Service Date: May 23, 2013

DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MONTANA

IN THE MATTER OF iSmart Mobile, LLC,)	REGULATORY DIVISION
Application for Designation as an Eligible)	
Telecommunications Carrier)	DOCKET NO. D2010.10.99

CONCURRING OPINION OF COMMISSIONER TRAVIS KAVULLA

Regulatory agencies like the Montana Public Service Commission have a public-interest responsibility to examine the consequences of Eligible Telecommunications Carrier (ETC) designations. I agree with intervenors Montana Independent Telecommunications Systems (MITS) and the Montana Telecommunications Association (MTA) that it is up to this Commission at the state level to decide what is in the public interest, with an understanding that such a determination should be contextualized within the law and rules that govern the Lifeline program via the U.S. Congress and the Federal Communications Commission. This Commission's judgment may differ from what the federal agency in its own circumstances has concluded. *See* Admin. R. Mont. 38.5.3210(2), quoted in MITS/MTA Post-Hearing Brief, p. 2.9

One aspect of that public-interest responsibility is to ensure that as the state-level gatekeeper of potentially generous federally sourced revenues, the Montana Commission exercises responsibly its power to open and close the flood-gates on this federal program, and to ensure that subsidies available to ETCs and their consumers do not have deleterious consequences. The provision of highly discounted or completely "free" phone services has given rise to a host of Lifeline controversies, and generated concern about the promotion of waste, fraud, and abuse of a well-intentioned federal program. It is reasonable that the Commission, in its first Lifeline ETC decision since the FCC issued its recent "transformation" order, take such a concern seriously. *See* In the Matter of Connect America Fund, etc. FCC 11-161 (adopted Oct. 27, 2011). In my view, and I trust my colleagues' views, it is generally good public policy to

⁹ I believe that the incredible growth in the Lifeline fund is worthy of note, and I wish that MITS/MTA had sponsored testimony drawing attention to it, instead of presenting data about the trend only as an appendix to its post-hearing brief.

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ensure that customers who are willing and able to pay with their own money for a telephone service should do that, absent a contribution made through other consumers' phone bills. In the wireless context, such subsidies could also undercut the high-fixed-cost wireline investments on which wireless telephony inevitably relies. Both of these considerations are properly at play in our consideration of ETC designations.¹⁰

That being said, I am willing to side with iSmart in its request for ETC designation for two important reasons.

First, unlike other recently designated ETCs elsewhere in the United States, iSmart has made a commitment in its testimony that it would not offer a device and phone plan that's simply given away to someone for "free." Hrg. Transcr. 60:17-61:7. iSmart is doing something—obtaining a Lifeline subsidy to discount its phone service—that other wireless providers in Montana already enjoy, and absent a meaningful distinction on which to rely, it would be inappropriate to deny iSmart an advantage that its competitors enjoy.

Second, while the FCC has chosen to abrogate the requirement, the Montana Administrative Rules still call upon this Commission to consider whether an ETC will have its own facilities. Admin. R. Mont. 38.5.3210(3)(g). This is for good reason. It is important that federal subsidies flow as directly as possible to the creation of new infrastructure that can sustain better telephony. iSmart has its own facilities in the wire centers for which it seeks ETC designation, and its business plan appears to be more than merely to act as a siphon for federal subsidies.

I therefor CONCUR with the Order.

Travis Kavulla, Commissioner (concurring)

¹⁰ For a colloquy about this public-policy dimension to ETC designations, See Hrg. Transcr. 57:19-63:17.