

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
SYRINGA WIRELESS LLC FOR) CASE NO. SYR-T-08-01
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER UNDER)
47 U.S.C. § 214(e)(2)) ORDER NO. 30629
_____)**

On April 30, 2008, Syringa Wireless LLC filed an Application requesting designation as an eligible telecommunications carrier (ETC) pursuant to Sections 214(e)(1)-(2) of the Telecommunications Act of 1934 as amended by the federal Telecommunications Act of 1996. The Commission is authorized to designate carriers as ETCs, and set forth requirements for designation in Order No. 29841 issued August 4, 2005 in Case No. WST-T-05-1. See *Idaho Code* § 62-610D. The Application states that Syringa Wireless is a commercial mobile radio service carrier providing mobile service as defined in the federal statute, and also provides intrastate telecommunications services. See 47 U.S.C. § 153(27) and 47 U.S.C. § 153(22). Syringa provides service in 17 counties in south and east Idaho.

Syringa's Application states that it satisfies all of the statutory and regulatory requirements for ETC designation. Syringa asserts it will offer the services required for carriers to be eligible for federal Universal Service Funds, including voice-grade access to the public switched telephone network, local calling, and access to emergency services, and that it will maintain the ability to remain functional in emergency situations. Syringa requests that it be designated as eligible to receive all available support from the federal Universal Service Fund including support for rural, insular and high-cost areas and low-income customers in geographic areas, and that it be approved to participate in the Lifeline program.

In its Application, Syringa asserts that its designation as an ETC is consistent with the public interest, convenience and necessity, and that it is consistent with the purposes and fundamental goals of preserving and advancing universal service, ensuring the availability of quality telecommunications services at just, reasonable and affordable rates, and promoting the deployment of advanced telecommunications services to rural and high-cost areas. Syringa contends it satisfies the items considered by the Federal Communications Commission (FCC) when analyzing the public interest benefits of an ETC application: (1) unique advantages and

disadvantages of the competitor's service offering through a cost-benefit analysis, (2) potential for cream-skimming, and (3) impact on the federal Universal Service Fund.

The Commission issued a Notice of Application and Notice of Modified Procedure on June 11, 2008 to process the Application and establish a period for filing written comments. Comments were filed only by the Commission Staff.

Staff reviewed Syringa's Application and analyzed the Company's compliance with the federal Telecommunications Act of 1996 ("the Act") and Commission Order No. 29841. Staff also analyzed the merits of awarding ETC designation separately under the two wire center classifications, non-rural and rural wire center service areas, set out in Section 214 of the Act.

In its Application, Syringa identifies 32 non-rural wire centers located in Qwest Corporation's southern Idaho service territory where Syringa seeks ETC designation. Application, Exhibit C1 at 1. Syringa also seeks ETC designation in 52 rural wire centers in central and southern Idaho within the service areas of the following rural incumbent local exchange carriers (ILECs): Albion Telephone Company; CenturyTel of Idaho, Inc.; Citizens Communications; Direct Communications; Filer Mutual; Fremont Telecom Company; Midvale Telephone; Mud Lake; Project Mutual; Rural Telephone; Silver Star-Teton Telephone; and Silver Star Communications. Application, Exhibit C1 at 2-3.

The Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the statutory service requirements set forth in 47 U.S.C. § 214(e)(1) and requests designation in a non-rural area 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) (italics added). When a carrier requests designation in a rural area served by an ILEC, the Act provides the State Commission with more discretion. Assuming the applicant meets the mandatory service requirements, the State Commission may grant ETC designation to the additional carrier if the Commission finds the designation is in the public interest. 47 U.S.C. § 214(e)(2). We first review Syringa's commitment to the statutory service obligations.

Network Improvement Plan

Applicants for ETC designation are required to submit a plan for improvements to the network during the next two years. 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 the proposed designated service area. Order No. 29841 at 18.

Syringa's Application provides detailed information outlining its network improvement plan for the years 2008, 2009, and 2010. Application, Confidential Exhibit D. The plan includes details such as affected wire center, planned expenditures, and a narrative description of the improvements for each year. Supporting documents include a map for each year with the current and future additions to the wireless network.

The Commission finds that Syringa provides a reasonable improvement plan with its Application. If Syringa is granted ETC designation, the annual submission of the Two-Year Network Improvement Plan and Progress Report will hold the Company accountable for making a reasonable effort to implement the network improvement plan. See Appendix Reporting Requirement, Order No. 29841.

