

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE AMENDED)
APPLICATION OF TRACFONE) **CASE NO. TFW-T-09-01**
WIRELESS, INC. FOR DESIGNATION AS)
AN ELIGIBLE TELECOMMUNICATIONS) **ORDER NO. 31096**
CARRIER)

On October 29, 2009, TracFone Wireless, Inc. (“TracFone” or “Company”) filed an Application, pursuant to Section 214(e)(2) of the Communications Act of 1934, for designation as an eligible telecommunications carrier (“ETC”). *Application* at 1. TracFone is seeking ETC designation solely for the purpose of providing Lifeline service under its trade name SafeLink Wireless and will not seek funds from the federal Universal Service Fund. *Id.*

On February 5, 2010, the Commission issued an Order denying TracFone’s Application. *See* Order No. 30996.

On March 1, 2010, TracFone filed a Petition for Reconsideration and an Amended Application for ETC designation. On March 8, 2010, Commission Staff filed an Answer to TracFone’s Petition. Subsequently, TracFone submitted a letter withdrawing its Petition for Reconsideration and expressing its support for a process that would facilitate a Staff review and recommendation regarding its Amended Application within 60 days.

On May 14, 2010, CTC Telecom, Inc. dba Snake River PCS (“CTC”) and Idaho Telecom Alliance (“ITA”) each filed, pursuant to Commission Rule of Procedure 71, IDAPA 31.01.01.071, a Motion to Intervene Out of Time and Petition to Intervene.

On May 19, 2010, TracFone filed, pursuant to Commission Rule of Procedure 75, IDAPA 31.01.01.075, a Motion in Opposition of TracFone Wireless, Inc. to Petitions to Intervene of CTC Telecom, Inc. dba Snake River PCS and Idaho Telecom Alliance. On May 24, 2010, CTC and ITA each filed replies to TracFone’s Motion in Opposition.

MOTION TO INTERVENE OUT OF TIME AND PETITION TO INTERVENE

CTC is a wireless eligible telecommunications carrier (ETC) in Idaho and claims 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. *CTC Petition* at 2.

ITA is a state telephone association, and its members include both commercial companies and cooperatives. *ITA Petition* at 2. ITA’s 14 members provide basic and advancing

telecommunications services in rural Idaho. All of ITA's members are rural telephone companies as defined in 47 U.S.C. § 153(37), and all the members (or affiliates of the members) are designated eligible telecommunications carriers in Idaho and claim a direct and substantial interest in this proceeding in that they do not believe that designation of TracFone as an ETC is in the public interest. *Id.*

The substance and content in the separate Petitions filed by CTC and ITA are nearly identical. If intervention is granted, the parties state that they will "introduce evidence, cross-examine witnesses, call and examine witnesses and be heard in argument" and claim that the "nature and quality of the evidence" they will produce is "dependent upon the nature and effect of other evidence in this proceeding." *Id.*

The parties claim that granting their Petitions to Intervene would provide them with adequate "means of participating in this proceeding which may have a material impact on the Commission's public interest criteria for designation of ETCs in Idaho's rural, high-cost areas." *Id.* at 2-3. Furthermore, granting their Petitions "will not unduly broaden the issues nor will it prejudice any party to this case; rather, granting the petition will serve the public's interest." *Id.* at 3.

Finally, the parties request an extension of the May 24, 2010 comment deadline by "at least forty-five (45) days following the date the Commission grants its petition to intervene." *Id.* Such an extension is necessary in order to provide the parties an "opportunity to review the record and supporting documentation, if any, and to propound appropriate discovery, if necessary." *Id.* The parties have not objected to the use of Modified Procedure, or otherwise requested a hearing on this matter.

TRACFONE'S OPPOSITION TO PETITIONERS' MOTIONS TO INTERVENE

TracFone opposes the Petitions to Intervene. *TracFone Motion* at 1. TracFone argues that the Petitions state no legal basis for allowing CTC and ITA to participate as intervenors in this case. *Id.*

TracFone's objections to the Petitions center on the Commission's decision to process their Amended Application pursuant to Modified Procedure. *See* Order No. 31028. TracFone points out that CTC, ITA or any other interested party have been allowed to participate in this proceeding by filing comments regarding TracFone's Amended Application within the comment deadline, on or before May 24, 2010. *TracFone Motion* at 2-3. Further, TracFone asserts that

CTC and ITA have failed to “articulate a single reason as to why designation of TracFone as an ETC is not in the public interest.” *Id.* at 3. TracFone also believes that the Petitions to Intervene by CTC and ITA offer “no basis” for determining whether their participation as intervenors will unduly broaden the issues in this case. *Id.* at 4.

Finally, TracFone states that it would be prejudiced by a 45-day extension to the comment period. *Id.* at 5. According to TracFone, “further delay in this proceeding will deprive Idaho’s low-income consumers from having meaningful competitive choice in Lifeline services.” *Id.*

COMMISSION DISCUSSION AND FINDINGS

The Commission has considered the Petitions to Intervene filed by CTC and ITA, as well as TracFone’s Motion in Opposition and CTC and ITA’s replies to TracFone’s Motion in Opposition.

The Commission recognizes TracFone’s interest in having this matter proceed in a timely manner. Nevertheless, the Commission has customarily held a “liberal intervention policy.” Order No. 25460 at 5. This policy is “coupled with the strict determination that intervenors may not unduly broaden the issues of a case.” *Id.*

The Commission finds that inasmuch as the parties represent ETCs currently operating in Idaho, both CTC and ITA have adequately demonstrated a “direct and substantial interest in . . . the subject matter of [this] proceeding and [will] not unduly broaden the issues . . .” in this case. Commission Rule of Procedure 74, IDAPA 31.01.01.074. The Commission finds that CTC and ITA are capable of providing important information and input in this case which may or may not directly impact the Commission’s inquiry into whether TracFone’s Amended Application for designation as an ETC in Idaho is in the public interest.

Accordingly, the Petitions to Intervene filed by CTC and ITA shall be granted. The parties are directed to convene a prehearing scheduling conference as soon as is practicable in order to develop an appropriate schedule going forward in this case, including a hearing if needed. We are sympathetic to TracFone’s need for a timely decision on this Application and will proceed expeditiously.

ORDER

IT IS HEREBY ORDERED that the Petition to Intervene filed by CTC Telecom, Inc. dba Snake River PCS is granted.

IT IS FURTHER ORDERED that the Petition to Intervene by Idaho Telecom Alliance is granted.

IT IS FURTHER ORDERED that all parties in this proceeding shall serve all papers hereafter filed in this matter upon the following individuals:

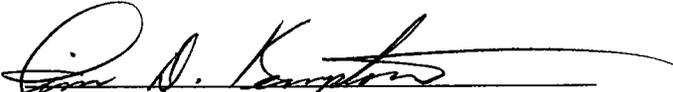
CTC Telecom, Inc., dba Snake River PCS:

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 28th
day of May 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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