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IN THE SUPREME COURT OF THE STATE OF IDAHO

SUP-T-11-01

TRACFONE WIRELESS, INC.,)	
)	SUPREME COURT
Petitioner-Appellant,)	DOCKET NO. 39331-2011
)	
v.)	
)	
IDAHO PUBLIC UTILITIES COMMISSION,)	
)	JOINT STIPULATED MOTION
Respondent on Appeal,)	TO SUSPEND APPEAL
)	
)	

COMES NOW the Idaho Public Utilities Commission (“PUC”) and TracFone Wireless, Inc. (“TracFone”) (collectively referred to as the “Parties”) through their respective attorneys of record and request that the Court suspend the appeal in this matter pursuant to Idaho Appellate Rule (I.A.R.) 13.2. As outlined in greater detail below, the Parties maintain there is good cause to suspend the appeal pending the PUC’s ruling on a Settlement Stipulation that, if approved, would resolve the appeal in this case.¹

¹ On February 2, 2012, the Court granted the Verified Application of CTC Telecom, Inc. and the Idaho Telecom Alliance to Appear as Amicus Curiae.

MOTION TO SUSPEND APPEAL

In this Motion, the Parties are requesting that the Court temporarily suspend the appeal until such time as the PUC completes its review of the Settlement Stipulation and other issues in PUC Case No. TFW-T-09-01. If the PUC approves the Settlement Stipulation and makes the requested finding, TracFone's Application for an ETC will be resolved and the appeal will be unnecessary. Suspending the appeal will also conserve judicial resources and allow the PUC sufficient time to complete its review.

In considering a suspension on appeal, the Parties must disclose the duration of the requested suspension. I.A.R. 13.2. The Parties request that the appeal be suspended for approximately 100 days, or until May 30, 2012. The parties maintain that this amount of time will provide sufficient opportunity for the PUC to complete its review and issue the necessary final Order in the current ETC case.

BRIEF IN SUPPORT OF SUSPENSION

On September 13, 2011, the PUC issued Order No. 32358, Final Order on Reconsideration ("Order"). The Order reaffirmed the PUC's previous determination in Order No. 32301 that TracFone is responsible for payment of fees required by the Idaho Telephone Assistance Program Act ("ITSAP"). With respect to payment of fees required by the Idaho Emergency Communications Act ("IECA), the Order provided that TracFone could either "remit the applicable fees, or seek an official ruling from the IECC [Idaho Emergency Communications Commission], or another tribunal with relevant jurisdiction, as to whether the fees applied. . . ." (Order at pp. 11-12; emphasis added).

On October 28, 2011, TracFone filed a Notice of Appeal alleging that the PUC erred by denying TracFone's Application for Designation as an Eligible Telecommunications Carrier

("ETC") due to non-payment of fees required by ITSAP, *Idaho Code* § 56-901, *et seq.*, and the IECA, *Idaho Code* § 31-4801, *et seq.* Subsequent to the filing of TracFone's appeal, PUC Staff and TracFone engaged in negotiations to determine whether the Parties could reach a reasonable compromise that would comport with the PUC's Order.

Pursuant to these negotiations, PUC Staff and TracFone agreed to enter into a Stipulated Settlement Agreement wherein PUC Staff would support TracFone's certification as an ETC in exchange for TracFone's commitment to: (1) remit ITSAP fees retroactive to January 1, 2011; and (2) seek a declaratory judgment from an Idaho state court regarding the applicability of the IECA fees.

PRAYER

In summary, the Parties respectfully request that the Court suspend this appeal for the reasons stated above. The Parties further maintain there is good cause for the Court to suspend the appeal for approximately 100 days, or until May 30, 2012. Therefore, the Parties respectfully request that the Court enter an Order consistent with the foregoing and suspending the above named appeal.

Respectfully submitted this 13th day of February 2012.

MCDEVITT & MILLER LLP

IDAHO PUBLIC UTILITIES COMMISSION



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O:Supreme Court Cases_TFW-T-09-01_Motion to Suspend_np

JOINT STIPULATED MOTION
TO SUSPEND APPEAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 13th DAY OF FEBRUARY 2012, SERVED THE FOREGOING **STIPULATED MOTION TO SUSPEND APPEAL**, IN SUPREME COURT DOCKET NO. 39331-2011, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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BY: *Brenda Samell*
Secretary