

Conley E. Ward [ISB No. 1683]  
GIVENS PURSLEY LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720  
Telephone No. (208) 388-1219  
Fax No. (208) 388-1300  
cew@givenspursley.com

RECEIVED  
FILED  
2004 JAN 16 PM 4:20  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Idaho Telephone Association  
S:\CLIENTS\1233\170\ITA Post-Hearing Brief.DOC

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE PETITION OF  
IAT COMMUNICATIONS, INC., d/b/a  
NTCHIDAHO, INC. OR CLEAR TALK, FOR  
DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER.

Case No. GNR-T-03-08

IN THE MATTER OF THE APPLICATION  
OF NPCR, INC., d/b/a NEXTEL PARTNERS,  
SEEKING DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS  
CARRIER.

Case No. GNR-T-03-16

**IDAHO TELEPHONE  
ASSOCIATION'S POST-HEARING  
BRIEF**

**STATEMENT OF THE CASE**

On February 3, 2003, IAT Communications, Inc., d/b/a Clear Talk ("Clear Talk") filed with the Idaho Public Utilities Commission ("Commission") a Petition for Designation as an Eligible Telecommunications Carrier. Clear Talk's petition requested an eligible telecommunications carrier ("ETC") designation for its wireless telecommunications service within the service areas of the following incumbent local exchange carriers: Qwest Corporation ("Qwest"), Citizens Telecommunications Company of Idaho ("Citizens"), Albion Telephone

ORIGINAL

Company (“Albion”), Filer Mutual Telephone Company (“Filer”), Fremont Telecom Company (“Fremont”), and Project Mutual Telephone Cooperative Association, Inc. (“Project Mutual”).<sup>1</sup>

On April 28, 2003, NPCR, Inc. d/b/a Nextel Partners (“Nextel”) submitted a similar Application for Designation as an eligible telecommunications carrier for its Idaho wireless service territory. Nextel’s Application requested an ETC designation for certain selected exchanges in Citizens’ service territory, and for the entirety of the service areas of Albion, Filer, Project Mutual, Mud Lake Telephone Cooperative Association, Inc. (“Mud Lake”), and Farmers Mutual Telephone Company (“Farmers”).

In Order No. 29240, the Commission combined the two applications and requested comments from other parties under its Modified Procedure rules. The Idaho Telephone Association (“ITA”)<sup>2</sup> and Citizens intervened and filed Comments opposing the applications and requesting an evidentiary hearing on the applications insofar as they applied to proposed designations in rural telephone company service areas.<sup>3</sup> Clear Talk and Nextel filed Reply Comments taking issue with the Intervenor’s Comments but not opposing the request for evidentiary proceedings.

In Order No. 29292, the Commission granted the Intervenor’s request for evidentiary hearings, which were held as scheduled on December 9<sup>th</sup> and 10<sup>th</sup> 2003. During the hearings Clear Talk dropped its request for designation in the Albion and Filer service areas. Tr. 379, L. 24-Tr. 380, L. 9.

---

<sup>1</sup> During the hearings Clear Talk dropped its request for designation in the Albion and Filer service areas. Tr. 379, L. 24-Tr. 380, L. 9.

<sup>2</sup> The ITA is authorized to represent member companies in regulatory proceedings and in other public policy matters. ITA member companies include: Albion Telephone Company, Cambridge Telephone Company, Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Company, Filer Mutual Telephone Company, Inland Telephone Company, Midvale Telephone Company, Mud Lake Telephone Cooperative Association, Project Mutual Telephone Cooperative Association, Direct Communications – Rockland, Rural Telephone Company, Silver Star Telephone Company, Oregon-Idaho Utilities, and Fremont Telecom.

<sup>3</sup> Project Mutual also intervened but did not actively participate in subsequent hearings.

