Office of the Secretary
Service Date
August 4, 2005

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF WWC HOLDING CO., INC. DBA CELLULAR-ONE® SEEKING DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER THAT MAY RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT	))))))	**CASE NO. WST-T-05-1** **ORDER NO. 29841**

On March 17, 2005, the Federal Communications Commission (FCC) adopted new rules for designating eligible telecommunications carriers (ETCs). *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, 20 F.C.C.R. 637. The FCC's new rules apply only to those ETC proceedings before the FCC pursuant to 47 U.S.C. § 214(e)(6). However, the FCC encouraged the state commissions to adopt similar requirements when designating ETCs pursuant to 47 U.S.C. § 214(e)(2). ETC designation allows a carrier to be eligible for federal universal service support. 47 U.S.C. § 214(e).

The Commission sought comment on the merits of the FCC's new ETC rules on April 1, 2005, Order No. 29749, and again on May 27, 2005, Order No. 29791. After considering the FCC's new ETC rules, the FCC Order, and the filed comments, we find it appropriate to adopt new ETC eligibility and reporting requirements in Idaho. These new Idaho ETC requirements are not identical to those adopted by the FCC, but they are consistent with both the FCC's new rules and the purposes of the federal Telecommunications Act of 1996.

The new Idaho requirements are set forth in greater detail below. In addition, the complete filing requirements for ETC designation and certification are attached as an Appendix to this Order.

BACKGROUND

A. Procedural History

On February 17, 2005, WWC Holding Co., Inc. d/b/a CellularOne® ("Western Wireless") submitted an Application requesting designation as an ETC in certain Idaho service areas pursuant to 47 U.S.C. § 214(e)(2). While the Western Wireless Application was pending, the FCC issued a decision adopting additional mandatory requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. § 214(e)(6) (the "new FCC Rules").

CC Docket No. 96-45, 20 F.C.C.R. 6371. The FCC encouraged the state commissions to adopt these additional requirements when designating ETCs pursuant to 47 U.S.C. § 214(e)(2). *Id.*

On April 1, 2005, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments on both the Western Wireless Application and the new FCC Rules. Order No. 29749 at 2. On May 27, 2005, after considering the comments filed in the first comment period, the Commission issued Order No. 29791 essentially bifurcating the proceedings to allow the new FCC Rules to be considered independently from the Western Wireless Application and seeking additional public comment on the new FCC Rules. Additional comments were due no later than June 17, 2005.

In response to the Commission's Order, timely comments on the merits of the new FCC Rules were filed by: the Commission Staff; Western Wireless; Citizens Telecommunications Company of Idaho, Inc. dba Frontier Communications of Idaho ("Frontier"); CenturyTel of the Gem State, Inc. and CentyuryTel of Idaho, Inc. ("CenturyTel"); the Idaho Telephone Association ("ITA"); and Potlatch Telephone Company dba TDS Telephone ("Potlatch"). In addition, Verizon Northwest Inc. ("Verizon") filed comments four days after the deadline and Qwest Corporation ("Qwest") sent a letter to the Commission on July 13, 2005, after the Commission had made its decision regarding the FCC Rules. The Qwest letter was not considered in the Commission's decision.

B. The Statutory and Regulatory Framework

1. Commission Authority

The Commission has jurisdiction and authority to designate carriers as ETCs pursuant to the federal Telecommunications Act of 1996 (the "federal Act") as set forth in 47 U.S.C. § 214(e)(1)-(2) and 47 C.F.R. § 54.101. Under the federal Act, the Commission is also responsible for the annual ETC certification process for Idaho service areas. 47 C.F.R. § 54.313 - .314. Annual certification allows carriers to receive federal universal service funds each year.

Under Idaho law, the Commission has "full power and authority to implement [the federal Act]...." *Idaho Code* § 62-615(1). The Commission's state statutory authority specifically includes the promulgation of any "procedures necessary to carry out the duties authorized or required by [the federal Act]...." *Idaho Code* § 62-615(3).

2. ETC Eligibility Requirements

To be designated an ETC, the telecommunications provider must: (1) be a "common carrier" as defined by 47 U.S.C. § 153(10); (2) offer throughout its proposed service areas the universal services[1] set forth in 47 C.F.R. § 54.101(a) either by using its own facilities or a combination of its own facilities and the resale of another carrier's services; and (3) must advertise the availability of its universal service offering and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1).

For those ETC applicants seeking designation in an area already served by an incumbent ETC, the federal Act further provides, "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier." 47 U.S.C. § 214(e)(2). In addition, before "designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find the designation is in the public interest." *Id.*

Traditionally, the FCC has allowed the state commissions to determine when an ETC application is "consistent with the public interest, convenience, and necessity" and when designating an ETC in a rural telephone company service area is "in the public interest." This has allowed state commissions to consider local factors and develop state-specific policies regarding universal service support.

