

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF T-MOBILE WEST CORP. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER)))))	CASE NO. TMW-T-10-01 ORDER NO. 32319
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On December 14, 2010, T-Mobile West Corp. filed an Application to be designated as an “eligible telecommunications carrier” (ETC) in certain areas of Idaho. T-Mobile is a facilities-based wireless telecommunications carrier currently serving Idaho customers with basic wireless services and advanced broadband services.

On May 12, 2011, the Commission issued a Notice of Application and Notice of Modified Procedure requesting interested persons to file comments regarding T-Mobile’s ETC Application. On June 2, 2011, timely comments were filed by Commission Staff and by a group of telecommunication companies comprised of Allied Wireless Communications Corp. and members of the Idaho Telecom Alliance¹ (hereinafter the “Telecom Group” or “Group”). On June 7, 2011, Allied Wireless filed a Petition to Intervene in this case which was subsequently granted by the Commission on June 16, 2011. Order No. 32265. On June 24, 2011, T-Mobile filed reply comments to the Telecom Group.

On July 1, 2011, Allied Wireless filed a “Motion to Defer Deliberations.” Contemporaneously with its Motion, Allied also filed its first set of discovery questions to T-Mobile requesting the answers to 24 discovery requests. On July 11, 2011, T-Mobile filed an answer to Allied’s Motion to Defer. As set out in greater detail below, we grant T-Mobile’s Application for ETC designation.

THE APPLICATION

T-Mobile is a commercial mobile radio services (CMRS) carrier² licensed by the Federal Communications Commission (FCC) to provide wireless services in various areas of Idaho. T-Mobile seeks ETC status in the wire centers of non-rural incumbent local exchange

¹ The ITA was representing its members: CTC Telecom (dba CTC Wireless); Syringa Wireless; and Rural Telephone Company (dba Rural Wireless).

² 47 U.S.C. § 153(33); 47 C.F.R. § 203.

carriers (ILECs) – such as CenturyLink and Frontier³ and in the wire centers of many rural ILECs.⁴ T-Mobile seeks ETC status in those Idaho wire centers listed in Attachment A of its Application. T-Mobile states that it seeks ETC status so that it may receive federal universal service support. Application at 1.

T-Mobile asserts that it will provide all the universal services supported by the federal Universal Service Fund (USF) including: voice grade access; local usage; dual tone multi-frequency signaling; single-party service; access to emergency services; access to operator, interexchange, and directory assistance services; and toll-blocking or toll-control for qualifying consumers. *Id.* at 3-4. The Company indicates that it intends to use its own facilities-based wireless facilities to meet its universal service obligations. *Id.* at 2-4.

The Application states that T-Mobile is committed to providing the required universal services throughout its designated ETC service areas, including the FCC's ETC servicing requirements found at 47 C.F.R. § 54.202. In those instances when T-Mobile receives a request for service outside its existing network coverage areas, T-Mobile will provide service within a reasonable period of time. To provide service the Company maintains that it will explore several alternatives including: modify or replace the customer's equipment; deploy a roof-mounted antenna or other equipment; adjust the nearest cell tower; adjust network or customer facilities; resell services from another carrier's facility; or use or construct an additional cell site/extender/repeater or other similar equipment. Application at 5. If T-Mobile determines that it cannot reasonably serve a new customer, then it will report the "unfulfilled request within thirty (30) days after making such a determination." *Id.*

Once designated as an ETC, the Company will make available to qualified low-income customers a discounted service offer that meets the "Lifeline" requirements.⁵ Application at 2. T-Mobile plans to make available to qualifying low-income customers an

³ In April 2011, CenturyLink and Qwest merged their companies. The combined companies will use the name CenturyLink, but the "Qwest" brand will continue for the next several months. In July 2010, Frontier Communications acquired control of Verizon's local and long-distance operations in Idaho.

⁴ T-Mobile's Application indicates it desires ETC status in areas served by rural ILECs including Albion, CenturyTel, Columbine, Direct Communications, Farmers Mutual, Filer Mutual, Fremont Telcom, Mud Lake Telephone Cooperative, Potlatch, Project Mutual, and Silver Star.

