

Agenda Date: September 13, 2012  
Item Number: A1

**Docket:** UT-101640  
Company Name: i-wireless, LLC

Staff: Roger Hahn, Regulatory Analyst  
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### **Recommendation**

Grant the exemption from Washington Administrative Code 480-123-030(1)(d), (f) and (g), which requires the filing of a substantive investment plan, wireless network maps and certification on back up power capabilities, respectively; and designate i-wireless, LLC as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support (Lifeline) from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2.

### **I. Background**

On September 29, 2010, i-wireless filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214 (e)(2) of the Communications Act of 1934, as amended (the Act), and Section 480-123-030 of the Washington Administrative Code (WAC). i-wireless, LLC (i-wireless or company) seeks ETC designation in Washington for the purpose of providing its pre-paid Lifeline service to qualified low-income households. It will only seek the Lifeline portion of low-income support from the federal Universal Service Fund (USF), which subsidizes eligible low-income households' monthly charges for basic telephone services. i-wireless does not seek Link-Up support, which subsidizes the non-recurring connection fee for basic telephone services. i-wireless seeks ETC designation only for service areas where its underlying wholesale provider, Sprint Nextel Corporation (Sprint Nextel), has facility coverage (Attachment 1). i-wireless does not seek to participate in the state Lifeline program, Washington Telephone Assistance Program.

i-wireless filed three amendments subsequent to its original petition. On June 10, 2011, i-wireless submitted an amendment to revise its Lifeline rate plans, including plans for tribal land residents. It also provided a copy of its additional voluntary commitments to be included in its Compliance Plan for the Federal Communications Commission (FCC) for the purpose of obtaining forbearance from the own facilities requirement. On October 24, 2011, i-wireless notified the commission that the FCC has approved the company's Compliance Plan and provided a copy of the approval order. On July 20, 2012, i-wireless filed a third amendment to revise its Lifeline rate plans and describe in details how it plans to comply with all the federal and Washington rules and requirements on Lifeline program.

i-wireless is a North Carolina limited liability company with its principal office in Newport, Kentucky. It was founded on September 7, 2006. It is a Mobile Virtual Network Operator, using the Sprint Nextel network on a wholesale basis nationwide and sells its wireless services through a partnership with Kroger Co. (Kroger), one of the nation's largest retail grocery chains. Kroger

owns 50 percent of i-wireless. In Washington, i-wireless will be sold through Fred Myer and QFC, which are both wholly owned by Kroger and have over 130 stores statewide.

Other than through special events, i-wireless's Lifeline products are offered exclusively through Kroger stores or its wholly owned affiliates. In addition, Kroger customers can accumulate free minutes for i-wireless service for dollars spent at Kroger stores using their Kroger shopper's card (Kroger Free Minute Loyalty Program).

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal USF.<sup>1</sup> By rule, WAC 480-123-040, the commission has the authority to approve petitions from carriers requesting ETC designation. The commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.<sup>2</sup>

## II. Discussion

Commission staff (staff) finds that i-wireless qualifies for ETC designation with the proposed conditions in Attachment 2. Pursuant to 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in an area if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), 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 therefor using media of general distribution.

i-wireless is a common carrier. It is a wireless service reseller that relies on its underlying network provider's facilities to offer services supported by federal universal service mechanisms, as defined in 47 C.F.R. § 54.101(a). i-wireless filed with the FCC a petition requesting the forbearance from the own facilities requirements. The FCC granted the forbearance on June 25, 2010<sup>3</sup> and approved the company's compliance plan on October 21, 2011.<sup>4</sup> The company also

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<sup>1</sup> 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.201(d).

<sup>2</sup> UT-093012, *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d), (f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund (UTC TracFone Proceeding)*, Order 03 (Dated June 24, 2010), ¶78.

<sup>3</sup> *In the Matter of Federal-State Joint Board on Universal Service, Telecommunications Carriers Eligible for Universal Service Support, i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45 and WC Docket No. 09-197, Order, FCC 10-117 (rel. June 25, 2010).

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service, Telecommunications Carriers Eligible for Universal Service Support, i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45 and WC Docket No. 09-197, Order, FCC 11-1763 (rel. October 21, 2011).

commits that it will advertise the availability of Lifeline services.

The company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsections (1)(d), (f) and (g).

WAC 480-123-030(1)(d) requires an ETC petitioner to provide a “substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers.” i-wireless requests an exemption from the requirement because the company seeks only Lifeline support, not federal High Cost Support. It does not have the obligation to use federal USF for infrastructure investment.

i-wireless requests an exemption from the subsections (1)(f) and (1)(g) because it does not have access to its underlying carriers’ coverage map, nor does it have control over its underlying carriers’ emergency power back up facilities.