This Commission has refined the "public interest" standard in two previous Orders. In Order No. 29541, issued on July 23, 2004, the Commission denied the ETC Applications of two wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc. or Clear Talk and NPCR, Inc. dba Nextel Partners, because both applicants failed to carry their burdens demonstrating that their applications, which applied to areas served by rural telephone companies, were in the public interest (the "*Clear Talk Order*"). On January 13, 2005, the Commission issued Order No. 29686 approving the ETC Application of a wireline carrier, VCI

[1] The enumerated services include: (1) voice grade access to the public switched network; (2) local calling; (3) touch tone signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to 911 emergency services where available; (6) access to operator services; (7) access to long-distance service; (8) access to directory assistance; and (9) toll limitation service. 47 C.F.R. § 54.101(a).

Company, in areas currently served by the incumbent local exchange carrier (ILEC), Qwest (the "*VCI Order*").

In determining when an ETC application is "consistent with the public interest, convenience, and necessity," this Commission essentially adopted the cost-benefit analysis set forth by the FCC and "weigh[ed] whether the potential benefits of ETC designation outweigh the potential harms." *Clear Talk Order* at 6 (citing *Virginia Cellular, LLC Petition for Designation as an ETC*, 19 F.C.C.R. 1563, 1574 (2004)); *VCI Order* at 3. In the *Clear Talk Order*, the Commission also enumerated the public interest factors specifically applicable to applications for ETC designation in rural telephone company service areas. The Commission found

> that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding the quality of the telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame.

Clear Talk Order at 6 (quoting *Virginia Cellular*, 19 F.C.C.R. at 1574).

3. Annual Certification Requirements

After initially designating a carrier as an ETC, this Commission has annual certification responsibilities it must meet in order for the state's carriers to receive federal USF funding each year. Pursuant to FCC regulations, in order for eligible carriers to continue to receive federal USF funds, the Commission "must file an annual certification with the Administrator and the [FCC] stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. § 54.313 (applying USF to non-rural carriers) and .314 (applying USF funds to rural carriers).

C. The New FCC Rules

The new FCC Rules issued in March 2005 amend sections of 47 C.F.R. Part 54. The changes include: (1) additional ETC eligibility requirements; (2) new annual reporting obligations; and (3) new guidelines for the annual certification process. These changes are outlined in greater detail below.

1. Eligibility Requirements

The additional eligibility requirements are included in a new section, 47 C.F.R. § 54.202. These additional requirements include five new application requirements, a reporting deadline, a public interest analysis, and a requirement that the ETC applicant provide any affected tribal government notice of the ETC application.

The additional application requirements include: (1) a commitment to provide supported services, including the commitment to provide service throughout the proposed service area to all customers making a reasonable request and the submission of a five-year network improvement plan; (2) the ability to remain functional in emergencies; (3) a commitment to consumer protection and service; (4) a local usage plan comparable to that of the incumbent local exchange carrier (ILEC); and (5) recognition that the carrier may someday be asked to provide equal access. 47 C.F.R. § 54.202(a). These new application requirements apply to all ETC applications filed on or after the effective date of the rules. *Id.* In addition, all previously designated ETCs and those ETC applicants with applications pending on the effective date of the rules must demonstrate that they meet these new requirements by October 1, 2006. 47 C.F.R. § 54.202(b).

The new FCC Rules also include a public interest standard that applies to all competitive ETC applicants, regardless of whether they seek designation in areas served by a rural carrier. 47 C.F.R. § 54.202(c). This public interest standard requires a cost-benefit analysis considering: (1) the benefits of increased consumer choice; (2) the impact of the designation on the universal service fund; and (3) the unique advantages and disadvantages of the competitor's service offering. *Id.* In situations where an ETC applicant seeks designation below the study level of a rural ILEC, the new FCC Rules also require consideration of potential cream skimming effects. *Id.* Finally, the new rules establish that tribal government notification is the responsibility of the ETC applicant. 47 C.F.R. § 54.202(d).

2. Reporting Requirements

Building on the initial eligibility requirements, the new FCC reporting requirements include: (1) a report on the five-year service quality improvement plan; (2) detailed outage information; (3) the number of unfulfilled service requests; (4) the number of complaints per 1,000 handsets or lines; (5) certification that it is complying with applicable service quality standards and consumer protection rules; (6) certification that the carrier is able to function in

emergency situations; (7) certification that the carrier is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas; and (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area. 47 C.F.R. § 54.209(a). These annual reports are due beginning October 1, 2006 and on October 1 every year thereafter. 47 C.F.R. § 54.209(b).

3. Certification Requirements

The new certification rules are primarily filing deadlines that must be met in order for the carrier to receive federal universal service support. *See* 47 C.F.R. §§ 54.307, .313, .314, and .809. These new rules are not discretionary, and thus are not considered in this Order. The Commission will continue to follow the FCC's certification requirements for federal universal service funding.

COMMENTS AND COMMISSION FINDINGS

A. General Comments

All of the comments filed, except those from Verizon, generally recommend that the Commission adopt the new FCC Rules for ETC designation. CenturyTel, Frontier, and Potlatch also propose additional requirements for ETC designation and Western Wireless proposes some modifications to the FCC Rules.