⁵ The Lifeline program is intended to provide universal service to eligible low-income customers 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.

affordable wireless handset; 145 “whenever” minutes, 500 night minutes, and 500 weekend minutes per month; and a Lifeline monthly rate of \$6.41. *Id.* at 6. The Company also commits to advertise the availability of its universal service offering within its proposed ETC service areas by using media of general distribution. *Id.* at 5. In addition, the Company notes that it already has various retail stores and authorized agents throughout its existing wireless service area.

T-Mobile also declares that it will comply with the Idaho Commission’s ETC requirements. In particular, the Company has filed a two-year investment plan to better serve customers once it is designated as an ETC. T-Mobile commits to using its USF revenues in the “first two years of support” to improve “service quality, signal coverage, and network capacity.” Application at 2. The Company indicates that it will be able to provide emergency services and that it will comply with the CTIA consumer protection code. *Id. citing* Order No. 29841, App. at 3. In August 2010, T-Mobile was recognized as earning the highest ranking in J.D. Power & Associates’ satisfaction survey for wireless carriers.

T-Mobile asserts that designating it as an ETC would provide a benefit to customers in its service territory and is in the public interest. *Id.* at 8-10. Besides providing consumers with competitive pricing and new services, customers will also benefit from increased competition. ETC status “will result in consumers having greater access to wireless telecommunications services in rural areas, thereby advancing the basic goal of preserving and advancing universal service.” *Id.* at 9. T-Mobile requests that the Commission certify that T-Mobile may receive federal USF funds for universal service support. *Id.* at 11.

THE MERGER

On March 20, 2011, AT&T announced plans to acquire T-Mobile USA, including all of its wholly owned subsidiaries such as T-Mobile West Corp. The FCC has opened a docket to examine the proposed transaction. *Application of AT&T and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WTB Docket No. 11-65 (April 28, 2011). In a production request, Staff asked about the impact of the proposed merger on the ETC Application. T-Mobile answered that notwithstanding the proposed merger, it “will be the designated ETC legal entity with the obligations and responsibilities of a universal service provider in Idaho.”

THE COMMENTS

A. Commission Staff

After reviewing T-Mobile's Application, Staff concluded that the Application "demonstrates a commitment on the part of [T-Mobile] to fulfill the obligations of an ETC in Idaho." Comments at 9. Staff noted that T-Mobile will comply with all the federal and state requirements necessary for ETC status. More specifically, Staff acknowledged that federal Universal Service Fund (USF) support in Idaho is capped at the March 2008 annualized level. *Id.* at 8. Staff further noted that all "newly designated and existing [Competitive] ETCs in Idaho will share the high-cost USF support in the amount that was distributed to Idaho CETCs in March 2008. . . . The interim cap will remain in place until the FCC adopts comprehensive reform measures." *Id.* at 8-9.

In its analysis, Staff determined that T-Mobile's ETC application "reasonably meets all of the statutory requirements for an ETC designation." *Id.* at 9. Consequently, Staff believed that T-Mobile's Application for ETC status was in the public interest and should be approved. *Id.*

B. The Telecom Group

The Telecom Group urges the Commission to set this matter for hearing and ultimately deny T-Mobile's Application for ETC designation. Comments at 2. The Group observed that T-Mobile's Application is the first by a prospective CETC that is about to be acquired by an even larger national carrier. *Id.* The Group asserts that the potential merge raises two general issues. First, the Group maintains that AT&T's acquisition of T-Mobile will have an adverse impact on the amount of federal USF support assigned to Idaho. *Id.* at 3. Second, the Group questions whether T-Mobile is truly committed to expanding its service into rural areas of Idaho. These issues are discussed in greater detail below.

