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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
T-MOBILE WEST CORP. FOR DESIGNATION)	CASE NO. TMW-T-10-01
AS AN ELIGIBLE TELECOMMUNICATIONS)	
CARRIER.)	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Donald L. Howell II, Deputy Attorney General, submits the following comments.

BACKGROUND

On December 14, 2010, T-Mobile West Corp. filed an Application to be designated as an “eligible telecommunications carrier” (ETC) in Idaho. T-Mobile is an existing facilities-based wireless telecommunications carrier serving Idaho customers with basic wireless services and advanced broadband services. Application at 1. The Company requests ETC designation pursuant to 47 U.S.C. § 214(e) and this Commission’s ETC requirements in Order No. 29841. *Idaho Code* § 62-610D.

The Application

T-Mobile is a commercial mobile radio services (CMRS) carrier licensed by the Federal Communications Commission (FCC) to provide wireless services in various areas of Idaho. T-Mobile's designated service areas currently include the wire centers of non-rural incumbent local exchange carriers (ILECs – such as Qwest and Verizon)¹ and the wire centers of many rural ILECs. See Application, Atch. A. T-Mobile seeks ETC status in those Idaho wire centers listed in Attachment A.

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 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. When the Company receives such a request, it will explore several alternatives to provide services 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.*

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.* In addition, the Company notes that it already has various retail stores and authorized agents throughout its existing Idaho service area.

¹ On April 1, 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. On July 1, 2010, Frontier Communications Corporation acquired control of Verizon's local and toll operations in Idaho.

Once designated as an ETC, the Company will make available to qualified low-income customers a discounted service offer that meets the “Lifeline” requirements.² T-Mobile plans to make available to qualifying low-income customers: an 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. In its Application, 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. 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 notes it was recognized as earning the highest ranking in J.D. Power & Associates’ satisfaction survey for wireless carriers.

In conclusion, 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.

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. 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.”

² 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.

STAFF ANALYSIS

Staff has reviewed the T-Mobile Application and has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996 ("the Act") and of Commission Order No. 29841. In addition, Staff has analyzed the merits of awarding ETC designation in the non-rural wire center service areas.³

Rural Wire Centers

The T-Mobile Application includes all wire centers currently served by the 12 Idaho rural incumbent local exchange carriers (ILEC). *Id.* Atch. A.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the statutory ETC requirements and requests designation in a rural area served by an ILEC, the Act gives the State Commission more discretion than in the non-rural areas. The Act states that the State Commission *may* grant ETC designation to the additional carrier provided that ETC designation of the additional carrier is in the public interest. 47 U.S.C. § 214(e)(2).

Under the Act and Order No. 29841, greater emphasis is placed on scrutinizing the public interest issues for ETC Applications in rural service areas. Rural wire centers often have widely disparate population densities, and therefore, highly disparate cost characteristics. As such, Staff believes the public interest analysis plays a more important role when reviewing an ETC designation in rural service areas.

Public Interest Analysis

Under Section 214 of the Act, the State Commission must determine that an ETC designation is consistent with the public interest, convenience and necessity. 47 U.S.C. § 214(e)(2). In accordance with the Act, and the ETC requirements of the FCC rules, the Commission has stated:

In adopting the FCC's proposed public interest analysis, this Commission adopts an analytical framework for making a public

³ The term "service area" denotes a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms. In the case of a rural telephone company, service area is defined as a company's study area unless and until the FCC and the State Commission, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company. 47 U.S.C. § 214(e)(5).

interest determination. This framework necessarily involves the consideration of certain enumerated factors, such as the benefits to consumer choice, the unique advantages and disadvantages of the applicant's service offering, and, where applicable, consideration of creamskimming. However, the Commission may consider other relevant public interest determinations in its public interest determination.

Order No. 29841 at 15-16.

