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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**CTC TELECOM, INC. FOR DESIGNATION AS )** CASE NO. CTL-T-09-1  
**AN ELIGIBLE TELECOMMUNICATIONS )**  
**CARRIER )** COMMENTS OF THE  
**)** COMMISSION STAFF  
**)**  
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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Neil Price, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure, issued on May 29, 2009, Order No. 30824, submits the following comments.

**BACKGROUND**

On April 23, 2009, CTC Telecom, Inc. ("CTC" or "Company") filed an Application, pursuant to Section 214(e)(1)-(2) of the Telecommunications Act of 1934, Sections 54.201 of the rules of the Federal Communications Commission ("FCC") and the rules and regulations of the Idaho Public Utilities Commission, for designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving support from the Universal Service Fund ("USF").

CTC is a Commercial Mobile Radio Services ("CMRS") carrier marketing and selling its mobile wireless services under the brand name Snake River PCS. The Company is licensed to

provide telecommunications services in Basic Trading Area (“BTA”) 050 in Idaho that includes the following Idaho counties: Adams, Boise, Gem, and northern Washington.

The Company’s proposed ETC wireless service area in Idaho includes both non-rural and rural wire centers served by four ILECs: Qwest Communications (“Qwest”), Cambridge Telephone Company (“Cambridge”), Citizens Communications/Frontier Communications (“Citizens”) and Midvale Telephone Company (“Midvale”).

## **STAFF ANALYSIS**

CTC is an Idaho corporation, and it is a wholly-owned subsidiary of Cambridge Telephone Company. CTC was granted a Certificate of Public Convenience and Necessity on August 19, 1998, to provide basic local exchange service to an area known as Hidden Springs in Ada County, Idaho. *See* Order No. 27673. On June 8, 1999, this Certificate was amended to expand CTC’s potential service area to include US WEST Communications, Inc’s southern Idaho territory. *See* Order No. 28059.

Staff has reviewed CTC’s 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 separately under the two wire center classifications of non-rural and rural wire center service areas.

### **Non-rural Wire Centers**

CTC identifies the non-rural wire centers, Emmett and Idaho City, in the Qwest service territory. Application, Exhibit B1.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the service requirements set forth in 47 U.S.C. § 214(e)(1) and requests designation in a non-rural area served by an incumbent local exchange carrier (ILEC), the statute provides that the Commission shall designate more than one common carrier as an ETC. 47 U.S.C. § 214(e)(2).

Designating more than one ETC in a non-rural area is consistent with past Commission decisions in which the Commission granted ETC status to Clear Talk, a wireless company, in the non-rural Qwest wire centers in eastern Idaho and the Magic Valley (Case No. GNR-T-03-8). *See* Order No. 29261. The Commission granted ETC designation to Western Wireless in the non-rural wire centers of Emmett, New Plymouth, and Weiser (Case No. WST-T-05-1). *See*

Order No. 29791. Inland Cellular was granted ETC status in the non-rural Verizon and Qwest wire centers in northern Idaho (Case No. INC-T-06-2). *See* Order No. 30212. Edge Wireless Company was granted ETC designation in the non-rural Qwest wire centers in southern Idaho (Case No. EDG-T-07-1). *See* Order No. 30360. Finally, on August 28, 2008, the Commission granted ETC status to Syringa Wireless LLC (Case No. SRY-T-08-1). *See* Order No. 30629.

Staff believes CTC meets all the statutory ETC requirements of Commission Order No. 29841 as it relates to non-rural wire centers. Designating CTC as an ETC in the non-rural service areas is consistent with the “public interest, convenience, and necessity” pursuant to 47 U.S.C. § 214(e)(2). Staff also believes granting ETC designation in the non-rural areas is in the public interest and will benefit the recipients of the Idaho Telecommunications Service Assistance Program (“ITSAP”).

Based upon past Commission decisions, and consistent with the requirements of Section 214 of the Act, Staff recommends approval of CTC’s request for ETC designation in the non-rural wire centers set forth in Exhibit B1 of the Application.

### **Rural Wire Centers**

CTC’s Application, includes nine rural wire centers in central and southern Idaho. These rural wire centers are: Cambridge, Council/Cuprum, Indian Valley and Lowman wire centers served by Cambridge Telephone Company; Garden Valley, Horseshoe Bend, New Meadows and Sweet served by Citizens Communications, and Midvale wire center served by Midvale Telephone. Application, Exhibit B1.

