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UTILITIES COMMISSION

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

DATE: JUNE 24, 2011

**SUBJECT: T-MOBILE'S RESPONSE TO COMMENTS OF ALLIED WIRELESS, THE
IDAHO TELECOM ALLIANCE (ITA), SYRINGA WIRELESS AND RURAL
TELEPHONE COMPANY, CASE NO. TMW-T-10-01**

In December 2010, T-Mobile West Corp. filed an Application to be designated as an "eligible telecommunications carrier" (ETC) in Idaho. T-Mobile is a facilities-based wireless telecommunications carrier serving Idaho customer with basic wireless services and advanced broadband services. T-Mobile seeks ETC status in the wire centers of non-rural incumbent local exchange carriers (ILECs) – such as CenturyLink and Frontier¹ and wire centers of many rural ILECs².

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. The Commission's Notice of Modified Procedure requested that interested parties file comments no later than June 2, 2011. Comments were filed by Commission Staff and by the "Carrier Group" comprised of Allied Wireless, the Idaho Telephone Alliance (ITA), Syringa Wireless, and Rural Telephone.

¹ 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 toll operations in Idaho.

² 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.

THE COMMENTS

A. Commission Staff

After reviewing T-Mobile's Application, Staff declared 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 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 did not believe it should recommend denial of an ETC application that "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 Carrier Group

The Carrier Group opposes ETC designation for T-Mobile. In general, they noted that AT&T's acquisition of T-Mobile raises questions of whether T-Mobile can complete its service improvement plan. "It is also the first application by a carrier that has publicly admitted it lacks adequate spectrum to provide in-building coverage in rural areas." Comments at 2. Consequently, the Carriers request that the Commission schedule an evidentiary hearing to examine several issues in greater detail. The Carrier Group frames the issues as:

1. What are the potential impacts of AT&T's proposed acquisition of T-Mobile on T-Mobile's use of federal universal service funds in Idaho?
2. Is T-Mobile truly committed to expanding its service in rural areas of Idaho?

These issues are examined in further detail below. The Carriers' comments (minus attachments) are enclosed for your information.

1. Federal USF. If the FCC approves the AT&T and T-Mobile acquisition, the Carriers are concerned that the FCC would insist on a condition that any federal USF support provided to T-Mobile be returned to the FCC. The Carriers note that the FCC imposed such a condition on two recent mergers involving Verizon Wireless' acquisition of Alltel, and Sprint's acquisition of Clearwire. The Carriers also cite to a September 2010 Order where the FCC recognized that it

capped total annual competitive ETC support for each state at the level of support that CETCs in the state were eligible to receive during March 2008. *In the Matter of High-Cost Universal Service Support & Federal-State Joint Board on Universal Service*, 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*, 23 F.C.C. Rcd. 8834, 8837-50 at ¶ 26 (2008).

In discussing the Verizon and Sprint mergers, the FCC noted that it conditioned approval of those transaction 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.” *Id.* at ¶ 4 (footnotes omitted). 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 will not be redistributed to other competitive ETCs in the state as high-cost support. *Id.*

The Carriers allege 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.” Comments at 5.

The Carriers also maintain 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 that proceeding, 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 Carriers also assert 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.” *Id.* 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.* Moreover, the Carrier Group insists that AT&T has testified before Congress that it does not need federal USF to complete its 4G network build out. Given this Congressional testimony, the Carriers urge 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.

The Carriers also question T-Mobile’s commitment to serve rural areas of Idaho. Because parts of T-Mobile’s Application are confidential, the Carriers insist that it is difficult to know exactly what T-Mobile’s intentions are. 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.

In conclusion, the Carriers protest the use of Modified Procedure and allege that T-Mobile has failed to provide sufficient information to determine the effects of the proposed AT&T merge on the use of federal USF in Idaho. Consequently, the parties request that they be afforded the opportunity to conduct discovery and to present evidence. *Id.* at 10.

T-MOBILE REPLY

1. Use of Modified Procedure. T-Mobile filed its response to the Carriers’ comments on June 24, 2011. T-Mobile opposes the Carriers’ 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 Carriers’ “have presented no compelling justification for the Commission to deviate from its longstanding precedent” of using Modified Procedure. *Id.* at 6. T-Mobile’s reply is attached.