WAC 480-123-030(1)(f) requires a wireless ETC petitioner to provide “a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals.” WAC 480-123-030(1)(g) requires a wireless ETC to have “at least four hours of back up battery power at each cell site, back-up generators at each microwave hub, and at least five hours back up battery power and back-up generators at each switch.”

Staff supports the company’s request for exemption from the three requirements under WAC 480-123-030. Staff believes the exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Granting the exemption will also be consistent with the commission’s designations of other Lifeline-only ETCs such as TracFone Wireless, Inc. (TracFone), Virgin Mobile USA, L. P. (Virgin Mobile), YourTel American, Inc. (YourTel), Cricket Communication, Inc. (Cricket) and Budget Prepay, Inc. (Budget).

i-wireless brands its Lifeline offering as “Access Wireless.” It offers two rate plans with no out of pocket charges for qualified Lifeline customers: (1) a 150 minutes plan with a roll over feature and customers under the plan can earn additional free minutes through Kroger Free Minute Loyalty Program; and (2) a 250 minutes plan without a roll over feature and excluded from Kroger Free Minute Loyalty Program. In addition, qualified Lifeline customers can choose to have a \$15 discount off any i-wireless’s retail wireless service plan. With federal tribal Lifeline support, i-wireless offers unlimited monthly voice usage plan free of charge for qualified tribal customers. Alternatively, qualified tribal Lifeline customers can choose to have a \$40 discount off any i-wireless’s retail plan. A free handset will be provided to Lifeline customers under any of the above plans.

Staff reviewed i-wireless’ technical and financial capabilities to provide the supported Lifeline service. Staff has confidence in the company’s technical competency in offering the wireless services based on its operational history over the years. Initially, staff had concerns about the company’s financial condition especially the high debt and the company’s ability to make a profit. However, the following additional factors were evaluated in determining whether the

company is financially capable: Kroger owns 50 percent of the company and intends to provide funding for the company's ongoing operation; the overall interest rate for the long term debt is very low; the company's non-affiliate debt is guaranteed by Kroger; the i-wireless offers services to non-Lifeline customers and does not rely exclusively on Lifeline disbursements; company-wireless has a two-year comprehensive financial plan approved by its Board of Directors. Given consideration to the above factors, staff believes the i-wireless is financially capable of providing the supported Lifeline service in compliance with all the low-income program rules.

In the proceedings involving the ETC petitions of TracFone, Virgin Mobile, YourTel, Cricket and Budget, staff recommended additional conditions to ensure that the companies would provide Lifeline services in a manner consistent with the public interest. Staff recommends that the commission apply a similar set of conditions to i-wireless's ETC designation. The Company agrees to the conditions in Attachment 2. Given the recent implementation of uniform Lifeline eligibility criteria by the FCC, staff recommends the commission require i-wireless to use the federal default eligibility criteria in 47 C.F.R. § 54.409(2).<sup>5</sup> As with all other similarly situated Lifeline-ETCs in Washington, Staff encourages i-wireless to work with the Department of Social and Health Services (DSHS) to gain access to their Benefits Verification System, a query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families. For customers who qualify based on their participation in the three additional federal assistance programs that are not in the DSHS database, or for customers who qualify based on income-based criteria, the company must review relevant proof documentation, as specified in 47 C.F.R. § 54.410. i-wireless is also required to provide its relevant customer records to the commission and the DSHS at least on an annual basis for the purpose of identifying ineligible customers or customers who receive duplicate Lifeline benefits from the company and a wireline Lifeline provider. This condition will be in place until the FCC's National Accountability Database and the National Lifeline Eligibility Database are fully functional.

### **III. Conclusion**

Based on the above analysis, staff believes that i-wireless meets all the federal and state rules for ETC designation in proposed service areas. Designating i-wireless as an additional Lifeline-only ETC will deliver competitive benefits to low-income households in Washington. Staff recommends the commission issue an order granting the exemption from WAC 480-123-030 (1)(d), (f) and (g), which requires the filing of a substantive investment plan, wireless network maps and certification on back up power capabilities, respectively. Staff recommends the commission designate i-wireless, LLC as an ETC for the purpose of receiving Lifeline support from the federal USF in the service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2.

Attachments – 2

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<sup>5</sup> The rationale is detailed in staff memo on Cricket Communications, Inc.'s ETC designation petition in Docket UT-111534.