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Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF	)	
EDGE WIRELESS, LLC FOR DESIGNATION	)	CASE NO. EDG-T-07-1
AS AN ELIGIBLE TELECOMMUNICATIONS	)	
CARRIER UNDER 47 U.S.C. § 214(E)(2)	)	
	)	COMMENTS OF THE
	)	COMMISSION STAFF

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The Staff of the Idaho Public Utilities Commission ("Commission"), by and through its Attorney of record, Cecelia A. Gassner, Deputy Attorney General, in response to the Notice of Application, Notice of Modified Procedure and Notice of Intervention Deadline in Order No. 30240 issued on February 12, 2007, submits the following comments.

### BACKGROUND

On January 22, 2007, Edge Wireless, LLC ("Edge" or "Company") filed an Application for designation as an eligible telecommunications carrier (ETC) for service areas in Idaho currently serviced by other carriers. *See Idaho Code* § 61-610A and Order No. 29841; *see also* 47 U.S.C. § 214(e)(2). The Application requests that the Company be designated as eligible to receive all available support from the federal Universal Service Fund (USF) and that it be approved to participate in the Lifeline program.

According to the Application, Edge is a commercial mobile radio service (CMRS) carrier providing "mobile service" as defined in 47 U.S.C. § 153(27). Through its cellular authorizations,

it provides service to the following counties in Idaho: Bannock, Bear Lake, Blaine, Bingham, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton, and Twin Falls. Edge also operates in northern California, southeastern Oregon, and northwestern Wyoming. Application at 2.

Edge is seeking ETC designation in certain rural and non-rural wire centers. These wire centers are set forth in Exhibit C to the Application.

The Application contains certain information related to the Company's local usage plans, customer service and ability to provide service, particularly in emergencies. The Company provides several pricing options for its customers, and also intends to invest funds in upgrading its infrastructure.

## **STAFF ANALYSIS**

Staff has reviewed Edge's Application and conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996 ("the Act") and of Commission Order No. 29841. In addition, Staff has analyzed the merits of awarding ETC designation separately under the two wire center classifications of non-rural and rural wire center service areas.

### **Non-rural Wire Centers**

Edge Wireless identifies the non-rural wire centers in the Qwest Communications service areas of central Idaho to the Montana and Wyoming borders as identified in Exhibit C to the Application.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the service requirements set forth in 47 U.S.C. § 214(e)(1) and requests designation in a non-rural area served by an ILEC, the statute provides that the Commission shall designate more than one common carrier as an ETC. 47 U.S.C. § 214(e)(2).

Designating more than one ETC in a non-rural area is consistent with past Commission decisions in which the Commission granted ETC status to Clear Talk, a wireless company, in the non-rural Qwest wire centers in eastern Idaho and the Magic Valley (Case No. GNR-T-03-8). Order No. 29261. The Commission granted ETC designation to Western Wireless in the non-rural wire centers of Emmett, New Plymouth, and Weiser (Case No. WST-T-05-1). Order No. 29791. On January 13, 2005, the Commission issued Order No. 29686 approving the ETC Application of

a wireline carrier, VCI Company, in the Qwest service areas (Case No. VCI-T-04-1). Finally, the Commission granted ETC status to Inland Cellular, a wireless company, in the non-rural Verizon and Qwest wire centers in northern Idaho (Case No. INC-T-06-2). Order No. 30212.

Staff believes Edge meets all the statutory ETC requirements of Commission Order No. 29841 as it relates to non-rural wire centers. Designating Edge as an ETC in the non-rural service areas is consistent with the “public interest, convenience, and necessity” pursuant to 47 U.S.C. § 214(e)(2). Staff also believes granting ETC designation to the non-rural areas is in the public interest and will benefit the recipients of the Idaho Telecommunications Service Assistance Support (ITSAP). This designation would also serve the public interest of the consumers who live in the Fort Hall Reservation and are thus eligible for ITSAP support as well as the federal Lifeline and Linkup support.

Based upon past Commission decisions, and consistent with the requirements of Section 214 of the Act, Staff recommends approval of Edge’s request for ETC designation in the non-rural wire centers set forth in Exhibit C of the Application.

### **Rural Wire Centers**

The Application also includes the rural wire centers within the service areas of Albion Telephone Company, CenturyTel of Idaho, Inc., Custer Communications, Direct Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Silver Star-Teton Telephone, Silver Star Communications. Application, Exhibit C at 2-3.

As noted above, the Act treats 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 serviced by an ILEC, the Act provides the State commission with more discretion, stating that the State commission may grant ETC designation to the additional carrier provided that ETC designation for 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 ETC Applications in rural service areas. Rural wire centers often have widely disparate population densities, and therefore, highly disparate cost characteristics. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 at 21-22 (the “FCC Order”). As such, Staff believes the public interest analysis plays a more important role when reviewing 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:

[i]n 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 three wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-8), and, most recently, Inland Cellular Telephone Company (Case No. INC-T-06-2), because the applicants failed to carry their burden of demonstrating that their Applications for areas served by rural telephone companies, were in the public interest. *See* Order Nos. 29541 and 30212. These Applications failed the public interest test by placing too much emphasis on competition and relying on approved state and federal applications in very different service areas rather than explaining how the relevant applicant's ETC designation would benefit all the customers in a 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 for Designation as an ETC*, 19 F.C.C.R. 1563 (2004)). Edge's Application makes four primary public interest arguments. Our analysis of each is below.

