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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
GOLD STAR COMMUNICATIONS, LLC FOR)	CASE NO. GOL-T-10-01
DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER)	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Donald L. Howell II, Deputy Attorney General, submits the following comments.

BACKGROUND

On June 8, 2010, Gold Star Communications, LLC (Gold Star or Company) filed an Application seeking designation as an eligible telecommunications carrier (ETC) pursuant to the federal Telecommunications Act and this Commission's Order No. 29841. 47 U.S.C. § 214(e) (1-2); 47 C.F.R. § 54.201. Gold Star is a commercial mobile radio services (CMRS) carrier providing mobile services as defined in 47 U.S.C. § 153(27) and conducts business as "Silver Star Wireless." Designation as an ETC would allow Gold Star to receive monetary support from the

federal Universal Service Fund (USF) and to participate in the federal Lifeline program.¹ Gold Star is a full-service wireless carrier that offers universal services throughout its licensed service area using its own wireless network infrastructure. Application at 2.

Gold Star is currently licensed to serve two “basic trading areas” (BTAs) in Idaho: BTA 202 (Idaho Falls) and BTA 353 (Pocatello). Gold Star has also entered into a lease agreement with Syringa Wireless, LLC for use of Syringa’s wireless spectrum in the areas of Wayan and the Smokey Canyon Mine owned by the J.R. Simplot Company. Pursuant to these BTA authorizations, Gold Star is authorized to provide wireless service in the following Idaho counties: Bonneville, Teton, Madison, Bingham, Butte, Custer, Lemhi, Jefferson, and Clark. *Id.*

The Company’s proposed ETC service area is in Teton County, eastern and northern Caribou County, and eastern Bonneville County served by incumbent local exchange carriers (ILEC) Silver Star Telephone Co., Inc. (Silver Star) and Columbine Telephone Co., Inc. dba Teton Telecom Communications (Columbine).

Gold Star is a limited liability company that was organized in the state of Wyoming on December 10, 1998. The address of the Company is listed as Freedom, Wyoming and its registered agent in Idaho is Aaron Jenkins located in Driggs, Idaho. *See* Secretary of State’s Application for Registration of Foreign Limited Liability Company.

STAFF ANALYSIS

Staff has reviewed Gold Star’s Application and has 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 has analyzed the merits of awarding ETC designation for rural wire center service areas.

In the Application, Gold Star states it will offer the federally designated universal services which are supported by the federal USF program. These universal services include: voice grade access to the public switched telephone network; a certain amount of local usage; dual tone multi-frequency signaling; single-party service; access to emergency services, operator services, long-distance services, and directory assistance; and long-distance limitation (i.e., toll blocking) for qualifying low-income customers. *Id.* at 5.

¹ The Federal Communications Commission’s Lifeline program is intended to promote universal service by using USF revenues to make telecommunications service more affordable. Idaho participates in the residential Lifeline program pursuant to *Idaho Code* § 56-901 and Order No. 21713.

Gold Star will comply with all applicable Idaho service quality standards and consumer protection rules, and will abide by the Consumer Protection Standards established by the Cellular Telephone Industry Association (CTIA) consumer code. *See* Application, Exh. H.

Gold Star states in its Application that granting it ETC designation is in the public interest. More specifically, Gold Star insists that its universal service offering will provide consumers in rural eastern Idaho “with the benefits of increased competitive choice and quality service . . . including high-speed data transmission capabilities.” *Id.* at 14-15. Gold Star further declares that it will also provide customers with voice mail, three-way calling, call waiting, call forwarding, and several different calling plans. *Id.* at 16.

Gold Star indicates that its designation as an ETC will have “a nominal impact on the federal [USF] if calculated using the FCC’s current ‘identical support’ rule.”² *Id.* at 18. Gold Star also asserts that it will serve all customers where it is able to provide wireless service regardless of the population densities. Consequently, it will not be engaged in “cream skimming” by serving only low-cost areas and avoiding high-cost areas. *Id.* at 17-18.

Rural Wire Centers

Gold Star’s Application, includes four rural wire centers in southeastern Idaho. These rural wire centers are: Freedom, Irwin, and Wayan served by Silver Star Telephone Co., Inc. and Driggs served by Columbine Telephone Co., Inc. *Id.*, Exhibit C1.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the statutory ETC requirements and requests designation in a rural area served by an ILEC, the Act gives the State Commission more discretion than in the non-rural areas. The Act states that the State commission *may* grant ETC designation to the additional carrier provided that ETC designation of the additional carrier is in the public interest. 47 U.S.C. § 214(e)(2).