As noted above, the Act treats 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, stating 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 place 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. In the Matter of the Federal-State Joint Board on Universal Services, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 at 21-22 (the “FCC Order”). As such, Staff believes the public interest analysis plays a more important role when reviewing 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:

(i)n 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 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 three wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., NPCR, Inc dba Nextel Partners (Case No. GNR-T-03-8) and, most recently, Inland Cellular Telephone Company (Case No. INC-T-06-2), because the applicants failed to carry out their burden of demonstrating that their Applications for areas served by rural companies were in the public interest. *See* Order Nos. 29541 and 30212. These Applications failed the public interest test 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 the customers in a service area. The term service area means 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 means such 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).

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)). CTC's Application makes four primary public interest arguments.

1. Cost-Benefit Analysis

CTC asserts its universal service offering not only increases competition in the rural areas, but also provides greater consumer choice for the rural consumer. Application at 13. CTC states the increased competitive choice and quality service will benefit the rural Idaho consumers and will also “speed the delivery of advanced wireless services to rural Idaho citizens.” *Id.* The Company further states that, “[w]ithout CTC’s wireless service, many consumers in areas surrounding Indian Valley, Idaho would have to rely solely on traditional wireline services.” *Id.* CTC claims mobility will offer “increased flexibility, public safety, and service options...by offering the benefits of mobility, CTC’s wireless universal offering will provide unique and essential services to consumers in Lowman, Montour, Idaho City, Garden Valley and Emmett, Idaho.” Application at 14. The Application states that an additional benefit will be offered to low-income consumers who are eligible for federal Lifeline benefits. *Id.* Finally, CTC claims it provides several advantages: Mobility, access to E911, voicemail, three-way calling, call waiting, call forwarding, expanded calling scopes and several calling plans. *Id.* CTC concludes its Cost-Benefit Analysis by describing how the federal high cost support would be used to improve its infrastructure in rural areas and how these improvements would positively impact the residents, travelers, and recreators [sic] in remote areas. Application at 15.

Staff does not advocate one technology over another, but instead recognizes that each has unique advantages and disadvantages depending upon the geography, demographics, and technological needs of the community. CTC states its wireless service will provide greater benefits and high-quality service to its consumers, but does not provide any data or facts to substantiate these claims. CTC’s list of advantages is not necessarily unique to nor exclusively associated with wireless technology and, as such, Staff is not convinced that a positive cost benefit analysis exists for wireless service that cannot also be claimed by the ILECs. Staff acknowledges that mobility is unique to wireless service, but Staff also understands the unique disadvantages and service quality challenges a mountainous terrain poses for wireless service providers. Further, the Company’s presumptive disadvantage associated with a consumer having to “rely solely on traditional wireline service,” is not a compelling argument to satisfy the public interest requirement.

2. Potential for Cream Skimming.

CTC states that it is not targeting low cost areas or avoiding high cost areas, but instead will serve all customers where it is able to provide wireless service to varied population

densities. Application at 16. CTC is not seeking ETC designation in partial wire centers and is proposing to serve some of the most sparsely populated and costliest to serve study areas in Idaho. Application at 18. This statement is supported by a wire center population density chart. Confidential, Exhibit C-2.

Staff notes that the list of wire centers in the Application includes the entire service area of Cambridge. CTC's Application, however, includes partial service areas of Citizens and Midvale. These two rural ILECs serve non-contiguous service areas in Idaho.

Staff agrees that Applications for ETC designation that include an entire service area avoid the specter of cream skimming. The opposite is true when an Application seeks ETC designation that does not include all the wire centers that make up a service area. Edge Wireless, in its ETC designation Application, understood that the Commission would not grant ETC status for partial service areas without first receiving FCC approval of a petition to redefine a service area down to the wire center. For this reason, Edge Wireless chose to eliminate a wire center that represented partial service areas. *See* Case No. EDG-T-07-1, Edge Wireless, LLC's ERRATA to Application and Exhibits.

The partial service area for Citizens is unique and must be analyzed separately. In the Rural Task Force (RTF) Order (FCC 01-157, released May 23, 2001), all rural ILECs were required to select one of three available disaggregation paths and to notify USAC of its selections. The path selected by an ILEC affects the support provided to competitive carriers. Citizens elected to disaggregate its service area at the exchange level. This decision changed the high cost support from an averaged cost across all lines served by a carrier in a service or "study" area to average line cost at each wire center. For this reason, Staff makes an exception to the partial service area test for the wire centers served by Citizens.

Staff believes that CTC partially meets the cream skimming test. Staff agrees that CTC avoids the appearance of cream skimming in those areas where CTC proposes to serve an entire study area, but not for those areas that represent a partial service area.

