

# GIVENS PURSLEY LLP

## LAW OFFICES

601 W. Bannock Street  
PO Box 2720, Boise, Idaho 83701  
TELEPHONE: 208 388-1200  
FACSIMILE: 208 388-1300  
WEBSITE: www.givenspursley.com

Gary G. Allen  
Kelly T. Barbour  
Peter G. Barton\*  
Christopher J. Beeson  
William C. Cole  
Michael C. Creamer  
Thomas E. Dvorak  
Roy Lewis Eiguren  
Jeffrey C. Fereday  
Martin C. Hendrickson  
Steven J. Hippler  
Debora K. Kristensen  
Anne C. Kunkel  
Jeremy G. Ladle

Michael P. Lawrence  
Franklin G. Lee  
David R. Lombardi  
John M. Marshall  
Kenneth R. McClure  
Kelly Greene McConnell  
Cynthia A. Melillo  
Christopher H. Meyer  
L. Edward Miller  
Patrick J. Miller  
Judson B. Montgomery  
Angela K. Nelson  
Deborah E. Nelson  
W. Hugh O'Riordan, LL.M.

Angela M. Reed  
Scott A. Tschirgi, LL.M.  
J. Will Varin  
Conley E. Ward  
Robert B. White  
Terri R. Yost  
  
RETIRED  
Kenneth L. Pursley  
Raymond D. Givens  
James A. McClure

\* Licensed in New York  
and Washington DC

## Via Hand Delivery

April 27, 2007

Ms. Xan Allen  
Idaho Public Utilities Commission  
472 W. Washington  
P.O. Box 83720  
Boise, ID 83720-0074

Re: Edge Wireless Application for ETC Documentation  
IPUC Case No. EDG-T-07-01

RECEIVED  
2007 APR 27 AM 11:57  
IDaho Public  
UTILITIES COMMISSION

Dear Xan:

I write to confirm that on April 25, 2007 the Idaho Telephone Association ("ITA") filed the original and seven copies of *Idaho Telephone Association's Motion for a Staff Investigation* in the above referenced matter. Page four of the *Motion* and Exhibits B and C have been redacted in the original and four of copies. The remaining three copies contain information designated by Edge Wireless as "highly confidential" that is subject to the terms of a *Protective Agreement* entered into between counsel for ITA and counsel for Edge Wireless.

Sincerely,



Michael C. Creamer

cc: Service List

MCC:kdt S:\CLIENTS\1233\198\MCC Ltr to PUC re Redacted Information.DOC

Conley E. Ward [ISB No. 1683]  
Michael C. Creamer [ISB No. 4030]  
GIVENS PURSLEY LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone No. (208) 388-1200  
Fax No. (208) 388-1300  
cew@givenspursley.com  
mcc@givenspursley.com

2007 APR 25 PM 4:38  
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  
MOTION FOR A STAFF  
INVESTIGATION**

The Idaho Telephone Association ("ITA"), by and through its attorneys Givens Pursley LLP, files this Motion for a Staff Investigation as more particularly described herein.

**STATEMENT OF THE CASE**

On January 22, 2007, Edge Wireless, LLC ("Edge" or Applicant) filed with the Idaho Public Utilities Commission ("Commission") an Application for Designation as an Eligible Telecommunications Carrier. Edge's application requests an eligible telecommunications carrier ("ETC") designation for its wireless telecommunications service within the service areas of the following incumbent local exchange carriers ("ILECs"): Qwest Corporation ("Qwest"), CenturyTel of Idaho ("Century"), Albion Telephone Company ("Albion"), Custer Telephone Cooperative, Inc. ("Custer"), Direct Communications-Rockland ("Direct Communications"),

Filer Mutual Telephone Company (“Filer”), Fremont Telecom (“Fremont”), Mud Lake Telephone Cooperative Association (“Mud Lake”), Project Mutual Telephone Cooperative Association (“Project Mutual”), and Silver Star Telephone Company (“Silver Star”). All of these ILECs except Qwest are “rural telephone companies” as that term is defined in 47 U.S.C. § 153(37).

In Order No. 30240, the Commission issued its Notice of Application and Notice of Modified Procedure in this matter. The Idaho Telephone Association<sup>1</sup> intervened and filed its Protest and Comments on March 13, 2007. The Commission thereafter provided an additional 28 days for further discovery, and directed the parties to then report whether hearings were desired. For the reasons stated below, the ITA does not at this time request hearings, but it respectfully requests that the Commission direct its Staff to conduct further investigations and issue a report to the Commission and Parties for the reasons described below.

### ARGUMENT

An applicant for ETC status within the service territory of a rural telephone company must satisfy a two part test. At the outset, the applicant must demonstrate the ability to provide supported services throughout the area for which the designation is sought. Section 214(e)(1) of the Telecommunications Act of 1996 states that an applicant for ETC status:

- shall, throughout the service area for which such designation is received—
- (A) offer the services that are supported by Federal universal support mechanisms under section 254 . . . ; and
  - (B) advertise the availability of such services and the charges therefore using media of general distribution.

