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December 17, 2010

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: TFW-T-09-01

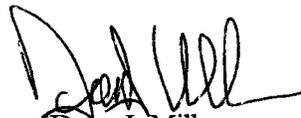
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven copies of Tracfone Wireless, Inc.'s Prehearing Brief.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

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Attorney for TracFone Wireless, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. TFW-T-09-01
OF TRACFONE WIRELESS, INC. FOR)	
DESIGNATION AS AN ELIGIBLE)	TRACFONE WIRELESS, INC.'s
TELECOMMUNICATIONS CARRIER.)	PREHEARING BRIEF
)	
)	
)	

TracFone Wireless, Inc. ("TracFone"), by its undersigned counsel, hereby files its prehearing brief in accordance with the Commission's Order issued November 24, 2010. This case concerns TracFone's Application, filed pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (47 U.S.C. § 214(e)(2)), for designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of offering Lifeline service, under

the trade name SafeLink Wireless[®], to qualified low-income Idaho households. TracFone will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high-cost areas.¹ As demonstrated in TracFone’s ETC Application and in this Prehearing Brief, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of Idaho.² Moreover, there are no issues that require the Commission to conduct a hearing on the ETC Application. Therefore, TracFone respectfully requests that the Commission continue its review of TracFone’s application and that it promptly grant its ETC Application so that TracFone may provide Lifeline service to low- income Idaho households at the earliest practicable time.

PROCEDURAL HISTORY

On October 29, 2009, TracFone filed an ETC Application with the Commission solely for the purpose of providing Lifeline service to eligible low-income consumers in Idaho. On February 5, 2010, the Commission issued Order No. 30996 denying the ETC Application without prejudice. On March 1, 2010, TracFone filed a First Amended ETC Application, which addressed the deficiencies that were noted by the Commission in Order No. 30996. In particular, this First Amended ETC Application provided TracFone’s contact information, agent of service information, certificate of authority from the Idaho Secretary of State, and a certificate of good standing from the Idaho Secretary of State. TracFone’s First Amended Application also updated

¹ Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone.

² See In the Matter of the Application of WWC Holding Co., Inc. DBA Cellular-One® Seeking Designation as an Eligible Telecommunications Carrier That May Receive Federal Universal Service Support, Order No. 29841, Case No. WST-T-05-1 (Idaho Pub. Utilities Comm’n: August 4, 2005) (“Idaho ETC Order”). ETC designation, certification and reporting requirements are contained in the Appendix to the Idaho ETC Order, referenced as “ETC Checklist” in this Prehearing Brief.

certain information that was in its initial ETC Application and provided more specific information about its Lifeline offering. Simultaneously with the filing of the First Amended ETC Application, TracFone submitted a Petition for Reconsideration of Order No. 30996 in an effort to expedite resolution of its request for designation as an ETC. TracFone later submitted a letter withdrawing its Petition for Reconsideration and expressing its support for a process that would facilitate a Staff review and recommendation regarding its Amended Application within 60 days.

During the course of this case, the Commission granted petitions to intervene filed by CTC Telecom, Inc. dba Snake River PCS (“CTC”) and Idaho Telecom Alliance (“ITA”) (collectively, “Intervenors”). Both Intervenors claimed to have a direct and substantial interest in this proceeding in that they do not believe that designation of TracFone as an ETC is in the public interest.³ However, neither Intervenor raised any specific basis as to how designation of TracFone as an ETC would not be in the public interest. Neither has either intervenor asserted that TracFone does not comply with any applicable federal or state requirement governing ETC designation or provision of Universal Service Fund-supported service.

TracFone also responded to a Production Request from the Commission Staff. On August 13, 2010, TracFone filed a Notice of Expanded Lifeline Offering, in which it notified the Commission of the Lifeline options available to qualifying Idaho households. On November 15, 2010, the parties and Commission Staff participated in a scheduling conference at the Commission’s office. Consistent with the parties’ agreement, the Commission issued an Order on November 24, 2010, in which the Commission required an identification of specific issues

³ See Motion to Intervene Out of Time and Petition to Intervene of CTC Telecom, INC. DBA Snake River PCS, May 14, 2010, at 2; Motion to Intervene and Petition to Intervene of Idaho Telecom Alliance, May 14, 2010, at 2.

through the filing of prehearing briefs. The November 24, 2010 Order contemplates that the Commission will issue a ruling outlining the relevant issues in this case. The Commission has not yet determined whether a hearing will be necessary for it to determine whether to grant TracFone's request to be designated as an ETC.