## STATEMENT OF FACTS

The Applicants in this case are two very different types of companies. Clear Talk is a small, closely held regional wireless carrier with a relatively limited service area in Idaho. Nextel is a publicly traded partnership. It effectively functions as an operating arm of its parent Nextel Communications, a publicly traded company that owns 32% of its stock. Tr. P. 518, L. 20-25. Nextel is managed under a joint operating agreement with Nextel Communications, and both companies offer the same Nextel branded products and services. *Id.*

The applications at issue in this case both seek competitive ETC designations in areas served by incumbent local exchange carriers (“ILECs”) that are designated as “rural telephone companies” as that term is defined in 47 U.S.C. § 153(37). The primary purpose of the applications is to qualify the Applicants for the receipt of federal universal service funds (“USF”). Tr. 12, L. 9-19; Tr. 340, L. 20-Tr. 341, L. 4. Neither Applicant has requested state universal service funding at this time, but neither rules out doing so in the future. Tr. 13, L. 5-8.

If the Commission grants the Applications, each of the Applicants will qualify for USF support for each wireless “line” in an amount equal to the affected ILEC’s system-wide average support per line.<sup>4</sup> Tr. 43, L. 3-5. This represents a new demand on the federal USF because the incumbent’s USF support, which is based on its total cost of service throughout its study area, Tr. 38, L. 16-19, is not reduced by incremental payments to wireless ETCs. Tr. 242, L. 16-19; Tr. 270, L. 16-20.

Despite the fact that their USF support would be based on the incumbents’ system-wide average costs, neither of the Applicants claim to offer service throughout the affected ILECs’ service areas. Both of the Applicants have chosen to concentrate their service area primarily

---

<sup>4</sup> In the Citizens service area, the Applicants’ support will be based on the average support per line within each of Citizens disaggregated exchanges.

along the interstate corridor where population densities are the greatest. *See* Exhibit 1; Application of Nextel Partners, Attachment 2. In Clear Talk's case, it concedes that it currently serves only a portion of Citizens' Aberdeen exchange, and relatively minor portions of Fremont and Project Mutual's service areas. Ex. 1; Tr. 380, L. 20-24. Similarly, Nextel acknowledges that it cannot provide service throughout the Citizens, Albion, Filer and Mud Lake service areas. Tr. 100, L. 1-20. Whether it can serve the entirety of Project Mutual's and Farmers' service areas is an open question because Nextel admits that it cannot in fact serve all the customers within the "cloud" delineated in its propagation map without additional buildout. Tr. 147, L. 18-19; Tr. 148, L. 5. Furthermore, Nextel's propagation map, which would seem to include the entirety of both companies' areas, is based on the use of 3-watt phones. Tr. 12, L. 2-4; Exhibits 103 and 104. If use of the more common types of wireless phones is assumed, Nextel's claimed coverage area is necessarily overstated. Tr. 99, L. 10-23.

Both Applicants acknowledge that they unilaterally chose their service areas based on their individual financial and operational considerations. Tr. 119, L. 10-17; Tr. 386, L. 17-21. In effect, both are now seeking ETC designations for the entirety of any incumbent's service area in any portion of which the Applicants have some service:

Q. Isn't it true that like Nextel, essentially you are seeking a designation based on the service areas in which you have some service?

A. [By Mr. Ishihara] Yes, that's correct.

Tr. 381, L. 2-5. In the words of Nextel's witness, Mr. Wood, "Nextel Partners is asking that it be permitted to define a service area in Idaho that it can serve as an ETC." Tr. 181, L. 20-22.

In fact, as matters now stand, both Applicants are legally barred from serving the entirety of all the affected ILECs' service areas because of license limitations. Tr. 98, L. 21-23; Tr. 427, L. 12-16. Acquiring additional licenses to provide coverage throughout the entirety of the

ILECs' service areas would be, as the Applicants acknowledge, an expensive and time consuming process and, in some cases, a legal impossibility. Tr. 73, L. 19-20; Tr. 125, L. 1-15, Tr. 128, L. 12-16. Even if the licensing impediment could be overcome, both Applicants acknowledged that they would only build out in areas where it was economically attractive to do so. According to Clear Talk, this would require a minimum of 125-250 customers for any new cell tower site. Tr. 451, L. 6-11. In response to a question from Commissioner Smith, Nextel's witness, Mr. Peabody, conceded that a full Nextel build out throughout all the affected ILECs' service areas would be a matter of "years, rather than months," Tr. 140, L. 8-16, but he refused to provide a firm timetable or buildout plan to support even this vague assurance. According to Mr. Peabody, Nextel:

cannot make business commitments about specific buildout until we are designated an ETC, evaluate funding levels, consider our own capital budgets, and analyze market dynamics.

