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IDAHO PUBLIC
UTILITIES COMMISSION

ORIGINAL

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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 TELE-)	INTERVENORS' POST-HEARING
COMMUNICATIONS CARRIER)	REPLY BRIEF ON THE APPLICABILITY
)	OF THE IDAHO EMERGENCY
)	COMMUNICATIONS ACT AND THE
)	IDAHO TELECOMMUNICATIONS
)	SERVICE ASSISTANCE PROGRAM TO
)	TRACFONE WIRELESS, INC.

The Idaho Telecom Alliance ("ITA"), by and through its attorney of record, Givens Pursley LLP, and CTC Telecom, Inc., dba CTC Wireless, by and through its attorney of record, Richardson & O'Leary, PLLC (collectively, "Intervenors"), in accordance with Order No. 32231 of the Idaho Public Utilities Commission ("Commission"), hereby jointly

file this post-hearing reply brief in the above-captioned matter. See Order No. 32231 (April 21, 2011). In the interests of brevity, this reply brief addresses only those arguments made by TracFone Wireless, Inc. ("TracFone") that merit additional comment.

I. TRACFONE MISCHARACTERIZES THE NATURE OF THE DISPUTED ISSUES AND THE PURPOSE OF THE POST-HEARING BRIEFING.

The post-hearing briefing was ordered at TracFone's request. As stated in *TracFone's April 8, 2011 Letter to the Commission*,

... By this letter, undersigned counsel for TracFone hereby advises the Commission that it does believe that briefs addressing the unresolved legal issues will assist the Commission in rendering an appropriate decision in this matter. During the hearing, it became apparent that significant differences regarding important issues continue to exist. Among those unresolved issues are those regarding applicability of certain taxes and fees on prepaid, non-billed telecommunications services.

Intervenors did not support post-hearing briefing, but agreed that any post-hearing briefing should be limited in scope to avoid re-hashing all relevant issues. *Intervenors' April 14, 2011 Joint Response to TracFone's Request*. Order No. 32231 subsequently limited the post-hearing briefing to analysis of TracFone's legal obligations under the Idaho Emergency Communications Act ("IECA") and the Idaho Telecommunications Service Assistance Program ("ITSAP").

Now, TracFone describes the choice to limit the scope to these issues as "appropriate" because "there can be no dispute that TracFone has demonstrated that it meets all [FCC] and Commission requirements for designation as an [ETC] for the limited purpose of providing Lifeline service to low-income Idaho consumers, and that designation of TracFone as an ETC will serve the public interest." *TracFone's Post-*

Hearing Brief at 1-2. TracFone's self-styled explanation of the purpose of Order No. 32231 mischaracterizes the reason why post-hearing briefing was ordered and erroneously indicates that the IECA and the ITSAP obligations are the only issues in dispute.

At no time have Intervenor's agreed that TracFone has complied with all FCC and Commission requirements or that ETC designation is in the public interest, and Intervenor's have found no such statement in the record from Staff or the Commission. The IECA and the ITSAP issues are the sole subjects of post-hearing briefing because TracFone identified those issues as the sole issues that merited further analysis, perhaps because TracFone was not satisfied that its position could succeed without further briefing. While Intervenor's could take this opportunity to respond to TracFone's mischaracterization by reiterating all the other reasons why TracFone's petition should be denied, doing so would violate the limited scope mandated by Order No. 32231.

II. TRACFONE INCORRECTLY ASSERTS THAT THE IECA AND THE ITSAP ISSUES ARE NOT RELEVANT TO ETC DESIGNATION.

TracFone's Forbearance Order was expressly conditioned on TracFone's compliance with E911 requirements applicable to wireless resellers. *Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 F.C.C. Rcd 15095, 15102 (2005). As thoroughly analyzed in *Intervenor's Post-Hearing Brief*, the requirements of the IECA and the ITSAP are unambiguously applicable to prepaid wireless services like TracFone's. Thus, to comply with the Forbearance Order and Idaho Law, TracFone must collect and remit the IECA and the ITSAP fees.

TracFone disagrees, and if the Commission designates TracFone as an ETC before TracFone's obligations are confirmed to TracFone's "satisfaction," TracFone will undoubtedly refuse to collect and remit the IECA and the ITSAP fees. Thus, these issues are relevant – if not critical – to the public interest aspects of the ETC designation.

