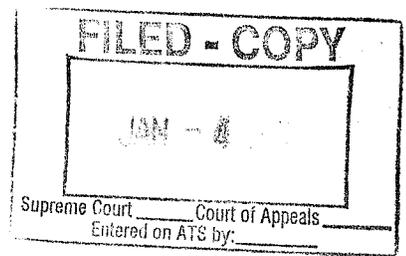


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IDAHO PUBLIC  
UTILITIES COMMISSION



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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION  
OF TRACFONE WIRELESS, INC. FOR  
DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER

} Case No. 39331

TRACFONE WIRELESS, INC.,  
APPELLANT

} VERIFIED APPLICATION TO APPEAR AS  
} *AMICUS CURIAE* PURSUANT TO IDAHO  
} APPELLATE RULE 8

V.

IDAHO PUBLIC UTILITIES COMMISSION,  
RESPONDENT

COME NOW, CTC Telecom, Inc., a duly organized Idaho corporation ["CTC"] and the Idaho Telecom Alliance, an unincorporated association of rural Idaho telecommunications carriers ["ITA"] and, by and through undersigned counsel, move this Court to allow Petitioners to appear and file an *amicus* brief in the above-captioned action.

I.  
BACKGROUND

On October 28, 2011, TracFone Wireless, Inc. ["Appellant"] filed a Notice of Appeal

to this Court of the Idaho Public Utilities Commission's decision in Case No.TFW-T-09-01. In particular, TracFone is appealing the Commission's decision in Order No. 32358, dated September 19, 2011, arguing that:

1. The Idaho Public Utility Commission ("IPUC" or "Commission") erred by denying Appellant's Petition for Designation as an Eligible Telecommunications Carrier due to non-payment of fees governed by Section 56-901, *et seq.*, Idaho Code; and
2. The IPUC erred by denying Appellant's Petition for Designation as an Eligible Telecommunications Carrier due to non-payment of fees required by Section 31-4801, *et seq.*, Idaho Code.

## II. LEGAL STANDARD

Idaho Appellate Rule 8 provides that the Court may allow for appearance as *amicus curiae* in a proceeding upon written application stating the interest of the applicants in the proceeding, the name of the party in whose support the *amicus curiae* requests to appear, and whether leave is sought to file an *amicus curiae* brief or participate in oral argument, or both.

## III. ARGUMENT

CTC Telecom and the ITA should be allowed to appear as *amici curiae* because they may be adversely affected by the outcome of the proceeding.

CTC Telecom, Inc., d/b/a CTC Wireless, is a wireless Eligible Telecommunications Carrier [ETC] in rural areas of Idaho. As a wireless ETC in Idaho, CTC is subject to Sections 56-901, *et seq.*, and 31-4801, *et seq.*, Idaho Code, and actively participated in the IPUC proceeding that

TracFone is now challenging before this Court. ITA is a state telephone association, and its members include both commercial companies and cooperatives. The fourteen (14) members of ITA provide basic and advanced telecommunications services in rural Idaho. All of the members are rural telephone companies as defined in 47 U.S.C. § 153(37), and all the members (or affiliates of the members) are designated ETCs in Idaho.

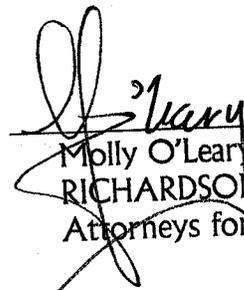
An applicant such as TracFone that is seeking ETC designation in areas already served by a rural telephone company has the burden of demonstrating that the public interest would be served by granting its ETC Application. IPUC Order No. 29841 at 8, August 4, 2005; *see also* 47 U.S.C. § 214(e)(2). “Merely asserting that granting the application will lead to increased competition in a particular service area is not enough, by itself, to warrant ETC designation in rural areas.” IPUC Order No. 30867 at 3, July 24, 2009; *see also* IPUC Order No. 29841 at 4.

