

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1177

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

ORDER

DISPOSITION: SECOND AMENDED APPLICATION GRANTED

Edge Wireless, LLC (Edge) initially filed two applications for designation as an Eligible Telecommunications Carrier (ETC): One application was for designation in areas served by incumbent non-rural carriers, UM 1176; the other application was for designation in areas served by incumbent rural carriers, UM 1177. Those dockets were subsequently consolidated, and the application under consideration is the Second Amended Application filed in UM 1177 on June 20, 2005. That application is approved as set forth below.

The legal requirements for designation as an ETC shifted dramatically during the course of this proceeding. To evaluate Edge’s application, this order commences with the procedural background of the case. We then discuss the legal requirements beginning with the state of the law that we applied in RCC Minnesota, Inc., UM 1083, and U S Cellular Corp, UM 1084; as well as the additional requirements that have been set forth by the Federal Communications Commission (FCC). Next, we assess Edge’s application using the legal framework set out above. Finally, we set out our findings and conclusions.

Procedural Background

On October 1 and 19, 2004, Edge filed two applications for ETC designation, because at that time, two different legal standards applied to designation in areas served by rural and non-rural carriers. Oregon Telecommunications Association (OTA) filed a petition to intervene on December 10, 2004, which was subsequently granted, and a prehearing conference was held December 17. Edge moved for a Protective Order on January 21, 2005, and the order was issued the same day. See Order No. 05-047.

At the prehearing conference, a schedule was adopted providing for workshops and a staff report. On February 8, 2005, Staff moved to extend the schedule to allow Edge to file an amended consolidated application in light of a new FCC decision, and speculated that, based on discussions, OTA would withdraw its intervention upon review of the amended application. Edge filed its First Amended Application and motion to consolidate the dockets on February 11. The motion to consolidate the dockets was granted on February 23. OTA filed a motion to withdraw its intervention on February 28.

On February 28, 2005, the FCC issued a press release indicating that it had reached a decision on additional guidelines for ETC designation. OTA immediately withdrew its motion to withdraw its intervention, and Staff requested that the schedule be held in abeyance until the parties had an opportunity to review the FCC decision.

On March 17, the FCC released its decision. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No 96-45, 20 FCC Rcd 6371, FCC 05-46 (rel Mar 17, 2005) (hereinafter "FCC 05-46"). The parties then proposed a new schedule, which was approved. Edge filed its Second Amended Application on June 20, 2005. Staff filed testimony on July 15, 2005. Edge then filed a letter requesting that the Commission act on its application without holding a hearing. OTA made no additional filings.

Applicable Law

The state of the law as of June 2004, was set forth in Order No. 04-355, when the Commission considered the ETC application of RCC Minnesota, Inc.:

Section 254 of the Act governs the Universal Service Fund (USF). The statute states that universal service policies should promote quality services at just, reasonable, and affordable rates; access to advanced telecommunications and information services; access to services in rural areas comparable to services in urban areas; and other policies as are developed over time. 47 USC § 254(b). The statute also states, "Universal service is an evolving level of telecommunications services." 47 USC § 254(c)(1).

Telecommunications carriers that have been designated ETCs under section 214(e) "shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 USC § 254(e). An ETC only receives USF support for customers that it serves in areas where USF support is distributed.

47 CFR § 54.307(a). The ETC can offer services, either using its own facilities or through a combination of its own facilities and resale of another carrier's services. 47 USC § 214(e)(1). An ETC does not receive support if it serves a customer through resale of another carrier's facilities, but only if it serves the customer using its own facilities. 47 CFR § 54.307(a)(3). The amount of support provided to the ETC for a customer line mirrors the amount provided to the incumbent local exchange carrier (ILEC) for that customer line. 47 CFR § 54.307(a)(4).

The basic test for whether an applicant should be designated as an ETC is (1) whether it offers the services supported by federal universal service support mechanisms, and (2) whether it advertises those services. 47 USC § 214(e)(1).

Order No. 04-355 at 3. The services supported by federal universal service support mechanisms are listed in federal regulations: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling, or its functional equivalent; (4) single-party service, or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. *See* 47 CFR § 54.101(a).