This Commission has consistently applied the public interest analysis in previous decisions. The Commission denied the ETC Applications of wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-08). In addition, the Commission partially denied, Inland Cellular Telephone Company (Case No. INC-T-06-02) and CTC Telecom, Inc. (Case No. CTL-T-09-01), because those applicants failed to carry out their burden of demonstrating that their Applications for ETC designation in rural areas were in the public interest. *See* Order Nos. 29541, 30212 and 30867. These Applications failed the public interest test by proposing partial service area coverage or by placing too much emphasis on competition and relying on approved state and federal applications in very different service areas rather than explaining how the particular applicant's ETC designation would benefit *all* customers in its ETC service area.

Applicants have the burden of proof to demonstrate that the public interest is served by designating them as an ETC in these rural areas. Order No. 29541 at 6 *citing Virginia Cellular, LLC Petition/or Designation as an ETC*, 19 F.C.C.R. 1563 (2004). The T-Mobile Application makes five public interest arguments: 1) the Company meets all requirements for designation as an ETC; 2) ETC designation is in the public interest because consumers will benefit from competitive pricing and new services, such as T-Mobile Lifeline Plan; 3) as T-Mobile expands its network in Idaho, consumers will benefit from a high level of service quality and more service options; 4) the designation will not adversely impact the universal service fund; and 5) benefits of increased competition. *Id.* at 8-10.

Other Public Interest Considerations

When applying the public interest test in an Application for ETC designation, Staff believes there are other considerations that have not been mentioned, but merit discussion.

1. Contributions to Idaho Programs. As in the more recent Applications for Certificate of Public Convenience and Necessity (CPCN), the Commission grants a CPCN subject to certain conditions. One of these conditions is a carrier's contribution to the Idaho Universal Service Fund (USF), Idaho Telephone Relay Service (TRS), and Idaho Telephone Service Assistance Program (ITSAP). The Commission also considers any future reporting deemed appropriate for competitive communications providers. Staff believes that if these requirements are appropriate for a CPCN, then it should also be appropriate for an ETC designation that is subject to greater scrutiny than a CPCN. Staff believes that these conditions, pursuant to *Idaho Code*, also apply to an ETC designated company.

2. Cream Skimming Analysis. In evaluating the public interest portion of an ETC Application, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is whether the Applicant is committed to providing universal service throughout the rural areas or, if not, whether the potential for cream skimming exists. Staff believes the Company avoids the appearance of cream skimming where the Application includes all wire centers in a designated service area. Staff notes that the T-Mobile Application includes a 2011 and 2012 network improvement plan (Application, Confidential Attachment B), with wire center specific details.

In addition to the information contained in the T-Mobile Application, Staff believes the Company is required to meet the public interest tests discussed in Other Public Interest Considerations (above) even when they are not explicitly stated in the Application. In sum, the Staff determines that T-Mobile's Application demonstrates that ETC designation is in the public interest.

Network improvement Plan

The two-year network improvement plan must describe with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Order No. 29841 at 18.

As mentioned earlier, T-Mobile presents detailed information outlining its network improvement plan for years 2011 and 2012. The service improvement plan includes capital and operating expenditures for each wire center. Application, at Confidential Exhibit B.

Staff believes T-Mobile provides a reasonable improvement plan. Additionally, with grant of ETC designation, companies must annually submit a Two-Year Network Improvement Plan and Progress Report to maintain the ETC designation. This annual requirement will hold the Company accountable for making a reasonable effort to implement the network improvement plan. *See Appendix Reporting Requirement, Order No. 29841.*

Ability to Remain Functional in Emergencies

The Commission explained in Order No. 29841 that it understands “different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements,” especially in an emergency. Order No. 29841 at 10. To demonstrate the ability to remain functional during emergencies, the ETC applicant must show that it has a “reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing different traffic spikes resulting from emergency situations.” *Id.* at 11.

In its Application, T-Mobile describes the components that make up its fault-tolerant network. Application, Exhibit D. These components are, portable back-up generator at various network locations throughout T-Mobile’s network that can be deployed in an emergency; the ability to reroute traffic around damaged or out-of-service facilities through the deployment of cell-on-wheels (COWs); redundant facilities and dynamic rerouting of traffic over alternate facilities; a network control center that monitors network traffic; and fixed generators with battery back up systems at a majority of sites. *Id.* Based on these factors, Staff believes the fault-tolerant network, as described in this Application, provides adequate support to demonstrate the Company’s ability to remain functional in an emergency.

