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IDAHO PUBLIC  
UTILITIES COMMISSION

June 23, 2011

VIA Email: [jean.jewell@puc.idaho.gov](mailto:jean.jewell@puc.idaho.gov)

Ms. Jean Jewell, Commission Secretary  
Idaho Public Utilities Commission  
472 W Washington  
PO Box 83720  
Boise, ID 83720

*comments*

Re: T-Mobile West Corporation's Response to ~~First Production Request of the Commission Staff~~  
Case No. TMW-T-10-01

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Dear Ms. Jewell:

Enclosed please find T-Mobile West Corporation's Response to Comments of Allied Wireless Communications Corporation, Idaho Telecom Alliance, CTC Telecom, Inc., Syringa Wireless, LLC, and Rural Telephone Company's and Protest to Use of Modified Procedure and Request for Hearing. The original and seven copies are being sent overnight via UPS.

Very truly yours,

Davis Wright Tremaine LLP

Mark P. Trinchero

MPT/jan

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Attorneys for T-Mobile West Corporation

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
T-MOBILE WEST CORPORATION FOR )  
DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER )  
PURSUANT TO 47 U.S.C. § 214(e)(2). )**

**CASE NO. TMW-T-10-01  
T-MOBILE WEST  
CORPORATION'S RESPONSE  
TO COMMENTS OF ALLIED  
WIRELESS  
COMMUNICATIONS  
CORPORATION, IDAHO  
TELECOM ALLIANCE, CTC  
TELECOM, INC., SYRINGA  
WIRELESS, LLC AND RURAL  
TELEPHONE COMPANY;  
PROTEST TO USE OF  
MODIFIED PROCEDURE; AND  
REQUEST FOR HEARING**

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## **I. Introduction**

T-Mobile West Corporation (“T-Mobile”) submitted its application for designation as an Eligible Telecommunications Carrier (“ETC”) on December 14, 2010. Four months later, Deputy Attorney General Don Howell released a Decision Memorandum recommending that the Public Utilities Commission (the “Commission”) process T-Mobile’s application through Modified Procedure. On May 12, 2011 the Commission issued an order applying Modified Procedure to the application, noting the effectiveness of Modified Procedure in past ETC cases. Allied Wireless Communications Co. (“Allied”), Idaho Telecom Alliance (“ITA”), CTC Telecom, Inc. (“CTC”), Syringa Wireless, LLC (“Syringa”), and Rural Telephone Company (“RTC”) (collectively the “Protesters”) ask the Commission to reverse that decision. There is no reason to do so.

Both the Decision Memorandum and the Commission’s Order were issued *after* AT&T announced plans to acquire T-Mobile’s parent company, T-Mobile USA, Inc.. Both the Order and Decision Memorandum reflect a determination that the potential acquisition does not provide reason to depart from the Commission’s practice of considering ETC applications under Modified Procedure. As T-Mobile has previously informed the Commission, T-Mobile will remain the designated ETC legal entity following completion of the proposed merger, and will continue to shoulder the obligations of an ETC in Idaho. T-Mobile will remain subject to the Commission’s supervision in carrying out its commitments to rural Idaho customers. In light of these facts, the Commission correctly decided in this case not to depart from its practice of applying Modified Procedure to ETC applications. As explained below, the Protesters’ arguments to the contrary are based on speculation, not information, and have no merit.

**II. This Commission has long held that Modified Procedure is appropriate for ETC applications.**

The Commission should not abandon the use of Modified Procedure in this case, as suggested by the Protesters. For over a decade, ETC applications have been processed under Modified Procedure. Modified Procedure not only benefits applicants, but benefits consumers by allowing designated carriers to begin investing USF funds into service and network expansion sooner rather than later. Allied acknowledges that it has recently been the beneficiary of Modified Procedure. Allied's ETC application, filed on December 16, 2010, two days after T-Mobile's application was filed, was processed under Modified Procedure in just over three months<sup>1</sup> and approved on March 22, 2011, merely three months ago. Indeed, every single one of the Protesters' ETC applications was processed under Modified Procedure. Protester ITA filed an ETC application on behalf of nineteen members including Protester Rural Telephone Company, which was processed under Modified Procedure in just over three months and approved on December 17, 1997.<sup>2</sup> Protester Syringa's ETC application was processed under Modified Procedure in about four months and approved on August 28, 2008.<sup>3</sup> Protester CTC's ETC application was processed under Modified Procedure in just over three months, and approved July 24, 2009.<sup>4</sup> A review of the Commission's files shows that that Modified Procedure has been applied to every ETC application in the last five years, that Modified

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<sup>1</sup> *In the Matter of the Application of Allied Wireless Communications Corp. dba Alltel Wireless for Designation as an Eligible Telecommunications Carrier*, Case No. ALL-T-10-01 (filed December 16, 2010, set for Modified Procedure on January 26, 2011, and approved on March 22, 2011).

