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IDAHO PUBLIC
UTILITIES COMMISSION

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February 8, 2012

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: TFW-T-09-01

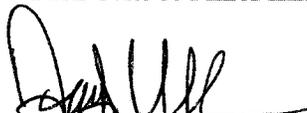
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven (7) copies of Tracfone Wireless, Inc.'s Stipulation and Motion.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Encl.

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Attorneys for TracFone Wireless, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. TFW-T-09-01
OF TRACFONE WIRELESS, INC. FOR)	
DESIGNATION AS AN ELIGIBLE)	STIPULATION AND MOTION
TELECOMMUNICATIONS CARRIER.)	
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COME NOW TracFrone Wireless Inc., (“TracFone” or “Company”) and the Staff of the Idaho Public Utilities Commission (“Staff”), by and through their respective counsel of record, and stipulate and agree as follows, to wit:

1. On September 13, 2011, the Commission issued Order No. 32358, Final Order on Reconsideration (“Order”). The Order reaffirmed the Commission’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 pg. 11-12; emphasis added).
2. On October 28, 2011, TracFone filed a Notice of Appeal alleging that the Commission 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, Staff and TracFone (hereinafter collectively referred to as “the Parties”) engaged in negotiations to determine whether the Parties could reach a reasonable compromise that would comport with the Commission’s Order. Pursuant to these negotiations, the Parties agreed to enter into this Stipulation.
3. TracFone hereby agrees that it will remit, to the ITSAP Administrator, ITSAP fees retroactive to January 1, 2011, calculated in accordance with *Idaho Code* § 56-904. TracFone will continue to do so each month thereafter, unless the ITSAP Administrator authorizes a less frequent remittance schedule pursuant to *Idaho Code* § 56-904(3). Payment of such fees, including past due amounts, shall be remitted by TracFone to the ITSAP Administrator within fourteen (14) days of a final Commission Order approving this Stipulation and conditionally designating TracFone as an ETC.

4. With respect to the applicability of fees required by the IECC, TracFone agrees to file a Declaratory Judgment Action in State District Court requesting a determination as to whether TracFone should be required to pay an “emergency communications fee” pursuant to Idaho Code § 31-4804. Within thirty (30) days following the filing of said action, the Commission will enter an Order designating TracFone as an ETC pursuant to 47 U.S.C. § 214(e)(2), for the limited purpose of providing Lifeline service to qualified low-income Idaho consumers. TracFone will file and prosecute in the District Court of the Fourth Judicial District a Complaint for a Declaratory Judgment to determine the applicability of the IECC fees to its prepaid wireless service in Idaho. TracFone has attached a draft of its suit for a Declaratory Judgment to this Stipulation. The Complaint shall name the State of Idaho and the IECC as respondents and the Complaint shall also be served upon the Association of Idaho Cities and the Idaho Association of Counties. TracFone agrees to participate in such proceeding in good faith. Notwithstanding TracFone’s commitment to file a Complaint for Declaratory Ruling described in this paragraph, nothing herein shall preclude either Party from seeking resolution of issues regarding fees administered by IECC by other means, including, but not limited to, pursuit of legislation.
5. The Parties hereby agree that TracFone’s Application for designation as an ETC in Idaho complies with all of the relevant criteria and requirements for designation as an ETC under Section 214(e) of the federal Communications Act of 1934, as amended. 47 U.S.C. § 214(e).
6. The Parties hereby agree that the foregoing agreements by TracFone comply with the spirit and intent of Commission Order No. 32358, and constitute substantial compliance therewith. The Parties further agree that, subject to this Stipulation, designation of

TracFone as an ETC pursuant to 47 U.S.C. § 214(e)(2) for the limited purpose of providing Lifeline service to low-income Idaho households will serve the public interest.

