

Cynthia A. Melillo (ISB No. 5819)  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300  
E-Mail: [cam@givenspursley.com](mailto:cam@givenspursley.com)

Attorneys for Idaho Telecom Alliance

Molly O'Leary (ISB No. 4996)  
Richardson & O'Leary PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, ID 83707  
Telephone: (208) 938-7900  
Facsimile: (208) 938-7904  
E-Mail: [molly@richardsonandoleary.com](mailto:molly@richardsonandoleary.com)

Attorneys for CTC Telecom, Inc.

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IDAHO PUBLIC  
UTILITIES COMMISSION

ORIGINAL

**BEFORE THE IDAHO PUBLIC SERVICE COMMISSION**

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

CASE NO.: TFW-T-09-01

**INTERVENORS' MOTION *IN LIMINE* TO  
EXCLUDE CERTAIN EVIDENCE FROM  
THE RECORD OR, IN THE  
ALTERNATIVE, MOTION TO COMPEL  
TRACFONE WIRELESS, INC. TO  
ANSWER INTERVENORS' SECOND  
JOINT PRODUCTION REQUEST**

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 IDAPA 31.01.01.056, jointly file this MOTION *IN LIMINE* or, in the alternative, this MOTION TO COMPEL TracFone Wireless, Inc. to fully answer Intervenors' SECOND JOINT PRODUCTION

REQUEST. Pursuant to Rule 256 of this Commission's Rules of Procedure ("IPUCRP"), Intervenor hereby request expeditious relief from the Commission regarding the substance hereof. IDAPA 31.01.01.256

### **PROCEDURAL BACKGROUND**

Intervenor served their SECOND JOINT PRODUCTION REQUEST ("Second Joint Request") upon TracFone on March 9, 2011. That Production Request is attached hereto as **Exhibit A**. In essence, Intervenor requested that TracFone provide all communications that it or its agents have had with Governor C.L. "Butch" Otter and Idaho Representative Wendy Jacquet, and /or their agents, concerning the letters submitted to this Commission by Governor Otter and Representative Jacquet, respectively, that purport to be in support of the application that is the subject of this proceeding.

TracFone timely filed an Objection to Intervenor's Second Joint Request on March 23, 2011. That Objection is attached hereto for ease of the Commission's reference, as **Exhibit B**. In essence, TracFone objects to Intervenor's Second Joint Request on the grounds that the information requested is not relevant to this Commission's determination as to whether TracFone meets the Eligible Telecommunications Carrier ("ETC") eligibility criteria set forth in Appendix A to this Commission's Order No, 29841, in Case No. WST-T-05-01 ("Idaho ETC Eligibility Requirements Order").

### **ARGUMENT**

The conduct of discovery in a proceeding before this Commission is governed by the Idaho Rules of Civil Procedure. IDAPA 31.01.01.225.01. The scope of discovery permissible under Rule 26 of the Idaho Rules of Civil Procedure ("IRCP") is broad: "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought

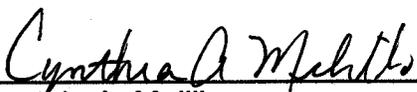
appears reasonably calculated to lead to the discovery of admissible evidence.” IRCP 26(b)(1). “Parties may obtain discovery regarding any matter which is relevant to the subject matter involved in the pending action.” *Id.* Thus, for TracFone to claim that the Intervenor’s request for all communications with Governor Otter and Representative Jacquet regarding their respective letters of support for TracFone’s application is not relevant, is tantamount to TracFone admitting that the letters themselves are not relevant to this Commission’s determination. (Intervenors agree that political pressure should be irrelevant in *any* proceeding before this Commission.)

In light of TracFone’s position, Intervenor’s respectfully move this Commission to strike the letter of Governor Otter and the letter of Representative Jacquet from the record before it and to not consider either of those letters in its deliberations.

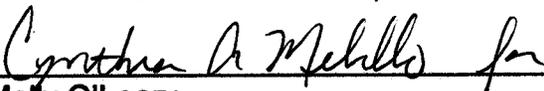
In the alternative, the Intervenor’s move this Commission to compel TracFone to fully answer Intervenor’s Second Joint Request no later than 5 p.m. MDT on Monday, March 28, 2011.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of March 2011.

