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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF TORCH WIRELESS'S )**  
**APPLICATION FOR DESIGNATION AS AN )** **CASE NO. TOR-T-21-01**  
**ELIGIBLE TELECOMMUNICATIONS )**  
**CARRIER IN IDAHO )**  
**)** **COMMENTS OF THE**  
**)** **COMMISSION STAFF**  
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**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Matt Hunter, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On March 15, 2021, Torch Wireless (“Torch” or “Company”) applied to the Commission for an Order designating it as an eligible telecommunications carrier (“ETC”) for the purpose of providing Lifeline services to qualifying customers in the State of Idaho. Application at 1. Torch also requested to participate in the Idaho Telecommunications Service Assistance Program (“ITSAP”). *Id.* The Lifeline program is intended to provide more affordable telecommunications service benefits to eligible low-income customers through the federal Universal Service Fund (“USF”) and ITSAP. Idaho participates in the residential Lifeline program pursuant to *Idaho Code* § 56-901. *See* Order No. 21713.

## **The Application**

The Company is a Wyoming corporation authorized to do business in Idaho as a foreign corporation. *See* Application, Exhibit A. Torch provides prepaid and Lifeline wireless telecommunications services, and its network is integrated with Sprint Spectrum, L.P., Verizon Wireless and T-Mobile USA, Inc. *Id.* at 4. Torch states that it will operate throughout Idaho, including Tribal lands. *Id.* at 2. Torch asserts that it meets the requirements of Section 214(e)(1) of the federal Telecommunications Act to be designated an ETC. *Id.* at 6-10.

Torch asserts it is entitled to ETC designation under 47 U.S.C. § 214(e)(2), which authorizes state commissions to designate wireless ETCs. *Id.* at 6. The Company asserts that it: (1) is a common carrier; (2) commits and is able to provide services supported by federal universal support mechanisms; (3) will advertise the availability of supported services in a manner reasonably designed to reach those likely to qualify; (4) is committed to consumer protection and service quality standards; (5) is capable of remaining functional in emergency situations; (6) has the financial and technical capability to provide Lifeline service; and (7) will comply with requirements imposed by this Commission. *Id.* at 6-10.

The Company further states that granting it ETC designation “will further the public interest by providing Idaho consumers, especially low-income consumers, with low prices and high-quality services.” *Id.* at 10. The Company notes, “Many low-income Consumers have yet to reap the full benefits of the intensely competitive wireless market, whether because of economic or financial constraints, employment impacts, or poor credit history.” *Id.*

The Company states it seeks to be a Lifeline-only ETC, and “is not seeking nor requesting high-cost support.” *Id.* at 2. The Company also seeks Commission authorization to participate in and receive reimbursement from the Idaho Telecommunications Service Assistance Program. *Id.*

The Company asserts it meets all federal and state requirements for designation as an ETC and argues that designating the Company as an ETC is in the public interest. *Id.* at 6-11.

### **Torch's Lifeline Service Offerings**

Torch intends to offer three Idaho service plans: Tribal Lifeline, Non-Tribal Lifeline, and Non-Lifeline. *See* Application, Exhibit C. Torch allows customers to purchase additional minutes. *Id.* Torch's plans include nationwide calling, caller ID, call waiting, call forwarding, 3-way calling and voicemail. *Id.* Torch does not appear to provide free handsets but does have a Bring Your Own Device option. *Id.*

### **STAFF ANALYSIS**

Staff has reviewed Torch's Application. Staff has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996, the FCC's regulations, and Commission Order No. 29841. Specific state and federal requirements for ETC designation are discussed in more detail as follows.

#### **Public Interest Considerations**

Staff typically applies a two-prong test when analyzing whether a Company's ETC Application is in the public interest. First, Staff determines whether the Company contributes to Idaho funds. Second, Staff analyzes whether the Company's Application raises "cream skimming" concerns.

In the Company's Application, Torch confirmed that upon approval as an ETC in Idaho, the Company would participate in the appropriate Idaho programs, specifically the ITSAP program. *See* Application at 10. The Company requests ETC designation statewide. *Id.* at 2. Therefore, no cream skimming analysis is required. Thus, Staff believes Torch satisfies the public interest considerations.

#### **Network Improvement Plan**

The Commission requires a two-year network improvement and progress report from all ETCs receiving high-cost support. *See* Order No. 29841 at 18. However, the Commission determined in Cricket Communications, Inc.'s ETC Application in Case No. CRI-T-11-01 that a two-year network improvement plan was not applicable to Lifeline-only ETCs. Order No. 32501.

In the USF/ICC Transformation Order, the FCC amended 47 C.F.R. § 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. Lifeline-only ETCs do not receive high-cost funds to improve or extend networks, therefore the FCC “saw little purpose in requiring such plans as part of the ETC designation process.”<sup>1</sup> Torch’s Application seeks only low-income USF support as a Lifeline-only ETC. Thus, Staff agrees that a network improvement plan is not a requirement for Torch’s ETC Application.

### **Ability to Remain Functional in Emergencies**

The Company states that it has the ability to remain functional in emergency situations in accordance with Commission Order 29841 and 47 C.F.R. § 54.202(a)(2). Application at 9. Torch asserts that because it is reselling wireless services, the Company is able to provide the same ability to remain functional in emergency situations as the underlying carriers provide to its own customers. *Id.* Namely, the Company asserts that the underlying carrier networks “have access to a reasonable amount of back-up power to ensure functionality without an external power source, are able to reroute traffic around damaged facilities, and are capable of managing traffic spikes resulting from emergency situations.” *Id.* at 9. Staff agrees Torch satisfies this requirement.

### **Other ETC Designation Requirements**

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

1. Common Carrier Status. Torch is a common carrier as defined in U.S.C. Title 47. *Id.* at 7.
2. Provide Universal Services. Torch will provide all required services and functionalities as set forth in Section 54.101(a) of the FCC’s Rules (47 C.F.R. § 54.101(a)). *Id.* at 7-8.

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<sup>1</sup> See Lifeline and Link up Reform and Modernization et al, WC Dkt No. 11-41 et al. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

3. Advertising. Torch will advertise the availability and rates for its services described in the Application through media of general distribution as required by 47 U.S.C. § 214(e)(1)(B). *Id.* at 8.


4. A Commitment to Consumer Protection and Service. Torch commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards, including compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service as required by 47 C.F.R. § 54.202(a)(3). *Id.* at 8.

5. Description of the Local Usage Plan. Torch will offer a Lifeline service plan. Exhibit C. Furthermore, the Company will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408, including as such standards are updated going forward. *Id.* at 4-5.

#### **STAFF RECOMMENDATION**

Based on its review of the Company's Application, Staff believes that the Application demonstrates the Company's commitment to fulfill the obligations of a Lifeline-only ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its service territory. It has addressed the public interest questions that accompany an ETC Application. Torch will provide multiple pricing plans, which will increase consumer choice for low-income telephone service in Idaho. Currently, the Commission has granted seven wireless ETCs access to participate in the State's ITSAP program, so Staff supports allowing Torch to participate in the ITSAP program. Thus, Staff believes Torch's Application for designation as an ETC is in the public interest and should be approved for the entire state.

Respectfully submitted this 3<sup>rd</sup> day of May 2021.

  
Matt Hunter  
Deputy Attorney General

Technical Staff: Daniel Klein

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 3<sup>RD</sup> DAY OF MAY 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. TOR-T-21-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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