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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 28, 2015

Public Utility Commission of Oregon

P.O. Box 1088
Salem OR 97308-1088

Re: **UM 1509 i-wireless ETC/ETP Application**
Joint Testimony in Support of Stipulation
DOJ File No.: 860105-GB0116-11

Attention Filing Center:

Enclosed for filing on behalf of the Stipulating Parties in this matter is the JOINT TESTIMONY in support of the Stipulation, including Exhibits Joint/101-105

Thank you for your assistance.

Sincerely,


Johanna M. Riemenschneider
Senior Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

Enclosures
JMR:mxg/#6760410
(Electronic copy only)
c: UM 1509 Service list

CASE: UM 1509
WITNESSES: Eric Schimpf, Kay
Marinos, Jon Cray, Bob Jenks, Mark
Tennyson

**PUBLIC UTILITY COMMISSION
OF OREGON**

JOINT EXHIBIT 100

**JOINT TESTIMONY OF I-WIRELESS, LLC, STAFF, CUB, AND OEM
IN SUPPORT OF STIPULATION**

August 28, 2015

I. INTRODUCTION

1 **Q. Please state your names and positions.**

2 **A.** My name is Eric Schimpf. I am Director of New Business Development for i-
3 wireless, LLC d/b/a Access Wireless (hereinafter referred to as “i-wireless” or the
4 “Company”). My witness qualification statement is included as Exhibit
5 Joint/101 to this testimony.

6 My name is Kay Marinos. I am a Program Manager in the
7 Telecommunications and Water Division of the Public Utility Commission of
8 Oregon (the “Commission”). My witness qualification statement is included as
9 Exhibit Joint/102 to this testimony.

10 My name is Jon Cray. I am the Program Manager of the Residential
11 Service Protection Fund (“RSPF”) of the Central Services Division of the
12 Commission and administrator of the Oregon Telephone Assistance Program
13 (“OTAP”). My witness qualification statement is included as Exhibit Joint/103 to
14 this testimony.

15 My name is Bob Jenks. I am the Executive Director of the Citizens’ Utility
16 Board of Oregon (“CUB”). My witness qualification statement is included as
17 Exhibit Joint/104 to this testimony.

18 My name is Mark Tennyson. I am the Technology and Response Section
19 Manager of the Oregon Office of Emergency Management (“OEM”). My
20 witness qualification statement is included as Exhibit Joint/105 to this testimony.

1 OEM intervened in this matter for the limited purpose of raising issues that are
2 directly related to filings in this matter that affect or impact 911 emergency
3 services in Oregon. Consequently, OEM's participation in this joint testimony is
4 similarly limited. OEM expresses no opinion, and is not qualified to testify, with
5 regard to matters not directly pertinent to the 911 issues addressed in this
6 testimony.

7 **Q. What is the purpose of your testimony?**

8 **A.** The purpose of our joint testimony is to describe and support the stipulation
9 ("Stipulation") among i-wireless, Staff of the Commission ("Staff"), CUB, and
10 OEM (together, the "Parties" and individually, a "Party"), which supports i-
11 wireless' request for designation as an Eligible Telecommunications Carrier
12 ("ETC") and Eligible Telecommunications Provider ("ETP"). The Stipulation
13 was filed concurrent with this joint testimony.

14 **Q. Does the stipulation resolve all of the issues in this proceeding?**

15 **A.** Yes. The Parties agree that i-wireless' Amended Application for ETC and ETP
16 status, as modified by, and subject to, the terms and conditions set forth in the
17 Stipulation and its Exhibits, will satisfy all applicable legal requirements and will
18 be in the public interest, and request that the Commission issue an order
19 designating i-wireless as an ETC and ETP subject to the terms and conditions
20 contained in the Stipulation.

21 **Q. Are all parties to this proceeding signatories to the stipulation?**

22 **A.** Yes.

23

1 **II. General Description of the Applicant and Application**

2
3 **Q. Please provide a brief description of i-wireless.**

4 **A.** i-wireless is a North Carolina limited liability company, 50% owned by Genie
5 Global, Inc. and 50% owned by The Kroger Co, the nation's largest grocery retail
6 chain and the second largest retailer overall. i-wireless is a reseller of commercial
7 mobile radio services ("CMRS") throughout the United States and provides
8 prepaid wireless telecommunications services to consumers by using the Sprint
9 Spectrum L.P. ("Sprint") network. i-wireless is a Mobile Virtual Network
10 Operator ("MVNO") and has a direct agreement with Sprint. i-wireless has been
11 in business successfully providing wireless services throughout the United States
12 for over seven years, and began providing Lifeline services in 2011 under the
13 brand name "Access Wireless". i-wireless has been designated as an ETC by the
14 FCC or state commissions in 35 jurisdictions.

15 **Q. What does i-wireless propose to offer to Lifeline customers in Oregon?**

16 **A.** Upon designation as an ETC, consistent with 47 C.F.R. § 54.405, i-wireless will
17 make available to qualified low-income consumers service offerings that meet all
18 applicable Lifeline requirements. i-wireless will provide Lifeline service under
19 the brand name "Access Wireless". Eligible Lifeline customers will have the
20 choice of several plans. The first is the Access Wireless 500 Anytime Minutes
21 Plan at \$0 net cost to the consumer. Consistent with i-wireless' federal-only
22 Lifeline plans nationwide, this plan includes the federal Universal Service Low-
23 Income Fund supported 250 minutes per month as well as 250 additional voice-

1 only OTAP minutes. Other plans reflect a discount on i-wireless Retail Rate
2 Plans. The discount includes the \$9.25 federal Lifeline subsidy, the \$3.50 OTAP
3 subsidy, and, in most instances, a \$5.75 Company credit¹ to the i-wireless retail
4 rate plan (excluding text-only plans). The plans that will be offered to Lifeline
5 customers are shown in Exhibit D of the Stipulation.

