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IDAHO PUBLIC
UTILITIES COMMISSION

May 19, 2010

VIA OVERNIGHT DELIVERY

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, Idaho 83702

Re: In the Matter of the Application of TracFone Wireless Inc. for Designation as an Eligible Telecommunications Carrier, Case No. TFW-T-09-01

Dear Ms. Jewell:

Enclosed please find the original and seven copies of the Motion in Opposition of TracFone Wireless, Inc. to Petitions to Intervene of CTC Telecom, Inc. dba Snake River PSC and Idaho Telecom Alliance. On May 19, 2010, the Motion in Opposition was sent to you by electronic mail. Please contact me if you have any questions about this submission.

Sincerely,



Debra McGuire Mercer

Counsel for TracFone Wireless, Inc.

Enclosures

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Counsel for TracFone Wireless, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF TRACFONE WIRELESS, INC. FOR) CASE NO. TFW-T-09-01
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER.) MOTION IN OPPOSITION OF
) TRACFONE WIRELESS, INC.
) TO PETITIONS TO
) INTERVENE OF CTC
) TELECOM, INC. DBA SNAKE
) RIVER PCS AND IDAHO
) TELECOM ALLIANCE**

Pursuant to IDAPA 31.01.01.075, TracFone Wireless, Inc. (“TracFone”) files this motion in opposition to the motions to intervene out of time and petitions to intervene of CTC Telecom, Inc. dba Snake River PCS (“CTC Telecom”) and Idaho Telecom Alliance (“ITA”) (collectively, “petitioners”).¹ CTC Telecom and ITA filed identical petitions in which each seeks leave to appear and participate as a party in this case. CTC Telecom and ITA’s petitions disregard the Commission’s orders establishing the structure of this proceeding and provide no legal basis for CTC Telecom and ITA to participate as intervenors in this proceeding.

¹ ITA did not serve TracFone with a copy of ITA’s petition to intervene.

On March 1, 2010, TracFone filed an Amended Application for designation as an Eligible Telecommunications Carrier (“ETC”) with the Commission, addressing certain deficiencies in a previously-filed application. On March 18, 2010, the Commission issued a Notice of Amended Application and Notice of Modified Procedure in which it described TracFone’s ETC Application and the terms of TracFone proposed Lifeline service and disclosed its determination that “the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission’s Rules.” The March 18, 2010 Notice further stated: “any person desiring to state a position on this Amended Application may file a written comment in support or opposition with the Commission within sixty (60) days from the service date of this Notice. The comment must contain a statement of reasons supporting the comment.” Thus, pursuant to the March 18, 2010 Notice, written comments regarding TracFone’s Amended Application were due no later than May 17, 2010. The Commission subsequently extended the comment date to May 24, 2010.² As of the date of this motion, no comments have been filed.

CTC Telecom and ITA inappropriately attempt to petition for intervention as a party to this proceeding. Commission Rule 31.0101.073 provides that petitions to intervene must be filed at least fourteen (14) days before the date set for hearing or prehearing conference. As noted in the March 18, 2010 Notice, this matter has not been set for hearing. Rather, the Commission adopted a modified procedure whereby any person may file a comment in support or opposition with a statement of reasons supporting the comment. As such, petitions to intervene are not contemplated in this proceeding. CTC Telecom and ITA may choose to file comments with the

² See Order No. 31082, May 12, 2010.

Commission on or before May 24, 2010. Neither CTC Telecom nor ITA have provided any reason as to why they are unable to file comments by that date.

Furthermore, CTC Telecom and ITA fail to assert that they are parties in interest sufficient to confer standing on them or the existence of any valid basis for their petitions to intervene. CTC Telecom and ITA simply claim without any explanation “a direct and substantial interest in this proceeding in that it does not believe that designation of TracFone as an ETC is in the public interest.”³ However, neither petitioner states any reason for the opinion that grant of TracFone’s application would not be in the public interest. Both petitioners also incorrectly assert that “[w]ithout the opportunity to intervene herein, [they] would be without any means of participation in this proceeding which may have a material impact on [them]” That assertion disregards the Commission’s modified procedure established for this matter, which specifically allows for any person, including CTC Telecom and ITA, to comment regarding TracFone’s Amended Application.

CTC Telecom and ITA request the Commission to extend the comment period at least 45 days following grant of their petitions to intervene to allow them to “review the record and supporting documentation, if any, and to propound appropriate discovery.”⁴ The petitioners’ request ignores the procedural status of this proceeding. Under the modified procedure ordered by the Commission, any person, including CTC Telecom and ITA, may file a comment within the deadline set by the Commission and if any comments are filed within the deadlines, “the Commission will consider them and may set a hearing or may decide the matter and issue its

³ CTC Telecom Petition to Intervene, at 2; ITA Petition to Intervene, at 2.

