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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF I-WIRELESS, LLC'S )**  
**APPLICATION FOR DESIGNATION AS AN )**  
**ELIGIBLE TELECOMMUNICATIONS )**  
**CARRIER. )** **CASE NO. WIR-T-15-01**  
**)** **COMMENTS OF THE**  
**)** **COMMISSION STAFF**  
**)**

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Daphne Huang, Deputy Attorney General, and submits the following comments.

**BACKGROUND**

On October 20, 2015, i-wireless, LLC (“i-wireless” or “Company”) filed an Application, pursuant to 47 U.S.C. § 214(e)(2), Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (FCC), and the Idaho Public Utilities Commission’s (Commission) rules and regulations,<sup>1</sup> seeking designation as an eligible telecommunications carrier (ETC) in Idaho to provide Lifeline service to qualifying Idaho consumers. On January 8, 2016, the Company filed a Letter with supplemental information, and on January 13, 2016, the Company filed a Notice of Mailing to Tribes.

<sup>1</sup> See Case No. WST-T-05-01, Order No. 29841 (August 4, 2005).

## THE APPLICATION

i-wireless provides “commercial mobile radio service” (CMRS) throughout the country and operates as a Mobile Virtual Network Operator (MVNO). The Company offers prepaid wireless telecommunications services using the Sprint Spectrum, L.P. network. Application at 2-3. The Company requests ETC status for service areas throughout Idaho, as set forth in Exhibit 14 to the Company’s Application. *Id.* at 21-22. The Company also asks that its designation include authority to participate in and receive reimbursement from the Idaho Telephone Service Assistance Program (ITSAP). January 8, 2016 Letter. i-wireless notes that it has been designated as an ETC in 37 states and the District of Columbia. Application at 3. The Company also has five pending ETC Applications. *Id.* at 3.

The Company contends that its request for ETC designation to participate in the Lifeline program is consistent with the Commission’s decisions designating TracFone and Virgin Mobile as ETCs. *See* TracFone ETC Order No. 32550 and Virgin Mobile ETC Order No.32645. i-wireless asserts it satisfies the requirements for designation as an ETC. Application at 16. Specifically, the Company states that it: (1) is a common carrier; (2) commits and is able to provide services supported by federal universal support mechanisms; (3) will advertise the availability of supported services; (4) commits to provide service throughout its service area in Idaho; (5) is capable of remaining functional in emergency situations; (6) is committed to consumer protection and service; (7) describes its local usage plan, which it contends will meet or exceed incumbent local exchange carrier (ILEC) plans; (8) will promote the public interest, convenience and necessity; (9) will comply with requirements imposed by this Commission for ETC status, including reporting requirements; and (10) has provided notice of its Application to the affected tribal governments and tribal regulatory authorities. *Id.* at 18-28; Notice of Mailing to Tribes. The Company also states it will comply with applicable ITSAP regulations, including but not limited to required monthly reporting and execution of a Memorandum of Understanding with the Department of Health and Welfare. January 8, 2016 letter.

The Company affirms that granting it ETC designation will “promote competition and innovation, and spur other carriers to target low-income consumers,” and “help assure that quality services are available at ‘just, reasonable, and affordable rates’” as contemplated in the Telecommunications Act. Application at 28. Granting it ETC designation will, the Company

states, “further the public interest by providing Idaho consumers, especially low-income consumers, with low prices and high quality services.” Application at 26.

### **Proposed Lifeline Service Offerings**

i-wireless will provide Lifeline service under the brand name “Access Wireless” and will offer three plans: (1) 250 Anytime Minutes Plan (non-tribal) with a free handset and 250 anytime minutes with unlimited text messaging per month; (2) Unlimited Talk and Text Plan (tribal only) with a free handset and unlimited voice minutes plus unlimited text messages per month; and (3) Retail Discount Plan that allows Lifeline eligible customers to choose from any i-wireless monthly retail plan at a discount—up to \$15.00 for non-tribal customers or up to \$40.00 for tribal customers. *Id.* at 4-5. Minutes are credited to a customer’s account at the beginning of every 30-day cycle. Lifeline customers will also have access to voice mail, caller identification, and call waiting at no additional charge. Customers may place free calls to the i-wireless customer service center and to 911 centers, regardless of account balance or activation status. *Id.* at 5. Additional minutes in increments of \$10.00, \$25.00, \$35.00, and \$50.00 may be purchased over the phone or online. *Id.* at 6.

