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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of i-wireless, LLC's Petition for Limited Designation as an Eligible Telecommunications Carrier	Brief of the Division of Public Utilities Docket No. 10-2526-01
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The following is the brief of the Division of Public Utilities (Division) in response to i-wireless, LLC's ("i-wireless") Petition for Limited Designation as an Eligible Telecommunications Carrier in Utah ("Petition").

INTRODUCTION AND SUMMARY

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. The entire Lifeline support will come from the Federal government's Universal Service Fund.

It is the Division's position that i-wireless meets all of the requirements contained in Section 214(e), Chapter 47 of the United States Code. Therefore, the Division recommends that the Commission approve the Petition with the condition that, in verifying potential customers' eligibility for the subsidy, i-wireless be required to follow the same procedures as any other telecommunications company.

"i-WIRELESS" MEETS THE REQUIREMENTS OF 47 USC SECTION 214(e)(1)

In order to obtain designation by the Commission as an ETC, i-wireless must meet the requirements of 47 USC Section 214(e)(1). That Section 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.

It is the Division's position that i-wireless meets the requirements of Paragraph 1 of Section 214(e). First, in his pre-filed testimony, Mr. Casey J. Coleman noted that, as a purely 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." ¹ However, Mr. Coleman testified that i-wireless petitioned for and was granted forbearance by the FCC of this facilities-based requirement for ETCs. ² Section 10(e) of the Communications Act

¹ Direct Testimony of Casey J. Coleman, p. 5, lines 89-91.

² *Id* at lines 97-99.

(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, Mr. Coleman testified, “the Utah Commission is required by Section 10(e) to act in accordance with the FCC’s *i-wireless Forbearance Order*, and therefore, may not apply the facilities-based requirement to the Company.”³

Second, according to the Petition, i-wireless would be offering 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.

Mr. Coleman testified that an ETC applicant must also demonstrate that it satisfies network build-out and improvement requirements as well as provide certification acknowledging that the FCC may require the applicant to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.⁴ However, in its Forbearance Order, the FCC determined that, because i-wireless is a pure reseller, it was not required to make these showings. Thus, as Mr. Coleman testified, i-wireless is also not required to make these showings for this ETC petition.⁵

³ *Id* at lines 103-106.

⁴ Direct Testimony of Casey J. Coleman, p. 4, lines 5-80.

⁵ *Id* at lines 84-88.

Third, i-wireless has adequately demonstrated that it would advertise its services. On pages 8-9, of i-wireless witness Mr. McDonough's testimony, he outlines the methods i-wireless uses to advertise its service to qualifying customers. Mr. McDonough indicates:

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.⁶

Mr. Coleman testified that the Division 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.⁷

I-WIRELESS ALSO MEETS THE "PUBLIC INTEREST" REQUIREMENTS OF 47 USC SECTION 214(e)(2)

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

(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

⁶ Direct Testimony of Patrick McDonough, p. 8, lines 18-23 and p. 9, lines 1-5.

⁷ Direct Testimony of Casey J. Coleman, p. 6, lines 127-31.

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 his hearing testimony, Mr. Coleman stated that, 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.⁸ Thus, it is the Division's position that, 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).

First, in his prefiled direct testimony, Mr. Coleman asserted that one of the primary concerns of the Division with the Petition is the potential for fraud.⁹ Because of the transient nature of i-wireless's 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.¹⁰ Thus, the Commission should require i-wireless to 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.

Second, the Division also recognizes that with the additional verification requirement, increased costs will be placed on DCC or any entity contracted to do the verification. Mr. Coleman testified that, historically, the Commission has allowed those costs of verification to be

⁸ Hearing Transcript, p. 51, lines 14-22.

⁹ Direct Testimony of Casey J. Coleman, p. 7, lines 146-48.

¹⁰ *Id* at lines 148-51.

paid by state USF funds.¹¹ The Division believes that 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 would continue to pay into the Utah USF:

THE COURT: And you'll pay into the State USF; is that right?

THE WITNESS: That is correct.¹²

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. According to Mr. Coleman, all costs for verification currently come from charges paid into the state USF by telecommunication companies on their intrastate retail rates.¹³ The Division believes treating i-wireless the same as other companies like Qwest, or rural ILECs that pay into the USF fund, is sufficient to cover the costs of verification. 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.

Third, the Division believes that providing additional competitive choice and opportunities to low-income consumers is in the public interest.¹⁴ Mr. Coleman testified that the i-wireless offering would provide "another opportunity for those low-income consumers to get phone service" as well as "an opportunity for them to continue to choose another provider."¹⁵ In addition, i-wireless has indicated that, along with a service offering different from other Lifeline providers, it would also be providing its low-income customers with a free phone.¹⁶ This offering, according to Mr. Coleman, would be "providing another competitive choice, in that

¹¹ Direct Testimony of Casey J. Coleman, p. 8, lines 165-67.

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

¹³ Direct Testimony of Casey J. Coleman, p. 9, lines 190-92.

¹⁴ See Hearing Testimony, p. 52, lines 3-25.

¹⁵ Hearing Testimony, p. 52, lines 5-11.

¹⁶ See Petition of i-wireless for Designation as an ETC, p. 13, line 20 and p. 14, line 6.

they are getting a free phone and not having that cost."¹⁷ Thus, because i-wireless would adequately verify its potential customers' eligibility, continue to pay into Utah's USF, and provide an additional competitive choice to low-income consumers, it meets the "public interest" requirements of 47 USC Section 214(e)(2).

CONCLUSION

The Division recommends that the Commission grant the ETC designation of i-wireless for the limited purpose of providing Lifeline service to qualified customers with two conditions. First, the Commission should require i-wireless to follow the same procedures as any other telecommunications corporation to verify potential customers' eligibility for the subsidy. Second, the Commission should 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.

Respectfully submitted this _____ day of May, 2011.

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¹⁷ Hearing Testimony, p. 53, lines 1-3.