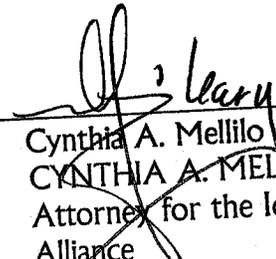
As Intervenors in the proceeding below, CTC and the ITA have steadfastly argued, among other reasons, that TracFone’s failure to collect and remit the statutorily mandated fees at issue in this matter is contrary to the public interest and, therefore, designation of TracFone as an ETC in the rural portions of Idaho served by CTC and other ITA members should be denied. CTC’s and the ITA members’ customers who are required to pay into the statutory funds are, arguably, paying more than their fair share because of TracFone’s refusal to collect and remit the fees from its customers. In addition, TracFone’s failure to collect the fees from its customers artificially reduces the price it charges for its service as compared to other wireless ETC service providers such as CTC and other ITA members.

IV.  
CONCLUSION

The ITA and CTC are entities who have a substantial interest in this proceeding and hereby respectfully request this Court grant their Application to Appear as *Amici Curiae* on behalf of the Idaho Public Utilities Commission, file a brief in support of the Commission's Order No. 32358, and participate in oral argument.

DATED this 4<sup>th</sup> day of January, 2012.

By:   
Molly O'Leary  
RICHARDSON AND O'LEARY, PLLC  
Attorneys for CTC Telecom, Inc.

By:   
FOR Cynthia A. Mellilo  
CYNTHIA A. MELLILLO, PLLC  
Attorney for the Idaho Telecom  
Alliance

VERIFICATION

STATE OF IDAHO )  
 ) ss.  
County of Washington )

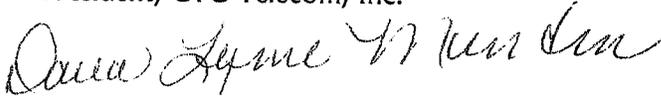
Richard A. Wiggins, President of CTC Telecom, Inc., being first duly sworn, deposes and says that he has read the within and foregoing Verified application to Appear as Amicus Curiae Pursuant to Idaho Appellate Rule 8 and believes the same to be true and correct to the best of his knowledge and belief.

DATED this 29 day of December, 2011.



Richard A. Wiggins  
President, CTC Telecom, Inc.

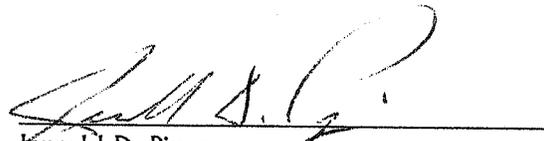
DANA LYNNE MUNDEN  
Notary Public  
State of Idaho



STATE OF IDAHO )  
 ) ss.  
County of Washington )

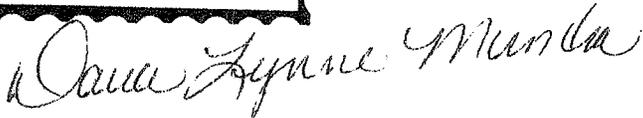
Jerrold D. Piper, President of the Idaho Telecom Alliance, being first duly sworn, deposes and says that he has read the within and foregoing Verified application to Appear as Amicus Curiae Pursuant to Idaho Appellate Rule 8 and believes the same to be true and correct to the best of his knowledge and belief.

DATED this 29 day of December, 2011.



Jerrold D. Piper  
President, the Idaho Telecom Alliance

DANA LYNNE MUNDEN  
Notary Public  
State of Idaho



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2012, a true and correct copy of the within and foregoing VERIFIED APPLICATION TO APPEAR AS *AMICUS CURIAE* PURSUANT TO IDAHO APPELLATE RULE 8 was served as follows:

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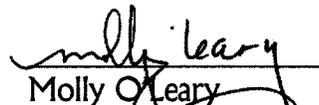
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Molly O'Leary