BACKGROUND

TracFone is a provider of Commercial Mobile Radio Services ("CMRS"). TracFone is incorporated under the laws of the State of Delaware and its corporate headquarters are located in Miami, Florida. With more than seventeen million customers throughout the United States, TracFone is the nation's fifth largest CMRS provider based on number of customers, and is the nation's leading provider of prepaid CMRS services.⁴ TracFone differs from other CMRS providers with which the Commission may be familiar in two important respects. First, TracFone does not own, operate, control or manage any telecommunications facilities anywhere. It holds no wireless licenses from the Federal Communications Commission ("FCC"), it operates no switches, cell towers or other transmission facilities. It provides service by reselling services that it procures from facilities-based underlying carriers. In short, TracFone is a wireless reseller (wireless resellers sometimes are referred to as "Mobile Virtual Network Operators" or "MVNOs").

Second, TracFone provides only prepaid services. TracFone offers no post-paid or billed services. TracFone customers do not sign service contracts and do not receive monthly invoices

⁴ Of those customers, approximately 3.2 million are SafeLink Wireless[®] Lifeline customers in the 35 states where TracFone has, to date, been designated as an ETC.

for service.⁵ There are no service term or volume commitments, no credit checks, no overage charges, no early termination fees, and no risk of disconnection for non-payment. Consumers purchase as much wireless airtime as they need when they need it. TracFone services can be purchased on a prepaid basis at numerous retail locations throughout Idaho (e.g., Kroger, Rent-A Center, Rite-Aid, Walmart, and others) or from TracFone directly through its website (www.tracfone.com).

Because TracFone's pay-as-you-go service is especially suitable for economically disadvantaged consumers, consumers with poor credit histories, transients, recent immigrants, senior citizens getting by on fixed incomes, younger persons, etc., TracFone has long believed that it could be an effective provider of Lifeline-supported services. In 2004, TracFone commenced its efforts to become a Lifeline provider by petitioning the Federal Communications Commission ("FCC") to exercise its statutory authority to forbear from application or enforcement of those provisions of the Communications Act and the FCC's rules which require ETCs to provide services supported by the federal Universal Service Fund at least in part using their own facilities. In September 2005, the FCC exercised its statutory authority to forbear from those provisions of the Communications Act and the FCC's rules which require ETCs to offer service, at least in part, using their own facilities.⁶ In 2008, the FCC designated TracFone as a Lifeline-only ETC in eleven jurisdictions for which the FCC, rather than state commissions,

⁵ While TracFone's non-Lifeline service is prepaid, its Lifeline service is a non-paid or free service.

⁶ Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005) ("FCC Forbearance Order"). The FCC's Forbearance Order is binding on all State commissions, including this Commission. Section 10(e) of the Communications Act (47 U.S.C. § 10(e)) states as follows: "A State commission may not continue to apply or enforce any provision of this Act that the [Federal Communications] Commission has determined to forbear from applying under subsection (a)."

retained authority to designate ETCs.⁷ Since that time, TracFone has been designated as an ETC to provide Lifeline service by no fewer than 23 state commissions.⁸

Having been designated as an ETC in 35 states, TracFone now is providing SafeLink Wireless[®] in about 31 states and plans to commence service shortly in the other states where it has been designated as an ETC. SafeLink Wireless[®] meets all of the requirements for Lifeline service. However, it is very different from “traditional” Lifeline services offered by incumbent local exchange carrier ETCs. SafeLink Wireless[®] is a free service. Qualified customers receive at no charge E911-compliant wireless handsets. No other ETC operating in Idaho provides free telephones -- wireline or wireless -- to its Lifeline customers.

Upon designation as an ETC by the Commission, TracFone’s SafeLink Wireless[®] Lifeline customers in Idaho, like TracFone’s Lifeline customers in all states, will have the option of choosing from three Lifeline plans:

- 1) 250 free minutes each month, which do not carry over to the next month if unused, with texting available at a rate of one text per minute of airtime; or
- 2) 125 free minutes each month, which carry over to the following month if unused, with texting available at a rate of one text per minute of airtime; or

⁷ In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, et al, 23 FCC Rcd 6206 (2008). The FCC has designated TracFone as an ETC in Alabama, Connecticut, Delaware, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia and the District of Columbia. Pursuant to Section 214(e)(6) of the Communications Act (47 U.S.C. § 214(e)(6)), the FCC is authorized to designate ETCs in states where state commissions do not have such authority or choose not to exercise such authority.