Under the Act and Order No. 29841, greater emphasis is placed on scrutinizing the public interest issues for ETC Applications in rural service areas. Rural wire centers often have widely

² The identical support rule awards federal high-cost USF support to competitive eligible communications carriers (CETC) based on the costs of the ILEC in whose territory the CETC seeks support, rather than on the CETC’s own cost or some other basis. The FCC released the *Identical Support NPRM* (FCC 08-4) based, in part, on the conclusions reached in 2007 by the Federal-State Joint Board on Universal Support regarding the need to control USF support growth immediately in order to preserve and protect the future sustainability of the fund.

disparate population densities, and therefore, highly disparate cost characteristics.³ As such, Staff believes the public interest analysis plays a more important role when reviewing an ETC designation in rural service areas.

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:

In 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.

This Commission has consistently applied the public interest analysis in previous decisions. The Commission denied the ETC Applications of wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-08). In addition, the Commission partially denied, Inland Cellular Telephone Company (Case No. INC-T-06-02) and CTC Telecom, Inc. (Case No. CTL-T-09-01), because the applicants failed to carry out their burden of demonstrating that their Applications for areas served by rural companies were in the public interest. *See* Order Nos. 29541, 30212 and 30867. These Applications failed the public interest test 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 particular applicant's ETC designation would benefit *all* customers in its ETC service area.⁴

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,

³ In the Matter of the Federal-State Joint Board on Universal Services, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 at 21-22 (the "FCC Order").

⁴ The term "service area" denotes a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of a rural telephone company, service area is defined as a company's study area unless and until the FCC and the State Commission, 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. 47 U.S.C. § 214(e)(5)

LLC Petition/or Designation as an ETC, 19 F.C.C.R. 1563 (2004)). Gold Star's Application makes four primary public interest arguments.

1. Cost-Benefit Analysis

Gold Star asserts its universal service offering not only increases competition in the rural eastern Idaho, but also provides increased competitive choice for quality service. Application at 14-15. Gold Star states that the increased competitive choice and quality service will benefit the rural Idaho consumers and will also “speed the delivery of advanced wireless services to citizens in these remote communities.” *Id.* at 15. The Company further states that, “[w]ithout Gold Star’s wireless service, many consumers in the area would have to rely solely on traditional wireline services.” *Id.* Gold Star claims mobility will offer “increased flexibility, public safety, and service options...[b]y offering the benefits of mobility, Gold Star’s wireless universal offering will provide unique and essential services to consumers in rural southeastern Idaho.” *Id.* The Company states that an additional benefit will be offered to low-income consumers who are eligible for federal Lifeline benefits. *Id.* at 16. As a locally-based company, Gold Star is focused on the specific needs of its rural customers, who are its one and only priority. *Id.* at 15. Without Gold Star, consumers in the Wayan and Henry communities would have to rely solely on traditional wireline services. In sum, Gold Star claims it provides several advantages: Mobility, access to E911, voicemail, three-way calling, call waiting, call forwarding, expanded calling scopes and several calling plans. *Id.* Gold Star concludes its Cost-Benefit Analysis by describing how the federal high cost support would be used to improve its infrastructure in rural southeastern Idaho. *Id.*

Staff does not advocate one technology over another, but instead recognizes that each has unique advantages and disadvantages depending upon the geography, demographics, and technological needs of the community. Gold Star states that its infrastructure improvements will provide greater benefits and high-quality service to its consumers, by providing additional services in underserved or unserved areas as well as providing data network capabilities. *Id.* Gold Star’s list of advantages is not necessarily unique to or exclusively associated with wireless technology. Staff, however, believes that the implicit benefits of Gold Star’s two-year network improvement plan may be more cost-effective to implement for a wireless provider than a similar plan may be for the ILEC and, therefore, consumers will more likely see improved services. Staff acknowledges that mobility is unique to wireless service, but Staff also understands the unique disadvantages and service quality challenges Idaho’s diverse terrain poses for wireless service

providers. Further, the Company's presumptive disadvantage associated with consumers having to "rely solely on traditional wireline service," is not a compelling argument to satisfy the public interest requirement.

2. Potential for Cream Skimming.

Gold Star states that it is not targeting low cost areas or avoiding high cost areas, but instead will serve all customers where it is able to provide wireless service to varied population densities. *Id.* at 17. Gold Star is not seeking ETC designation in partial wire centers and is proposing to serve some of the more sparsely populated and more costly study areas in Idaho. *Id.* at 18. This statement is supported by a wire center population density chart. *Id.* Confidential, Exhibit C-2.

Staff notes that the list of wire centers in the Application includes the entire service area of Silver Star and Columbine. Staff agrees that an Application for ETC designation that includes an entire service area avoids the appearance of cream skimming.

