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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
INLAND CELLULAR TELEPHONE COMPANY) **CASE NO. INC-T-06-2**
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER UNDER) **COMMENTS OF THE**
47 U.S.C. § 214(e)(2).) **COMMISSION STAFF**
)

The Staff of the Idaho Public Utilities Commission (Commission), by and through its Attorney of record, Cecelia A. Gassner, Deputy Attorney General, in response to the Notice of Modified Procedure and Notice of Intervention Deadline in Order No. 30152 issued on October 19, 2006, submits the following comments.

THE APPLICATION

On June 29, 2006, Inland Cellular Telephone Company filed a Petition on behalf of Washington RSA No. 8 Limited Partnership dba Inland Cellular (“Inland” or “Company”) for designation as an eligible telecommunications carrier (ETC) for service areas in Idaho that are currently served by an incumbent local exchange carrier (ILEC). *See Idaho Code* §§ 62-610A and 62-610D and Order No. 29841. *See also* 47 U.S.C. § 214(e)(2).

According to the Petition, Inland is authorized by the Federal Communications Commission (FCC) as the “B Band” cellular carrier in the northern section (within Idaho County) of Idaho 2 (B-2) Rural Service Area (RSA). Application at 2. Inland is also licensed by

the FCC as the “B Band” cellular carrier and has the authority to serve the southern section of Idaho 1 (B-2) RSA through a Rural Service Area Service Agreement and Option held by Inland Telephone Company. *Id.* Inland is a commercial mobile radio service (CMRS) provider and provides interstate telecommunications services. *Id.* Inland seeks designation as an ETC and to receive universal service support in certain non-rural wire centers located in Benewah, Clearwater, Idaho, Latah, Lewis and Nez Perce counties.

On September 6, 2006, the Commission issued a Notice of Application. Order No. 30123. The Idaho Telephone Association, Citizens Communications of Idaho dba Frontier Communications of Idaho, Potlatch Telephone Company, and WWC Holding Co., Inc. dba Alltel filed Petitions to Intervene. No objections were filed against any of these Petitions, and the Commission granted each Petition. Order Nos. 30123, 30144 and 30178. In addition, the Commission granted the Motion for Limited Admission filed by out-of-state counsel for Potlatch. Order No. 30144.

On September 27, 2006, the Company filed certain supplementary information to support the Application (“Supplement No. 1”). The Company filed further supplementary information for the Application on October 12, 2006 (“Supplement No. 2”).

BACKGROUND

An ETC applicant has the obligation of complying with the federal and state requirements for ETC status. In early 2005, the Federal Communications Commission (FCC) adopted new rules pertaining to ETC designation under 214(e)(6). *In the Matter of the Federal-State Joint Board on Universal Service*, CC docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 (“FCC Order”).

The FCC’s Order encouraged State commissions to adopt the new FCC rules when deciding whether a carrier should be designated as an ETC. FCC Order at 1. The FCC also clarified the “public interest” analysis and urged State Commissions to use this analysis. FCC Order at 21-27.

After seeking public comment on the merits of the new FCC rules, the Commission adopted new Idaho ETC requirements that mirror most, but not all of the FCC rules. *See* Order No. 29841. The new Idaho ETC designation requirements are: (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. Order No. 29841 at 21.

STAFF ANALYSIS

Staff has reviewed Inland's Application, including the two supplemental filings, and conducted an analysis of the Company's fulfillment of the federal Telecommunications Act ("the Act") and of Order No. 29841. In addition, Staff has analyzed the merits of awarding ETC designation separately under the three wire center classifications of non-rural, partial rural wire center, and rural wire center service areas.

Non-Rural Wire Centers

Inland identifies the non-rural wire center service areas as Bovil, Deary, Genesee, Moscow, Orofino, Peck, Pierce, Potlatch, Weippe (Verizon Northwest, Inc.) and Cottonwood, Craigmont, Grangeville, Kamiah, Kooskia, Lapwai, Lewiston, Nez Perce (Qwest Corp.-ID). The Nez Perce and Coeur d'Alene Tribal reservations are also located in wire centers classified as non-rural service area.

The Act treats rural service areas differently from non-rural service areas 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 already served by an 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 service 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 also 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. Finally, on January 13, 2005, the Commission

approved the ETC Application of a wireline carrier, VCI Company, in the Qwest service areas (Case No. VCI-T-04-1). See Order No. 29686.

