

VIA ECFS

December 20, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: WC Docket Nos. 09-197 and 11-42
True Wireless LLC's Compliance Plan and
Petition of True Wireless, LLC for Designation as an ETC for Low Income Support
Only**

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the undersigned counsel hereby provides notice that on December 18, 2012, the undersigned counsel for True Wireless, LLC ("True Wireless") sent an email to the following members of the Wireline Competition Bureau's Telecommunications Access Policy Division in connection with True Wireless's proposed compliance plan submitted in WC Docket No. 11-42 and True Wireless' pending ETC Petition submitted WC Docket No. 09-197: Trent Harkrader and Kimberly Scardino.

The email expressed True Wireless' serious concerns about the process being used to handle approval of compliance plans and 10-state ETC applications for non-facilities-based Lifeline ETCs.

First, True Wireless' compliance plan has been pending with TAPD since March 2012. True Wireless has fully answered all questions posed by staff to the company. Specifically, it has (1) filed multiple revisions of its plan, including updates to information that grew stale with the passage of time, and (2) attended multiple in-person meetings with company representatives. The last meeting was held on September 28, after which True Wireless filed more revisions to its plan responding to the questions posed by staff during the meeting. Until two days ago, True Wireless had not been given any further feedback or questions from staff, or any indication that its plan was anything other than complete and satisfactory, despite multiple inquiries since the September 28 meeting. I spoke then with Ms. Scardino on December 18 and learned for the first time that True Wireless will not be in the next batch of compliance plan approvals because staff has further questions. When I asked what the questions were, I was told that staff had questions

“about the company” and other items, but that staff does not have its list of questions ready to pose.

True Wireless stands ready to answer staff’s questions, but it is unacceptable that over two months have passed and it is only learning now that its approval will be held up, and yet was given no opportunity to even learn what staff’s questions are. There is a due process problem with this lack of timely communication with the company.

Moreover, there does not seem to be any consideration of the economic effect on True Wireless of the delay in approving its plan, which of course, delays approval of its 10-state application. In legal terms failure to take those effects into account amounts to arbitrary and capricious action. True Wireless is prevented from marketing its services in new markets without approval of its plan, and its shut out of the 10 states over which the Commission exercises jurisdiction under Section 214(e)(6). True Wireless, like other ETCs, has been struggling with subscriber loss and a more difficult marketing environment due to the new Lifeline rules. While True Wireless agrees that the reforms were needed, they have resulted in a need for ETCs to expand their service territories and True Wireless is no exception. Other ETCs approved before True Wireless will have a significant advantage as they enter the market many months before True Wireless.

Second, there does not seem to be any logic underlying which ETCs’ plans are being approved and which are not. There is no appreciable difference between True Wireless’ plan and others that have been approved; and if staff has a different view, True Wireless has not been told what the supposed deficiencies are. Given that the compliance plan approval process has been treated by TAPD as a licensing/certification regime, this lack of transparent decision making is problematic. In order for a non-facilities-based ETC to operate, it must first get a license (in the form of approval of a compliance plan) from TAPD. And of course, the ETC designation for the 10 “FCC states” is also a license. The law is clear that a licensing regime cannot be administered in an arbitrary and capricious or discriminatory manner. *See, e.g., Puerto Rico Sun Oil Co. v. EPA*, 8 F.3d 73, 78 (1st Cir. 1993). Not only is True Wireless unaware of any deficiencies in its plan, the Bureau has approved plans of other companies that appear to be far less qualified. For example, the plan of Birch Communications, Inc. (“Birch”) has been approved, yet Birch has not even received ETC designation in any state in which it operates, and has been receiving Lifeline discounts only as a result of reselling already-discounted ILEC Lifeline services (so-called “Lifeline resale”). The Commission is considering whether to eliminate Lifeline resale entirely, because it is concerned that these non-ETC resellers are “subject to less oversight to ensure compliance with the Commission’s Lifeline rules.” Yet Birch’s plan was approved in early August 2012. The other plans that have been approved are similarly for entities that are not ETCs or have much less experience than True Wireless. Approving those plans, while letting True Wireless’ plan remain pending, is both discriminatory and anticompetitive.

In this regard, note that the compliance plan process is an outgrowth of a Section 10 forbearance ruling. Section 10(b) required the Commission to consider the effect of forbearance on the promotion of competition, and the Commission did so, expressly relying on the pro-

competitive effect of allowing non-facilities-based ETCs to enter the market in reaching its decision to forbear from the facilities requirement in the first place. See Lifeline Reform Order at paragraph 378. It would be irrational, therefore, for TAPD to fail to take competitive considerations into account when processing compliance plan approvals. Specifically, delay in approval of a substantively valid compliance plan and application like True Wireless' is anticompetitive – it simply hands the market to existing providers and those whose plans and applications are randomly approved. If True Wireless were to gain just 10% of the markets where it has pending ETC applications (including the one pending before the Commission), it estimates that it would earn over \$6 million per month in additional revenues. Such delays, therefore, directly contradict the substantive logic and requirements of the Commission's ruling granting forbearance – substantive logic that found the extension of competition in this market to be in the public interest.

In light of the foregoing, True Wireless requests a meeting as soon as possible to determine what staff's outstanding questions are and to discuss expediting approval of its plan and Section 214(e)(6) application. True Wireless' CEO, Brian Cox, and Vice President, Danny Michael, can meet with TAPD in person this week or the first week in January.

Please contact me should you have any questions.

Respectfully submitted,



Danielle Frappier

Cc: Trent Harkrader (via e-mail)
Kimberly Scardino (via e-mail)
Jonathan Lechter (via e-mail)