

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: CECELIA A. GASSNER**

**DATE: MARCH 23, 2007**

**SUBJECT: IN THE MATTER OF EDGE WIRELESS, LLC'S APPLICATION FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER, CASE NO. EDG-T-07-01**

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 that are currently serviced by other carriers. *See Idaho Code* § 61-610A and Order No. 29841. *Also see* 47 U.S.C. § 214(e)(2). The Application requests that it 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.

On February 6, 2007, WWC Holding, Inc. dba Alltel filed a Petition to Intervene, which was granted on March 7, 2007. Order No. 30265. On February 16, 2007, the Idaho Telephone Association (ITA) filed a Petition to Intervene, which was also granted on March 7, 2007. Order No. 30264. On February 12, 2007, the Commission issued a Notice of Application and Modified Procedure and solicited comments from interested parties. Order No. 30240. Staff timely filed its comments. On March 13, 2007, the ITA filed a Protest and Comments.

### THE APPLICATION

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.

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.

### **THE PROTEST**

The ITA asserts that the Application inaccurately states the law. ITA Protest and Comments at 1-2. It further asserts that nothing in the Application demonstrates that Edge's service will be ubiquitous in the wire centers or that it will not engage in cream skimming of the incumbent rural telephone companies' most profitable areas. *Id.* at 3. Lastly, it argues that, because Edge filed its two-year plan as a confidential document, the ITA is unable to assess whether that two-year plan meets the Commission's requirements. *Id.* at 3-4. The ITA asserted that Modified Procedure is not appropriate for this matter and requested a hearing. *Id.* at 4.

In its reply, Edge asserts that the ITA mischaracterized its Application, and that the ITA ignored Edge's discussion regarding the public interest standard. Edge Reply Comments at 2. Edge also states that the ITA errs in its argument that the Commission must grant Edge ETC status throughout its entire service area. *Id.* It also states that, contrary to the ITA's assertion, it has met the requirement for demonstrating a commitment to provide service to customers in the relevant rural ILEC study areas. *Id.* at 3.

Lastly, Edge argues that the Commission should reject the ITA's request for a hearing. *Id.* at 4. Edge states that the ITA never requested a copy of any of the confidential exhibits to the Application or otherwise sought to review the information the ITA alleges it must see in order to make any conclusion as to whether the Application is complete. *Id.*

### **STAFF COMMENTS**

Staff 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 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**

Staff noted that Edge identifies the non-rural wire centers in the Qwest Corporation 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). Staff Comments at 2.

Staff also noted that designating more than one ETC in a non-rural area is consistent with past Commission decisions. See Order Nos. 29261, 29791, 29686 and 30212. *Id.* at 2-3. 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. *Id.* at 3.

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

### **Rural Wire Centers**

Staff commented that 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, and Silver Star Communications. *Id.*

Staff noted that 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). *Id.*

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. *Id.*

### **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.

Staff noted that prior applications were denied by the Commission 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. Staff Comments at 4.

Staff stated that 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)). Staff analyzed each of Edge's four primary public interest arguments.

1. Increased Consumer Choice and Service Quality. Staff stated that 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. *Id.*

Staff agreed that, although the modern wireless handset may offer some advantages over wireline equipment, Staff does not advocate for the use of one technology over another and

it is not a compelling public interest argument. *Id.* at 5. With regards to Edge's second rationale, Staff did not agree with Edge's assertion that wireless service is at a disadvantage to wireline service that receives high cost USF funding. *Id.*

Staff acknowledged that the Application provides detailed evidence of how the Company will use high-cost funds in Idaho. Staff felt it did 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. *Id.* at 6.

Edge Reply Comments: In reply, Edge noted that it is proud of its record for using USF funds to improve service in Oregon. Edge Reply Comments at 5. It submitted an order of the Oregon Public Utilities Commission that found that Edge had used its 2005 high cost funds to further the goals of universal service in Oregon. *Id.* at Attachment 1. Edge noted that the Order states:

Edge Wireless had submitted a 5-year plan as part of its application for designation last year. Edge did a superb job of retaining much of that plan and carrying through elements of it for implementation in 2006 and 2007, as their recertification for last year required a plan for only 2005 support spending. While some projects that were not completed from their 2005 plan were carried over into their 2006 plans, much of the 2006 and 2007 plans were new this year.

*Id.* at 6.

2. Health and Safety Benefits. Staff believes that the Company has demonstrated a health and safety benefit to the public. It noted that the Company provided illustrative information regarding the use of its wireless services in emergency situations. Staff Comments at 6. In addition, Staff stated that the Company demonstrated how reliable wireless phone service provides a redundant form of communications for ILECs and that during certain emergency situations, the residents were able to stay connected through the Company's wireless system. *Id.*

3. Competitive Response. 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.* at 6-7. 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. *Id.* at 7.

4. State and Federal Precedent. Staff commented that Edge noted that other State Commissions have approved other wireless companies' ETC designation applications. Staff acknowledged 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. *Id.*

### **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 avoided 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, from the Staff's perspective, the Application presented 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. *Id.*

### **Two-Year Network Improvement Plan**

Edge's Application provides detailed information outlining its two-year network improvement plan. Staff noted that 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. *Id.* at 8. 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). Staff

believes that the plan appears to provide improvements throughout the requested wire centers and shows substantial consideration of each center's needs. *Id.*

In Staff's opinion, the Company's thoroughness and attention to detail 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. *Id.* 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**

Staff stated that 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. *Id.* at 8-9. It noted that the Application also provided detailed descriptions of the Company's Emergency 911 capabilities that include automatic numbering information (ANI) and automatic location information (ALI) service. *Id.* 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 and one of the Company's two network operating centers (NOCs) is located in Pocatello, Idaho. Staff believes the Company meets the ETC designation standard for Ability to Remain Functional in Emergencies. *Id.*

### **High-Cost Funding**

Staff noted that it 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. Staff commented that 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. *Id.* at 9.

## 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 judged these categories with a critical analysis to determine if the Applicant has provided compelling evidence that it meets these requirements. *Id.*

Based upon the information provided in the Application, Staff saw 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. *Id.*

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 recommends that the Commission approve the Application as to the rural and non-rural wire centers listed in the Application. *Id.* at 10.

## COMMISSION DECISION

Does the Commission continue to find that Modified Procedure is appropriate for this matter, or does the Commission desire to set a prehearing conference for this matter to establish a discovery and hearing schedule? Does the Commission desire to do anything else with regards to this matter?



Cecelia A. Gassner

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