

Lance J.M. Steinhart
Lance J.M. Steinhart, P.C.
1720 Windward Concourse, Suite 115
Alpharetta, Georgia 30005
(770) 232-9200 (Phone)
(770) 232-9208 (Fax)
Email: lsteinhart@telecomcounsel.com

Attorney for i-wireless, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of i-wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households	Docket No. 10-2526-01 MOTION TO WAIVE RESPONSIVE POST-HEARING BRIEFS
--	---

Pursuant to Utah Rule R746-100-3, i-wireless, LLC (“i-wireless”) hereby files this its motion for waiver of responsive post-hearing briefs and moves that the Public Service Commission of Utah (“Commission”) issue a final decision in the instant docket. In support of this motion, i-wireless states as follows:

1. The Division of Public Utilities (“DPU”) and the Office of Consumer Services (“OCS”) do not oppose the motion.
2. DPU was the only party to file a post-hearing brief, in support of the approval of i-wireless’ Petition in the instant docket.
3. i-wireless is seeking designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Utah, pursuant to section 214(e)(2) of the Communications Act of 1934, as amended (“Act”), for purposes of offering prepaid wireless services supported by the Universal Service Fund’s (“USF”) Lifeline program. i-wireless seeks ETC status in all areas of

Utah in which i-wireless has network coverage. i-wireless is only requesting ETC status in order to provide Lifeline service to qualifying customers and is not requesting any direct Utah USF support.

4. i-wireless meets all of the requirements contained in Section 214(e), Chapter 47 of the United States Code. In order to obtain designation by the Commission as an ETC, i-wireless must meet the requirements of 47 USC Section 214(e)(1), which provides:

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received:

(A) offer the services that are supported by Federal universal service support mechanism under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

5. i-wireless meets the requirements of Paragraph 1 of Section 214(e). As a pure reseller, i-wireless is not following the requirements of Section 214(e)1(A) that the common carrier use some combination of its own facilities and resale of another carrier's services. However, i-wireless petitioned for and was granted forbearance by the FCC of the facilities-based requirement for ETCs.¹ Section 10(e) of the Communications Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” Thus, the Utah Commission is required by Section 10(e) to

¹ Direct Testimony of Patrick McDonough, p. 4, line 23 and p.5, lines 1-3.

act in accordance with the FCC's *i-wireless Forbearance Order*, and therefore, may not apply the facilities-based requirement to the Company.

6. i-wireless will offer all of the services required for Federal USF support throughout the designated service area, including:

- Voice grade access to the public switched network.
- Local usage.
- Dual tone multi-frequency (“DTMF”) signaling or its functional equivalent.
- Single-party service or its functional equivalent.
- Access to 911 and E911 emergency service.
- Access to operator services.
- Access to interexchange service.
- Access to directory assistance.
- Toll limitation for qualified low-income customers.

7. i-wireless has adequately demonstrated that it will advertise its services. As Mr. McDonough indicated:

i-wireless currently markets its retail services, and will likewise market its Lifeline product, through 48 Kroger stores across the state of Utah. This marketing will include signage and instructional materials on end caps in each store. To reach customers who qualify for the program, cash register receipt information will be printed for those customers who use a program-qualifying method of payment. i-wireless will also utilize direct mail, conventional advertising (e.g., radio) and non-conventional advertising (e.g., bus wraps/signage) to reach qualified customers. In addition, [the Company] plans to distribute brochures at various state and local social service agencies, and intends to partner with nonprofit assistance organizations (such as Habitat for Humanity), in order to inform customers of the availability of its Lifeline services.²

DPU reviewed the sample marketing materials that have been used by i-wireless in other markets and is satisfied that i-wireless will “advertise the availability of their services and the charges” using media of general distribution as required by Section 214(e)1(B) of the Act.³

8. In order to obtain designation by the Commission as an ETC, i-wireless must also meet the “public interest” requirements of 47 USC Section 214(e)(2). That Section provides:

² Direct Testimony of Patrick McDonough, p. 8, lines 18-23 and p. 9, lines 1-5.

³ Direct Testimony of Casey J. Coleman, p. 6, lines 127-31.

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

In determining whether an ETC designation is in the public interest, the Commission would be looking at two elements: effect on the USF and competitive choice.⁴ Thus, as long as i-wireless 1) uses a Commission-approved method of customer eligibility verification, 2) continues to pay into Utah's USF, and 3) provides an additional competitive choice, i-wireless meets the public interest standard contained in Paragraph 2 of Section 214(e).