6 The terms and conditions of the Company's Lifeline rate plans are also on
7 its website at www.accesswireless.com, and the terms and conditions of i-
8 wireless' retail rate plans can be found at www.krogeriwireless.com. i-wireless
9 does not require credit checks or long-term service contracts, and does not charge
10 installation, activation, or termination fees on any of its plans.

11 **Q. What other features are available to i-wireless' Lifeline customers?**

12 **A.** In addition to wholly-supported voice services, Lifeline customers will also
13 receive a free handset and access to voice mail, caller I.D. and call waiting
14 features at no additional charge, even after their initial allotment of included
15 minutes has been consumed. Customers may place calls to i-wireless customer
16 service and 911 for free, regardless of account balance or activation status. i-
17 wireless does not decrement minutes for balance inquiries or calls placed to i-
18 wireless customer service via 6-1-1 or the respective 800 number. Customers are
19 not bound by a local calling area requirement; all i-wireless plans include
20 domestic long distance at no extra charge and digital coverage on the Nationwide
21 Sprint PCS Network. Additional minutes, texts, and data packages are available
22 for purchase. i-wireless will offer its Lifeline customers the ability to purchase

¹ A Company credit is not available on select rate plans due the highly competitive nature of the market offer. In those instances, the Company credit is reflected in a reduction in the overall retail price. Currently, the Company credit is not available on the \$35 Unlimited Talk & Text retail rate plan.

1 additional minutes of use at a rate no higher than \$0.10 per minute.

2 Furthermore, through i-wireless' partnership with The Kroger Co.
3 ("Kroger"), customers can accumulate free minutes for dollars spent at
4 participating Kroger-owned store locations simply by using their Kroger loyalty
5 shopper's card. Currently, i-wireless has a presence in 55 Kroger-owned Fred
6 Meyer and Quality Food Center (collectively referred to as "Kroger") stores in
7 Oregon. Lifeline customers can participate in this Free Minutes program even
8 when utilizing government-subsidized forms of payment.

9 **Q. What financial support will i-wireless receive?**

10 **A.** i-wireless will seek reimbursement from the federal Universal Service Low-
11 Income Fund for the maximum federal Lifeline subsidy that it passes through to
12 consumers, currently \$9.25 per customer per month. i-wireless will also seek
13 OTAP reimbursement from the Oregon RSPF for the \$3.50 per customer per
14 month that it passes through to consumers. i-wireless will not seek any high-cost
15 support funding and requests designation for the limited purpose of receiving
16 only low-income support funds.

17 **Q. Will i-wireless offer Lifeline service everywhere in Oregon?**

18 **A.** No. i-wireless will offer Lifeline service throughout the proposed designated
19 service area that is defined by the geographic areas associated with the zip codes
20 listed in Exhibit A of the Stipulation and depicted in the map included as Exhibit
21 B of the Stipulation. If a customer determines that the wireless coverage is
22 insufficient at his or her residence, the customer may cancel the i-wireless
23 Lifeline service and i-wireless will report the information to Staff in order to

1 assist in the identification of areas lacking sufficient wireless service.

2 **Q. Will i-wireless offer tribal Lifeline service?**

3 **A.** No, not at this time. i-wireless does not seek designation on Tribal Lands, and
4 therefore will not offer Tribal Lifeline. Any Tribal Lands included in the zip
5 codes listed in Exhibit A are excluded from the Company's designated service
6 area. If the Company decides to offer Tribal Lifeline in the future, it will file an
7 amended application requesting designation on Tribal Lands.

8
9 **III. PROCEDURAL HISTORY**

10
11 **Q. Please describe the procedural history in this docket.**

12 **A.** On November 19, 2010, i-wireless filed its initial Application for Limited
13 Designation as an ETC with the Commission. This Application also included a
14 request for designation as an ETP for the purpose of participating in the OTAP.
15 The application was docketed as UM 1509. On Friday, January 21, 2011, a
16 prehearing conference took place. CUB and OEM intervened in the docket. The
17 Parties agreed to delay setting a schedule until the Federal Communications
18 Commission ("FCC") approved i-wireless' Compliance Plan required by the
19 FCC's Forbearance Order, FCC 10-117. On January 12, 2012, the
20 Administrative Law Judge ("ALJ") requested that i-wireless file a status report
21 because there appeared to be no action in the docket for several months. On
22 January 23, 2012, i-wireless filed a status report explaining that even though the
23 FCC had approved i-wireless' Compliance Plan on October 21, 2011, the

1 Company wanted to wait to observe the impacts of an expected FCC order
2 reforming Lifeline before submitting an amended application. The FCC *Lifeline*
3 *Reform Order* (FCC 12-11) was released in February of 2012. On August 20,
4 2012, i-wireless filed another report explaining that it needed more time to ensure
5 compliance with the FCC *Lifeline Reform Order*.