⁸ The following state commissions have designated TracFone as an ETC: Arkansas, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, Ohio, Puerto Rico, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia, and Wisconsin.

- 3) 68 free minutes each month, which carry over to the following month if unused, with texting available at a rate of 3 texts per each minute of airtime, plus International Long Distance calling to over 60 destinations.

Also included at no additional charge as part of TracFone's SafeLink Wireless[®] service are important service features, including voice mail, call waiting and caller ID. SafeLink Wireless[®] customers may purchase additional airtime at favorable rates. However, there is no requirement that they do so; nor are overage charges imposed on consumers to who exceed their allotment of free airtime. Most importantly, SafeLink Wireless[®] is achieving the goals of the federal universal service program. Those statutory goals include making available to consumers in all regions of the United States, including rural and low-income consumers, affordable telecommunications services.⁹ To date, TracFone has enrolled more than three million low-income customers in its Lifeline program and, by doing so, has materially increased participation in Lifeline and made the security, convenience and public safety benefits of wireless telecommunications available to millions of Americans who, for economic reasons, previously had been unable to participate in the "wireless revolution."

ARGUMENT

I. TracFone Meets All Applicable Federal and Idaho ETC Designation Criteria.

Section 214(e)(2) of the Communications Act¹⁰ provides that State commissions shall designate common carriers that meet the requirements of paragraph (1) as ETCs. Section 214(e)(1) contains two requirements for ETC designation: Section 214(e)(1)(A) requires ETCs to offer the services supported by Federal universal service support mechanisms using their own

⁹ 47 U.S.C. § 254(b)(3).

¹⁰ 47 U.S.C. § 214(e)(2).

facilities or a combination of their own facilities and the resale of other carriers' services.¹¹ Section 214(e)(1)(B) requires ETCs to advertise the availability of such services and the charges therefor using media of general distribution.¹²

As a result of the FCC Forbearance Order, the facilities-based service requirement in Section 214(e)(1)(A) no longer is applicable to TracFone. As described in TracFone's First Amended ETC Application, TracFone will aggressively advertise the availability of its Lifeline service and the associated charges using media of general distribution, in accordance with the requirements of Section 214(e)(1)(A) of the Communications Act, Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)), and ETC Checklist, ¶ A.3.¹³ TracFone has successfully marketed its SafeLink Wireless[®] service in over 30 states and will use all marketing and outreach efforts necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone's wireless Lifeline offering in Idaho.

In addition to the ETC designation requirements codified at Section 214(e)(1)(A) and (B), Section 54.101(a) of the FCC's rules¹⁴ and ETC Checklist, ¶ A.2 require ETCs to provide the following service functionalities as a condition of receiving USF support: 1) voice grade access to the public switched network; 2) local usage; 3) dual-tone multifrequency signaling or its functional equivalent; 4) single-party service or its functional equivalent; 5) access to emergency services; 6) access to operator services; 7) access to interexchange services; 8) access to directory assistance; and 9) toll-limitation for qualifying low-income consumers. In its ETC

¹¹ 47 U.S.C. § 214(e)(1)(A).

¹² 47 U.S.C. § 214(e)(1)(B).

¹³ See First Amended ETC Application, at 16.

¹⁴ 47 C.F.R. § 54.101(a).

Application, TracFone demonstrated that it will provide each of these functionalities.¹⁵ Neither Staff nor the Intervenors have raised any concern regarding TracFone's ability to provide the service functionalities required by federal or Idaho law.

