETC	Competitive ETC	Total 2006
Alabama	\$ 99,577	\$ 16,394	\$ 115,971
Alaska	98,115	55,471	153,586
American Samoa	1,308	1,428	2,736
Arizona	67,143	15,872	83,015
Arkansas	101,917	30,589	132,506
California	105,001	1,056	106,058
Colorado	71,033	8,505	79,538
Connecticut	2,148	0	2,148
Delaware	261	0	261
District of Columbia	0	0	0
Florida	72,188	9,419	81,607
Georgia	99,093	8,625	107,717
Guam	9,360	7,345	16,705
Hawaii	22,582	18,214	40,797
Idaho	52,130	0	52,130
Illinois	67,768	1	67,769
Indiana	57,897	5,560	63,457
Iowa	63,386	42,239	105,625
Kansas	135,354	54,836	190,190
Kentucky	73,438	25,669	99,107
Louisiana	85,110	41,873	126,983
Maine	23,752	13,199	36,951
Maryland	4,544	3	4,547
Massachusetts	2,827	0	2,827
Michigan	43,794	15,144	58,938
Minnesota	79,602	40,292	119,894
Mississippi	136,387	139,647	276,033
Missouri	85,966	123	86,089
Montana	66,634	11,525	78,159
Nebraska	58,280	23,492	81,771
Nevada	24,927	6,327	31,254
New Hampshire	7,820	257	8,077
New Jersey	1,279	0	1,279
New Mexico	50,313	15,215	65,528
New York	45,613	3,309	48,922
North Carolina	74,033	7,437	81,469
North Dakota	41,368	39,535	80,903
Northern Mariana Islands	590	226	816
Ohio	41,582	0	41,582
Oklahoma	107,000	16,630	123,629
Oregon	62,298	9,952	72,250
Pennsylvania	64,023	1,491	65,514
Puerto Rico	29,461	93,860	123,321
Rhode Island	35	0	35
South Carolina	81,895	0	81,895
South Dakota	60,090	29,381	89,471
Tennessee	50,320	1,494	51,814
Texas	206,078	24,646	230,723
Utah	23,912	262	24,174
Vermont	24,958	5,880	30,838
Virgin Islands	25,250	0	25,250
Virginia	65,675	13,836	79,510
Washington	58,928	43,835	102,763
West Virginia	59,664	10,677	70,341
Wisconsin	83,013	51,196	134,209
Wyoming	39,687	17,950	57,637
TOTAL	\$3,116,405	\$979,916	\$ 4,096,321

Note: Numbers may not add due to rounding.

ATTACHMENT B



The News

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City of Challis sets May hearing for tower zone

BY TODD ADAMS

After an hour-long informational meeting on cellphone towers, the Challis City Council scheduled a May 8 public hearing on an ordinance creating a commercial tower zone adjacent to the Challis dump road.

Dennis Thornock, manager of the Custer Telephone Cooperative, presented the council with the draft of a less restrictive communication tower ordinance that he said would be more flexible and better allow cellphone companies to provide coverage in the city. He plans to submit a similar one to Custer County.

Council members took no action Tuesday on Thornock's draft, saying they wanted to compare it to the city's latest version. The mayor and council agreed it would be best to have a separate ordinance for setting standards for communication towers. They set the public hearing to consider establishing a 150-by-150 foot communication tower zone on property owned by the Dan and Spencer Strand families adjacent to the Challis dump road. The tower zone would allow up to four towers, serving up to 12 companies, to be built in the same location.

New ordinance?

Thornock said at the April 10 meeting that the city's proposed ordinance and the one adopted by the county were not flexible enough to allow growth in wireless communications, which in turn fuels economic growth. Custer's draft removes restrictions such as a 120-foot height limit, a ban on lattice towers (which are less expensive to build) and a section that prohibits tower location on ridgelines and other scenic areas.

Allowing towers to be 150 feet or taller and atop ridges may mean fewer towers built in Custer County to cover a larger area, Thornock said. As a county resident, "I'd like to see less towers and more coverage," he said. "If you limit it, you won't have coverage."

The city's proposed ordinance, and one adopted by the county on March 17, came from model ordinances in other, flatter Idaho counties. Custer County's rugged, mountainous terrain and sparse population make it a different ballgame, Thornock said.

