

Conley Ward
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
(208) 388-1300 (fax)

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Telephone Association
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BEFORE THE IDAHO PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF IAT
COMMUNICATIONS, INC., d.b.a. NTCH-
IDAHO, INC. OR CLEAR TALK FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

CASE NO.: GNR-T-03-8

IN THE MATTER OF THE APPLICATION OF
NPCR, INC. DBA NEXTEL PARTNERS
SEEKING DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

CASE NO.: GNR-T-03-16

PROTEST OF IDAHO TELEPHONE
ASSOCIATION

In Order No. 29240, the Idaho Public Utilities Commission ("Commission") combined the Applications of IAT Communications, Inc. ("Clear Talk") and NPCR, Inc. ("Nextel") in the above-entitled cases and requested comments from interested parties on the Commission's tentative proposal to process both applications under Modified Procedure. On behalf of its member companies, the Idaho Telephone Association ("ITA") strongly opposes the combined applications and requests that the Commission schedule these applications for full evidentiary hearings rather than the use of Modified Procedure. In support of this Protest, the ITA states as follows:

1. On the face of the pleadings, it is obvious that neither Application meets the requirements for an Eligible Telecommunications Carrier (“ETC”) designation in rural telephone company study areas.

Both Nextel and Clear Talk seek ETC designations in the study areas of “rural telephone companies,” as defined in 47 U.S.C. § 153(37). Nextel seeks ETC designations in the following rural telephone company service areas: Albion Telephone Company (“Albion”), Filer Mutual Telephone Company (“Filer”), Farmers Mutual Telephone Cooperative Association, Inc. (“Farmers”), Project Mutual Telephone Cooperative Association, Inc. (Project Mutual”), and Mud Lake Telephone Cooperative Association, Inc. (“Mud Lake”). Clear Talk seeks ETC designations in the following rural telephone company service areas: Albion, Filer, Project Mutual, and Fremont Telcom Co. (“Fremont”).

Each Application states that the Applicant fully complies with the requirements for ETC designation in each of the affected study areas. Nextel’s Application states, “Nextel Partners meets all of the requirements for designation as an ETC in each of these Designated Areas.” Nextel Application at 2. Clear Talk’s Application claims, “Clear Talk meets all of the Commission’s requirements for E.T.C. designation to serve southeast Idaho customers.” Clear Talk Application at 3. Both statements are manifestly false.

The Telecommunications Act requires companies seeking an ETC designation to provide the services supported by universal support mechanisms “throughout the service area for which the designation is received.” 47 U.S.C. § 214(e). The Act further provides, “In the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area.’” 47 U.S.C. § 214(e)(5).¹ Comparing the Applicants’ coverage area maps with the rural telephone companies’ service area maps on file with the Commission, it is obvious

¹ This provision may be altered only by exceptions established by the federal and state regulatory authorities and the Joint Board, none of which are alleged to have occurred in this case.

that the Applicants cannot meet this fundamental statutory requirement for ETC designation in most, if not all, the affected rural telephone companies' service areas.

In the case of Nextel, the Applicant clearly does not provide service in the entirety of Albion's, Filer's, and Mud Lake's service territories. Whether it provides service throughout the entirety of the Farmers and Project Mutual service areas cannot be determined without further investigation.

In the case of Clear Talk, the coverage map makes it abundantly clear that Clear Talk does not provide coverage throughout the service area of any of the affected rural telephone companies. In fact, it is not clear that Clear Talk's coverage area includes any of the Albion, Filer, and Fremont service areas. At best, Clear Talk serves only a small fraction of these companies' service areas.

These obvious misstatements by the Applicants call into question the validity of the other claims in their Applications, and the ITA respectfully requests the opportunity to conduct discovery and present evidence that may expose other misstatements or errors by the Applicants. Furthermore, if the Applicants are in fact providing service within some portion of the rural telephone companies' service areas, the ITA has serious doubts that the Applicants are doing so in accordance with applicable legal requirements and Commission policies. To cite but two examples, the ITA believes it can prove in an evidentiary proceeding that the Applicants have not entered into required interconnection agreements with the affected companies, are not in many cases paying applicable access charges, and are otherwise not in compliance with this Commission's policies and industry standards. Again, the ITA requests an evidentiary hearing on these and other issues that may be unearthed during discovery.

2. Granting the Applicants' request for ETC status in the rural telephone companies' service areas would be contrary to the public interest.