<sup>2</sup> *In the Matter of the Idaho Telephone Association's Request for Eligible Telecommunications Carrier Designation on Behalf of Its Member Local Exchange Carriers*, Case No. GNR-T-97-17 (filed Sept. 11, 1997, set for Modified Procedure on October 22, 1997, and approved on December 17, 1997).

<sup>3</sup> *In the Matter of the Application of Syringa Wireless LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)*, Case No. SYR-T-08-01 (filed April 20, 2008, set for Modified Procedure on June 11, 2008, and approved on August 28, 2008).

<sup>4</sup> *In the Matter of the Application of CTC Telecom Wireless LLC for Designation as an Eligible Telecommunications Carrier* CTL-T-09-01 (filed April 23, 2009, set for Modified Procedure on May 29, 2009, and approved on July 24, 2009).

Procedure is appropriate concerning CMRS applications in rural areas, and that Modified Procedure is appropriate where multiple intervenors submit comments.<sup>5</sup>

The Commission should not abandon the use of Modified Procedure in this case and set the matter for hearing, as Protestors suggest. This Commission has processed ETC applications on modified procedure even when there have been intervenors opposed to the grant of ETC designation. Edge Wireless was the first wireless ETC applicant granted designation in rural ILEC territories, including the territory of eight ITA members.<sup>6</sup> Edge Wireless filed its application on January 22, 2007. Representing the interests of its members, ITA intervened to oppose Edge's application.<sup>7</sup> There, as here, ITA argued that Modified Procedure was inappropriate and requested a hearing;<sup>8</sup> ITA also filed a Motion for a Staff Investigation.<sup>9</sup> Staff supported Modified Procedure, as it does here, and opposed ITA's proposed investigation as an imprudent use of Staff resources.<sup>10</sup> The Commission agreed—denying ITA's Motion for a Staff Investigation and granting Edge's application under Modified Procedure on June 29, 2007.<sup>11</sup>

Inland Cellular Telephone Company ("Inland") was another wireless ETC applicant seeking designation in areas served by other carriers, including rural ILEC study areas.<sup>12</sup> Inland filed its application on June 29, 2006, and the Commission issued a Notice of Modified Procedure on October 19, 2006. ITA intervened in opposition to Inland's application on behalf

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<sup>5</sup> See, e.g., *In the Matter of the Petition of Edge Wireless, LLC for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)* ("Edge Wireless"), Case No. EDG-T-07-01 (filed January 22, 2007, set for Modified Procedure on February 12, 2007 and approved under Modified Procedure on June 29, 2007 after the intervention of two parties); *In the Matter of the Petition of Inland Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)* ("Inland Cellular"), Case No. INC-T-06-02 (filed June 29, 2006, set for Modified Procedure on October 19, 2006 and approved in part on December 28, 2006, after the intervention of four parties).

<sup>6</sup> *Edge Wireless*, Case No. EDG-T-07-01, Idaho Telephone Association's Protest and Comments, at 1.

<sup>7</sup> *Edge Wireless*, Case No. EDG-T-07-01, Idaho Telephone Association's Petition to Intervene, at 2.

<sup>8</sup> *Edge Wireless*, Case No. EDG-T-07-01, Idaho Telephone Association's Protest and Comments, at 4.

<sup>9</sup> *Edge Wireless*, Case No. EDG-T-07-01, Order No. 30360, at 1.

<sup>10</sup> *Edge Wireless*, Case No. EDG-T-07-01, Decision Memorandum, February 6, 2007, at 1; Order No. 30360, at 10.

<sup>11</sup> *Edge Wireless*, Case No. EDG-T-07-01, Order No. 30360, at 14.