3. Impact on the Fund.

CTC asserts that receipt of high cost funds will have a nominal impact on the federal USF fund if calculated using the FCC's current "identical support" rule. CTC conducted a study using customer zip codes from its billing system to identify the location of its customers relative to the exchange area boundaries of the ILEC with whom CTC competes for wireless service customers. CTC's calculation of total per-line support (using USAC data from September 2008)

that each competing ILEC currently receives, including high cost, local switching, interstate common line, and long-term support when multiplied by the individual ILEC per-line support amount with the number of CTC wireless consumers shows CTC would receive an estimated \$171,288.59 per year in USF support. Application at 17. Based upon CTC's calculations, "[t]his represents less than 0.0041 percent of the high-cost portion of the federal USF, assuming \$4.2 billion in high cost support disbursement in a single year. Accordingly, grant[ing] of CTC's ETC request will have minimal impact on the USF." *Id.* CTC goes on to state, "[t]he benefits of designating CTC as an ETC outweigh any potential harm to the sustainability of the fund." Application at 18.

As stated earlier, CTC Telecom markets and sells wireless service under the brand name Snake River PCS. Application at 2. Staff notes that CTC Telecom is a Competitive Local Exchange Carrier ("CLEC") and a subsidiary of Cambridge Telephone Company. Cambridge is a Title 61 company and is price-regulated by the Idaho PUC. In addition to the federal high-cost funds it receives, Cambridge also receives approximately \$167,000 annually from the Idaho USF fund.

Staff notes that most of CTC's wireless emergency operation features are identical to the features stated in the Syringa Wireless ETC designation Applications (Case No. SYR-T-08-1). Application at 8.

Syringa Wireless is owned by a consortium (Member Partners) of the following ILECs: Albion Telephone Company, Project Mutual, Direct Communications, Filer Mutual Telephone Co., and Silver Star. *See* Syringa Wireless website, <http://www.syringawireless.com/>. Albion Telephone Company, Direct Communications, and Silver Star are price-regulated Title 61 companies. Project Mutual and Filer Mutual Telephone Co. are Cooperative Telecommunications Companies that are not regulated by the Commission. All five members of the Syringa Wireless Board of Directors are employees of the Member Partners. *Id.* Three of the ILECs, Albion Telephone Company, Direct Communications, and Silver Star/Teton also receive a combined Idaho USF funding of over \$900,000 annually or 47% of the total Idaho USF fund disbursement. With the inclusion of CTC, the Idaho USF funds provide to the four affiliated ILECs totals over \$1,070,000 annually or more than 50% of the total Idaho USF fund disbursement. These companies also receive federal USF money.

CTC's assertion of minimal impact to the federal USF fund may be correct, but partly because of recent action taken by the FCC. This topic is examined in greater detail in the High-Cost Federal Funding discussion.

4. State and Federal Precedent.

CTC notes that designation of CTC wireless services as an ETC is consistent with ETC decisions across the country, demonstrated by numerous cases at the state and federal level, including this Commission's recent designations of Edge Wireless, LLC and Syringa Wireless LLC as Idaho's first wireless rural ETCs. Application at 18.

As noted in previous decisions, the Commission does not rely upon past decisions in determining whether a current Application should be approved or denied. Each Application must stand on its own merit in determining if it meets the state and federal ETC designation requirements as outlined in Commission Order No. 29841. The Commission stated in Case No. INC-T-06-2, "[i]t cannot be presumed that benefits associated with different companies in different states are applicable to the Company or the customers in its requested service area." Order No. 30212 at 6.

**Public Interest Summary**

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 problem of cream skimming where the Application includes all wire centers in a designated service area. Staff notes the CTC Application includes a detailed network plan (Application, Confidential Exhibit C) for a two-year period, with wire center specific plans to enhance the network. This provides support for the Applicant's claim that it will continue to use high cost funds to upgrade the network. In sum, the Application presents one unpersuasive argument (Cost-Benefit), one partially compelling (Potential for Cream Skimming) and two arguments (Impact on the Fund and State and Federal Precedent) as supporting the public interest analysis. However, if the wire centers that represent partial service areas are removed, the appearance of cream skimming is eliminated. Staff believes CTC's Application in total presents a somewhat acceptable argument to support the Company's public interest position.

### **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, CTC's Application provides detailed information outlining its network improvement plan for the years 2009, 2010 and 2011. Application, Confidential at 15 and Confidential Exhibit C. The plan includes details such as affected wire centers, expenditures and a narrative description of the planned improvements for each year.