The Telecommunications Act does not require this Commission to designate any additional ETCs in rural telephone company service areas. 47 U.S.C. §214(e)(2). (“[T]he 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 for a service area.”) (emphasis added). In fact, the Act expressly forbids the designation of additional ETCs in rural telephone companies' service areas unless, “the State commission shall find that the designation is in the public interest.” *Id.* (emphasis added).

Unfortunately, all too many state commissions are effectively ignoring the Act's statutory commands and designating additional ETCs in a manner that is contrary to the public interest. As the United States Telecom Association pointed out in a recent filing before the Joint Board,

The federal universal service fund (USF) is under strain. One of the main reasons is that the FCC and state commissions are granting an increasing number of companies ETC status. Payments of high-cost USF support to competitive ETCs (CETCs) has increased seven times in just under two years.² Although required by law to assess whether the public interest is served by multiple ETCs in areas served by rural telephone companies,³ state commission are granting CETC designations for the sake of spurring on competition, regardless of whether these designations serve the public interest. Competition among multiple service providers in high-cost rural markets is not the goal of universal service policy. Ubiquitous, affordable telecommunications service is. USF support is a cost-recovery mechanism that is necessary to keep telephone rates in high-cost areas comparable to rates in other

² See USTA Comments at n.8.

³ Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), states, “Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”

parts of the country.⁴ To that end, all ETCs must be able to provide critical infrastructure capable of providing qualifying services reasonably comparable to service provided in lower cost areas. Nonetheless, state commission are using universal service to encourage what they perceive to be competition in the form of complimentary wireless services rather than to ensure ubiquitous service. Artificially induced competition allows CETCs to reap the benefits of USF support even if not justified by their costs. While incumbent local exchange carriers (ILECs) must demonstrate that they use high-cost USF support to fund maintenance and expansion of their network facilities, CETCs have been able to use USF support simply to boost profits. Industry analysts recognize that granting CETCs has, as one analyst puts it, “extraordinary potential for abuse and disruption of the current rural markets, by affecting the size of the [universal service] fund, creating businesses that are founded on ‘regulatory revenues’ rather than on regulatory formulas tied to investment levels (allowed rates of return), and possibly damaging the incumbent carriers as customers are siphoned away from already-sparse service areas.”⁵ Another industry analyst has characterized the increasing share of USF support to CETCs as proof of “the opportunity for rural wireless carriers to supplement organic EBITDA with high-margin subsidies.”⁶

USTA Reply Comments, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed June 2, 2003) (proceeding hereafter cited as *USF Joint Board*).

The public interest perils cited by the USTA clearly apply to these Applications. Both Applications point to competition with the incumbent local exchange carriers as the primary advantages to be derived from their Applications. But there is no showing that, in the case of rural telephone company study areas, additional competition needs to be subsidized by the federal USF or that it is in the public interest. In fact, the available evidence is to the contrary.

⁴ Section 254(b)(3) of the Act requires the FCC to base policies for the preservation and advancement of universal service on the principle that consumers in all regions of the country, including high-cost areas, should have access to telecommunications services that are “reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

⁵ *Less Mason Universal Service Financial Analysis* (April 28, 2003) at 9.

⁶ Solomon Smith Barney, *Wireless EDGE Weekly* (Jan. 31, 2003); *See also* Public Notice at n. 43, citing Solomon Smith Barney report finding that wireless carriers treat high-cost funding as an incremental revenue source that represents “almost all margin.”

In the course of preparing its own Comments for the *USF Joint Board*, the ITA surveyed its members on a number of issues, including the effect of wireless competition on the member companies' service areas. (A copy of the resulting ITA Comments is attached as Exhibit A). The results paint a very revealing portrait of the state of rural telephone company service areas in Idaho.

One of the most important survey findings is that Idaho rural companies have extremely high cost service areas. Idaho rural telephone companies average only 2 access lines per square mile of service territory, whereas the average rural telephone company nationwide has a service density nearly 10 times the Idaho average, at 19 customers per square mile. ITA Comments at 2. Gross plant investment per access line for ITA members is roughly \$5,400. *Id.* at 3. Given the cost of service in these areas, it is not surprising that none of the ITA members reported wireline competition within their service territories. *Id.* at 2. But there is no shortage of wireless competition.

