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IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of IAT  
Communications, Inc., d.b.a. NTCH-Idaho, Inc.  
or Clear Talk, for Designation as an Eligible  
Telecommunications Carrier.

CASE NO. Docket No. GNR-T-O3-08

In the Matter of the Application of NPCR, INC.  
d/b/a NEXTEL PARTNERS  
Seeking Designation as an Eligible  
Telecommunications Carrier that may receive  
Federal Universal Service Support.

CASE NO. Docket No. GNR-T-O3-16

**POST-HEARING BRIEF OF IAT  
COMMUNICATIONS, INC., d/b/a/  
CLEAR TALK**

**STATEMENT OF THE CASE**

On February 3, 2003, IAT Communications, Inc., d/b/a Clear Talk ("Clear Talk") filed a  
an Application with the Idaho Public Utilities Commission ("Commission") requesting  
designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e) of  
the Telecommunications Act of 1996 ("the Act"). In that petition, Clear Talk initially sought  
designation in the service areas of Citizens Telecommunications Company of Idaho ("Citizens"),  
Albion Telephone Company ("ATC"), Qwest Corporation ("Qwest"), Filer Mutual Telephone  
Company ("Filer"), Fremont Telecom Company ("Fremont"), and Project Mutual Telephone

Cooperative Association, Inc. (“Project Mutual”) – all of which are classified as incumbent local exchange carriers (“ILEC”) and, with the exception of Qwest, are classified as rural ILECs.

More than two months later, on April 28, 2003, NPCR, Inc. d/b/a Nextel Partners (“Nextel”) also requested Commission designation as an ETC for a portion of its Idaho wireless service territory, including some Citizens exchanges, and ATC, Filer, Project Mutual, Mud Lake Telephone Cooperative Association, Inc. (“Mud Lake”), and Farmers Mutual Telephone Company (“Farmers”).

On May 5, 2003, Clear Talk filed an Amended Application to, among other things, clarify that it was not seeking ETC designation for the purpose of the Idaho Universal Service Fund. Clear Talk also requested interim ETC designation for any service area for which its petition was not contested.

On June 11, 2003, the Commission issued Order No. 29261, designating Clear Talk as an ETC in the Qwest exchanges that are coterminous with Clear Talk’s PCS Basic Trading Areas Nos. 202, 353 and 451, which include the American Falls, Blackfoot, Bliss, Buhl, Burley, Gooding, Idaho Falls, Rexburg, Rigby, Shelley, Pocatello, Lava Hot Springs, McCammon, Twin Falls, Jerome, Kimberly, and Wendell exchanges. In so ordering, the Commission found that, based on the record before it, Clear Talk met the threshold requirements of Section 214(e)(1)(A) and (B) for the foregoing Qwest exchanges. Order 29261 at 5 – 6.

On June 13, 2003, at the request of Commission Staff, Clear Talk filed a Second Amended Application to clarify the rural wire centers within its current Idaho service area for which it was seeking ETC designation. Pursuant to Exhibit B of Clear Talk’s Second Amended Petition, Clear Talk limited its application for ETC designation to the following rural ILEC wire centers:

1. Fremont Telecom – Ashton Exchange (ASTIDMARSO); St. Anthony Exchange (STATIDMADSO)
2. Project Mutual – Qwest/Burley Exchange (HYBNIDO1RSO); Paul Exchange (PAULIDXCRSO); Rupert Exchange (RPRTIDXCDSO)
3. Citizens Telecom of Idaho – Aberdeen Exchange (ABRDIDXCDSO)

On May 27, 2003, the Commission combined the two applications and requested comments from other potentially interested parties under the Commission's Modified Procedure Rules. Order No. 29240. Petitions to Intervene were filed by the Idaho Telephone Association ("ITA"), Citizens, and Project Mutual. On July 21, 2003, the Commission granted ITA's request for an evidentiary hearing. Order No. 29292 at 9. Direct and Rebuttal Testimonies were pre-filed by the parties and an evidentiary hearing was held on December 9<sup>th</sup> and 10<sup>th</sup> 2003, pursuant to the Commission's Notice of Hearing. Order No. 29312.

#### STATEMENT OF FACTS

The Commission has already found, based on the evidence in the record, that Clear Talk has met the threshold requirements of Section 214(e)(1):

Based on the Company's filings, the Commission finds that Clear Talk is a wireless common carrier that has licenses granted by the FCC to provide service in southeastern Idaho. The Commission further finds that Clear Talk has met the requirements for ETC designation in Qwest exchanges in southeastern Idaho as it will offer the supported services to all customers in its designation areas through its own facilities or those of other carriers and will advertise these services.

