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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
 SYRINGA WIRELESS LLC FOR) CASE NO. SYR-T-08-1
 DESIGNATION AS AN ELIGIBLE)
 TELECOMMUNICATIONS CARRIER UNDER)
 47 U.S.C. § 214(E)(2)) COMMENTS OF THE
) COMMISSION STAFF
)**

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Weldon B. Stutzman, Deputy Attorney General, submits the following comments in response to Order No. 30573 issued on June 11, 2008.

BACKGROUND

On April 30, 2008, Syringa Wireless LLC (Syringa) filed an Application requesting designation as an eligible telecommunications carrier (ETC) pursuant to Sections 214(e)(1)-(2) of the Telecommunications Act of 1934 as amended by the federal Telecommunications Act of 1996. The Commission is authorized to designate carriers as ETCs, and set forth requirements for designation in Order No. 29841 issued August 4, 2005 in Case No. WST-T-05-1. The Application states that Syringa is a commercial mobile radio service carrier providing mobile service as defined

in the federal statute, and also provides intrastate telecommunications services. See 47 U.S.C. § 153(27) and 47 U.S.C. § 153(22). Syringa provides service in 17 counties in south and east Idaho.

Syringa's Application states that it satisfies all of the statutory and regulatory requirements for ETC designation. Syringa asserts that it will offer the services required for carriers to be eligible for federal Universal Service Funds, including voice grade access to the public switched telephone network, local calling, and access to emergency services and ability to remain functional in emergency situations. Syringa requests that it be designated as eligible to receive all available support from the federal Universal Service Fund including support for rural, insular and high-cost areas and low-income customers in geographic areas, and that it be approved to participate in the Lifeline program. Syringa's Application asserts that its designation as an ETC is consistent with the public interest, convenience and necessity, and that it is consistent with the purposes and fundamental goals of preserving and advancing universal service, ensuring the availability of quality telecommunications services at just, reasonable and affordable rates, and promoting the deployment of advanced telecommunications services to rural and high-cost areas. Syringa asserts that it satisfies the items considered by the Federal Communications Commission when analyzing the public interest benefits of an ETC application: (1) unique advantages and disadvantages of the competitor's service offering through a cost-benefit analysis, (2) potential for cream skimming, and (3) impact on the federal Universal Service Fund.

STAFF ANALYSIS

Staff has reviewed Syringa's Application and analyzed 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 separately under the two wire center classifications of non-rural and rural wire center service areas.

Non-rural Wire Centers

In its Application, Syringa identifies 32 non-rural wire centers located in Qwest's southern Idaho service territory. Application, Exhibit C1 at 1.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the service requirements set forth in 47 U.S.C. § 214(e)(1) and requests designation in a non-rural area served by an incumbent local exchange carrier (ILEC), the

statute provides that the Commission shall designate more than one common carrier as an ETC. 47 U.S.C. § 214(e)(2).

Designating more than one ETC in a non-rural area is consistent with past Commission decisions in which the Commission granted ETC status to Clear Talk, a wireless company, in the non-rural Qwest wire centers in eastern Idaho and the Magic Valley (Case No. GNR-T-03-8). Order No. 29261. The Commission granted ETC designation to Western Wireless in the non-rural wire centers of Emmett, New Plymouth, and Weiser (Case No. WST-T-05-1). Order No. 29791. On January 13, 2005, the Commission issued Order No. 29686 approving the ETC designation of a wireline carrier, VCI Company, in the Qwest service areas (Case No. VCI-T-04-1). Order No. 29686. On December 28, 2006, Inland Cellular, a wireless company, was granted ETC status in the non-rural Verizon and Qwest wire centers in northern Idaho (Case No. INC-T-06-2). Order No. 30212. Finally, on June 28, 2007, the Commission granted ETC status to Edge Wireless Company in the non-rural Qwest wire centers in southern Idaho (Case No. EDG-T-07-1). Order No. 30360.

Staff believes Syringa meets all the statutory ETC requirements of Commission Order No. 29841 as it relates to non-rural wire centers. Designating Syringa as an ETC for the non-rural service areas is consistent with the “public interest, convenience, and necessity” pursuant to 47 U.S.C. § 214(e)(2). Staff also believes granting ETC designation for the non-rural areas is in the public interest and will benefit the recipients of the Idaho Telecommunications Service Assistance Support Program (ITSAP). This designation would also serve the public interest of the consumers who live on the Fort Hall Reservation and are thus eligible for ITSAP support as well as federal Lifeline and Linkup support.

Based upon past Commission decisions, and consistent with the requirements of Section 214 of the Act, Staff recommends approval of Syringa’s request for ETC designation in the non-rural wire centers set forth in Exhibit C1 of the Application.

Rural Wire Centers

Syringa’s Application also includes 52 rural wire centers in central and southern Idaho within the service areas of the following rural ILECs: Albion Telephone Company, CenturyTel of Idaho, Inc., Citizens Communications, Direct Communications, Filer Mutual, Fremont Telecom Company, Midvale Telephone, Mud Lake, Project Mutual, Rural Telephone, Silver Star-Teton Telephone, and Silver Star Communications. Application, Exhibit C1 at 2-3.