There are an average of 5 wireless carriers serving these study areas. Four study areas reported between 1 to 3 wireless providers, four additional study areas stated that there were 4 to 6 providers, and the remaining four study areas identified between 7 to 10 wireless carrier alternatives. In many cases, these CMRS providers have been offering mobile service for 5 to 10 years. Even more significantly, these carriers have been offering their services since inception without high-cost support.

Id. at 3.

While the wireless carriers do not currently receive USF support, they have a number of countervailing advantages *vis a vis* their rural telephone company competitors. First, the wireless carriers are completely exempt from state regulation. *See* Idaho Code § 62-603(14). Second, they are not required to serve the entirety of the ILEC's service area and are free to concentrate on the small pockets of relatively low cost, high margin customers. Third, they

are exempt from the cost of a number of pro-competitive requirements, such as equal access, that are imposed on wireline companies by federal or state regulations.

While the ITA cannot definitively prove, at this point, that wireless competition is negatively impacting its member companies' finances, the available evidence strongly suggests this is the case. On the whole, ITA access line counts for the last five years are at best flat, with a steady decline in residential access lines even though at least some of the areas have experienced significant population growth. *See* ITA Comments at 5. Even more striking is the fact that the majority of ITA members experienced a 4% to 8% reduction in interstate access minutes from 2001 to 2002, presumably because wireless customers are using the bundled minutes in their wireless plan for toll calling. *Id.* at 6.

Under these circumstances, it is folly to provide ETC status and a new subsidy to wireless carriers in Idaho rural telephone company service areas. As FCC Commissioner Martin recently observed, the Commission should be

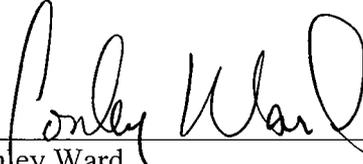
hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive even for one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, leading to inefficient or stranded investment and a ballooning universal service fund.

Separate Statement of Commissioner Kevin J. Martin, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (November 18, 2001). Commissioner Martin's observations are doubly true in Idaho, where continued inroads by wireless carriers will ultimately put further pressure on the state, as well as the federal, USF.

For these and other reasons, the ITA respectfully requests that the Commission schedule full evidentiary proceedings in the above-entitled matter. The ITA is confident that such proceedings will demonstrate that the Applicants are not in compliance with the requirements

for ETC status in the rural telephone company service areas, and that ETC designations for the Applicants in such areas would be contrary to the public interest.

DATED this 10th day of June 2003.

A handwritten signature in black ink, appearing to read "Conley Ward", written over a horizontal line.

Conley Ward
GIVENS PURSLEY LLP
Attorneys for Idaho Telephone Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of June 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jean Jewell
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074
 U.S. Mail Fax By Hand

Molly O'Leary, Esq.
Richardson & O'Leary, PLLC
99 E. State Street, Suite 200
Eagle, ID 83616
 U.S. Mail Fax By Hand

Sean P. Farrell, Esq.
IAT Communications, Inc.
NTCH-Idaho Inc., dba Clear Talk
703 Pier Avenue, Suite B, PMB 813
Hermosa Beach, CA 90254
 U.S. Mail Fax By Hand

Dean J. Miller, Esq.
420 West Bannock
P.O. Box 2564-83701
Boise, ID 83702
 U.S. Mail Fax By Hand

Philip R. Schenkenberg, Esq.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, MN 55101
 U.S. Mail Fax By Hand

Morgan W. Richards
Moffatt, Thomas, Barrett, Rock & Fields
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
 U.S. Mail Fax By Hand

Lance A. Tade, Manager
State Government Affairs
Citizens Telecommunications
Company of Idaho
4 Triad Center, Suite 200
Salt Lake City, UT 84180
 U.S. Mail Fax By Hand

Robert M. Nielsen
548 E Street
P.O. Box 706
Rupert, ID 83350
 U.S. Mail Fax By Hand

Charles H. Creason, Jr.
President and General Manager
Project Mutual Telephone Cooperative Association, Inc.
507 G Street
P.O. Box 366
Rupert, ID 83350
 U.S. Mail Fax By Hand


Tina Smith

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|---------------------------|---|---------------------|
| In the Matter of |) | |
| |) | CC Docket No. 96-45 |
| Federal-State Joint Board |) | FCC 03J-1 |
| On Universal Service |) | |