3. Impact on the Fund.

Gold Star asserts that receipt of high cost funds will have a nominal impact on the federal USF fund if calculated using the FCC's current identical support rule. Gold Star conducted a study using customer zip codes from its billing system to identify the location of its customers relative to the exchange area boundaries of the ILEC with whom Gold Star competes for wireless service customers. Gold Star's calculation of total per-line support (using USAC's Idaho projection for second quarter 2010) that each competing ILEC currently receives, including high cost, local switching, interstate common line, and long-term support when multiplied by the individual ILEC per-line support amount with the number of Gold Star wireless consumers shows Gold Star would receive an estimated \$648,000 per year in USF support. *Id.* at 18. Based upon Gold Star's calculations, "[t]his represents less than 0.015 percent of the high-cost portion of the federal USF, assuming \$4.3 billion in high cost support disbursement in a single year. Accordingly, grant of Gold Star's ETC request will have minimal impact on the USF." *Id.* at 18-19. Gold Star goes on to state, "[t]he benefits of designating Gold Star as an ETC outweigh any potential harm to the sustainability of the fund." *Id.* at 19.

As stated earlier, Gold Star is doing business as "Silver Star Wireless." *Id.* at 2. Staff notes that the addresses and principals listed for Gold Star and Silver Star Wireless are the same as those for Silver Star and Columbine. Both are Title 61 ILECs and are price-regulated by the Commission. In addition to the federal high-cost funds it receives, Silver Star Telecom

(separately known as Columbine Telephone Company dba Teton Telecom and Silver Star Communications) also receives approximately \$155,700 annually from the Idaho USF fund.

Staff notes that most of Gold Star's wireless emergency operation features are identical to the those stated in the Syringa Wireless and CTC Telecom Inc's ETC designation Applications (Case Nos. SYR-T-08-01 and CTL-T-09-01). Application at 9-10.

Syringa Wireless is owned by a consortium (Member Partners) of the following ILECs: Albion Telephone Company, Project Mutual, Direct Communications, Filer Mutual Telephone Co., and Silver Star. See Syringa Wireless website, <http://www.syringawireless.com/>. Albion Telephone Company, Direct Communications, and Silver Star are price-regulated Title 61 companies. Project Mutual and Filer Mutual Telephone Co. are Cooperative Telecommunications Companies that are not regulated by the Commission. All five members of the Syringa Wireless Board of Directors are employees of the Member Partners. *Id.* Three of the ILECs, Albion Telephone Company, Direct Communications, and Silver Star also receive a combined Idaho USF funding of approximately \$822,600 annually or 48% of the total Idaho USF fund disbursement. In addition, these Title 61 companies receive federal USF support.

Gold Star's assertion of minimal impact to the federal USF fund may be correct, but partly because of recent action taken by the FCC. This topic is examined in greater detail in the High-Cost Federal Funding discussion.

4. State and Federal Precedent.

The Company notes that designation of Gold Star wireless services as an ETC is consistent with ETC decisions across the country, demonstrated by numerous cases at the state and federal level, including this Commission's recent designation of Edge Wireless, LLC, Syringa Wireless, LLC and CTC Telecom, LLC as wireless rural ETCs. *Id.* at 19.

As noted in previous decisions, the Commission does not rely upon past decisions in determining whether a current Application should be approved or denied. Each Application must stand on its own merit in determining if it meets the state and federal ETC designation requirements as outlined in Commission Order No. 29841.

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, whether the potential for cream skimming exists. Staff believes the Company avoids the appearance of cream skimming where the Application includes all wire centers in a designated service area. Staff notes that the Gold Star Application includes a 2010 and 2011 network improvement plan (Application, Confidential Exhibit D), with wire center specific details. While Staff would have preferred to see additional improvement plans for 2012, the information provided supports the Company's claim that it will continue to use high cost funds to upgrade the network.

In sum, the Staff believes GOLD STAR's Application presents an acceptable argument to support the Company's public interest position.

Network improvement Plan

The two-year network improvement plan must describe with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Order No. 29841 at 18.

As mentioned earlier, Gold Star's Application provides detailed information outlining its network improvement plan for 2010 and 2011. Application, Confidential at 16 and Confidential Exhibit D. The plan includes details such as affected wire centers, expenditures and a narrative description of the planned improvements for each year.

Staff believes Gold Star provides a reasonable improvement plan, and if Gold Star is 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 Requirement, Order No. 29841.*

Ability to Remain Functional in Emergencies

The Commission explains in Order No. 29841 that it "understands different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements, especially in an emergency." Order No. 29841 at 10. To demonstrate the ability to remain functional during emergencies, the ETC applicant must show that it has a "reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing different traffic spikes resulting from emergency situations."