Generally, the comments in support of the FCC Rules argue that the Commission should adopt the FCC Rules, because they provide a reasonable and predictable framework for future ETC decisions and are generally consistent with previously articulated Commission policies. Additional arguments to adopt all of the FCC Rules are that the FCC Rules: ensure that designations are provided only to those ETC applicants able to serve all customers in a service area; assist states in conducting the public interest analysis consistent with the Act; help protect the long-term sustainability of the universal service fund; and provide a more uniform ETC process among the states.

Verizon urges the Commission to refrain from adopting any new rules that would result in increased regulatory burdens on ILECs. As a wireline ILEC, Verizon argues that it is already subject to the Commission's Customer Relations Rules and numerous financial reporting requirements and should not be included in any additional requirements in order to maintain its status as an ETC.

Commission Finding. The Commission evaluated each of the FCC's new rules separately and decided to implement some but not all of the FCC's guidelines. As demonstrated below, the Commission adopts only those requirements we find useful and necessary to implement our duties and responsibilities under the federal Act. These new Idaho requirements will help the FCC achieve its goal of bringing greater uniformity to state proceedings while allowing the Idaho Commission to consider the factors it deems most important to the ETC process in Idaho. As outlined below, the new requirements will also provide carriers greater clarity in the ETC designation process in Idaho.

B. Eligibility Requirements

1. The Commitment and Ability to Provide Supported Services

To be eligible as an ETC under the new FCC Rules, a carrier must demonstrate the commitment and ability to provide supported services by: (1) committing to provide service throughout the proposed service area to all customers making a reasonable request; and (2) submitting a five-year plan that describes proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed service area. 47 C.F.R. § 54.202(a)(1).

Staff. The Commission Staff supported both parts of the rule finding that the requirements are consistent with past Commission decisions. Specifically, Staff maintained that the process set forth in the new FCC Rules for handling service requests addresses past concerns of the Commission regarding the need for wireless ETC applicants to have a procedure for handling requests for service. Additionally, Staff felt that the five-year plan helps demonstrate a commitment to consumers in rural areas and furthers the goals of universal service.

Western Wireless. Western Wireless also supported the clear process set forth in the rule for addressing requests for service in the wireless context and urged the Commission to consider similar standards applicable to landline carriers. However, Western Wireless opposed the five-year service improvement plan, arguing it is too speculative and would cause significant administrative burdens. To ensure the receipt of better information and reduce unnecessary regulatory expenses, Western Wireless suggested that the Commission require a one-year network improvement plan for the purpose of determining ETC eligibility and then require all carriers file detailed expenditure and network improvement reports covering a two-year period for the purpose of annual certification. These two-year reports would cover the previous year's

spending and the future year's anticipated spending. In addition, Western Wireless suggests that these reports be based on information from the ETC's designated service area, as opposed to the wire center.

ITA. ITA supported both the process set forth for responding to service requests and the five-year improvement plan declaring that the requirements are reasonable and necessary to ensure that USF funds are used for their intended purposes. ITA argued that the commitment to provide service upon reasonable request would ensure that the ETC applicant makes reasonable efforts to fulfill carrier of last resort obligations that come with ETC status. In addition, ITA stated that the five-year plan would explain precisely where and how USF support would be deployed to serve the public interest.

Verizon. Because Verizon is already subject to financial reporting requirements as an ILEC, Verizon argued that requiring it to submit a five-year plan showing what it would do with universal service funds would be redundant and unnecessary.

Commission Finding. With one exception, the Commission adopts the FCC's proposed guidelines regarding the ETC's appropriate response to service requests. The exception is that the Commission finds the requirement of a two-year, rather than a five-year, network improvement plan to be more appropriate. This Commission has already determined that "an applicant carrier must reasonably demonstrate ... its ability and willingness to provide service upon designation." *Clear Talk Order* at 5 (citing *Western Wireless*, 15 F.C.C.R. at 15178 at ¶ 24 (2000). By requiring a commitment to provide service upon reasonable request and the development of a two-year network improvement plan, we are giving this requirement additional substance and shape.

All of the filed comments support the commitment to providing service upon reasonable request, and the Commission finds that the process outlined in the FCC Rules provides necessary clarity to carriers considering requests for service. Thus, to meet the required commitment to provide service upon reasonable request, an ETC applicant in Idaho must certify that it will: (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment;

(b) deploying roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

We decided not to adopt the five-year network improvement guideline set forth by the FCC. Instead, the Commission will require a two-year network plan, which should provide more meaningful information and focus the ETC applicants on future plans to improve service. The Commission recognizes that these plans will be fluid and subject to re-evaluation based on changing market conditions and the amount of universal service support actually received. However, the Commission finds that a two-year network plan in the dynamic telecommunications market strikes the appropriate balance between demonstrating a commitment to improve services and obtaining meaningful information.

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. Each applicant shall also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its reasons for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

2. The Ability to Remain Functional in Emergencies

Under the new FCC rules, to demonstrate the ability to remain functional in emergency situations, the ETC applicant must show that it has a reasonable amount of back-up power, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. 47 C.F.R. § 54.202(a)(2). The FCC adopted these requirements as a minimum stating that most emergency situations are local in nature. Therefore, the FCC encouraged state commissions to adopt additional, geographically specific factors relevant for consideration.