Tr. 73, L. 8-11.

Finally, while the Applicants repeatedly insisted that they need USF support to bring the benefits of competition with the ILECs to Idaho's rural areas, there is absolutely no evidence in the record to support this bald assertion, and Nextel's witness, Mr. Wood, admits as much. Tr. 276, L. 19-Tr. 278, L. 12. The Applicants presented no cost studies to demonstrate that USF support is economically necessary, nor did they present any evidence whatsoever that they would further the ultimate goal of universal service by providing service to customers who currently do not have access to supported telecommunications services. This is not surprising because all the meaningful evidence in the record indicates there are already numerous unsubsidized wireless carriers in the Idaho rural telephone companies' service areas, and the service they are providing

is almost exclusively a complementary service, rather than a competitor for the ILECs' existing universal service offerings. *See infra* pp. 14-16.

### ARGUMENT

The Applicants would have the Commission believe that this case is about removing “regulatory barriers” to competition, Tr. 91, L. 14-15, and providing a “level playing field” for wireless service providers. Tr. 52, L. 16, Tr. 83, L. 16. This is utter nonsense. In Idaho, there are no “regulatory barriers” to wireless competition because wireless service providers are completely exempt from regulation under either title 61 or title 62 of the Idaho Code. Idaho Code § 62-603(14). The Applicants, and many other wireless providers, have entered rural telephone company service territories at will, and they will continue to do so in the future. In addition, it is quite clear that the Applicants don't want the competitive playing field leveled in those cases where they may have a competitive advantage over the incumbents.

I disagree with any suggestion that a goal of regulation in this context should be to attempt to equalize the position of the carriers by artificially removing advantages any carrier may have over others.

Testimony of Don Wood, Tr. 202, 10-14.

The issues in this case have nothing to do with the Applicants' ability to compete with incumbent rural telephone companies. They are free to do so in a time and place of their choosing. The real question is whether their service within rural telephone company service territories should be subsidized by USF support payments. As a matter of law, this question can only be answered in the affirmative if the Applicants show, and the Commission finds, that (1) they have the capability and commitment to provide service throughout the incumbent rural telephone companies service territories, and (2) the requests for ETC designation and USF

support will serve the public interest. Both applications fall woefully short of meeting either requirement.

- 1. The Applicants' requests for ETC designations must be denied because they do not offer service throughout the entirety of the incumbent rural telephone companies study areas.**

A party seeking a competitive ETC designation in a rural telephone company's service territory must first meet a minimum threshold statutory test by demonstrating that it offers service throughout the entirety of incumbent's study area. This requirement stems from Section 214(e)(1) of the Telecommunications Act of 1996, which provides that an applicant for ETC status:

- shall, throughout the service area for which such designation is received—
- (A) offer the services that are supported by Federal universal support mechanisms under section 254 . . . ; and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.

47 U.S.C. § 214(e)(1). Section 214(e)(5) further provides:

In the case of an area served by a rural telephone company "service area" means such company's "study area" unless and until the Commission and the States after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Congress enacted this "ubiquitous service" requirement in response to rural telephone companies' concerns that they would be placed at an unfair competitive disadvantage if their competitors could target only their most attractive customers while simultaneously receiving USF support based on the incumbent's system-wide average costs. In rejecting arguments that rural telephone companies service areas should be redefined to accommodate potential competitors' preferred service areas, the Joint Board concluded:

We find no persuasive rationale in the record for adopting, at this time, a service area that differs from a rural telephone company's present study area. We note

that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize “cream skimming” by potential competitors. Potential “cream skimming” is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company’s study area.