As noted above, the Act treats 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 provides the State commission with more discretion, stating that the State commission may grant ETC designation to the additional carrier provided that the Commission finds 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 disparate population densities, and therefore, highly disparate cost characteristics. In the Matter of the Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 at 21-22 (the "FCC Order"). Accordingly, the public interest analysis plays a more important role when reviewing 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 requirement of the FCC rules, the Commission has stated:

[i]n 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 three wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-8), and, most recently, Inland Cellular Telephone Company (Case No. INC-T-06-2), because the applicants failed to carry out their burden of demonstrating that their Applications for areas served by rural telephone companies were in the public interest. *See* Order Nos. 29541 and 30212. 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 the customers in a service area. The term service

area means 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 means such 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).

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, LLC Petition for Designation as an ETC*, 19 F.C.C.R. 1563 (2004)). Syringa's Application makes four primary public interest arguments.

1. Cost-Benefit Analysis.

Syringa asserts its universal service offering not only increases competition in the rural areas, but also provides greater consumer choice for the rural consumer. Application at 15. Syringa states the increased competitive choice and quality service will benefit the rural Idaho consumers and will also "speed the delivery of advanced wireless services to rural Idaho citizens." *Id.* The Company further states that in many of the areas it serves, "Syringa Wireless is the only wireless carrier providing high-quality voice and data services to customers. Without Syringa Wireless, many customers in Idaho would have to rely solely on traditional wireline services." *Id.* Syringa claims mobility will offer "unique and essential services to consumers in rural Idaho," and "affords customers increased flexibility, public safety, and service options." *Id.* The Application states that an additional benefit will be offered to low-income consumers who are eligible for state ITSAP and federal Lifeline benefits. *Id.* Finally, Syringa claims it provides several advantages: mobility, access to E911, voicemail, three-way calling, call waiting, call forwarding, expanded calling scopes and several calling plans. Application at 16. Syringa concludes its Cost-Benefit Analysis by describing how the federal high cost support would be used to improve its infrastructure in rural areas and how these improvements would positively impact the tourism industry and help with local jobs and economic development. *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. Syringa states its wireless service will provide greater benefits and high-quality service to its consumers, but does not provide any data or facts to substantiate these claims. Syringa's list of advantages is not necessarily unique to nor exclusively associated with wireless technology and, as such, Staff is not convinced that a positive cost benefit

analysis exists for wireless service that cannot also be claimed by the ILECs. Staff acknowledges that mobility is unique to wireless service, but Staff also understands the unique disadvantages and service quality challenges a mountainous terrain poses for wireless service providers. Further, the Company's presumptive disadvantage associated with a consumer having to "rely solely on traditional wireline service," is not a compelling argument to satisfy the public interest requirement.

2. Potential for Cream Skimming.

Syringa 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. Syringa is not seeking ETC designation in partial wire centers and is proposing to serve some of the least densely populated and costliest to serve study areas in Idaho. Application at 18. This statement is supported by a wire center population density chart. Confidential, Exhibit C-2.

Staff notes that the list of wire centers in the Application includes the entire service areas of the following ILECs: Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direction Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Silver Star-Teton and Silver Star Communications. Syringa's Application, however, includes wire centers that make up partial service areas for Citizens Communications/Frontier Communication (Citizens), Midvale Telecom Company, and Rural Telephone Company. These three rural ILECs serve non-contiguous service areas.

Staff agrees that Applications for ETC designation that include an entire service area avoid the specter of cream skimming. The opposite is true when an Application seeks ETC designation that does not include all the wire centers that make up a service area. Edge Wireless, in its ETC designation Application, understood that the Commission would not grant ETC status for partial service areas without first receiving FCC approval of a petition to redefine a service area down to the wire center. For this reason, Edge Wireless chose to eliminate a wire center that represented partial service areas. *See* Case No. EDG-T-07-1, Edge Wireless, LLC's ERRATA to Application and Exhibits.

The partial service area for Citizens is unique and must be analyzed separately. In the Rural Task Force (RTF) Order (FCC 01-157, released May 23, 2001), all rural ILECs were required to select one of three available disaggregation paths and to notify USAC of their selections. The path selected by an ILEC affects the support provided to competitive carriers. Citizens elected to disaggregate its service area at the exchange level. This decision changed the high cost support from an averaged cost across all lines served by a carrier in a service or "study" area to average line

cost at each wire center. For this reason, Staff makes an exception to the partial service area test for the wire centers served by Citizens.

Staff believes that Syringa partially meets the cream skimming test. Staff agrees that Syringa avoids the appearance of cream skimming in those areas where Syringa proposes to serve an entire study area, but not for those areas that represent a partial service area.

3. Impact on the Fund.

Syringa 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. Syringa 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 Syringa competes. Syringa's calculation of total per-line support 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 Syringa consumers shows Syringa would receive an estimated \$1,095, 948 per year in USF support. Application at 18. Based upon Syringa's calculations, "[t]his represents less than 0.0261 percent of the high-cost portion of the federal USF, assuming \$4.2 billion in high cost support disbursement in a single year. Accordingly, grant[ing] of Syringa Wireless' ETC request will have minimal impact on the USF." *Id.* Syringa goes on to state, "[t]he benefits of granting Syringa ETC designation outweigh any potential harm to the sustainability of the fund." Application at 19.