### **The Federal Lifeline and Link Up Reform and Modernization Order**

On February 6, 2012, the FCC released a Report and Order (“the Order”) to comprehensively reform the low-income program of the Universal Service Fund (“USF”). The Order substantially strengthens protection against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.<sup>2</sup> The Order also establishes rigid requirements for ETCs to obtain customer certifications to prevent duplication of lifeline benefits.

i-wireless declares it will comply with the Order; will meet the certification and verification requirements; will comply with all regulations imposed by the Commission to the extent such provisions apply to a prepaid wireless provider; commits that 100% of federal

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<sup>2</sup> See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, 27 F.C.C.R. 6656, ¶¶ 361-83 (Feb. 6, 2012) (“*Lifeline and Link Up Reform Order*”).

universal service funds will flow through directly to Lifeline customers; and the Company will comply with the reporting requirements adopted by the Commission. As the Company is not seeking high-cost support for its wireless service, it requests a waiver of the two-year network improvement and maintenance plan associated with the use of high-cost support. Order No. 29841, Section B.1.

### **Compliance Plan**

Pursuant to the Order, the FCC approves compliance plans as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended, for the provision of Lifeline service.<sup>3</sup> In the Order, the FCC found that “a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers seeking to provide Lifeline-only service.”<sup>4</sup> Therefore, the FCC conditionally granted forbearance from the Act’s facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) approval of a compliance plan by the FCC’s Wireline Competition Bureau, providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligation contained in the Order. The FCC approved i-wireless’ revised compliance plan on October 21, 2011.<sup>5</sup>

### **Notice of Apparent Liability**

On November 1, 2013, the FCC issued a notice of apparent liability (NAL) to i-wireless.<sup>6</sup> The NAL alleges that between October 2012 and April 2013, i-wireless was reimbursed in eight states for 1,684 intra-company duplicate customer enrollments totaling \$24,358 in overpayment from the Universal Service Administrative Company (USAC).<sup>7</sup> For this alleged violation, the FCC proposed a monetary forfeiture in the amount of \$8,753,074.<sup>8</sup> On January 10, 2014, i-wireless filed a response challenging the NAL findings and the matter is now pending before the FCC. In the two years following i-wireless’ response to the NAL, no further action has been

<sup>3</sup> See *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶¶ 379-80.

<sup>4</sup> *Wireline Competition Bureau Approves Compliance Plans*, 27 F.C.C.R. 5776 at 1-2 (May 25, 2012).

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 26 F.C.C.R. 14508 (Oct. 21, 2011).

<sup>6</sup> *In the Matter of i-wireless, LLC, Notice of Apparent Liability for Forfeiture*, 28 F.C.C.R. 15381 (Nov. 1, 2013).

<sup>7</sup> *Id.*, ¶ 9.

<sup>8</sup> *Id.*, ¶ 1.

taken by the FCC, and none is expected. Staff believes the Company has sufficient safeguards in place to adequately address the NAL and any associated public interest concerns. The implementation of the National Lifeline Accountability Database (NLAD) will provide an additional third party verification – a safeguard that was not in place during the timeframe of the alleged duplicate enrollments by i-wireless.

## **STAFF ANALYSIS**

Staff has reviewed the i-wireless' Application, including the approved Compliance Plan, The FCC's Notice of Apparent Liability, and the Company's confidential response to the NAL. In addition, Staff has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996, the *Lifeline and Link Up Reform Order*, and Commission Order No. 29841. An analysis of the specific state and federal requirements for ETC designation are examined in more detail below.

### **Public Interest Considerations**

When applying the public interest test for ETC designation, Staff historically analyzes two primary considerations. These are discussed as follows.

1. Contribution to the Idaho Telecommunications Service Assistance Program (ITSAP). In a prior ETC Application case filed by TracFone, another MNVO pre-paid wireless service provider, the Commission determined that it was in the public interest to require TracFone to contribute to this fund.<sup>9</sup> See Order No. 32301 at 9. The ITSAP Administrator confirmed that i-wireless remits to the ITSAP surcharge on a monthly basis. January 7, 2016 email. Staff also believes i-wireless demonstrates its intent to comply with all state and federal 911/E911 requirements. Application at 18. Staff, therefore, believes i-wireless meets this public interest test.

