

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: CECELIA A. GASSNER

DATE: DECEMBER 19, 2006

**SUBJECT: IN THE MATTER OF INLAND CELLULAR'S PETITION FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER, CASE NO. INC-T-06-02**

On June 29, 2006, Inland Cellular Telephone Company filed a Petition on behalf of Washington RSA No. 8 Limited Partnership d/b/a Inland Cellular ("Inland" or "Company") for designation as an eligible telecommunications carrier (ETC) for service areas in Idaho that are currently serviced by other carriers. *See Idaho Code* § 61-610A and Order No. 29841. *Also see* 47 U.S.C. § 214(e)(2). A Notice of Application was filed on September 6, 2006. Order No. 30123.

Four entities intervened in this matter. On August 15, 2006, the Idaho Telephone Association (ITA) filed its Petition to Intervene, and on September 1, 2006, Citizens Telecommunications of Idaho dba Frontier Communications of Idaho ("Frontier") filed its Petition to Intervene. On September 12, 2006, Potlatch Telephone Company, Inc. ("Potlatch") filed its Petition to Intervene and its out-of-state counsel filed a Motion for Limited Admission. No objections were filed to any of the Petitions or to the Motion. ITA's Petition was granted. Order No. 30123. On October 5, 2006, Frontier's and Potlatch's Petitions were also granted, as was the Motion by Potlatch's counsel. Order No. 30144. WWC Holdings Co., Inc. dba Alltel ("Alltel") intervened on October 19, 2006 and the Commission granted its petition. Order No. 30178. On October 19, 2006, the Commission issued a Notice of Modified Procedure and established a deadline to file written comments of November 20, 2006. Order No. 30152.

On November 15, 2006, Frontier filed a Request for Extension of Time to File Comments, with a new deadline of November 27, 2006. The Commission approved the

extension, and Staff, Frontier, ITA and Potlatch timely filed comments. The Company indicated that it may desire to file reply comments and would do so on or before December 18, 2006, if it decided to respond. The Company did not file any reply comments.

THE PETITION

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). Petition 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.

The Petition contains certain information related to the Company's local usage plans, customer service and ability to provide service. The Company provides several pricing options for its customers, and also intends to invest funds in upgrading its infrastructure.

The Company filed two supplements to its Petition, on September 27, 2006 and October 12, 2006 (Supplement No. 1 and Supplement No. 2, respectively). These documents provided further information following inquiry from Staff.

COMMENTS

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 Corporation-ID). The Nez Perce and Coeur d'Alene Tribal reservations are also located in wire centers classified as non-rural service area.

Staff noted that the federal Telecommunications Act ("the Act") treats rural service areas differently from non-rural service areas for the purposes of ETC designation. Staff Comments at 3. 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 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). *Id.*

Staff further noted that 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 of a wireline carrier, VCI Company, in the Qwest service areas (Case No. VCI-T-04-1). *See* Order No. 29686. *Id.* at 3-4.

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. *Id.* at 4.

Based upon past Commission decisions, and consistent with the requirements of Section 214 of the Act, Staff, therefore, recommended approval of ETC designation for Inland in the non-rural wire centers set forth in the Petition. *Id.*

Partial Rural Wire Centers

Inland’s Petition encompasses partial areas of the wire centers of Elk River and White Bird that are served by Frontier. Both wire centers cover a very rural and large geographic area. According to the Petition, 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. *Id.*

Staff stated that the FCC and the Commission have raised concerns about any petition that does not include an entire wire center as it may lead to cream skimming within that area. *See* Order No. 29541 at 16. Inland’s Petition only provides population estimates, and no

other data regarding the exact demographics of the customers to be served in the partial wire centers. The Staff added that the Commission denied a similar petition from another wireless carrier due to a concern about that company “cream skimming” customers in partial wire centers. *See* Order No. 29541. *Id.* at 4-5.

Staff believes that the Petition 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 Petition does not identify the areas within these wire centers that will be served, nor the potential consumer base that they plan to serve. Staff believes these facts are important in the cream skimming analysis as rural wire centers often contain pockets of lower-cost, more profitable customers. Staff asserted that 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, recommended denial of ETC designation in the partial wire centers of Elk River and White Bird. *Id.* at 5.

