

ORDER NO.

11 326

ENTERED

AUG 25 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1517

In the Matter of

ZTAR MOBILE INC.

Request for Waiver of OAR 860-033-0006.

ORDER

DISPOSITION: APPLICATION APPROVED

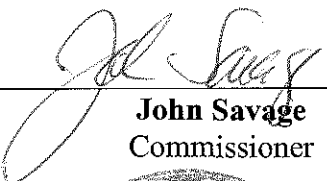
On June 13, 2011, Ztar Mobile, Inc. (Ztar) filed a request with the Public Utility Commission of Oregon (Commission) to waive the assessed late report fee, the late penalty, and the interest on the unpaid surcharge fees for Residential Service Protection Fund (RSPF) surcharge reports and remittances submitted to the Commission after the deadlines in 2009 and 2010. A full description of the filing, its procedural history, and Staff's recommendation are contained in the Staff Report, attached as Appendix A and incorporated by reference.

At its Public Meeting on August 23, 2011, the Commission adopted Staff's recommendations to waive the late reporting fees, late payment penalties, and interest charges in the amount of \$295.96 that were assessed for Ztar's remaining violations after the first incident of delinquency.

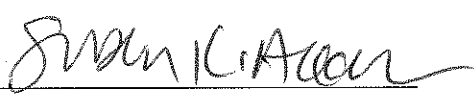
ORDER

IT IS ORDERED that Ztar Mobile Inc.'s request for waiver of RSPF late reporting fees, late payment penalties and interest charges assessed in the amount of \$295.96 for its violations after the first incident of delinquency is allowed effective August 23, 2011.

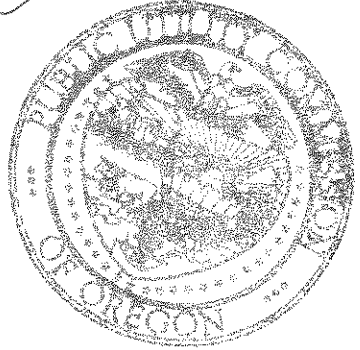
Made, entered, and effective AUG 25 2011.



John Savage
Commissioner



Susan K. Ackerman
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. CA2

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 23, 2011**

REGULAR _____ CONSENT X EFFECTIVE DATE August 23, 2011

DATE: July 26, 2011

TO: Public Utility Commission

FROM: Jon Cray 

THROUGH: Rick Willis and David Poston 

SUBJECT: RESIDENTIAL SERVICE PROTECTION FUND (RSPF):
(Docket No. UM 1517) Ztar Mobile, Inc. Request for Waiver of Oregon
Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and
860-033-0006(8).

STAFF RECOMMENDATION:

Staff recommends the Commission, as authorized by OAR 860-033-0006(9), waive the assessed RSPF late report fee, the late payment penalty and the interest charge to Ztar Mobile, effective August 23, 2011.¹

DISCUSSION:

¹ The 2009-2011 and 2011-2013 Legislature approved funding for the Commission to create a Compliance Specialist position to ensure that all telecommunications providers and all cellular, wireless and other radio common carriers accurately collect, report and remit all RSPF surcharges to which the State is entitled pursuant to chapter 290, Oregon Laws 1987. Since the position was filled in December 2009, the Compliance Specialist, in accordance with OAR 860-033-0008, conducted an extensive audit of all telecommunications providers' and all cellular, wireless and other radio common carriers' RSPF surcharge remittance reports that were submitted no later than three years after the due date. In addition, the Compliance Specialist monitors all companies' ongoing compliance. Ztar Mobile is one of five companies that filed a waiver request in response to the Compliance Specialist's findings. See RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) Thomson Reuters Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8) on behalf of Allied Wireless Communications Corporation, RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) American Fiber Network, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) ATL Communications, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) United Telephone Company of the Northwest f.k.a. Embarq d.b.a. CenturyLink Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8). Therefore, for consistency purposes, Staff adopted the approach of accepting payment for the first infraction if the telecommunications provider or cellular, wireless or radio common carrier provided evidence showing that it submitted the RSPF Remittance Report and surcharge fees late due to circumstances beyond its control.

