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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Telephone Association

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
EDGE WIRELESS, LLC FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
UNDER 47 U.S.C. § 214(e)(2)

Case No. EDG-T-07-01

**IDAHO TELEPHONE ASSOCIATION'S
PROTEST AND COMMENTS**

The Idaho Telephone Association ("ITA"), by and through its attorneys Givens Pursley LLP, files this Protest and Comments in response to the Petition of Edge Wireless, LLC for Designation as an Eligible Telecommunications Carrier ("Petition"). For the reasons stated below, the ITA respectfully requests that the Commission either dismiss the *Petition* or, at a minimum, determine that Modified Procedure is not an appropriate means of reviewing the Petition, and that the Commission schedule further proceedings as more fully explained below.

The ITA's primary concern in this matter is with the *Petition's* request for a competitive ETC designation within the service territories of ten rural telephone companies, eight of whom are ITA members. See *Petition*, Exhibit C at 2-3. One problem with this aspect of the *Petition* is

that it is premised on an inaccurate, and misleading statement of the relevant statutes. According to the *Petition*,

Section 214(e)(2) of the Act *requires* state commissions to designate as an ETC, throughout the service area for which the ETC status is sought, any carrier that: (i) offers services that are supported by federal universal support mechanisms; and (ii) advertises the availability of such services.

Petition at 2-3. (Emphasis added)¹

This characterization of federal law is erroneous in two respects. First, with respect to ETC designations in rural telephone company serving areas, the federal act clearly states that state commissions “may” designate more than one ETC, but only if the Commission “shall find the designation is in the public interest.” *See* 47 U.S.C. § 214(e)(2). Second, the Act’s reference to “throughout the service area” is a condition of the two cited service requirements, not a reference to the ETC’s service area. This is quite clear from an accurate citation of the Act:

A common carrier designated as an eligible telecommunications carrier . . . shall, throughout the service area for which the designation is requested---
(A) offer the services that are supported by Federal universal support mechanisms . . . ; and
(B) advertise the availability of such services and the charges therefore using media of general distribution.

47 U.S.C. §214(e). Furthermore, in the case of a competitive ETC request in a rural telephone company’s service territory, the “throughout” requirement generally refers to the rural telephone company’s “study area,” not to the area requested by the alternative ETC. *See* 47 C.F.R. § 54.207(b).

Taken as a whole, these federal statutes and regulations impose a two part test for the designation of a competitive ETC in a rural telephone company’s service area that is clearly at odds with the *Petition*’s statement of the law. First, as a threshold matter, the applicant must

¹ The *Petition*, at least in the form the ITA copied from the Commission’s web site, has no page numbers. ITA references to *Petition* page numbers count the pages starting with the caption page, rather than with the accompanying transmittal letter.

demonstrate that it is offering, or will offer, the designated services throughout the entirety of the incumbent rural telephone company's study area. Second, even if the applicant meets this threshold test, it must still meet its burden of proving that the designation of an additional ETC "is in the public interest."

The ITA can find nothing in the *Petition* that even alleges that the Petitioner meets the threshold requirement of ubiquitous service throughout the relevant rural telephone companies' study areas. The *Petition* merely states that, "Edge serves all the wire centers in all of the rural ILEC study areas listed in Exhibit C." *Petition* at 3. This is clearly not the same thing as a statement that Edge serves "throughout" the designated wire centers. Nor does the fact that Edge is licensed to serve in a particular Basic Trading Area prove anything about its **actual** service in that area. In short, the *Petition* offers no evidence or assurances that Edge will not engage in "cream skimming" of the incumbent rural telephone companies' most profitable areas, which is exactly what the Act's threshold requirement was designed to prevent. *See further* Order No. 29841 at 16

A further defect in the *Petition* is that there is no **public** evidence demonstrating that the requested USF support "is in the public interest" and "necessary to preserve and advance universal service," as required by federal law. *See* 47 U.S.C. § 253(b). In order to meet these statutory requirements, Order No. 29841 requires applicants for ETC status in rural telephone company service areas to provide a two year network improvement plan that explains exactly how USF support will be spent and how those expenditures will advance universal service.

The two year network improvement plan must describe in specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each

project that is funded by high-cost support; the specific geographic area where the improvements will be made; and the estimated population that will be served as a result of the improvements.

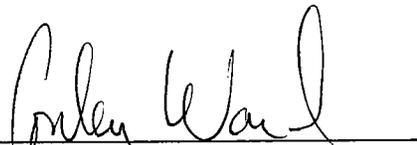
Order No. 29841 at 9.

The Petition's response to this requirement is allegedly contained in Exhibit D, which has been deleted from the public record pursuant to Petitioner's claim that it "contains trade secrets or confidential material." Consequently, at this juncture, the ITA has no means of determining whether the Petition conforms to Order No. 29841's requirements regarding network improvement plans. Nor does the ITA know whether or not the confidentiality claim is warranted.

The ITA therefore submits that Modified Procedure is not appropriate in this case because crucial evidence has not yet been made available to all the parties, and it requests a hearing in this matter. Assuming for the sake of argument that the confidentiality claim is valid, the Commission has appropriate procedural means to protect the information while at the same time preserving other parties' right to a fair hearing. *See e.g.*, IPUCRP 243.

WHEREFORE, the ITA respectfully requests that the Commission either dismiss the Petition or schedule further proceedings in accordance with these Comments.

DATED this 13th day of March 2007.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

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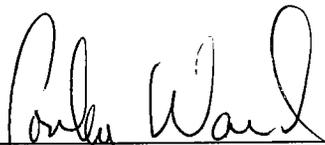
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