⁴ CTC Telecom Petition to Intervene, at 3; ITA Petition to Intervene, at 3.

order on the basis of the written positions before it.”⁵ The Commission’s modified procedure does not contemplate discovery at this time. Under the modified procedure, the Commission will determine whether there will be a hearing or discovery after it considers any timely-filed comments.

CTC Telecom and ITA unjustifiably and inexplicably assert that grant of their petitions will not unduly broaden the issues nor prejudice any party. The petitioners cannot assure the Commission that their participation in this proceeding will not broaden the issues. First, the petitioners themselves do not articulate a single reason as to why designation of TracFone as an ETC is not in the public interest. TracFone and the Commission itself are left to guess what bases these putative intervenors might raise to support their proffered conclusion that designation of TracFone as an ETC will not serve the public interest. Second, the petitioners do not know the type of evidence they would be offering in this proceeding -- or, if they do know, they have not revealed what evidence they plan to offer. As stated by both CTC Telecom and ITA: “The nature and quality of evidence which this Intervenor will introduce is dependent upon the nature and effect of other evidence in this proceeding.”⁶ Therefore, the petitioners have no basis for contending that the issues in this proceeding will not be unduly expanded as a result of their intervention.

Finally, contrary to the petitioners’ unsupported assertions, TracFone will be substantially prejudiced by the delay in the Commission’s consideration of its ETC Application if the Commission grants the petitioners’ request for a 45 day extension to the comment period. TracFone initially filed its application for designation as an ETC with this Commission on

⁵ IDAPA 31.01.01.204.

⁶ CTC Telecom Petition to Intervene, at 2; ITA Petition to Intervene, at 2.

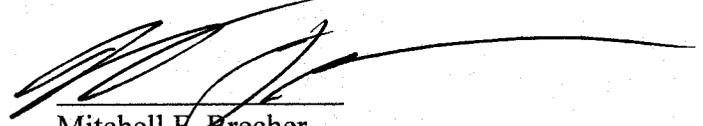
October 29, 2009 -- nearly seven months ago. The Commission denied that application without prejudice on February 5, 2010 based on its understanding that TracFone had not met certain legal requirements related to transacting business in Idaho. TracFone subsequently explained to the Commission that it was in full compliance with Idaho requirements regarding doing business in Idaho and the Commission permitted TracFone to file an Amended Application in the same docket. Petitioners' request for additional time to participate in this proceeding, especially when they already have an opportunity to file comments, does not justify further delay. Moreover, as noted in TracFone's Amended Application, only one wireless ETC in Idaho provides Lifeline and that ETC serves only a small number of Lifeline customers.⁷ While there are other wireless ETCs, including CTC Telecom, they are not receiving any Lifeline support, and as such are not providing Lifeline service to any low-income Idaho consumers. TracFone's experience operating as a designated ETC in many other states indicates that its SafeLink Wireless® Lifeline service is an attractive alternative to many low-income consumers.⁸ Further delay in this proceeding will deprive Idaho's low-income consumers from having meaningful competitive choice in Lifeline services. Moreover, most low-income Idaho households will not have any available wireless Lifeline service options. As such, Idaho low-income consumers will also be prejudiced by additional delay in this proceeding.

⁷ Syringa Wireless, the one wireless ETC that has Lifeline customers only serves approximately 1,600 Lifeline customers. Syringa Wireless and ClearTalk (Syringa Wireless and ClearTalk have merged and operate under the name Syringa Wireless) received a total of \$193,116 in Lifeline support in 2008. Assuming that the amount was spread evenly throughout the year and that the maximum Lifeline support amount of \$10.00 per customer per month was received, Syringa Wireless had 1,609 customers (193,116 divided by 12, and then taking that quotient and dividing it by 10 equals 1,609). See USAC FCC Filings, Third Quarter Appendices - 2010, Chart LI05, at <http://www.usac.org/about/governance/fcc-filings/2010/quarter-3.aspx>.

⁸ Currently, TracFone has been designated as an ETC in 28 jurisdictions and is providing its SafeLink Wireless® Lifeline service to more than three million low-income households in those jurisdictions.

Based on the foregoing, TracFone requests that the Commission deny the petitions to intervene filed by CTC Telecom and ITA and continue to conduct this proceeding under the Commission's modified procedure in accordance with the March 18, 2010 Notice.

Respectfully submitted,



Mitchell R. Brecher
Debra McGuire Mercer

Counsel for TracFone Wireless, Inc.

May 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of May 2010, served the foregoing MOTION IN OPPOSITION OF TRACFONE WIRELESS, INC. TO PETITIONS TO INTERVENE OF CTC TELECOM, INC. DBA SNAKE RIVER PCS AND IDAHO TELECOM ALLIANCE, in Case No. TFW-T-09-01, via e-mail to the following:

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s/ Raymond Lee
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