Order No. 29261 at.5. In support of this finding, the Commission cited, *In the Matter of Federal-State Joint Board on Universal Service* 15 F.C.R. 15168, 15178 at ¶ 24 (2000), and the "Declaration of Larry Curry", attached as Exhibit 1 to Clear Talk's Application. *Id.* at FN.4.

The Commission concluded that:

“ . . . Clear Talk' s Petition and supporting materials demonstrate that the Company has the ability and commitment to provide all the services required for ETC designation throughout the Qwest exchanges in southeastern Idaho.”

Order No. 29261 at 6.

In addition to the Qwest exchanges, Clear Talk’s above-referenced Application and supporting materials requested ETC designation in the Ashton and St. Anthony exchanges of Fremont Telecom, the Aberdeen exchange of Citizens, and the Qwest/Burley, Paul, and Rupert exchanges of Project Mutual.

As with its request for ETC designation for the Qwest exchanges, Clear Talk’s request for ETC designation for the above-referenced rural ILEC exchanges is limited only by the reach of its FCC licenses for southern Idaho. These licenses were acquired based on availability and price, not some grand scheme to game the Universal Service Fund system. Tr. 386, LL. 4 – 9; Tr. 462, LL. 9 – 13. Clear Talk is committed to maximizing its investment in these licenses by deploying services in previously unserved areas. Tr. 471, L. 17 – Tr. 472, L.1.

Clear Talk’s ability to increase deployment of wireless communication services to consumers in the requested rural ILEC exchanges will, at a minimum, double with the assistance of Universal Service Fund support. Tr. 380, LL. 17 – 20; Tr. 472, LL. 2 – 8. In addition, Universal Service Fund support will allow Clear Talk to enhance its existing services, as required by Section 254(e) of the Act. Clear Talk’s provision of wireless services in the requested rural areas will increase customers’ telecommunication choices and mobility, as well as improve public safety by bringing telecommunication services into previously unserved areas and decreasing response times for emergency services.

In addition to traditional mobile wireless service, Clear Talk also intends to offer wireless local loop service in the requested rural ILEC exchanges. Tr. 355, LL. 21 – 24; Tr. 356, L. 2 – Tr. 358, L. 8. This service will compete directly with incumbent landline services.

Since its entry into Idaho, Clear Talk has demonstrated a consistent growth trend based on customer demand. Clear Talk Exhibit 3. Clear Talk stands ready, willing and able to bring wireless service deeper into Idaho if it is able to offset some of the higher costs associated with rural areas with Universal Service Fund support. Tr. 440, LL. 10 – 15.

Clear Talk has agreed to have its ETC designation conditioned on several conditions proposed by Citizens. TR. 443, L. 1 – Tr. 444, L. 13.

ITA has conceded that competition from wireless service will cause rural ILECs to operate more efficiently. ITA Post-Hearing Brief at 14.

The survey referenced by ITA in its testimony (*e.g.*, Tr. 494, LL. 6 – 9) and Post-Hearing Brief (at 14) is not in evidence.

There is no evidence in the record that consumers will be harmed by the designation of Clear Talk as an ETC in the rural exchanges that are the subject of Clear Talk's Application.

There is no evidence in the record that the rural exchanges that are the subject of Clear Talk's Application cannot support more than one ETC.

In its decision in *In the Matter of the Application of Qwest for Deregulation of Basic Local Exchange Rates in Its Boise, Nampa, Caldwell, Meridian, Twin Falls, Idaho Falls, and Pocatello Exchanges* (hereafter, "*Qwest Deregulation*"), the Commission did not find that

wireless service does not and cannot compete with landline service. Order No. 29360. Rather, the Commission found that Qwest failed to meet its evidentiary burden in the case before it. *Id.* at 19.

## **ARGUMENT**

### **I. Clear Talk has met the threshold requirements for ETC designation in the subject rural areas.**

In granting Clear Talk's request for ETC designation in Qwest's exchanges, the Commission has correctly found, based on the evidence in the record, that Clear Talk meets the threshold requirements under Section 214(e)(1) for ETC designation. Order No. 29261. This finding expressly includes a determination that Clear Talk "has the ability and commitment to provide all the services required for ETC designation throughout the Qwest exchanges." *Id.* at 6. Pursuant to principles of *res judicata*, the record likewise supports a finding that Clear Talk has the ability and commitment to provide all of the services required for ETC designation in the requested rural exchanges.

### **II. Granting Clear Talk's Application is in the Public Interest.**

In addition to finding that the threshold requirements of Section 214(e)(1) have been met, Section 214(e)(2) of the Act requires that, in the case of a request for a competitive ETC designation in a rural ILEC's service area, the Commission find that the requested designation is in the public interest. 47 U.S.C. § 214(e)(2).