Staff. The Commission Staff supported the FCC emergency functionality requirement as an important public safety goal. In addition, Staff found that emergency planning by an ETC demonstrates its commitment to service quality and reliability.

Western Wireless. Western Wireless did not oppose the emergency functionality requirement provided that it is imposed in a competitively neutral manner and suggests that the Commission consider requiring ETC applicants to commit to industry-standard best practices for addressing emergency situations. According to Western Wireless, most wireless carriers maintain back-up power at both cell sites and switches that allow the network to remain functional for four to eight hours during a loss of external power. In addition, carriers may have one or more back-up generators available if external power is lost for an extended period of time.

In terms of re-routing, Western Wireless argues that it engineers a degree of redundancy into its transport network but it is impossible to ensure that all calls will be delivered when a cell site goes down, because re-routing depends on the availability of another site to pick up the signal. Western Wireless argues that the availability of another site is a function of technology and network engineering and should not be seen as lack of ability or commitment to provide service in emergency situations.

With regard to traffic spikes, Western Wireless stated that wireless companies generally engineer their networks so that fewer than 2% of calls are blocked at cell sites at the busiest hour of the day, and less than 1% of calls are blocked at the switch. In addition, excess digital traffic can be directed to open analog channels. According to Western Wireless, these standards should be sufficient, because emergencies are rare and unpredictable and no wireless carrier could justify spending capital resources to overbuild capacity at every cell tower.

Verizon. Verizon argued that it is already committed to maintain service in the face of weather and other emergencies, because of its "carrier-of-last-resort" responsibilities; thus, requiring an additional demonstration of emergency functionality would be redundant.

Commission Finding. The Commission will follow the FCC's proposed guidelines regarding emergency functionality. These requirements, as Staff suggested, demonstrate a commitment to service quality and reliability. Further, while different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements, the requirements do not on their face appear to favor one technology over another.

Thus, in order to demonstrate the ability to remain functional in emergencies, the ETC applicant must demonstrate 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 traffic spikes resulting from emergency situations.

3. A Commitment to Consumer Protection and Service

Pursuant to 47 C.F.R. § 54.202(a)(3), an ETC applicant must demonstrate a commitment to satisfy applicable consumer protection and service quality standards, including a commitment from wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Code").

Staff. The Commission Staff supported this requirement emphasizing that the Commission may decide to impose additional consumer protection and service quality standards in the future on a case-by-case basis.

Western Wireless. Western Wireless supported the adoption of this FCC Rule and the CTIA Code, because Western Wireless believes that adherence to the principles and practices set forth in the CTIA Code ensures that wireless carriers provide high-quality consumer service.

Potlatch. Potlatch argued that all ETCs should be held to the same service and consumer protection standards relating to voice quality, network reliability, repair standards, held service orders, emergency back-up (eight hour minimum), disconnection, deposits, late fees, consumer complaints, billing requirements, and lifeline participation.

Verizon. Verizon argued that it is already committed to existing state customer protection rules as an ILEC; thus, requiring Verizon to comply with this rule would be redundant.

Commission Finding. Given the general agreement among the commenters, the Commission adopts the FCC's proposed guidelines regarding customer protection and service. Recognizing that there may be different standards applicable to the ETC applicant based on best practices in the industry and the technology involved, the Commission will require that all wireless applicants for ETC designation agree to comply with the CTIA Code. Other similar commitments will be considered on a case-by-case basis.

4. A Local Usage Plan Comparable to that of the ILEC

Under the new FCC Rules, ETC applicants must demonstrate that their usage plan is comparable to the ILEC(s) in the service areas for which it seeks designation. 47 C.F.R. §

54.202(a)(4). The FCC Rule does not include a specific local usage threshold allowing the comparison to be done on a case-by-case basis.

Staff. The Commission Staff supported this requirement explaining that the local usage plan need not be a fully flat rated plan but should allow sufficient minutes of use to meet customer needs.

Western Wireless. Western Wireless opposed this requirement, because it alleges that it is unnecessary, not competitively neutral, and reduces consumer choice. Western Wireless argued that it should be allowed to offer the FCC's supported services within service plans that are designated to satisfy consumers in a competitive market. Further, making the ILEC's service offering the baseline is at odds with the principle of competitive neutrality.

Nonetheless, should the Commission adopt a comparability requirement, Western Wireless suggested that the comparison be made with reference to one plan available from the ETC applicant, rather than all plans that contain the supported services. Western Wireless further suggested that the Commission consider the values of mobility, larger local calling areas, and other features of wireless service when comparing the ETC applicant's service offering with that of the incumbent.

Verizon. Verizon opposes applying this requirement to an ILEC, such as Verizon, arguing that it makes no sense when the ETC is the ILEC.

Commission Finding. Rather than require that the applicant's usage plan is comparable to that of the ILEC, we find that it is sufficient for the ETC applicant to simply describe its local usage plans and those of the ILEC. This will assist the Commission in identifying any benefits to consumer choice that the applicant might provide and the unique advantages or disadvantages of the applicant's service offering. This information is essential to the public interest analysis.

The Commission does not intend to require that the ETC applicant's service plan is identical to that of the incumbent. With competition, the customers should have the option to obtain the type of service offering they would like. The Commission rejects the comparability requirement, because it could potentially discourage carriers from offering diverse choices.

