

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Docket No. 11A-776T

**IN THE MATTER OF THE APPLICATION OF I-WIRELESS, LLC FOR
DESIGNATION AS AN ELIGIBLE PROVIDER FOR LIMITED PURPOSE OF
OFFERING LITAP.**

STIPULATION AND SETTLEMENT AGREEMENT

i-wireless, LLC (“i-wireless”), Trial Staff of the Public Utilities Commission of the State of Colorado (“Staff”) and the Office of Consumer Counsel (“OCC”) (collectively the “Stipulating Parties” or the “Parties”), through their undersigned counsel, enter into this Stipulation and Settlement Agreement (“Stipulation”) regarding the application filed by i-wireless in the instant docket. The Parties submit this Stipulation for approval by the Colorado Public Utilities Commission (the “Commission” or the “PUC”) pursuant the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-1407 and 1408.

PRELIMINARY STATEMENT

1. On or about September 21, 2011, i-wireless, an existing eligible telecommunications carrier (“ETC”)¹, filed an application seeking designation as an eligible provider (“EP”) for the limited purpose of offering a low-income program and receiving Low-Income Telephone Assistance Program (“LITAP”) support for low-income customers in Colorado. The application was assigned Docket Number 11A-776T.

¹ See Decision No. R11-0503, Docket No. 10A-949T.

2. i-wireless seeks EP designation for the limited purpose of offering LITAP service in 144 non-rural exchanges served by CenturyLink (Qwest Corporation) and are the same exchanges for which i-wireless was previously approved for ETC designation for the limited purpose of offering Lifeline service by the Commission in Decision No. R11-0503, Docket No. 10A-949T, and as shown on Attachment 1 to the Stipulation and Settlement Agreement in Docket No. 10A-949T.

3. Concurrent with the application, i-wireless filed a waiver of 4 CCR 723-2-2847(c), which requires an applicant to provide services through its own facilities rather than providing services as a reseller. The FCC conditionally granted i-wireless' petition for forbearance from the facilities-based requirement for the purposes of participating in the Lifeline program.²

4. In order to be eligible to receive funding from the Colorado LITAP, a carrier must be designated as an EP in accordance with 4 CCR 723-2-2847, and a carrier must: (1) be, or is applying to be, an ETC; (2) agree to provide basic local exchange service as described in Section 214(e) and 254 of the Communications Act of 1934; (3) offer basic local exchange service throughout the entire support area; (4) have the managerial qualifications, financial resources and technical competence to provide basic local exchange service throughout the service area regardless of the availability of facilities or the presence of other providers, (5) not be receiving funds from the HCSM or any other source that together with revenues, as defined by the Commission-adopted revenue benchmark, that exceed the cost of providing basic local exchange service, and

² See *Federal-State Joint Board on Universal Service; In the Matter of i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, Order FCC 10-117, released June 25, 2010.

(6) granting the application serves the public convenience and necessity as defined in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

5. i-wireless, Staff and the OCC engaged in settlement discussions in an attempt to resolve their differences regarding issues raised by i-wireless' application.

6. i-wireless, Staff and OCC have now reached agreement on the issues raised in this docket, as is set forth herein. This Stipulation is entered into for the purpose of avoiding the costs and risks of litigation. The Parties agree this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

Variance of Commission Rule 723-2-2847(c)

1. i-wireless seeks variance of rule 2847(c) that requires an applicant to provision services through its own facilities rather than offering services as a reseller.

2. i-wireless is a wireless reseller of Sprint Nextel's (Sprint) network.

3. i-wireless seeks EP designation for the limited purpose of providing low-income consumers LITAP service in Colorado. i-wireless will not be seeking Colorado High Cost Support Mechanism (CHCSM) funds in its service area and will not be competing with other providers for CHCSM funding.

4. i-wireless' LITAP program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Colorado.

5. i-wireless' LITAP product is offered in certain non-rural wire centers listed in Attachment 1 to the Stipulation and Settlement Agreement previously approved by the Commission in Decision No. R11-0503, Docket No. 10A-949T. The product offering for low-income consumers provides a local calling plan with more free minutes than its Lifeline Basic Universal Service (LBUS) offering and represents a significant benefit for those consumers and is, therefore, in the public interest.

6. The Parties stipulate and agree that i-wireless has shown good cause and will serve the public interest, convenience and necessity. The Parties recommend that the Commission grant i-wireless' request for waiver from 4 CCR 723-2-2847(c).