Rather than accepting the self-serving spin provided by ITA's and Citizens' expert, Daniel Trampush, this Commission need look no further than the Federal Communication

Commission (“FCC”) for guidance on how to apply the public interest standard of Section 214(e)(2) to the facts of this matter.

As stated by the FCC, designation of a wireless carrier in rural areas serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas. *In the Matter of Federal-State Joint Board on Universal Service: Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC. Docket 96-45 (Dec. 26, 2000) (hereafter, “*Wyoming*”), at ¶¶ 9, 18. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. *Id.* at ¶ 19. Competition will also provide an incentive to rural telephone companies to improve their existing networks to remain competitive, resulting in improved service to consumers. *Id.*<sup>1</sup> Consumers will likewise benefit from expanded local calling areas. *Id.* at ¶ 23.

While the Intervenors attempt to make much of the fact that some wireless service is already available in portions of their service areas without the benefit of Universal Service Fund support, the FCC’s decision in the *Wyoming* case was not premised on whether there were other wireless carriers present in the subject exchanges. Therefore, any attempt by the Intervenors to argue that this Commission’s decision must be premised on the existence or non-existence of other wireless carriers, is a red herring.

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<sup>1</sup> ITA has conceded that competition from wireless service will cause rural ILECs to operate more efficiently. ITA Post-Hearing Brief at 14.

Like Western Wireless in Wyoming, Clear Talk is seeking ETC designation in the subject rural exchanges precisely so that it can *further* its deployment of wireless service to rural Idaho. Designation of Clear Talk as an ETC will, at a minimum, double its ability to deploy wireless universal service to portions of rural Idaho that presently lack wireless service. And, like Western Wireless in *Wyoming*, Clear Talk intends to offer wireless local loop service in the subject rural ILEC exchanges. Tr. 355, LL. 21 – 24; Tr. 356, L. 2 – Tr. 358, L. 8. This service will compete directly with incumbent landline services.

In addition, like Western Wireless in *Wyoming*, and countless other wireless ETCs, the incentive for Clear Talk to make good on its commitment to offer these services throughout the exchanges within its FCC license areas is twofold: (1) expand coverage to maximize the baseline return on its investment in the FCC licenses; and (2) because support is tied to the acquisition of customers, Clear Talk cannot realize the potential for Universal Service Fund support without reaching out to as many consumers as possible. As the FCC noted in *Wyoming*, unlike rural ILECs, a competitive carrier must continuously demonstrate its commitment to offer and deploy the supported services. *Wyoming* at ¶ 15. So the risk of non-compliance is squarely on the shoulders of Clear Talk – not Idaho consumers.

Furthermore, Clear Talk has committed to use the Universal Service Fund support it receives to upgrade its facilities and enhance its present service, which is a specific goal of the fund. 47 U.S.C. § 254(e).

Finally, there is no evidence in the record that consumers will be harmed by the designation of Clear Talk as an ETC in the rural exchanges that are the subject of Clear Talk's

Application; and there is no evidence in the record that the rural exchanges that are the subject of Clear Talk's Application cannot support more than one ETC.

Consequently, like the facts in *Wyoming*, the evidence before this Commission meets the public interest test enunciated by the FCC.

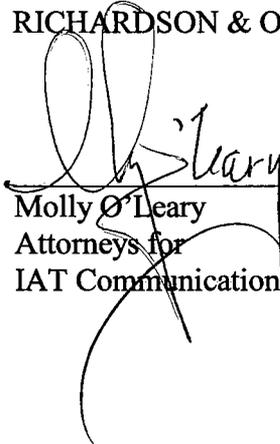
### CONCLUSION

For the foregoing reasons, and based on the record before it, the Commission should grant Clear Talk's Application for ETC designation.

As this Commission stated in *Qwest Deregulation*: The public interest is served when effective competitive forces exist to protect customers from monopoly pricing. Order No 29360 at 20. Designation of Clear Talk as an ETC in the requested rural exchanges will help ensure that effective competitive forces will spread to, take root in, and propagate throughout rural Idaho.

RESPECTFULLY SUBMITTED, this 23rd day of January, 2003.

RICHARDSON & O'LEARY, PLLC



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2004, I caused a true and correct copy of the foregoing **POST-HEARING BRIEF OF CLEAR TALK** to be served by the method indicated below, and addressed to the following:

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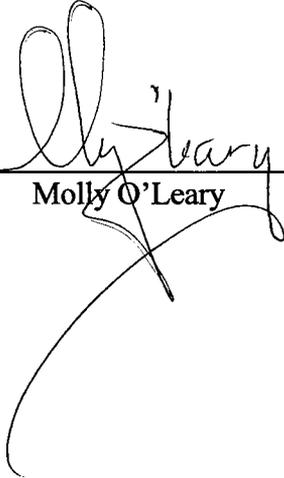
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