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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)
TELECOMMUNICATIONS CARRIER.)
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

REBUTTAL TESTIMONY OF JOSE FUENTES

- 1 Q. WHAT IS YOUR NAME AND OCCUPATION?
- 2 A. My name is Jose Fuentes. I have been Director of Government Relations for
3 TracFone Wireless, Inc. ("TracFone") for the past two years. I am responsible for
4 facilitating TracFone's designation as an Eligible Telecommunications Carrier
5 ("ETC") by state utility commissions and for implementing SafeLink Wireless®
6 Lifeline service throughout the United States. I am also the corporate
7 spokesperson for the SafeLink Wireless® brand.
- 8 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?
- 9 A. The rebuttal testimony I am providing today responds to the testimony and
10 exhibits filed by Grace Seaman, a Utilities Analyst employed by the Commission,
11 and by Daniel L. Trampush, a consultant retained by Idaho Telecom Alliance
12 ("ITA") and CTC Telecom, Inc. ("CTC") filed with the Commission on March
13 18, 2011.
- 14 Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS
15 COMMISSION'S PROCEEDING CONCERNING TRACFONE'S ETC
16 APPLICATION?
- 17 A. Yes. On February 25, 2011, I provided direct written testimony and exhibits to
18 the Commission. My direct testimony was filed in support of TracFone's First
19 Amended ETC Application, filed with the Commission on March 1, 2010.
- 20 Q. HAVE YOU REVIEWED THE TESTIMONY OF MS. SEAMAN?
- 21 A. Yes.
- 22 Q. WHAT IS YOUR UNDERSTANDING OF MS. SEAMAN'S TESTIMONY?

1 A. Ms. Seaman testifies that Commission Staff believes that TracFone's ETC
2 Application does not meet Idaho's ETC requirements, and, therefore, the
3 Commission should not designate TracFone as an ETC.

4 Q. WHAT REASONS DOES MS. SEAMAN PROVIDE FOR COMMISSION
5 STAFF'S CONCLUSION THAT TRACFONE DOES NOT MEET IDAHO'S
6 ETC REQUIREMENTS?

7 A. Ms. Seaman asserts that TracFone's ETC Application should be denied for three
8 reasons: (1) non-payment to the Idaho Telecommunications Assistance Program
9 ("ITSAP"); (2) non-payment of the 911 fee to the Idaho Emergency Services fund
10 ("911 Fund"); and (3) incomplete evidence to support that all rural wire centers
11 are fully served.

12 Q. DID MS. SEAMAN INDICATE THAT THERE ARE ANY OTHER REASONS
13 FOR THE COMMISSION TO DENY TRACFONE'S ETC APPLICATION?

14 A. No.

15 Q. DO THE ISSUES RAISED BY MS. SEAMAN WARRANT DENIAL OF
16 TRACFONE'S ETC APPLICATION?

17 A. No. While TracFone appreciates Staff's concerns, issues regarding whether
18 TracFone is required to pay certain state fees can be resolved by other means as I
19 will describe in this rebuttal testimony. As it has done in other states, TracFone
20 will remit all fees upon final determination that such fees are applicable to it
21 pursuant to state law. In addition, Ms. Seaman's concerns about rural wire center
22 coverage is not relevant to whether TracFone should be designated as an ETC in
23 its service area in Idaho.

1 Q. HOW DOES TRACFONE PROPOSE TO ADDRESS STATE FEE ISSUES?

2 A. Based on Ms. Seaman's testimony, it appears that Commission Staff does not
3 agree with TracFone's conclusion based on its own examination of the relevant
4 state law provisions that it is not obligated to contribute to the ITSAP fund nor to
5 the 911 Fund. Idaho is not the first state where attempts have been made to
6 subject TracFone to state fee requirements which TracFone concluded are not
7 applicable to it, or to delay approval of TracFone's ETC applications based on
8 disputes regarding such fees. Neither is it the only state where legitimate, good
9 faith, disagreements regarding applicability of certain fees and taxes have been
10 shown to exist between TracFone and others, including state commission staffs.
11 In such states, TracFone has consistently worked cooperatively with legislators,
12 regulatory departments, and other stakeholders to resolve such disputes and has
13 been able to reach agreements for mechanisms which would allow TracFone to be
14 designated as an ETC and to deliver its unique SafeLink Wireless® Lifeline
15 service to low-income households while TracFone and other stakeholders sought
16 resolution of the issues regarding fee applicability. As discussed below, TracFone
17 is committed to doing the same in Idaho.

18 If the Commission deems it necessary to determine whether TracFone and
19 other prepaid wireless providers are legally obligated to contribute to the ITSAP
20 and 911 funds, it should open a separate proceeding to address that issue.
21 TracFone faced a similar issue before the Maine Public Utilities Commission
22 ("Maine PUC"). In the Maine PUC proceeding regarding TracFone's ETC
23 petition, the Maine PUC Staff raised the issue of whether TracFone was obligated

1 to make contributions to certain Maine funds, including the Maine USF and
2 Maine Telecommunications Education Access Fund (“MTEAF”). TracFone
3 asserted that it was not obligated to contribute to those funds because under
4 applicable laws, contributions were based on billed intrastate revenues, and
5 TracFone, as a provider of prepaid wireless services, does not bill its customers,
6 and therefore has no billed intrastate revenues within the ambit of the applicable
7 statutes. In the order designating TracFone as an ETC, the Maine PUC noted that
8 its designation of TracFone as an ETC did not “absolve TracFone of any
9 obligations it may have to abide by the Commission’s rules regarding
10 contributions to MUSF, MTEAF and payment of other regulatory fees.” The
11 Maine PUC decided to “open an investigation in a separate docket into whether
12 TracFone is required to contribute to MUSF and MTEAF, and whether TracFone
13 is in compliance with its obligations to pay other applicable regulatory fees.” The
14 Maine PUC’s Order designating TracFone as an ETC and the Maine PUC Notice
15 of Investigation are provided as Exhibit No. 7 and Exhibit No. 8. The Maine PUC
16 subsequently closed the investigation and opened a rulemaking proceeding to
17 address the applicability of the subject fees to all prepaid providers, including
18 TracFone. The Maine PUC’s Notice of Rulemaking is provided as Exhibit No. 9.
19 Like the Maine PUC, this Commission could open a separate docket to address
20 any statutory fee issues within its jurisdiction, rather than resolve those issues in
21 this ETC proceeding. Because the Maine PUC wisely chose to resolve the fee
22 dispute issues in a proceeding separate from the ETC designation process, today
23 many low-income Maine households are able to enroll in SafeLink Wireless® and

1 receive free mobile telecommunications service, while the Maine PUC and
2 affected stakeholders address the fee requirements.

3 Similarly, when TracFone sought ETC designation in Arizona, issues were
4 raised regarding the applicability of certain Arizona fees to TracFone's prepaid
5 wireless services. On March 1, 2011, the Arizona Corporation Commission
6 designated TracFone as an ETC enabling it to provide Lifeline service to that
7 state's low-income households. However, that designation was subject to a
8 condition that TracFone send letters to each of the State of Arizona departments
9 with jurisdictional authority to enforce the fee requirements at issue. Specifically,
10 TracFone was directed to solicit opinions from those departments as to whether
11 the fees in question are applicable, and to submit copies of those letters and any
12 responses received to the Arizona Corporation Commission as a compliance item
13 in the TracFone ETC docket. A copy of the Arizona order is provided as Exhibit
14 No. 10.

15 The Maine and Arizona solutions serve as examples of ways in which the
16 Commission may address questions about the applicability of ITSAP and 911 fees
17 to TracFone without depriving Idaho's neediest households of an invaluable
18 wireless Lifeline service offering.

19 Q. ARE THE ITSAP FEE AND 911 FEE WITHIN THIS COMMISSION'S
20 JURISDICTION?

21 A. TracFone understands that the ITSAP fee is within the Commission's jurisdiction.
22 However, the 911 fee is subject to enforcement by the Idaho Emergency
23 Communications Commission, which is part of the Department of Administration.

1 Q. IF THE COMMISSION DOES NOT HAVE JURISDICTION TO ENFORCE
2 THE 911 FEE, HOW SHOULD THAT ISSUE BE RESOLVED?

3 A. As noted above, TracFone recently faced a similar issue in Arizona. TracFone, as
4 a requirement of the Order designating it as an ETC, shall submit letters to the
5 state agencies with jurisdiction to enforce the disputed fees (i.e., Arizona
6 Department of Administration, the Arizona Commission on the Deaf and Hard of
7 Hearing, and the Arizona Corporation Commission), seeking a determination as to
8 whether the fees, over which the agencies have jurisdiction, are applicable to
9 TracFone's services as an ETC in Arizona. This Commission, similarly could
10 require TracFone to submit a letter to the Idaho Emergency Communications
11 Commission seeking a determination as to whether TracFone is obligated to
12 contribute to the 911 fund under current law.

13 Q. IF THIS COMMISSION OR THE EMERGENCY COMMUNICATIONS
14 COMMISSION DETERMINED THAT TRACFONE IS SUBJECT TO THE
15 ITSAP AND 911 FEES, WOULD TRACFONE COMMENCE PAYMENT OF
16 THOSE FEES?

17 A. TracFone would commence payment of the ITSAP and 911 fees upon receiving a
18 final determination that it is obligated to remit those fees.

19 Q. WHAT IS MS. SEAMAN'S CONCERN ABOUT TRACFONE PROVIDING
20 LIFELINE SERVICE IN ALL WIRE CENTERS?

21 A. In response to a production request from ITA and CTC, TracFone provided a list
22 of exchanges and ILEC rate centers in which it provides service. Ms. Seaman is

1 concerned that TracFone's service area may not include entire rural wire centers,
2 and as such may raise the issue of creamskimming.

3 Q. WHAT IS TRACFONE'S RESPONSE TO THIS CONCERN?

4 A. First, I want to point out that creamskimming is not a relevant issue when a
5 wireless service provider seeks ETC designation solely for purposes of providing
6 Lifeline service. In 2008, when the FCC designated TracFone as an ETC in 11
7 States, it stated: "In addition, we need not perform a creamskimming analysis
8 because TracFone is seeking to be eligible for Lifeline support only." A copy of
9 the FCC's Order is provided as Exhibit No. 11. Furthermore, as I noted in my
10 direct testimony, the FCC developed the "creamskimming" analysis requirement
11 when it began to designate wireless ETCs who sought support from the high-cost
12 portion of the Universal Service Fund to subsidize the costs of building alternative
13 networks which would compete with rural LECs. The FCC's concern was that
14 such facilities-based wireless ETCs would get high-cost support to build out
15 competing networks with those of the rural LECs but would actually deploy
16 competing networks only in the most populous areas of the rural ILECs service
17 territories -- effectively using Universal Service Fund support to engage in
18 "creamskimming" in the ILECs' territories since the ILECs had to build out
19 throughout their entire service areas, including the sparsely-populated portions of
20 their service areas. Since TracFone provides service only where its underlying
21 vendors have wireless coverage, it will not, and cannot, engage in creamskimming
22 as that term has been used by the FCC. It is for that reason that the FCC

1 concluded in 2008 that a creamskimming analysis is not necessary when
2 considering Lifeline-only ETC designation requests.

