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July 8, 2011

VIA Email: jean.jewell@puc.idaho.gov

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

Re: T-Mobile West Corporation's Answer to Allied Wireless Communications Corporation's
Motion to Defer Deliberations
Case No. TMW-T-10-01

Dear Ms. Jewell:

Enclosed please find T-Mobile West Corporation's Answer to Allied Wireless Communications Corporation's Motion to Defer Deliberations. The original and seven copies are being sent overnight via UPS.

Very truly yours,

Davis Wright Tremaine LLP



Mark P. Trinchero

MPT/ajg

Enclosures

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Attorneys for T-Mobile West Corporation

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	CASE NO. TMW-T-10-01
T-MOBILE WEST CORPORATION FOR)	
DESIGNATION AS AN ELIGIBLE)	T-MOBILE WEST
TELECOMMUNICATIONS CARRIER)	CORPORATION'S ANSWER TO
PURSUANT TO 47 USC § 214(e)(2).)	ALLIED WIRELESS
)	COMMUNICATIONS'
)	"MOTION TO DEFER
)	DELIBERATIONS"

The "Motion to Defer Deliberations" submitted by Allied Wireless Communications Corp. ("Allied") has no foundation in the rules of the Idaho Public Utilities Commission ("Commission") and caps a series of delaying tactics that amount to abuse of process by Allied. T-Mobile West Corporation ("T-Mobile") respectfully asks that the motion be denied or stricken so that a decision on the merits of T-Mobile's application may be rendered without further delay.

Allied's delaying tactics in this proceeding amount to an egregious abuse of process. T-Mobile submitted its application for designation as an Eligible Telecommunications Carrier ("ETC") on December 14, 2010.¹ The application was made available on the Commission's web site the next day, except for confidential material including T-Mobile's network improvement plan.² If Allied was truly concerned about the details of that confidential plan—as it claimed in its later comments—it should have intervened then and sought discovery. Instead, Allied waited.

On March 20, 2011, AT&T announced plans to acquire T-Mobile's parent company, T-Mobile USA, Inc. If Allied was truly concerned about the impact of the merger on T-Mobile's ETC application—as it claimed in its later comments—it should have intervened and sought discovery. But again, Allied waited.

On May 12, 2011, the Commission ordered the application of Modified Procedure and set a twenty-one day period for written comments.³ Despite its later-avowed concerns about confidential plans and the merger, Allied again chose not to intervene and seek discovery. Instead, Allied waited until the last possible day, June 2, 2011, to submit a set of comments alleging concerns about T-Mobile's application.⁴ Allied's comments focused on two issues: (1) the impact of the merger (which Allied had known about since March), and (2) speculation about possible deficiencies in T-Mobile's network improvement plan on file with the

¹ *In the Matter of the Application of T-Mobile West Corp. for Designation as an Eligible Telecommunications Carrier*, Case No. TMW-T-10-01, Application (filed December 14, 2011).

² See Internet Archive,

<http://web.archive.org/web/20101215220946/http://www.puc.idaho.gov/cases/summary/TMWT1001.html> (showing that the application was available on Dec. 15, 2010 at 2:49 pm).

³ Notice of Application Order No. 32240, Case No. TMW-T-10-01 (May 12, 2011).

⁴ Allied was joined in these comments by Idaho Telecom Alliance ("ITA"), CTC Telecom, Inc. ("CTC"), Syringa Wireless, LLC ("Syringa"), and Rural Telephone Company ("RTC"). None of those entities has moved to intervene or made even informal requests for information concerning the merger or T-Mobile's network improvement plans. 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 ("Allied's Comments"), Case No. TMW-T-10-01 (June 2, 2011).

Commission since mid-December 2010 (which Allied had made no attempt to request).⁵ Allied's professed alarm regarding the merger and T-Mobile's "secret build plan"⁶ is flatly inconsistent with Allied's repeated failure to take steps to obtain timely discovery on the merger or build plan. That suggests that Allied's real motive is to extend these proceedings as long as possible, and thereby delay the entry of additional competition in the study areas and wire centers included in T-Mobile's application that would reduce Allied's own share of universal service support dollars due to the Federal Communications Commission's cap on support available to competitive ETCs.⁷

Allied finally petitioned to intervene on June 7, 2011, nearly six months after T-Mobile's application was filed.⁸ Allied's petition to intervene was granted on June 16, 2011,⁹ giving Allied an immediate right to seek discovery under Rule 222 of the Commission's Rules of Procedure.¹⁰ But again Allied waited.