<sup>12</sup> *Inland Cellular*, Case No. INC-T-06-02, Order No. 30212, at 2.

of its members.<sup>13</sup> Potlatch Telephone Company, Inc., a rural ILEC, also intervened, as did Citizens Telecommunications of Idaho d/b/a Frontier Communications of Idaho, and WWC Holdings Co., Inc. d/b/a Alltel.<sup>14</sup> The Commission fully considered the comments of the intervening parties without departing from Modified Procedure, ultimately granting Inland's application in part and denying it as to rural and partially rural areas. The Inland proceeding shows that Modified Procedure is sufficient to allow the Commission to address any legitimate concerns raised by intervenors.

In the Inland Cellular and Edge Wireless proceedings, the Commission faced novel issues concerning possible ETC designation for wireless carriers in rural ILEC study areas. Nonetheless, the Commission determined that Modified Procedure was appropriate for addressing those new issues, ultimately rejecting ETC designation for Inland Cellular in rural ILEC study areas and granting designation for Edge Wireless in rural ILEC study areas. Nearly four years after the Commission's final order in the Edge Wireless docket, the designation of a wireless carrier as an ETC in rural ILEC study areas is no longer a novel issue. Modified Procedure was appropriate when ITA intervened on behalf of its members in the Inland and Edge Wireless proceedings in 2006 and 2007. It is even more appropriate for T-Mobile in 2011, now that the public interest issues of CETC designations in rural ILEC study areas are long settled. Even if the Protestors had successfully identified unique issues concerning T-Mobile's application, which is not the case, the Edge Wireless and Inland Cellular proceedings show that Modified Procedure is sufficient to deal with such issues.

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<sup>13</sup> *Inland Cellular*, Case No. INC-T-06-02, Idaho Telephone Association's Petition to Intervene, at 1.

<sup>14</sup> *Inland Cellular*, Case No. INC-T-06-02, Order No. 30212, at 2; Comments of the Potlatch Telephone Company, Inc., at 2.

Consistent with precedent, the Commission should continue to process T-Mobile's application under Modified Procedure. The Commission should reject the Protesters' request for a hearing in this matter. The Protesters have presented no compelling justification for the Commission to deviate from its longstanding precedent.

**III. The Protesters' opposition is not based on the public interest, but instead reflects their own self-interest in avoiding rural competition in rural areas and retaining a larger slice of USF funding.**

In their comments, the Protesters present a parade of horrors that they speculate might follow designation of T-Mobile as an ETC. Those assertions are a naked attempt to avoid enhanced competition in rural areas of Idaho. The unusual alliance of Allied, an independent competitive ETC ("CETC"), and the rural ILECs, including the wireless affiliates of the rural ILECs,<sup>15</sup>, appears to be united by one principle—their financial interest in protecting profits—and not by any concern for rural consumers that would benefit from T-Mobile's investments and expanded service choices.

Allied, CTC and Syringa, all CETCs in Idaho, plainly have an interest in protecting their own share of USF funds. As pointed out by the Protesters and Staff, their share of USF support would be reduced if T-Mobile is designated an ETC because of the FCC's interim cap on high-cost USF support for competitive ETCs. Effective May 1, 2008, the FCC capped annual CETC support for each state at the level of support that CETCs were eligible to receive in March 2008. Now that Allied, Syringa and CTC have gained ETC designation—through the modified procedure they now oppose—they wish to foreclose consumer choice in rural areas in order to maintain their share of USF dollars.

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<sup>15</sup> CTC, Syringa and RTC are wireless affiliates of Idaho rural ILECs.

Equally plain, the RLECs have an interest in prohibiting, or at least delaying, the entry of additional competition in the 13 Idaho rural telephone company study areas included in T-Mobile's application. Both the CETC and RLEC Protesters stand to gain by preventing, or substantially delaying, the expansion of T-Mobile service in rural markets that ETC designation would bring. Rural customers, in contrast, stand to lose the benefits of an expanded T-Mobile network in rural areas. The Protesters' pecuniary interests are not aligned with the public interest.

The Protesters' recommendation that the Commission should abandon Modified Procedure and "should commence an adjudicative proceeding, set the matter for hearing, and *ultimately deny the petition*," serves their goal of delaying and preventing more choices for rural consumers. T-Mobile believes the public interest is best served by expeditiously facilitating additional telecommunications options for rural consumers. Because the Protesters desire delay as one of their objectives, any drawn out process that ultimately confirms Staff's conclusions that designation of T-Mobile is in the public interest benefits the Protesters, who get to keep their current share of USF funds and block increased competition in rural areas, but harms consumers.