3 Second, requiring TracFone, or any wireless carrier, to define its service
4 area in terms of ILEC wire centers is inappropriate. Wire centers are wireline
5 service area concepts; they have no relevance to wireless services. While
6 TracFone can clearly define its service area in terms of Zip Codes and can provide
7 service area maps, it does not have access to information that would allow it to
8 identify whether it is serving a portion of an ILEC wire center.

9 Third, while other state commissions considering TracFone's ETC
10 applications have required TracFone to describe its coverage area in terms of wire
11 centers or exchanges, no state commission has conducted a creamskimming
12 analysis or required TracFone to perform such an analysis. Indeed, of the 36
13 states in which TracFone has been designated as an ETC, only the Kansas
14 Corporation Commission analyzed whether TracFone's coverage area included
15 partial wire centers and then designated TracFone only in those wire centers that
16 were fully included within TracFone's coverage area, based on Kansas
17 Corporation Commission Staff's analysis of the coverage area information
18 TracFone provided and other data available to the Staff. All other state
19 commissions and the FCC that have designated TracFone as an ETC have defined
20 TracFone's service area as all areas within the coverage areas of TracFone's
21 underlying carriers or by using other coverage area information provided by
22 TracFone. For the reasons I just discussed, a creamskimming analysis is
23 unnecessary and inappropriate.

1 Q. WHAT IS TRACPHONE'S RESPONSE TO MS. SEAMAN'S TESTIMONY
2 THAT DUPLICATE CLAIMS ARE AN ISSUE?

3 A. Duplicate claims for Lifeline support occur when an individual receives Lifeline-
4 supported service from more than one ETC. This is an issue throughout the
5 industry and is not limited to TracFone's service. At this time, ETCs only have
6 access to their own customer lists; ETCs have no access to other ETCs' customer
7 lists. Only a few states maintain and make available to ETCs databases of
8 enrolled Lifeline customers which can be used to determine whether an applicant
9 for Lifeline service is receiving Lifeline-supported service from another ETC.
10 Idaho is not one of those states. Moreover, under the FCC's rules and the rules of
11 most states, ETCs are required to obtain from applicants for Lifeline service self-
12 certifications under penalty of perjury that the applicant is not receiving Lifeline
13 benefits from another ETC. All ETCs must rely on those self-certifications in the
14 absence of accessible databases to confirm the accuracy of the customers' self-
15 certifications. Therefore, neither TracFone nor any other ETC -- wireline or
16 wireless -- has access to information to enable it to determine whether a Lifeline
17 applicant is already receiving Lifeline-supported service from another ETC. The
18 FCC's current rules do not provide any means for minimizing duplicate claims.
19 However, the FCC has recently commenced a rulemaking proceeding in which it
20 is considering changes to the FCC's rules governing Lifeline to prevent the waste
21 of funds caused by duplicate claims. One option being considered by the FCC is
22 the development of a database of all Lifeline customers that would enable ETCs
23 to check whether a Lifeline applicant is already receiving Lifeline service from

1 another ETC. See In the Matter of Lifeline and Link Up Reform and
2 Modernization, et al., Notice of Proposed Rulemaking, WC Docket No. 11-42,
3 (released March 4, 2011). The FCC's Lifeline proceeding has been commenced
4 in response to recommendations received from the Federal-State Joint Board on
5 Universal Service in November 2010. The Federal-State Joint Board received
6 comments from many interested stakeholders, including state commissions, and
7 consumer groups, as well as many telecommunications companies and their
8 industry associations. TracFone was among the entities submitting comments to
9 that Joint Board. In FCC filings with the Joint Board, TracFone advocated for
10 establishment of such as database as the most efficient and effective means to
11 minimize duplicate enrollment in Lifeline programs. TracFone continues to
12 believe that a national database is the best way to prevent duplicate claims. The
13 FCC's rulemaking notice articulates a clear intent by that agency to promulgate
14 reforms to the Lifeline program to prevent waste, fraud, and abuse of Universal
15 Service Fund resources and to mandate that such reforms become minimum
16 requirements for states. Among those FCC proposals is the establishment of a
17 national database and suggested by the Joint Board and as supported by TracFone
18 and others. TracFone expects that the concerns about improper duplicate
19 enrollment described in Ms. Seaman's testimony will be addressed by the FCC.
20 Accordingly, TracFone encourages the Commission and other affected
21 stakeholders in Idaho to participate in that proceeding and share their views and
22 suggestions with the FCC, rather than deny the benefits of TracFone's Lifeline
23 service to low-income Idaho households while the FCC addresses those issues.

1 Q. WHAT DOES TRACFONE DO TO PREVENT DUPLICATE CLAIMS?

2 A. TracFone, like all other ETCs, does not have access to information that would
3 allow it to determine whether a Lifeline applicant or customer is receiving
4 Lifeline-supported service from another ETC. Therefore, at this time, there is no
5 way for TracFone or any other ETC to ensure that an applicant or customer is not
6 receiving Lifeline benefits from another service provider. However, in
7 accordance with the FCC's 2005 Forbearance Order (the FCC order which
8 allowed TracFone to be designated as an ETC without providing service using its
9 own facilities), TracFone requires every Lifeline customer to verify on an annual
10 basis that the customer remains head of household and only receives Lifeline-
11 Supported services from TracFone. That additional verification requirement was
12 imposed by the FCC on ETCs like TracFone who are subject to forbearance. It is
13 not imposed on other ETCs. No Idaho ETC is required to verify annually that
14 every Lifeline customer receives Lifeline-supported service only from that ETC.
15 Thus, if designated as an ETC by the Commission, TracFone would be subject to
16 a more rigorous condition to prevent duplicate enrollments than any other Idaho
17 ETC.

18 As Ms. Seaman notes in her testimony, TracFone petitioned the FCC to
19 modify this requirement to allow it to request the required self-certification from a
20 statistically-valid sample of its Lifeline customers, rather than from all of its
21 Lifeline customers. However, the FCC's Wireline Competition Bureau denied
22 TracFone's petition. The Wireline Competition Bureau's stated reason for
23 denying TracFone's petition was that the fact that TracFone's Lifeline service is

1 provided for free increased may increase the risk of duplicate claims. A copy of
2 the Denial Order is provided as Exhibit No. 12.

3 Q. HAVE YOU REVIEWED THE TESTIMONY OF MR. TRAMPUSH?

4 A. Yes.

5 Q. WHAT IS YOUR UNDERSTANDING OF MR. TRAMPUSH'S TESTIMONY?

6 A. Mr. Trampush testifies that designation of TracFone as an ETC in areas served by
7 rural companies in Idaho is not in the public interest.

8 Q. WHAT REASON DOES MR. TRAMPUSH PROVIDE FOR HIS
9 CONCLUSION THAT TRACFONE'S DESIGNATION AS AN ETC IN AREAS
10 SERVED BY RURAL TELEPHONE COMPANIES IN IDAHO IS NOT IN THE
11 PUBLIC INTEREST?

12 A. Mr. Trampush cites several reasons for his conclusion, including his belief that
13 the public interest benefits claimed by TracFone are not valid. Mr. Trampush also
14 asserts that TracFone's Lifeline offering does not provide any unique advantages
15 over the current Lifeline plans available in Idaho.

16 Q. DO YOU AGREE WITH MR. TRAMPUSH'S CONCLUSION?

17 A. No. TracFone's SafeLink Wireless[®] Lifeline service is a unique offering. It
18 differs significantly from the Lifeline services of any other Idaho ETC.
19 TracFone's Lifeline service will provide important and invaluable public interest
20 benefits. Many of these benefits were described in TracFone's Amended ETC
21 Application and in my direct testimony and will not be repeated here. Suffice it to
22 say that TracFone was the first ETC in the nation to provide Lifeline customers
23 with free wireless handsets (paid for by TracFone with no support from the USF),

1 free quantities of wireless all-distance airtime, and a full complement of important
2 vertical features, such as call waiting, caller ID, and voice mail -- features which
3 other Idaho ETCs, including several of those who sponsored Mr. Trampush's
4 testimony, offer only at additional charges -- charges which are not subject to
5 Lifeline discounts. The perceived value of TracFone's Lifeline service is best
6 demonstrated by the fact that more than 3 million low-income households are
7 currently enrolled in the program and enjoying its benefits in the more than 30
8 states where the service currently is available.

9 Q. IN TRACFONE'S ETC APPLICATION, TRACFONE ASSERTS THAT ITS
10 LIFELINE SERVICE WILL PROVIDE LARGER CALLING AREAS IN
11 IDAHO. PLEASE EXPLAIN HOW IT EXPANDS LOCAL CALLING AREAS
12 FOR IDAHO RESIDENTS?

13 A. TracFone, through its relationships with AT&T Mobility, T-Mobile, and Verizon
14 Wireless, offers a coverage area that exceeds the coverage area of each of the four
15 wireless ETCs mentioned in Mr. Trampush's testimony, as well as the coverage
16 areas of each of the ILECs who are members of ITA. A TracFone customer in
17 Idaho can use airtime minutes to place and receive calls from all areas where its
18 underlying carriers have coverage throughout the United States, without incurring
19 any roaming charges. While Mr. Trampush asserts without any factual support
20 that TracFone will not provide larger local calling areas, that is obviously
21 incorrect. As generally understood, a local calling area is the geographic area
22 within which a telephone service customer may initiate calls without being
23 subject to additional charges. For wireline ETCs, the local calling area is the

1 geographic covered by some -- or a portion of -- that carrier's exchange facilities.
2 Calls within that area are not subject to additional charges; calls beyond that
3 specified area are subject to additional charges. Thus, a call traversing a distance
4 of only a few miles will often be subject to toll charges simply because such calls
5 are beyond the ETC's limited local calling area. With TracFone's service, callers
6 may call anywhere within the United States and not incur additional charges.
7 Even roaming calls are not subject to additional charges. In short, unlike Idaho's
8 other ETCs, and contrary to Mr. Trampush's testimony, the entire United States
9 (including, of course, the entire State of Idaho) will be the local calling area for
10 TracFone's Lifeline customers. Even Idaho's currently-designated wireless ETCs
11 have a more limited local calling area. For example, Silver Star Wireless charges
12 a higher rate for roaming (i.e., calls initiated outside that company's coverage
13 area). As stated on its website: "Roaming minutes will be charged at 50 cents per
14 minute. Roaming charges will apply to all calls originating outside of the Silver
15 Star Wireless network (see map). Nationwide calling is on CDMA network with
16 Silver Star Wireless preferred CDMA roaming partners." Silver Star, by charging
17 a 50 cent roaming rate for calls outside of its network, limits its customers' local
18 calling area. See Exhibit No. 13. CTC Telecom, itself an intervenor in this
19 proceeding and a sponsor of Mr. Trampush's testimony, also has "home" airtime
20 rates and "roam" airtime rates. See Exhibit No. 14. Syringa Wireless requires
21 customers to use at least 50 percent of their monthly airtime minutes on the
22 Syringa Wireless network. See Exhibit No. 15. TracFone offers its customers,
23 including its Lifeline customers, national calling. Thus, TracFone offers a

1 significantly more expansive "local calling area" than that offered by the current
2 wireless ETCs in Idaho -- all of whom subject their customers, including their
3 Lifeline customers, to costly additional charges for calls initiated outside their
4 limited local calling areas.