Joint Board Recommended Decision, FCC 96J-3 at ¶ 172 (Nov. 8, 1996)

Enforcing this minimum statutory requirement is not, as the Applicants repeatedly insist, either unfair or anticompetitive. As the ITA’s witness Dan Trampush explained it is part and parcel of Congress’s definition of fair competition in rural telephone company service territories.

Congress essentially offered wireless carriers a choice when they enter a rural telephone company’s service area. They are free to skim the cream of the incumbent’s customers, but if they do so they must forgo USF support. Alternatively, the competitor can attempt to qualify for USF subsidies equivalent to the incumbent’s. If the competitor chooses the latter alternative it must, as a minimum threshold requirement, match the incumbent’s obligation to serve and actively solicit customers throughout the entirety of a rural ILEC’s territory. This requirement is mandatory and non-discretionary, unless the Joint Board recommends, and the FCC and states adopt, some lesser requirement.

Tr. 501, L. 1-13.

The Applicants would have the Commission relieve them of this minimum statutory requirement by relying on an FCC preemption decision entitled *In the Matter of the Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, 15 FCC Rcd. At 15175 (Aug. 10, 2000) (hereafter *Western Wireless*). According to Nextel’s witness, Don Wood, the *Western Wireless* decision stands for the proposition that the law does not require a competitive ETC applicant “to show that it can serve every customer throughout each study area for which it seeks designation in advance of receiving a grant of ETC status.” Tr. 30, L. 13-

16. While this is an apt characterization of the FCC's initial holding, it omits some important qualifications that make the Applicants reliance on *Western Wireless* misplaced.

The FCC qualified its decision by stating that a competitive ETC applicant must "make a reasonable demonstration to the state commission of its capability and commitment" to provide universal service throughout the proposed ETC serving area. The FCC stressed that this must be a meaningful demonstration:

We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state Commission its ability and willingness to provide service upon designation.

*Western Wireless* at ¶ 24. Furthermore, the FCC affirmed that, "A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request." *Western Wireless* at ¶ 17 (emphasis added).

In a subsequent order, *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*), the FCC provided an example of the type of "capability and commitment" showing required by law. In *Wyoming*, the FCC noted "Western Wireless also commits to provide service to any requesting customer within the designated service areas, and if necessary, will deploy any additional facilities to do so." *Wyoming* at ¶9. The FCC characterized this commitment as "a statutory duty," *Wyoming* at ¶ 20, that is required because:

Congress was concerned that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company exercise its option to relinquish its ETC designation under section 214(e)(4).

*Wyoming* at ¶19. The FCC granted Western Wireless's application only after finding that it demonstrated "a financial commitment and ability to provide service to rural customers that minimizes the risk that it may be unable to satisfy its statutory ETC obligations after designation." *Id.*

Taken as a whole, the *Western Wireless* and *Wyoming* decisions stand for the proposition that a competitive ETC need not have facilities throughout the rural incumbent's service area at the time of designation, but it must show it is "fit, willing and able" to provide carrier of last resort service, in the same manner as the incumbent, upon reasonable request. The Applicants cannot, and will not, meet this statutory requirement. Because of license and facility limitations, they lack the capability to provide service throughout the incumbents' service territories, and they have steadfastly refused to provide any evidence of financial ability or willingness to meet their statutory obligations in any reasonable timeframe.

On this record, there is simply no conceivable basis for a Commission finding that the Applicants stand ready to serve as a carrier of last resort in the same manner as the incumbents. On cross examination, Citizens' witness, Lance Tade provided a not atypical example of the daunting economics involved in fulfilling a carrier of last resort obligation:

[T]here's a small community in our Elk City exchange called Orogrande and in our 2004 budget, there's approximately 12 customers up there that want service and we currently do not have facilities going into that area and there's an obligation on our part to spend about \$350,000 to provide service to those 12 customers.

Tr. 613, 20-Tr. 614, L.1. Neither of the Applicants is capable or willing to undertake similar obligations.