Ability to Remain Functional in Emergencies

The Commission notes in Order No. 29841 that it "understands different carriers in different industries and geographic areas will have different technological challenges and opportunities to meet these functional requirements, especially in an emergency." Order No. 29841 at 10. To demonstrate the ability to remain functional in emergencies, the ETC applicant must show that it has a "reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing different traffic spikes resulting from emergency situations." *Id.*

Syringa describes the components that make up its fault-tolerant network in its Application. Application at 9 and Confidential at 10. These components include a Mobile Switching Center located in Roosevelt, Utah with 7X24 remote monitoring; a Self-healing Alternate Route Protection Service for Fiber Facilities interconnection; cell site design with overlapping coverage, battery back-up, remote monitoring, standby generators, and 7X24 remote monitoring (Application at 9); confidential information identifying the locations of field staff and additional back-up equipment; and the planned upgrades to improve reliability. Application, Confidential at 10.

The fault-tolerant network, as described in the Application, provides adequate support to demonstrate the Company's ability to remain functional in an emergency.

Other ETC Service Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841. These additional requirements are:

1. Common Carrier Status. Syringa is a Commercial Mobile Radio Services (CMRS) carrier providing “mobile service” as defined in 47 U.S.C. § 153(27). Application at 2.
2. Provide the Universal Services. Syringa offers the federally designated services listed at 47 U.S.C. § 54.10(a). *Id.* at 5.
3. Advertising. Syringa plans to advertise the availability of each of the supported services as detailed in the Application, throughout its licensed service area. *Id.* at 12.
4. The Commitment and Ability to Provide Supported Services. Syringa is committed to answering all reasonable requests for service within its proposed ETC service area. *Id.* at 20.
5. A Commitment to Consumer Protection and Service. Syringa will comply with all applicable protection standards established by the CTIA Consumer Code. *Id.* at 13.
6. Description of the Local Usage Plan. Syringa submits its rate plan brochures as Exhibit E. *Id.* at 6.
7. Tribal Notification. Syringa is seeking ETC designation for a portion of the Fort Hall Reservation and, consistent with the Tribal Notification requirement, has provided a copy of its Application to a representative of the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho. *Id.* at 13.

The Commission finds Syringa meets all the statutory ETC requirements as described in Commission Order No. 29841 as it relates to non-rural wire centers. Designating Syringa as an ETC for the non-rural service areas will provide an additional benefit to recipients of the Idaho Telecommunications Service Assistance Support Program (ITSAP). Syringa’s ETC designation will also serve the public interest of the consumers who live on the Fort Hall Reservation and are thus eligible for ITSAP support as well as federal Lifeline and Linkup support. We approve Syringa’s request for ETC designation in the non-rural wire centers set forth in Exhibit C1 of the Application.

Public Interest Analysis

As required under the Act and Order No. 29841, the Commission places greater emphasis on public-interest issues for ETC applications in rural service areas. Rural wire centers often have widely disparate population densities and thus may have highly disparate cost characteristics. *See, In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 at 21-22 (the “FCC Order”).

Accordingly, the public interest analysis plays a more important role when the Commission reviews ETC designations for rural service areas.

Consistent with the Act and the ETC requirements of FCC rules, the Commission in Order No. 29841 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. Based on a public interest analysis, the Commission has denied ETC applications that placed too much emphasis on alleged benefits of competition rather than explaining how the particular applicant's ETC designation would benefit all customers in a service area. *See, e.g.,* Case No. GNR-T-03-8 (IAT Communications, Inc. dba NTCH-Idaho, Inc., and NPCR, Inc dba Nextel Partners), Case No. INC-T-06-2 (Inland Cellular Telephone Company). The term service area means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of a rural telephone company, service area means the company's study area unless the FCC and the State commission, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c) of the Act, establish a different definition of service area for the company. 47 U.S.C. § 214(e)(5). Applicants have the burden of proof to demonstrate that the public interest is served by designating them as an ETC in rural areas. Order No. 29541 at 6 (*citing Virginia Cellular, LLC Petition for Designation as an ETC*, 19 F.C.C.R. 1563 (2004)).

Syringa's Application makes four primary arguments relating to public interest issues: Cost-Benefit Analysis, Potential for Cream-Skimming, Impact on the federal USF, and State and Federal Precedents.