5 Q. DO THE CURRENT IDAHO WIRELESS ETCs OFFER PLANS THAT ARE
6 COMPARABLE TO THE LIFELINE PLAN PROPOSED BY TRACFONE?

7 A. No. Mr. Trampush claims that TracFone's Lifeline service is not unique because
8 wireless ETCs in Idaho offer pay-as-you-go plans with unlimited local calling.
9 He states that Silver Star Wireless offers weekly and monthly pay-as-you-go
10 plans. Silver Star Wireless's least expensive monthly plan provides for "up to
11 250 minutes" for \$25. See Exhibit No. 13. Under this plan, local minutes are
12 charged at a rate of \$0.25 per minute, while calls for which roaming is necessary
13 are charged at a rate of \$0.50 per minute. Assuming that a Lifeline discount of
14 \$13.50 is applied, Silver Star Wireless's Lifeline customers would pay \$11.50 per
15 month ($\$25.00 - \$23.50 = \$11.50$). As compared with TracFone's SafeLink
16 Wireless[®] most popular Lifeline option which provides 250 minutes at no charge,
17 a Silver Star Lifeline customer on the plan described above would pay \$11.50 for
18 the additional 50 minutes above the free minutes that the customer could receive
19 at no charge under TracFone's plan. Those additional 50 minutes would require
20 the Lifeline customer to pay \$0.23 per minute -- assuming that all of those
21 minutes were local minutes within Silver Star's local calling area, and not subject
22 to roaming charges. Similarly, although Syringa Wireless offers unlimited local
23 calling for \$30.00 (which would cost \$16.50 for a Lifeline customer), at least half

1 of the calls must be on the Syringa Wireless Network or service will be
2 terminated. See Exhibit No. 15. Mr. Trampush refers to a \$24.10 monthly plan
3 for CTC Wireless. However, the least expensive wireless plan I have found for
4 CTC Wireless is 300 minutes per month for \$35.50 (which would cost \$22.00 for
5 a Lifeline customer after application of the \$13.50 discount funded by the
6 Universal Service Fund). See Exhibit No. 14. Comparing that Lifeline plan with
7 that of TracFone, a CTC Wireless Lifeline customer would have to pay \$22.00
8 per month to acquire 50 minutes more than TracFone would provide that
9 customer at no charge. The per minute price of those 50 additional minutes
10 (assuming that all those calls were local calls) would be \$.044 -- a per minute
11 price substantially higher than the \$0.10 per minute price which TracFone will
12 charge for additional minutes beyond the 250 free minutes. I simply do not
13 understand the basis for Mr. Trampush's conclusion that the public interest would
14 be served by charging low-income consumers \$0.44 per minute for minutes which
15 TracFone would provide at no charge. I understand how that arrangement would
16 be in CTC Wireless's interest, but I do not understand how it would serve the
17 public interest. Moreover, given this substantial disparity between the real costs
18 incurred by TracFone's Lifeline customers and the real costs incurred by those
19 other ETCs' Lifeline customers, I do not understand the basis for Mr. Trampush's
20 conclusion that TracFone's Lifeline program will not be different from those of
21 other Idaho ETCs. TracFone's Lifeline plan, which provides 250 minutes that can
22 be used anywhere in the United States for no charge whatsoever, plus a free

1 handset, provides unique advantages over each of the plans cited by Mr.
2 Trampush.

3 Q. DO TRACFONE'S LIFELINE CUSTOMERS INCUR ANY COSTS
4 ASSOCIATED WITH THE HANDSET?

5 A. No. Mr. Trampush asserts that the Commission needs to know the cost of the
6 handset to determine whether TracFone's customer's end up paying more for
7 Lifeline service from TracFone than from an existing ETC. This assertion is
8 baseless. TracFone does not charge its Lifeline customers a single dime for the
9 handset either directly or in the form of other charges. TracFone's Lifeline
10 service is completely free to qualified low-income households. Moreover,
11 TracFone offers a larger "local" calling area than the current Idaho wireless
12 ETCs, plus it does not charge for roaming. TracFone's Lifeline customers may
13 purchase additional airtime minutes, if they choose, at a rate of no more than
14 \$0.10 per minute -- significantly lower than Silver Star Wireless's local rate of
15 \$0.25 per minute -- or CTC's rate of \$0.44 per minute for the additional 50
16 minutes. There simply are no inflated or other charges associated with
17 TracFone's decision to provide free handsets to Lifeline customers. Lest there be
18 any doubt about whether TracFone's uses its Lifeline plan to force customers to
19 purchase additional service, no Lifeline customer is required to purchase
20 additional service and, in fact, very few do so. According to company data, less
21 than 2 percent of Lifeline customers who choose the 250 minute plan purchase
22 any additional service.

1 Q. DOES TRACFONE EXPECT TO INCREASE THE LIFELINE
2 PARTICIPATION RATE IN IDAHO?

3 A. Yes. In several states in which TracFone has provided Lifeline service it has
4 increased the Lifeline participation rate by more than 100%. For example,
5 TracFone has provided Lifeline service in Florida, Virginia, and Tennessee since
6 late 2008 and in several other states since 2009. In October 2009, TracFone
7 analyzed the impact of the introduction of its Lifeline service on enrollment in
8 several states. As of October 2009, TracFone had enrolled more than 2.5 million
9 low-income households in its Lifeline program and had dramatically increased
10 Lifeline enrollment in the following states: Alabama - 162 percent; Florida - 300
11 percent; Georgia - 285 percent; North Carolina - 156 percent; Tennessee - 268
12 percent; and Virginia - 692 percent. Based on its history of significantly
13 increasing Lifeline enrollment from historically low levels in every state where it
14 offers Lifeline service, TracFone is confident that it will similarly increase
15 Lifeline enrollment among qualified low-income Idaho households. Mr.
16 Trampush notes that the Universal Service Administrative Company ("USAC")
17 website shows that Idaho's Lifeline participation rate for 2009 was between 20
18 and 50 percent (i.e., that in the "best case," more than one-half of the state's
19 Lifeline-eligible low-income households are not receiving Lifeline benefits) and
20 that the participation rate for several states in which TracFone offers Lifeline at
21 least one-half of Idaho's low-income households currently do not receive Lifeline
22 benefits does not indicate that TracFone will not materially increase the Lifeline
23 participation rate in Idaho as it has done in every other state where it offers

1 Lifeline service as an ETC. First, TracFone only commenced service in many
2 states in 2009, so any increase in participation rates would most likely occur in
3 2010. Second, the USAC data do not indicate where within the 20 to 50 percent
4 range lies Idaho's actual Lifeline enrollment. Nothing in his testimony provides
5 any basis for concluding that Idaho's current Lifeline participation rate is not
6 closer to twenty percent than to fifty percent of eligible households. Based on
7 TracFone's experience in other states, it anticipates that it will be able to
8 significantly increase the Lifeline participation rate in Idaho.

9 Q. MR. TRAMPUSH ASSERTS THAT A LOW LIFELINE PARTICIPATION
10 RATE SIMPLY MEANS THAT MANY PEOPLE ELIGIBLE FOR LIFELINE
11 ARE DECIDING NOT TO TAKE ADVANTAGE OF THE PROGRAM. DO
12 YOU AGREE WITH THAT ASSESSMENT?

13 A. No. TracFone believes, that a low Lifeline participation rate is the result of there
14 not being an attractive Lifeline service of which eligible people are aware.
15 TracFone has substantial experience in serving and marketing to low-income
16 customers and believes that it has developed a Lifeline product that will meet the
17 needs of low-income Idahoans. TracFone has succeeded in enrolling large
18 numbers of qualified low-income households in Lifeline where other ETCs have
19 failed. It attributes this to two primary reasons. First, TracFone has aggressively
20 and creatively marketed its Lifeline service. It advertises in print and electronic
21 media likely to reach targeted low income households -- households who all too
22 often in the past were never made aware of the availability of Lifeline support
23 despite the requirement contained at Section 214(e)(1)(B) of the federal

1 Communications Act and in the FCC's rules that ETCs advertise the availability
2 of Lifeline using media of general distribution. Second, TracFone's Lifeline
3 service is free. Qualified customers receive telecommunications service with no
4 financial outlay whatsoever. To many low-income households, even the
5 discounted prices charged by ETCs after receipt of their Lifeline subsidies leave
6 the service priced beyond their means. Relatedly, there is no risk of a TracFone
7 Lifeline customer incurring billed charges for additional services which the
8 customer cannot afford to pay and then having service terminated for non-
9 payment. These factors -- aggressive and creative marketing, and free service --
10 have enabled TracFone to increase significantly the number of low-income
11 households enrolled in Lifeline programs.

12 Q. DOES MR. TRAMPUSH ASSERT THAT THERE ARE RISKS ASSOCIATED
13 WITH TRACFONE BEING DESIGNATED AS AN ETC?

14 A. Yes. Mr. Trampush states that because TracFone will only provide service where
15 its underlying carriers have coverage and will not expand the existing networks,
16 there is a potential for creamskimming. As I testified earlier, a creamskimming
17 analysis is unnecessary and inappropriate when a wireless telecommunications
18 provider seeks designation as an ETC solely to provide Lifeline service. Mr.
19 Trampush also asserts that when a customer switches service from an ILEC to
20 TracFone, that customer no longer contributes to the Universal Service Fund, and
21 therefore, there is an upward pressure on the fund. Mr. Trampush provides no
22 basis for this position and the statement is erroneous. TracFone contributes to the
23 Universal Service Fund based on its interstate telecommunications service

1 revenues in the same manner as do all other providers of such service. It
2 completes and files FCC Form 499 as required and remits the amounts invoiced to
3 it based on those reports.

4 Q. DOES MR. TRAMPUSH RAISE ANY OTHER CONCERNS ABOUT
5 TRACFONE'S SERVICE?

6 A. Yes. Mr. Trampush asserts that TracFone has not demonstrated its ability to stay
7 functional in an emergency and is not able to meet the CTIA Consumer Code for
8 wireless services. Neither of these accusations are correct. TracFone provides
9 service in Idaho by reselling services of underlying wireless network carriers,
10 including AT&T Mobility, T-Mobile, and Verizon Wireless. Those network
11 operators have implemented state-of-the-art network reliability standards and
12 TracFone and its customers benefit from their high standards. Throughout its
13 more than twelve years of existence, TracFone's service reliability has compared
14 favorably with that of any facilities-based operator in the wireless
15 telecommunications industry. TracFone currently provides wireless service
16 Idaho, and has done so for more than twelve years. During that period, it never
17 has failed to remain functional during an emergency. Moreover, the ETC
18 designating authorities in not less than 36 states have found that TracFone has
19 demonstrated its ability to remain functional in an emergency, and so should this
20 Commission.

