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IDAHO PUBLIC
UTILITIES COMMISSION

November 27, 2006

Mrs. Jean Jewell
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83702

RE: Case No. INC-T-06-02, In the Matter of the Petition of Inland Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. Section 214(E)(2).

Mrs. Jewell,

Please find enclosed the original and 8 copies of Frontier Communications of Idaho's comments in the above referenced matter. Also enclosed is the certificate of service for these responses to parties of interest in this docket.

If you have any questions, please contact me.

Sincerely,



Ingo Henningsen
Manager, Government and External Affairs

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
INLAND CELLULAR TELEPHONE COMPANY)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER UNDER)
47 U.S.C. SECTION 214(E)(2))
_____)

Case No: INC-T-06-02

**COMMENTS OF
CITIZENS TELECOMMUNICATIONS COMPANY OF IDAHO
D/B/A FRONTIER COMMUNICATIONS OF IDAHO**

Citizens Telecommunications Company of Idaho, d/b/a Frontier Communications of Idaho ("Frontier") respectfully submits these Comments pursuant to Idaho Public Utilities Commission ("Idaho Commission") Order No. 30152 in the above-referenced proceeding regarding the petition filed by Inland Cellular Telephone Company ("Inland") for designation as an Eligible Telephone Company ("ETC") within the state of Idaho.

Inland's ETC Petition was filed with the Idaho Commission on June 29, 2006. Frontier filed a motion to intervene on September 1, 2006. The Idaho Commission granted Frontier's motion in its Order No. 30144, dated October 5, 2006.

As the Commission is aware, Frontier is a rural local exchange carrier providing local exchange and other telecommunications services in 18 exchanges in Idaho. Frontier has been certified as an ETC by the Idaho Commission and is eligible to received federal universal service support.

Inland's application seeking ETC designation included a request for ETC designation in portions of Frontier's Elk City and White Bird wire centers.¹ In its ETC Petition, Inland explains

¹ Exhibit D to Inland's ETC Petition dated June 26, 2006 identifies two Frontier wire centers (Elk City and White Bird) which Inland partially serves and for which Inland is seeking ETC designation.

that there are areas within certain rural LEC wire centers that Inland will not serve because Inland is not licensed by the Federal Communications Commission (“FCC”) to provide wireless services in these areas within the rural ILEC exchanges.² Inland’s request for ETC designation in its Elk City and White Bird wire centers is not in the public interest because Inland will only serve a portion of the two Frontier wire centers. Frontier respectfully requests that the Idaho Commission deny Inland’s request to be designated as an ETC in Frontier’s Elk City and White Bird exchanges.

I. Inland’s ETC Petition Fails to Satisfy the Public Interest Standard For ETC Designations.

Section 214(e)(2) of the Communications Act of 1934 grants the primary authority to designate carriers as ETCs to state regulatory commissions.³ Under section 214(e)(2), “[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” for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).⁴ Section 214(e)(2) further states: “[b]efore 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.”⁵ In short, the Idaho Commission has the authority to determine whether Inland’s ETC Petitions meet statutorily prescribed requirements before granting Inland’s ETC designation request.

² Inland ETC Petition at ¶ 10.

³ See 47 U.S.C. § 214(e)(2).

⁴ 47 U.S.C. § 214(e)(1).

⁵ 47 U.S.C. § 214(e)(2).

As discussed in more detail below, both the FCC and the Idaho Commission have determined that the granting of ETC designation in less than a complete wire center is not in the public interest because subwire center designation would encourage cream skimming. To allow Inland to serve only a portion of the two Frontier's wire center while collecting revenues derived from Frontier's cost to service all customers in these wire centers would unjustly enrich Inland whose costs to serve the smaller area may well be lower. In addition, Frontier would be put at a competitive disadvantage as it would continue to be required to provide service throughout its entire Elk City and White Bird exchanges while Inland Cellular would only be responsible for a portion of those wire center.

II. The FCC's Virginia Cellular Order, Highland Cellular Order and ETC Designation Rules Establish that Designating an ETC for only a Portion of a Wire Center is Inconsistent with the Public Interest.