**IV. Based on an objective review of all information, Staff supports T-Mobile.**

Staff recommended Modified Procedure for T-Mobile's application.<sup>16</sup> Since the Commission's decision to adopt Modified Procedure, Staff has completed its review of T-Mobile's application, which includes a map of planned cell sites and a detailed network improvement plan describing the substantial investments T-Mobile will make with universal service funds during the first two years of support.<sup>17</sup> Staff issued a production request to

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<sup>16</sup> Decision Memorandum, at 3.

<sup>17</sup> The Protesters refer to these as "secret build plans". However, Allied and all other CETCs file their build plans under seal with the Commission to protect against disclosure of these trade secrets (i.e., where new cell sites will be

T-Mobile concerning the proposed merger with AT&T, and reviewed T-Mobile's response to that production request. After fully analyzing the application, including the maps and network improvement plan, Staff concluded that T-Mobile's ETC designation "is in the public interest and should be approved."<sup>18</sup> With respect to the network improvement plan, Staff specifically noted that T-Mobile presented "detailed information outlining its network improvement plan for 2011 and 2012," expressly determined that the plan is reasonable, and concluded that the annual recertification process will effectively hold T-Mobile accountable for implementing the plan.<sup>19</sup> Despite the "greater emphasis on scrutinizing the public interest issues for ETC Applications in rural service areas," which Staff noted that some other carriers have failed to meet,<sup>20</sup> Staff concluded that "T-Mobile's Application demonstrates that ETC designation is in the public interest."<sup>21</sup> Staff also cited the increased consumer choice that T-Mobile will provide in recommending approval.<sup>22</sup>

Staff has no pecuniary interest in T-Mobile's application, unlike the Protesters, and Staff's conclusion is informed by all the data in the application, including T-Mobile's maps, network improvement plan, and response to Staff's production request. While the Protesters hurl numerous arguments against T-Mobile's application, none of those arguments present any new information that was not already considered by Staff when it made its recommendation. Indeed, most of the Protesters' arguments are based on less information, not more. The Protesters have no substantive information to counter Staff's analysis, only hyperbole and speculation. As

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built) to competitors. There is nothing out of the ordinary about T-Mobile having sought confidential treatment of its build plans in this case.

<sup>18</sup> Staff Comments, at 4 and 9.

<sup>19</sup> Staff Comments, at 6.

<sup>20</sup> Staff Comments, at 5 (citing IAT Communications, NPCR and Inland Cellular Telephone Company, which was partially denied).

<sup>21</sup> Staff Comments, at 6.

<sup>22</sup> Staff Comments, at 9.

explained below, these attempts to delay or deny T-Mobile's ETC Application based on misinformation and speculation should be rejected.

**V. The Protesters' warnings about loss of USF are speculative, unfounded, and inconsistent with recent FCC precedent and statements.**

The Protesters' assert that the FCC may require AT&T to relinquish USF support as a merger condition and warn that "[i]f recent FCC history is a guide, not only will this happen, but **the relinquished support will not return to Idaho.**" This ominous prediction, in fact, is not only inconsistent with T-Mobile's plans, but is also inconsistent with recent FCC action. First, the Protesters rely on FCC orders that are out-of-date. The *Verizon/Alltel* and *Sprint/Clearwire* merger orders were issued within three days of each other in the Fall of 2008, and accepted voluntary commitments by the applicants to phase-down CETC support.<sup>23</sup> However, the Protesters ignore a more recent FCC decision that reached the opposite conclusion of those earlier orders. In 2009, the FCC (under current Chairman Genachowski) approved Centennial's transfer of licenses to AT&T without requiring either company to relinquish or phase-down CETC support.<sup>24</sup> This latter decision, decided under the current Chairman of the FCC, provides better guidance for how the Commission might approach AT&T's proposed merger with T-Mobile.

The *Centennial* result is entirely consistent with FCC Chairman Genachowski's stated desire to address CETC support as part of the Commission's effort concerning comprehensive

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<sup>23</sup> See *Verizon/Alltel Order*, Memorandum Opinion & Order & Declaratory Ruling, FCC 08-0258, ¶ 197 (Nov. 10, 2008) (citing the "unique facts" of the transaction); *Sprint/Clearwire Order*, Memorandum Opinion & Order, FCC 08-259 ¶ 108 (November 7, 2008).