Colorado EP Designation For the Limited Purpose of Offering LITAP

1. i-wireless is a commercial mobile radio service ("CMRS") provider, and a common carrier as defined by 47 U.S.C. § 153(10) and 47 C.F.R. § 20.9(a)(7).

2. i-wireless provides basic local exchange service and it has shown an intent and ability to offer those services once designated throughout the areas set forth on Attachment 1 in the previously approved Stipulation and Settlement Agreement by the Commission in Decision No. R11-0503, Docket No. 10A-949T .

3. i-wireless received conditional designation as an ETC in Decision No. R11-0503 in Docket No. 10A-949T.

4. i-wireless has the managerial qualifications and financial resources to provide basic local exchange service throughout the areas set forth in Attachment 1 in the previously Stipulation and Settlement Agreement approved by the Commission in Decision No. R11-0503, Docket No. 10A-949T.

5. i-wireless is not receiving funds from the CHCSM or federal high cost support or any other source that together with revenues exceed the reasonable costs of providing basic local exchange service.

6. On July 26, 2010, i-wireless submitted its compliance plan to the FCC. Subsequently, on September 9, 2011, i-wireless submitted to the FCC a revised compliance plan. The revised compliance plan outlines the measures it will take to implement the conditions imposed by FCC.³

7. The FCC's Order DA 11-1763, adopted October 21, 2011, in CC Docket No. 96-45, WC Docket No. 09-197 approved i-wireless' Revised Compliance Plan.

8. i-wireless will make available LITAP service to qualifying low-income consumers. i-wireless will not offer Link-Up to qualifying low-income consumers and will not seek Link-Up support.

9. In consideration for receiving LITAP support as an EP, i-wireless will increase its monthly discount to the LBUS plans previously approved by the Commission in Decision No. R11-0503, Docket No. 10A-949T. Hereafter, i-wireless will provide a \$20.00 monthly discount on its retail LBUS plans or the equivalent of 350 free prepaid wireless minutes per month to eligible Low-income customers. i-wireless agrees that it will seek Tier 1, Tier 2 and Tier 3 support from Universal Service Administrative Company and will seek support from the LITAP fund.⁴

10. i-wireless LITAP plans are exclusively prepaid offerings and not offered on a distance sensitive basis. As such, toll limitation is not a concern because of the

³ See i-wireless, LLC's Revised Compliance Plan, *Federal-State Joint Board on Universal Service; In the Matter of i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, filed Sept. 9, 2011 .

⁴ Tier 1, Tier 2 and Tier 3 support from the Universal Service Administrative Company currently consists of \$9.28 in reimbursement per eligible subscriber. Upon granting the subject Application, support from the

prepaid nature of these LITAP plans. Therefore, i-wireless' prepaid offerings effectively act as a toll limitation. However, i-wireless LITAP customers will not be disconnected for non-payment of toll charges.

11. i-wireless will contribute the LITAP surcharge, at the Commission-approved rate, on a per line per month basis, on behalf of its non-LITAP subscribers. i-wireless will include the surcharge on its non-low-income customers' monthly service plan.

12. i-wireless will remit and pay the E911 charge of one and four-tenths percent per month, as specified in C.R.S. § 29-11-102.5, on \$20.00 worth of monthly prepaid minutes provided to eligible LITAP customers.

13. Commission Rule 4 CCR 723-2-2803 requires regulated providers to include LITAP in their tariffs. i-wireless does not file tariffs, but agrees to provide the information required in Rule 2803 in a reasonable tariff-substitute mutually agreed upon with Staff and as agreed upon in Attachment 4 in the previously approved Stipulation and Settlement Agreement by the Commission in Decision No. R11-0503, Docket No. 10A-949T.

14. i-wireless agrees to all Commission reporting requirements, including submitting 911, LITAP and TRS reports as required and are in addition to the reporting requirements in Attachment 4 in the previously approved Stipulation and Settlement Agreement by the Commission in Decision No. R11-0503, Docket No. 10A-949T.

15. i-wireless agrees to bill, collect and remit monthly the uniform telecommunications relay services ("TRS") charge, currently twenty cents per line per

Colorado LITAP fund will consist of an additional \$6.39 per eligible subscriber in reimbursement. These amounts may be revised by the governing entities.

month, imposed under § 40-17-103(3)(a), C.R.S. (the “TRS surcharge”) to support the Colorado Disabled Telephone Users Fund upon its customers.

16. i-wireless will not collect a deposit from qualifying low-income customers at time of enrollment.