Section 54.202 of the FCC's rules (47 C.F.R. § 54.202) and the ETC Checklist, ¶ B also contain additional requirements. As demonstrated in the First Amended ETC Application, TracFone complies with all applicable requirements. TracFone has the ability to provide Lifeline service on a timely basis to all requesting customers within TracFone's service area as required by FCC Rule 54.202(a) and ETC Checklist, ¶ B.1.a. TracFone currently provides service in Idaho by reselling service which it obtains from underlying facilities-based providers. Therefore, TracFone will be able to commence offering its Lifeline service to all locations served by any of its underlying carriers very soon after receiving approval from the Idaho Public Utilities Commission since it already serves those areas.¹⁶ TracFone's service area is limited by the network coverage of its underlying carriers. Thus, there would not be a situation in which a potential customer is within TracFone's service area but outside its existing network coverage. As such, the requirement in FCC rule 54.202(b) and ETC Checklist, ¶ B.1.b. that an ETC provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage is not applicable to TracFone. Similarly, the submission of a network improvement plan required by FCC rule 54.202(a)(1)(ii) is not applicable to TracFone because it does not own, operate, or control any networks.

TracFone has also explained that, in accordance with Section 54.202(a)(2) and ETC Checklist, ¶ B.2., it has the ability to remain functional in emergency situations. TracFone

¹⁵ See First Amended ETC Application, at 10-15.

¹⁶ Id. at 15.

provides service in Idaho by reselling services of underlying wireless network carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless. Therefore, TracFone does not have control over those network operators' back-up power and traffic management. However, those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards. Throughout its ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry.¹⁷

TracFone's First Amended ETC Application supports TracFone's commitment to consumer protection and service as required by Section 54.202(a)(3) and ETC Checklist, ¶ B.3. As stated in the First Amended ETC Application, TracFone complies with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.¹⁸ Furthermore, in accordance with Section 54.202(a)(4) and ETC Checklist, ¶ B.4., TracFone provided a description of its local usage plan in its Notice of Expanded Lifeline Offering, filed on August 13, 2010. Section 54.202(a)(4) requires an ETC applicant to demonstrate that its local usage plan is comparable to that offered by the incumbent local exchange carrier ("ILEC") in the service area for which the ETC applicant seeks designation. However, this Commission has modified that requirement so that an ETC applicant is only required to submit the local usage plan of the ILEC. Attached as Exhibit 1 is a copy of Qwest's local usage plans as stated on Qwest's website at www.qwest.com. TracFone understands that Idaho residents who qualify for Lifeline receive a \$13.50 credit on their telephone bills, but are responsible for any remaining amount due. Unlike the traditional Lifeline plans currently available to Idaho consumers, TracFone's Lifeline customers will receive a specified amount of free airtime that can be used to

¹⁷ Id., at 13-14.

¹⁸ Id., at 15-16.

initiate and receive wireless calling -- local and long distance, intrastate and interstate, and roaming -- with no charge to the customers. Based on the foregoing, TracFone's First Amended ETC Application conforms with the requirements of Section 54.202 and ETC Checklist, ¶ B.

II. Designation of TracFone as an ETC in the State of Idaho Would Serve the Public Interest.

For those ETC applicants seeking designation in an area already served by an incumbent ETC, Section 214(e)(2) of the Communications Act (47 U.S.C. § 214(e)(2)) provides that “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier.” Consistent with Section 214(e)(2), the FCC has stated: “We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”¹⁹

In determining when an ETC application is consistent with the public interest, this Commission adopted the public interest standard established by the FCC. As stated in the Idaho ETC Order:

The new FCC Rules also include a public interest standard that applies to all competitive ETC applicants, regardless of whether they seek designation in areas served by a rural carrier. 47 C.F.R. § 54.202(c). This public interest standard requires a cost-benefit analysis considering: (1) the benefits of increased consumer choice; (2) the impact of the designation on the universal service fund; and (3) the unique advantages and disadvantages of the competitor service offering.²⁰

¹⁹ Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005).

²⁰ See Idaho ETC Order, at 5.

As detailed in TracFone's First Amended ETC Application, this Commission's designation of TracFone as ETC serves the public interest. First, designation of TracFone as an ETC will increase the competitive choices for low-income Idaho households. TracFone demonstrated in its First Amended Application that while there are several wireless ETCs in Idaho, only one of them, Syringa Wireless, actually provides Lifeline service to low-income Idaho households.²¹ Moreover, that ETC – the only wireless ETC that has any Lifeline customers -- only serves approximately 1,600 Lifeline customers.²² Furthermore, according to FCC data, Idaho's statewide Lifeline participation rate is only 22.1 percent of eligible households.²³ In other words, nearly eighty percent of low income Idaho households which are eligible to participate in Lifeline are not doing so. TracFone's experience operating as a designated ETC in many other states indicates that its SafeLink Wireless[®] Lifeline service is an attractive alternative to many low-income consumers. Thus, this Commission's designation of TracFone as an ETC will give low-income Idaho consumers an alternative competitive choice for wireless Lifeline service.