7. Once designated as an ETC, TracFone shall have the same entitlement to receive support from the ITSAP fund as do other ETCs who provide Lifeline service in Idaho. TracFone herein acknowledges that designation as an ETC in Idaho is subject to annual review.
8. In the event that the District Court determines that TracFone is subject to IECC fees, TracFone agrees to reimburse the IECC, or other agencies as the Court deems appropriate, any past dues fees dating from Jan 1, 2011. If TracFone does not reimburse the IECC and elects to seek judicial review of an adverse ruling by the District Court that the Company owes IECC fees, TracFone agrees that the Commission may revoke TracFone's designation as an ETC, pending the outcome of the subsequent judicial review.
9. The Parties agree to work in a cooperative manner, and with the Department of Health and Welfare, to establish Lifeline customer enrollment processes which neither favor nor disfavor any provider of Lifeline service and which make it reasonably practicable for Idaho consumers to enroll in the Lifeline program of their choice, including TracFone's SafeLink Wireless® program
10. Accordingly, the Parties request that the Commission enter its Order approving this Stipulation and designating TracFone as an Eligible Telecommunications Carrier in Idaho.
11. Upon entry of an Order designating TracFone as an ETC in Idaho, TracFone agrees to promptly file with the Supreme Court of Idaho a Stipulation of Dismissal of its appeal, Docket No. 39331-2011, with each party to bear its own costs.

MOTION

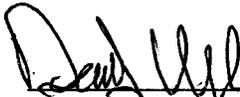
TracFone and Staff respectfully request that the Commission enter its Order consistent with the foregoing.

DATED this 8 day of February 2012.

DATED this 8th day of February 2012.

MCDEVITT & MILLER LLP

IDAHO PUBLIC UTILITIES COMMISSION



Dean J. Miller (ISB No. 1968)
TracFone Wireless Inc.



D. Neil Price (ISB No. 6864)
Donald L. Howell (ISB No. 3366)
Attorneys for Idaho Public Utilities Commission

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2012, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

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BY: Heather Houle
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Attorneys for TracFone Wireless, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TRACFONE WIRELESS, INC

Plaintiff,

vs.

THE STATE OF IDAHO AND THE IDAHO
EMERGENCY COMMUNICATIONS
COMMISSION

Defendants

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

COMES NOW TracFone Wireless, Inc., (TracFone) and for a cause of action, upon which relief can be granted, complains and alleges as follows:

I.

Parties

1. TracFone is a Delaware Corporation authorized to conduct business in the state of Idaho. TracFone is a telecommunications carrier engaged in the business of reselling commercial mobile radio service (CMRS) in the State of Idaho.
2. The State of Idaho administrates and enforces the law of the State of Idaho.

3. The Idaho Emergency Communications Commission (IECC) is a governmental body created by the Idaho Emergency Communications Act, Idaho Code §38-4801 *et seq.* The duties and responsibilities of the IECC are described in Idaho Code §38-4816.

II.

Jurisdiction and Venue

4. The Court has jurisdiction pursuant to the Idaho Declaratory Judgment Act, Idaho Code §10-1201 *et seq.*
5. Venue is proper in Ada County, Idaho.

III.

Factual Background

6. Idaho Code § 31-4804 authorizes the collection of an Emergency Communications Fee from purchasers of access lines by telecommunication providers for the purpose of financing the maintenance, operation, enhancement and governance of a consolidated emergency communications (911 or E911) system. Section 31-4804(2) provides that the Emergency Communications Fee shall be imposed upon and collected from purchasers of access lines with a service address or place of primary use within the county or 911 service area on a monthly basis by all telecommunications providers. Section 31-4804(3) further provides that telecommunications providers shall remit the Emergency Communications Fee to the relevant county treasurer's office or administrator for the 911 service area based upon the area from which the fee was collected. The issue presented in this case is whether TracFone is responsible for remitting the Emergency Communications Fee.

7. TracFone offers wireless telecommunications service throughout the nation, including Idaho, through the vehicle of prepaid airtime cards that are available for purchase through various third party retail outlets (e.g. Wal-Mart, Target, Best Buy, etc.). Consumers may also purchase pre-paid airtime online through TracFone's internet website (www.tracfone.com). TracFone's prepaid wireless service is offered on a "pay-as-you-go" basis, not on a monthly basis. TracFone offers no post-paid or billed services and does not render periodic invoices to consumers of its prepaid services.
8. On October 29, 2009, TracFone filed an Application with the Idaho Public Utilities Commission ("IPUC") for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(2)). Designation as an ETC allows telecommunications carriers to offer discounted telecommunications service to qualified low-income consumers and to receive reimbursement from the Universal Service Fund for the Lifeline benefits provided to those consumers. On March 1, 2010, TracFone filed an Amended Application for designation as an ETC with the IPUC, docketed as Case No. TFW-T-09-01 ("Idaho PUC Proceeding").¹
9. In the course of the IPUC Proceeding, an issue arose as to whether TracFone is legally responsible to collect and remit the Emergency Communications Fee to the various counties in which it operates and whether TracFone's voluntary agreement to remit the

¹ The Application may be viewed at: <http://www.puc.idaho.gov/internet/cases/tele/TFW/TFWT0901/20100301FIRST%20AMENDED%20APPLICATION.PDF>.