In the Application, Gold Star describes the components that make up its fault-tolerant network. Application at 9-10. These components include a Mobile Switching Center located in Roosevelt, Utah with 12 hours of backup battery and a natural gas generator connected to the public utility supply; Self-Healing Alternative Route Protection Service for Fiber Facilities interconnection with automated 7x24 remote monitoring of cell sites and switches; Cell sites with 8 hours battery backup and standby generator to accommodate extended power outages; Network Operating Center in Roosevelt, Utah; and Gold Star's 7x24 on-call staff who will be called or contacted via text message when the monitoring system detects a problem. *Id.*

Staff believes the fault-tolerant network, as described in the Application, provides adequate support to demonstrate the Company's ability to remain functional in an emergency.

Other ETC Designation Requirements

Additional requirements for ETC designation, not previously discussed, are detailed in the Appendix 1 of Order No. 29841 and discussed more fully below.

1. Common Carrier Status. Gold Star Telecom is a Commercial Mobile Radio Services (CMRS) carrier providing "mobile service" as defined in 47 U.S.C. § 153(27). Application at 2.

2. Provide the Universal Services. Gold Star offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 5.

3. Advertising. Gold Star plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area, by media of general distribution. *Id.* at 13.

4. The Commitment and Ability to Provide Supported Services. Gold Star is committed to answering all reasonable requests for service within its proposed ETC service area. *Id.* at 20.

5. A Commitment to Consumer Protection and Service. Gold Star will comply with all applicable Idaho service quality standards and consumer protection rules, and will also abide by the Consumer Protection Standards established by the Cellular Telephone Industry Association (CTIA) consumer code. *See* Application at 13 and Exh. H.

6. Description of the local Usage Plan. Gold Star submits its rate plan brochures as Exhibit E. *Id.* at 6.

7. Tribal Notification. Gold Star is not seeking ETC designation for any portion of tribal lands as none currently exists in its proposed ETC service area. *Id.* at 13.

Staff believes Gold Star meets the aforementioned ETC designation requirements.

HIGH-COST FEDERAL FUNDING

The original goal of the federal Universal Service Fund, under the Telecommunications Act of 1934, was to provide at least one access line for basic telephone service to every household in the U.S., and at a reasonable, subsidized cost. Staff does not believe the USF was ever intended to provide equal funding for both the ILEC and an ILEC affiliate operating in the same service area as would be the case with Silver Star Telecom and Gold Star Telecom, LLC dba Silver Star Wireless.

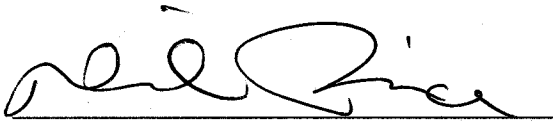
Staff is aware of the high-cost federal funding issues for rural areas. Staff recognizes and is concerned about the growth of high-cost funds, particularly as it relates to Competitive ETCs (CETC). The escalating high-cost fund is an ongoing concern that is being addressed at the federal level. On April 29, 2008, the FCC adopted the Federal-State Joint Board on Universal Service's recommendation to impose an interim emergency cap on the amount of high-cost support that CETCs may receive. *See* FCC 08-122. Specifically, effective May 1, 2008, total annual CETC support for each state will be capped at the level of support that CETCs in that state were eligible to receive during March 2008 on an annualized basis. All newly designated and existing CETCs in Idaho will share the high-cost USF support in the amount that was distributed to Idaho CETCs in March 2008. The only exception to this interim cap is if a CETC: (1) Files cost data demonstrating that its costs meet the support threshold in the same manner as the ILEC; or (2) Serves tribal lands or Alaska Native regions. The interim cap will remain in place until the FCC adopts comprehensive reform measures. *Id.*

The Commission is not in a position to alter public policy regarding the federal USF draw. The Commission must follow the rules and regulation even if troubled by the outcome. In the meantime, Staff does not feel it should recommend denial of an ETC Application that reasonably meets all of the statutory requirements for an ETC designation. Denial of an ETC Application also denies the rural consumers the benefit of Idaho Telephone Service Assistance Program (ITSAP), federal Lifeline and Linkup support, as well as other potential technological and safety benefits that may be offered by the CETC. Staff wishes to note, however, that to the extent the areas are already served, these benefits are available to the consumers through the ILECs.

STAFF RECOMMENDATION

Staff is satisfied that the Application meets the minimal requirements for ETC designation in Idaho and recommends that the Commission approve the Application of Gold Star Communications, LLC for designation as an eligible telecommunications Carrier.

Respectfully submitted this 30th day of September 2010.

for 
Donald L. Howell, II
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30TH DAY OF SEPTEMBER 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GOL-T-10-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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