When the Commission last considered the issue, the FCC had declared that, in areas served by non-rural incumbent carriers, provision and advertisement of the essential nine services “is consistent *per se* with the public interest.” *See, e.g.,* Order No. 04-355 at 6 (quoting *In the Matter of Pine Belt Cellular, Inc. and Pine Belt PCS, Inc., Petition for Designation as an Eligible Telecommunications Carrier*, DA 02-1252, 17 FCC Rcd 9589 ¶ 13 (rel May 24, 2002)). In contrast, in areas served by rural incumbent carriers, the Commission was required to conduct a more thorough analysis to determine whether “the designation is in the public interest.” *See* Order No. 04-355 at 7 (citing 47 USC § 214(e)(2)). In considering whether designation was in the public interest, the Commission evaluated cream-skimming concerns, performed a cost-benefit analysis, and examined the applicant’s ability to provide reliable service. *See* Order No. 04-355 at 7-13.

In interpreting and applying federal law, the Commission used FCC decisions as guidance. *See* Order No. 04-355 at 7 n 2 (“FCC decisions are not binding on this Commission, * * * but the decisions are instructive to our analysis.”) The FCC has since issued a March 17, 2005, Report and Order regarding minimum requirements for a telecommunications carrier to be designated as an ETC, after receiving substantial public input and recommendations by the Federal-State Joint Board on Universal Service. *See* CC 05-46.

In addition to providing and advertising the nine essential services, the FCC set out several additional criteria for new ETC designations:

- (1) The applicant must show a commitment and ability to provide services in two ways: by providing services to all requesting customers within the service area, and submitting a formal network improvement plan that demonstrates how Universal Service Funds will be used to improve coverage, signal strength, or capacity that would not occur without high-cost support. *See* FCC 05-46, ¶ 21. The improvement plan should set out how, in the next five years, signal quality, coverage, or capacity will be improved, the projected start and completion date for each project, the specific geographic areas in which improvements will be made, and the estimated population that will be served as a result of the improvements. *See id.* at ¶ 23.
- (2) The applicant must state a plan to remain functional in emergency situations. *See* FCC 05-46, ¶¶ 25-27. While the FCC declined to adopt specific requirements, it stated that an applicant “must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.” *Id.* at ¶ 25. Additional requirements may be set forth by state commissions, but the requirements must be competitively neutral. *See id.* As discussed below, reports regarding outages will also be required. *See id.* at ¶ 27.
- (3) The applicant must satisfy certain consumer protection and service quality standards. The FCC stated that it would require carriers to adhere to the Cellular Telecommunication and Internet Association’s (CTIA) Consumer Code for Wireless Service. Under the CTIA Consumer Code, wireless carriers agree to the following terms: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy. *See* FCC 05-46, ¶ 28 n 71. The FCC discouraged states from adopting additional consumer protections for carriers seeking ETC designation. *See id.* at ¶ 30.
- (4) The applicant must offer a local usage plan that is comparable to that offered by the incumbent carrier, but the FCC did not set establish a specific threshold. *See* FCC 05-46, ¶¶ 32-34. In evaluating the local usage plan, factors to be considered include whether the applicant’s local calling plan has a different local calling area than the incumbent carrier, whether the applicant’s local calling plan offers unlimited free calls to government, social service agencies, health facilities, educational institutions, and emergency numbers, and whether there is a local plan available that offers a specified number of free minutes in the local area. *See id.* at ¶ 33. The FCC expressly notes that although it has not set a specified number of minutes for local

usage, “there is nothing in the Act, Commission’s rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.” *See id.* at ¶ 34.

- (5) The applicant must indicate that it understands 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. *See* FCC 05-46, ¶¶ 35-36.