2. Federal USF. While T-Mobile recognizes that the FCC has kept high-cost USF support for CETCs at March 2008 levels, the Carriers’ comments about the possible loss of federal USF revenues are speculative, unfounded, and inconsistent with recent FCC precedent and statements. *Id.* at 9. More specifically, T-Mobile maintains that the Carriers ignored a 2009 FCC decision that reached the opposite conclusion 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 decision provides "better guidance on how the Commission 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 in that 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 the Commission." *Id.* at 11 (footnote omitted). Finally, T-Mobile declares that it is likely that the FCC's USF reform proceeding will result in changes to the USF system prior to the AT&T and T-Mobile merger being approved. *Id.* at 10.

T-Mobile also insists that Allied, CTC and Syringa all stand to gain 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 expanded T-Mobile's network and services. *Id.* at 7.

3. Coverage Area. T-Mobile next asserts that the Carriers' comments regarding the possible overlap with AT&T coverage is unsupported and irrelevant. T-Mobile refutes the Carriers' 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 reasonable and in the public interest. *Id.* at 13. 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). T-Mobile observed 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.

4. The Texas Case. T-Mobile also maintains that the Carriers reliance on the Texas PUC proceeding does not support a delay or denial of this ETC Application. In the Texas proceeding, various parties filed a motion with the administrative law judge (ALJ) to abate the proceeding because of the announced merger transaction. The ALJ and the Texas PUC denied efforts to lengthen the hearing process. *Id.* at 11.

5. Congressional Testimony. Finally, T-Mobile submits that recent Congressional testimony made by AT&T's CEO does not support the Carriers' efforts to delay or deny ETC status to T-Mobile. In a passage from 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 notes 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. In other words, the Carriers are 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 Carriers present no new 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. Expedient approval of T-Mobile's Application is in the public interest and will bring additional benefits for Idaho rural consumers. *Id.* at 16.

COMMISSION DECISION

Based upon the comments of the parties, what does the Commission desire to do? Does the Commission find that there is a need for an evidentiary hearing?



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IDAHO PUBLIC UTILITIES COMMISSION

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-10-1

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

In Order No. 32240, the Idaho Public Utilities Commission (the "Commission"), in the above-entitled case, requested comments from interested parties on T-Mobile West Corporation's Application for Designation as an Eligible Telecommunications Carrier (the "Application") on or before June 2, 2011. Allied Wireless Communications Corporation ("Allied Wireless"), the Idaho

Telecom Alliance (“ITA”) on behalf of its member companies, CTC Telecom, Inc., dba CTC Wireless (“CTC”), Syringa Wireless, LLC (“Syringa Wireless”) and Rural Telephone Company, dba RTC Wireless (“RTC”), respectfully provide these Comments to the Application of T-Mobile West Corporation (“T-Mobile” or “Applicant”) for designation as an Eligible Telecommunications Carrier (“ETC”). For the reasons set forth below, the Commission should not grant T-Mobile’s Application on an expedited, modified procedure basis. Instead, the Commission should commence an adjudicative proceeding, set the matter for hearing and should ultimately deny the petition. Allied Wireless, ITA, CTC, Syringa Wireless and RTC may be collectively referred to herein as the “Commenting Parties.”

INTRODUCTION

The Commenting Parties certainly appreciate that the Commission has, in recent years, streamlined the process for ETC applications and reduced the administrative burden on ETC applicants. Indeed, Allied is a very recent beneficiary of the use of modified procedure to grant ETC status. Order No. 32209, *In the Matter of the Application of Allied Wireless Communications Corporation*, Case no. ALL-T-10-01 (Idaho PUC March 22, 2011)(hereafter “*Allied Order*”). However, T-Mobile’s ETC Application is unlike any that have yet come before this Commission. It is the only application by a prospective CETC that is about to be acquired by an even larger national carrier, thus bringing the legitimacy of T-Mobile’s proposed service improvement plan into obvious question. It is also the first application by a carrier that has publicly admitted it lacks adequate spectrum to provide in-building coverage in rural areas.