Other ETC Designation Requirements

Additional requirements for ETC designation, not previously discussed, are detailed in the Appendix 1 of Order No. 29841 and discussed more fully below.

1. Common Carrier Status. T-Mobile Telecom is a Commercial Mobile Radio Services (CMRS) carrier providing “mobile service” as defined in 47 U.S.C. § 153(27). Application at 3.
2. Provide the Universal Services. T-Mobile offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 3-4.

3. Advertising. T-Mobile plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area, by media of general distribution. *Id.* at 5-6

4. The Commitment and Ability to Provide Supported Services. T-Mobile is committed to answering all reasonable requests for service within its proposed ETC service area. *Id.* at 5.

5. A Commitment to Consumer Protection and Service. T-Mobile will comply with all applicable Idaho service quality standards and consumer protection rules, and will also abide by the Consumer Protection Standards established by the Cellular Telephone Industry Association (CTIA) consumer code. *Id.* at 7.

6. Description of the local Usage Plan. T-Mobile asserts that it provides several different rate plans with varying amounts of local usage that are compatible to the offerings of the ILECs. The price plans are set forth at www.t-mobile.com. *Id.* at 8.

7. Tribal Notification. T-Mobile states that it will comply with this requirement. No further information was provided with the Application. *Id.*

Staff believes T-Mobile meets the aforementioned ETC designation requirements.

High-Cost Federal Funding

The original goal of the federal Universal Service Fund (USF), under the Telecommunications Act of 1934, was to provide at least one access line for basic telephone service to every household in the U.S., and at a reasonable, subsidized cost.

Staff is aware of the high-cost federal funding issues for rural areas. Staff recognizes and is concerned about the growth of high-cost funds, particularly as it relates to Competitive ETCs (CETC). The escalating high-cost fund is an ongoing concern that is being addressed at the federal level. On April 29, 2008, the FCC adopted the Federal-State Joint Board on Universal Service's recommendation to impose an interim emergency cap on the amount of high-cost support that CETCs may receive. *See* FCC 08-122. Specifically, effective May 1, 2008, total annual CETC support for each state will be capped at the level of support that CETCs in that state were eligible to receive during March 2008 on an annualized basis. All newly designated and existing CETCs in Idaho will share the high-cost USF support in the amount that was distributed to Idaho CETCs in March 2008. The only exception to this interim cap is if a CETC: (1) files cost data demonstrating that its costs meet the support threshold in the same manner as the ILEC;

or (2) serves tribal lands or Alaska Native regions. The interim cap will remain in place until the FCC adopts comprehensive reform measures. *Id.*

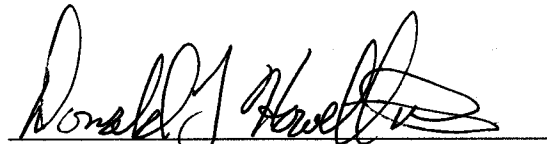
The Commission is not in a position to alter public policy regarding the federal USF draw. The Commission must follow the rules and regulation even if troubled by the outcome. In the meantime, Staff does not believe it should recommend denial of an ETC Application that reasonably meets all of the statutory requirements for an ETC designation. Denial of an ETC Application also denies the rural consumers the benefit of Idaho Telephone Service Assistance Program (ITSAP), federal Lifeline and Linkup support, as well as other potential technological and safety benefits that may be offered by the CETC. Staff wishes to note, however, that to the extent the areas are already served, these benefits are available to the consumers through the ILECs or other wireless carriers.

STAFF RECOMMENDATION

Staff has reviewed the application of T-Mobile West for designation as an ETC. Staff believes that the Application demonstrates a commitment on the part of the Company to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF through its territory, it has provided a two-year network improvement plan, the Company has addressed all of the public interest questions that accompany an ETC application, and will provide multiple pricing plans which will increase customer choice, including a Lifeline plan.

Staff believes that the application of T-Mobile West for designation of an ETC is in the public interest and should be approved.

Respectfully submitted this 2 day of June 2011.


Donald L. Howell, II
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2ND DAY OF JUNE 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. TMW-T-10-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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