2. "Cream Skimming" Analysis. In assessing possible disadvantages of granting an ETC designation, the Commission considers if the designation is sought "for an area less than the entire study area of a rural telephone company." Order No. 33226 at 3. "In such circumstances,

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<sup>9</sup> The Commission also considered TracFone's contribution to the Idaho Emergency Communications Act (IECA) "911/E911" fund. Since the Tracfone case, the Idaho Legislature revised Idaho Statutes regarding the remittance of E911 fees imposed on prepaid wireless service purchased through a retailer. Pursuant to the revised Statute, "[t]he prepaid wireless E911 fee shall be collected by the seller from the consumer" in the amount of 2.5% of the sales price on each retail transaction. *Idaho Code* § 31-4813.

known as ‘cream skimming,’ a company can avoid providing services throughout the rural study area, which is contrary to the public interest.” *Id.*

i-wireless requests ETC designation statewide, subject to the existence of its underlying carrier’s facilities and corresponding coverage. The Company states it “understands that its service may overlap with rural carriers in Idaho, but maintains that the public interest factors justify its designation in these carriers’ service areas, “because it seeks ETC designation solely to utilize USF funding to provide Lifeline service to qualified low-income consumers. It does not seek and will not accept Link Up or high cost support.” Application at 22.

Staff believes that the Company’s exclusion of high-cost support in its Application makes the cream skimming and the rural versus non-rural analysis moot. *See* Order No. 32645 at 3. Staff, however, believes that i-wireless’ ETC designation should not include the entire state, but instead, the Company’s ETC designation should be limited to those exchanges listed in Exhibit 14.

### **Network Improvement Plan**

The Idaho ETC Designation Order requires an ETC to provide a two-year network improvement and progress report if the ETC receives high-cost support. *See* Order No. 29841 at 18. In considering another prior ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs and granted the requested ETC designation along with an exemption from the network improvement plan. *See* Order No. 32501.

The FCC, in the *USF/ICC Transformation Order*, amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. Because Lifeline-only ETCs are not receiving funds to improve or extend its networks, the FCC stated that it “saw little purpose in requiring such plans as part of the ETC designation process.”<sup>10</sup> i-wireless’ Application seeks only low-income USF support. Thus, Staff believes i-wireless is exempt from Idaho’s two-year network improvement plan requirement.

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<sup>10</sup> *See Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386.

### **Ability to Remain Functional in Emergencies**

i-wireless states that it has the ability to remain functional in emergency situations in accordance with the Idaho ETC Order and Section 54.202(a)(2) of the FCC's Rules, 47 C.F.R. § 54.202(a)(2). The Company confirms that it provides the same ability to remain functional in emergency situations as currently provided by the ILECS to their own customers, such as access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. Application at 22. Staff believes i-wireless meets this requirement.

### **Other ETC Designation Requirements**

Additional requirements for ETC designation are enumerated in Appendix 1 of Order No. 29841 and are discussed below.

1. Common Carrier Status. i-wireless is a commercial mobile radio service provider and is a common carrier as defined in the federal Telecommunications Act. *Id.* at 18.

2. Provide the Universal Services. i-wireless states it will provide each of the supported services identified in Section 54.101 and Section 54.202(a). *Id.* at 16.

3. Advertising. i-wireless also states it will comply with the requirements set forth in the *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656. *Id.* at 20.

4. The Commitment and Ability to Provide Supported Services. i-wireless further indicates it will provide services consistent with the FCC's grant of forbearance from Section 214's facilities requirements. *Id.* at 17.

5. A commitment to Consumer Protection and Service. i-wireless commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. The Company will comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. *Id.* at 23.

6. Description of the Local Usage Plan. i-wireless states that an Applicant for ETC designation is no longer required to demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory. *Id.*, citing *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 208. "Nevertheless, not only will the Company's offering be comparable to the underlying ILEC plans, but it also will exceed them in several respects." *Id.* at 23.

7. Tribal Notification. The Company has filed a Notice of Mailing to Tribes with the Commission. *See* Notice of Mailing to Tribes.

Staff believes i-wireless meets the aforementioned ETC designation requirements where applicable for a Lifeline-only ETC designation.

## RECOMMENDATION

Staff has reviewed the Application of i-wireless, LLC for designation as an ETC. Staff believes the Application demonstrates the Company's technical, financial and managerial expertise as well as the commitment to fulfill the obligations of an ETC in Idaho. The Company satisfactorily addresses the FCC's NAL; will provide all universal services supported by the federal USF throughout its underlying carrier's service territory; answers the public interest questions that accompany an ETC Application; has an FCC-approved compliance plan; and meets all requirements established by the Commission in Order No. 29841.

Staff believes i-wireless' Application for designation as an ETC is in the public interest and recommends approval for those wire centers listed in Exhibit 14. Staff also recommends that the Commission approve the waiver of the two-year network improvement plan.

Respectfully submitted this 12<sup>th</sup> day of February 2016.

  
Daphne Huang  
Deputy Attorney General

Technical Staff: Grace Seaman

i:umisc:comments/wirt15.1djhs comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 12<sup>TH</sup> DAY OF FEBRUARY 2016, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. WIR-T-15-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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