5. Recognition that the Carrier May Someday be Asked to Provide Equal Access

Under the new FCC Rules, in order to be eligible for ETC designation, the applicant must certify that it may be required to provide equal access to long distance carriers in the event

that no other ETC is providing equal access within the service area. 47 C.F.R. § 54.202(a)(5). Equal access includes the ability to access the presubscribed long distance carrier of the customer's choice by dialing a single digit "1" versus a multiple digit access code (NXXX_).

Staff. The Commission Staff supported this requirement. Staff argued that if the ILEC or other ETCs in a service area relinquish their ETC designation, it is in the public interest to require the remaining ETC to provide equal access.

Western Wireless. Western Wireless argued that the Commission should not require equal access certification, because the FCC, and not the state commission, has the authority to require a commercial mobile radio services (CMRS) provider to provide equal access.

ITA. ITA suggested that the Commission go further than the FCC rule and require an ETC applicant to explain how it would provide equal access to long distance carriers if that becomes necessary.

Verizon. Verizon stated that it is already subject to the equal access requirement as an ILEC; thus, requiring Verizon to comply with this rule would be redundant.

Commission Finding. The Commission agrees with Western Wireless and concludes that it will not ask an ETC applicant to certify that it may someday be asked to provide equal access. We find that this requirement is based entirely on speculation and would serve no substantive purpose. Should all other ETC providers relinquish service in a given area, then the Commission at that time will address what requirements might fall upon the sole remaining ETC.

6. Reporting Deadline

Pursuant to 47 C.F.R. § 54.202(b), those carriers previously designated as ETCs or with ETC applications pending on the effective date of the new FCC Rules will be required to show that they meet the eligibility requirements no later than October 1, 2006 as part of the annual certification filing. According to the FCC, different ETCs should not be subject to different obligations, going forward, because of when they first obtained ETC designation.

Western Wireless. Western Wireless filed the only comments on this issue arguing that any new substantive and reporting standards should be applicable to ETC applications filed in 2006 and should not apply to pending applications. In addition, Western Wireless supported the application of the new rules to all carriers, not just competitive ETCs or wireless ETCs.

Commission Finding. The Commission agrees with the FCC's conclusion that different ETCs should not be subject to different obligations depending on when they first

obtained ETC designation. Therefore, all carriers that file ETC applications after the date this Order is issued and all carriers previously granted ETC status by this Commission shall demonstrate that they comply with the additional eligibility requirements set forth above. All carriers filing ETC applications after the date of this Order shall include such information in the ETC application, and all carriers previously granted ETC status by this Commission shall file a report demonstrating that they meet the additional eligibility requirements no later than September 1, 2006. This will allow the Commission sufficient time to complete a review of the information prior to annual certification, which is due on October 1 of each year.

The Commission does not at this time determine whether these additional requirements should also apply to the only ETC application currently pending, which is that of Western Wireless, Case No. WST-T-05-1. That issue is reserved for consideration at a later date and shall be briefed in the context of this Commission's consideration of the Western Wireless Application, which shall take place at a hearing to be scheduled as soon as practicable following issuance of this Order.

7. Public Interest Analysis

The new FCC Rules describe the factors to be considered when determining whether designating an additional ETC in a rural or non-rural telephone company service area is in the public interest. This rule also requires consideration of potential cream skimming effects in instances where an ETC applicant seeks designation below the study area level of a rural telephone company.

Staff. The Commission Staff supported the FCC's public interest analysis. Staff asserted that the Commission has applied these same considerations in past ETC designation decisions, including the Commission's *Clear Talk Order*, Order No. 29541.

Western Wireless. Western Wireless also supported the adoption of the public interest analysis set forth in the new FCC Rules. However, Western Wireless alleged that the new guidelines depart from the Commission's *Clear Talk Order*. Western Wireless asserted that in the *Clear Talk Order* the Commission noted that the ETC applicant had not demonstrated the need to receive universal service support in order to extend service. Western Wireless argued that such a "needs test" is discriminatory and should not be applied.

Western Wireless also argued that the proposed cream skimming analysis should go further. Western Wireless suggested that if the rural telephone company has disaggregated

support or if the population analysis does not demonstrate cream skimming, then the Commission should be required to authorize the applicant's designation in the wire centers where designation is sought.

Frontier. Frontier supported the proposed public interest standard. Frontier argued that the costs to be considered should include higher costs per line, because the cost of providing access in rural areas must be spread over a smaller customer base, and greater demands on the USF fund, as competitive ETCs receive support for duplicate network costs.

ITA. ITA also supported the proposed public interest standard finding the required analysis both reasonable and necessary to prevent unfair competition and excessive universal service support for competitive ETCs.

Potlatch. Potlatch also supported the proposed public interest standard. Potlatch argued that some rural areas may not be able to support more than one ETC due to the high cost nature of the serving area. Potlatch further proposed that if the Commission decides to designate more than one ETC in a service area, it should consider limiting the number of ETCs designated in rural company service areas to no more than one wireline and one wireless provider in order to prevent undue pressure on the universal service support fund.