1. Cost-Benefit Analysis

Syringa asserts its universal service offering not only increases competition in the rural areas, but also provides greater service choices for the rural consumer. Application at 15. Syringa states the increased competitive service options and quality service will benefit the rural

Idaho consumers and will “speed the delivery of advanced wireless services to rural Idaho citizens.” *Id.* The Company further states that in many of the areas it serves, “Syringa Wireless is the only wireless carrier providing high-quality voice and data services to customers. Without Syringa Wireless, many customers in Idaho would have to rely solely on traditional wireline services.” *Id.* Syringa claims wireless mobility will offer “unique and essential services to consumers in rural Idaho,” and “affords customers increased flexibility, public safety, and service options.” *Id.* The Application states that an additional benefit will be offered to low-income consumers who are eligible for state ITSAP and federal Lifeline benefits. *Id.* Finally, Syringa claims it provides several advantages including mobility, access to E-911, voice-mail, three-way calling, call waiting, call forwarding, expanded calling scopes and several calling plans. Application at 16. Syringa concludes its Cost-Benefit Analysis by describing how the federal high-cost support would be used to improve its infrastructure in rural areas and how these improvements would positively impact the tourism industry, increasing local jobs and economic development. *Id.*

2. Potential for Cream-Skimming

Syringa states it is not targeting low-cost areas or avoiding high-cost areas, but instead will serve all customers where it is able to provide wireless service to varied population densities. Syringa asserts it is not seeking ETC designation in partial wire centers and is proposing to serve some of the least densely populated and costliest to serve study areas in Idaho. Application at 18. This statement is supported by a wire center population density chart filed with the Application. Confidential, Exhibit C-2. Applications for ETC designation that include an entire service area generally avoid the potential for cream-skimming.

The list of wire centers in the Application includes the entire service areas of the following ILECs: Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direct Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Silver Star-Teton and Silver Star Communications. Syringa’s Application also includes, however, wire centers that make up partial service areas for Citizens Communications/Frontier Communication (Citizens), Midvale Telecom Company, and Rural Telephone Company. These three rural ILECs serve non-contiguous service areas. The partial service area for Citizens is unique, however, and must be analyzed separately. In the Rural Task Force (RTF) Order (FCC 01-157, released May 23, 2001), all rural ILECs were required to select one of three available

disaggregation paths and to notify the Universal Service Administrative Company of their selections. The path selected by an ILEC affects the support provided to competitive carriers. Citizens elected to disaggregate its service area at the exchange level. This decision changed the high-cost support from an averaged cost across all lines served by a carrier in a service or “study” area to average line cost at each wire center. This alteration for Citizens removes the cream-skimming concern for Syringa’s ETC designation for less than all of Citizens service area.

3. Impact on the Universal Service Fund

Syringa asserts that its receipt of high-cost funds will have a nominal impact on the federal USF fund if calculated using the FCC’s current “identical support” rule. Syringa conducted a study using customer zip codes from its billing system to identify the location of its customers relative to the exchange area boundaries of the ILEC with which Syringa competes. Syringa’s calculation of total per-line support that each competing ILEC currently receives, including high-cost, local switching, interstate common line, and long-term support when multiplied by the individual ILEC per-line support amount with the number of Syringa consumers, indicates Syringa would receive an estimated \$1,095,948 per year in USF support. Application at 18. Based upon its calculations, Syringa argues “[t]his represents less than 0.0261 percent of the high-cost portion of the federal USF, assuming \$4.2 billion in high-cost support disbursement in a single year. Accordingly, grant[ing] of Syringa Wireless’ ETC request will have minimal impact on the USF.” *Id.* Syringa goes on to state, “[t]he benefits of granting Syringa ETC designation outweigh any potential harm to the sustainability of the fund.” Application at 19.

4. State and Federal Precedent

Syringa notes that designation of Syringa Wireless as an ETC is consistent with other decisions across the country, demonstrated by numerous cases at the state and federal level, including this Commission’s recent designation of Edge Wireless, LLC as Idaho’s first wireless rural ETC. Application at 19. This argument is not persuasive, however, because the Commission does not rely on past decisions in determining whether a current application should be approved or denied. Each application must stand on its own merit in determining if it meets the state and federal ETC designation requirements as outlined in Commission Order No. 29841. The Commission stated in Case No. INC-T-06-02, “[i]t cannot be presumed that benefits

associated with different companies in different states are applicable to the Company or the customers in its requested service area.” Order No. 30212 at 6.

Public Interest Summary

In evaluating the public interest issues, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. It is important that the applicant is committed to providing universal service throughout the entire rural service areas. Here, Syringa avoids the potential for cream-skimming where the Application includes all wire centers in the ILEC’s designated service area.

