

UM 1517

MEMORANDUM

RECEIVED

JUL 26 2011

Public Utility Commission of Oregon
Administrative Hearings Unit Division

To: Jon Cray; Kevin Haddad
From: David Wilkie
Re: Oregon RSPF; Ztar Mobile, Inc.

Date: June 13, 2011

My research into the Residential Service Protection Fund of Oregon indicates that the program was provided for in sections 2 to 6 and 9 to 14, chapter 290, Oregon Laws 1987. The Public Utility Commission was directed under this statute to develop and implement the program through the assessment of a surcharge of up to 35 cents per month against each paying retail subscriber who has service with access to the telecommunications relay service... For cellular, wireless or other radio common carriers, the surcharge shall be applied on a per instrument basis, but *applies only to subscribers whose place of primary use, as defined and determined under 4 U.S.C. 116-126*, is within Oregon.

The operations of Ztar Mobile are exclusively wireless and exclusively prepaid. The terms of 4 U.S.C. 116-126 expressly exclude and do not apply to prepaid telecommunications services. Therefore there is no possible way that prepaid services can meet the provisions which the Oregon Legislature adopted for applicability of the RSPF surcharge. Therefore, according to my analysis, the surcharge does not apply to any of the activities of Ztar, and the company is not subject to any duty to file any report with respect to its activities relating to the RSPF.

The reason for the exclusion of prepaid makes perfect sense because prepaid companies does not have subscribers. Ztar is typically never aware of the name or address of its customers, and makes no effort to obtain this information except potentially in a customer service context. In addition, the legislature was evidently sensitive to the constitutional limitation on collecting taxes and surcharges only within Oregon. A prepaid customer may not be an Oregon resident even though he purchased a phone or SIM card in Oregon, and applying the charge to such a customer would be unconstitutional.

The company, and I myself, were originally confused by the regulation, which makes no exemption for prepaid wireless, even though the regulation is clearly written with postpaid in mind. However, the implementing regulations can't expand the reach of the underlying law, and for the reasons expressed, I do not see how it could apply to a provider in the position of Ztar Mobile. I am curious as to how other prepaid only companies (Virgin Mobile comes to mind) have addressed and been treated with respect to this program.

In any event, I am eager to hear your response to this analysis. If I have gone wrong somewhere, please explain how. It is most important to Ztar to maintain itself in compliance with all applicable laws.

With respect to the written waiver request you have sought from Ztar , please consider this memorandum as such formal request. I would wish this request to be effective if it turns out that I am wrong, and the company is subject to the RSPF program. It is my understanding that the waiver being requested is from penalties due to late filings. In fact, Ztar had been under the impression that it was having such reports filed on its behalf by Thomson Reuters as its agent. However, Thomson has lately been extremely inconsistent, and Ztar is in the process of bringing its state filings operations back in house. The analysis contained in this memorandum is partially a result of this effort. If this analysis is incorrect, Ztar would certainly appreciate the opportunity to come into compliance as rapidly as possible without penalty.

Thank you for your time and assistance with regard to this matter. Please contact me at davidtwilkie@yahoo.com or at 214-675-0780.