Staff believes Inland meets all of the ETC requirements of the Act and of Commission Order No. 29841 as they relate to non-rural wire centers. Designating Inland 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 will benefit the consumers who are eligible recipients of Idaho Telecommunications Service Assistance Support (ITSAP). This decision further serves the public interest of the consumers who live in the Coeur d’Alene and the Nez Perce Tribal territories and are thus eligible for the federal LifeLine and Linkup support.

Based upon past Commission decisions, and consistent with the requirements of section 214 of the Act, Staff, therefore, recommends approval of ETC designation for Inland in the non-rural wire centers set forth in the Application.

Partial Rural Wire Centers

Inland’s Application encompasses partial areas of the wire centers of Elk River and White Bird that are served by Frontier Communications of Idaho. Both wire centers cover a very rural and large geographic area. According to the Application, these cities have an estimated population of 156 and 106 respectively. Supplement No. 2, Exhibit A at 1. It is unknown how many of these are year-around versus seasonal residents. Further, there is no indication that Inland has future plans to serve the entire wire center.

The FCC has 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.” See *Highland Cellular ETC Designation Order*, 19 FCC Red at 6438, para. 33. This Commission voiced its similar determination regarding Applications for ETC designation in partial wire centers in Case No. GNR-T-03-8. In that matter, the Commission found 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.” Order No. 29541 at 16. Inland’s Application only provides population estimates, and no other data regarding the exact demographics of the customers to be served in the partial wire centers.

Consistent with the FCC's [*Highland Cellular*] decision, the Idaho Commission denied Clear Talk's ETC Application in Case No. GNR-T-03-8. See Order No. 29541. In that matter, Clear Talk sought ETC designation in a partial wire center. Order No. 29541 at 16. The Commission stated, "we find that Clear Talk's lack of commitment to serve at least a full wirecenter is problematic and thus its request is inappropriate in this case. We conclude for these reasons that granting Clear Talk's Application is again not in the public interest." Order No. 29541 at 19.

Staff believes that the Application does not adequately address the more stringent ETC requirements applied to partial wire centers and that granting ETC designation in these partial rural wire centers will pose an undue burden on the ILEC. Inland's Application does not identify the areas within these wire centers that will be served, nor the potential consumer base that they plan to serve. These facts are important in the cream skimming analysis as rural wire centers often contain pockets of lower-cost, more profitable customers. Unfortunately, the Company does not provide data to demonstrate that such cream skimming is unlikely. Inland does not reasonably demonstrate a public interest benefit such that it would warrant an exception to past Commission decisions. Staff believes that granting ETC status in these partial wire centers may have the effect of leaving the ILEC as the carrier of last resort for the highest cost customer. Staff, therefore, recommends denial of ETC designation in the partial wire centers of Elk River and White Bird.

Rural Wire Centers

The Application also includes the rural wire centers of Juliaetta, Kendrick and Troy, in the Potlatch Telephone Co., Inc. service area, and Leon and Lenore in the Inland Telephone Company service area.

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 federal Act provides the State commission with more discretion, stating that the State commission may grant ETC designation to the additional carrier provided that ETC designation for the additional carrier is in the public interest.

As with the partial wire center analysis, the Act and Order No. 29841, greater emphasis is placed on scrutinizing ETC Applications in rural service areas. Rural wire centers often have widely disparate population densities, and therefore, highly disparate cost characteristics.

FCC Order at 21-22. 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). The Act further states that, “[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest.”

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 two wireless carriers, IAT Communications, Inc. dba NTCH-Idaho, Inc., and Clear Talk and NPCR, Inc. dba Nextel Partners (Case No. GNR-T-03-8), 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. *See* Order No. 29541.

Applicants have the burden of proof to demonstrate that the public interest is served by designating them as an ETC in these rural areas. *Id.* at 6 (citing *Virginia Cellular, LLC Petition for Designation as an ETC*, 19 F.C.C.R. 1563, 1574 (2004)). Inland’s Application makes five primary public interest arguments. Our analysis of each is below.

First, the Company states, “...an ETC designation will promote competition and facilitate provision of advanced communications services to the residents of rural Idaho...” Application at ¶ 32. The Company does not elaborate on which “advanced communications services” will be provisioned by the Company and in which wire centers. This statement is also not supported with specificity in the Company’s Two-Year Network Improvement Plan.