In fact, both parties have openly repudiated any intention of complying with their statutory duty by testifying they would only provide service when and where it is profitable. In

Clear Talk's case, it will not consider installing a new cell site unless there are at least 125 potential customers even if it receives USF support, and even then the company is unwilling to commit to providing service in all such cases. Tr. 473, L. 2-23. Nextel's position is even more restrictive, as Mr. Peabody's exchange with Commissioner Hansen vividly illustrates:

- Q. Just a follow-up with what Mr. Richards was asking you on guidelines to provide service. Really, when a customer asks for service, isn't really your guideline dollars and cents? If to provide service to that customer you're not going to be able to recover your cost through the rate you charge, isn't it more likely you're going to deny that customer service?
- A. Yes. We are an investor-owned company. We have to show profitability on our investments. There's no guaranteed return for us.
- Q. So really, that's basically your major guideline, is it not?
- A. That's correct.

Tr. 137, L. 4-15.

In short, both companies intend to engage in systematic cream skimming by focusing only on profitable customers and rejecting service to those who can't make an immediate contribution to the bottom line. This is hardly surprising given the fact that this is the very essence of Nextel's well-documented business plan. Morningstar, a respected independent stock research firm, summarized the company's strategy as follows:

Unlike rivals obsessed with subscriber growth, Nextel doesn't wave a cell phone at every Tom, Dick, and Harry. Instead, it skims the cream of the crop; lucrative business customers who tend to be heavy cell phone users and who are more concerned with quality and features than price.

Tr. 517, L. 7-10; Exhibit 304 (emphasis added). There can be little doubt that Nextel is in fact following this cream skimming strategy in its rural Idaho service areas. While multi-line business customers provide on average only 8.4% of Idaho incumbent rural telephone companies' total access lines, they constitute more than 50% of Nextel's access lines in the four rural telephone company service areas where Nextel has a significant presence.

Under these circumstances, the Commission must find that the Applicants clearly do not intend to meet their obligations to provide ubiquitous service throughout the incumbent rural telephone companies' study areas, and the applications must therefore be denied.

**2. Granting the Applicants' request for ETC status would be contrary to the public interest.**

Even if an applicant is fit, willing and able to provide service throughout a rural incumbent's service area, it must additionally prove that its request for ETC status is in the public interest. Section 214(e)(2) of the Telecommunications Act of 1996 states:

[T]he State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier. . . Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2) (emphasis added).

The Applicants urge the Commission to accept the presumed benefits of competition as conclusive evidence that their request is in the public interest.<sup>5</sup> But as the ITA's witness, Dan Trampush, points out, the Applicants' position is clearly at odds with Congressional intent.

If the presumptive benefits of competition were sufficient to satisfy the public interest test, the public interest test would be a *non sequiter* because Congress would have had no reason to include it in the law. It would have made multiple ETC designations mandatory, as it did in RBOC service areas, on the grounds that competition is always in the public interest.

---

<sup>5</sup> Designating Clear Talk as an ETC in Idaho will bring competition to rural, high cost areas, and competition is in the public interest . . . The failure to designate Clear Talk as an ETC would deprive consumers of the benefits of competition, including increased choices, higher quality service, and lower rates. Glenn Ishihara, P. 23, L-6-7 17-19.

Consistent with the Act, the "public interest" is served where designating a competitive ETC will benefit consumers in rural areas of the state. The Commission should make this determination from the presumption that competition benefits consumers, and that citizens throughout the state are entitled to the benefits of competitive universal service. Scott Peabody, Tr. 50, L. 20-Tr. 51, L. 2.

But that is not what Congress did. Instead it made multiple ETC designations permissive in rural telephone company service areas and further provided that these designations must first be determined to be “in the public interest.” Thus, the only logical reading of the statute is that a company seeking ETC status in a rural telephone company service area must show some public interest benefit beyond the presumptive benefits of competition.

Tr. 525, L. 12-Tr. 526. L.3 (footnote omitted). *Accord*, Comments of the National Association of State Utility Consumer Advocates at 9, CC Docket No. 96-45.