Commission Finding. Noting that all of the commenters support the FCC's proposed public interest analysis, the Commission adopts this analysis. Further, the Commission agrees with Staff and finds that the FCC's proposed public interest determination is consistent with the Commission's previous decisions and was already applied in the *Clear Talk Order*. Order No. 29541.

The Commission further finds that Western Wireless' argument that the FCC's public interest determination departs from the Commission's previous analysis in the *Clear Talk Order* reflects a misunderstanding of the public interest analysis. According to Western Wireless, the FCC's proposed public interest determination would limit the Commission's public interest analysis only to those factors identified by the FCC. We reject such an interpretation of the FCC's guidelines. In adopting the FCC's proposed public interest analysis, this Commission adopts an analytical framework for making a public 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 cream skimming. However, the Commission may consider other relevant public interest determinations in its public interest determination.

Thus, in determining whether ETC designation is in the public interest, this Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an ETC applicant seeks designation below the study level of a rural telephone company, the Commission shall also conduct a cream skimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC does not seek designation. In its cream skimming analysis, the Commission shall consider other factors, such as disaggregation of support by the ILEC. In addition, the Commission may consider any other factors it deems relevant to determining whether an application is in the public interest.

8. Tribal Notification

Only Western Wireless addressed this issue. Western Wireless does not oppose the Commission's adoption of such a rule where relevant and applicable.

Commission Finding. The Commission will follow the FCC's proposed guidelines for tribal notification. A common carrier seeking ETC designation for any part of tribal lands shall provide a copy of its application to the affected tribal government or tribal regulatory authority, as applicable, at the time it files its application with the Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an ETC on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable.

C. Reporting Requirements

The FCC Rules require annual reports based in large part on the eligibility requirements. *See* 47 C.F.R. § 54.209(a). Pursuant to 47 C.F.R. § 54.209(b), these annual reports are due beginning October 1, 2006 and on October 1 every year thereafter.

<u>Staff</u>. The Commission Staff supported all of the reporting requirements. Without these annual reports, Staff notes, the designation requirements could become "empty promises."

<u>Western Wireless</u>. Western Wireless supported the new annual reports regarding unfulfilled requests for service, certification regarding CTIA compliance, and certification regarding emergency functionality. In addition, Western Wireless generally supported a

Commission requirement regarding outage reports. However, Western Wireless argued that the reporting should track the reporting already required by federal law. Pursuant to federal law, all carriers providing voice communications are subject to federal outage reporting requirements. *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-188 (Aug. 19, 2004) ("Outage Order"). These standards are tailored to the technology used and are similar but not identical to the new FCC Rule. Western Wireless argued that the Commission should require annual outage reports identical to those set forth in the Outage Order. This will provide the Commission with sufficient information without imposing a second set of standards for tracking and reporting outages.

Western Wireless opposed reporting requirements regarding service complaints and certification that its local usage plan is comparable to that of the incumbent. In addition, because Western Wireless disagrees with the eligibility requirement regarding a five-year plan, it also opposed an annual filing regarding such a plan. Western Wireless argued that an annual report covering a 24-month period would be more reasonable. Western Wireless further suggested that this annual report include: (1) how much support the carrier received in the prior calendar year and how that support was used; (2) how actual spending differed from any plans previously provided to the Commission; and (3) how much support the carrier anticipates receiving in the current calendar year and how that support has been and will be used. This annual filing would also include an affidavit from a company representative stating that support received in the following year would only be used for its intended purposes and would be treated as "trade secret" and not available for public disclosure. According to Western Wireless, this more intense certification process is similar to that taken in other states, including West Virginia, Maine, Vermont, Oregon, and South Dakota.

Commission Finding. The Commission finds that annual reports are necessary to provide us with the information necessary to fulfill our certification obligations under the federal Act. In addition, annual reports based on the initial eligibility requirements will help reinforce these eligibility requirements. Moreover, annual reports regarding outages and customer complaints, though not directly related to the initial eligibility requirements, will help ensure that USF funds are being used for the purpose of improving service quality in high-cost areas. Therefore, beginning on September 1, 2006, and every year thereafter, the Commission will

require that all designated ETCs submit the following information, in order to be eligible for ETC certification.

1. Two-Year Network Improvement Plan and Progress Report

To reinforce the initial eligibility requirements and ensure that federal USF funding is being used for its intended purpose, the Commission requires the annual submission of a progress report on the ETC's most recent two-year network improvement plan as well as the submission of a new two-year network improvement plan. The progress report must include maps detailing the ETC's progress towards meeting its plan targets; an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. This information should be submitted at the wire center level.

Mirroring the network improvement plan required for eligibility, the two-year network improvement plan in the annual report 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. Each applicant must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

2. Outages

The Commission will follow the guidelines proposed by the FCC. Thus, the annual reports must require detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty (30) minutes in duration for each service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the ETC's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage;

(e) the steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

3. Unfulfilled Service Requests

The Commission will follow the FCC's proposed guidelines and require that all ETCs submit an annual report each year indicating the number of requests for service from potential customers within the ETC's service areas that were unfulfilled in the previous year. The carrier shall also detail how it attempted to provide service to those potential customers as set forth in the eligibility determination.