6 **Q. When did activity in this docket resume?**

7 **A.** Activity resumed on August 31, 2012 when i-wireless filed an Amended
8 Application (“Amended Application”). A prehearing conference was held on
9 October 10, 2012. Thereafter, the Parties filed several status reports with the
10 ALJ. Staff and CUB served data requests on i-wireless to which i-wireless
11 responded. On October 31, 2012, the Parties held a workshop. The Parties held
12 additional workshops and settlement conferences on February 25, May 9, and
13 November 7 of 2013. The FCC issued to i-wireless a Notice of Apparent
14 Liability for Forfeiture (NAL) in November 2013.² During a conference call on
15 March 12, 2014, the Parties agreed to support a motion to hold the docket in
16 abeyance until October 14, 2014 to allow for resolution of the NAL. The docket
17 was suspended, effective April 9, 2014 through October 14, 2014. Following the
18 end of the abeyance period, the Parties held additional settlement
19 conferences/workshops on November 13, 2014, and January 27, 2015, and March
20 3, 2015, and May 8, 2015. The conferences have been open to all parties to this
21 docket.

22
23

² *In the Matter of i-wireless, LLC*, FCC 13-148 (Released November 1, 2013).

1 **IV. General Description of the Stipulation**

2
3 **Q. Please describe the genesis of the Stipulation.**

4 **A.** In its Amended Application, i-wireless offered evidence intended to meet the
5 applicable legal requirements for designation as an ETC and ETP. Through
6 workshops, conference calls and data requests, the Parties identified specific
7 requirements and issues that needed to be further addressed before recommending
8 approval of i-wireless' request for designation as an ETC and ETP. The
9 Stipulation, filed with this Joint Testimony, reflects the resolution of the issues
10 and formalizes a number of specific terms and conditions that the Parties believe
11 are necessary to a finding that approval of i-wireless' Amended Application is in
12 the public interest. The special conditions are intended to protect against waste,
13 fraud and abuse and to address concerns related to the nature of i-wireless'
14 Lifeline services.

15 **Q. What are the legal standards that apply to i-wireless' application?**

16 **A.** The federal requirements for ETC designation are identified in the FCC rules, 47
17 C.F.R. §§ 54.101-54.202. The Oregon requirements for ETC designation were
18 established by the Commission in Order No. 06-292 ("ETC Order"). One of those
19 requirements is to offer Lifeline and OTAP services. In order to offer Lifeline and
20 OTAP services in Oregon, an ETC must receive designation as an ETP. ETP
21 requirements are found in OAR Chapter 860, Division 033: Residential Service
22 Protection Fund (the "RSPF Rules").

23 **Q. Please generally describe the stipulation.**

1 A. In the Stipulation, the Parties agree that the Amended Application, as modified by
2 and subject to the terms and conditions set forth in the Stipulation, will satisfy the
3 applicable legal requirements and that approval of the Amended Application,
4 subject to the terms and conditions set forth in the Stipulation, is in the public
5 interest. The Parties recommend that the Commission designate i-wireless as an
6 ETC and as an ETP for the limited purpose of offering Lifeline services in the
7 areas associated with the zip codes listed in Exhibit A of the Stipulation, subject
8 to the terms and conditions set forth in the Stipulation.

9

10 V. REQUIREMENTS FOR ETC DESIGNATION

11

12 **Q. What do the FCC's rules require for designation as an ETC?**

13 A. The FCC's rules in 47 C.F.R. §§ 54.101-54.202 require that ETCs be common
14 carriers that are willing and able to offer and advertise the supported services
15 throughout the designated service area and commit to meeting several specific
16 obligations.

17 **Q. Does i-wireless meet all of the FCC rule requirements?**

18 A. i-wireless meets all FCC rule requirements except one. That is rule 47 C.F.R. §
19 54.201(i) which requires that ETCs offer the supported services "either using its
20 own facilities or a combination of its own facilities and resale of another carrier's
21 services." As a reseller of Sprint services without spectrum of its own, i-wireless
22 does not meet this requirement. However, the FCC granted forbearance from this
23 requirement to wireless reseller applicants that submit, and gain FCC approval of

1 a Compliance Plan. The FCC approved i-wireless's plan on October 21, 2011.³
2 Through its Amended Application, supplementary materials, and the terms and
3 conditions of the Stipulation, i-wireless has demonstrated that it meets the FCC's
4 requirements for ETC designation as a Lifeline provider.

5 **Q. What are the Commission requirements for designation as an ETC?**

6 **A.** The Commission established requirements for ETC designation in Oregon in
7 Order 06-292. While generally mirroring the FCC requirements effective at that
8 time, there are some differences. In addition, in the years following the release of
9 the ETC Order, the FCC has modified some of its ETC requirements; such
10 changes have not yet been reflected in Commission requirements. However,
11 related revisions are currently under consideration in Docket No. UM 1648,

12 **Q. Does i-wireless meet all Commission requirements for ETC designation?**

13 **A.** There are just a few requirements that are not met and for which waivers are
14 requested. They are identified in Exhibit E to the Stipulation. The Parties agree
15 that i-wireless meets the rest of the ETC designation requirements set forth in
16 Order No. 06-292 and will not address the requirements that are clearly evidenced
17 with information in the Amended Application and require no further explanation
18 or clarification.

19 **Q. Does i-wireless satisfy initial application requirement 2.1?**

20 **A.** Yes, i-wireless commits to offer all required supported services. Subsequent to
21 the issuance of Order 06-292, the FCC revised the definition of supported services
22 in 47 C.F.R § 54.101. However, i-wireless commits to offer the supported

³ See *In re: i-wireless, LLC Petition for Forbearance from 47 USC. §214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, DA 11-1763, 2011 WL 5038791 (Oct. 21, 2011).

1 services under the definitions in both Order 06-292 and the revised FCC rule.