Second, the Company asserts, “[o]ne of the principal goals of the Telecommunications Act of 1996, was to ‘promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers...’.” Application at ¶ 33. The presumptive benefits of competition alone as presented in the Application are not sufficient to satisfy the public interest requirement. The Company does not present any evidence or data demonstrating how its services will further competition. Rather, it makes a bald assertion about the general concept of competition without addressing the wants and needs of the areas affected by the Company’s request.

Third, the Company references the granting of ETC Applications in Wyoming, Arizona, and South Dakota to other wireless companies. Application at ¶¶ 34, 35, and 37. Some statements contained in these paragraphs are anecdotal and are not quantitative or specific. Staff believes Inland’s Application must stand on its own merits and we cannot presume that benefits associated with cases involving different companies in different states is applicable to this Application. No evidence is presented by the Company to demonstrate how it will specifically provide a benefit to the consumers in the requested wire centers.

Fourth, the Company asserts that, “[i]n most, rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost support is made available to drive infrastructure investment.” Application at ¶ 36. While this may be a valid argument, Staff does not believe it constitutes a compelling public interest statement with regards to ETC designation. Again, the Company provides no specific data or evidence regarding the needs of the customers in the wire centers or that infrastructure improvements will not occur without high cost support.

Last, the Company states, “[w]ith high cost support, Inland Cellular will have an opportunity to create a network that is capable of convincing customers to rely on wireless service as their primary phone.” Application at ¶ 38. Staff believes this statement is invalid. The purpose of ETC designation is not to create an environment that will encourage customers to rely on wireless service as their primary service provider. ETC designation is a means to advance universal service. ETC services are also meant to provide for secure and reliable telephone services to low-income consumers who may otherwise have difficulty meeting the monthly rates. It is not meant as a mechanism to promote the use of one telecommunications technology over another.

Based on the Application, Staff does not believe that the Company has presented a compelling public interest argument for the rural wire centers.

Staff also notes that the wire centers of Leon and Lenore are in the service area of Inland Telephone Company, with whom, the Applicant is an affiliate. Inland Telephone Company currently qualifies for and receives federal high cost Universal Service Support (USF), as well as Idaho USF support. *See* Order No. 23838. If an ETC designation were to be granted to the Applicant, both Inland Telephone Company and Inland Cellular could potentially receive USF support in Leon and Lenore wire centers. This creates the possibility of cross-subsidy issues and does not serve the public interest.

Two-Year 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. This ETC requirement does not clearly specify the timing of the two-year plan. Staff recommends, that at a minimum, a two-year plan should be forward-looking and should not include any period prior to the filing date. Staff believes that a plan is a method to explain how a company gets from where it is to where it wants to be. To that end, the use of historical data seems counter-intuitive to the Commission's intent.

In the initial filing, dated June 29, 2006, Inland presented a two-year plan that included plan years 2006 and 2007. Application at ¶ 25-26. Staff requested additional information for a two-year network plan that included years 2007 and 2008. In its supplemental filing, Inland appeared to move much of what they originally included in the 2006 plan year to 2007. Supplement No. 1 at ¶ 13-18. Inland stated this budget adjustment is normal for the Company as it operates practically debt free, and redirecting funds toward other sites that require improvement or expansion, or to new sites that are needed because of demand, is standard operating procedure. *Id.* It also stated that many of the improvements planned for 2006 will not be performed until 2007. *Id.* They further emphasize that cellular is a highly competitive industry and that in order to answer demand, the Company must have flexibility to remain competitive. Supplement No. 1 at ¶ 15. Staff questions the Company's use of competition to justify ETC designation as a benefit for consumers. Elsewhere in the Application the Company implies that its services are needed because more competition in services is needed. Here, the

Company provides an excuse of other competition in other areas to explain why it cannot commit to specific improvements in these areas or to these customers.

Staff acknowledges flexibility may be required in business planning, but believes an ETC-designated company must present a solid plan to satisfy the public interest analysis. Once an ETC designation has been granted, the ETC must meet the statutory requirements of submitting an annual report to the Commission that, among several requirements, includes a two-year network improvement plan and a progress report. Order No. 29841 at 21. This requirement is meaningless unless the Commission has a plan by which to analyze the progress of what the Company said would occur to what the Company actually accomplished. Without this requirement, it would be difficult to refute the possibility that the Company may be shifting funds to address the demand to better paying customers or more densely populated areas over the demand in the more rural areas, thus posing the specter of cream skimming.