Frontier expressed its similar concern about the potential for the Company to engage in cream skimming in these partial wire centers. It cited the FCC’s decision in the *Highland Cellular Order* in which the FCC concluded that a rural carrier may not be competitive in anything less than an entire wire center, and “the competitor must commit to provide the supported services to customers throughout a minimum geographic area.” Frontier Comments at 4 (*citing 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)). Frontier requested that the Commission deny Inland’s Petition as to these partial wire centers. *Id.* at 8.

The ITA also expressed concern that the Petition sought to cover only parts of Frontier’s service territory. ITA Comments at 2. It also raised the issue of potential cream skimming. *Id.* For this and reasons cited below, ITA requested that the Commission deny the Petition as to areas serviced by rural telephone companies. *Id.* at 4.

Rural Wire Centers

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

Telephone Company service area. Staff noted that the Commission has stated, in Order No. 29841, that when considering a petition for ETC designation in rural areas, an evaluation of whether the designation is in the public interest is vital. As such, Staff believes the public interest analysis plays a more important role when reviewing ETC designation in rural service areas. Staff Comments at 5-6.

Public Interest Analysis

Staff stated that the Commission denied the ETC petitions 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 petitions, which applied to areas served by rural telephone companies, were in the public interest. *See* Order No. 29541. Staff commented that the Commission has found that petitioners 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)).

Staff evaluated Inland's five primary public interest arguments promoted in its Petition. Staff first noted that even though the Company states in its Petition, "...an ETC designation will promote competition and facilitate provision of advanced communications services to the residents of rural Idaho..." it does not provide any further information regarding which "advanced communications services" are referenced nor does the Company's two-year plan provide additional information. *Id.* (citing Petition at ¶ 32).

Second, the Company asserted, "[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...'" Petition at ¶ 33. Staff commented that the presumptive benefits of competition alone as presented in the Petition are not sufficient to satisfy the public interest requirement. Staff believes that the bald assertion, without evidence or data to showing how competition will address the wants and needs of the service area, is not enough to support this argument. *Id.* at 7.

Third, the Company referenced the granting of ETC petitions in Wyoming, Arizona, and South Dakota to other wireless companies. Petition at ¶¶ 34, 35, and 37. Staff believes Inland's Petition must stand on its own merits and one cannot presume that benefits associated with cases involving different companies in different states are applicable to this Petition. Staff

noted that no evidence is presented by the Company to demonstrate how it will specifically provide a benefit to the consumers in the requested wire centers. *Id.*

Fourth, the Company asserted 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.” Petition 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. Staff commented that the Company provided 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. *Id.*

Last, the Company stated, “[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.” Petition at ¶ 38. Staff believes this statement is invalid. Staff commented that 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 and 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. *Id.* Based on the Petition, Staff does not believe that the Company presented a compelling public interest argument for the rural wire centers. *Id.* at 8.

Staff further noted that the wire centers of Leon and Lenore are in the service area of Inland Telephone Company, of whom the Company 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. Staff commented that 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. *Id.*

Potlatch asserted that public interest standard arising from the FCC certification rules require a cost-benefit analysis that takes into account “the impact of the designation on the universal service fund.” Potlatch Comments at 13. Potlatch commented that the Petition does not include any information or analysis of this impact, and thus the cost-benefit analysis cannot,

by definition, be performed to complete the evaluation as to whether the Company meets the public interest standard. *Id.*

Two-Year Network Improvement Plan

Staff stated that under the Commission's Order, 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. *Id.* (referencing Order No. 29841 at 18). This ETC requirement does not clearly specify the timing of the two-year plan. Staff recommended, that at a minimum, a two-year plan should be forward-looking and should not include any period prior to the filing date. *Id.*

Staff commented that in the original filing, the Company provided a two-year plan for 2006 and 2007. Staff then requested an update for 2007 and 2008. In its supplemental filing, Staff observed that Inland moved much of what it originally included in the 2006 plan year to 2007. *Id.* (citing 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. Supplement No. 1 at ¶ 13-18. 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 questioned the Company's use of competition to justify ETC designation as a benefit for consumers. Staff Comments at 8.

Staff also acknowledged that flexibility may be required in business planning, but believes an ETC-designated company must present a solid plan to satisfy the public interest analysis. Without this requirement, Staff believes that 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. *Id.* at 9.