Another potential harm considered in the public interest analysis is the impact on the federal support fund. Syringa’s claim that its ETC designation would minimally impact the federal USF may be correct, but in part because of recent action taken by the FCC. Rapid escalation of the high-cost fund is currently a concern that is being addressed at the federal level. On April 29, 2008, the FCC adopted the Federal-State Joint Board on Universal Service’s recommendation to impose an interim emergency cap on the amount of high-cost support that competitive ETCs (CETCs) may receive. *See In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, FCC Docket No. 05-337, 96-45, Order FCC 08-122 issued May 1, 2008.* Specifically, effective May 1, 2008, total annual support for each state will be capped at the level of support that CETCs in that state were eligible to receive during March 2008 on an annualized basis. Unless the FCC grants an exception, all newly designated and existing CETCs in Idaho will share the high-cost USF support in the amount that was distributed to Idaho CETCs in March 2008. The interim cap will remain in place until the FCC adopts comprehensive reform measures. *Id.*

The Commission finds that Syringa has met its burden to prove that its designation as an ETC in the rural areas covering the ILEC’s entire service area is in the public interest. We find that the potential benefits to Syringa’s designation as an ETC in the rural service areas outweigh the potential harms. Denial of the Application would deny rural and tribal consumers the benefit of ITSAP, federal Lifeline and Linkup support as well as other potential technological and safety benefits that may be available by Syringa’s designation as an ETC. Syringa’s ETC designation will not materially affect the federal USF, and it will not increase the amount currently available to ETCs in Idaho. In addition, the Application includes a detailed network plan for a two-year period, demonstrating a commitment to use high-cost funds to upgrade the

network. Application, Confidential Exhibit D. Finally, Syringa avoids the potential for cream-skimming in those areas where Syringa proposes to serve an entire study area. On this record, we find that Syringa has met its burden to prove that its designation as an ETC in the rural areas covering the ILEC's entire service area is in the public interest.

Summary of Commission Findings and Conclusions

The Commission finds Syringa meets all the statutory ETC requirements as described in Commission Order No. 29841 as it relates to non-rural wire centers. Designating Syringa as an ETC for the non-rural service areas will provide a service option to recipients of the Idaho Telecommunications Service Assistance Support Program (ITSAP). Syringa's ETC designation may also benefit customers who live on the Fort Hall Reservation and are thus eligible for ITSAP support as well as federal Lifeline and Linkup support. We approve Syringa's request for ETC designation in the non-rural wire centers set forth in Exhibit C1 of the Application.

Regarding the rural wire center areas, we find the public interest analysis, the two-year network improvement plan, and the ability to remain functional in an emergency weigh in favor of approving Syringa's Application in the rural wire centers. In addition, Syringa would provide comparable service to that currently provided by the ILECs. The Company demonstrates an understanding of the federal and state customer service requirements for ETC designation. Based on the record in this case, we find Syringa meets all federal and state requirements to be granted ETC designation in the rural wire centers served by Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direct Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Citizens Communications/Frontier Communications, Silver Star-Teton and Silver Star Communications. The Commission approves the Application in the rural wire centers served by those companies.

We deny the Application for the rural wire centers served by Midvale Telephone Exchange, Inc. and Rural Telephone Company, however, as these wire centers represent partial service areas of the incumbent provider. Where an applicant intends to provide service in only partial rural service areas, the potential for cream-skimming is a significant factor in the public interest analysis. On the record in this case, the Commission cannot find that the public interest would be served by designating Syringa an ETC in the partial wire centers served by Midvale Telephone Exchange, Inc. and Rural Telephone Company.

ORDER

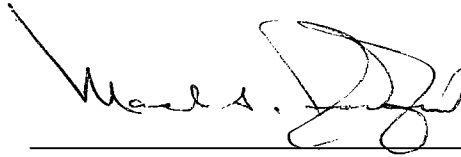
IT IS HEREBY ORDERED that the Application of Syringa Wireless LLC for designation as an eligible telecommunications carrier in the non-rural wire centers set forth in Exhibit C1 of the Application is approved.

IT IS FURTHER ORDERED that the Application for Syringa's ETC designation in the rural wire centers served by Albion Telephone Company, CenturyTel of Idaho, Custer Communications, Direct Communications, Filer Mutual, Fremont Telecom Company, Mud Lake, Project Mutual, Citizens Communications/Frontier Communications, Silver Star-Teton and Silver Star Communications is approved.

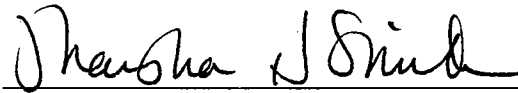
IT IS FURTHER ORDERED that Syringa's Application for ETC designation in the rural wire centers served by Midvale Telephone Exchange, Inc. and Rural Telephone Company is denied.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28th
day of August 2008.



MACK A. REDFORD, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



JIM D. KEMPTON, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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