21 Q. WHAT IS MR. TRAMPUSH'S CONCERN REGARDING TRACFONE'S
22 COMPLIANCE WITH THE CTIA CONSUMER CODE?

1 A. Mr. Trampush alleges that TracFone does not comply with the CTIA Consumer
2 Code because it does not offer a trial period or provide its customers a refund for
3 unused minutes. This assertion too is incorrect. The CTIA Consumer Code
4 provides the following regarding trial periods: "When a customer initiates service
5 with a wireless carrier, the customer will be informed of and given a period of not
6 less than 14 days to try out the service. The carrier will not impose an early
7 termination fee if the customer cancels service within this period, provided that
8 the customer complies with applicable return and/or exchange policies. Other
9 charges, including airtime usage, may still apply." As I already testified in my
10 direct testimony, customers may terminate their use of TracFone service at any
11 time without incurring any penalty or termination charge, therefore a 14 day trial
12 period is not necessary.

13 Q. MR. TRAMPUSH ASSERTS THAT THERE ARE COMPLAINTS ABOUT
14 TRACFONE'S CUSTOMER SERVICE ON THE INTERNET, INCLUDING
15 COMPLAINTS REGARDING WAIT TIMES. WHAT IS TRACFONE'S
16 RESPONSE TO THESE ASSERTIONS?

17 A. While I am not aware of the specifics of the complaints referenced in Mr.
18 Trampush's testimony, I do know that TracFone is highly committed to providing
19 high quality customer service to all of its customers. TracFone has a process for
20 resolving complaints quickly and effectively. TracFone also continuously
21 monitors customer service and analyzes the quality of its customer service based
22 on several criteria and then makes changes to its customer service when

1 necessary. Finally, TracFone's wait times compare favorably to the industry
2 average.

3 Q. DO YOU AGREE WITH MR. TRAMPUSH THAT THE ONLY PUBLIC
4 INTEREST BENEFIT TO TRACFONE'S LIFELINE SERVICE IS THAT IT
5 WILL PROMOTE COMPETITION?

6 A. No. As I testified earlier, TracFone's Lifeline service offers unique advantages
7 over the Lifeline plans offered by wireline and wireless ETCs in Idaho, including
8 those ETCs who have sponsored Mr. Trampush's testimony. Those advantages
9 include a more expansive, indeed, a nationwide, local calling area, important
10 service features at no additional charge, and a free handset. No ETC currently
11 operating in Idaho provides that unique combination of consumer benefits.
12 TracFone also anticipates that it will significantly increase the Lifeline
13 participation rate among low-income households in Idaho as it has done in every
14 other State where it offers Lifeline service as an ETC. Furthermore, there are no
15 risks associated with designating TracFone as an ETC. While TracFone's
16 entrance into the Lifeline service market will promote competition, that is not the
17 sole public interest benefit of its Lifeline service.

18 Q. HOW WILL TRACFONE CERTIFY THE ELIGIBILITY OF LIFELINE
19 APPLICANTS IN IDAHO?

20 A. TracFone will certify the eligibility of its Lifeline in accordance with Idaho law.
21 Pursuant to Section 56-903(1) of the Idaho Code, "the department of health and
22 welfare shall develop procedures for taking applications for assistance and for
23 determining and certifying program eligibility." As noted on the ITSAP fact

1 sheet available on the Commission's website at
2 <http://www.puc.idaho.gov/CONSUMER/ITSAP.PDF>, a person who is interested
3 in receiving Lifeline must apply at a Community Action Partnership ("CAP")
4 office or with an Idaho Department of Health and Welfare ("DHW") Regional
5 Office. If the person is determined to be eligible, the person's information will be
6 forwarded to the person's chosen telephone company. Therefore, a CAP or
7 DHW, not TracFone, will verify eligibility in Idaho. However, TracFone will
8 work with the CAPs and DHW to ensure that only eligible individuals are
9 accepted into the Lifeline program.

10 Q. TRACFONE WAS RECENTLY AUDITED BY USAC. WHAT DID USAC
11 FIND?

12 A. USAC found that TracFone's Lifeline service, including the process it uses to
13 certify initial eligibility and continued eligibility for Lifeline service complied
14 with the FCC's rules.

15 Q. WHAT DO THE FCC RULES PROVIDE REGARDING HOW ETCS MUST
16 CERTIFY THE INITIAL ELIGIBILITY OF LIFELINE APPLICANTS WHO
17 CLAIM THEIR ELIGIBILITY BASED ON PARTICIPATION IN A LOW-
18 INCOME PROGRAM?

19 A. The FCC rules provide that such applicants must certify under penalty of perjury
20 that they participate in a program that qualifies them to receive Lifeline benefits.
21 As USAC found, TracFone complies with the FCC's rules concerning
22 certification of eligibility. However, in Idaho, and as permitted by the FCC's

1 rules, TracFone will comply with Idaho's rules governing certification of
2 eligibility.

3 Q. IS THE FCC CONSIDERING REVISING THE RULES GOVERNING THE
4 LIFELINE PROGRAM?

5 A. Yes. As Mr. Trampush mentions, the FCC is concerned about waste, fraud and
6 abuse in the Lifeline program. One issue about which the FCC is particularly
7 concerned is when an individual receives Lifeline service from more than one
8 ETC. This is known as "double dipping" "duplicate enrollment." As I explained
9 earlier, ETCs do not have access to other ETCs' customers lists. Therefore, it is
10 difficult, if not impossible, for any ETC to prevent duplicate enrollment. The
11 FCC has initiated a rulemaking proceeding to address this issue, as well as other
12 issues related to the Lifeline program. The FCC also is actively considering
13 taking interim steps to prevent duplicate enrollment pending completion of the
14 FCC rulemaking proceeding. In recent weeks, TracFone has been an active
15 participant in meetings convened by the FCC to develop such an interim solution.
16 If such an interim solution is finalized and adopted while this proceeding is
17 pending, I will submit a supplement affidavit describing that solution and
18 attaching any FCC documents memorializing the solution.

19 Q. WHILE THE FCC PROCEEDING IS PENDING, SHOULD THE
20 COMMISSION DEFER A DECISION IN THIS CASE?

21 A. No. Any new rules ultimately issued by the FCC in the rulemaking proceeding
22 will apply to all ETCs. In the meantime, TracFone, as well as all other ETCs, are
23 required to comply with the current rules. The FCC, fully aware that carriers are

1 continuing to request ETC designation at the FCC, as well as at state
2 commissions, has not required that any ETC proceedings be delayed or
3 suspended. Mr. Trampush's assertion that customers may be confused by
4 changes in the rules is unfounded and provides no basis for delaying the current
5 proceeding. Delaying the proceeding will only result in delaying the availability
6 of TracFone's Lifeline service to eligible low-income Idahoans.

7 Q. WHY HAS TRACFONE REFUSED TO PROVIDE INFORMATION ABOUT
8 ITS COST STRUCTURE TO ITA AND CTC?

9 A. TracFone's costs and expenses are not relevant to any requirement for designation
10 as an ETC. So far as TracFone is aware, no other ETC has been required to
11 provide cost information as part of the ETC designation process in Idaho. In this
12 regard, I remind Mr. Trampush and others that Section 332(c) of the federal
13 Communications Act prohibits states from regulating the rates of commercial
14 mobile radio service providers.

15 Q. MR. TRAMPUSH ASSERTS THAT THE COMMISSION SHOULD IMPOSE A
16 NUMBER OF CONDITIONS AND REPORTING REQUIREMENTS ON
17 TRACFONE IF IT IS DESIGNATED AS AN ETC. WOULD TRACFONE
18 AGREE TO THOSE CONDITIONS?

19 A. Mr. Trampush proposes that TracFone should be required to make a compliance
20 filing for approval by the Commission. The filing would include TracFone's
21 Lifeline rate plans, terms and conditions, proposed advertising language, a
22 Lifeline application form for Idaho, and a certification that TracFone will comply
23 with all applicable federal and state statutes and regulations. TracFone does not

1 oppose these conditions, with two exceptions. First, Mr. Trampush proposes that
2 the advertising language should include information directing customers to
3 contact the Commission or an appropriate Idaho state agency for complaints
4 regarding any Lifeline service issue. The New Jersey Board of Public Utilities
5 ("New Jersey Board") also required similar language in TracFone's advertising,
6 but has since asked TracFone to remove the reference to the New Jersey Board in
7 its advertising. According to the New Jersey Board Staff, they were receiving
8 numerous calls regarding various Lifeline service issues that had no relation to
9 complaints, and that responding to these inquiries was straining that Board's
10 resources. TracFone has no objection to including such language in its Idaho
11 advertising if the Commission deems it appropriate. However, TracFone cautions
12 the Commission that the inclusion of language in advertising materials directing
13 customers to contact the Commission may result in the Commission receiving
14 numerous calls and burdening Commission resources. Second, TracFone clarifies
15 that it would be willing to certify compliance with all applicable laws governing
16 state fees, once those laws are determined to be applicable to TracFone either in a
17 separate proceeding or through a final determination made by the appropriate
18 state agency.

19 Q. WOULD TRACFONE AGREE TO THE REPORTING REQUIREMENTS
20 PROPOSED BY MR. TRAMPUSH?

21 A. Mr. Trampush proposes several reporting requirements, including that TracFone
22 file any future changes to its rates, terms and conditions, at least 10 days prior to
23 the effective date of the changes, provide information on its terms, rates, and

1 conditions in the welcome packet sent to Lifeline customers, and post its rates,
2 terms, and conditions on its website. TracFone would agree to this requirement.
3 Mr. Trampush also proposes that TracFone apply a non-usage policy in Idaho
4 whereby TracFone would be required to deactivate a Lifeline customer who has
5 no usage for 60 consecutive days. TracFone has a non-usage policy in place in all
6 states in which it offers Lifeline service and will also follow that policy in Idaho.
7 Incidentally, the FCC has proposed in its Lifeline rulemaking proceeding that all
8 ETCs be required to implement a 60 day non-usage policy, based on TracFone's
9 current non-usage policy.

10 Q. ARE THERE ANY OTHER REPORTING REQUIREMENTS PROPOSED BY
11 MR. TRAMPUSH?

12 A. Mr. Trampush also states that TracFone should be required to provide quarterly
13 reports on the number of Lifeline customers enrolled each month in each of the
14 plans and the number of customers deactivated and the reason for the
15 deactivation. TracFone would not oppose this requirement. Although, like the
16 non-usage policy, the benefits of that proposed reporting requirement are such
17 that all ETCs should be subject to it.

18 Q. DOES MR. TRAMPUSH PROPOSE ANY OTHER REQUIREMENTS?

19 A. Mr. Trampush asks that TracFone be required to comply with Commission Staff's
20 requests for information. TracFone will comply with requests from the
21 Commission Staff, but will seek appropriate protections for confidential
22 information. TracFone will also work with DHW and the CAPs to verify the

1 eligibility of all Lifeline applicants and will advise the Commission of the
2 verification procedures agreed upon.