Second, designation of TracFone as an ETC for the purpose of receiving support only from the Lifeline portion of the federal Universal Service Fund ("USF") will have a negligible impact on the USF. In fact, the FCC has considered the impact on the USF when determining

²¹ First Amended Application, at 22.

²² Syringa Wireless and ClearTalk received a total of \$193,116 in Lifeline support in 2008. Assuming that the amount was spread evenly throughout the year and that the maximum Lifeline support amount of \$10.00 per customer per month was received, the companies had 1,609 customers (193,116 divided by 12, and then taking that quotient and dividing it by 10 equals 1,609).

²³ See *In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-87 (April 29, 2004) Table 1.A. The Universal Administrative Company estimates that in 2008 the participation rate for eligible households in Idaho was between twenty and fifty percent (20-50%). See 2008 Participation Rates by State, available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

whether to grant TracFone's petitions for designation as an ETC.²⁴ As noted in the FCC Forbearance Order, "[a]ny increase in the size of the fund [associated with granting TracFone's ETC application] would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers."²⁵

Third, TracFone's Lifeline service offers unique advantages as compared to other Lifeline service options. As described at page 6 of this Prehearing Brief, TracFone will offer three Lifeline service options to qualified consumers. Under each of those options, a Lifeline consumer will receive a specified number of free airtime minutes and an E911-compliant handset free of charge. TracFone offers consumers an opportunity to acquire free wireless service using state-of-the-art handsets and such features as caller ID, voice mail, call waiting, text messaging, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, and no early termination fees, the service is available to all Lifeline-eligible consumers. With all TracFone service, including its SafeLink Wireless[®] Lifeline service, usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis.²⁶

TracFone's Lifeline service is unique in that it will be free to qualified subscribers and will include a free E911-compliant wireless handset. The Lifeline programs offered by other

²⁴ In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206, ¶ 16 n.47 (2008) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia)..

²⁵ FCC Forbearance Order, ¶ 17; see First Amended ETC Application, at 25-27.

²⁶ First Amended ETC Application, at 23.

ETCs in Idaho provide participating consumers with discounts below carriers' standard rates. However, enrolled Lifeline customers still must pay the ETC's discounted charges, plus any additional charges incurred (including, for example, additional charges for vertical features and for toll calls) as well as purchase telephone equipment necessary to use those discounted services. In addition, unlike some ETCs in Idaho, TracFone has no activation, connection or other service commencement charges. Given Idaho's low Lifeline participation rate, the existence of only one wireless ETC that has any Lifeline customers, and the unique benefits of TracFone's SafeLink Wireless® Lifeline service, the public interest would be served by the Commission's designation of TracFone as an ETC for the purpose of providing Lifeline service.²⁷

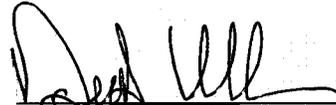
In addition to meeting the public interest factors, TracFone, if designated as an ETC, will also serve the public interest because TracFone will participate in the Lifeline program as required by the FCC's Rules and will otherwise comply with all FCC and Commission Rules governing universal service programs, which are designed to ensure that the public interest standards of the Communications Act are achieved. As a national leader in wireless services, TracFone has done much to advance the availability of wireless service for those portions of the population for whom wireless service is otherwise unavailable or, if available, is too costly and requires term duration and volume commitments which are beyond the means of many consumers.

²⁷ Id. at 25.

CONCLUSION

Based on TracFone's First Amended ETC Application, as amended by the Notice of Expanded Lifeline Offering, and the foregoing, TracFone has demonstrated that it meets all applicable federal and Idaho requirements for designation as an ETC and that designation of TracFone as an ETC will serve the public interest. Accordingly, there is no need for a hearing. TracFone requests that the Idaho Public Utilities Commission promptly grant its application for designation as an ETC so that it may commence provision of Lifeline service to qualified low-income Idaho households in the very near future.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that I have on the 17th day of December 2010, served the foregoing TRACFONE WIRELESS, INC.'S PREHEARING BRIEF, in Case No. TFW-T-09-01, via e-mail to the following:

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