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Pursuant to OAR 860-033-0006(4), "Each telecommunications provider must submit to the Commission the RSPF Remittance Report and surcharge fees on or before the 21st calendar day after the close of each month or quarter..." On March 29, 2011, Staff issued a letter requesting payment from Ztar Mobile for noncompliance with OAR 860-033-0006(4), which states that "Each telecommunications provider must submit to the Commission the RSPF Remittance Report and surcharge fees on or before the 21st calendar day after the close of each month or quarter..." Staff assessed a late report fee, late payment penalty and an interest charge for a total of \$400.10 to Ztar Mobile in accordance with OAR 860-001-0050. Specific amounts for each assessed charge are not included in order to protect the confidentiality of Ztar Mobile's business trade secrets. Ztar Mobile was delinquent in filing the RSPF Remittance Report and corresponding surcharges for the following periods in 2009 and 2010:

Remittance Period	Deadline	Date Received
May/June 2009 (2 nd quarter)	July 21, 2009	August 4, 2009
September 2009	October 21, 2009	February 23, 2010
November/December 2009 (4 th quarter 2009)	January 21, 2010	February 22, 2010
January 2010	Filed Return with incorrect RSPF surcharge rate	Amended Return Filed September 14, 2010
March 2010	April 21, 2010	May 14, 2010
June 2010	July 21, 2010	July 29, 2010

The Commission issued a Notice of Proposed Assessment to Ztar Mobile on April 20, 2007, when it did not respond to Staff's letter demanding payment for failure to meet the requirements outlined in OAR 860-033-0006(4). Ztar Mobile responded to the Notice of Proposed Assessment on May 18, 2011, by filing the "RSPF Exemption Form", claiming it was not subject to the requirements for collecting or remitting the RSPF surcharge because, "Ztar Mobile, Inc is not eligible to receive federal universal service support throughout a designated service area by having met the eligibility criteria set forth in C.F.R. § 54.201 (2008) and in Commission Order 06-292." See Attachment A. In response, Staff explained the irrelevancy of the aforementioned reference to the RSPF surcharge requirements to Ztar Mobile via electronic mail.

On June 13, 2011, Ztar Mobile submitted its written waiver request to Staff clarifying that "The operations of Ztar Mobile are exclusively wireless and exclusively prepaid." In its memorandum, Ztar Mobile quoted section 7, chapter 290, Oregon Laws 1987 that, "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*, (emphasis added) is within Oregon."

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Ztar Mobile emphasized that the terms of 4 U.S.C. 116-126 "expressly exclude and do not apply to prepaid telecommunications services" and thus, provided a legal analysis of why it is not subject to the statutory requirements for the collection and remittance of the RSPF surcharge. Ztar Mobile also explained that Thomson Reuters, a regulatory tax compliance company, was filing the RSPF Remittance Report and surcharge fees on its behalf inconsistently. See Attachment B.

Commission records show that Ztar Mobile has been collecting or remitting the RSPF surcharge as far back as records are retained (1/2006). Staff informed Ztar Mobile that there are existing prepaid wireless service providers who believe they are subject to the RSPF surcharge requirements pursuant to chapter 290, Oregon Laws 1987 based on the type of service offering(s) provided. Therefore, Staff proposed to Ztar Mobile that it continue to file the RSPF Remittance Report and surcharge fees. Because Thomson Reuters was filing the RSPF report and surcharge fees on behalf of Ztar Mobile, Staff recognized that these circumstances in which Ztar Mobile was consequently assessed late reporting fees, penalties and interest may have been beyond the prepaid wireless service provider's control. In addition, Ztar Mobile agreed with Staff's own recommendation to petition the Commission to waive all late reporting fees, penalties and interest charges to Ztar Mobile except for the first delinquent incident, which was the second quarter 2009 totaling \$104.14. See Attachment C.