Emergency Communications Fee should be a precondition to granting ETC designation.

10. On May 21, 2011, the IECC, acting through its Chairman, submitted a letter to the IPUC contending that TracFone was responsible for remittance of the Emergency Communications Fee and urged the IPUC to deny TracFone's ETC Application. ("IECC Letter")² Although TracFone had been in contact with IECC prior to that time, never before had the IECC or any representative of the IECC expressed the opinion that the 911 fee was applicable to prepaid, non-billed, non-monthly services like that provided by TracFone.
11. Through various pleadings, briefs and written testimony in the IPUC Proceeding, TracFone asserted that it did not have a legal obligation to remit the Emergency Communications Fee because, among other things, does not provide service on a monthly basis, as expressly required by Idaho Code §31-4804.
12. On September 19, 2011, the Commission issued its final Reconsideration Order No. 32358, denying TracFone's Application³. The IPUC's denial of TracFone's ETC Application was based, in part, on its conclusion that TracFone's refusal to remit the Emergency Communications Fee is contrary to the public interest.

² The IECC letter may be viewed at: [http://www.puc.idaho.gov/internet/cases/tele/TFW/TFWT0901/public%20comments/20100524COMMENT%20\(IECC\).PDF](http://www.puc.idaho.gov/internet/cases/tele/TFW/TFWT0901/public%20comments/20100524COMMENT%20(IECC).PDF).

³ The Order may be viewed at: http://www.puc.idaho.gov/internet/cases/tele/TFW/TFWT0901/ordnotc/20110919RECONSIDERATION_ORDER_NO_32358.PDF.

13. In its final Reconsideration Order No. 32358, the IPUC placed heavy reliance on the IECC Letter, but stated: “If TracFone disputes the IECC’s clear statement regarding the applicability of the IECA fee then it is free to challenge that finding before the IECC *or other appropriate legal venue*” (emphasis added). IPUC Order No. 32358, at 8⁴. The IPUC further concluded: “Absent the Company’s assent to remit the applicable fees, or seek an official ruling from the IECC, or another tribunal with relevant jurisdiction, as to whether the fees applied, the designation of TracFone as an ETC in Idaho would not be in the public interest.” *Id.* at 11-12.
14. In accordance with the IPUC’s Reconsideration Order, TracFone files this Complaint for Declaratory Judgment in this court, a tribunal with relevant jurisdiction, seeking a declaration regarding whether TracFone is required to remit the Emergency Communications Fee on its prepaid, non-billed services which are not provided on a monthly basis.

IV.

Issue for Determination

15. The issue for determination and upon which a declaration is sought is whether TracFone is legally obligated to remit the Emergency Communications Fee under Idaho Code §31-4804. Pursuant to Idaho Code §10-1202, TracFone is a person whose rights or legal relations are affected by a statute and is entitled to obtain a declaration of rights thereunder. TracFone respectfully requests that the Court enter its

⁴ Here, the Commission was impliedly acknowledging that it is not a court with the judicial power to interpret or construe statutes that are not within the scope of its jurisdiction under the Public Utility Law, but that it would give deference to another state agency, in the absence of a judicial determination.

declaration to the effect that it is not legally obligated to remit the Emergency Communications Fee.

V.

Justiciable Controversy

16. For the reasons set forth above, there is an actual and justiciable controversy between TracFone and the Defendants.

WHEREFORE, TracFone respectfully requests that the Court enter its Order:

1. Declaring and determining that TracFone is not legally responsible to remit the Emergency Communications Fee.
2. Granting such other and further relief is appropriate in the circumstances.

Dated this ____ day of February, 2012.

McDevitt & Miller LLP

By: _____

Dean J. Miller
Attorneys for TracFone Wireless, Inc.,