GIVENS PURSLEY LLP

  
\_\_\_\_\_  
Cynthia A. Melillo  
Attorneys for Idaho Telecom Alliance

RICHARDSON & O’LEARY, PLLC

  
\_\_\_\_\_  
Molly O’Leary  
Attorneys for CTC Telecom, Inc.,  
dba CTC Wireless

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 24<sup>th</sup> day of March, 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](mailto: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](mailto:Neil.price@puc.idaho.gov)

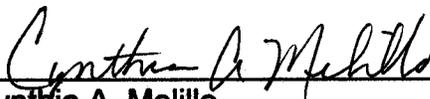
- U.S. Mail
- Overnight Mail
- Hand Delivery
- Fax
- Electronic Mail

Mitchell F. Brecher  
Debra McGuire Mercer  
GREENBERG TRAURIG, LLP  
2101 L Street, NW, Suite 1000  
Washington, DC 20037  
[brecherm@gtlaw.com](mailto:brecherm@gtlaw.com)  
[mercerdm@gtlaw.com](mailto: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](mailto:joe@mcdevitt-miller.com)

- U.S. Mail
- Overnight Mail
- Hand Delivery
- Fax
- Electronic Mail

  
\_\_\_\_\_  
Cynthia A. Melillo

# **EXHIBIT A**

Cynthia A. Melillo (ISB No. 5819)  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, ID 83701  
Telephone: (208) 388-1200  
Facsimile: (208) 388-1300  
E-Mail: [cam@givenspursley.com](mailto:cam@givenspursley.com)

Attorneys for Idaho Telecom Alliance

Molly O'Leary (ISB No. 4996)  
Richardson & O'Leary PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, ID 83707  
Telephone: (208) 938-7900  
Facsimile: (208) 938-7904  
E-Mail: [molly@richardsonandoleary.com](mailto:molly@richardsonandoleary.com)

Attorneys for CTC Telecom, Inc.

**BEFORE THE IDAHO PUBLIC SERVICE COMMISSION**

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

CASE NO.: TFW-T-09-01

**SECOND JOINT PRODUCTION  
REQUEST OF THE IDAHO TELECOM  
ALLIANCE AND CTC TELECOM, INC.,  
DBA CTC WIRELESS, TO TRACFONE  
WIRELESS, INC.**

The Idaho Telecom Alliance, by and through its attorney of record, Givens Pursley LLP, and CTC Telecom, Inc., dba CTC Wireless (formerly dba Snake River PCS), by and through its attorney of record, Richardson & O'Leary, PLLC, jointly request that TracFone Wireless, Inc. ("TracFone") provide the following documents and information as soon as possible, but no later than twenty-one (21) days from the date of service hereof, in accordance with IDAPA 31.01.01.225.03.

This Production Request is to be considered continuing, and TracFone is requested to provide, by way of supplementary responses, additional documents that it or any person acting on its behalf may later obtain that will augment the documents produced.

Please provide answers to each question, supporting workpapers that provide detail or are the source of information used in calculations and the name, job title and telephone number of the person preparing the documents. Please identify the name, job title, location and telephone number of the record holder.

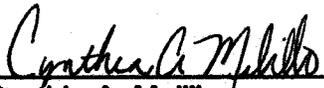
Please provide all Excel and electronic files on CD with formulas activated.

**REQUEST NO. 51.** Please provide copies of all communications (whether oral, written or otherwise) with Governor C.L. "Butch" Otter and Representative Wendy Jaquet, and/or anyone in their respective offices, that have not otherwise been published on the Commission's website. A request for the description of oral communications shall be deemed to include a request for the following information with respect to each of said oral communications:

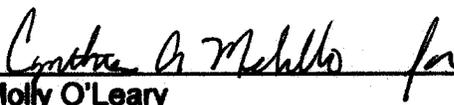
1. The date and place of such communication.
2. Whether said communication was in person or by telephone.
3. A description of each person who participated in or heard of said communication.
4. The substance of what was said by each person who participated in said communication.
5. A chronological description of all documents or recordings summarizing, confirming or in any manner referring to said communication.

DATED this 9<sup>th</sup> day of March 2011.

GIVENS PURSLEY LLP

  
\_\_\_\_\_  
Cynthia A. Melillo  
Attorneys for Idaho Telecom Alliance

RICHARDSON & O'LEARY, PLLC

  
\_\_\_\_\_  
Molly O'Leary  
Attorneys for CTC Telecom, Inc.,  
dba CTC Wireless

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of March 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](mailto:jean.jewell@puc.idaho.gov)

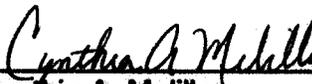
- U.S. Mail
- Overnight Mail
- Hand Delivery
- Fax
- Electronic Mail

Mitchell F. Brecher  
Debra McGuire Mercer  
GREENBERG TRAUERIG, LLP  
2101 L Street, NW, Suite 1000  
Washington, DC 20037  
[brecher@gtlaw.com](mailto:brecher@gtlaw.com)  
[mercerdm@gtlaw.com](mailto: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](mailto:joe@mcdevitt-miller.com)

- U.S. Mail
- Overnight Mail
- Hand Delivery
- Fax
- Electronic Mail

  
\_\_\_\_\_  
Cynthia A. Melillo

# **EXHIBIT B**

**FILE COPY**

Dean J. Miller (ISB No. 1968)  
McDEVITT & MILLER LLP  
420 West Bannock Street  
P.O. BOX 2564-83701  
Boise, Idaho 83702  
Tel: 208-343-7500  
Fax: 208-336-6912  
joe@mcdevitt-miller.com