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<sup>1</sup> The ITA is authorized to represent member companies in regulatory proceedings and in other public policy matters. ITA member companies include: Albion Telephone Company, Cambridge Telephone Company, Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Company, Filer Mutual Telephone Company, Inland Telephone Company, Midvale Telephone Company, Mud Lake Telephone Cooperative Association, Project Mutual Telephone Cooperative Association, Direct Communications – Rockland, Rural Telephone Company, Silver Star Telephone Company, Oregon-Idaho Utilities, and Fremont Telecom.

47 U.S.C. § 214(e)(1). Section 214(e)(5) further provides:

In the case of an area served by a rural telephone company “service area” means such company’s “study area” unless and until the Commission and the States 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.

Section 54.101 of the Code of Federal Regulations essentially repeats this statutory language.

In addition, an applicant for ETC status in a rural telephone company service area must demonstrate to the Commission, and the Commission must find, that an additional ETC designation “is in the public interest.” 47 U.S.C. § 214(e)(2). In its Order No. 29841, this Commission adopted, with minor modifications the public interest standards promulgated by the Federal Communications Commission (“FCC”) *In the Matter of Federal-State Joint Board On Universal Service*, CC Docket 96-45 (March 17, 2005).

The initial difficulty with Edge’s Application is that it cannot possibly meet the first part of this test in all the service areas for which it is seeking an ETC designation. In its Application at page 3, Edge states “Edge serves all the wire centers in all of the rural study areas listed in Exhibit C.” This is manifestly false.

Because Edge has designated virtually all of the substantive information about its network as proprietary and confidential, ITA counsel’s discussion of Edge’s network with ITA members has been quite limited. However, when shown Edge’s statement cited above, several members reported that it could not possibly be true because Edge has no facilities at all in one or more of their wire centers. As an example, the ITA has attached to this pleading as Exhibit A, the Affidavit of Dennis Thornock, who states that Edge has no facilities of any kind in any of Custer’s wire centers. Furthermore, as Mr. Thornock’s

Affidavit points out, thorough coverage of Custer's service area would require numerous cell sites and other facilities.

The ITA members' reports appear to be confirmed by Edge's Confidential Exhibit D-2 (attached for convenience as Exhibit B), which shows :

Based on this information, and a review of Edge's coverage maps, the ITA believes that Edge

Furthermore, Edge's two year build-out plan (Exhibit D-2, attached for convenience as Exhibit B), does not

In addition to those wire centers where Edge does not provide any service, a review of Edge's coverage map, attached as Exhibit C, suggests to ITA counsel that there are

Presumably, these are the least dense and highest cost segments of those wire centers. In these wire centers, Edge's Application is, in effect, a request for ETC designation in a partial wire center. This Commission has previously rejected such applications, on the

grounds that they raise concerns about “cream skimming.” See Order No. 29541 at 16-18.

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.

Commission Order No. 29541 at 16 (emphasis original).

Under normal circumstances, the ITA would seek further discovery in the form of access to Edge’s facilities and engineering documents to confirm that Edge has no facilities in a number of wire centers and to test whether it is cream skimming in those wire centers where it is providing only partial service. However, the ITA does not believe the public interest would be well served by establishing the precedent that competitors, or potential competitors, can use Commission proceedings as the basis for a detailed investigation of another company’s engineering records and facilities.

Presumably, Edge would agree with this sentiment.

Fortunately, the Commission seems to have anticipated this difficulty. In Order No. 29841, the Commission stated:

In instances where an ETC applicant seeks designation below the study level of a rural telephone company, the Commission shall also conduct a cream skimming analysis that compares the population density of each wire center in which the ETC seeks designation against that of the wire centers in the study area in which the ETC does not seek designation.

Order No. 29841 at 16 (emphasis added).

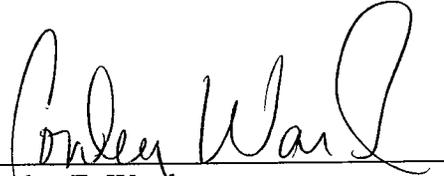
The ITA is well aware, of course, that Edge does not in its pleadings seek a designation below the study area level. But that fact cannot be dispositive, or the Commission’s rule would be meaningless. If the mere fact that an applicant files on an entire service area, even though it

does not intend to serve all the wire centers or the entirety of some wire centers, avoids an appropriate cream skimming analysis, then of course that is what applicants will do, and the Commission's legitimate concerns will never be addressed.

