

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)	NOTICE OF
CARRIER)	PROPOSED SETTLEMENT
)	
)	ORDER NO. 32463

On September 13, 2011, the Commission issued Order No. 32358, Final Order on Reconsideration. The Order re-affirmed the Commission's previous determination in Order No. 32301 that TracFone Wireless, Inc. ("TracFone" or "Company") 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 No. 32358 at 11-12.

On October 28, 2011, TracFone filed a Notice of Appeal of Reconsideration Order No. 32358 with the Idaho Supreme Court, Docket No. 39331-2011. In its Appeal, the Company alleges 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, Commission Staff ("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 Orders.

NOTICE OF PROPOSED SETTLEMENT

YOU ARE HEREBY NOTIFIED that the Parties have agreed to a Settlement Stipulation and present the following terms for Commission approval:

1. 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 the Stipulation and conditionally designating TracFone as an ETC.

2. 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 the 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 the 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.
3. 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).
4. 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.
5. 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.
6. 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 due 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.

7. 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.
8. Accordingly, the Parties request that the Commission enter its Order approving the Stipulation and designating TracFone as an Eligible Telecommunications Carrier in Idaho.
9. 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.

YOU ARE FURTHER NOTIFIED that the Settlement Stipulation and the Company's Application, together with supporting workpapers, testimonies and exhibits in Case No. TFW-T-09-01 have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices, 472 W. Washington Street, Boise, Idaho. The Settlement Stipulation and the Company's Application may also be viewed on the Commission's web site, www.puc.idaho.gov, by clicking on "File Room" and then "Telephone Cases" under the corresponding case number, TFW-T-09-01, for this proceeding.

YOU ARE FURTHER NOTIFIED that the Commission is not bound by any settlement reached by the Parties. The Commission will independently review any proposed settlement to determine whether the settlement is just, fair and reasonable, and in the public interest, or otherwise in accordance with law or regulatory policy. The Commission may accept the settlement, reject the settlement, or state additional conditions under which the settlement will be accepted. IDAPA 31.01.01.274-.276.

ORDER

IT IS HEREBY ORDERED that persons interested in submitting written comments regarding the proposed Settlement Stipulation should do so within 21 days of the service date of this Order.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th day of February 2012.



PAUL KJELLANDER, PRESIDENT

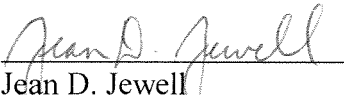


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:TFW-T-09-01_np11_Settlement