<sup>24</sup> See *Applications of AT&T and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations and Spectrum Leasing Arrangements*, Memorandum Opinion & Order, 24 FCC Rcd 13915 (rel. Nov. 5, 2009).

universal service and intercarrier compensation reform.<sup>25</sup> In 2011, the FCC opened a series of proceedings to develop a record for comprehensive reform of the Universal Service Fund. FCC Commissioners have indicated that they intend to act quickly:

When we voted unanimously to approve the USF/ICC Transformation NPRM last month, each of us made clear that we are committed to reforming the Universal Service Fund (USF) and the Intercarrier Compensation (ICC) system, and to doing so as soon as possible. We must eliminate waste and inefficiency and modernize USF and ICC to bring the benefits of broadband to all Americans. We can't afford to delay.

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In addition to the workshops, we of course encourage parties to file comments in response to the Notice of Proposed Rulemaking (NPRM). As a reminder, the first comments on certain issues are due on April 1, and the last reply comments are due on May 23. While the NPRM included many reform ideas, there may be others that merit consideration as well. We remain open to considering all ideas put forth in the workshops and comments.

Once the record is complete in late May, we look forward to moving to an Order within a few months—it's going to be a busy spring and summer.

It is likely that the FCC's universal service reform proceeding will result in changes to the USF system *prior to* the AT&T/T-Mobile's merger being approved. This means that it is highly *unlikely* that the FCC would need to impose a universal service phase-down merger condition because the parties would already be under such obligation.

The Protesters' dire predictions about FCC actions are unsupported for other reasons as well. First, the Protesters misconstrue the 2008 proceedings, in which the FCC accepted *voluntary* commitments to phase out high-cost support. T-Mobile has stated that after AT&T's stock purchase of its parent company is complete, T-Mobile will remain the legal entity with

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<sup>25</sup> See Connect America Fund Notice of Proposed Rulemaking, Separate Statement of Chairman Genachowski, Connect America Fund, WC Docket No. 10-90.

ETC designation in Idaho and retain the responsibilities that accompany that status.<sup>26</sup> Under the Telecommunications Act, T-Mobile will be legally obligated to use universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>27</sup> Moreover, even if T-Mobile attempted to relinquish ETC status, that decision would be subject to the review and approval of the Commission.<sup>28</sup>

The remaining arguments that the Protesters raise also fail.

**VI. The Protesters’ references to concerns in Texas are misleading and irrelevant.**

The Protesters’ repeated reliance on the concerns raised by the Texas PUC staff is as misleading as it is self-serving. The Protesters intentionally omit the important fact that the Administrative Law Judge (“ALJ”) and the Public Utility Commission of Texas (“Texas PUC”) rejected arguments to abate the proceeding because of the announced AT&T acquisition. In that case, a CETC, DialToneServices, L.P. (“DTS”), filed a motion with the ALJ to abate T-Mobile’s ETC proceeding due to the announced AT&T/T-Mobile acquisition. The ALJ denied DTS’ motion, and rejected DTS’s attempt to delay the proceedings in that case, just as Allied’s attempt to delay this Commission’s proceedings should be rejected. DTS subsequently appealed the ALJ’s bench ruling to the Texas PUC. The PUC considered and denied DTS’ appeal.<sup>29</sup> The record in the Texas proceeding shows that neither the ALJ nor the Texas PUC have been persuaded by DTS’s concerns to abate the proceeding.

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<sup>26</sup> See Staff Comments, at 3.

<sup>27</sup> See 47 U.S.C. § 254(e) (“A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”).

<sup>28</sup> See, e.g., Final Order No. 30698 in case number VCI-T-04-01, approving VCI Company’s relinquishing of ETC designation, served December 9, 2008.

<sup>29</sup> See Order Denying Appeal of ALJ’s March 22, 2011 Bench Order, , Texas PUC Docket No. 38387, SOAH Docket No. 473-10-5443, Texas PUC Docket No. 38388, SOAH Docket No. 473-10-5444 (filed May 3, 2011).

The speculative underpinnings of the Protesters' arguments is particularly apparent in their attempt to raise doubts about T-Mobile's commitment and ability to expand into rural areas of Idaho, *based on the Texas proceeding*. The Protesters concede that several state commissions have approved T-Mobile's ETC applications.<sup>30</sup> Concerns raised about T-Mobile's build plan in Texas are entirely irrelevant to this Commission's review of T-Mobile's ETC designation request for Idaho. Staff has already thoroughly reviewed T-Mobile's *Idaho* network improvement plan, and found it to be reasonable and in the public interest. Once again, the Protesters offer speculation, not information, and certainly offer no information that was unavailable to this Commission's Staff relating to T-Mobile's plans in Idaho.