III. TRACFONE'S SUGGESTIONS THAT THE ETC DESIGNATION SHOULD BE SEPARATED FROM THE IECA AND THE ITSAP ISSUES TO PROTECT IDAHO'S POOR IS DISINGENUOUS.

TracFone expresses "concern" that delaying TracFone's ETC designation while engaging in an analysis of the IECA and the ITSAP requirements threatens the safety of Idaho's low-income population. *TracFone's Post-Hearing Brief* at 8-9. TracFone believes the Commission should grant ETC designation now, with knowledge that TracFone has no intention to collect and remit the IECA and the ITSAP fees, and allow an indefinite time period to pass while the Idaho Supreme Court or Idaho Legislature makes a "final determination" or statutory clarification. While providing telecommunications services to Idaho's low-income population is an important duty, and one that Intervenor support, TracFone's manipulation of the public interest analysis serves no one's interests but TracFone's. Indeed, providing the low-income population with access to adequately funded emergency services is also an important duty, and one that TracFone appears to have no qualms with avoiding.

IV. SUGGESTING THAT LEGISLATION IS NEEDED TO CLARIFY TRACFONE'S OBLIGATIONS IS NOT THE SAME AS CONCEDED THAT TRACFONE HAS NO OBLIGATIONS.

As explained in *Intervenors' Post-Hearing Brief*, the legislative history of the IECA and the ITSAP demonstrate a concerted effort to include all telecommunications carriers, and no exemption for prepaid wireless services was ever crafted. TracFone

invokes statements made at an IECC meeting that suggest legislation may be needed to collect on prepaid wireless services as support for its argument that TracFone is not currently required to collect and remit the fees. *TracFone's Post-Hearing Brief* at 3-5. TracFone's reliance on these statements is misplaced. No legislation is needed because the current versions of the IECA and the ITSAP clearly require TracFone to collect and remit the fees. If such legislation were enacted, it would clarify existing obligations in response to the "doubt" manufactured by TracFone, not create a new requirement for prepaid wireless services.

In any event, engaging in an assessment of whether more legislation is needed and what IECC's position is on that topic is not relevant or appropriate to determination of this matter. This evidence is not properly before the Commission because it was submitted after the record was closed and has not been subject to cross-examination or rebuttal. Thus, that portion of *TracFone's Post-Hearing Brief* that discusses the IECC minutes and the related attachment should be stricken. In addition, cherry-picked portions of the back-and-forth debate within the IECC are not dispositive. Essentially, TracFone created the purported "ambiguity" by advocating its position that its chosen business model is exempt, and now TracFone attempts to use the perceived need for a statutory clarification as evidence that TracFone's argument is correct. TracFone's "logic," while creative, cannot negate its existing obligations.

V. SIMILARLY, SUGGESTING THAT FEES SHOULD BE COLLECTED AND REMITTED BY RETAILERS OF PREPAID WIRELESS PHONES AND MINUTES DOES NOT CHANGE EXISTING STATUTORY REQUIREMENTS.

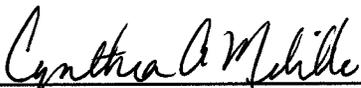
TracFone suggests that a "better" policy would shift the requirement to collect and remit the IECA and the ITSAP fees from the prepaid wireless carrier to the retailers.

TracFone's Post-Hearing Brief at 5. Intervenor choose not to comment on the merits of this idea as they are not relevant. Regardless of what a "better" policy may be, the existing statutes require the prepaid wireless carriers – not the retailers – to collect and remit the fees. If TracFone would like to shift the burden of compliance to retailers, TracFone can take that issue up with the legislature. In the meantime, TracFone's existing obligations should be enforced, regardless of what may come into effect at a later date.

VI. CONCLUSION.

In sum, *TracFone's Post-Hearing Brief* has provided no credible arguments showing the Idaho legislature exempted prepaid wireless services like TracFone's from the statutory schemes in the IECA or the ITSAP. If TracFone is to be designated an ETC in Idaho, TracFone must show that its services are in the public interest which, among other things, requires that TracFone comply with the requirements of the IECA and the ITSAP.

DATED this 13th day of June 2011.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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