1. Federal USF. If the FCC approves the acquisition, the Telecom Group expressed concern that the FCC might condition its approval of the AT&T and T-Mobile merger by requiring that T-Mobile voluntarily surrender any federal USF support it received to the FCC. The Group notes the FCC imposed such a condition in two 2008 mergers involving Verizon Wireless' acquisition of Alltel, and Sprint's acquisition of Clearwire. *Id.* at 3, nn. 1&2. If the FCC imposes a similar condition on the AT&T/T-Mobile merger, Idaho may be deprived "of millions of dollars of FUSF high-cost support." *Id.* The Group alleges that there is every

likelihood that the FCC will impose a similar condition in the AT&T and T-Mobile merge. If such a condition is imposed, then the federal high-cost support “will not be returned to Idaho thereby permanently reducing high-cost support in Idaho.” *Id.* at 5.

The Group states that the FCC capped total annual competitive ETC support for each state in 2008. The FCC capped the level of USF support that CETCs in Idaho were eligible to receive as of March 2008. *In the Matter of High-Cost Universal Service Support & Federal-State Joint Board on Universal Service (“USF Order”),* 25 F.C.C. Rcd. 12854 at ¶ 3 (issued September 3, 2010) citing *Interim Cap Order, High-Cost Universal Service Support & Federal-State Joint Board on Universal Service (“Interim Cap Order”),* 23 F.C.C. Rcd. 8834, 8837-50 at ¶ 26 (2008).

In the Verizon and Sprint mergers, the FCC conditioned approval of those transactions on those “carriers’ voluntary commitment to surrender their high-cost universal service support – estimated as approximately \$530 million in 2008 – in equal 20% increments over a period of five years from the closing date of the transactions.” *USF Order* at ¶ 4 (footnotes omitted). In the *USF Order*, the FCC observed that nothing in the *Interim Cap Order* requires the FCC “to redistribute to other competitive ETCs the high-cost universal service support reclaimed from Verizon Wireless and Sprint Nextel.” *Id.* at ¶ 10. The FCC determined that declining to redistribute Verizon and Sprint’s surrendered high-cost support “strikes an appropriate balance by reigning in the high-cost support mechanism without modifying support provided to other competitive ETCs.” *Id.* at ¶ 11. Thus, the surrendered support was not redistributed to other competitive ETCs in the states as high-cost support. *Id.*

The Telecom Group also notes that the staff of the Texas PUC expressed similar concerns regarding T-Mobile’s application for ETC designation in Texas. Comments at 4-5. In the Texas proceeding, the Group asserts that the Texas staff expressed concerns that if T-Mobile voluntarily relinquished its ETC status, then the amount of remaining federal USF revenue may be diminished. *Id.* at 5, citing Atch. C at 38 (Texas Staff Brief).

2. Service Areas. The Telecom Group next asserts that the coverage map of AT&T and T-Mobile’s website show that the two carriers “largely appear to cover the same area in Idaho.” Comments at 5. Given this apparent overlap in service area, the Group questions whether it is necessary for T-Mobile to build new cellular facilities “in areas that AT&T already has coverage?” *Id.* The Group also questions T-Mobile’s commitment to serve rural areas of

Idaho. Because parts of T-Mobile's Application are confidential, the Group insists that it is difficult to evaluate T-Mobile's build-out plans. *Id.* Consequently, the Carriers urge the Commission to "commence a formal docket and subject T-Mobile's plan to further scrutiny to ensure that T-Mobile meets the requirements to be an ETC." *Id.* at 8. The Group alleges that T-Mobile "may have the least expansive coverage in Idaho's rural area."

The Telecom Group next insists that AT&T's CEO has testified before Congress that the Company does not need federal USF to complete its 4G network build-out. *Id.* at 6. Given this Congressional testimony, the Group urges the Commission to examine the Congressional testimony to "determine what AT&T will do in Idaho if it acquires T-Mobile. Will it build out the entire proposed ETC service area with 4G LTE on its own, without high-cost support?" *Id.* at 7.

In conclusion, the Telecom Group protests the use of Modified Procedure and alleges that T-Mobile has failed to provide sufficient information to determine the effects of the proposed AT&T merger on the use of federal USF in Idaho. Consequently, the Group requests that it be afforded the opportunity "to conduct discovery and to present evidence" at a hearing. *Id.* at 10.