The Applicants’ implausible interpretation of the “public interest” test is not only irrational, it is also inconsistent with the manner in which lawmakers have historically employed the term. When used in public utility statutes, a reference to the “public interest” normally invites the Commission to weigh competing social and economic considerations. *See generally* Charles F. Phillips, Jr., *THE REGULATION OF PUBLIC UTILITIES* at 183 (1993). This is precisely the approach suggested by FCC Commissioner Adelstein, who argues that regulators should consider the following issues in administering the public interest test:

Whether granting ETC status to a competitor will bring benefits to a community that it does not already have and what effect it will have on the overall size of the fund, and thus on consumers’ bills. So, a threshold question is, does the benefit to consumers outweigh the ultimate burden on consumers.

*Remarks of Commissioner Johnathan S. Adelstein before the National Association of Regulatory Utility Commissioners on February 25, 2003*, quoted in NTCA Reply Comments, P.5, CC Docket No. 96-45. Mr. Trampush proposed a similar approach in his testimony:

I suggest, therefore, that we must first consider what we are trying to accomplish with USF payments, what is the likelihood that we will achieve our goals, and whether the expected results justify the costs.

Tr. 529, L. 16-Tr. 530, L.2.

Whether the Commission adopts Commissioner Adelstein’s test or Mr. Trampush’s proposed approach, the result is the same. There is precious little evidence that designating the

Applicants as ETCs would produce significant benefits. The Applicants argue that USF funding will enable them to introduce new services to potential customer and force the ILECs to operate more efficiently in response to their competitive pressure. *See e.g.*, Tr. 85, L. 4-22. The facts simply don't support either argument.

According to a recent Legg Mason report, there are now approximately 156 million wireless subscribers nationwide, amounting to a penetration rate of 54% of the nation's households. Legg Mason, *3Q 2003 Wireless Scorecard: Subscriber Growth is Accelerating* at 1 (Jan. 7, 2004). Rural Idaho has also seen explosive growth in both the number of cellular customers and the number of providers. In a survey undertaken prior to this proceeding, the ITA found that all member companies reported the presence of cellular providers in their service areas, with an overall average of 5 cellular providers per incumbent territory. Tr. 531, L. 19-23. Many of these wireless companies have been providing service for 5-10 years without subsidies. Tr. 532, L. 2-5. Thus, wireless service is not a "new" service in the rural telephone companies' service territories, and there is no evidence in the record that the Applicants will fill a need or provide services that are not already available without subsidization.

Similarly, the facts do not support the Applicants' argument that their competitive presence will force the incumbents to improve their operational efficiency. Since there are already numerous wireless carriers in their territories, the incumbents are already faced with the threat of potential competition and the need to operate efficiently. But whether or not the Applicants are designated as ETCs, that competitive threat is more potential than actual. The available evidence suggests that Citizens and ITA customers are not substituting wireless for wireline service to any significant degree. Tr. 533, L. 5-22. Instead customers seem to view the two types of service as complementary services, each prized for their own unique attributes. Tr.

535, L. 1-Tr. 536, L. 2. This is entirely consistent with the Commission's recent findings in the Qwest deregulation case, which also reached the conclusion that the two types of service are largely complementary rather than competitive. *See 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*, Order No. 29360 at 19-20 Oct. 20, 2003).

The field in which the wireless carriers are in fact having significant competitive impacts is interexchange service. In this arena, customers are using their bundled minutes of use to displace access charges and wireline long distance charges. Tr. 533, L.23-Tr. 534, L. 5. As Mr. Trampush notes, this situation raises two compelling public policy questions:

First, how can the presumed benefits of competition occur when there appears to be little direct wireless competition with the incumbents for the provision of universal service? Second, does it make sense to devote scarce federal universal service funds to promote wireless competition in rural areas when that competition is largely directed against interexchange carriers who do not qualify for similar subsidies?

Tr. 536, L. 3-Tr. 537, L. 7. This issue is all the more interesting in view of the fact that wireless carriers generally do not provide equal access to their interexchange competitors.

Against this slim evidence of benefits stemming from wireless ETC designations, the Commission must weigh the potential cost of providing multiple providers with USF support for potentially any number of phones per household. As Mr. Trampush pointed out, granting the Applicants' requests is likely to open the floodgates for further designation requests.