Further, the FCC will require the following reports of new and current ETCs: (1) progress updates on the carrier’s five-year service quality improvement plan; (2) detailed information on outages in the carrier’s network; and (3) how many requests for service from potential customers were unfulfilled in the past year and the number of complaints per 1,000 handsets or lines. *See* FCC 05-46, ¶ 69. The FCC will also require certification that the carrier complies with other requirements, such as the number of complaints per 1,000 handsets or lines, observance of the CTIA Consumer Code, ability to function in emergency situations, provision of local usage plans comparable to those offered by local incumbent carriers, and acknowledgement that it may be required to offer equal access if other ETCs withdraw from the area. *See id.*

In addition, the FCC enhanced its public interest analysis. *See* FCC 05-46, ¶¶ 40-47. The decision stated that the public interest inquiry should be applied to carriers seeking to serve areas served by both rural and non-rural carriers; however, the prohibition on cream-skimming should continue to apply only to areas served by rural carriers. *See id.* at ¶¶ 42, 52. The FCC also set forth several specific considerations to be evaluated in determining whether an ETC application is in the public interest. Increased consumer choice among carriers is one factor that may weigh in favor of a public interest finding, but that alone will not satisfy the public interest test. *See id.* at ¶ 44. Also, increased service offerings, such as mobility, fewer toll charges, voice mail, numeric paging, call forwarding, three-way calling, and call waiting may also weigh in favor of wireless carriers winning ETC designation. Against those benefits, certain disadvantages may also be considered, such as the frequency of dropped calls and the lack of coverage in the area. *See id.* The FCC specifically declined to adopt a specific test to use when considering whether the designation of an ETC would affect the size and sustainability of the Universal Service Fund. *See id.* at ¶ 54.

After a carrier has been designated as an ETC, it must file reports as part of the annual recertification process. In the past, the Commission has required extensive reporting by ETCs to show how they are spending Universal Service Fund support and providing service to their customers. *See, e.g.,* Order No. 04-355 at 16-17. The new FCC order required additional reports:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal

quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. n196 Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected; and

(3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers.

FCC 05-46, ¶ 69. Further, the carrier must provide the number of complaints per 1,000 handsets or lines; certification that it is complying with applicable consumer protection rules, such as the CTIA Consumer Code; certification that it is able to function in emergency situations; certification that it offers a local usage plan comparable to that offered by the incumbent carrier; and certification that the carrier acknowledges that it may be required to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. *See id.* The FCC urged state commissions to apply these reporting requirements on all ETCs applying for annual recertification. *See id.* at ¶ 71.

No state laws or rules have been enacted regulating designation of ETCs, therefore we rely on precedent and the guidance provided by the FCC. However, at the August 16, 2005, public meeting, we opened docket UM 1217 to consider matters raised by the FCC's March 17, 2005, decision.

Application of Edge Wireless, LLC

Federal universal service support is given to support the nine essential services set forth in 47 CFR § 54.101(a). Edge has committed to providing those

services. *See* Second Amended Application, 6 (June 20, 2005). The only exception is the Link Up service, the federal program for discounts on connection charges, because Edge does not charge for activation of wireless services. *See* Staff/1, Marinos/11. Also, Edge has committed to advertising those services and has provided a budget for 2004 with a statement that it expects to spend a similar amount in 2005. *See* Second Amended Application, 12 and n 26.

First, Edge agreed to provide service to customers making a reasonable request for service, using the same six-point checklist already approved by the Commission: (1) determine whether the customer's equipment can be modified or replaced to provide acceptable service; (2) determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service; (3) determine whether adjustments at the nearest cell site can be made to provide service; (4) determine whether there are any other adjustments to network or customer facilities that can be made to provide service; (5) explore the possibility of offering resold service; and (6) determine whether an additional cell site, a cell-extender, or repeater can be employed, or can be constructed to provide service. *See* Second Amended Application, 21-22; Order No. 04-355 at 10. In addition, Edge submitted a confidential five year build out plan specifying anticipated new cell sites and improvements to existing sites at the wire center level. *See* Second Amended Application, 14, and confidential Exhibit J.

Second, Edge has designed a “fault tolerant network” to remain functional in emergency situations. *See* Second Amended Application, 9. The network has a mobile switching center; overlapping cell sites with constant remote monitoring and battery back up, and standby generators at major sites; mobile cells and other alternate access equipment; and trained technicians at various locations with access to cell sites. *See id.* at 9-10. To show its commitment, Edge cites several situations which stressed its network, for example, storms and high-capacity events such as county fairs, and the steps it took to accommodate usage in those situations. *See id.* at 10.