T-MOBILE REPLY

1. Use of Modified Procedure. T-Mobile filed its response to the Group's comments on June 24, 2011. T-Mobile opposed the Group's request for an evidentiary hearing and asserts there is no reason to doubt that the use of Modified Procedure will allow the Commission to develop an adequate record regarding the ETC Application. Reply at 2. T-Mobile maintains that the use of Modified Procedure has "applied to every ETC application in the last five years" and "that Modified Procedure is appropriate where multiple intervenors submit comments." *Id.* at 3-4 (footnotes omitted). In particular, T-Mobile notes that Modified Procedure was used to process the ETC applications for Allied, the ITA, Syringa, and CTC. *Id.* at 3. Even when the Commission has faced novel issues in ETC applications such as in Inland Cellular and Edge Wireless applications, the Commission has utilized Modified Procedure. *Id.* at 5. T-Mobile insists that Modified Procedure is sufficient to deal with unique issues and the Group has "presented no compelling justification for the Commission to deviate from its longstanding precedent" of using Modified Procedure. *Id.* at 6.

2. Federal USF. While T-Mobile recognizes that the FCC has capped high-cost USF support for CETCs at March 2008 levels, T-Mobile characterizes the Group's comments about the possible loss of federal USF revenues as "speculative, unfounded, and inconsistent with recent FCC precedent and statements." *Id.* at 9. More specifically, T-Mobile maintains that the Group failed to disclose a 2009 FCC decision that reached the opposite result than in the Verizon and Sprint merger 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 [USF] support." *Id.* (footnote omitted) *citing Application of AT&T and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, Memorandum Opinion & Order*, 24 F.C.C. Rcd. 13915 (November 5, 2009). T-Mobile claims that this later decision provides "better guidance on how the [FCC] might approach AT&T's proposed merger with T-Mobile." *Id.* at 9.

T-Mobile also argues that the Verizon and Sprint mergers were distinguishable from the proposed AT&T and T-Mobile merger because the two prior cases involved *voluntary* commitments to phase out high-cost support. *Id.* at 10 (emphasis original). T-Mobile states that it will remain the legal entity with ETC designation in Idaho and will retain the responsibility that accompanies that status. Even if T-Mobile "attempted to relinquish ETC status [in Idaho], that decision would be subject to the review and approval of [this] Commission." *Id.* at 11 (footnote omitted).

T-Mobile also insists that the FCC's universal service reform proceeding may be completed before the FCC completes its action on the AT&T/T-Mobile merger. Consequently, T-Mobile insists that USF reform may be in place before ruling on the merger, and thus, there will be no need for the FCC to impose USF safeguards in the merger case. *Id.* at 10.

T-Mobile next argues the Group's reliance on the Texas PUC proceeding does not support a delay or denial of this ETC Application. In the Texas proceeding, T-Mobile said that various parties filed a motion with the administrative law judge (ALJ) to abate the proceeding because of the announced merger. However, the ALJ and the Texas PUC denied efforts to lengthen the hearing process. *Id.* at 11.

Finally, T-Mobile insists that Allied, CTC and Syringa all stand to gain financially by preventing or delaying ETC designation for T-Mobile. Their opposition to the ETC Application is a "naked attempt" to avoid or delay enhanced competition in rural areas of Idaho. *Id.* at 6. A

delay in granting T-Mobile's Application would be contrary to the public interest because rural customers would lose the benefit of the expanded T-Mobile network and services. *Id.* at 7. In essence, T-Mobile's competitors would gain, and rural customers would lose. A delay in designating T-Mobile as an ETC "benefits the Protestors, who get to keep their current share of USF funds and block increased competition in rural areas. . . ." *Id.*

3. Service Areas. T-Mobile asserts that the Group's comments regarding the possible overlap with AT&T coverage is unsupported and irrelevant. T-Mobile refutes the Group's assertion that available USF funds may be used to build redundant facilities. T-Mobile claims that this characterization ignores the fact that Commission Staff has reviewed T-Mobile's build-out plan and found the plan robust, reasonable and in the public interest. *Id.* at 13.⁶ Moreover, T-Mobile's build-out plans will be subject to annual Commission review and approval through the annual recertification process. *Id.* at 14. T-Mobile states that 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." *Id.* at 12 (footnote omitted). The Company observes that Commission Staff stated in its analysis that T-Mobile presented "detailed information outlining its network improvement plan for 2011 and 2012." *Id.* at 8. Thus, Staff found that T-Mobile's implementation plan was satisfactory.