Staff notes that Syringa 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 rate-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.* These ILECs are among the companies that Syringa claims it will "compete" with. Three of the ILECs, Albion Telephone Company, Direct Communications, and Silver Star/Teton also receive a combined Idaho USF funding of over \$900,000 annually or 47% of the total Idaho USF fund disbursement. These Companies also receive federal USF money. In addition, these ILECs and Syringa Wireless have applied for state Broadband Equipment Tax Credit. *See* Order Nos. 30463, 30566 and 30585 and Case No. SYR-T-08-02.

Syringa's assertion of minimal impact to the 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.

Syringa notes that designation of Syringa Wireless 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 as Idaho's first wireless rural ETC. Application 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. The Commission stated in Case No. INC-T-06-02, "[i]t cannot be presumed that benefits associated with different companies in different states are applicable to the Company or the customers in its requested service area." Order No. 30212 at 6.

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 problem of cream skimming where the Application includes all wire centers in a designated service area. Staff notes the Syringa Application includes a detailed network plan (Application, Confidential Exhibit D) for a two-year period, with wire center specific plans to enhance the network. This provides support for the Applicant's claim that it will continue to use high cost funds to upgrade the network. In sum, the Application presents one unpersuasive argument (Cost-Benefit), one partially compelling (Potential for Cream Skimming) and two arguments (Impact on the Fund and State and Federal Precedent) as supporting the public interest analysis. However, if the wire centers that represent partial service areas are removed, the appearance of cream skimming is eliminated. Staff believes Syringa's Application in total presents a minimally 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, Syringa's Application provides detailed information outlining its network improvement plan for the years 2008, 2009, and 2010. Application, Confidential Exhibit D. The plan includes details such as affected wire center, expenditures, and a narrative description of the planned improvement for each year. Supporting documents includes a map for each year with the current and future additions to the wireless network.

Staff believes Syringa provides a reasonable improvement plan, and if Syringa 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 notes 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 in 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, Syringa describes the components that make up its fault-tolerant network. Application at 9 and Confidential at 10. These components include a Mobile Switching Center located in Roosevelt, Utah with 7X24 remote monitoring; a Self-healing Alternate Route Protection Service for Fiber Facilities interconnection; Cell site design with overlapping coverage, battery back-up, remote monitoring, standby generators, and 7X24 remote monitoring (Application at 9); confidential information identifying the locations of field staff and additional back up equipment; and the planned upgrades to improve reliability. Application, Confidential at 10.

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. These are discussed below.

1. Common Carrier Status. Syringa 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. Syringa offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 5.
3. Advertising. Syringa plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area. *Id.* at 12.
4. The Commitment and Ability to Provide Supported Services. Syringa 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. Syringa will comply with all applicable protection standards established by the CTIA Consumer Code. *Id.* at 13.
6. Description of the local Usage Plan. Syringa submits its rate plan brochures as Exhibit E. *Id.* at 6.
7. Tribal Notification. Syringa is seeking ETC designation for a portion of the Fort Hall Reservation and, consistent with the Tribal Notification requirement, has provided a copy of its Application to a representative of the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho. *Id.* at 13.

Staff believes Syringa meets the above seven 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 Syringa and its Member Partners.

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 CETCs 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, but must follow 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 and tribal consumers the benefit of 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 these benefits are available to the consumers through the ILECs.

SUMMARY

As noted earlier, Staff is uneasy by the affiliation between Syringa and its Member Partners. This concern, however, does not affect Staff's summary of Syringa's ETC designation Application.

Of the requirements for ETC designation, it is Staff's opinion that the public interest analysis, the two-year network improvement plan, and the ability to remain functional in an emergency are essential to the Idaho consumers in the rural wire centers. Consequently, Staff carefully considers these categories to determine if the Applicant has provided compelling evidence that it meets these requirements.

Based upon the information provided in the Application, Staff sees no indication that Syringa would not provide comparable service to that currently provided by the ILECs. Staff believes the Company exhibits an understanding of the federal and state customer service requirements for ETC designation. Staff further believes Syringa meets all federal and state requirements to be granted ETC designation in the 32 non-rural wire centers and the rural wire centers served by Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direction Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual,

Citizens Communications/Frontier Communication, Silver Star-Teton and Silver Star Communications.

STAFF RECOMMENDATION

Staff recommends that the Commission approve the Application as to the non-rural wire centers listed in the Application. Satisfied that the Application meets the minimal requirements, Staff recommends that the Commission approve the Application in the rural wire centers served by Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direction Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Citizens Communications/Frontier Communication, Silver Star-Teton and Silver Star Communications. Staff recommends that the Commission deny the Application for the non-rural wire centers served by Midvale Telecom Company, and Rural Telephone Company, as these wire centers represent partial service areas.

Respectfully submitted this 25th day of July 2008.



Weldon B. Stutzman
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25TH DAY OF JULY 2008, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. SYR-T-08-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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