2 **Q. Does i-wireless satisfy initial application requirement 2.3?**

3 **A.** Requirement 2.3 is a description of each of the applicant's service offerings that
4 will qualify for federal universal service support, i.e., supported Lifeline
5 offerings. In Exhibit D to the Stipulation, the Lifeline service offerings that i-
6 wireless will provide in Oregon are displayed and described. These offerings
7 have been revised from those proposed in Exhibit 2 of the Amended Application.
8 The Stipulation also contains provisions for notification of any future changes in
9 these Lifeline service offerings.

10 **Q. Does i-wireless satisfy initial application requirement 3.1?**

11 **A.** Yes, in large part. Initial application requirement 3.1 requires explicit
12 identification of the proposed designated service area through a map, as well as a
13 list of Incumbent Local Exchange Carrier ("ILEC") wire centers that will
14 comprise the designated service area. The map required in sub-requirement 3.1.1
15 is to show the applicant's licensed area boundaries and its requested designated
16 service area overlaid on the boundaries of all ILEC wire centers that it proposes to
17 include in its designated service area. As a reseller of Sprint service, i-wireless
18 does not own any cellular licenses and therefore has no licensed area to show on a
19 map. Additionally, i-wireless will define its designated service area in terms of
20 zip code areas, not ILEC wire centers. Therefore, the map in Exhibit B of the
21 Stipulation visually indicates the relevant zip code areas rather than ILEC wire
22 center boundaries. The Parties agree that good cause exists to waive the map
23 requirements of initial application requirement 3.1.

1 Similarly, the Parties agree that there is good cause to waive the wire
2 center list sub-requirement of requirement 3.1. That is, rather than define its
3 designated service area by a list of wire centers, i-wireless provides a list of zip
4 codes in Exhibit A of the Stipulation that will comprise the designated service
5 area.

6 **Q. Please explain the use of zip codes to define i-wireless' designated service**
7 **area.**

8 **A.** Prior to the wireless resellers' interest in becoming ETCs to offer Lifeline service,
9 the FCC and ETCs alike largely tended to define designated service areas in terms
10 of ILEC wire centers. However, with the increase in the number of wireless
11 carriers desiring to provide Lifeline services, the continuing use of wire center
12 boundaries creates unnecessary administrative burdens as wire center boundaries
13 have little relevance in the wireless world. Most wireless customers do not know
14 which ILEC provides service in their area, or from which specific location. On
15 the other hand, nearly everyone knows the zip code associated with their address.
16 Similarly, wireless service providers enable customers to use zip codes to assist in
17 determining the extent of the provider's coverage shown on wireless coverage
18 maps. The use of zip codes will make it much easier for the customer and i-
19 wireless to determine whether an individual lives within the designated service
20 area and therefore can obtain Lifeline service from the Company.

21 **Q. Is the use of zip codes to define designated service areas prohibited by any rule or**
22 **regulation?**

23 **A.** There appear to be no rules or regulations that prohibit the use of zip codes under

1 reasonable circumstances. In its Order No. 06-292 (page 11), the Commission
2 left the door open to consideration of ways to limit or define ETC designated
3 service areas. In its USF/ICC Transformation Order, the FCC broke its own
4 historical pattern of using wire centers for ETC designation areas when it adopted
5 census blocks as the units to award high-cost funds, such as those for the rural
6 broadband experiments and CAF funding. Staff contacted members of the FCC
7 staff to confirm that they are not aware of any FCC rules or orders that would
8 prohibit the use of zip codes to define service areas for Lifeline-only ETCs.

9 **Q. Does i-wireless satisfy initial application requirement 3.2?**

10 **A.** The intent of this requirement is satisfied in that i-wireless commits to offer the
11 supported services throughout the proposed designated service area. Several
12 years after Order No. 06-292 was issued, the FCC deleted the rule that addresses a
13 “six-step process” cited as part of this requirement. Furthermore, as a wireless
14 reseller, i-wireless is not capable of building out or improving the network as it
15 does not own the network used to provide the supported service. However, i-
16 wireless agrees to report to Staff instances in which a customer ascertains that
17 service is inadequate in his location and therefore cancels Lifeline service from i-
18 wireless.

19 **Q. Does i-wireless satisfy initial application requirement 4.2?**

20 **A.** The intent of this requirement has been met by i-wireless’ inclusion of the
21 coverage map shown in Exhibit C of the Stipulation that indicates the extent of
22 wireless coverage with minimum signal strength of -99 dBm. Because it does not
23 own the wireless network that it will use to provide Lifeline service, i-wireless

1 cannot provide a map that shows varying levels of signal strength. If the map in
2 Exhibit C does not contain sufficient information regarding signal strength to
3 meet requirement 4.2, i-wireless requests a partial waiver of the requirement and
4 the Parties agree that there is good cause to grant the waiver. Consistent with the
5 CTIA Consumer Code, i-wireless agrees to provide a coverage map for Oregon
6 on its website and at the points of sale.

7 **Q. Does i-wireless satisfy initial application requirement 8?**

8 **A.** Yes, to the extent that it relies on an underlying carrier, Sprint. Requirement 8
9 requires a demonstration of an applicant's ability to remain functional in
10 emergencies, addressing specifics such as backup power, and ability to reroute
11 traffic and manage traffic spikes. It also addresses E911 services. As a reseller of
12 another carrier's network, i-wireless must rely on the ability of the carrier to
13 remain functional in emergencies and for access to 911 services. i-wireless uses
14 the Sprint network, which is a major national network under the purview of the
15 FCC and subject to certain types of associated FCC regulations. The Sprint
16 network is also used by Virgin Mobile, a carrier already designated as an ETC by
17 the Commission.