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IDAHO PUBLIC  
UTILITIES COMMISSION

Mitchell F. Brecher (Admitted Pro Hac Vice)  
Debra McGuire Mercer  
GREENBERG TRAUIG, LLP  
2101 L Street, NW, Suite 1000  
Washington, D.C. 20037  
Tel: 202-331-3100  
Fax: 202-331-3101  
brecher@gt;aw.com  
mercercdm@gtlaw.com

*Attorneys for TracFone Wireless, Inc.*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	<b>CASE NO. TFW-T-09-01</b>
<b>OF TRACFONE WIRELESS, INC. FOR</b>	)	
<b>DESIGNATION AS AN ELIGIBLE</b>	)	<b>TRACFONE WIRELESS, INC.'S</b>
<b>TELECOMMUNICATIONS CARRIER.</b>	)	<b>OBJECTIONS TO SECOND</b>
	)	<b>JOINT PRODUCTION</b>
	)	<b>REQUEST OF THE IDAHO</b>
	)	<b>TELECOM ALLIANCE AND</b>
	)	<b>CTC TELECOM, INC. DBA CTC</b>
	)	<b>WIRELESS</b>

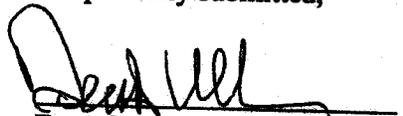
Pursuant to IDAPA 31.01.01.225.03, TracFone Wireless, Inc. ("TracFone") files the following objections to the Second Joint Production Request of the Idaho Telecom Alliance and CTC Telecom, Inc. dba CTC Wireless.

**REQUEST NO. 51. Please provide copies of all communications (whether oral, written or otherwise) with Governor C.L. "Butch" Otter and Representative Wendy Jaquet, and/or anyone in their respective offices, that have not otherwise been published on the Commission's website. A request for the description of oral communications shall be deemed to include a request for the following information with respect to each of said oral communications:**

1. **The date and place of such communication.**
2. **Whether said communication was in person or by telephone.**
3. **A description of each person who participated in or heard of said communication.**
4. **The substance of what was said by each person who participated in said communication.**
5. **A chronological description of all documents or recordings summarizing, confirming or in any manner referring to said communication.**

**Objection:** TracFone objects to this request to the extent that it seeks information that is not relevant to the determination of whether TracFone meets the federal requirements of 47 U.S.C. § 214(e)(1) and (2) for designation as an ETC or the Idaho requirements for designation as an ETC contained in the Appendix to In the Matter of the Application of WWC Holding Co., Inc. DBA Cellular-One® Seeking Designation as an Eligible Telecommunications Carrier That May Receive Federal Universal Service Support, Order No. 29841, Case No. WST-T-05-1 (Idaho Pub. Utilities Comm'n: August 4, 2005) ("ETC Checklist").

Respectfully submitted,

  
Dean J. Miller (ISB No. 1968)  
McDEVITT & MILLER LLP  
420 West Bannock Street  
P.O. BOX 2564-83701  
Boise, Idaho 83702  
Tel: 208-343-7500  
Fax: 208-336-6912  
joe@mcdevitt-miller.com

Mitchell F. Brecher  
Debra McGuire Mercer  
GREENBERG TRAURIG, LLP  
2101 L Street, NW, Suite 1000  
Washington, D.C. 20037  
Tel: 202-331-3100  
Fax: 202-331-3101  
brecherm@gt;aw.com  
mercerdm@gtlaw.com

*Attorneys for TracFone Wireless, Inc.*

March 23, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of March, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input type="checkbox"/>
<u><a href="mailto:jjewell@puc.state.id.us">jjewell@puc.state.id.us</a></u>		

Neil Price, Esq.	Hand Delivered	<input type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input checked="" type="checkbox"/>
<u><a href="mailto:Neil.Price@puc.idaho.gov">Neil.Price@puc.idaho.gov</a></u>		

Molly O'Leary, Esq.	Hand Delivered	<input type="checkbox"/>
Richardson & O'Leary, PLLC	U.S. Mail	<input type="checkbox"/>
P.O. Box 7218	Fax	<input type="checkbox"/>
Boise, ID 83707	Fed. Express	<input type="checkbox"/>
<u><a href="mailto:molly@richardsonandoleary.com">molly@richardsonandoleary.com</a></u>	Email	<input checked="" type="checkbox"/>

Cynthia A. Melillo, Esq.	Hand Delivered	<input type="checkbox"/>
Givens Pursley LLP	U.S. Mail	<input type="checkbox"/>
601 N. Bannock Street	Fax	<input type="checkbox"/>
P.O. Box 2720	Fed. Express	<input type="checkbox"/>
Boise, ID 83701	Email	<input checked="" type="checkbox"/>
<u><a href="mailto:cam@givenspursley.com">cam@givenspursley.com</a></u>		

BY: Heather Houle  
MCDEVITT & MILLER LLP