

## DECISION MEMORANDUM

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

**FROM:** DON HOWELL

**DATE:** MAY 4, 2007

**SUBJECT:** EDGE WIRELESS, LLC'S APPLICATION FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER (ETC), CASE NO.  
EDG-T-07-01

In February 2007, the Commission issued a Notice of Application and Notice of Modified Procedure regarding Edge Wireless's Application for designation as an eligible telecommunications carrier (ETC) for several Idaho service areas. In particular, Edge seeks ETC designation in certain rural and non-rural wire centers. The Commission has the authority to designate telecommunication carriers as ETCs under the federal Telecommunications Act of 1996. 47 U.S.C. § 214(e)(1-2); 47 C.F.R. § 54.101; *Idaho Code* § 62-615(1). In response to the Commission's Notice of Modified Procedure, the Idaho Telephone Association (ITA) filed a protest to Edge's ETC Application.

In Order No. 30286 issued March 28, 2007, the Commission address ITA's Protest and directed ITA and Edge to exchange information via discovery. The Commission also directed Edge to allow ITA to review Edge's two-year network improvement plan after executing a confidentiality agreement. The Order directed Edge and ITA to inform the Commission no later than April 25 whether a hearing is necessary or if the matter may continue to be considered by Modified Procedure. Order No. 30286 at 2.

Edge filed timely Comments that the Commission should designate Edge as an ETC and ITA timely filed a "Motion for a Staff Investigation." ITA asserted in its Motion that Edge neither has facilities in all the areas it proposes to serve as an ETC carrier, nor does Edge's build-out plan indicate that it will install such facilities within 2 years. ITA Motion at 4 (confidential).

On May 1, 2007, Edge filed an errata correction to its Application. On May 3, 2007, Staff filed an objection to ITA's Motion and Edge filed a Reply to ITA's Motion.

### **EDGE WIRELESS COMMENTS**

Edge noted in its comments that it has provided confidential documents and other information to ITA. The parties also engaged in a conference call in order "to permit ITA to ask clarifying questions regarding the material" that Edge provided. Having provided ITA with the requested information, Edge urged the Commission to continue processing this matter under Modified Procedure and issue an Order granting ETC designation to Edge. Edge Comments at 1-2.

### **ITA MOTION FOR A STAFF INVESTIGATION**

In response to Order No. 30286, ITA filed a "Motion for a Staff Investigation." Although ITA did not request an evidentiary hearing in its Motion, it did request "the Commission direct its Staff to conduct further investigations and issue a report to the Commission and Parties. . . ." ITA Motion at 2. ITA insists there are two discrepancies with Edge's ETC Application. First, ITA alleges that Edge does not or will not serve all the wire centers in those telephone service areas in which it is seeking ETC designation. *Id.* at 3. ITA asserts that Edge does not have facilities in certain wire centers nor does Edge's two-year build-out plan reveal that these wire centers are scheduled for facilities in the next two years. *Id.* at 4 (confidential).

Second, ITA requests that the Commission direct its Staff to conduct an independent investigation to ensure that Edge's ETC Application does not result in "cream skimming."<sup>1</sup> ITA requested that the Staff determine:

- (1) If Edge in fact lacks facilities and the ability to provide service in the requested wire centers,
- (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.

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<sup>1</sup> 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." Order No. 29541 at 16 (emphasis original).

ITA Motion at 6. ITA requested that the Staff issue a written report examining the three issues set out above.

### **EDGE ERRATA**

On May 1, 2007, Edge filed an errata correction to its Application to remove the “Stanley wire center from its proposed ETC area.” Edge Errata at 1. Edge acknowledges that it inadvertently included the Stanley wire center in its proposed ETC area allegedly served by rural incumbent Custer Telephone. Because the Stanley wire center is in fact in Midvale Telephone’s study area, including the Stanley wire center in Edge’s ETC area “would require the Commission to redefine the Midvale study area to the wire center level.” This was not Edge’s intent. Errata at 2. Consequently, Edge withdrew the Stanley wire center from its proposed ETC service area. *Id.* at 1-2.

### **STAFF OBJECTION**

On May 3, 2007, Staff filed an objection to the ITA Motion. Staff suggests that ITA has misconstrued the standard for granting ETC status. An ETC applicant is not required to demonstrate a pre-existing ability to serve an entire service area nor even an entire wire center before being granted an ETC designation. Rather, Staff reports that an ETC Applicant must demonstrate a commitment to fulfill all reasonable requests for service within the proposed service area. Staff maintains that Edge satisfies this requirement when the Company stated its “commitment to serve requesting customers.” Staff Objection at 2-3 *citing* Application at 14. Staff states that Edge can avoid cream skimming by virtue of its commitment to serve entire wire centers. Objection at 3; Staff initial Comments at 7.

Staff also objects to the Motion because it is not a reasonable use of Staff’s time to conduct an investigation into Edge’s “Network Coverage.” Staff explains that ETCs must file annual reports to include: (1) a two-year Network Improvement Plan and Progress Report; and (2) Unfulfilled Service Requests. These reports are used to determine how well an ETC is performing based upon stated commitments in its ETC application and whether it will be approved for recertification by the Commission. Objection at 3. For these reasons, Staff argues that ITA’s request for a Staff investigation is unwarranted.

## EDGE REPLY

On May 3, 2007, Edge also filed a reply to ITA's Motion. Edge urges the Commission to deny ITA's Motion because it is based upon a misreading of the law and is intended to delay the designation of Edge as an ETC. Edge Reply at 1. Edge acknowledges that it does not currently have its own facilities in all the proposed ETC area. However, Edge maintains that federal law and this Commission's Rules do not require an ETC to serve a proposed area "*exclusively* through its own facilities." *Id.* at 2 (emphasis original). Edge asserts that it may offer service by using its own facilities, the facilities of other carriers, or build new facilities. *Id.*

Edge states that the standards for granting ETC status were established in Order No. 29841. In the Appendix to the Order, the Commission requires an ETC applicant to demonstrate that it will: (a) provide service on a timely basis to requesting customers within the 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 service 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.

The ETC applicant must also submit a two-year network improvement plan that describes with specificity proposed improvement or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant must also 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 areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

Edge Reply at 3 *citing* Order No. 29841, Appx at 2. Thus, Edge argues that the extent of current wireless coverage is irrelevant; it is the carrier's commitment to providing service under the standards set out above that is the test for ETC designation. Edge Reply at 3.

Edge maintains that it has sufficient radio spectrum to serve its proposed area. *Id.* at 4. The Company states that it has a switch in Pocatello and a customer service center in Idaho Falls. Edge says it is committed to building out the “rural wire centers and has the proven ability to do so.” *Id.* Edge’s two-year plan is merely a plan for the deployment of facilities and a new two-year plan is due every year. Edge reiterates that it is not seeking ETC status below the study area level for any rural ILEC in Idaho nor is it seeking to serve any partial wire centers. *Id.* at 4-5.

Edge urges the Commission to deny ITA’s Motion and continue processing the ETC application under Modified Procedure. Edge insists that ITA has every reason to delay this application “because ETC designation will make Edge a more formidable competitor, both for the ITA members in their capacity as rural ILECs and in their capacity as members of the Syringa Wireless consortium.” *Id.* at 6.

#### COMMISSION DECISION

1. What is the Commission’s determination regarding ITA’s Motion for a Staff Investigation?
2. Does the Commission wish to continue processing this case under Modified Procedure or schedule a hearing?
3. Anything else?



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Don Howell

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