Pursuant to OAR 860-033-0006(9), "...The Commission may waive the late report fee, the late payment fees and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider files a written waiver request and provides evidence showing that the telecommunications provider submitted the Remittance Report and surcharge fees late due to circumstances beyond its control." Staff supports Ztar Mobile's request for abatement of the RSPF late report fee, late payment penalty and interest charge because it not only rendered payment in the amount of \$104.14 to the Commission for its delinquent second quarter 2009 filing, but demonstrated successive compliance after the fact when it secured its state filings internally from Thomson Reuters.

PROPOSED COMMISSION MOTION:

The Commission, in accordance with OAR 860-033-0006(9), waive the remaining RSPF late reporting fees, the late payment penalties and the interest charges that were assessed to Ztar Mobile in the amount of \$295.96, effective August 23, 2011.

UM 1517

**Oregon Public Utility Commission (PUC)
Residential Service Protection Fund (RSPF)
Surcharge Exemption Form**

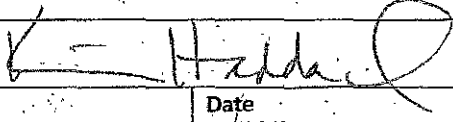
RECEIVED
2011 MAY 18 A 8:40
PUC

Chapter 290, Oregon Laws 1987 stipulates that:

The surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the telecommunications relay service shall be charged based on software design. For cellular, wireless or other radio common carriers, the surcharge must 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 to 126, is within this state.

If your company does **NOT** meet the statutory requirements for collecting the RSPF surcharge from your telephone or cellular customers, please complete the form below specifying why the company is exempt and return it either by mail or electronically to:

Kathy Shepherd, RSPF Compliance Specialist
Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
PO Box 2148
Salem, OR 97308-2148
kathy.shepherd@state.or.us

Company Name Ztar Mobile, Inc.		PUC ID# 8347
Address 16 Village Lane, Suite 250		
City Colleyville	State TX	Zip 76034
Contact Person Kevin Haddad		
Phone (817) 427-8888	Email khaddad@ztarmobile.com	
<p align="center">Company is exempt from collecting and remitting the RSPF surcharge because: Ztar Mobile, Inc is not eligible to receive federal universal service support throughout a designated service area by having met the eligibility criteria set forth in 47 C.F.R. § 54.201 (2008) and in Commission Order 06-292.</p>		
Signature Required – Print & Sign Kevin Haddad		
Title President	Date 05/09/2011	

MEMORANDUM

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.

CRAY Jon W.

From: Cheryl Sepmoree [csepmoree@ztarmobile.com]
Sent: Wednesday, July 13, 2011 4:27 PM
To: CRAY Jon W.
Cc: SHEPHERD Kathy J.; Kevin Haddad; David Wilkie
Subject: RE: Ztar Mobile, Inc. Oregon RSPF-URGENT
Attachments: Oregon PUC - 07-13-11.pdf

Importance: High

Hi Jon,

Per our conversation, Ztar Mobile Inc. is in agreement with your proposal and is remitting Check #14870 dated 07/13/11 in the amount of \$104.14 to clear the first incident which was the second quarter 2009. Based the options you provided in your previous email, Ztar Mobile Inc. will continue to file the Oregon Public Utility Commission Residential Service Protection Fund Surcharge Remittance Form and payments monthly. I believe that is option "B".

(B) The prepaid wireless service provider must divide the provider's total intrastate monthly revenue by the national average monthly revenue for each prepaid wireless service customer of the national prepaid wireless service industry to determine the number of the provider's prepaid customers. The prepaid wireless service provider must then pay on a monthly basis an amount to the Residential Service Protection Fund equal to the number of the provider's prepaid customers, multiplied by the amount of the surcharge.

Ztar Mobile is currently reporting and remitting quarterly the 9-1-1 tax to the Oregon Department of Revenue.

We truly appreciate your support in getting this issue resolved.