4. Customer Complaints

The Commission will follow the FCC's proposed guidelines and require that the ETC provide the number of complaints per 1,000 handsets or lines.

5. Service Quality and Consumer Protection Certification

The Commission will follow the FCC's proposed guidelines and require certification that the ETC is complying with applicable service quality standards and consumer protection rules.

6. Descriptions of the Applicant's local usage plan and that of the ILEC.

As indicated above, the Commission will not require the ETC to provide a local usage plan comparable to that of the ILEC. However, the Commission does want to monitor what types of plans are being offered by the ILEC and the competitive ETCs. Thus, the Commission directs each ETC to submit annual reports describing the ETC's local usage plan(s) as well as that of the ILEC.

D. Additional Recommendations

In addition to supporting the FCC Rules as minimum guidelines, CenturyTel, Frontier, and Potlatch recommended that the Commission adopt additional requirements detailed below.

1. Support Based on ILEC's Cost of Service

CenturyTel argued that the Commission should require that a competitive ETC serve the ILEC's entire study area or receive support based on the ILEC's costs only for the area that the competitive ETC seeks to serve. According to CenturyTel, this would guarantee competitive neutrality.

Commission Finding. The Commission rejects CenturyTel's recommendation, as it is beyond the scope of inquiry in this case. This case is focused on the merits of the new FCC Rules regarding ETC designation and certification, not the basis of the USF support calculation.

2. Carrier of Last Resort Obligations

CenturyTel, Frontier, and Potlatch urged the Commission to require competitive ETCs to assume "carrier of last resort" responsibilities. Because an ETC may withdraw from an area served by more than one ETC, Frontier argued that all ETCs must be willing and able to fulfill all of the expectations and obligations of existing carriers. Potlatch further argued that all ETCs should be willing to serve the entire service area within one year of receiving ETC designation and should comply with universal service reporting requirements applicable to carrier of last resort.

Commission Finding. The Commission declines to adopt the recommendation of CenturyTel, Frontier, and Potlatch. The Commission does not think it is necessary to require an ETC to assume carrier of last resort obligations as part of the ETC process. Should an ETC applicant become the sole remaining provider of telecommunications service in a given service area, the Commission will address whatever additional requirements may be necessary. *See Idaho Code* §§ 62-612 (limiting a carrier's right to withdraw or discontinue local telephone service).

3. Adequate Financial Resources

CenturyTel recommended that the Commission evaluate whether ETC applicants have sufficient financial resources to provide quality service throughout the service area. This requirement would ensure that a carrier receiving financial support is able to sustain its operations and serve all customers in the designated area.

Commission Finding. The Commission finds that our current certification process requires a certain showing of financial capability, and that is sufficient for the Commission's purposes. *Idaho Code* §§ 61-526 through -528, IDAPA 31.01.01.111 and 112 (Rules 111 and 112), and Procedural Order No. 26665.

4. Official Notice

Frontier requested that the Commission take administrative notice of the FCC's record in Docket No. 96-45 (FCC 05-46).

Commission Finding. The Commission does not believe it is necessary to take official notice of the record developed in a separate case before the FCC. The Commission is satisfied that the record in this case is sufficient to support its decision.

SUMMARY

After reviewing the FCC Rules, the FCC Order, and the comments filed in this case, the Commission finds that it needs more detailed information to consider when making ETC designation and certification decisions. This information is necessary for the Commission to fulfill its duties and obligations under the federal Act and will provide carriers with greater clarity in the ETC designation process. Therefore, the Commission will now require the following additional information when determining initial ETC designation: (1) a commitment to provide service throughout the proposed service area and a two-year network improvement plan to demonstrate the commitment and ability to provide the supported services; (2) the ability to remain functional in emergency situations; (3) a commitment to satisfy applicable consumer protection and service quality standards, such as the CTIA Code, if applicable; (4) descriptions of the applicant's local usage plan and that of the ILEC; (5) demonstration that granting the carrier ETC status is in the public interest; and (6) tribal notification, if applicable. This information shall be included in all future ETC applications, and all carriers previously granted ETC status by this Commission shall file such information by September 1, 2006.

In addition, the Commission will require annual reports with: (1) a two-year network improvement plan and progress report; (2) outage information; (3) the number of unfulfilled service requests; (4) the number of complaints per 1,000 handsets or lines; (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules; and (6) descriptions of the applicant's local usage plan and that of the ILEC. These annual reports will be due for the first time by September 1, 2006 and on September 1 every year thereafter.

For the convenience of carriers with ETC designation and carriers seeking ETC designation in the future, we have compiled the relevant ETC requirements in an Appendix to this Order.

ORDER

IT IS HEREBY ORDERED that all applications for designation as an eligible telecommunications carrier in Idaho pursuant to 47 U.S.C. § 214(e)(2) must comply with the designation requirements as outlined in this Order.

IT IS FURTHER ORDERED that all carriers previously designated eligible telecommunications carriers by this Commission pursuant to 47 U.S.C. § 214(e)(2) must comply with the designation requirements as outlined in this Order by September 1, 2006.