Under the circumstances, the Commission cannot reasonably conclude that granting T-Mobile’s Application would be in the public interest without a more formal investigation open

to broad participation by other CETCs and other interested parties. Without limitation, the Commission should take a hard look at the following issues:

1. What are the potential impacts of AT&T's acquisition of T-Mobile on T-Mobile's use of Federal Universal Service Funds ("FUSF") in Idaho? May AT&T agree or be forced to relinquish T-Mobile's FUSF support by the FCC as a condition of the FCC's grant of the AT&T-T-Mobile merger application? Why would the FCC not condition AT&T's acquisition of T-Mobile on AT&T's voluntary commitment to forgo USF high-cost support as was required of Verizon Wireless as a condition of Verizon Wireless' acquisition of Alltel¹ and of Sprint as a condition of Sprint's acquisition of Clearwire,² thereby depriving the State of Idaho of millions of dollars of FUSF high-cost support indefinitely?³

2. Even setting aside the AT&T merger, is T-Mobile truly committed to expanding its service into rural areas of Idaho? As discussed in detail below, would it not be appropriate for the Commission to initiate an investigation in light of findings in other state?

¹ *Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008) ("Verizon Wireless Merger Order").

² *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008) ("Sprint Nextel Merger Order").

³ See, e.g., *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854 (¶ 20) ("Corr Wireless Order") (instructing USAC "to reserve any reclaimed [high-cost support] funds [surrendered by Sprint and Verizon Wireless] as a fiscally responsible down payment on proposed broadband universal service reform, as recommended in the National Broadband Plan").

DISCUSSION

I. AT&T's Proposed Acquisition of T-Mobile Requires Further Investigation and Analysis Before the Commission Can be Certain That T-Mobile's Application is in the Public Interest.

The Staff appears to have asked T-Mobile to explain the impact of the proposed AT&T merger on the ETC Application.⁴ But T-Mobile's answer is woefully inadequate to address the many potentially significant issues that the merger creates for T-Mobile's Application.⁵ At this early stage of the merger proceeding and absent any discovery directed to either AT&T or T-Mobile, it is premature to draw any conclusions about the merger impact either way, with the one exception that the Commission should not be rushed into a decision with limited facts when the merger calls into question the legitimacy of the service improvement plan submitted by T-Mobile, as well as the real possibility that any high-cost support received by T-Mobile might ultimately be removed from the state's CETC support allocation and claimed by the Federal Communications Commission.⁶

The Texas PUC and its staff appear to have conducted one of the most thorough reviews to date of a T-Mobile ETC Application. Texas PUC Staff is so concerned about the impact of AT&T's acquisition that the merger is one of the key reasons Texas PUC Staff is opposed to T-Mobile's ETC Application. Texas PUC Staff noted the most obvious concern, which is that T-Mobile may well win FUSF support in Texas, only to relinquish it shortly thereafter as a potential FCC merger condition. *See generally, Commission Staff's Initial Brief, Application of*

⁴ Since the Staff's discovery is not on the PUC's website, the depth and breadth of the Staff's investigation is not currently known to Allied Wireless.

⁵ According to the April 20, 2011 Decision Memorandum in this case, T-Mobile responded it "will be the designated ETC legal entity with the obligations and responsibilities of a universal service provider in Idaho."

⁶ *See Corr Wireless Order, supra.*

T-Mobile West Corp. For Designation as an Eligible Telecommunications Carrier (Rural), SOAH Dkt. 473-10-5443, Dkt. No. 38387 (submitted Apr. 21, 2011)(“*Texas Staff Brief*”).⁷ This Commission should share the same concern.

If recent FCC history is a guide, not only will this happen, but **the relinquished support will not return to Idaho**. As the Texas PUC Staff noted, this permanent reduction of the CETC cap in a state could come at a high price to that state and its rural communities. *Texas Staff Brief* at 37-38.