3 Q. WOULD TRACFONE BE WILLING TO FILE WITH THE COMMISSION ITS
4 CUSTOMER RECORDS AND A REPORT ON CUSTOMER COMPLAINTS
5 ON AN ANNUAL BASIS?

6 A. TracFone would agree to file customer records so long as they receive
7 confidential treatment. TracFone would need to work with Commission Staff to
8 agree upon a format and scope of the records to be filed. TracFone would also
9 agree to file an annual report on customer complaints filed with TracFone, the
10 Commission and the FCC.

11 Q. WOULD TRACFONE BE WILLING TO PROVIDE A COPY OF ITS
12 ANNUAL LIFELINE VERIFICATION SURVEY RESULTS THAT IT FILES
13 WITH USAC EACH YEAR?

14 A. Yes. Indeed, there is merit to many of Mr. Trampush's reporting requirement
15 proposals. Since that information would be invaluable to the Commission's
16 efforts to effectively monitor the performance of TracFone as an ETC as well as
17 the operation of the Lifeline program in Idaho, I respectfully suggest that those
18 reporting requirements be made applicable to all ETCs providing Lifeline service
19 in Idaho.

20 Q. SHOULD THE COMMISSION BE ABLE TO REVOKE TRACFONE'S ETC
21 DESIGNATION IF TRACFONE FAILS TO COMPLY WITH ANY OF THE
22 CONDITIONS OR REPORTING REQUIREMENT PROPOSED BY MR.
23 TRAMPUSH?

1 A. TracFone understands that the Commission has the right to revoke an ETC
2 designation for violation of applicable legal requirements. However, TracFone,
3 like any other ETC, should provided with notice and afforded an opportunity to
4 be heard and present evidence as to why its designation should not be revoked in
5 the event that the Commission determines that revocation may be necessary.

6 Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD TO YOUR
7 TESTIMONY?

8 A. Based on my testimony above, I would like to reiterate that TracFone meets all
9 legal requirements for designation as an ETC and that designation of TracFone as
10 an ETC for the limited purpose of providing Lifeline service to low-income Idaho
11 households will serve the public interest. Accordingly, the Idaho Public Utilities
12 Commission should unconditionally and promptly grant TracFone's ETC
13 Application so that TracFone may commence providing its SafeLink Wireless®
14 service to low-income Idaho households at the earliest possible time. TracFone
15 looks forward to soon bringing this important Congressionally-mandated
16 telecommunications benefit to low-income Idaho households as it already is doing
17 in 33 other States.

18 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

19 A. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input type="checkbox"/>
jjewell@puc.state.id.us		

Neil Price, Esq.	Hand Delivered	<input type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input checked="" type="checkbox"/>
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Molly O'Leary, Esq.	Hand Delivered	<input type="checkbox"/>
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BY: Heather Houle
MCDEVITT & MILLER LLP

Exhibit No. 7
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-263

February 9, 2010

TRACFONE WIRELESS, INC.
Request for Designation as an Eligible
Telecommunications Carrier

ORDER GRANTING ETC
STATUS AND OPENING
SEPARATE INVESTIGATION

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

In this Order we grant the Petition for Waiver of TracFone Wireless, Inc. (TracFone) and designate TracFone as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (TelAct), 47 U.S.C. § 214(e)(2), and 47 C.F.R. § 54.201 of the Federal Communications Commission's (FCC) Rules for the limited purpose of providing Lifeline service in the state of Maine. Furthermore, we open an investigation pursuant to 35-A § 1303(2) into TracFone's obligation to pay fees into the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Education Access Fund (MTEAF), and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

II. BACKGROUND

On August 5, 2009, TracFone filed an Application for designation as an ETC for the limited purpose of providing Lifeline service in Maine.¹ *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Maine for the Limited Purpose of Offering Lifeline Service to Qualified Households (Aug. 5, 2009) (Application). TracFone submitted a revised application on October 8, 2009 that specifically addressed the requirements of Chapter 206 of the Commission's Rules. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, First Amendment to Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (Oct. 8, 2009) (Amended Application). TracFone is a reseller of commercial mobile radio service (CMRS) and has been operating in Maine for more than ten years. TracFone does not own or operate any facilities in Maine or elsewhere; rather it operates a "virtual network" that relies on obtaining service from other licensed operators of wireless networks. In Maine, TracFone provides service throughout the state wherever wireless service is available through its arrangements with various service providers.²

¹ TracFone operates its Lifeline service under the trade name SafeLink Wireless.

² TracFone initially plans to offer Lifeline service only in areas served by AT&T Mobility and T-Mobile.

On September 18, 2009 the Presiding Officer issued a Procedural Order requiring that any preliminary comments on TracFone's Revised Application be filed no later than October 13, 2009.³ *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Procedural Order (Sept. 18, 2009). The September 18, 2009 Procedural Order also scheduled a technical conference for October 16, 2009.

On October 8, 2009, along with its Amended Application, TracFone filed a petition for a waiver of certain requirements of Chapters 206 and 294 of the Commission's Rules. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Petition for Waiver (Oct. 8, 2009). In its Petition for Waiver, TracFone requested that the Commission waive (1) the requirement in Chapter 206, § 3(C) for submission of a substantive plan of the investments to be made with federal support and a description of how those expenditures will benefit consumers; (2) the requirement in Chapter 206, § 3(E) that wireless applicants provide a map showing existing and planned locations of cell sites; (3) the requirement in Chapter 206, § 3(F) that it provide information demonstrating that it has the ability to remain functional in emergency situations; and (4) the requirement in Chapter 206, § 3(G) that it comply with Chapter 294 of the Commission's Rules insofar as relates to the requirement in Chapter 294 § 6 that TracFone inform its Lifeline customers of program information and guidelines by mail.

On October 16, 2009 a technical conference was held in this matter. The technical conference was attended by representatives of TracFone, the OPA, TAM, Kennebec Valley Community Action Program (KVCAP), and Maine Community Action Association (MCA).⁴ At the technical conference, the Presiding Officer made the following Oral Data Requests of TracFone: (1) Explain the basis for TracFone's decision to set the number of free minutes provided to its Lifeline customers in Maine at 66; (2) explain how TracFone will, if at all, collect E-911 fees from Lifeline customers; and (3) explain how Lifeline customers would be charged for calls that originate from a cell site located in Canada.

On October 26, 2009, Commission Staff instructed TracFone to respond to a series of written data requests relating to TracFone's policies regarding payment of fees to the Maine Universal Service Fund (MUSF), the Maine Telecommunications Education Access Fund (MTEAF), the federal Universal Service Fund (USF), and to report its Maine intrastate revenue for the period from the 4th quarter of 2007 through the 3rd quarter of 2009.⁵ *TracFone Wireless, Inc., Request for Designation as an*

³ The Commission received preliminary comments from the Office of the Public Advocate (OPA) and the Telephone Association of Maine (TAM).

⁴ The OPA, KVCAP, and MCA each requested, and were granted, intervenor status in this matter.

⁵ There were a total of five questions in Examiner's Data Request No. 1, each with several sub-parts.

Eligible Telecommunications Carrier, Docket No. 2009-263, Examiner's Data Request No. 1 (Oct. 26, 2009). TracFone was required to respond to Examiner's Data Request No. 1 by November 9, 2009.

On October 28, 2009 TracFone responded by letter to the oral data requests made at the October 16, 2009 technical conference. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Response to 3 Questions (Oct. 28, 2009). In response to Question 1, while not providing details about how it arrived at the number of minutes to be provided to its Lifeline customers, TracFone stated that it had revisited the number of free minutes to be provided to Lifeline customers and increased the number to 68 from 66, and that those minutes would roll over from month to month provided that customers remained enrolled in the program. In response to Question 2 TracFone stated that, based on its interpretation of Maine law, it would not be required to remit E-911 fees from its Lifeline customers because, as Lifeline is a free service, there are no charges from which to collect such fees. In response to Question 3, TracFone stated that it would not permit Lifeline customers to originate calls from a Canadian cell site.

On November 9, 2009 TracFone responded to Questions 1, 2, 4, and 5 of Examiner's Data Request No. 1 and filed a motion for a protective order regarding its answer to Question 3. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Response (Nov. 9, 2009). In response to Questions 1 and 2, TracFone stated that under its interpretation of the Commission's Rules, it was not required to pay into MUSF and MTEAF, respectively, because as a pre-paid reseller it does not have any "billed" revenue. In response to Question 3, TracFone stated that it regarded its Maine intrastate revenue figures as competitively sensitive information, and refused to disclose the information in the absence of a protective order.⁶ In response to Question 4, TracFone stated that it does pay federal USF and, accordingly, has a means of distinguishing between interstate and intrastate revenues. TracFone refused to answer Question 5 regarding whether it pays USF or similar fees to any authorities in other states on the ground that the question was irrelevant to whether TracFone should be designated as an ETC in Maine.

On January 11, 2010, the Presiding Officer issued a Procedural Order asking for comment on TracFone's responses to Questions 1 and 2 of Examiner's Data Request No. 1 and whether and to what extent TracFone's failure to pay into MUSF and MTEAF should factor into determining whether the Commission should grant TracFone's request for ETC status. *TracFone Wireless, Inc., Request for Designation as an Eligible*

⁶ On November 25, 2009 the Presiding Officer granted TracFone's motion, *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Protective Order (Nov. 25, 2009), and on December 4, 2009 TracFone filed its confidential answer to Question 3. *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263, Confidential Response to Examiner's Data Request No 1 (Dec. 4, 2009).

Telecommunications Carrier, Docket No. 2009-263, Procedural Order (Jan. 11, 2010). Intervenor and Interested Persons were given until February 1, 2010 to respond.

By February 1, 2010 the Commission had received comments from Maine Governor John Baldacci, the Emmanuel Homeless Shelter, the OPA, Maine State Representative Kenneth Fletcher, the AARP, Maine State Senator Barry Hobbins, the Maine Association of Retirees, Maine State Representative Stacey Allen Fitts, Maine State Representative Richard Blanchard, Maine Senate Majority Leader Philip Bartlett, Maine House Majority Leader John Piotti, MCA, Maine State Senator John Nutting, State Representative Jon Hinck, and KVCAP. The commenters were unanimous in their belief that the Commission should treat TracFone's failure to pay MUSF and MTEAF fees and its application for ETC status as two separate issues. All commenters urged the Commission to approve TracFone's application as expeditiously as possible.