If the Commission grants these insupportable Applications, it is difficult for me to imagine any grounds that will suffice to deny subsequent applications. In that event, we can assume that virtually all of the wireless carriers operating in Idaho will apply for, and be granted, ETC status and federal USF support. Furthermore, I would expect that these carriers will ultimately seek funding from the state universal service fund as well.

The result will be the creation of a whole new industry subset, founded not on competitive business principles, but rather on the desire to maximize regulatory

subsidies that have little or nothing to do with universal service. The ultimate irony is that this will distort, rather than advance, competition, and place legitimate universal service funding at risk.

Tr. 541, L. 12-Tr. 542, L. 2.

Under these circumstances, the public interest weighing process tilts decidedly against the Applicants. The benefits are questionable and the countervailing costs are potentially enormous.

### CONCLUSION

For the above and foregoing reasons, the ITA submits that the Commission has no choice but to reject the Applications on the grounds that they are contrary to law and not in the public interest.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of January 2004.

GIVENS PURSLEY LLP

By: \_\_\_\_\_

Conley E. Ward

Attorneys for Idaho Telephone Association

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of January 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jean Jewell	<input type="checkbox"/> U.S. Mail
Idaho Public Utilities Commission	<input checked="" type="checkbox"/> Hand Delivered
472 W. Washington Street	<input type="checkbox"/> Overnight Mail
P.O. Box 83720	<input type="checkbox"/> Facsimile
Boise, ID 83720-0074	

Molly O'Leary	<input checked="" type="checkbox"/> U.S. Mail
RICHARDSON & O'LEARY	<input type="checkbox"/> Hand Delivered
99 E. State Street, Ste. 200	<input type="checkbox"/> Overnight Mail
Eagle, ID 83616	<input type="checkbox"/> Facsimile

Sean P. Farrell	<input checked="" type="checkbox"/> U.S. Mail
IAT Communications, Inc.	<input type="checkbox"/> Hand Delivered
NTCH-Idaho Inc., d/b/a Clear Talk	<input type="checkbox"/> Overnight Mail
703 Pier Avenue, Suite B	<input type="checkbox"/> Facsimile
PMB 813	
Hermosa Beach, CA 90254	

Dean J. Miller	<input checked="" type="checkbox"/> U.S. Mail
MCDEVITT & MILLER	<input type="checkbox"/> Hand Delivered
420 W. Bannock Street	<input type="checkbox"/> Overnight Mail
P.O. Box 2564	<input type="checkbox"/> Facsimile
Boise, ID 83701-2564	

Philip R. Schenkenberg	<input checked="" type="checkbox"/> U.S. Mail
2200 First National Bank Building	<input type="checkbox"/> Hand Delivered
332 Minnesota Street	<input type="checkbox"/> Overnight Mail
Saint Paul, MN 55101	<input type="checkbox"/> Facsimile

Morgan W. Richards	<input checked="" type="checkbox"/> U.S. Mail
Moffatt, Thomas, Barrett, Rock & Fields	<input type="checkbox"/> Hand Delivered
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	<input type="checkbox"/> Overnight Mail
P.O. Box 829	<input type="checkbox"/> Facsimile
Boise, ID 83701-0829	

Lance A. Tade, Manager  
State Government Affairs  
Citizens Telecommunications Company of Idaho  
4 Triad Center, Ste. 200  
Salt Lake City, UT 84180

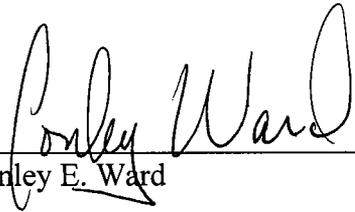
U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Robert M. Nielsen  
548 E Street  
P.O. Box 706  
Rupert, ID 83350

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Charles H. Creason, Jr.  
President and General Manager  
Project Mutual Telephone Cooperative Association  
507 G Street  
P.O. Box 366  
Rupert, ID 83350

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Conley E. Ward