There are other reasons to be concerned about the impact of AT&T’s acquisition. Attachment A hereto is a portion of the coverage maps from AT&T’s and T-Mobile’s websites showing Idaho. The two carriers largely appear to cover the same areas in Idaho. The obvious question is whether the new cell sites that T-Mobile plans to build using FUSF support are in areas that AT&T already has coverage? Since T-Mobile filed its build plan confidentially, the Commenting Parties do not know the answer to this key question.

Without an investigation, it is entirely possible that the combined AT&T/T-Mobile entity could end up receiving FUSF support to build cell towers in areas where it has already built towers without FUSF support. This is a matter that the Oregon PUC staff, public counsel, and private intervenors appear to be investigating.⁸ It is difficult to see how allocating scarce and

⁷ Copy attached as Attachment C for ease of reference.

⁸ See generally, OPUC Dkt. UM 1511, <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16547>. The state’s public counsel—the Citizen’s Utilities Board—as well as the Oregon Cable Telecommunications Association and United States Cellular have intervened. The Oregon PUC has entered a protective order so that intervenors have access to T-Mobile’s confidential build plan and coverage maps. The OPUC has ordered three rounds of pre-filed testimony and a two day hearing. *Id.*, Prehearing Conference Memorandum (March 8, 2011). The first public filing that would disclose the scope of the issues in Oregon was T-Mobile’s scheduled filing of testimony, which was due yesterday, June 1, 2011. However, on the due date T-Mobile requested a one day extension of time to file, which effectively precludes discussion of the testimony in these Comments. <http://edocs.puc.state.or.us/efdocs/HDA/um1511hda103649.pdf>.

capped USF high-cost dollars without considering these key issues is in the State of Idaho's public interest.

Another development in the AT&T merger that is too recent for Texas PUC Staff to have included in its brief are recent statements and testimony by AT&T witnesses to the effect that AT&T does not need or plan to use FUSF to complete its 4G build out. AT&T's Chairman, Chief Executive Officer and President, Randall Stephenson, recently testified before Congress concerning the many benefits that the proposed acquisition would provide to rural Americans:

This transaction will benefit consumers in many ways: improving service quality and network capacity, fostering innovation, increasing competitive pressure, and helping to ensure that America remains the global leader in mobile broadband. Consumers all across the nation will share in these benefits as the transaction will allow the combined company to build out an advanced new 4G LTE network and bring state-of-the-art mobile broadband to over 97 percent of the American population – more than any other provider and far more than AT&T alone was planning before the transaction.

This represents a private market solution to effectively address the important public policy objective of bringing high-speed mobile broadband to rural, suburban and urban communities across the nation – *all without any subsidies or taxpayer dollars*. This means private capital investment, much of which would not occur but for this transaction, will drive substantial benefits – including private sector jobs in the combined company, in the vendors who support its efforts, in the communities served by the expanded LTE coverage, and in the larger ecosystem of innovative firms whose services will ride on the network (emphasis added).⁹

⁹ "How Will the Proposed Merger Between AT&T and T-Mobile Affect Wireless Telecommunications Competition?" United States House of Representatives Committee on the Judiciary; Subcommittee on Intellectual Property, Competition and the Internet, Hearing conducted May 26, 2011, at http://judiciary.house.gov/hearings/hear_05262011.html.

In his earlier testimony, Mr. Stephenson explicitly agreed that AT&T would, "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."¹⁰

Before designating T-Mobile as an ETC, eligible to receive high-cost support purportedly needed to build out its proposed ETC service area, the Commission must examine Mr. Stephenson's comments and 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? The Commission needs to know, and T-Mobile is in no position today to know AT&T's true intentions, let alone make commitments as to what will really happen with USF support after the merger.

II. Is T-Mobile Truly Committed and Able to Expand Its Service Into Rural Areas?

While several state commissions have approved T-Mobile's ETC applications, others are thoroughly investigating and apparently finding reasons to be concerned about the public interest separate and apart from the merger questions. One of the biggest questions is T-Mobile's commitment and ability to meaningfully expand service into rural areas. Again, due to T-Mobile's confidential filings, it is difficult to know exactly what the facts are in the other states, just as here in Idaho. But reading between the lines, one can get the idea. As Texas PUC Staff stated:

T-Mobile's proof that its designation will provide a "material benefit" seems to rely entirely on its new and planned cell site deployment and its Service Improvement Plan (SIP). [Footnote omitted]. Yet, the information provided by T-Mobile in its deployment plan and its SIP is virtually meaningless. [Followed by 8 lines of redacted text.] * * * Additionally, T-Mobile's allocation methodology

¹⁰ <http://www.senate.gov/fplayers/CommPlayer/commFlashPlayer.cfm?fn=judiciary051111&st=xxx>

makes it impossible to tell whether T-Mobile plans to invest any particular amount of money in Texas, much less in any particular rural study area, because many "network" components can be located anywhere. [Followed by 15 lines of redacted text.] * * * T-Mobile must show that if it is designated as an ETC it commits to provide some new primary benefit in and for the rural study areas for which it seeks designation.

Two examples help explain Staff's position [Followed by 3½ pages of redacted text.]

Texas Staff Brief at 20-26. Whatever is in T-Mobile's secret build plan, it has raised great concern in states where parties have been able to dig beneath the surface of the boilerplate representations made by T-Mobile in its public filings. The Commission should commence a formal docket and subject T-Mobile's plans to further scrutiny to ensure that T-Mobile meets the requirements to be an ETC.

Of the four major wireless carriers, T-Mobile may have the least expansive coverage in Idaho's rural areas. Attachment B hereto is T-Mobile's coverage map in the Northwest. T-Mobile's coverage appears to follow the Interstate highways and, to some extent, major secondary highways. It is a "red flag" that should cause any state commission to investigate the situation thoroughly to ensure not only that T-Mobile is committed to expanding coverage to high cost rural areas, but also that it is capable of doing so. Therefore, the Commission should ensure that T-Mobile's initial and all subsequent build plans are properly targeted to high cost areas of the State, not just filling in urban and suburban coverage. Again, public data is scarce, but Texas PUC Staff's investigation found the following:

[T-Mobile submitted a] list of new and proposed cell sites, its maps and its SIP. Yet, the combination of the information provided in these exhibits demonstrate that T-Mobile has not made a specific or enforceable commitment to improve signal quality, coverage, or capacity or otherwise further the provision of the supported services in its requested rural study areas. [4 lines redacted] Therefore, it is unclear whether or how much signal improvement might result in any given

rural study area. Additionally, it appears that T-Mobile's primary reason for requesting some rural study areas is because they neighbor high value non-rural areas in which T-Mobile cannot get high-cost support. Therefore, since all of the new cell sites deployed by T-Mobile in the future will provide 4G data speeds, it appears that T-Mobile will be building its new 4G network in non-rural areas on the backs of its rural customers and their rural ILECs. T-Mobile has not demonstrated that any federal high cost support it receives as an ETC will be used to improve signal quality, coverage, or capacity, or otherwise be used to further the provision of supported services in the rural study areas for which it seeks designation.

Texas Staff Brief at 35-36 (emphasis added). T-Mobile may be facing similar challenges to and concerns about its build plans in Oregon, although since T-Mobile recently requested a continuance there, the issues have not yet been publicly identified. *See Note 8, supra.*

This Commission knows it need not rubber stamp ETC applications. *See, e.g.,* Order Nos. 29541, 30212, and 30867 in *IAT Communications, Inc. dba NTCH-Idaho, Inc. and NPCR, Inc. dba Nextel Partners* (Case No. GNR-T-03-08) and *Inland Cellular Telephone Company* (Case No. INC-T-06-02) and *CTC Telecom, Inc.* (Case No. CTL-T-09-01)(partially denied). The Commission denied those applications because they “failed the public interest test due to either partial service area coverage or by placing too much emphasis on competition . . . rather than explaining how the particular application’s ETC designation would benefit all customers in its ETC service area.” *Allied Order* at 4 (emphasis added). T-Mobile’s ETC Application appears to suffer from both of these infirmities which the Commission noted in its recent order designating Allied Wireless an ETC.

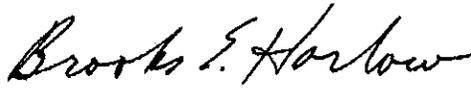
T-Mobile proposes ETC designation in 70 non-rural wire centers and a handful of adjacent rural ILEC study areas. Is this another case of T-Mobile “building in non-rural areas on the backs of its rural customers”? An investigation is needed to ensure that the public interest is served, not just T-Mobile’s.