Ability to Remain Functional in Emergencies

The Commission has stated that it “understands different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements.” Order No. 29841 at 10. The ETC requirements do not on their face appear to favor one technology over another. Thus, 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.” *Id.* at 11.

Staff believes the Application minimally satisfies this requirement and, as such, warrants some discussion as it relates to rural wire centers. A rural consumer who does not have neighbors in close proximity or who is located far from a health facility, police, fire, and other emergency services is more dependent on reliable telephone service than those located in more densely populated non-rural areas.

In the Application, Inland states that they have “battery back-up [good for a minimum of four hours] and a standby generator at the central office, as well as at all cell sites.” Application at ¶ 27. They further state that, “Inland Cellular maintains redundant routes to the outside world should a route be cut-off. Inland Cellular has technicians on call should trouble develop at any time.” *Id.* Inland does not state the number of technicians that are available, where they are located, and how soon they would be on site to begin diagnostics and repair functions.

Inland asserts that in an outage, its cellular customers could receive service from any of Inland Cellular's roaming partners should their service remain intact and a signal can be obtained. Supplement No. 2 at ¶ 8. Staff does not believe a backup plan that uses a roaming partner's signal constitutes a sound emergency plan. The nature of wireless service in rural mountainous terrain suggests that service coverage may be spotty and relying on another wireless carrier's service when the primary carrier's service is inoperable cannot be considered a plan to remain functional in an emergency.

Inland further suggests that the customer could also get into their automobiles with their cellular phone and drive until a signal is indicated on their device. Supplement No. 1 at ¶ 21. Once again, Staff does not believe this to be a prudent element of an emergency plan. It is not feasible to think that a customer caught in an emergency caused by a natural disaster such as a wild fire or blizzard would be able to drive their automobile until a signal is reached.

In both of these scenarios, Inland does not explain how the Company will handle the premium per minute billing of the roaming charges that may be incurred. These additional costs would likely pose a burden to a low- or fixed-income customer who is an ITSAP or a federal LifeLine recipient.

While the Application appears to meet the minimum requirements for demonstrating the ability to remain functional in an emergency during a normal outage, the Company did not acknowledge or present a concrete emergency backup plan or a disaster recovery plan. Staff does not believe the Application adequately conveys the Company's ability to handle a serious emergency.

SUMMARY

Staff believes the public interest analysis, the two-year network improvement plan, and the ability to remain functional in an emergency are particularly important to the Idaho consumers in the rural wire centers. As stated earlier, the presumptive benefits of competition alone as emphasized in the Application are not sufficient to satisfy the public interest requirement. Idaho consumers in the more rural wire centers are the most likely targets of cream skimming, which is contrary to the public interest. These consumers may not receive the same attention from the Company as it relates to various aspects of service whether responding to repair issues or to normal upgrades and expansions. These consumers, after committing to a service provider, may not benefit from future technological advances and service enhancements

without Commission oversight of the Company's progress on the two-year network improvement plan (which the Staff believes should be presented as forward-thinking from the filing date). Finally, emergency preparedness is vital in the rural wire centers. Without a detail-specific plan that is executable in an emergency, regardless of the cause, the rural consumers have a greater likelihood of being without service for a longer period of time.

STAFF RECOMMENDATION

Staff recommends that the Commission approve the Application as to the non-rural wire centers listed in the Application. Staff further recommends the Commission deny the Application as to the partial rural wire centers of Elk City and White Bird. Lastly, Staff recommends that the Commission deny the Application as to the rural wire centers of Leon, Lenore, Juliaetta, Kendrick, and Troy.

Respectfully submitted this ^{27th} day of November 2006.



Cecelia A. Gassner
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27TH DAY OF NOVEMBER 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. INC-T-06-2, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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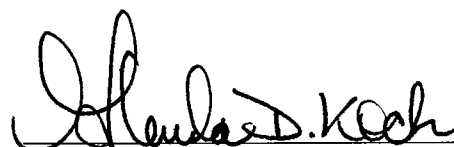
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