III. LEGAL STANDARDS

The TelAct provides for the continuing support of universal service goals by making federal USF available to carriers which are designated as ETCs. Section 214(e)(2) of the TelAct gives state commissions the primary responsibility for designating carriers as ETCs. *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Rulemaking, 15 FCC Rcd 12208, 12255, ¶ 93 (2000) (Twelfth Report and Order). To be designated as an ETC, a carrier must offer all nine of the services supported by the universal service fund to all customers within the ETC's service area and advertise the availability of those services throughout the service area.⁷

In furtherance of its role in designating ETCs, Chapter 206, Section 3 of the Commission's Rules require that ETC applicants provide the following information: (1) a description of the services for which ETC designation is sought and a statement that the provider will offer the services for which support is sought throughout that service area; (2) a statement that the provider will provide service on a timely basis to customers within the service area; (3) a plan of the investments to be made with federal support and how those investments will benefit customers; (4) a statement that the provider will advertise, throughout its service area, the availability of the services for which support is sought; (5) maps depicting the existing and planned locations of cell sites; (6)

⁷ The FCC has defined the services that are to be supported by the federal universal service support mechanisms to include: (1) voice grade access to the public switched telephone network (PSTN); (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

information demonstrating the provider's ability to remain functional in an emergency; (7) a certification that the provider will comply with Chapters 290 and 294 of the Commission's Rules; (8) that the provider offers a local usage plan comparable to the one offered by the ILEC in the proposed service area; (9) a statement that the provider will provide equal access to long distance carriers; and (10) any additional information that the Commission may require.

The Commission will approve an application for designation as an ETC if the petition meets the requirements of Chapter 206, the carrier's designation as an ETC advances some or all of the purposes of universal service in 47 U.S.C. § 254, and the ETC designation is in the public interest. After ETC status is granted, the carrier must file an annual report in accordance with Chapter 206, § 6 of the Commission's Rules.

III. DISCUSSION

A. INITIAL APPLICATION

In its Application, TracFone describes in detail how it meets the federal requirements for designation as an ETC in Maine. As an initial matter, TracFone recognizes that federal law requires ETCs to offer services, at least in part, over their own facilities, and that the FCC's Rules prohibit state commissions from designating as an ETC a carrier that offers exclusively resale services. However, TracFone states that in 2005 the FCC granted TracFone "forbearance from the facilities requirement for ETC designation for Lifeline support only." See *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 (Sept. 8, 2005) (TracFone Forbearance Order) at 1; *Application* at 4-5. Based on this order of forbearance, TracFone asserts that this Commission has jurisdiction to designate TracFone as an ETC under 47 U.S.C § 214(e)(2).

Next, TracFone's Application describes in detail how TracFone provides, or will provide, all of the functionalities required by FCC Rules.

1. TracFone states that it will provide "voice grade" access to the PSTN, meaning that Lifeline customers will have the ability to make and receive telephone calls at frequencies between 500 and 4,000 hertz.
2. TracFone states that Lifeline customers will have the ability to make and receive local calls wherever TracFone provides service, and that local usage is included in its proposed calling plan.
3. TracFone states that all telephone handsets that it provides to its Lifeline customers are DTMF capable.

4. TracFone states that it provides all Lifeline customers with single-party access for the duration of every call; indeed, TracFone does not provide "party line" service to any of its customers.
5. TracFone states that it will fully comply with FCC requirement regarding E-911, and "has implemented and will continue to implement [E-911] services . . . when such services are made available by the carriers from whom TracFone purchases services."
6. TracFone states that Lifeline customers will have access to operator services.
7. TracFone states that Lifeline customers will have access to interexchange services to complete toll calls, and that there is no additional charge for Lifeline customers for long distance calling.
8. TracFone states that Lifeline customers will have access to directory assistance provided by its vendors.
9. TracFone states that there is no need for it to offer toll-limitation to Lifeline customers because, as TracFone's service is entirely pre-paid, it is not possible for a Lifeline customer to incur extra charges (or any charges for that matter) for toll calling.

Further, TracFone's Application states that TracFone will comply with all other federal requirements including providing service to Lifeline customers in its service area within a reasonable period of time, compliance with the service quality standards set by the Wireless Association Consumer Code for Wireless, advertising the availability of its Lifeline service within its service area, and compliance with federal certification of eligibility and verification of continued eligibility requirements.

Additionally, TracFone contends that certification of TracFone as an ETC in Maine would serve the public interest. TracFone points to what it believes are important benefits of its service to low-income Mainers. Among those benefits is the advantage of having a mobile phone as opposed to a landline phone with regard to persons seeking employment. TracFone argues that a mobile phone will allow prospective employees to respond immediately to potential employers and, once hires, allow people to stay in contact with their employers better manage their schedules. Perhaps most importantly, TracFone emphasizes that fact that its Lifeline service will be completely free to low-income customers. TracFone will provide Maine Lifeline customers with a free handset and 68 minutes of airtime each month.⁸

⁸ Should Lifeline customers desire to purchase additional minutes beyond the allotment of free minutes, they may do so at \$0.20 per minute.

B. AMENDED APPLICATION

As described in Part II above, under the Commission's Rules, ETC Applicants are required to provide the Commission with certain information regarding their plans for providing Lifeline service. TracFone, in its Amended Application, and in accordance with the Commission's Rules, states the following:

1. That its service area will initially consist of all areas in Maine served by AT&T Mobility and T-Mobile. Additionally, TracFone plans to expand its service area to include areas served by Verizon Wireless.⁹
2. That it is not required to comply with the requirement in Section 3(A)(2) of Chapter 206 that it provide services, at least in part, over its own facilities.¹⁰
3. That it will provide Lifeline service to all qualified customers on a timely basis, with the only anticipated delay after ETC designation being the time needed to implement procedures and internal systems to offer the Lifeline program.¹¹
4. That it should be exempt from the requirements in Section 3(C) that it file a plan of investments to be made with initial federal support because it contends that this requirement is intended to apply only "to carriers that seek high-cost support to fund investments to their network," and, as a pure reseller, TracFone does not own any networks or facilities.¹²
5. That it will "aggressively advertise" its Lifeline service in a manner targeted to reach qualified customers, including print and broadcast media.¹³

⁹ TracFone states that it anticipates expanding Lifeline service to Verizon Wireless' service area in the second quarter of 2010.

¹⁰ TracFone relies on the *TracFone Forbearance Order* and 47 U.S.C. § 160(e) as justification for its contention that it does not have to comply with Section 3(A)(2). Title 47 U.S.C. § 160(e) states, in relevant part, that "a state commission may not continue to apply or enforce any provision of [47 U.S.C. §§ 151-615b] that the [FCC] has determined to forbear from applying."

¹¹ TracFone states that Section 3(B)(2) is not applicable because, as a pure reseller, TracFone does not have the ability to make modifications to the facilities of its underlying carriers.

¹² TracFone also states that, with regard to the Lifeline support it will receive, "one hundred percent of the support will be flowed through to Lifeline customers in the form of free usage."

¹³ TracFone also states that it will not be providing service supported by high-cost universal support mechanisms nor will it be providing Link-Up service, and, accordingly, will not be advertising such offerings.

6. That it has requested, but not been granted access to the comprehensive coverage maps of its underlying carriers as would comply with Section 3(E) of Chapter 206. Accordingly, TracFone has asked the Commission to waive this requirement.
7. That, because TracFone is a pure reseller, and does not operate any facilities, the requirement in Section 3(F) of Chapter 206 that it provide information regarding its ability to remain operational in an emergency does not apply.¹⁴
8. That it will comply with Chapter 290 and the applicable portions of Chapter 294 of the Commission's Rules.¹⁵ Further, TracFone certifies that it will comply with the consumer standards set forth in CITA – The Wireless Association (CITA) Consumer Code for Wireless Service and in the Commission's Rules to the extent those standards apply to resellers of prepaid services.
9. That it will provide a local usage plan to all Lifeline customers that it believes is comparable with that of Incumbent Local Exchange Carriers (ILEC).¹⁶
10. That it certifies that it may be required to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

¹⁴ TracFone states that it relies on the "state-of-the-art network reliability standards" of its underlying carriers.

¹⁵ Section 3(G)(1) requires that applicants comply with Chapters 290 and 294 of the Commission's Rules. Section 6 of Chapter 294 requires Lifeline carriers to provide written notification the Lifeline program and the program's guidelines to each of their customers at least once per year by mail. TracFone has applied for a waiver of this requirement based on the fact that, as a pre-paid wireless reseller, TracFone does not send bills to its customers nor does it communicate with them by mail.

¹⁶ TracFone states that under relevant FCC orders, local calling plans do not have to be identical to those of an ILEC, as long as it is comparable. *See Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005); *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) (TracFone ETC Order).

IV. DECISION

A. PETITION FOR WAIVER

TracFone states that we should waive the provisions of Chapter 206, §§ 3(C), (E), and (F) and Chapter 294, § 6 of the Commission's Rules because these provisions pertain only to facilities-based wireless carriers, and it is unable to comply based on its inability to comply with the rules as a result of its status as a non facilities-based reseller of wireless services.

We agree that the basic purpose of Chapter 206 (i.e., ensuring that Maine consumers are provided with access to services funded through federal USF support) would not be significantly advanced by applying requirements to a non facilities-based carrier like TracFone which seeks ETC designation solely for the purpose of offering resold services for Lifeline customers, as opposed to one that seeks USF funds to accomplish infrastructure buildout goals. Indeed, in this instance, denying TracFone's application for ETC status based on its inability to comply with the specific rules at issue here would not be in the best interest of Maine's consumers. Further when we balance the interests involved in considering such a waiver, we find that the value of the service that TracFone desires to provide, combined with the limited nature of the waiver TracFone seeks, outweighs the Commission's otherwise significant interest in fully enforcing not just the letter, but also the spirit and intent of its Rules.

Accordingly, we grant TracFone's Petition for Waiver, and waive the provisions of Chapter 206, §§ 3(C), (E), and (F) and Chapter 294, § 6 of the Commission's Rules as described in its Petition, for the limited purpose of granting TracFone ETC status to enable it to provide Lifeline service in Maine.

B. ETC DESIGNATION

Although we are troubled by TracFone's apparent failure to pay fees for MUSF and MTEAF, we agree with the unanimous sentiment of the commenters to this proceeding that the issue of whether TracFone should have ETC status for the purpose of providing Lifeline service to Maine's consumers should be separate from the issue of TracFone's failure to pay into MUSF and MTEAF.

Accordingly, we find that TracFone's application for designation as an ETC for the limited purpose of providing Lifeline service meets the requirements of Chapter 206 of the Commission's Rules, will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest. Accordingly, we grant TracFone's application.