#### 1. Increased Consumer Choice and Service Quality.

The Company makes two main points in support of increased consumer choice and service quality: a) the current advantages of wireless versus wireline service in rural areas; and b) the leveling of the playing field between wireline and wireless companies for availability of high-cost support.

In addressing the current advantages of wireless service, the company states, “[d]esignation of Edge as an ETC is in the public interest because such designation will promote competition and thereby facilitate the provision of advanced communications services and higher quality services to the residents of rural Idaho.” Application at 16. The Company corroborates this statement by describing the advantages of wireless over wireline service such as, wider local calling areas, mobile communications, a variety of service offerings, competitive rates, increased functionality of the wireless handsets, and the convenience and safety features of wireless mobility. *Id.* Edge also states, “some rural Idaho consumers may be able to obtain wireless service from Edge where landline service from the ILEC is cost prohibitive.” *Id.* at 17.

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. As with competition, the presumptive benefits of consumer choice alone does not satisfy the public interest requirement. In recent years, technological advancements have allowed most Idaho consumers a wireless option. Staff agrees that the modern wireless handset offers additional features as identified by the Company. *Id.* at 16. Staff is not convinced, however, that wireless service or enhanced handset functionality is sufficiently advantageous to be regarded as a measure of public interest and warrant high-cost funding consideration.

With regards to the availability of high-costs funds, the Company reasons that “[d]esignation of Edge as an ETC will begin to level the playing field among carriers competing in the local exchange market—to the benefit of consumers.” *Id.* at 18. The Company further states, “the rural ILECs serving the proposed ETC service area retain close to 100% of the local exchange market primarily because it is impossible for any company to compete with a monopoly that receives explicit subsidies from the government as well as substantial implicit subsidies that are unavailable to competitors (even those designated as ETCs).” *Id.* at 17.

Staff does not agree with the Company’s claim that it is impossible for another telecommunications company to compete with a rural ILEC that receives high-cost funds. Indeed, Edge admits they have been successful in competing for second lines in the rural wire centers. *Id.* at 17. Staff is more concerned with leveling the playing field for all consumers in a mostly rural state regardless of demographics.

The Company states, “Edge has been able to invest in infrastructure that brings advanced wireless services to parts of rural Oregon that would not have otherwise received those services.”

*Id.* at 16. As support for its contention that more competition brings improved services, Edge cites its experience in Oregon. The Company provides no evidence or data to support its claim.

Staff acknowledges that the Application provides detailed evidence of how the Company will use high-cost funds in Idaho. Staff does not have sufficient information to verify the Company's anecdotal claims that ETC designation increased consumer choice and service quality in its Oregon service area. In addition, the Application provides no documentation to support the Company's claim that its network improvement was specifically a result of ETC designation in Oregon.

## 2. Health and Safety Benefits.

The Company states, "Edge's mobile offering will allow rural consumers the flexibility to communicate while on the go and still retain access to emergency services. In addition to being able to reach emergency services while in their homes, wireless subscribers are able to reach emergency services while they are in route to their homes, workplaces and commercial centers." *Id.* at 19. In the Application, Edge illustrates a recent emergency situation where the Company used information gained from a rural cell site to assist Search and Rescue personnel to locate survivors in a remote mountainous location in Oregon. *Id.* at 20. The Company further supports this position by demonstrating how reliable wireless phone service provides a redundant form of communications for ILECs as witnessed during the activation of a tsunami warning system on the rural Oregon and California coasts that caused ILEC failure due to the high volume of calling. When this occurred, the residents were able to stay connected through the Applicant's wireless system. *Id.* The Company supplied supporting letters from an Oregon Commissioner and a Cassia County 911 Coordinator.

Staff believes that the Company has demonstrated a health and safety benefit to the public.

## 3. Competitive Response.

The Applicant postulates that competition will motivate Edge and other carriers to:

"implement advanced communications service and continually improve service quality levels in order to attract customers for their respective services, it will spur a competitive response from affected ILECs: service quality and customer service will improve; new investments in plant will be made; high speed data (e.g., DSL) may be deployed more quickly to retain and attract customers; and wider local calling areas, bundled service offerings, and lower prices overall will be introduced to compete with Edge to retain and attract customers." *Id.* at 21.

According to Edge, the resulting network advancement will boost economic development and encourage the relocation of new businesses that rely on a high quality advanced telecommunications infrastructure for commercial activities. *Id.*

Staff believes that rural wireless carriers are already present and competing with ILECs. It is, therefore, reasonable to assume that ILECS are already motivated to implement and offer advanced telecommunications services to retain and attract customers and that ILECs will continue to do so regardless of whether Edge's ETC Application is approved. Staff does not believe this a compelling argument to support public interest.