IT IS FURTHER ORDERED that all eligible telecommunications carriers seeking universal service support must file an annual report with this Commission as outlined in this Order by September 1, 2006 and on every September 1 thereafter.

THIS IS A FINAL ORDER. Any person interested in the Order 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. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 4th day of August 2005.

Paul Kjellander

PAUL KJELLANDER, PRESIDENT

Marsha H. Smith

MARSHA H. SMITH, COMMISSIONER

Dennis S. Hansen

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell

Jean D. Jewell
Commission Secretary

APPENDIX

Requirements for Eligible Telecommunications Carrier (ETC) Designation, Reporting, and Certification.

A. STATUTORY DESIGNATION REQUIREMENTS

All ETC applicants must follow the federal statutory requirements for ETC designation. *See* 47 U.S.C. § 214(e)(1).

1. Common Carrier

The ETC applicant must be a "common carrier" as defined by 47 U.S.C. § 153(10).

2. Provide the Universal Services

The ETC applicant must demonstrate that it is capable of providing and will continuously provide throughout its proposed service area the universal services set forth in 47 C.F.R. § 54.101(a), either by using its own facilities or a combination of its own facilities and resale of another carrier's services. *See* 47 U.S.C. § 214(e)(1)(A). These services include:

(a) Voice grade access to the public switched network;

(b) Local calling;

(c) Touch tone signaling or its functional equivalent;

(d) Single-party service or its functional equivalent;

(e) Access to 911 emergency services where available;

(f) Access to operator services;

(g) Access to long-distance service;

(h) Access to directory assistance; and

(i) Toll limitation service.

See 47 C.F.R. § 54.101(a).

3. Advertising

The ETC applicant must demonstrate that it will advertise the availability of its universal service offering and the charges therefore using media of general distribution. *See* 47 U.S.C. § 214(e)(1)(B).

4. Public Interest

The ETC applicant must demonstrate that ETC designation is consistent with the public interest, convenience, and necessity; and, in the case of an area served by a rural telephone company, demonstrate that the public interest will be met by an additional designation.

5. Tribal Notification

An ETC applicant seeking ETC designation for any part of tribal lands shall provide a copy of its application to the affected tribal government or tribal regulatory authority, as applicable, at the time it files its application with the Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an ETC on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable.

B. ADDITIONAL ELIGIBILITY REQUIREMENTS

All ETC applicants in Idaho must also satisfy the following additional requirements for ETC designation in Idaho. All ETCs previously designated by this Commission pursuant to 47 U.S.C. § 214(e)(2) must provide this information by September 1, 2006.

1. The Commitment and Ability to Provide Supported Services

The ETC applicant must certify that it will: (a) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (i) modifying or replacing the requesting customer's equipment; (ii) deploying roof-mounted antenna or other equipment; (iii) adjusting the nearest cell tower; (iv) adjusting network or customer facilities; (v) reselling services from another carrier's facilities to provide service; or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

The ETC applicant must also submit a two-year network improvement plan that describes with specificity proposed improvement or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the

estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

2. The Ability to Remain Functional in Emergencies

The ETC applicant must demonstrate 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 traffic spikes resulting from emergency situations.

3. A Commitment to Consumer Protection and Service

The ETC applicant must certify that it will comply with all applicable service quality standards and consumer protection rules. In addition, all wireless carriers seeking ETC designation must agree to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Code").

4. Description of the Local Usage Plans

The ETC applicant must provide a description of its local usage plans and a description of the local usage plan(s) of the incumbent local exchange carrier (ILEC).

C. REPORTING REQUIREMENTS

Beginning on September 1, 2006, and every year thereafter, all carriers requesting high-cost support must submit an annual report to the Commission.

1. Two-Year Network Improvement Plan and Progress Report

The annual report must include a progress report demonstrating what progress has been made in the last year toward goals outlined in the most recent two-year network improvement plan. The progress report must include maps detailing the ETC's progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. This information should be submitted at the wire center level. The annual report must also include a new two-year network

improvement plan indicating plans for future investment. The two-year network improvement plan must provide the same information required for ETC designation. *See, infra,* Appendix B.1.

2. Outages

The annual report must include detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty (30) minutes in duration for each service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) the steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

3. Unfulfilled Service Requests

The annual report must include the number of requests for service from potential customers within the ETC's service areas that were unfulfilled in the previous year. The carrier shall also detail how it attempted to provide service to those potential customers.

4. Customer Complaints

The annual report must include the number of complaints per 1,000 handsets or lines.

5. Service Quality and Consumer Protection Certification

The annual report must include certification that the ETC is complying with applicable service quality standards and consumer protection rules.

6. Descriptions of the Applicant's local usage plan and that of the ILEC.

The annual report must include a description of the ETC's local usage plan(s) and a description of the ILEC's local usage plan(s).

D. CERTIFICATION REQUIREMENTS

In order to be eligible for federal USF funding in any given year, the carrier must comply with the annual reporting requirements above. In addition, the carrier must certify to the Commission that all federal high-cost support provided to the carrier for service areas in Idaho will be used only for the provision, maintenance, and upgrading of facilities and services for which the support was intended.