One of the primary concerns of the DPU with the Petition is the potential for fraud.⁵ Because of the transient nature of i-wireless' service and the fact that there is no economic cost to users of the service, qualified Lifeline customers may find ways to exploit the system and obtain multiple Lifeline supported phones at the same address.⁶ Thus, i-wireless will utilize the Department of Community and Culture's ("DCC") knowledge and databases (or whichever provider of verification services is established through Docket No. 10-2508-01) to ensure as accurately as possible that only one individual per household is receiving the Lifeline subsidy.

i-wireless recognizes that with the additional verification requirement, increased costs will be placed on DCC or any entity contracted to do the verification. Historically, the

⁴ Hearing Transcript, p. 51, lines 14-22.

⁵ Direct Testimony of Casey J. Coleman, p. 7, lines 146-48.

⁶ *Id* at lines 148-51.

Commission has allowed those costs of verification to be paid by state USF funds.⁷ According to the DPU, if a telecommunications company pays the applicable fees for its intrastate retail rates into the state USF fund, this should be sufficient to cover the costs of Lifeline verifications for that company. Mr. McDonough, the representative for i-wireless, testified that the company will continue to pay into the Utah USF.⁸ As a telecommunications carrier paying into the state USF fund, i-wireless would be similar to all other telecommunications carriers where the cost of verification would be covered by funds from the USF. Conversely, if i-wireless does not feel USF payments are applicable to its company, then paying the costs that will be developed in Docket No. 10-2528-01 would be appropriate.

Finally, the provision of additional competitive choice and opportunities to low-income consumers is in the public interest.⁹ i-wireless has indicated that, along with a service offering different from other Lifeline providers, it will also be providing its low-income customers with a free phone.¹⁰ i-wireless will adequately verify its potential customers' eligibility, continue to pay into Utah's USF, and provide an additional competitive choice to low-income consumers; therefore, i-wireless meets the public interest requirements of 47 USC Section 214(e)(2).

9. i-wireless requests that the Commission grant its Petition for ETC designation for the limited purpose of providing Lifeline service to qualified customers with two conditions. First, the Commission require i-wireless to follow the same procedures as any other telecommunications corporation to verify potential customers' eligibility for the subsidy. Second, the Commission require i-wireless to continue to pay into Utah's USF or, in the alternative, pay the verification costs developed in Docket No. 10-2528-01.

⁷ Direct Testimony of Casey J. Coleman, p. 8, lines 165-67.

⁸ Hearing Transcript, p. 35, lines 12-14.

⁹ See Hearing Testimony, p. 52, lines 3-25.

¹⁰ See Petition of i-wireless for Designation as an ETC, p. 13, line 20 and p. 14, line 6.

WHEREFORE, i-wireless respectfully requests that the Commission waive the filing of responsive post-hearing briefs and issue a final decision designating i-wireless as an eligible telecommunications carrier based upon the record in this Docket, which clearly demonstrates that i-wireless' Lifeline product offering will offer an additional choice of providers offering service for low-income consumers, which represents a significant benefit for those consumers and is in the public interest.

DATED this 31st day of May, 2011.

/s/ Lance J.M. Steinhart

Lance J.M. Steinhart
Lance J.M. Steinhart, P.C.
1720 Windward Concourse, Suite 115
Alpharetta, Georgia 30005
(770) 232-9200 (Phone)
(770) 232-9208 (Fax)
Email: lsteinhart@telecomcounsel.com

Attorney for i-wireless, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 31st day of May, 2011, on the following:

ASSISTANT ATTORNEYS GENERAL

Patricia Schmid pschmid@utah.gov
Paul Proctor pproctor@utah.gov

DIVISION OF PUBLIC UTILITIES

Philip Powlick philippowlick@utah.gov
William Duncan wduncan@utah.gov
Casey Coleman ccoleman@utah.gov

OFFICE OF CONSUMER SERVICES

Cheryl Murray cmurray@utah.gov
Eric Orton eorton@utah.gov
Michele Beck mbeck@utah.gov

SALT LAKE COMMUNITY ACTION PROGRAM

Sonya Martinez smartinez@slcap.org

UTAH RURAL TELECOM ASSOCIATION

Stephen Mecham sfmecham@cnmlaw.com

/s/ Heather Kirby

Heather Kirby, Legal Assistant to
Lance J.M. Steinhart
Attorney for i-wireless, LLC