Finally, T-Mobile submits that recent Congressional testimony made by AT&T's CEO does not support the Telecom Group's efforts to delay or deny ETC status to T-Mobile. In a passage from his Congressional testimony, AT&T's CEO said he would accept a condition to prohibit the use of USF money for AT&T's rural broadband build-out. However, T-Mobile states in its reply that the issue of USF funding in this proceeding concerns "*narrowband*" build-out as envisioned under the Telecommunications Act. *Id.* at 14 (emphasis in original). In other words, the Telecom Group is mixing a discussion about rural broadband build-out with rural narrowband ETC services. Consequently, the fact that AT&T may be building its 4G network does not diminish the need for ETC universal services in Idaho's rural areas. *Id.* at 15.

In conclusion, T-Mobile asserts that there is no reason why this ETC Application cannot be processed under Modified Procedure. The Telecom Group presents no new

⁶ T-Mobile also took issue with the Group's implication that there was something unusual or inappropriate because T-Mobile's build-out plan was a "trade secret" and unavailable for review. Rule 67; *Idaho Code* § 9-340D. T-Mobile observed that such plans are protected from unauthorized public disclosure as a trade secret – just as Allied and other ETC applicants have done. *Id.* at n.17.

information for the Commission's consideration and their comments are prompted by their own self-interest. For the reasons stated above, the Commission should continue to process this Application under Modified Procedure and ultimately approve T-Mobile's request for ETC status. Expeditious approval of T-Mobile's Application is in the public interest and will bring additional benefits for Idaho rural consumers. *Id.* at 16.

DISCUSSION AND FINDINGS

A. The Requests for Hearing

As an initial matter, we first address the Telecom Group's request for an evidentiary hearing. At our decision meeting held on June 27, 2011, we denied the request for an evidentiary hearing. We affirm that decision today. As noted in T-Mobile's reply comments, the Commission has used Modified Procedure to process every previous ETC application. Despite the Group's arguments to the contrary, we see no compelling reason to deviate from this practice. We find the use of Modified Procedure has developed a sufficient record of evidence for the Commission to consider and resolve the issues presented.

The Commission's Rules of Procedure allow for the use of Modified Procedure, i.e., the consideration of issues based on written submissions (i.e., comments) rather than by hearing. Rule 201, IDAPA 31.01.01.201; Order No. 32212 at 10-12. As we recently stated in Order No. 32212, our Supreme Court has expressly approved the use of written comments in gathering evidence and resolving disputes. Modified Procedure provides parties "with an opportunity to comment, to object, and to make written submissions; and the final orders of the Commission must be based upon substantial evidence." Order No. 32212 at 10 *citing Intermountain Gas Co. v. Idaho PUC*, 97 Idaho 113, 129, 540 P.2d 775, 791 (1975) (emphasis added); *American Public Gas Assoc. v. Federal Power Comm'n*, 162 U.S.App.D.C., 497 F.2d 718, 722 (1974). The use of Modified Procedure allows commenters to present evidence and make arguments to the Commission.

In support of its request for an evidentiary hearing, the Telecom Group requests "the opportunity to conduct discovery and present evidence." Comments at 10. We are puzzled by this request because discovery is available at an early stage in every proceeding. Our Rule 222 provides that all parties have the right of discovery in a proceeding. IDAPA 31.01.01.222. Moreover, parties may and routinely do present discoverable evidence in their written comments.

Once T-Mobile filed its Application on December 14, 2010,⁷ discovery was available. If the Telecom Group thought discovery was appropriate, the Group or members of the Group could have filed a petition to intervene at any time.