CONCLUSION

The Commission should not approve T-Mobile's ETC Application based on the record currently before it or on an expedited, modified procedure basis. Pursuant to Commission Order 32240, page 3, the Commenting Parties hereby protest the use of modified procedure in this matter. T-Mobile has failed to provide sufficient information to determine the effects of the proposed AT&T merger on T-Mobile's build-out plans and use of FUSF funds, and the Commenting Parties respectfully request the opportunity to conduct discovery and present evidence. Pursuant to Commission Order 32240, page 3, the Commenting Parties hereby request a hearing be set in this matter.

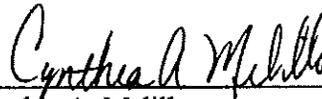
Respectfully submitted this 2nd day of June 2011.

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comments

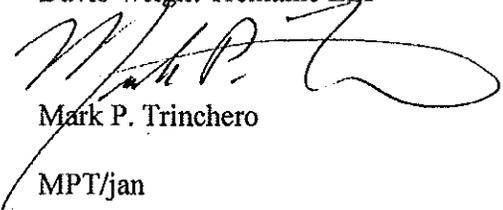
Re: T-Mobile West Corporation's Response to ~~First Production Request of the Commission Staff~~
Case No. TMW-T-10-01

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. Trincherro

MPT/jan

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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 RESPONSE
PURSUANT TO 47 U.S.C. § 214(e)(2).	)	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

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 months¹ 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, 1997.² Protester Syringa's ETC application was processed under Modified Procedure in about four months and approved on August 28, 2008.³ Protester CTC's ETC application was processed under Modified Procedure in just over three months, and approved July 24, 2009.⁴ 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

¹ *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).

² *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).

³ *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).

⁴ *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.⁵

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.⁶ Edge Wireless filed its application on January 22, 2007. Representing the interests of its members, ITA intervened to oppose Edge' application.⁷ There, as here, ITA argued that Modified Procedure was inappropriate and requested a hearing;⁸ ITA also filed a Motion for a Staff Investigation.⁹ Staff supported Modified Procedure, as it does here, and opposed ITA's proposed investigation as an imprudent use of Staff resources.¹⁰ The Commission agreed—denying ITA's Motion for a Staff Investigation and granting Edge's application under Modified Procedure on June 29, 2007.¹¹

Inland Cellular Telephone Company ("Inland") was another wireless ETC applicant seeking designation in areas served by other carriers, including rural ILEC study areas.¹² 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

⁵ 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).

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

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

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

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

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

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

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

of its members.¹³ 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.¹⁴ 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.

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

¹⁴ *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,¹⁵, 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.

¹⁵ 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.¹⁶ 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.¹⁷ Staff issued a production request to

¹⁶ Decision Memorandum, at 3.

¹⁷ 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."¹⁸ 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.¹⁹ 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,²⁰ Staff concluded that "T-Mobile's Application demonstrates that ETC designation is in the public interest."²¹ Staff also cited the increased consumer choice that T-Mobile will provide in recommending approval.²²

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

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

¹⁸ Staff Comments, at 4 and 9.

¹⁹ Staff Comments, at 6.

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

²¹ Staff Comments, at 6.

²² 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.²³ 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.²⁴ 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

²³ 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).

²⁴ 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.²⁵ 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.

* * * * *

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

²⁵ 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.²⁶ 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.”²⁷ Moreover, even if T-Mobile attempted to relinquish ETC status, that decision would be subject to the review and approval of the Commission.²⁸

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.²⁹ 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.

²⁶ See Staff Comments, at 3.

²⁷ 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.”).

²⁸ 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.

²⁹ 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.³⁰ 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.³¹ 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:³²

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

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

³¹ 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.

³² *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.

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.³³ 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

³³ 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."³⁴

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

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. §

³⁴ 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).

³⁵ 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.³⁶

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.³⁷ 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

³⁶ 47 C.F.R. § 54.101.

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