18 **Q. Does i-wireless satisfy initial application requirement 10.1?**

19 **A.** Yes. Requirement 10.1 requires a demonstration that designation is in the public
20 interest. The Parties agree that designation of i-wireless to offer Lifeline services
21 in Oregon is in the public interest, in light of the additional terms and conditions
22 listed in the Stipulation. Designation will result in more choices for low-income
23 consumers among Lifeline providers and service options. i-wireless will offer the

1 greatest number of free minutes to date to customers who desire a plan without
2 any charges. The Company will also offer plans with data options and more
3 minutes for customers in need of them.

4 **Q. Does i-wireless satisfy initial application requirement 10.2?**

5 **A.** No, it does not. This requirement was adopted by the Commission in Order 06-
6 292 as one of the FCC's requirements. However, the FCC has determined that
7 this "creamskimming" requirement no longer applies in the case of applications
8 for ETCs requesting designation only to provide Lifeline services. See *In the*
9 *Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. §*
10 *214(e)(1)(A)*, CC Docket No. 96-45, Order 09-18, para. 39 n. 101 (March 5,
11 2009). Therefore, this requirement is inapplicable to i-wireless's application.

12 **Q. What additional terms and conditions are contained in the Stipulation?**

13 **A.** These are the additional terms and conditions of the Stipulation:

14 • Under paragraph 14 of the Stipulation, if i-wireless discontinues or
15 expands the use of its current underlying wireless carriers, or expands coverage
16 through use of additional underlying wireless carriers, it will file notice with the
17 Commission and Staff will review the remaining wireless coverage and may
18 recommend modifications to the designated service area as may be appropriate.
19 In addition, i-wireless will post its handset-unlocking policy consistent with the
20 CTIA Consumer Code on the Access Wireless website.

21 • Under paragraphs 22 and 23 of the Stipulation, i-wireless will notify
22 existing Lifeline customers within ten days following an increase in the
23 minutes, units, or other material terms of its Lifeline service offerings and
24 permit those customers to immediately subscribe. The Company will provide
25 90 days' notice of any proposed decrease. If, in another state, i-wireless has a

1 Lifeline service offering with more included minutes or other material terms, or a
2 promotional offering with a higher number of free minutes, i-wireless will extend
3 such terms to all Oregon Lifeline customers.

4 • Under paragraphs 24 and 25 of the Stipulation, i-wireless will remit the
5 RSPF surcharge to the Commission on behalf of all its Oregon customers and will
6 remit the Oregon 9-1-1 tax on behalf of all of its Oregon Lifeline customers.

7 • Under paragraph 26 of the Stipulation, i-wireless must demonstrate
8 operational readiness and the ability to submit all required reporting following
9 designation as an ETC and ETP before it may begin advertising and offering
10 Lifeline services.

11 • Under paragraph 31 of the Stipulation, i-wireless will comply with
12 applicable OARs related to advertising, marketing and outreach. i-wireless agrees
13 to discuss and address any concerns Staff may have with respect to any
14 advertising and marketing material and work in good faith to resolve such
15 concerns.

16 • Under paragraph 32 of the Stipulation, i-wireless acknowledges liability
17 for the actions of employees, agents and other action on its behalf and agrees to a
18 number of limitations on the use of third party representatives in order to protect
19 the program and its participants from waste, fraud and abuse.

20 • Under paragraph 42 of the Stipulation, i-wireless will submit training
21 materials for customer service representatives to Staff for review and approval
22 that will clearly define Oregon Lifeline policies and procedures.

23 **Q. What is the status of the NAL?**

24 **A.** The FCC issued the NAL to i-wireless on November 1, 2013 proposing a penalty
25 for instances of alleged duplicate Lifeline subscribers. On January 10, 2014, i-
26 wireless submitted its response to the NAL, which contained a comprehensive

1 factual analysis and legal defense against the allegations of the FCC, seeking
2 cancellation of the proposed forfeiture. Thus far, the FCC has taken no further
3 action on i-wireless' NAL and none has been indicated, despite numerous
4 attempts by i-wireless to reach a resolution. Possible outcomes include no further
5 public action by the FCC, cancellation of the NAL, and a settlement and consent
6 decree. Absent those outcomes, the FCC could take other action such as folding
7 the issues raised in the NALs into a rulemaking proceeding or converting the
8 NAL to a forfeiture order. Such an order would be subject to appeal in a United
9 States Court of Appeals. It is impossible to predict the outcome at this point. By
10 law, the NAL will expire five (5) years after issuance. Section 504(c) of the
11 Communications Act, 47 U.S.C. § 504(c), provides that the FCC may not use an
12 NAL against a licensee if that licensee has not paid the proposed fine or no court
13 has ordered it to pay an imposed forfeiture. In the absence of voluntary payment,
14 per Section 504(a) of the Communications Act, 47 U.S.C. § 504(a), the FCC may
15 refer the case to the federal Department of Justice ("USDOJ"), and pursuant to
16 such referral, a U.S. attorney may then institute a civil suit in the name of the
17 United States to recover the forfeiture amount subject to a trial de novo. Pursuant
18 to 28 U.S.C. § 2462, USDOJ has five years from the date the claim "accrued"
19 (i.e., the date of the alleged violation) to commence a collection action against the
20 entity. Accordingly, if no payment is made voluntarily and no recovery suit is
21 commenced within 5 years of the date of the alleged infraction, any related NAL
22 or forfeiture order becomes inactionable and can be cancelled.