The ITA is also well aware that the Staff, in its Comments, did not think potential cream skimming is a concern in this case. But that is because the Staff mistakenly took at face value Edge's false representation that it "serves all the wire centers" covered in its Application. This led the Staff to the erroneous conclusion that "the Company avoids the specter of cream skimming as the Application does not include partial wire centers and addresses all wire centers in a service area." Staff Comments at 7 (emphasis added). Investigation of the facts in the Edge exhibits and on the ground would demonstrate otherwise.

Therefore, the ITA respectfully moves this Commission, pursuant to Order No. 29841, for an Order directing its Staff to conduct a further investigation to determine: (1) if Edge in fact lacks facilities and the ability to provide service in the wire centers listed above, (2) whether Edge is serving only the most profitable and least cost areas of those wire centers where it is serving only a portion of the area, and (3) whether Edge's claimed Network Coverage is accurate. The ITA further requests that the Staff be directed to issue a written report containing its findings, to be served on all Parties who have executed the Protective Agreement.

DATED this 25<sup>th</sup> day of April 2007.

  
\_\_\_\_\_  
Conley E. Ward  
GIVENS PURSLEY LLP  
Attorneys for Idaho Telephone Association

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April 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:

Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington Street  
P.O. Box 83720  
Boise, ID 83720-0074

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Mark P. Trincherro  
Davis, Wright & Tremaine LLP  
1300 S.W. 5<sup>th</sup> Ave., Suite 2300  
Portland, OR 97201  
Email: marktrincherro@dwt.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Molly O'Leary  
Richardson & O'Leary, PLLC  
P.O. Box 7218  
Boise, ID 83707  
Email: molly@richardsonandoleary.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April 2007, I caused to be served a true and correct copy of the foregoing document ,with Page 4 and Exhibits B and C redacted, by the method indicated below and addressed to the following:

Dean J. Miller  
McDevitt & Miller LLP  
420 W. Bannock Street  
P.O. Box 2564  
Boise, ID 83701-2564  
Email: joe@mcdevitt-miller.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Nathan Glazier  
Regional Manager, State Affairs  
AllTel Communications, Inc.  
4805 Thistle Landing Dr.  
Phoenix, AZ 85044  
Email: nathan.glazier@alltel.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

  
Michael C. Creamer

# EXHIBIT A



3. In my capacity as Custer's General Manager, I am generally familiar with the technology and facilities required to provide cellular telephone service. I am also familiar with the geography and topography of Custer's service area.

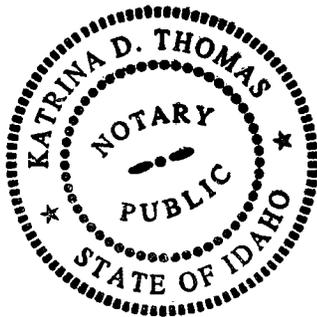
4. I have read the Application of Edge Wireless, LLC in the above entitled case now before the Idaho Public Utilities Commission. On page 3 of that Application, the Applicant states, "Edge serves all the wire centers in all of the rural ILEC study areas listed in Exhibit C." All four Custer wire centers are listed in Exhibit C. (Exhibit C also erroneously lists Stanley as a Custer wire center. That exchange is actually served by Midvale Telephone Exchange).

5. I can state with certainty that the quoted statement from the Application is false with regard to Custer. To the best of my knowledge, Edge Wireless has no facilities at all within any of the four Custer wire centers. Further, I can also state with certainty that providing wireless telecommunication service to any significant portion of Custer's territory would require multiple cell towers and other facilities.

DATED this 23 day of April 2007.

Dennis L. Thornock  
Dennis L. Thornock

Subscribed and sworn to, before me, this 23<sup>rd</sup> day of April 2007.



Katrina Thomas  
Notary Public for the State of Idaho  
Residing at Boise ID  
My Commission Expires 5/22/12

**EDG-T-07-01**

**EXHIBITS B AND C**

**ARE CONFIDENTIAL**

**AND WERE NOT**

**SCANNED**

924

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U.S. Mail  
 Hand Delivered  
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 Facsimile  
 Email

Mark P. Trincherro  
Davis, Wright & Tremaine LLP  
1300 S.W. 5<sup>th</sup> Ave., Suite 2300  
Portland, OR 97201  
Email: marktrincherro@dwt.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Molly O'Leary  
Richardson & O'Leary, PLLC  
P.O. Box 7218  
Boise, ID 83707  
Email: molly@richardsonandoleary.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Dean J. Miller  
McDevitt & Miller LLP  
420 W. Bannock Street  
P.O. Box 2564  
Boise, ID 83701-2564  
Email: joe@mcdevitt-miller.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

Nathan Glazier  
Regional Manager, State Affairs  
AllTel Communications, Inc.  
4805 Thistle Landing Dr.  
Phoenix, AZ 85044  
Email: nathan.glazier@alltel.com

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

  
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Michael C. Creamer