17. The Parties stipulate and agree that designating i-wireless as an EP in the study areas and wire centers set forth in Attachment 1 in the previously approved Stipulation and Settlement Agreement by the Commission in Decision No. R11-0503, Docket No. 10A-949T serves the public interest, convenience and necessity, as defined in 47 U.S.C. § 214(e)(2), §§ 40-3.4-102, 40-15-101, 40-15-501, and 40-15-502 C.R.S., as well as relevant Commission’s Rules implementing these statutes.

18. Without waiving any of its positions stated in this proceeding, i-wireless has entered into this Stipulation with Staff and the OCC to settle pending litigation. Thus, the Parties stipulate and agree that i-wireless shall provide its EP LITAP universal service offerings in Colorado pursuant to this Stipulation. The Parties acknowledge that because i-wireless will be an EP authorized to receive LITAP support, provisions in this Stipulation supersede the monthly discount agreed to in the Stipulation and Settlement Agreement approved in Docket No. 10A-949T (LBUS plans), and i-wireless will increase that discount as provided herein. The Parties agree that all other terms, conditions and operating procedures approved by the Commission in Decision No. R11-0503 in Docket No. 10A-949T remain unchanged by this Stipulation. The Parties further recommend that i-wireless' provision of its universal service offering as an EP be governed by the following additional requirement, namely: Upon appropriate pleading, or upon its own motion, the Commission may investigate a proposed change to i-wireless' Lifeline Basic

Universal Service Description, Terms and Conditions and Operating Procedures, and i-wireless agrees to respond to requests for information from the Commission Staff. After notice to i-wireless and a subsequent investigation, the Commission may find that the change is not consistent with i-wireless' EP status or results in a universal service Lifeline or LITAP offering that is not eligible for funding. i-wireless shall thereafter make such changes as are necessary to bring its offering into compliance with such requirements. The Parties agree that the Commission has authority to enforce compliance with this Stipulation and 4 CCR 723-2-2847 and, consistent with this Paragraph, may exercise its audit powers derived from Section 40-15-107, C.R.S. with respect to the basic universal service Lifeline offerings or the Company's EP status.

GENERAL PROVISIONS

19. Without waiving any of its positions stated in this case, i-wireless desires to end further uncertainty in litigation by entering this Stipulation. Accordingly, the Parties hereby agree to be bound to the terms of this Stipulation. The Parties recognize, however, that should the Commission or the FCC determine the particular regulatory treatment applicable to wireless ETC/EP designees, in further rulemaking or otherwise, any such lawful and applicable determinations would apply to i-wireless. Notice of any such FCC or Commission determination shall be provided to the Staff.

20. This Stipulation is a settlement of disputed and compromised claims and accordingly, this Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. No precedential effect or other significance, except as

may be necessary to enforce this Stipulation or a Commission order concerning this Stipulation, shall be attached to any principle or methodology contained in this Stipulation.

21. All witnesses of the Parties will support all aspects of the Stipulation embodied in this document in any hearing conducted to determine whether the Commission should approve this Stipulation. Each Party also agrees that, except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding, which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or enforce this Stipulation or a Commission order approving this Stipulation. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

22. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties to the Stipulation, except as provided in Paragraph 18 above. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Stipulation, this Stipulation shall be null and void and of no effect in this or any other proceedings.

23. In the event this Agreement becomes null and void or in the event the Commission does not approve this Stipulation, this Stipulation, as well as the negotiation undertaken in conjunction with the Stipulation, shall not be admissible into evidence in these or any other proceedings.

24. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable and in the public interest. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable, and reasonable resolution of all issues, which were or could have been contested by the Parties with respect to the i-wireless application.

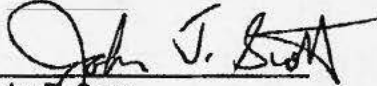
25. This Stipulation is an integrated agreement that may not be altered by the unilateral determination of any Party.

26. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation. The Parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

WHEREFORE, the Parties respectfully submit this Stipulation for approval by the Commission and request that the Commission grant such approval.

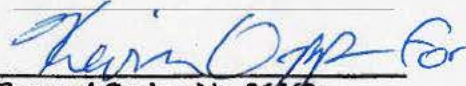
Dated this 1ST day of FEBRUARY, 2012.

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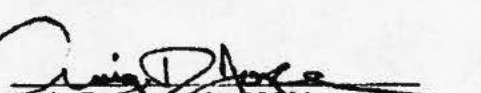
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Dated this 1st day of February, 2012.

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