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IDAHO PUBLIC
UTILITIES COMMISSION

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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-O3-16 **RESPONSE OF CLEAR TALK TO ITA PROTEST**
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.	

IAT Communications, Inc., d/b/a NTCH-Idaho, Inc. or Clear Talk ("Clear Talk") hereby responds to the Protest of Intervenor Idaho Telephone Association ("ITA") filed in the above combined cases.

Clear Talk does not oppose ITA's request for a hearing and welcomes the opportunity to demonstrate its ability and intent to fulfill the role of an Eligible Telecommunications Carrier ("ETC") in the southeast Idaho service areas of Albion Telephone Company, Filer Mutual Telephone Company, Citizens Telecommunications Company of Idaho, Project Mutual Telephone Cooperative Association, Inc., and Fremont Telecom, Inc. Nevertheless, Clear Talk

desires to take this opportunity to correct several erroneous assertions made by ITA in its Protest and to request that the Idaho Public Utilities Commission ("the Commission") resist any attempt by ITA or any other Intervenor to use misconstruction of the applicable law as a means for turning the requested evidentiary hearing into a wide-ranging, anticompetitive fishing expedition.

A. AN APPLICANT NEED NOT HAVE UBIQUITOUS COVERAGE AT THE TIME IT SEEKS ETC DESIGNATION

Contrary to ITA's assertion at p. 2 of its Protest, Clear Talk meets all of the Commission's requirements for ETC designation in the service areas for which such designation is requested. ITA's statement that Clear Talk is required, before it receives ETC designation status, to provide service throughout the service areas for which designation is requested is apparently based on a fundamental misunderstanding of the applicable law[1] – or a disingenuous attempt to "have it both ways." The following is a telling illustration that, of the two possible explanations for ITA's mischaracterization of the applicable law, the latter is perhaps the most likely.

On the one hand, ITA erroneously argues that Clear Talk is not entitled to ETC designation because it does not provide service throughout the service areas for which it has requested such designation (ITA Protest at 2); on the other hand, ITA argues that, as a policy matter, Clear Talk doesn't need Universal Service Fund support because it has already begun serving the service areas for which designation is requested, without the benefit of high-cost support (ITA Protest at 6; Exhibit A at 3). Then, without missing a beat, ITA turns right around and claims that Clear Talk has an unfair competitive advantage over the wireline ILECs because

[1] *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling,* CC Docket 96-45, FCC 00-248, ¶ 17 (rel. August 10, 2000) ("Declaratory Ruling").

it only serves relatively "low cost, high margin customers" (ITA Protest at 6) – completely ignoring the fact that the high cost support that Clear Talk will be entitled to as an ETC will make it economically feasible for Clear Talk to provide universal service throughout the relevant service areas.[2]

As stated by the Federal Communications Commission (FCC) in its South Dakota Western Wireless Declaratory Ruling, "a telecommunication carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC." *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling,* CC Docket 96-45, FCC 00-248, ¶ 17 (rel. August 10, 2000).

Because Clear Talk only seeks access to the federal universal service program, the federal standards for eligibility control and this Commission has wisely recognized that fact.[3] Any attempt by ITA or any other Intervenor to turn this proceeding into a fishing expedition to dredge up irrelevant, extraneous factual matters based on a mischaracterization of the relevant issues must be soundly rebuffed by the Commission.

B. The Focus of the Public Interest Standard is the Public, Not the Incumbent ETC's Bottom Line.

Contrary to ITA's Protest, the public interest factor under Section 214(e)(2) is not intended as a "preserve the status quo" exemption to protect rural ILECs from *bona fide* competition. Thus, ITA's argument that the federal, high-cost universal service fund is not intended to further competition in rural areas (ITA Protest at 5) is completely off the mark. Once

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[2] *See, id.*
[3] IPUC Order No. 29261, pp. 3-4.

again, the fallacy of ITA's position is demonstrated by the fact that it offers contrary arguments in support of its position: (1) there is plenty of wireless competition already (ITA Protest at 6); and (2) the wireless carriers only provide coverage in "small pockets of relatively low-cost, high-margin customers (*Id.,* emphasis added*)*.

The public interest standard under Section 214(e)(2) requires simply that the consumer benefits of increased service choice, innovative services and new technologies are not outweighed by adverse consumer impacts. The public interest standard is not intended to weigh the benefits of competition to a competitive ETC's bottom line against the cost of such competition to the incumbent ETC's bottom line. The focus of the public interest standard is the public.

CONCLUSION

Clear Talk looks forward to the opportunity to address these and other issues, as necessary, in a contested hearing and respectfully requests that the Commission reject any attempt by ITA or any other Intervenor to lead its inquiry astray and use this procedure for a far-flung fishing expedition into extraneous and legally irrelevant matters.

RESPECTFULLY SUBMITTED, this 27th day of June, 2003.

RICHARDSON & O'LEARY, PLLC

Molly O'Leary
Attorneys for
IAT Communications, Inc. dba Clear Talk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, this 20th day of June, 2003, served the foregoing RESPONSE OF CLEAR TALK TO ITA PROTEST by hand delivering an original and seven copies to:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington Street
Boise, Idaho 83720
(208) 334-0300

and by mailing, via first-class mail on June 20, 2003, true and correct copies to the following parties of record:

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