ITA also commented on the Company's two-year plan. ITA believes that the information presented by the Company comprised a "generalized narrative about budgeted improvements" that mostly described "data and broadband data services, which are not supported services under current USF rules" ITA Comments at 3-4. ITA further stated that

the Company did not present a wire center-by-wire center plan or how the projects set forth will improve signal quality, coverage or capacity or other pertinent details. *Id.* at 4. ITA also argued that the Company did not provide a solid commitment to improvements in any part of the requested service areas. *Id.*

Potlatch voiced similar concerns in its comments, stating that the Company makes no assertion as to whether the two-year plan sets forth improvements that are part of its ordinary course of business or whether they are additional items that the Company will perform upon the grant of ETC designation. Potlatch Comments at 6. Potlatch asserted that it believes that Inland did not meet the Commission's requirements with regards to the two-year requirement in not stating its intended improvements with specificity on a wire center-by-wire center basis. *Id.* at 8. In addition, Potlatch commented that the Company did not describe in its plan how the proposed improvements would improve signal quality, coverage or capacity, nor did it express specificity on any potential project. *Id.* at 8-9. Potlatch asserted that the two-year plan "contain[s] no commitment to build, no project by project information concerning project cost or start of completion date, and beyond the Genesee reference – no geographic specifics." *Id.* at 10.

Ability to Remain Functional in Emergencies

Staff commented that 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." Staff Comments at 9 (*citing* Order No. 29841 at 10). 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." Order No. 29841 at 11.

Staff believes the Petition minimally satisfies this requirement and, as such, warrants some discussion as it relates to rural wire centers. Staff noted that 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. Staff Comments at 9.

In the Petition, Inland stated 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." Petition at ¶ 27. It further stated that, "[it] 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 its 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. Staff Comments at 10. Staff asserted that 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. *Id.*

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. Staff Comments at 10. Staff believes 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. *Id.*

Staff further commented that in neither of these scenarios does Inland explain how the Company would handle the premium per minute billing of the roaming charges that may be incurred. Staff believes that these additional costs would likely pose a burden to a low- or fixed-income customer who is an ITSAP or a federal LifeLine recipient. Staff does not believe the Petition adequately conveys the Company’s ability to handle a serious emergency. *Id.*

Potlatch expressed doubts about the Company’s emergency plan, and commented that the rugged terrain of the proposed service area would make the Company’s stated solution of looking for a roaming partner a “dubious proposition at best.” Potlatch Comments at 10-11.

Local Usage Plan

Potlatch expressed concerns about the Company’s local usage plans. *Id.* at 11. Potlatch noted that the Company provided information on two of its existing calling plans as options to meet the local usage plan requirement. *Id.* Potlatch stated that the Company offered no specific basic universal service plan that was customized for the customer base associated with ETC designation. *Id.* In addition, Potlatch noted, the Petition did not demonstrate that these plans are comparable with the basic service of the ILEC. *Id.* at 12. Potlatch contends that

any petitioner for ETC certification in Idaho should be able to establish a specific basic universal service plan comparable to the ILEC. *Id.* It further contends that this plan should be separately identified in marketing materials and advertised on the Company's website. *Id.* Lastly, Potlatch asserted that the Company's plan of \$19.95 for 150 minutes should not be found to meet the needs of the customers in the service area. *Id.* Potlatch urged the Commission to "require a specific basic universal service offering with adequate local usage as a condition of the receipt of ETC designation." *Id.* at 13.

Certification of Proposed Services

Potlatch commented that the Company did not file a certification that it would meet certain service standards. *Id.* at 4. The subject certification was filed by the Company with its Supplement No. 2. Supplement No. 2, Affidavit Containing Certifications Pursuant to IPUC Order No. 29841.

Summary

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

Frontier requested that the Commission deny the Petition as to the partial rural wire centers of Elk City and White Bird.

ITA requested that the Commission deny the Petition as to the partial rural wire centers and the rural wire centers of Leon, Lenore, Juliaetta, Kendrick and Troy.

Potlatch requested that the Commission deny the Petition in its entirety.

COMMISSION DECISION

Does the Commission approve the Petition as to the non-rural wire centers? Does the Commission approve the Petition as to the partial rural wire centers? Does the Commission approve the Petition as to the rural wire centers? Does the Commission desire to do anything else with regards to the Petition?



Cecelia A. Gassner

M:INC-T-06-02_cg5