Third, Edge has confirmed that it will comply with the consumer protection standards established by the CTIA Consumer Code. *See* Second Amended Application, 12. Edge also committed to cooperating with the Commission on consumer complaints, in accordance with the Interagency Agreement between the Commission and the Department of Justice, which established a process to handle such complaints. *See* Second Amended Application, 12, and Exhibit M. The Interagency Agreement states that carriers are required to provide substantially accurate coverage maps to consumers; allow new customers to terminate a wireless contract for any reason within 14 days of activation without paying an early termination fee; return any activation or other “non-usage” based fee charged to consumers if consumers cancel within three days of activation; disclose material terms and conditions of the plans in the carriers’ advertising, when soliciting new consumers through telemarketing, and in writing, after a consumer purchases a new plan; separately state the charge for each plan feature or service on consumers’ bills; and not represent that discretionary cost recovery fees are taxes or some other type of government required fee. *See id.* at Exhibit M, 1.

Fourth, Edge provided specific local calling plans to show that it provides local usage. *See* Second Amended Application, Exhibit G. It provides several groups of plans. The Local Shared plans provide a home calling area of southern Oregon and northern California; the Western Shared plans provide a home calling area of Oregon, Washington, Idaho, California, Nevada, Utah, Wyoming, Colorado, Montana, and Alaska. Both of those groups of plans offer a low cost option in which customers would have no day time anytime minutes, but unlimited night and weekend minutes and emergency calls. *See id.* at Exhibit G, 2. Edge also provides toll-free 511 calls for the Oregon Department of Transportation road reports and 711 calls to TRS/TTY operators, and plans to provide 211 calls to social service agencies. *See* Second Amended Application, 8. More extensive calling plans are also offered. *See generally id.* at Exhibit G.

Fifth, Edge has acknowledged that it may be required to provide equal access if other ETCs withdraw from the area. *See* Second Amended Application, 12.

As to whether its application is in the public interest, Edge asserts that it will increase consumer choice and service quality by expanding wireless service where it would not otherwise exist, provide health and safety benefits by allowing mobile service in remote locations, and increase competition among carriers. *See* Second Amended Application, 13-18. The Commission has also considered the carrier's contribution to Internet options as a factor in determining whether an ETC application is in the public interest. *See* Order No. 04-355 at 7-8. Edge has shown its commitment to providing advanced wireless data communications and indicates that it will enhance that service in the future. *See* Second Amended Application, 15-16.

In addition, Edge stated that its designation would not cream-skim wire centers with the lowest cost of service from rural incumbent carriers service area. The Application covers the entire service area of Citizens, but includes only selected wire centers in the service areas of CenturyTel, Cascade, and United. Edge compared the cost of service and, in the alternative, density as a proxy for cost of service, for CenturyTel and Cascade wire centers which it does and does not serve. *See id.* at 20-21, and Exhibits K, L. An analysis of those wire centers shows that Edge's application does not cream-skim in those areas. Only one wire center of United is included in Edge's application, and it is a low-density wire center. *See* Staff/1, Marinos/19.

In compliance with FCC 05-46 ¶ 65, Edge is being designated as an ETC in the incumbent LEC study areas of the following carriers: parts of Qwest, Verizon, Cascade, CenturyTel, and United study areas, and all of Citizens study area. A list of all wire centers in which Edge is being designated, initially filed as Exhibit B to the Second Amended Application, is attached as Appendix A.

Edge has also committed to file the reports currently required of other ETC designees in the annual recertification process, and also fulfill any new or additional reporting requirements adopted by the Commission pursuant to the FCC's March 17, 2005 Order. *See* Second Amended Application, 22-24.

Finally, it is noted that Staff supports the Application and finds that it meets the requirements established by the FCC. *See* Staff/1, Marinos/19. OTA declined to submit any filings in this case other than documents related to its intervention.