#### 4. State and Federal Precedent.

Edge Wireless states, "[t]here are now numerous cases at the state and federal level where designation of a wireless carrier as an ETC in a rural area was found to be in the public interest." *Id.* at 22. The Application references cases from *RCC Minnesota, Inc., d/b/a Cellular One, Midwest Wireless Communications, LLC*, and *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Memorandum and Opinion and Order*.

Staff acknowledges that wireless carriers have been approved as ETCs in other states and at the federal level. Staff believes this argument has little bearing on whether Edge's Application meets the public interest analysis in Idaho.

#### **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, does the potential for cream skimming exist? Staff believes 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. Further, the detailed network plan (Confidential Exhibit D) and the target network standards (Confidential Exhibit L) demonstrate commitment to and knowledge of serving rural areas in Idaho. In sum, the Application presents three mediocre and one compelling argument in support of the public interest analysis. However, when combined with the very unlikely possibility of cream skimming, Staff believes Edge's Application in total presents a reasonable argument to support the Company's public interest position.

### **Two-Year 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.

Edge's Application provides detailed information outlining its two-year network improvement plan. A narrative and two exhibits outline the anticipated improvements in each wire center with a timetable that begins in the third quarter of 2007 and continues through the first quarter of 2009. The submitted plan includes details such as start date, completion date, the estimated population affected, type of customers, type of construction and total project cost. Supporting documents include a map of cities with the current and future wireless coverage clearly delineated (Exhibit D of Application). The plan appears to provide improvements throughout the requested wire centers and shows substantial consideration of each center's needs.

The Company's thoroughness and attention to details 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. If granted ETC designation, the annual submission of the Two-Year Network Improvement Plan and Progress Report will hold the Company accountable for making a reasonable effort to implement the network improvement plan. See Appendix Reporting Requirements, Order No. 29841.

### **Ability to Remain Functional in Emergencies**

The Commission notes 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 in 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." *Id.* at 11.

The Application provides a detailed description of the Company's access to emergency services and ability to remain functional in emergency situations through the use of back-up support for their Mobile Switching Center and cell sites, a fault tolerant network, 24X7 Network monitoring and outage resolution procedures, staffing and additional equipment, cell on wheels



(COW), redundant facilities, and a complete inventory and regionally available spare parts. Application at 9-11. The Application also provides detailed descriptions of the Company's Emergency 911 capabilities that include automatic numbering information (ANI) and automatic location information (ALI) service. *Id.* at 8. A Technical Operations team of 11 people is located within Southeastern Idaho and is equipped with a complete complement of spares for cell sites, microwave and other equipment. *Id.* at 10. Finally, one of the two network operating centers (NOCs) is located in Pocatello, Idaho. The Company cites its experience in responding quickly to past emergency situations. Edge also listed the 2006 network upgrades that were implemented to improve reliability and they also enumerate the upgrade activities planned for 2007. *Id.* at 11.

Staff believes the Company meets the ETC designation standard for Ability to Remain Functional in Emergencies.

## **HIGH-COST FUNDING**

Staff is aware of the high-cost funding issues for rural areas. Staff recognizes and is concerned about the growth of high-costs funds, particularly as it relates to Competitive ETCs (CETC). The escalating high-cost fund is an ongoing concern that must be addressed at the federal level. In the meantime, Staff does not feel it should deny recommendation for approval 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 and tribal consumers the benefit of ITSAP, Lifeline and Linkup support as well as other potential benefits that may be offered by the CETC.

## **SUMMARY**

Of the requirements for ETC designation, it is Staff's opinion that the public interest analysis, the two-year network improvement plan, and the ability to remain functional in an emergency are essential to the Idaho consumers in the rural wire centers. Consequently, Staff judges these categories with a critical analysis to determine if the Applicant has provided compelling evidence that it meets these requirements.

Based upon the information provided in the Application, Staff sees no indication that Edge would not provide comparable service to that currently provided by the ILECs. The thoroughness of the Application and the attention to detail demonstrated in the two-year network plan indicates a serious commitment to provide reliable, state-of-the-art telecommunications to the rural wire

center consumers. Staff believes the Company demonstrates a commitment to Idaho as evident by the number of technicians located within the state as well as the NOC located in Pocatello, Idaho. Edge's Idaho presence exceeds that of some of the ILECs.

Staff believes the Company exhibits an understanding of the federal and state customer service requirements for ETC designation. Staff further believes Edge meets all federal and state requirements to be granted ETC designation in both the non-rural and rural wire centers.

#### **STAFF RECOMMENDATION**

Staff recommends that the Commission approve the Application as to the rural and non-rural wire centers listed in the Application.

Respectfully submitted this 14<sup>th</sup> day of March 2007.



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Cecelia A. Gassner  
Deputy Attorney General

Technical Staff: Grace Seaman

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 14<sup>TH</sup> DAY OF MARCH 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. EDG-T-07-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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