**VII. The Protesters' attacks on T-Mobile's existing rural coverage and possible overlap with AT&T's coverage are not only unsupported, but irrelevant and should be rejected.**

First, the Protesters fault T-Mobile for not having ubiquitous coverage throughout the state.<sup>31</sup> In fact, T-Mobile does not seek ETC designation throughout the state or even in every rural area of the state. The Protesters do not provide data sufficient to assess their claims about lack of coverage, particularly in comparison to the coverage supplied by Allied, CTC and Syringa in their ETC areas. But lack of coverage is not a "red flag"; it is instead a non-issue. The FCC has recognized that a carrier seeking to enter the universal service market is not expected to have coverage or even provide service prior to ETC designation:<sup>32</sup>

14. Prohibiting the Provision of Telecommunications Service.  
We find that an interpretation of section 214(e) requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting the ability of

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<sup>30</sup> T-Mobile was designated as an ETC in Florida, Kentucky and Washington in 2010, and in Hawaii in 2011.

<sup>31</sup> See Comments, at 9 ("Of the four major wireless carriers, T-Mobile *may* have the least expansive coverage in Idaho's rural areas.") (emphasis added). Assuming this is true, at most it shows that among *all* carriers delivering CMRS in Idaho, T-Mobile has the fourth *most* extensive rural coverage.

<sup>32</sup> *South Dakota Preemption Order*, CC Docket 96-45, Order 00-248 at ¶¶ 14-15, available at [http://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/2000/fcc00248.txt](http://transition.fcc.gov/Bureaus/Common_Carrier/Orders/2000/fcc00248.txt).

prospective entrants from providing telecommunications service. A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

15. No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

A carrier entering the universal service market cannot be expected to have coverage throughout the ETC service area prior to designation; as the FCC recognizes, the point of high-cost universal service funding is to provide a mechanism for carriers to extend facilities in rural areas that can benefit from investment of USF funds.

The Protesters also claim, without any support, that T-Mobile's build-out in rural areas has a high degree of overlap with existing AT&T cell sites.<sup>33</sup> The Protesters imply that this potential overlap raises questions about whether USF funds, for future build-out, will be used to build redundant facilities. These claims ignore the fact that Commission Staff has thoroughly reviewed T-Mobile's build plan, found that it is reasonable and in the public interest, and has

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<sup>33</sup> Comments, at 5.

recommended ETC designation for T-Mobile. Staff's findings and recommendations, unlike the Protesters' specious claims, are grounded in experience and facts, not speculation.

Second, the Protesters ignore that T-Mobile's build plans will be subject to annual Commission review and approval through the annual recertification process. There is simply no reason to conclude that the Commission will fail to ensure that USF support is spent in ways that benefit rural Idaho consumers and that any redundancy will be avoided.

**VIII. Comments by Mr. Stephenson on broadband funding are consistent with T-Mobile's commitment to spend USF dollars building out facilities for narrowband service, as required by federal law.**

Finally, the Protesters cite comments made in recent Congressional hearings by Randall Stephenson, AT&T's CEO, concerning funding of *broadband* build-out. Those comments concerned AT&T's willingness to bring *broadband* capabilities to rural communities (and others) without using USF funding. Specifically, Mr. Stephenson provided the following response to a question from Senator Kohl:

Senator Kohl: "Mr. Stephenson, would you accept as a condition of the merger a prohibition on AT&T from using any Universal Service Fund money for its rural broadband build out?"

Stephenson: "For this LTE build out? Yes sir."<sup>34</sup>

The Protesters present Mr. Kohl's words as if they were Mr. Stephenson's own.<sup>35</sup>

Notwithstanding that error, Mr. Stephenson's acceptance of a prohibition on AT&T using Universal Service Fund money for its LTE rural *broadband* build out is inapposite to the issue before the Commission, namely T-Mobile's commitments to use Universal Service Funds for rural *narrowband* build out as envisioned under the Telecommunications Act. 47 U.S.C. §

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<sup>34</sup> Senate Judiciary Hearing on May 11, 2011, available at <http://www.senate.gov/fplayers/CommPlayer/commFlashPlayer.cfm?fn=judiciary051111&st=xxx> (at approximately 143:30).

<sup>35</sup> Comments, at 7.