COMMENTS OF THE
IDAHO TELEPHONE ASSOCIATION

I. Introduction

The Idaho Telephone Association (“ITA”) by counsel, respectfully submits its Comments in the above captioned proceeding whereby the Federal–State Joint Board on Universal Service seeks comment on certain of the Commission’s rules relating to high–cost universal service support and the ETC designation process.¹

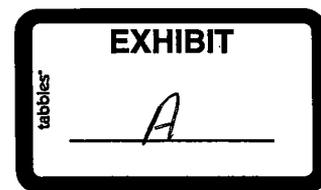
ITA is a state telephone association and its members include both commercial companies and cooperatives.² The fourteen ITA member companies provide basic and advancing telecommunications services in rural Idaho. All of ITA’s members are rural telephone companies as defined in 47 U.S.C. § 153(37).

Through these Comments, ITA provides facts, data, and views to assist the Joint Board in developing constructive and meaningful recommendations that will ensure the continued stability, sufficiency and predictability of the universal service fund mechanisms.³

¹ *Public Notice*, CC Docket No. 96-45, FCC 03J-1, Released February 7, 2003 (*Notice*).

² ITA member companies submitting these collective comments include: Albion Telephone Company, Cambridge Telephone Company, Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Company, Filer Mutual Telephone Company, Inland Telephone Company, Midvale Telephone Company, Mud Lake Telephone Cooperative Association, Project Mutual Telephone Cooperative Association, Direct Communications – Rockland, Rural Telephone Company, Silver Star Telephone Company, Oregon-Idaho Utilities, and Fremont Telecom.

³ 47 U.S.C. § 254(b)



II. State of the Marketplace and Universal Service Fund

The Joint Board's Public Notice requests detailed data on competition and line growth in high cost areas and observes that the more detailed data it receives, the better positioned the Joint Board will be to develop recommendations to perpetuate the Act's goals of maintaining universal service and fostering competition.⁴ In responding to this request, ITA surveyed its members to compile as much meaningful and useful information as possible within the compressed timeframe allowed for these comments. Of the 15 study areas represented by ITA's 14 member companies, ITA collected information on 12 study areas. This response accounts for approximately 98 percent of the ITA's membership's total access lines.⁵ The data presented in these comments is based on this survey.

No competitive local exchange carriers (CLECs) currently offer service in ITA member company serving areas. This is not surprising given the relatively low density demographics, high-cost infrastructure investment, and substantial operating expenses associated with serving these rural areas. On average, the ITA companies have only 2 access lines per square mile of service territory. This is in contrast to the findings of the Rural Task Force, which determined that, on average, rural carriers serve 19 lines per square mile.⁶ Four of the ITA study areas have a line density per square mile of less than 1 and three study areas have a density of between 1 and 2 lines per square mile. On the other end of the spectrum, one member with a comparatively small service territory has more than 100 access lines per square mile.

⁴ Notice at para. 9.

⁵ Three member companies with combined access lines of approximately 1,000 were unable to respond to the data request in the time allowed for the comments.

⁶ Rural Task Force, White Paper 2, *The Rural Difference*, January 2000, page 33.

The lack of access line density and ubiquity of coverage in these rural areas translates into high costs. At the end of 2002, the gross investment in telephone plant in service per access line for the ITA members was approximately \$5,400. Plant Specific Operating Expenses were \$445 per line for this same period, or \$37 per line per month.

Because of this cost structure, it is vital to rural customers in Idaho that specific, predictable, and sufficient federal universal service funding be maintained so that these customers continue to enjoy the same level of service at comparable rates to those services received by urban customers. In light of these demographics and resulting costs to serve, it is not surprising that these rural markets have yet to attract any CLECs.

The Joint Board cites the Commission's most recent CMRS Competition report, which found that 94 percent of the total United States population lives in counties with three or more mobile telephone service operators and asks what percentage of rural customers have access to mobile services.⁷ ITA members' customers generally have a wide choice of wireless providers. There are an average of 5 wireless carriers serving these study areas. Four study areas reported between 1 to 3 wireless providers, four additional study areas stated that there were 4 to 6 providers, and the remaining four study areas identified between 7 to 10 wireless carrier alternatives. In many cases, these CMRS providers have been offering mobile service for 5 to 10 years. Even more significantly, these carriers have been offering their services since inception without high-cost support.

The Joint Boards asks to what extent support for competitive ETCs will grow over time.⁸ The historic growth in the universal service fund is well documented in

⁷ Notice at para. 12.