C. INVESTIGATION INTO COMPLIANCE WITH REGULATORY FEE OBLIGATIONS

The designation of TracFone as an ETC for the purpose of providing Lifeline service does not absolve TracFone of any obligations it may have to abide by the Commission's Rules regarding contributions to MUSF, MTEAF and payment of other regulatory fees. Accordingly, we open an investigation in a separate docket into whether TracFone is required to contribute to MUSF and MTEAF, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

V. **CONCLUSION**

We grant TracFone's Petition for Waiver designate it as an ETC for the limited purpose of providing Lifeline service in the state of Maine. Additionally, we open an investigation into whether TracFone is required to contribute to MUSF and MTEAF, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

In light of the foregoing it is,

ORDERED

1. that the Petition for Waiver submitted on October 8, 2009 by TracFone Wireless, Inc. requesting waiver of Chapter 206, §§ 3(C), (E) and (F) and Chapter 294, § 6 of the Commission's Rules is **GRANTED** for the limited purpose of TracFone's designation as an ETC to provide Lifeline service in Maine;
2. that the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Maine for the Limited Purpose of Offering Lifeline Service to Qualified Households submitted on August 5, 2009 as amended by the First Amendment to Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier submitted on October 8, 2009 by TracFone Wireless, Inc. is **APPROVED**;
3. that TracFone Wireless, Inc is **DESIGNATED** as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201, and 65-407 CMR 206 for the limited purpose of providing Lifeline service in the state of Maine;
4. that, pursuant to 35-A M.R.S.A. § 1303(2), an **INVESTIGATION** be opened, in Docket No. 2010-47, into whether TracFone is required to contribute to the Maine Universal Service Fund and the Maine Telecommunications Education Access Fund, and whether TracFone is in compliance with its obligations to pay other applicable regulatory fees.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Exhibit No. 8
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-47

February 11, 2010

TRACFONE WIRELESS CORPORATION
Notice of Investigation for failure to Make
Required Payments to the Maine Universal
Service and the Maine
Telecommunications Education Access
Funds

NOTICE OF INVESTIGATION;
OPPORTUNITY TO
PARTICIPATE; OPPORTUNITY
FOR COMMENT

I. SUMMARY

This Notice of Investigation provides notice of the investigation opened by the Commission in its Order in Docket No. 2009-263 into whether TracFone Wireless, Inc. (TracFone) is required under Commission Rules to contribute to the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Education Access Fund (MTEAF). This investigation will take place in the above-captioned docket.

II. BACKGROUND

In the course of processing TracFone's request to be designated as an Eligible Telecommunications Carrier (ETC), the Commission became aware that TracFone has not filed reports with, or made payment to, the MUSF and MTEAF. See *TracFone Wireless, Inc., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2009-263 (ETC Proceeding); Order Granting ETC Status and Opening Separate Investigation (Feb. 9, 2010) (ETC Order).

Pursuant to 35-A M.R.S.A. § 7104, the Commission may require "providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996." 35-A M.R.S.A. § 7104(3). Section 7104(3) defines "providers of intrastate telecommunications services" to "include providers of radio paging service and *mobile telecommunications services*" (emphasis added). *Id.* The statute requires the Commission to adopt rules to implement "this section."

The MUSF is governed by Chapter 288 of the Commission's Rules. The purpose of the MUSF is to ensure that telecommunications services are available to consumers throughout Maine at affordable rates that are comparable to those available in urban areas, by providing support for high cost rural service. Chapter 288 states that "[a]ll interexchange carriers, Local Exchange Carriers (LECs), *mobile telecommunications carriers* and radio paging providers that provide intrastate telecommunications in Maine must contribute to the Maine Universal Service Fund if the carrier had revenues of \$12,500 or more during the most recently completed quarter" (emphasis added). It further states that "[a] carrier that must contribute to the Fund shall report the amount of its billed revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator."

The MTEAF is governed by 35-A M.R.S.A. § 7104-B(2) and Chapter 285 of the Commission's Rules. MTEAF funds are used to provide discounts to qualifying schools and libraries to assist them in paying the costs of acquiring and using advanced telecommunications technologies. The statute states that the Commission shall "require *all telecommunications carriers offering telecommunications services in the State* ... to contribute to the fund" (emphasis added). The Rule defines a "Contributing Telecommunications Carrier" as "*any telecommunications carrier that had intrastate retail revenues for telecommunications services in Maine of \$12,500 or more during the most recently completed quarter, including all interexchange carriers (IXCs), local exchange carriers (LECs), [and] mobile telecommunications carriers*" (emphasis added). Such carriers are also required to make quarterly reports to MTEAF containing the amount of intrastate revenue generated in Maine. Chapter 285, §§ 1(A), 2(A).

According to the records of the MUSF and MTEAF Administrator and of this Commission, TracFone has never made any payments to the MUSF or the MTEAF and has not filed any quarterly reports, despite repeated delinquency notices from the MUSF-MTEAF Administrator advising TracFone of its obligations.

Pursuant to TracFone's request, the Commission recently designated TracFone an ETC for the limited purpose of providing Lifeline service in the State of Maine, an endeavor it will accomplish through subsidization obtained from the federal universal service fund. See *ETC Order*. On October 26, 2009, in the ETC proceeding, the Presiding Officer issued a Data Request that asked TracFone why it had failed to make any payments or filings pursuant to Chapters 285 and 288. Docket No. 2009-263, Examiner's Data Request No. 1 (Oct. 26, 2009) at 2. On November 9, 2009, TracFone responded:

TracFone, as a prepaid wireless carrier, does not bill its customers for services. Therefore, TracFone is not required by Chapter 288 to contribute to the MUSF. Section 4(C) further provides that "[a] carrier that must contribute to the Fund shall report the amount of its *billed* revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator. . . . TracFone is not required to contribute to the MUSF, and as such, is not subject to the MUSF reporting requirements.

Docket No. 2009-263, Response to Examiner's Data Request No. 1 (Nov. 9, 2009) at 1-2 (emphasis added by TracFone).

TracFone provided essentially the same response about its failure to make payments or reports to the MTEAF.

On January 11, 2010, the Presiding Officer in the ETC Proceeding issued a Procedural Order asking for comment on TracFone's above responses, and whether the

Commission should consider TracFone's failure to pay regulatory fees as a factor in its decision regarding the granting of ETC status. The Commission received several comments from advocacy groups, state legislators, and the Governor of Maine. The commenters were unanimous in their view that the issues of ETC status and regulatory fee compliance should be treated separately.

While the issues outlined above may not be connected to the question of whether TracFone should be allowed to provide Lifeline service in Maine, they do nonetheless raise important questions regarding fundamental fairness between TracFone and its competitors and TracFone's willingness to comply with Maine's regulatory framework.

III. NOTICE OF INVESTIGATION

In the Order dated February 9, 2010 in Docket No. 2009-263, the Commission initiated an investigation pursuant to 35-A M.R.S.A. § 1303(2) into the following issues:

1. Whether TracFone is required under Commission Rules to contribute to MUSF;
2. Whether TracFone is required under Commission Rules to contribute to MTEAF; and
3. Whether TracFone is currently in compliance with its obligations to pay other regulatory fees and contribute to other regulatory funds.

This Notice of Investigation opens the above captioned docket for the purpose of conducting that investigation.

IV. OPPORTUNITY TO PARTICIPATE¹

As the entity most directly affected by this Investigation, TracFone is hereby made a party to this proceeding. Any other person or entity who wishes to participate in this proceeding as a party must file a **Petition to Intervene** with the Commission's Administrative Director, Maine Public Utilities Commission, State House Station 18, Augusta, Maine 04333 by **Friday, February 26, 2010**. Copies of the petition should also be sent to:

Mitchell F. Brecher
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
brecherm@gtlaw.com

Debra McGuire Mercer
Greenberg Traurig, LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037
mercerdm@gtlaw.com

¹ This Notice of Investigation was sent to the members of the service lists for Docket Nos. 2009-40 and 2009-263, as well as representatives of FairPoint and U.S. Cellular.

Petitions to Intervene must be in writing and must state the name and the docket number of this proceeding and the manner in which you are affected by the proceeding. Please include the name of the Intervenor, the address, phone and fax numbers, and an e-mail address. **All Petitions to Intervene must also include a short and plain statement of nature and extent of the participation sought and a statement of the nature of the evidence and argument that is intended to be presented.** Pursuant to Commission Rules, the Hearing Examiner may require consolidation of intervenors for purposes of discovery, presentation of evidence, and argument.

Persons interested in only receiving copies of the Commission's orders and notices of public hearings may request to be added to the Commission's mailing list as an **Interested Person**. All such requests should be directed to the Commission's Administrative Director, Maine Public Utilities Commission, State House Station 18, Augusta, Maine 04333. Please include the name and address of the Interested Person as well as an e-mail address, if available.

V. OPPORTUNITY TO COMMENT

The Commission provides an opportunity for parties that have filed Petitions to Intervene in this matter to file comments in response to TracFone's argument that it is not required to pay MUSF and MTEAF fees on any of the services that it resells in Maine or file reports regarding the same, notwithstanding the language (quoted above) of Chapter 288, § 4(C) and Chapter 285, § 1(A). TracFone may also file comments in support of its position.

All comments must be filed with the Commission, in Docket No. 2010-47, no later than **Wednesday, March 10, 2010**.

Dated at Hallowell, Maine, this 11th day of February 2010

Jordan McColman
Hearing Examiner

Exhibit No. 9
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

October 26, 2010

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 285 and 288 of
the Commission's Rules

NOTICE OF RULEMAKING

CASHMAN, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

By this notice we initiate a rulemaking in Docket No. 2010-340 to amend Chapters 285 and 288 of the Commission's Rules (Chapter 285 or Chapter 288) to clarify that all telecommunications carriers are subject to the same required contributions to the Maine Telecommunications Education Access Fund (MTEAF) and Maine Universal Service Fund (MUSF). We also conclude our investigation in Docket No. 2010-47.

II. BACKGROUND

On February 9, 2010, the Commission issued its Order in Docket No. 2009-263 designating TracFone Wireless, Inc., (TracFone)¹ as an Eligible Telecommunications Carrier (ETC) for the limited purpose of providing lifeline service to low-income customers in Maine. During the course of processing TracFone's ETC application, the Commission became aware that TracFone had not filed reports with, or made payments to, the MUSF and MTEAF.

During the proceeding in Docket No. 2009-263, the Presiding Officer issued a Data Request that asked TracFone why it had failed to make any MTEAF or MUSF payments or filings pursuant to Chapters 285 and 288. TracFone responded:

TracFone, as a prepaid wireless carrier, does not bill its customers for services. Therefore, TracFone is not required by Chapter 288 to contribute to the MUSF. Section 4(C) further provides that "[a] carrier that must contribute to the Fund shall report the amount of its *billed* revenue and its

¹ TracFone is a provider of pre-paid cellular telephone handsets and a reseller of other carriers' cellular telephone service for use on the handsets it sells. TracFone typically sells its handsets through retail outlets such as Wal-Mart, Target, and convenience stores, but does sell some handsets directly to the public via its website. TracFone handsets typically come pre-loaded with a specific amount of minutes of service, and additional minutes can be purchased at retail outlets, from TracFone's website, or from the handsets themselves.

uncollectible factor quarterly on forms provided by the Fund Administrator. . . . TracFone is not required to contribute to the MUSF, and as such, is not subject to the MUSF reporting requirements.

TracFone provided essentially the same response about its failure to make payments or reports to the MTEAF.