We further note that Allied Wireless did not file its Petition to Intervene until June 7, 2011, and that request was granted by the Commission on June 16, 2011. Allied's discovery in this matter was not filed until July 1, 2011. Consequently, we find that Group's argument that it needed a hearing to conduct discovery is unpersuasive and not supported by the facts. As noted above, parties may include discovered evidence in their written comments.

B. Motion to Defer Deliberations

After denying the Telecom Group's request for an evidentiary hearing on June 27, 2011, Allied Wireless filed a "Motion to Defer Deliberation" on July 1, 2011. In its Motion, Allied "respectfully requests that the Commission defer deliberation on the merits of [T-Mobile's ETC Application] pending completion of discovery by Allied Wireless." Motion at 2.

On July 11, 2011, T-Mobile filed an answer vigorously opposing the Motion. T-Mobile asserted that Allied's Motion "caps a series of delaying tactics that amount to abuse of process by Allied." Answer to Motion at 1. T-Mobile recited the history of this case (i.e., the date the Application was filed, the date the merger was announced, the date the Commission issued its Order on Modified Procedure, etc.) to demonstrate that Allied had plenty of opportunity to intervene and seek discovery but failed to do so. *Id.* at 2-4. T-Mobile argued that the Motion is "an abuse of process plainly designed to further delay a proceeding that has already taken twice as long as Allied's ETC application." *Id.* at 4 (footnote omitted).

We affirm our decision made at the July 11, 2011 decision meeting to deny the Motion. We find Allied's Motion to be untimely, inappropriate and beyond the scope of our Procedural Rules. We find that Allied did not timely avail itself of the opportunity to conduct discovery in this case. As set out above, there was ample opportunity to conduct discovery but Allied did not do so until July 1 – nearly 28 weeks after T-Mobile filed its Application and about 14 weeks after the announcement of the merger with AT&T. Accordingly, we reject Allied's Motion to Defer.

⁷ As T-Mobile observed in its reply comments, Allied Wireless's ETC application was filed two days after T-Mobile's ETC Application was filed. Reply Comments at 3.

C. The Merits of T-Mobile's Application

Having dispensed with the procedural issues, we now turn our attention to reviewing the merits of T-Mobile's ETC Application. The federal Telecommunications Act sets out different statutory requirements for applicants seeking ETC status for non-rural and rural service areas. When an applicant meets the statutory requirements for a non-rural area, Section 214(e)(1) provides that the Commission shall designate more than one common carrier as an ETC. See 47 U.S.C. § 214(e)(2). For ETC designation in a rural area, the Telecommunications Act gives the state commission the discretion to grant ETC designation to additional carriers if such ETC designation is in the public interest. *Id.*

1. Federal USF. The Telecom Group urges us to deny or delay T-Mobile's ETC Application because the FCC may condition the merger with a provision that requires T-Mobile to surrender its federal USF support for Idaho. Such a condition might result in a reduction of high-cost support to Idaho. T-Mobile asserts that it is inappropriate to speculate about what the FCC may or may not do in the merger case.

We find that it is unreasonable to delay or reject T-Mobile's ETC Application based upon what the FCC may or may not decide in the AT&T and T-Mobile transaction for several reasons. First, as laid out in the Telecom Group's comments and T-Mobile's reply comments, it is unclear whether the FCC will impose a condition in the merger that would require T-Mobile to voluntarily surrender its high-cost USF support. Although Verizon and Sprint agreed to forego USF support in 2008, the FCC did not impose a similar condition in the more recent 2009 Centennial merger. Based on these facts, we will not speculate on what the FCC will do in the AT&T/T-Mobile merger or use that as a basis to deny this Application.

Second, as T-Mobile argued, the FCC may issue its USF reforms before it resolves the merger case.⁸ In particular, the FCC's Wireless Telecommunications Bureau has "stopped the [FCC's] informal 180-day clock [to process the merger case] until we have the information required to evaluate [new] models." Letter from Rick Kaplin, Chief of Wireless Telecommunications Bureau, WTB Docket No. 11-65 (July 20, 2011). Thus, the FCC's processing of the merger was stopped on July 20 (day 83) and has not restarted.