⁸ Notice at para. 11.

OPASTCO's recently released White Paper titled *Universal Service in Rural America: A Congressional Mandate at Risk*.⁹ Without the Commission's adoption of appropriate Joint Board recommendations and absent prudent state commission decisions with respect to eligibility, ITA believes pressure on the fund will continue to grow at an exponential rate, thereby jeopardizing the future sustainability of the fund. To the extent funding support is curtailed, this will have a chilling effect on investment in rural telecommunications infrastructure.

Idaho exemplifies the increasing activity of wireless providers seeking competitive ETC status and, in turn, potentially increasing demands on the fund. On January 28, 2003, IAT Communications d.b.a. Clear Talk filed for eligible CETC status with the Idaho Public Utilities Commission in six Idaho service areas.¹⁰ This request was followed by a Nextel Partners application for eligibility for five study areas and so called "conditional designation" in another carrier's territory upon redefinition of the service area.¹¹ Three of these study areas are the same for the two applicants. Thus, the Idaho Commission faces critical decisions concerning whether to designate three providers in three study areas and two providers in the other study areas. And, it is probable that additional filings by other wireless providers may be forthcoming. ITA shares the concerns of Commissioner Martin when he stated:

I also note that I have some concerns with the Commission policy...of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive even for one carrier. This policy

⁹ See OPASTCO written *ex parte* filed in CC Docket No. 96-45 on January 28, 2003.

¹⁰ Before the Idaho Public Utilities Commission, In the Matter of IAT Communications, Inc., d.b.a. Clear Talk, Petition for Designation as an Eligible Telecommunications Carrier, January 28, 2003.

¹¹ Before the Idaho Public Utilities Commission, In the Matter of the Application of NPCR, INC. d/b/a NEXTEL PARTNERS Seeking Designation as an Eligible Telecommunications Carrier that may receive Federal Universal Service Support, Application of Nextel Partners, April 28, 2003.

may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, leading to inefficient or stranded investment and a ballooning universal service fund.¹²

The Joint Board's Notice questions if there is line growth in high cost areas and how much of the growth is due to wireline, wireless, and other technology platforms. The Idaho companies are only in a position to answer the question from the wireline perspective and do not have access to data that addresses the question in the context of wireless or other platforms for their specific serving areas. The table below summarizes combined access lines for the twelve study areas for the past three years.

| | <u>2000</u> | <u>2001</u> | <u>2002</u> |
|------------------------|---------------|---------------|---------------|
| Residential | 30,582 | 30,472 | 30,373 |
| Business – Single Line | 4,715 | 5,040 | 4,537 |
| Business – Multi-Line | 3,745 | 3,631 | 3,991 |
| Special Access | <u>576</u> | <u>604</u> | <u>591</u> |
| Total Access Lines | <u>39,618</u> | <u>39,747</u> | <u>39,492</u> |

As the above data indicates, the access line growth of the ITA members has been essentially flat. This is not surprising given the economy in this area of the country, with continuing small business closures, and population declines. While discussions with ITA members indicate there is anecdotal evidence that a few customers may have “cut the cord”, the companies are not experiencing major access line losses to CMRS providers. ITA believes that a reasonable forecast for future line growth in these rural areas would range from flat to declining by 1 to 2 percent per year.

The story is different when examining interstate access minutes of use. For the combined study areas, interstate access minutes of use increased three percent from 2000 to 2001, and were essentially flat from 2001 to 2002. However, when the data is

¹² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01-304, rel. November 18, 2001, separate statement of Commissioner Kevin J. Martin.

disaggregated to the study area level, the majority of ITA members experienced interstate access usage declines in the four percent to eight percent range. This loss in usage was offset by access minute growth of the other carriers yielding overall flat growth for 2002. There are some customers who are not designating a primary carrier for long distance service, indicating their intention to use their wireless provider for this function.

In the Notice the Joint Board questions whether wireless service is a complement to or substitute for wireline service.¹³ Based on the foregoing rural Idaho specific information, ITA believes that wireless service is complementary to wireline service with respect to basic local service, but that customers are substituting wireless service for their long distance calling. This understandably reflects the regional and national “buckets of minutes”, free night and weekend calling, and other features being offered by the CMRS providers. Dr. William R. Gillis in recent testimony before the Senate Subcommittee supports this view:

..I would observe mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such. With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connections, we are discussing complementary services, both desired by consumers for different reasons¹⁴.