Thank you,
Cheryl

Cheryl Sepmoree
Controller



Office: (817) 427-8888 ext. 4021
Fax: (817) 605-9990

----- Forwarded Message -----

From: CRAY Jon W. <jon.cray@state.or.us>
To: David Wilkie <davidtwilkie@yahoo.com>
Cc: SHEPHERD Kathy J. <kathy.shepherd@state.or.us>; Kevin Haddad <khaddad@ztarmobile.com>
Sent: Wednesday, July 13, 2011 1:07 PM
Subject: FW: Ztar Mobile, Inc. Oregon RSPF

Hi Mr. Wilkie,

Have you had an opportunity to review my e-mail below? We need Ztar Mobile, Inc. to confirm its acceptance of our proposal by COB Friday, July 15, 2011 in order for us to petition the Oregon Public Utility Commissioners via a drafted public meeting memo with a recommendation that they waive all

late reporting fees, penalties and interest except for the first incident which was the second quarter 2009 totaling \$104.14.

Thanks in advance.

Jon Cray, Program Manager
Residential Service Protection Fund
Public Utility Commission of Oregon
550 Capitol St. NE, Suite 215
P.O. Box 2148
Salem, OR 97308-2148
Telephone: (971) 340-4683 or (503) 373-1400
E-Mail: jon.cray@state.or.us
www.rspf.org

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This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: CRAY Jon W.
Sent: Thursday, June 30, 2011 2:47 PM
To: 'David Wilkie'
Cc: SHEPHERD Kathy J.; 'Kevin Haddad'
Subject: RE: Ztar Mobile, Inc. Oregon RSPF
Importance: High

Hi Mr. Wilkie,

Thank you for Ztar Mobile, Inc.'s willingness to voluntarily file and pay the Oregon RSPF surcharge. We will be happy to draft and submit a letter to Ztar Mobile, Inc. that outlines the explicit requirements with respect to the filing schedule and remittance of the RSPF surcharge. Before we proceed, please see the language, which I copied and pasted below, from our bill below for options available to Ztar Mobile, Inc. on how it may calculate or assess the RSPF surcharge. Please let me know if you have any questions or concerns about these options. How was Ztar Mobile, Inc calculating or assessing the Oregon RSPF surcharge in the past?

(e) For customers that are not billed periodically, including but not limited to customers that purchase prepaid wireless service, the telecommunications service provider must include in the price of the service the surcharge for each month during which the customer is authorized to use the service. A prepaid wireless service provider must remit to the Residential Protection Service Fund an amount equal to the surcharge after collecting the amount using one of the following options:

(A) On a monthly basis, the prepaid wireless service provider must collect an amount equal to the surcharge from each active prepaid wireless service customer whose account balance is equal to or greater than the surcharge; or

(B) The prepaid wireless service provider must divide the provider's total intrastate monthly revenue by the national average monthly revenue for each prepaid wireless service customer of the national prepaid wireless service industry to determine the number of the provider's prepaid customers. The prepaid wireless service provider must then pay on a monthly basis an amount to the Residential Service Protection Fund equal to the number of the provider's prepaid customers, multiplied by the amount of the surcharge.

(f) The commission may adopt by rule the method for calculating the national average monthly revenue for each prepaid wireless service customer of the national prepaid wireless service industry.

Please confirm your acceptance of our proposal to petition the Oregon Public Utility Commissioners via a public meeting memo with a recommendation that they waive all late reporting fees, penalties and interest **except** for the first incident which was the second quarter 2009 totaling \$104.14. We are adopting this approach for all companies that have submitted a waiver request yet demonstrated consistent compliance after the fact; it is our intent not to confer preferential treatment on any provider.

We are not aware of any other state reports that Ztar Mobile, Inc. needs to file; however, we encourage Ztar Mobile, Inc. to continue reporting and remitting the 9-1-1 tax to the Oregon Department of Revenue.