In its ETC Petition, Inland suggests that the Idaho Commission should grant its ETC request related to the partial wire centers in which it provides wireless service. Inland cites 47 C.F.R. § 54.207 in support of its position that it should be granted ETC designation in the partial exchanges it serves. However, 47 C.F.R. § 54.207, which relates to the definition and possible redefinition of a rural carrier's service area for purposes of receiving federal universal funding, does not support Inland's argument. The FCC has specifically rejected requests for ETC status in areas below the wire center level on the basis that such requests would be inconsistent with the public interest.

On January 22, 2004, the FCC released the *Virginia Cellular Order*, which granted in part and denied in part, the petition of Virginia Cellular, LLC to be designated as an ETC

throughout its licensed service area in the Commonwealth of Virginia.⁶ In that Order, the FCC utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular.⁷ The FCC further stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the FCC.⁸

Following the framework established in the *Virginia Cellular Order*, on April 12, 2004, the FCC released the *Highland Cellular Order*, which granted in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.⁹ In the *Highland Cellular Order*, the FCC concluded, among other things, that a carrier in a rural study area may not be designated as a competitive ETC below the wire center level.¹⁰ The FCC explained:

Although the Wireline Competition Bureau previously designated an ETC for portions of a rural telephone company's wire center, we conclude that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. In particular, we conclude, that prior to designating an additional ETC in a rural telephone company's service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area. A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than

⁶ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) (*Virginia Cellular Order*).

⁷ See *Virginia Cellular Order*, at ¶¶ 4, 27, 28, 46.

⁸ See *Virginia Cellular Order*, at ¶ 4.

⁹ See *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) (*Highland Cellular Order*).

¹⁰ See *Highland Cellular Order* at ¶ 33.

*consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation.*¹¹

The FCC explained that it did not appear that Highland Cellular was deliberately seeking to enter only certain portions of the study area in order to creamskim.¹² Indeed, in its order the FCC did not include any discussion of the characteristics of the rural exchange. Rather, the FCC concluded, that as a matter of policy, “making designations for a portion of a rural company’s wire center would be inconsistent with the public interest”.¹³ Further, the FCC explained that prior to designating an additional ETC in a rural telephone company’s service area, the competitor must commit to provide the supported services to customers throughout the rural telephone company’s entire wire center.¹⁴

Inland’s ETC Petition fails to address either the *Virginia Cellular Order* or the *Highland Cellular Order*, both of which are relevant to Inland’s request to be designated as an ETC in portions of a wire center. In addition to not addressing the *Virginia Cellular Order* and the *Highland Cellular Order*, Inland avoids any mention of the FCC’s most recent order on ETC requirements, the *Report and Order*, FCC 05-46, released March 17, 2005 (“*ETC Order*”).¹⁵

In the *ETC Order*, the FCC adopted mandatory criteria that it would apply when considering requests by carriers to be designated as ETCs, and urged state commissions to apply

¹¹ See *Highland Cellular Order* at ¶ 33

¹² See *Highland Cellular Order* at ¶ 26.

¹³ See *Highland Cellular Order* at ¶ 33.

¹⁴ *Highland Cellular Order* at ¶ 33.

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46 (rel. March 17, 2005) (“*ETC Order*”).

those same criteria in considering requests by carriers to be designated as ETCs in state proceedings.¹⁶ Specifically, the FCC explained:

*We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this Report and Order. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.*¹⁷

In the *ETC Order*, the FCC also reiterated that it was contrary to the public interest requirements of 47 U.S.C. § 214(e) to grant ETC designations below the wire center level. Referring to its earlier *Virginia Cellular* and the *Highland Cellular* decisions, the FCC explained:

*We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest.*¹⁸ *We also found that the competitive ETC applicant must commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county or town boundary lines.*¹⁹ *We continue to believe, as we stated in the Highland Cellular ETC Designation Order, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.*²⁰

¹⁶ *ETC Order* at ¶ 1.

¹⁷ *ETC Order* at ¶ 19.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *Id.* The FCC also established the following five requirements that applicants for ETC designation must comply with (1) the ETC applicant must provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) the ETC applicant must demonstrate its ability to remain functional in emergency situations; (3) the ETC applicant must demonstrate that it will satisfy consumer protection and service quality standards; (4) the ETC applicant must offer local usage plans comparable to those offered by the incumbent local exchange carrier in the areas for which it seeks designation; and (5) the ETC applicant must acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. Frontier urges the Idaho Commission apply the FCC's ETC standards as a prerequisite to designating Inland as an ETC.