214(e)(1)(A) requires ETCs to offer nine specific *narrowband* services that are supported by Federal universal service support mechanisms under 47 U.S.C. 254(c)(1). These services are defined in 47 C.F.R. § 54.101 as:

- (1) Voice grade access to the public switched network;
- (2) Local usage;
- (3) Dual tone multi-frequency signaling or its functional equivalent;
- (4) Single-party service or its functional equivalent;
- (5) Access to emergency services;
- (6) Access to operator services;
- (7) Access to interexchange service;
- (8) Access to directory assistance; and
- (9) Toll limitation for qualifying low-income consumers.<sup>36</sup>

Although the FCC is considering future funding for broadband in connection with its National Broadband Plan and the Connect America Fund, broadband services are currently not supported by the Universal Service Fund High Cost mechanism.<sup>37</sup> The fact that the 4G LTE build out that AT&T is in the process of deploying, under the current legal framework, will not be funded by the USF does not diminish the need for expansion of the nine services that the current USF supports in rural areas, nor does it diminish the need for USF support to promote that expansion. Expanded availability of the nine USF-supported services to rural Idaho cannot wait—as the Protesters propose—until after the merger.

## **IX. Conclusion**

The Protesters provide no reason to revisit the Commission's decision to process its ETC application under Modified Procedure. Their comments present no new information, only unfounded speculation. That speculation is driven by their interests in precluding further competition in the universal service market. It is further fueled by mischaracterizations of FCC

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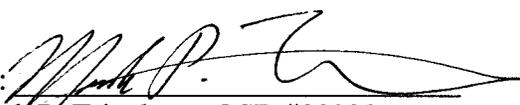
<sup>36</sup> 47 C.F.R. § 54.101.

<sup>37</sup> See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51.

practices, the proceeding in Texas, and the statements of Mr. Stephenson. It rests on complaints concerning “secret build plans” that were in fact thoroughly reviewed by Staff. Having reviewed all the relevant information, Staff has stated that “T-Mobile’s Application demonstrates that ETC designation is in the public interest,” and “should be approved.”<sup>38</sup> As the foregoing shows, while the Protesters’ pecuniary interests might benefit from delay or denial of that approval, they have failed to demonstrate that abandoning Modified Procedure in this case would serve the public interest.

For these reasons, the Commission should continue to process T-Mobile’s application under Modified Procedure, and approve T-Mobile’s application. Expedient approval of T-Mobile’s application, which has been pending for six months, is in the public interest and will bring additional benefits for Idaho rural consumers.

DATED: June 23, 2011.

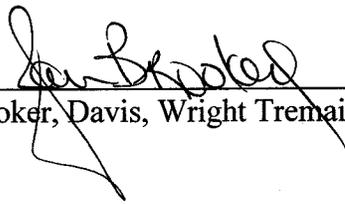
T-Mobile West Corporation	
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<p>David Daggett, ISB #5936            DAVIS WRIGHT TREMAINE, LLP            1201 Third Avenue, Suite 2200            Seattle, WA 98101-3045            daviddaggett@dwt.com            (206) 757-8066</p>	

<sup>38</sup> Staff Comments, at 4 and 9.

CERTIFICATE OF SERVICE

I hereby certify that, on June 23, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of T-MOBILE WEST CORPORATION'S RESPONSE TO COMMENTS OF ALLIED WIRELESS COMMUNICATIONS CORPORATION, IDAHO TELECOM ALLIANCE, CTC TELECOM, INC., SYRINGA WIRELESS, LLC, AND RURAL TELEPHONE COMPANY'S AND PROTEST TO USE OF MODIFIED PROCEDURE AND REQUEST FOR HEARING upon:

Jean Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Street PO Box 83720 Boise, ID 83720-0074 jjewell@puc.state.id.us	Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax <input type="checkbox"/> UPS <input type="checkbox"/> Email <input checked="" type="checkbox"/>
Cynthia A. Melillo, Esq. Givens Pursley LLP 601 N Bannock Street PO Box 2720 Boise, ID 83701 cam@givenspursley.com	Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax <input type="checkbox"/> UPS <input type="checkbox"/> Email <input checked="" type="checkbox"/>
Dean J. Miller McDevitt & Miller LLP PO Box 2564-83701 Boise, ID 83702 joe@mcdevitt-miller.com	Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax <input type="checkbox"/> UPS <input type="checkbox"/> Email <input checked="" type="checkbox"/>
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 Jan Brooker, Davis, Wright Tremaine LLP