Thanks,

Jon Cray, Program Manager
Residential Service Protection Fund
Public Utility Commission of Oregon
550 Capitol St. NE, Suite 215
P.O. Box 2148
Salem, OR 97308-2148
Telephone: (971) 340-4683 or (503) 373-1400
E-Mail: jon.cray@state.or.us
www.rspf.org

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From: David Wilkie [mailto:davidtwilkie@yahoo.com]
Sent: Wednesday, June 29, 2011 5:05 PM
To: CRAY Jon W.
Cc: Kevin Haddad
Subject: Re: Ztar Mobile, Inc. Oregon RSPF

Mr. Cray- Ztar has indicated that it is ready to go forward with your proposal that it voluntarily file and pay Oregon RSPF fees so long as past penalties and interest is waived by the state. The company is asking for a letter or something from you giving it explicit guidance as to what reports it needs to file on what schedule and how to calculate the fees.

I would also like to find out if there are any other state reports that the company needs to file as an enabler of prepaid wireless sold by others at retail. Thanks very much for your help with regard to these matters. DTW

From: CRAY Jon W. <jon.cray@state.or.us>
To: David Wilkie <davidtwilkie@yahoo.com>
Cc: SHEPHERD Kathy J. <kathy.shepherd@state.or.us>; Kevin Haddad <khaddad@ztarmobile.com>
Sent: Wednesday, June 22, 2011 12:06 PM
Subject: RE: Ztar Mobile, Inc. Oregon RSPF

Hi Mr. Wilkie,

Thank you for providing us with your legal analysis (see attached) as to the applicability of the Oregon Residential Service Protection Fund (RSPF) surcharge to Ztar Mobile, Inc. As far back as our records indicate (i.e. 2006), Ztar Mobile, Inc. has been collecting and/or remitting the RSPF surcharge. Could you please clarify

how Ztar Mobile, Inc calculated or assessed the RSPF surcharge in Oregon? Also, could you please describe each and all available prepaid service offerings from Ztar Mobile, Inc. in Oregon? How does Ztar Mobile, Inc. assess the Telecommunications Relay Service surcharge or 9-1-1 tax in states that do not employ a point-of-sale mechanism?

We appreciate the challenges Ztar Mobile, Inc. faces with respect to how it can appropriately calculate or assess the RSPF surcharge; for instance, as you explained in your memorandum, a prepaid customer that may not be an Oregon resident despite purchasing a phone or SIM card in Oregon. There are prepaid wireless companies that believe it is subject to the RSPF surcharge requirements pursuant to chapter 290, Oregon Laws 1987 based on the type of service offering(s) provided, etc. while others voluntarily contribute. We plan to seek and obtain legislative approval that clearly establishes the Oregon Public Utility Commission's authority to impose the RSPF surcharge to customers of prepaid wireless services. In the meantime, we respectfully request that Ztar Mobile, Inc. voluntarily continue to file the RSPF report and surcharge.

Because Thomson Reuters was filing the RSPF report and surcharge on behalf of Ztar Mobile, Inc., we recognize that these circumstances in which Ztar Mobile, Inc. was consequently assessed late reporting fees, penalties and interest may have been beyond the company's control. If Ztar Mobile, Inc. is in agreement, we are prepared to petition the Oregon Public Utility Commissioners via a public meeting memo with a recommendation that they waive all late reporting fees, penalties and interest except for the first incident which was the second quarter 2009 totaling \$104.14. We are adopting this approach for all companies that have submitted a waiver request yet demonstrated consistent compliance after the fact. Although we are allowed by Oregon Administrative Rule to conduct audits no later than 3 years after the RSPF surcharge remittance report due date, we understand that if notified or given the opportunity, Ztar Mobile, Inc. most likely would have addressed or rectified the past due issue for subsequent reports.

We look forward to your thoughts regarding our proposal.

Thanks in advance.
Jon

-----Original Message-----

From: David Wilkie [mailto:davidtwilkie@yahoo.com]
Sent: Monday, June 13, 2011 8:08 AM
To: CRAY Jon W.
Cc: Kevin Haddad
Subject: Ztar Mobiel, Inc. Oregon RSPF

Mr. Cray- My name is David Wilkie, and I represent Ztar Mobiel, Inc. Please see that attached memorandum regarding my legal analysis of the Oregon RSPF and why it does not apply to the prepaid business operations of Ztar. Thanks for your attention and assistance. David Wilkie