23 **Q. Have other state utility commissions granted ETC designation to i-wireless**
24 **despite the NAL?**

25 **A.** Yes. Absent further action from the FCC regarding the NAL, other state
26 commissions have been moving forward with i-wireless' ETC designation

1 requests. On June 16, 2015, the Nebraska Public Service Commission found it in
2 the public interest to designate i-wireless as an ETC. On October 7, 2014, the
3 Georgia Public Service Commission granted i-wireless' request to expand its ETC
4 service area. On May 29, 2014 the Washington Utilities and Transportation
5 Commission issued an order renewing i-wireless' ETC designation. On
6 September 11, 2014, the California Public Utilities Commission's ("CA PUC")
7 granted i-wireless designation as an ETC (Resolution T-17449). The CA PUC
8 Staff ("CA Staff") engaged in a rigorous due diligence process, including
9 consideration of the NAL, and did not uncover any fitness issues to deny approval
10 of i-wireless's ETC request. The CA PUC found it consistent with the public
11 interest to designate i-wireless as an ETC.

12 **Q. What was the CA PUC'S analysis regarding the NAL?**

13 **A.** CA PUC considered the NAL and noted "The FCC has not adopted a threshold
14 for an acceptable level of duplicates. To assess i-wireless' error rate, [CA] staff
15 relied upon the Federal *Improper Payments Elimination and Recovery Act of 2010*
16 (IPERA)⁴ as a guideline for an acceptable level of error for duplicate enrollments.
17 . . . The IPERA asserts that "significant" risk exists when improper program
18 payments exceed \$10,000,000 of all payments made in a fiscal year or 1.5% of a
19 fiscal year's program outlay. Absent an FCC threshold, [CA] staff finds that the
20 1.5% provides a reasonable guideline for an acceptable level of duplication.⁵ The
21 CA PUC further noted CA staff found that i-wireless' duplication rate "does not
22 rise to the level of a "significant" risk that justifies a denial of their ETC
23 designation request."⁶ The CA PUC's analysis is equally applicable to i-wireless'
24 request for ETC and ETP designation in Oregon.
25

⁴ 31 U.S.C.3321 note, July 22, 2010.

⁵ Resolution T-17449, p.17-18

⁶ Id.

1 **VI. REQUIREMENTS FOR ETP DESIGNATION AND RSPF RULES**

2
3 **Q. What are the commission’s requirements for designation as an ETP?**

4 **A.** An ETC that is also designated as an ETP must comply with the RSPF rules set
5 forth in OAR 860-033-0001 to OAR 860-033-0100. The definition of an ETP in
6 OAR 860-033-0005(7) sets forth three requirements that a telecommunications
7 carrier must meet to be designated as an ETP:

8 First, an ETP must offer services under “under 47 C.F.R. § 54 Subpart E
9 (2013) using either its own facilities or a combination of its own facilities and
10 resale of another carrier’s services.”

11 Second, an ETP must advertise the availability of and the charges for such
12 services using media of general distribution.

13 Third, an ETP must demonstrate that it will comply with OAR 860-033-
14 0005 through 860-033-0110.

15 **Q. Does i-wireless meet all of the requirements for ETP designation?**

16 **A.** No, it does not. However, i-wireless requests, and the Stipulating Parties support,
17 waivers or partial waivers of five specific rules or rule subsections in Exhibit E.

18 **Q. What are the rules for which the parties support a waiver?**

19 **A.** The Stipulating Parties support a waiver or partial waiver of OAR 860-033-
20 0005(7)(a), OAR 860-033-0006(3)(b), OAR 860-033-0006(3)(c), OAR 860-033-
21 0010(2), and OAR 860-033-0046(4).

22 **Q. On what basis do the parties support a waiver of OAR 860-033-0005(7)(a)?**

23 **A.** OAR 860-033-0005(7)(a) is derived from the federal ETC requirement (*See* 47

1 C.F.R. § 54.201(i)) that ETCs offer the supported services “either using its own
2 facilities or a combination of its own facilities and resale of another carrier’s
3 services.” However, by approving i-wireless’ Compliance Plan, the FCC granted
4 i-wireless forbearance from this requirement.

5 **Q. On what basis do the parties support a waiver of OAR 860-033-0006(3)(b)**
6 **and (c)?**

7 **A.** The Stipulating Parties believe there is good cause for a waiver of OAR 860-033-
8 0006(3)(b) and (c) to the extent that it would require i-wireless to collect the
9 RSPF surcharge from its customers and identify the RSPF surcharge on each
10 customer’s bill, respectively. i-wireless is a prepaid wireless service provider that
11 does not issue bills to its customers. However, i-wireless will remit the RSPF
12 surcharge to the Commission on behalf of all its Oregon customers, including
13 Lifeline customers.

14 **Q. On what basis do the parties support a partial waiver of OAR 860-033-**
15 **0010(2)?**

16 **A.** i-wireless will offer the OTAP and Lifeline discount on all plans except the 100
17 Minute with 50 MB Data retail plan and the 250 Minute Talk with Unlimited Text
18 and 250MB Data retail plan. These plans are excluded because they offer fewer
19 minutes for voice, the supported service, than the 500 Free Minutes plan.
20 Otherwise, i-wireless will offer the OTAP and Lifeline discount on all other plans.
21 The parties support a waiver of the rule in this instance, given that the Company
22 offers a wide variety of plans to Lifeline customers, and the plans for which the
23 discounts are not available does not provide a significant amount of OTAP and

1 Lifeline supported services.

2 **Q. On what basis do the parties support a waiver of OAR 860-033-0046(4)?**

3 A. The Stipulating Parties agree there is good cause for a waiver of OAR 860-033-
4 0046(4) to the extent it requires the filing of a weekly No Match report. In lieu of
5 the weekly No Match report required by OAR 860-033-0046(4), the Parties have
6 agreed, as set out in Paragraph 36 of the Stipulation, that i-wireless will submit a
7 weekly Order Activity report to Staff in an electronic format accessible by the
8 Commission. The Parties support a waiver of OAR 860-033-0046(4) because i-
9 wireless will provide the same information required for the No Match report in
10 the Order Activity report.