⁸ On August 3, 2011, the FCC issued a notice of "Further Inquiry" requesting comments about universal service issues. See DA 11-1348.

<http://transition.fcc.gov/transaction/att-tmobile-clockhis.html> (viewed on August 2, 2011).⁹ At the present time, we recognize that all newly designated and existing ETCs in Idaho will share the high-cost USF support that was capped in March 2008 by the FCC.

2. Service Areas. After reviewing the Application, maps and network improvement plans submitted by T-Mobile, we find that T-Mobile's plan to serve rural and non-rural areas is reasonable and robust. As T-Mobile pointed out in its reply comments, the FCC has determined that an ETC applicant does not need to provide service in the proposed ETC service area prior to designation as an ETC. "Such a requirement deprives consumers in high-cost areas of the benefits of competition by insulating in the incumbent LEC from [ETC] competition." *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota PUC*, CC Docket No. 96-45, 15 F.C.C.R. 15168 at ¶ 12 (August 10, 2000). In other words, it is T-Mobile's ability to provide the required ETC services after it is granted ETC status that is at issue.

The Telecom Group's concerns are also alleviated by the fact that if T-Mobile is granted ETC status then its build-out plans will be subject to annual review. The FCC has declared that a "state commission may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria." *South Dakota* at ¶ 15. To maintain ETC designation, T-Mobile must annually submit a two-year network improvement plan and progress report. We find this annual requirement will hold T-Mobile accountable for making a reasonable effort to implement its network improvement plan and its ETC status may be revoked if it does not. Order No. 29841. Consequently, we are not persuaded by the Group's arguments concerning T-Mobile's ETC service areas.

We further find that the Group's argument based upon the congressional testimony of AT&T's CEO is misplaced. As T-Mobile explained, the testimony was addressing broadband build-out not narrowband ETC services.¹⁰

After reviewing T-Mobile's Application, we find that T-Mobile meets the requirements for ETC designation set out in 47 U.S.C. § 214(e)(1) and Commission Order No.

⁹ We also note that the Texas PUC has not entered any final order in its case evaluating T-Mobile's application for ETC designation in Texas. *Application of T-Mobile West Corp. for Designation as an ETC*, 2011 WL 2280261 (Tx. PUC (June 2, 2011)).

¹⁰ Even if broadband access or services are subsequently added to the list of ETC universal services, the annual review of ETC network improvement plans will provide sufficient oversight of how new services will be deployed in the ETC service area.

29841. We find that designating T-Mobile as an ETC in its requested rural and non-rural service areas is in the public interest. Granting ETC status will benefit consumers by offering new services and increased competition. In addition, we find granting T-Mobile ETC status will provide rural customers with greater access to wireless services and may be beneficial to eligible recipients for ITSAP and Lifeline services. Order No. 30360 at 8.

In conclusion, we find that T-Mobile has adequately demonstrated that it is capable of providing the required universal services and has filed a viable network improvement plan that would enable it to provide service throughout its proposed ETC service areas. We further find that T-Mobile has demonstrated to our satisfaction that it: (1) has a local usage plan comparable to the ILECs already operating in the proposed area; (2) will be able to comply with applicable service and quality standards; (3) is able to remain functional during emergencies; and (4) will issue the appropriate tribal notifications as necessary. Order No. 29841, Appendix A. Accordingly, we find that T-Mobile has satisfied the requirements for designation as an ETC in its proposed Idaho service areas.

ORDER

IT IS HEREBY ORDERED that the Telecom Group's request for an evidentiary hearing is denied.

IT IS FURTHER ORDERED that Allied Wireless's Motion to Defer Deliberations is denied.

IT IS FURTHER ORDERED that T-Mobile West Corp.'s Application for designation as an ETC carrier in those rural and non-rural service areas designated in its Application is approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. TMW-T-10-01 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9th
day of August 2011.



PAUL KJELLANDER, PRESIDENT

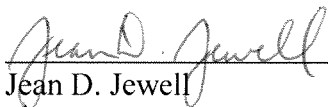


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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