Staff believes CTC provides a reasonable improvement plan, and if CTC is granted ETC designation, the annual submission of the Two-Year Network Improvement Plan and Progress Report 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 explains 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 in 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."

In the Application, CTC describes the components that make up its fault-tolerant network. Application at 7-9. These components include a Mobile Switching Center located in Roosevelt, Utah with 12 hours of backup battery and a natural gas generator plumbed to public utility supply; Self-Healing Alternative Route Protection Service for Fiber Facilities interconnection with automated 7X24 remote monitoring; Cell sites with 8 hours battery backup and standby generator to accommodate extended power outages; Network Operating Center in Roosevelt, Utah, and CTC's 7X24 on-call staff who will be called or contacted via text message when the monitoring system detects a problem. Application at 8-9.

Staff believes the fault-tolerant network, as described in the 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. These are discussed below.

1. Common Carrier Status. CTC Telecom is a Commercial Mobile Radio Services (CMRS) carrier providing “mobile service” as defined in 47 U.S.C. § 153(27). Application at 2.
2. Provide the Universal Services. CTC offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 5.
3. Advertising. CTC plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area. *Id.* at 11.
4. The Commitment and Ability to Provide Supported Services. CTC is committed to answering all reasonable requests for service within its proposed ETC service area. *Id.* at 19.
5. A Commitment to Consumer Protection and Service. CTC will comply with all applicable protection standards established by the CTIA Consumer Code. *Id.* at 12.
6. Description of the local Usage Plan. CTC submits its rate plan brochures as Exhibit E. *Id.* at 6.
7. Tribal Notification. CTC is not seeking ETC designation for any portion of tribal lands. *Id.* at 12.

Staff believes CTC meets the above seven ETC designation requirements.

### **HIGH-COST FEDERAL FUNDING**

The original goal of the federal Universal Service Fund, 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 does not believe the USF was ever intended to provide equal funding for both the ILEC and an ILEC affiliate operating in the same service area as would be the case with Cambridge Telephone Company, CTC Telecom, LLC and its wireless brand name Snake River PCS.

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, but must follow rules and regulation even if troubled by the outcome. In the meantime, Staff does not feel 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 these benefits are available to the consumers through the ILECs.

## SUMMARY

Of the requirements for ETC designation, it is Staff's opinion that the public interest analysis, the two-year network improvement plan, and the ability to remain functional in an emergency are essential to the Idaho consumers in the rural wire centers. Consequently, Staff carefully considers these categories to determine if the Applicant has provided compelling evidence that it meets these requirements.

Based on the information presented in the Application, Staff sees no indication that CTC would not provide comparable service to that currently provided by the ILECs. Staff believes the Company exhibits an understanding of the federal and state customer service requirements for ETC designation. Staff believes CTC meets all federal and state requirements to be granted ETC designation in the two non-rural wire centers served by Qwest. Staff further believes CTC meets all federal and state ETC requirements as to the eight rural wire centers served by Cambridge Telephone Company and Citizens Communications. CTC's Application includes the entire Cambridge service area and the less populated wire centers in the Citizens service area. Staff does not believe CTC meets the ETC requirements for the one rural wire center served by

Midvale Telephone Company as this wire center represents the most densely populated wire center in the Midvale designated service area and, therefore, the least costly wire center to serve.

### STAFF RECOMMENDATION

Staff is satisfied that the Application meets the minimal requirements of an ETC and recommends that the Commission approve the Application as to the non-rural wire centers of Emmett and Idaho City in the Qwest service area. Staff recommends approval of the Application in the four rural wire centers that make up the entire designated service area served by Cambridge Telephone Company. Staff also recommends Commission approval of the four rural wire centers, Garden Valley, Horseshoe Bend, New Meadows and Sweet, in the Citizens Communications service area. Finally, Staff recommends that the Commission deny the Application for the one rural wire center, Midvale, in the Midvale Telecom service area.

Respectfully submitted this 19th day of June 2009.



Neil Price  
Deputy Attorney General

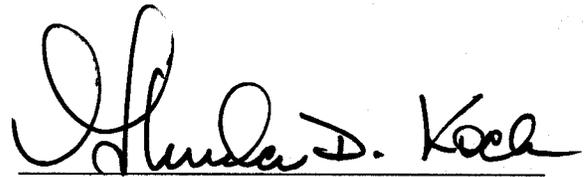
Technical Staff: Grace Seaman

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 19<sup>TH</sup> DAY OF JUNE 2009,  
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN  
CASE NO. CTL-T-09-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID,  
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