11 **Q. Are there other rules that the Parties recommend be waived?**

12 A. No.

13

14 **VII. SUPPLEMENTAL REPORTING**

15

16 **Q. What reporting is required of i-wireless under the Stipulation?**

17 A. i-wireless agrees to provide quarterly reports to Staff and to CUB in the format
18 identified in the Stipulation as Exhibit F. In addition, i-wireless will submit
19 monthly to Staff a copy of its Oregon-specific monthly Lifeline Worksheet (Form
20 497) that i-wireless submits to the Universal Service Administrative Company
21 ("USAC") from which it claims or seeks low-income reimbursement or support.
22 In conjunction with Form 497, i-wireless will provide the customers' names,
23 residential addresses, phone numbers and Commission-assigned OTAP

1 identification number to Staff in an electronic format accessible by the
2 Commission. When applicable, i-wireless agrees to provide Staff a revised copy
3 of Form 497 and the corresponding revised report.

4 Upon Commission approval of the Stipulation, i-wireless will file all
5 information required by the FCC under 47 CFR § 54.401(d). i-wireless shall
6 provide Staff with a copy of any certification that its Lifeline plan satisfies the
7 federal criteria within ten business days of receipt.

8 **Q. Do the parties realize that much of the information in the reports is sensitive
9 and may be subject to confidential treatment?**

10 **A.** Yes. Information i-wireless is required to submit to the Commission, Staff or
11 CUB under the terms of the Stipulation may be submitted as confidential
12 pursuant to OAR 860-001-0070 and covered by the Protective Order entered in
13 this proceeding on February 10, 2011 (*See* Order No. 11-050). The Parties agree
14 that such information may be submitted to Staff, CUB and other Parties
15 electronically, as required in the Stipulation. Certain information, however, will
16 be subject to sharing with the FCC or USAC, with appropriate protections to
17 ensure confidentiality.

18

19

VIII. CONCLUSION

20

21 **Q. What do the parties recommend regarding the stipulation?**

22 **A.** The Parties recommend that the Commission adopt the Stipulation as the basis for
23 resolving all of the contested issues in this proceeding, and that the Commission

1 grant i-wireless designation as an ETC and ETP in Oregon subject to the terms
2 and conditions of the Stipulation. The Parties further recommend that the
3 Commission waive, with respect to i-wireless' compliance, all of the requirements
4 and rules, which were recommended for waiver in Exhibit E to the Stipulation.

5 **Q. Please summarize the benefits of i-wireless' designation as an ETC and ETP.**

6 **A.** As explained in the Amended Application, i-wireless' designation to offer
7 Lifeline services in Oregon would provide valuable benefits to qualifying low-
8 income consumers in the state. i-wireless would be the first wireless ETC in
9 Oregon to offer OTAP benefits as part of a Lifeline service offered at no charge to
10 qualifying customers. i-wireless also offers a Company credit in addition to the
11 federal Lifeline and OTAP subsidies. Therefore, no other Lifeline provider in
12 Oregon offers more free minutes or a larger discount on retail plans. i-wireless'
13 Lifeline customers will receive the same wireless services and customer service
14 provided to all Company customers. i-wireless' affiliation with Kroger awards
15 the consumer exclusive benefits, such as the Free Minutes program, and at the
16 same time grants i-wireless both proximity to and unique insight into the Lifeline-
17 eligible consumer. The Company already pays RSPF and 911 surcharges
18 associated with its existing customers, and agrees to continue to do so for its
19 future Lifeline customers.

20 For all of the above reasons, the Parties agree that i-wireless' Amended
21 Application for ETC and ETP designation, as modified by, and subject to, the
22 terms and conditions set forth in the Stipulation, satisfies all applicable legal
23 requirements. The Parties agree that designation of i-wireless as an ETC and ETP

1 is in the public interest and will benefit Lifeline-eligible consumers in Oregon,
2 and that the Commission should issue an order granting ETC and ETP designation
3 subject to the terms and conditions contained in the Stipulation.

4 **Q. Does this conclude your joint testimony?**

5 **A.** Yes.

WITNESS QUALIFICATION STATEMENT

NAME: Eric Schimpf

EMPLOYER: i-wireless, LLC

TITLE: Director of New Business Development

ADDRESS: 1 Levee Way, Suite 3104
Newport, KY 41071

EDUCATION: MBA, Northern Kentucky University
BS in Business Administration, The Ohio State University

PROFESSIONAL EXPERIENCE:

Director of New Business Development, i-wireless, LLC, 2011 - Present

Eric Schimpf has over 29 years of experience as a Telecom Executive in telephone and wireless company operations. Since 2011, Eric has been i-wireless' Director of New Business Development in charge of establishing new state relationships for the Company's growing Lifeline business. i-wireless LLC is a privately-held company with 51-200 employees, and is the private-label wireless service sold exclusively within the Kroger family of stores.