On June 27, 2011 the Commission reaffirmed that T-Mobile's application would be processed under Modified Procedure, rejecting the drawn-out procedure and evidentiary hearing proposed by Allied in its comments. At that point T-Mobile's application, pending for over six months, was fully submitted and ripe for an imminent decision by the Commission.

Only then, at the eleventh hour—when Allied's delaying tactics appeared to have failed—did Allied suddenly discern an immediate need to propound twenty-four discovery requests. Allied now attempts to use these last-minute discovery requests as the basis for the

⁵ See Allied's Comments, at 3 (enumerating these two issues).

⁶ Comments of Allied, et al., Case No. TMW-T-10-01, at 8 (June 2, 2011).

⁷ It is worth noting that Allied waited until after it had secured ETC designation from this Commission, on March 22, 2011, before inserting itself into T-Mobile's application process.

⁸ Petition to Intervene, Case No. TMW-T-10-01 (filed June 7, 2011).

⁹ Intervention Order No. 32265, Case No. TMW-T-10-01 (June 16, 2011).

¹⁰ See IPUC Rules of Procedure, Rule 222 ("[A]ll parties to a proceeding have a right of discovery...").

instant “Motion to Defer Deliberation,” stating that “[t]his Motion is made and based upon the grounds and for the reasons that Allied Wireless on this date has propounded written discovery requests to the Applicant T-Mobile.”¹¹

This naked attempt to delay a decision is outrageous. Allied could have intervened and sought discovery in December when the application was filed, in March when the merger was announced, in May when Modified Procedure was ordered, or in June when it filed its comments. It could have submitted discovery requests on June 16, when the Commission granted its belated petition to intervene. Having declined those numerous opportunities, it now demands that this proceeding grind to a halt for its belated discovery. Compounding this abuse of process is the broad scope of the requests, using this proceeding to seek such irrelevant matter as “unredacted copies of all motions and briefs filed by any party in the Texas PUC case.”¹² The Commission should reject Allied’s motion as an abuse of process plainly designed to further delay a proceeding that has already taken twice as long as Allied’s ETC application.¹³

The Commission’s Rules of Procedure provide no basis for Allied’s motion. The rules neither provide for a “Motion to Defer Deliberations,” nor otherwise provide that proceedings are stayed during discovery. No motions to defer appear to have been filed in other cases concerning ETC applications. In fact, T-Mobile is unaware of such a motion having *ever* been filed with this Commission. Allied has spun this new delaying motion out of whole cloth.

The only rule that Allied cites in support of its motion is Rule 056,¹⁴ the general rule governing motions. But Allied has failed to even follow that rule, which requires that motions

¹¹ Motion to Defer Deliberations, Case No. TMW-T-10-01, at 2 (July 1, 2011).

¹² First Production Request of Allied Wireless Communications Corporation to T-Mobile West Corporation, ¶ 23.

¹³ See Allied Wireless Communications Corp., Application for ETC Designation, Case No. ALL-T-10-01, opened Dec. 16, 2010, with a Final Order issued on March 22, 2011.

¹⁴ Motion to Defer Deliberations, Case No. TMW-T-10-01, at 1.

must (1) “[f]ully state facts upon which they are based,” and (2) “[r]efer to the particular provision of statute, rule, order, notice or other controlling law upon which they are based.”¹⁵

Allied’s motion fails because it states no facts that provide a basis for the motion. Moreover, the only “particular provision” to which Allied’s motion refers is Rule 056 itself. This type of circular bootstrapping fails to satisfy Rule 056. If reference to Rule 056 itself satisfied the requirement to cite a “particular provision,” the requirement would be meaningless. But it is not, and Allied’s motion is therefore improper.

For these reasons, T-Mobile requests that the Commission deny, or in the alternative strike, Allied’s “Motion to Defer Deliberations” and allow T-Mobile’s application to be decided on the merits without further delay.

DATED: July 8, 2011.

T-MOBILE WEST CORPORATION

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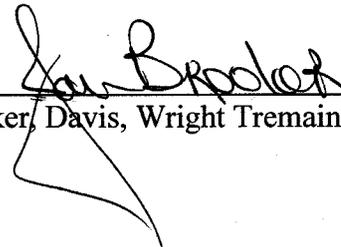
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¹⁵ IPUC Rules of Procedure 056(1)-(2).

CERTIFICATE OF SERVICE

I hereby certify that, on July 8, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document upon:

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