If the city and county aren't flexible enough, the area won't have adequate cellular coverage, Thornock said. Custer is in favor of competing cellphone companies here because if people can't get cellular coverage or high-speed wireless Internet in the future, they'll probably move elsewhere. Custer's digital cellular signal technology is different and can't be received by users with some other cellphones,

Challis, ID

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58°F
Light Rain
Feels Like: 58°F
Humidity: 44%
Wind: WSW at 15 mph
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The Challis Phone Book



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he said.

Custer County probably won't see a huge proliferation of cell towers, at least in Thornock's lifetime, he said.

Frank O'Leary and other Edge Wirelss representatives also attended the meeting to answer questions. O'Leary said he reviewed Thornock's draft ordinance and Edge agrees with parts, but disagrees with others. He told the council that Edge is willing to make whatever site the city grants workable, if technically possible. The company has been positive when asked to move from one proposed site to another, he said.

The best site for cellphone coverage was the first one, proposed on private property across Main Street from Custertel's existing tower. Public opposition to that site led to the council voting last year to deny a variance and special use permit. The council took the company's proposed Peck's Hill site off the table after more opposition. Edge then proposed the third, dump road, site.

Edge says a 150-foot tower is needed at the dump road site to reach the golf course. The city's ordinance proposes a 120-foot height limit.

Each site has different challenges, O'Leary said. The higher dump road tower would cost more to build, but maintenance costs would be lower, since it's closer to a road and utilities. The 65-foot Peck's Hill tower would cost less to build, but it would cost more to develop that site and it would give poor coverage along Highway 93 and the Challis Creek areas, he said.

There are tradeoffs, O'Leary said, but as long as the city's chosen site is economically and technically workable, "we will go where the city directs us."

Another option with a shorter tower at the dump road site would be a line-of-sight repeater to carry a signal to the golf course. That would be more expensive and less reliable, said Edge engineer Shad Rydaich.

Mayor Janette Burstedt Piva said the city and Edge have considered other sites, such as one on undeveloped Bluff Avenue behind the Salmon River Electric pole yard, but not as seriously.

A proposal to co-locate on Custertel's tower has not been in the running. Thornock said the tower has no room for more equipment and any addition to its 105-foot height would have to be approved by a structural engineer.

Thomsen asked about building a new, taller, Custertel tower 50 feet away from the old one and the co-op renting space to Edge and other companies.

That's an option, Thornock replied. But adding height to the existing tower or building a new one would be expensive, and Edge probably wouldn't be interested in leasing at the high cost Custertel would need to recover costs.

Thornock said he's concerned that the existing city and county ordinances restrict wireless broadband (voice, video and data). If the governments limit tower sites to cost-prohibitive places, companies



won't locate here. With larger companies buying up the smaller ones, it's likely that only one other company besides Edge ? Verizon ?would want to provide cellular coverage to this sparsely populated county in the future, he said. That would allow most cellphone users to receive signals here.

O'Leary agreed that proliferation of towers is not likely in this remote county, as it costs \$250,000 to \$300,000 to establish a site, which is then very expensive to maintain. There's the added cost of "backhaul," or connecting to a local telephone switch. Edge has talked with Custertel about using its switch and fiber optic lines of the Syringa network, which would benefit the co-op, Thornock said.

It makes economic sense for a company to build fewer, higher towers, Thornock said. O'Leary said technology is the biggest cost of siting a tower, then steel and concrete. The higher the tower, the more expensive the materials, so companies generally don't want to build any higher than necessary, he said.

Harriet Henderson asked about Edge's plans for a tower network in Custer County, and how that dovetails with the city tower. O'Leary said those plans are on hold now. "I don't think we can build a system that works for us with the ordinance the county now has," he said.

Thornock said Custertel would not divulge cell sites to a competitor and he doubted Edge would either. While Thornock's draft ordinance and the city's version both call for companies to give the city a master plan of all towers proposed in the county, the draftstates that is proprietary and not subject to public scrutiny.

Jan Holmgren asked whether it was possible for an unbiased, third party with technical expertise, to verify height requirements, as it's hard to put the fox in charge of the henhouse.

Councilwoman Sharon Allred said Thornock is the resident expert. "He's watching out for us, I'm sure," she said.

Thornock had earlier said either Custertel or Edge would run computer models to determine the best height for towers at different sites, taking terrain and other factors into account.

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