Management Consultant, Highland Partners, LLC, 2008 - Present

Cincinnati Bell, 1989-2008

Held varied positions with Cincinnati Bell, including General Management, Product Management, Marketing, Sales and Customer Service

WITNESS QUALIFICATION STATEMENT

NAME: Kay Marinos
EMPLOYER: Public Utility Commission of Oregon
TITLE: Program Manager, Competitive Issues
ADDRESS: 201 High Street SE Suite 100
Salem, Oregon 97308
EDUCATION: PhD/ABD and MA in Economics, University of Hawaii
BA in Economics, Hofstra University

PROFESSIONAL EXPERIENCE:

Manager, Competitive Issues, Public Utility Commission of Oregon, 2007
- Present

Responsible for managing telecommunications competitive issues, competitive provider certifications, carrier interconnections agreements, wholesale service quality, Eligible Telecommunications Carrier (ETC) designations, federal universal service programs and ILEC service territory allocations. Staff member of Federal-State Joint Board on Universal Service.

Senior Telecom Analyst, Public Utility Commission of Oregon, 2004 - 2007

Responsible for federal ETC designations, annual ETC recertifications, and federal universal service issues.

Senior Consultant/Specialist, NYNEX/Bell Atlantic/Verizon, 1988 -2003

Managed special project teams to ensure compliance with regulatory and legal requirements. As subject matter expert, performed wide range of analytic functions to develop and support company's objectives in federal regulatory proceedings. Major issues included Telecom Act implementation, competitive markets, interconnection, pricing flexibility, price caps, rate restructuring, cost recovery, and cost allocation.

Manager, National Exchange Carrier Association (NECA), 1984 -1988

Managed development of telecom industry forecasts of interstate usage and dedicated access services used to determine nationwide carrier pool rates.

Business Research Analyst, GTE Hawaiian Telephone, 1982 - 1983

Developed revenue and demand forecasts for budgeting and network planning

Economist & Planner, State of Hawaii, 1978 - 1982

Managed energy conservation and emergency planning projects. Supervised economic and demographic studies for urban redevelopment in industrial area of Honolulu.

WITNESS QUALIFICATION STATEMENT

NAME: Jon Cray

EMPLOYER: Public Utility Commission of Oregon

TITLE: Residential Service Protection Fund Program Manager, Central Services Division

ADDRESS: 201 High Street SE Suite 100
Salem, Oregon 97308

EDUCATION: MS in Communication Sciences and Disorders
East Carolina University, 2002

BS in Communication Sciences and Disorders
East Carolina University, 2000

PROFESSIONAL EXPERIENCE:

Program Manager, Residential Service Protection Fund, Public Utility Commission of Oregon, 2006 - Present

Manage the Oregon Telephone Assistance Program, Telecommunication Devices Access Program and Oregon Telecommunications Relay Service

Contact Center Manager, Communication Service for the Deaf, 2005 - 2006

Managed the California Telephone Access Program call center for the California Public Utilities Commission

Contact Center Supervisor, Communication Service for the Deaf, 2003 - 2006

Managed a team of California Telephone Access Program customer service representatives for the California Public Utilities Commission

WITNESS QUALIFICATION STATEMENT

NAME: Bob Jenks

EMPLOYER: Citizens' Utility Board of Oregon

TITLE: Executive Director

ADDRESS: 610 SW Broadway, Suite 400
Portland, OR 97205

EDUCATION: Bachelor of Science, Economics
Willamette University, Salem, OR

EXPERIENCE: Provided testimony or comments in a variety of OPUC dockets, including UE 88, UE 92, UM 903, UM 918, UE 102, UP 168, UT 125, UT 141, UE 115, UE 116, UE 137, UE 139, UE 161, UE 165, UE 167, UE 170, UE 172, UE 173, UE 207, UE 208, UE 210, UE 233, UE 246, UE 283, UG 152, UM 995, UM 1050, UM 1071, UM 1147, UM 1121, UM 1206, UM 1209, UM 1355, UM 1635, UM 1633, UM 1654, and UM 1662. Participated in the development of a variety of Least Cost Plans and PUC Settlement Conferences. Provided testimony to Oregon Legislative Committees on consumer issues relating to energy and telecommunications. Lobbied the Oregon Congressional delegation on behalf of CUB and the National Association of State Utility Consumer Advocates.

Between 1982 and 1991, worked for the Oregon State Public Interest Research Group, the Massachusetts Public Interest Research Group, and the Fund for Public Interest Research on a variety of public policy issues.

MEMBERSHIP: National Association of State Utility Consumer Advocates
Board of Directors, OSPIRG Citizen Lobby
Telecommunications Policy Committee, Consumer Federation of America
Electricity Policy Committee, Consumer Federation of America
Board of Directors (Public Interest Representative), NEEA

WITNESS QUALIFICATION STATEMENT

NAME: Mark Tennyson

EMPLOYER: Office of Emergency Management

TITLE: Technology and Response Section Manager

ADDRESS: Anderson Readiness Center
3225 State Street
Salem, OR 97301

EDUCATION: BS in Speech / Telecommunications, University of Oregon

PROFESSIONAL EXPERIENCE:

Manager of Technology & Response Services, Oregon Office of Emergency Management, 2011- Present

Manage State 9-1-1 Program, and Information Technology Staffs at Office of Emergency Management. Chief Information Officer Oregon Military Department.

9-1-1 Program Analyst, Oregon Office of Emergency Management, 2007-2011

Coordination of Statewide 9-1-1 services, interface with Local Exchange Carriers that provide telco services to Public Safety Answering Points.

Local Telephone Service Product Manager, Electric Lightwave LLC. ,1997 -2007

Product Marketing of Local Telephone Services to Business Customers.