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IDAHO PUBLIC
UTILITIES COMMISSION

Cynthia A. Melillo (ISB # 5819)
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, ID 83701
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
Email: cam@givenspursley.com

Attorneys for Idaho Telecom Alliance

Molly O'Leary (ISB # 4996)
Richardson & O'Leary PLLC
515 North 27th Street
P.O. Box 7218
Boise, ID 83707
Telephone: (208) 938-7900
Facsimile: (208) 938-7904
E-Mail: molly@richardsonandoleary.com

Attorneys for CTC Telecom, Inc.

ORIGINAL

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF TRACFONE WIRELESS, INC., FOR DESIGNATION AS AN ELIGIBLE TELE-COMMUNICATIONS CARRIER	)	CASE NO. TFW-T-09-01 INTERVENORS' OPPOSITION TO TRACFONE WIRELESS, INC.'S PETITION FOR RECONSIDERATION

The Idaho Telecom Alliance ("ITA"), by and through its attorneys of record, Givens Pursley LLP, and CTC Telecom, Inc., dba CTC Wireless, by and through its attorneys of record, Richardson & O'Leary, PLLC (collectively, "Intervenors"), hereby jointly file this Opposition to Tracfone Wireless Inc.'s ("TracFone's") Petition for

Reconsideration of the Public Utility Commission ("Commission") Order No. 32301 (July 29, 2011) (the "Order").

I. TRACFONE'S DISAPPOINTMENT WITH THE LEGAL CONCLUSIONS DOES NOT RENDER THE COMMISSION'S LEGAL CONCLUSIONS WORTH RECONSIDERATION.

A Petition for Reconsideration must "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." IDAPA 31.01.01.331.01. The *Petition* is essentially nothing more than an attempt to rehash the same legal analysis already considered and rejected by the Commission. While TracFone reiterates its opposition, the arguments do not demonstrate that the Order was "unreasonable, unlawful, erroneous or not in conformity with the law." *Id.* Essentially, this *Petition* asks the Commission to reach the opposite conclusion based upon the same legal arguments. The Commission ruled correctly and need not reconsider the Order.

TracFone initiated this process almost two years ago. The Commission conducted an extensive briefing and hearing process to enable full understanding of TracFone's qualifications for ETC designation. The Commission thoroughly considered the statutory and regulatory analyses of all parties and looked to sources of persuasive authority from relevant state agencies and courts in other jurisdictions. Based upon the facts and arguments presented, the Commission rejected TracFone's position. The Commission's analysis was well-reasoned and supported by the facts in the record. TracFone's disappointment in the decision does not render the decision mistaken or erroneous.

Even if the Commission's determination about the applicability of the ITSAP and the IECA surcharge was not dispositive, the Commission's broad statutory authority to consider the public interest gives the Commission discretion to deny TracFone's application for ETC designation for any combination of reasons. The Commission fully explained the reasons for denying TracFone's application, and such reasons are within the Commission's allowable scope of authority.

II. TRACFONE'S ATTEMPT TO SUBMIT FACTUAL EVIDENCE AFTER THE CLOSE OF THE RECORD SHOULD BE REJECTED.

TracFone places great emphasis on its problems with the IECC's position and its impact on the Commission's decision. Most of the facts submitted in opposition to consideration of IECC's position were not made a part of the record when the record was still open. TracFone should have obtained this information and made these arguments while the proceedings were opened. All evidence that was not in the record prior to the record being closed should be disregarded. In any event, the motivations of IECC staff are irrelevant, and TracFone is incorrect to assert that the Commission's decision was "based solely on a letter" from the IECC. *Petition* at 4. The Commission stated the many reasons for its decision, which reflect no violation of any statute or rule establishing the Commission's authority. There is no need to reconsider the facts or arguments related to IECC.

III. TRACFONE HAS MADE ALL THE ARGUMENTS IT HAS TO MAKE IN THE ORIGINAL PROCEEDINGS AND IN THIS *PETITION*. THUS, THERE IS NO NEED FOR FURTHER BRIEFING OR ORAL ARGUMENT.

The Commission rules require, in addition to the grounds for reconsideration, "a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. TracFone presented all of the arguments it had in the original proceedings and restates these arguments in the *Petition*. All of these issues have been previously addressed by the Parties. TracFone improperly submits facts that were available but not obtained before the record closed and applies these to previously-made arguments. Ultimately, TracFone has nothing to offer that is different than what has already been offered and analyzed by the Parties and the Commission. The *Petition* should be denied, and there should be no opportunity to "start over" with further briefing or oral argument.

IV. CONCLUSION.

The Commission's Order No. 32301 was based upon substantial and competent evidence in the record. Intervenors respectfully request that the Commission issue an Order affirming its findings in Order No. 32301 and denying TracFone's *Petition for Reconsideration*.

DATED this 26th day of August 2011.

By: Cynthia A Melillo
Cynthia A. Melillo
GIVENS PURSLEY LLP
Attorneys for Idaho Telecom Alliance

By: Cynthia A Melillo for
Molly O'Leary
RICHARDSON & O'LEARY, PLLC
Attorneys for CTC Telecom, Inc.,
dba CTC Wireless

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jean Jewell Idaho Public Utilities Commission 472 West Washington Street Boise, ID 83702 jean.jewell@puc.Idaho.gov	☐ U.S. Mail ☐ Overnight Mail ☒ Hand Delivery ☐ Fax ☐ Electronic Mail
Neil Price Idaho Public Utilities Commission 472 West Washington Street Boise, ID 83702 Neil.price@puc.Idaho.gov	☐ U.S. Mail ☐ Overnight Mail ☐ Hand Delivery ☐ Fax ☒ Electronic Mail
Mitchell F. Brecher Debra McGuire Mercer GREENBERG TRAURIG, LLP 2101 L Street, NW, Suite 1000 Washington, DC 20037 brecherm@gtlaw.com mercerdm@gtlaw.com	☐ U.S. Mail ☐ Overnight Mail ☐ Hand Delivery ☐ Fax ☒ Electronic Mail
Dean J. Miller McDEVITT & MILLER LLP 420 West Bannock Street Boise, ID 83702 joe@mcdevitt-miller.com	☐ U.S. Mail ☐ Overnight Mail ☐ Hand Delivery ☐ Fax ☒ Electronic Mail

Cynthia A. Melillo

Cynthia A. Melillo