As the data indicates, rural Idaho customers are not substituting their wireline phones for wireless phones to any major extent. Rather, as observed by Dr. Gillis, they value both services for different reasons. With respect to wireline service, customers place importance on reliability, quality of service, public safety, and the ability to receive

¹³ Notice at para. 14

¹⁴ Testimony of Dr. William R. Gillis, Director, Center to the Bridge to the Digital Divide, Washington State University, before the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation, April 2, 2003.

service regardless of where they live in the ILEC's service territory, i.e., carrier of last resort obligations (COLR). Wireless service offers the customer a different value proposition; namely mobility, nationwide calling, different ringing tones, and differentiated phones, among other factors. ITA believes this trend raises a compelling public interest question: In light of the equal access obligations of the incumbent ILECs, how much scarce federal universal service funds does the Commission want to devote to providing more long distance competition in rural areas?

The Joint Board also requested comments on the methodology of calculating support for competitive ETCs and the related reporting requirements if support were based on their own costs, rather than those of the incumbent.¹⁵ ITA believes that funding for all ETCs should be based on their own specific, supportable, historic costs. Wireline and wireless carriers have fundamentally different cost structures. Wireline providers utilize significant switching and distribution facilities to provide service, while wireless carriers' networks consist of towers and radio equipment. The competitive ETCs costs need to be known to make an informed decision that balances the benefits of ETC funding with the costs of that funding. Also, without knowing these costs it is impossible to judge the competitive impacts; competitive ETCs may be over or under recovering their costs. This information is obtainable but not currently known.

Tens of millions of dollars of federal USF funding currently flows to competitive ETCs.¹⁶ Furthermore, the level of funding is predicted to grow exponentially in the future, absent changes in the rules. Because of the magnitude of these amounts and the fact that federal USF is a scarce national resource, ITA strongly believes that there should

¹⁵ Notice at para. 18

¹⁶ Annualizing USAC data for 2Q03, Report HC01 produces payments of \$147 million to competitive ETCs in 2003.

be accountability by competitive ETCs. This reporting should demonstrate that the universal service funds received by the CETCs have been used for purposes consistent with section 214(e) of the Telecommunications Act of 1996 and are not just considered upside to the bottom line of the wireless providers.¹⁷ We believe that as a matter of law and the public interest, the allocation of finite public resources demands this accountability. If competitive ETCs do not want to provide and support their costs and be held accountable for the use of publicly provided funds, they would have the option of not seeking support.

ITA does not believe it is feasible or in the public interest to base support on the lowest cost provider's costs as discussed in the Notice.¹⁸ Not all carriers provide the quality and reliability of service that is vital to customers for their public health and safety. Additionally, not all wireless carriers provide coverage throughout the wireline carrier's service area. Finally, only one carrier, the incumbent ILEC, bears the costs and obligations of COLR, which results in a comparatively higher cost structure. For the foregoing reasons, we do not believe this proposal is appropriate or competitively neutral.

III. Scope of Support

The Public Notice questions whether section 254 of the Act would be better served if support were limited to a single connection to the residential and single line business users, whether these lines are provided by the incumbent ILEC or the competitive ETC. ITA does not believe it is appropriate or practical to limit support based on primary and secondary lines. Customers maintain more than one line for a variety of reasons including telecommuting, Internet access, and fax. To these customers

¹⁷ *Notice*, at Footnote 43 referencing the Solomon Smith Barney that indicates that universal service funding is an additional revenue source that is "almost all margin".

¹⁸ *Notice* at para. 19

both lines are important to their everyday lives. Furthermore, these services are readily available in urban markets. Most importantly, capital investment decisions of the rural ILECs are made at the network level, not the line level. And, funding is necessary to support total network costs, not individual lines of a customer. Restricting support to a single connection, whether by the wireline or CMRS provider, raises compelling questions concerning the ILECs ability to continue to invest in the network, maintain quality service at affordable rates, and fulfill their carrier of last resort obligations. Furthermore, the loss of support for multi-line small rural businesses could place those businesses at a competitive disadvantage *vis a vis* their urban counterparts. In summary we believe restricting support would be bad public policy and inconsistent with the Act.

