

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1176 & UM 1177**

In the Matter of  
EDGE WIRELESS, LLC  
Application for Designation as an Eligible  
Telecommunications Carrier, Pursuant to the  
Telecommunications Act of 1996.

**EDGE WIRELESS' MOTION TO  
CONSOLIDATE DOCKETS UM 1176  
AND UM 1177**

**MOTION TO CONSOLIDATE**

By agreement of the parties at the workshop in Docket UM 1177, held January 31, 2004, Edge Wireless, LLC ("Edge"), by its attorneys, hereby files this motion requesting the Oregon Public Utility Commission (the "Commission") consolidate Dockets UM 1176 and UM 1177. In support of this motion, Edge states as follows:

Edge originally filed two separate applications for ETC status with the Commission: one for specified areas within the service areas of non-rural ILECs and another for specified areas within the service areas of rural ILECs. The non-rural area application was filed on October 1, 2004 and docketed as UM 1176. The rural area application was filed on October 19, 2004 and docketed as UM 1177. Edge's decision to file separate applications was based on the language of 47 U.S.C. § 241(e)(1) and (2), FCC precedent, and conferences with Commission Staff, all of which indicated that the requirements for obtaining ETC status in non-rural ILEC territories are less stringent than the requirements for obtaining ETC status in rural ILEC territories.

Typically, applicants for ETC status in non-rural ILEC territories are granted ETC status upon finding that the applicant meets the nine-point checklist and that it agrees to offer and advertise the supported services throughout the proposed ETC service area, without addressing

whether such designation otherwise serves the public interest.<sup>1</sup> Conversely, Applicants for ETC status in rural ILEC territories had the additional burden of showing that a grant of ETC status would serve the public interest.<sup>2</sup>

On November 18, 2004, after Edge had filed its initial applications in UM 1176 and UM 1177, the FCC's Wireless Telecommunications Bureau released the *Sprint ETC Order*.<sup>3</sup> Commission Staff interprets the *Sprint ETC Order* as requiring the Commission to apply the public interest standard applicable to ETC applications in rural ILEC areas to Edge's application for ETC status in non-rural areas.<sup>4</sup> While Edge does not believe the Commission should conduct such an analysis, it hereby combines its non-rural and rural applications.<sup>5</sup> Should the

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<sup>1</sup> See, Section 214(e)(1) of the Act.

<sup>2</sup> See, Section 214(e)(2) of the Act.

<sup>3</sup> *In the Matter of the Application of SPRINT CORPORATION for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Order No. 04-3617, CC Docket No. 96-45 (released November 18, 2004).

<sup>4</sup> In the *Sprint ETC Order*, the FCC approved Sprint's non-rural area ETC application based on a finding that Sprint satisfied the public interest standard by making commitments similar to those made by ETCs in rural areas in the *VTC ETC Order, In the Matter of VIRGINIA CELLULAR, LLC for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Order No. FCC 03-338, CC Docket No. 96-45 (released January 22, 2004), and the *HTC ETC Order, In the Matter of HIGHLAND CELLULAR, INC. for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Order No. FCC 04-37, CC Docket No. 96-45 (released April 12, 2004).


<sup>5</sup> FCC ETC orders are not binding on this Commission when exercising its authority under Section 214(e)(2). The Commission should not follow the FCC's *Sprint ETC Order* as to the non-rural ILEC portion of Edge's application. Doing so would be contrary to the statutory scheme adopted by Congress and inconsistent with prior decisions of this Commission. 47 U.S.C. 214 (e)(2) clearly mandates that a state "shall" designate additional ETCs in non-rural areas "so long as each additional requesting carrier meets the requirements of paragraph (1)". Paragraph (1) of Section 214(e) does not include a public interest test. Under Section 214(e)(2) a public interest finding is required with respect to rural ILEC areas only. This Commission has previously recognized this scheme when it granted, without applying a public interest test, ETC status to RCC Minnesota, Inc. ("RCC"). See *In the Matter of the Application of RCC MINNESOTA, INC. for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Order No. 04-355, Docket UM 1083 (June 24, 2004) ("RCC ETC Order") and United States Cellular Corporation ("USCC"), *In the Matter of the Application of US CELLULAR CORPORATION for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Order No. 04-356, Docket UM 1084 (June 24, 2004) ("USCC ETC Order").

Commission, however, decide to apply a public interest test to the non-rural ILEC portion of Edge's application, the statements regarding the public interest contained in Edge's Amended Combined Application apply with equal vigor to the non-rural ILEC and rural ILEC territories for which Edge seeks ETC status. By consolidating the two dockets, the Commission can review the combined application for ETC status in both non-rural and rural ILECs together as a whole. This will result in administrative efficiency and will not prejudice the rights of the parties to the two dockets.

For the foregoing reasons, Edge urges the Commission to grant its motion to consolidate Dockets UM 1176 and UM 1177, applications for Designation as an Eligible Telecommunications Carrier ("ETC") in rural and non-rural areas, filed with the Commission in the above referenced proceedings on September 30, 2004.

Respectfully submitted this 11th day of February, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **“EDGE WIRELESS’ MOTION TO CONSOLIDATE DOCKETS UM 1176 AND UM 1177”** upon the parties named on the attachment.

I further certify that said copies were placed in sealed envelopes addressed to said partys’/attorneys’ last known addresses as shown and deposited in the United States Mail at Portland, Oregon, and that the postage thereon was prepaid.

DATED this 11<sup>th</sup> day of February, 2005.

DAVIS WRIGHT TREMAINE LLP

By: 

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