The FCC decisions in *Virginia Cellular* and *Highland Cellular*, along with the FCC's *ETC Order*, make it clear that it would be contrary to the public interest to grant Inland's ETC designation request for the partial wire centers Inland intends to serve.

III. The Idaho Commission's Clear Talk Order Support Denial of Inland's Request for ETC Designation In Frontier's Partial Wire Centers.

The Idaho Commission has also previously rejected applications for ETC status in partial wire centers. The Idaho Commission addressed the issue of CETC designation in a partial wire center in its *Clear Talk Order*, No. 29541 dated July 23, 2004.²¹

In *Clear Talk*, the applicant was seeking designation as an ETC in "less than the entire study areas of the affected rural telephone companies in this case."²² In its decision to deny that application the Idaho Commission stated that "a request for ETC designation for an area less than the entire study area of a rural telephone company generally raises concerns that an Applicant intends to "cream skim" in the rural study area."²³ This Commission agreed with the FCC's decision in the *Highland Cellular Order* stating:

Recently, the FCC has found that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. Highland Cellular, CC Docket No. 96-45, FCC 04-37, 2004 WL 770088 (2004). In the Highland Cellular decision the FCC reasoned that prior to designating an additional ETC in a rural telephone company's service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area. This minimum area was found to be a rural telephone company's wire center because rural carrier wire centers typically correspond with county and/or town lines. Requiring the competitive carrier to commit to a minimum geographic area would make it less likely that the competitor will relinquish its ETC designation at a later date. The FCC further noted that consumers in rural areas tend to have fewer competitive alternatives than those in urban areas and

²¹ Case No. GNR-T-03-08, *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*, and GNR-T-03-16, *In the Matter of the Application of NPCR, Inc. d/b/a Nextel Partners Seeking Designation as an Eligible Telecommunications Carrier*.

²² *Clear Talk Order No. 29541 at p 19.*

²³ *Id.*

*such consumers are more vulnerable to carriers relinquishing ETC designation. The Commission finds that this reasoning is sound. Accordingly, we find that Clear Talk's lack of commitment to serve at least full wire centers is problematic and thus it request is inappropriate in this case. We conclude for these reasons that granting Clear Talk's Application is again not in the public interest.*²⁴

The Idaho Commission's *Clear Talk Order* supports denial of Inland's request for ETC designation in Frontier's Elk City and White Bird wire centers.

IV. The Idaho Commission Should Deny Inland's Request for ETC Designation in Frontier's Two Partial Wire Centers.

As noted above, the FCC has concluded that a competitive carrier seeking ETC designation in a rural study area may not be designated as a competitive ETC below the wire center level. The Idaho Commission has reached a similar conclusion. Inland Cellular's application to be designated an ETC for only portions of a number of Frontier's rural Idaho wire centers is in direct opposition to the standard set forth by the FCC and of that set by this Commission in the *Clear Talk Order*. Therefore, the Idaho Commission should reject Inland Cellular's Petition to be designated as an ETC in areas that are below the wire center level. Specifically, the Idaho Commission should deny Inland's request to be designated as an ETC in the Frontier wire centers of Elk City and White Bird.

V. Conclusion

For the reasons stated above, Frontier respectfully requests that the Idaho Commission deny Inland's request to be designated as an ETC in portions of Frontier's White Bird and Elk City exchanges.

Respectfully submitted this 27th day of November, 2006.

CITIZENS TELECOMMUNICATIONS COMPANY OF IDAHO

²⁴ *Clear Talk Order No.29541* at p. 16.

D/B/A FRONTIER COMMUNICATIONS OF IDAHO



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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
INLAND CELLULAR TELEPHONE COMPANY)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER UNDER)
47 U.S.C. SECTION 214(E)(2))
_____)

Case No: INC-T-06-02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this filing dated November 27, 2006 by Citizens Telecommunications Company of Idaho, d/b/a Frontier Communications of Idaho, was this day mailed by USPS to the following (next day air to PUC Executive Secretary):

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DATED this 27 day of November, 2006



Ingo Henningsen