IV. Process for Designating ETCs

The Joint Board's Public Notice seeks comments on the system for designating ETCs and what factors should be considered in making these public interest determinations pursuant to sections 214 (e)(2) and 214 (e) (6) of the Act.¹⁹ ITA believes that a well-reasoned and diligent evaluation of the public interest standard when deciding on a CETC application for eligibility would meaningfully examine whether additional public funding will achieve a commensurate level of public benefits for rural customers. In this regard, FCC Commissioner Jonathan Adelstein has recently commented:

I'm encouraging state commissions to carefully consider the public interest when making eligibility determinations, as is required by the Act. Specifically, states must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service. Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution.

¹⁹ Notice at para. 33.

We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers.²⁰ (emphasis added)

When evaluating the costs of granting CETC status to an applicant, the state commission or FCC, in those situations where the state lacks jurisdiction, should review not only the additional costs imposed on the federal universal service fund, but also any state universal service fund impacts as well. This multi-jurisdictional view is especially relevant in Idaho where the state has, since 1988, administered a state universal service fund “for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho”²¹

In addition to the federal and state impacts on universal service funds, regulatory authorities should consider the strong probability that additional CMRS providers will also seek eligibility status. They will be compelled to do this to remain competitive. In some study areas in Idaho, this could potentially result in up to 11 publicly funded networks in a single study area if the incumbent ILEC and 10 wireless carriers were all granted eligible status.

The evaluation of the benefits to consumers of granting eligibility to additional ETCs should, at a minimum, consider the following factors: effect on prices, introduction of new or improved service over and above those currently available, improvements in service quality, specific plans to increase coverage to provide service to the entire study area, willingness and ability to assume carrier of last resort obligations, and the overall commitment and capability of the applicants to do what they say they are going to do and

²⁰ Remarks of Commissioner Jonathan Adelstein before the National Telephone Cooperative Associations, February 3, 2003.

²¹ *Idaho Code* § 62-610(1).

that they are not merely pursuing this course of action for short term financial gain. Once a competitive ETC is designated as eligible for public funds, accountability standards and reporting responsibilities need to be put in place. This would be over and above the current annual certification process. This reporting would encompass monitoring service level quality, customer complaints, pricing, and financial reporting to ensure that the funds have been used for their intended purposes. Concurrently, ILECs should be simultaneously allowed the same pricing flexibility as the competitive ETC including the ability to deaverage rates in those situations where the competitive ETC does not serve the entire study area. This flexibility is needed to promote regulatory parity and ensure competitive neutrality.

The Joint Board asks whether it is advisable to establish permissive federal guidelines for states to use in designating ETCs under section 214(e)(2) and what should be included in such guidelines.²² The Joint Board also asks that the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs be addressed. In this case, the Court reversed the portion of the FCC's Order prohibiting states from imposing any additional requirements when designating eligible ETCs.²³ Taking the Court's decision into consideration in conjunction with sections 214(e)(2) and 214(e)(6), the ITA does not believe it is appropriate to establish federal guidelines. While consistency in eligibility decisions across multiple jurisdictions may be a laudable goal, the ITA's opinion is that the relevant state

²² 47 U.S.C. § 214(e).

²³ *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

jurisdiction is in the best position to make public interest determinations taking into consideration the facts and circumstances relevant to the particular state.

V. Conclusion

ITA members' customers have enjoyed a wide choice of wireless service offerings for many years without high cost support being provided to CMRS providers. These wireless offerings have not significantly affected access line growth in rural Idaho, but are resulting in reductions in interstate access minutes. Since wireless service is complementary to wireline service for basic local service and is a substitute for long distance service, regulatory authorities face a compelling public interest determination in deciding how much public funding is made available to support more long distance competition in rural areas. The ITA believes that funding should be at the network level and not at the "primary line" level. Supporting network costs is consistent with the service obligations of the ILECs and their capital investment decisions. The state jurisdictions are legally authorized to make public interest determinations regarding eligibility for USF funding and federal guidelines should not be necessary. To the extent public funding is deemed appropriate, that funding should reflect the varying levels of service quality, coverage, and specific, supportable costs of the CETC. The public interest and regulatory parity demands that these recipients be held to the same regulatory standards as the incumbent ILECS and accountable for the use of any funds received to ensure consistency with section 214(e) of the Act.

Respectfully submitted,
Idaho Telephone Association

Conley Ward
Their Attorney

Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701-2730
(208) 388-1200
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