Findings and Conclusions

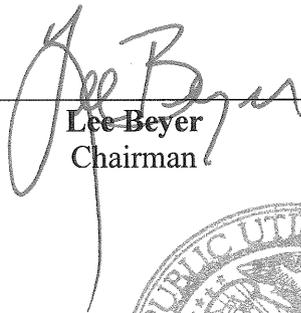
We find that Edge has committed to providing services and improving its network as discussed above. Therefore, we conclude that Edge's application meets the legal requirements set forth by federal law and FCC orders. Consequently, we conclude that Edge should be designated as an ETC for the service area in which it has applied. We also require Edge to submit the above mentioned reports as part of its annual recertification process.

ORDER

IT IS ORDERED that:

1. The Second Amended Application of Edge Wireless, LLC, for designation as an Eligible Telecommunications Carrier pursuant to the Telecommunications Act of 1996 is granted;
2. Edge Wireless, LLC, is designated as an Eligible Telecommunications Carrier in the wire centers indicated in Appendix A.
3. Edge Wireless, LLC, will be required to file the reports as discussed in this order as part of the annual recertification process.

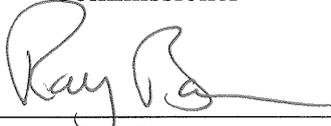
Made, entered, and effective AUG 29 2005.



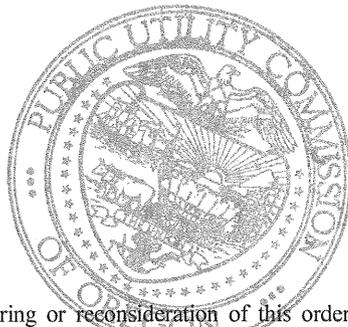
Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

Exhibit B
EDGE WIRELESS PROPOSED ETC AREA (NON-RURAL)

**Verizon Northwest, Inc. Wire Centers
in Coos, Curry, Douglas and Josephine Counties:**

RDPTORXX (Reedsport)
LKSDORXX (Lakeside)
NBNDORXX (North Bend)
CSBYORXX (Coos Bay)
CQLLORXX (Coquille)
BNDNORXX (Bandon)
MYPNORXX (Myrtle Point)
LNGLORXX (Langlois)
PTORORXX (Port Orford)
PWRSORXX (Powers)
GLBHORXX (Gold Beach)
BKNGORXX (Brookings)
MRPHORXX (Murphy)
PRVTORXX (Provolt) *
EMPRORXX (Empire)

**Qwest Corporation Wire Centers
in Coos, Curry, Douglas and Josephine Counties:**

STHROR58 (Sutherlin)
RSBGOR57 (Roseburg)
WNTNOR57 (Winston)
GRPSOR29 (Grants Pass) *

*Although Edge's BTA boundaries do not completely encompass the entire wire center, Edge will offer service throughout the entire wire center area.

Exhibit B
List of Rural ILEC Wire Centers in Edge's Proposed ETC Area

Citizens Wire Centers
in Coos, Curry, Douglas and Josephine Counties:

AZALORXA (Azalea) *
CNVLORXA (Canyonville)
CVJTORXA (Cave Junction)
DYCKORXX (Days Creek)
GLDORXA (Glendale)
MYCKORXA (Myrtle Creek)
OBRNORXX (O'Brien)
RDDLORXA (Riddle)
SELMORXA (Selma)
WLCKORXA (Wolf Creek)

Cascade Wire Centers
in Coos, Curry, Douglas and Josephine Counties:

EKTNORXB (Elkton)
SCBGORXA (Scottsburg)

CenturyTel Wire Centers
in Coos, Curry, Douglas and Josephine Counties:

CMVLORXA (Camas Valley)
DRANORXA (Drain) *
GLIDORXA (Glide)
NRUPORXA (North Umpqua)
YNCLORXA (Yoncalla) *

United Wire Centers
in Coos, Curry, Douglas and Josephine Counties:

DMLKORXX (Diamond Lake)

*Although Edge's BTA boundaries do not completely encompass the entire wire center, Edge will offer service throughout the entire wire center area.