Essentially, TracFone's argument was that Chapters 285 and 288 base the contributions that carriers must make on a carrier's "intrastate retail revenue." TracFone's argument rests primarily on the language of the reporting requirement in Chapter 288, Section 4(C) and Chapter 285, Section 2(A). The purpose of the "billed-less-uncollectible" reporting requirement is to ensure that carriers will be assessed on the basis of their actual received intrastate revenues. The uncollectible portion of the reporting requirement has no applicability to prepaid service. Chapter 288, Section 4(C) also states that "assessments apply to all intrastate retail revenues derived from telecommunications services provided in Maine." Chapter 285, Section 2(A) contains similar language. Nevertheless, Chapters 285 and 288 define "intrastate retail revenue" as

revenue that a carrier bills for intrastate telecommunications services sold to end-user customers for use by those customers, less the carrier's factor for uncollectibles. Intrastate retail revenue does not include revenue received from sales of services to other carriers for resale by those carriers; revenue from access services sold to other carriers; interconnection revenue received from other carriers, including from the sale of unbundled network elements; and revenue derived from surcharges for the MUSF, MTEAF, 911 and similar funding requirements.

Chapter 285, § 1(B); Chapter 288, § 2(G). Thus, TracFone argued, because "intrastate retail revenue" is based on revenue that a carrier "bills," and TracFone, as a pre-paid wireless carrier, does not "bill" its customers, TracFone is not subject to the contribution requirements of Chapters 285 and 288.

In our February 9, 2010 Order granting ETC status to TracFone, we also ordered the initiation of an investigation into TracFone's claim that it is exempt from the contribution requirements of Chapter 285 and 288. The investigation was assigned Docket No. 2010-47, and the Hearing Examiner issued a Notice of Investigation on February 11, 2010.

The Telephone Association of Maine (TAM) and the Maine Office of the Public Advocate (OPA) intervened in the proceeding and submitted written comments on TracFone's exemption argument. A Conference of Counsel was held on May 11, 2010 with Commission Staff and representatives from TracFone, TAM, and the OPA.

TAM and the OPA both argued, in their comments and at the Conference of Counsel, that TracFone's argument was merely semantic, and that the clear intention of both the Statutes and the Rules is that all telecommunications carriers in Maine with intrastate retail revenue, regardless of the means of collecting that revenue, are subject to Chapters 285 and 288 and, accordingly, are required to contribute to MTEAF and MUSF. TAM and the OPA pointed to the statutes underlying the rule as support for their position. The statutes make no mention of the method of collection of intrastate retail revenue, other than to require explicit identification on customer bills of contributions by the carrier or any surcharge imposed on customers. See 35-A M.R.S.A. §§ 7104 and 7104-B. Furthermore, neither Section 7104 nor 7104-B contain any suggestion that revenues subject to assessment should be limited to "billed" revenues.²

III. CONCLUSION OF INVESTIGATION IN 2010-47

During the course of the investigation, it became clear that the issue of non-payment of MTEAF and MUSF contributions was likely not limited to TracFone, but that most, if not all, pre-paid wireless carriers operating in Maine could use TracFone's argument to avoid making MUSF and MTEAF contributions. It also became clear that, should our investigation result in a finding that TracFone is subject to Chapters 285 and 288, we would likely proceed to initiate similar investigations regarding other pre-paid telecommunications carriers. Ultimately, it became apparent that the most efficient method of addressing the issue of whether or not pre-paid telecommunications providers must pay into MTEAF and MUSF was to propose amendments to Chapters 285 and 288 to expressly include pre-paid intrastate revenues as subject to the reporting and assessment requirements of the Rules, whether or not a carrier renders a "bill." During such a rulemaking proceeding, TracFone and any other pre-paid telecommunications carriers operating in Maine would have an opportunity to fully present their views on the proposals contained in this Notice of Rulemaking.

Accordingly, we close our investigation in Docket No. 2010-47 and initiate a separate rulemaking proceeding in this docket to consider amendments to Chapters 285 and 288 regarding pre-paid telecommunications carriers.

² The only reference in Title 35-A M.R.S.A § 7104 (MUSF) to bills is the requirement in subsection 3(E) stating that the Commission must "require explicit identification on customer bills of contributions to any state universal service fund established pursuant to this section," a requirement set forth in Chapter 288, § 5(A). Section 7104-B (MTEAF) requires only that the Commission "require explicit identification on customer bills of any charge imposed under this section. That requirement is contained in Chapter 285, § 3(C).

IV. LEGAL AUTHORITY

A. MUSF

Title 35-A M.R.S.A. § 7104(1) mandates that this Commission “require telephone utilities to participate in statewide outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission.”³ The Legislature has required that the Commission adopt rules to implement its mandate and given the Commission the authority to “require providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of [Title 35-A] and the federal Telecommunications Act of 1996, Public Law 104-104, 11 Stat. 56.”⁴ 35-A M.R.S.A. § 7104(3). The mandates of Section 7104 do not draw any distinction between pre-paid and post-paid (i.e., “billed”) service providers.

B. MTEAF

Pursuant to the authority granted in 35-A M.R.S.A. §§ 7104 and 7104-B, the Commission may establish a telecommunications education access fund and “require a telecommunications carriers offering telecommunications in [Maine] and any other entities identified pursuant to subsection 8 [of § 7104-B]⁵ to contribute to the

³ “Telephone utility is defined as “every person, its lessees, trustees, receivers or trustees appointed by any court that provides telephone service for compensation” in Maine. 35-A M.R.S.A. § 102(19). A “person” is defined as including “a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, [or] any other legal entity or natural person.” *Id.* § 102(11). “Telephone service” is defined as “the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of wires.”

⁴ “Providers of intrastate telecommunications services” is defined to include providers of radio paging service and mobile telecommunications services.” 35-A M.R.S.A. § 7104(3).

⁵ The “other entities” identified by 35-A M.R.S.A. § 7104-B include, but are not limited to, cable television companies, internet service providers, and any other entity to the extent the entity offers services that “provide a method of delivering 2-way interactive communications services comparable to those offered by telecommunications carriers.” 35-A M.R.S.A. § 7104-B(8). Subsection 8 also states that “[t]he commission shall periodically examine the services provided and entities assessed a fee under this section. The purpose of the review is to ensure that the fees assessed under this section are competitively neutral.” *Id.*

fund.”⁶ Just as in Section 7104, the mandates of Section 7104-B do not draw any distinction between pre-paid and post-paid service providers.

V. DISCUSSION OF PROPOSED RULE AMENDMENTS

The modifications discussed below will make clear that pre-paid telecommunications providers will be treated in the same matter as other telecommunications providers for the purpose of contributions to MTEAF and MUSF. Specifically, pre-paid mobile telecommunications providers will be required to contribute to MTEAF and MUSF using the same method of calculating contributions as other mobile telecommunications carriers.

A. Chapter 285 (MTEAF)

1. Section 1: Definitions

We propose to amend the definition of “Intrastate Retail Revenue” in Section 1(B) of the Rule to make clear that such revenue is all revenue that a carrier receives from intrastate telecommunications services sold to end user customers for use by those customers, while allowing carriers that have uncollectible revenues to deduct their uncollectible factors.

2. Section 2: Assessment

We propose to amend Section 2(A) of the Rule to clarify that the assessment applies to all intrastate retail revenue regardless of the method of collection.

We propose to amend Section 2(C)(1) of the Rule to clarify that the assessment of those charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine, is applicable regardless of a carrier’s method of revenue collection.

⁶ Section 7104-B defines “Telecommunications carrier” and “telecommunications service” as having the same meaning as set forth in 47 U.S.C. § 153. 35-A M.R.S.A. § 7104-B(1)(C). Title 47 U.S.C. § 153 defines “telecommunications carrier” as “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of [Title 47]),” and “telecommunications service” as “the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C § 153(44), (46). “Telecommunications” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” *Id.* § 153(43).

We propose to amend Section 2(E)(1) of the Rule to clarify that assessments apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider, including a paging provider, that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

3. Section 3: Recovery of Contributions from Retail Customers

We propose to amend Section 3(A) of the Rule to clarify that a carrier's contribution to the fund may be recovered from customers through a surcharge without regard to a carrier's revenue collection method.

We propose to amend Section 3(B) of the Rule to clarify that its surcharge application provisions apply to all carriers that use any of the interstate-intrastate allocation methods described in Section 2 of the Rule, without regard to a carrier's revenue collection method.

We propose to amend Section 3(C) of the Rule to clarify that any surcharge collected from customers to recover MTEAF fees be identified on customer bills only if the carrier provides a bill (including electronic bills) to the customer.

We also propose to amend Sections 2(C)(1), 2(C)(3), 2(D)(2), 2(D)(3), 2(E)(1), 2(E)(3), 2(F) and 5 to replace "Director of Finance" with "Director of Telephone and Water Utility Industries."

B. Chapter 288 (MUSF)

1. Section 1: Definitions

We propose to amend the definition of "Intrastate Retail Revenue" in Section 2(G) of the Rule to make clear the such revenue is all revenue that a carrier from intrastate telecommunications services sold to end user customers for use by those customers, while allowing carriers that have uncollectible revenues to deduct their uncollectible factor.

2. Section 4: The Fund

We propose to amend Section 4(C) of the Rule to clarify that a carrier must report the total amount of all revenue received, regardless of whether the carrier sends a bill to customers, and that carriers with uncollectible revenues also shall report their uncollectible factor.

We propose to amend Section 4(D)(1) of the Rule to clarify that the assessment applies to the intrastate portion of those retail charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

We propose to amend Section 4(F)(1) of the Rule to clarify that the assessments shall apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider (including a paging provider) that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

We propose to amend Section 4(G) of the Rule to clarify that the quarterly contribution that each carrier must contribute to MUSF is equal to all of that carrier's intrastate retail revenue, regardless of whether the carrier sends a bill to customers, and that carriers that have uncollectible revenues shall deduct their uncollectible factor.

We propose to amend Section 4(I) of the Rule to clarify that a carrier must report on a quarterly basis all intrastate revenues, regardless of whether the carrier sends a bill to customers, and that carriers that have uncollectible revenues shall also report their uncollectible factor.

3. Section 5: Identification and recovery of Contributions by Contributing Carriers

We propose to amend Section 5(A) of the Rule to clarify that contributions that a carrier makes to the MUSF must be identified on customer bills only if the carrier provides a bill or other statement of charges (written or electronic) to the customer.

We propose to amend Section 5(B)(2) of the Rule to clarify that the surcharge applies to all intrastate retail telecommunications services provided to a retail customer, or any designated subset of those services, but shall not apply to surcharges for Enhanced 911, for the Maine Telecommunications Education Access Fund, or for similar funds that are not part of a carrier's retail service offerings, regardless of a carrier's method of revenue collection.

We propose to amend Section 5(B)(3) of the Rule to clarify that its surcharge application provisions apply to all carriers that use any of the interstate-intrastate allocation methods described in Section 4 of the Rule, without regard to a carrier's revenue collection method.

We propose to amend Section 5(B)(4) to clarify that any surcharge collected from customers to recover MUSF fees be identified on customer bills only if the carrier provides a bill to the customer.

We also propose to amend Sections 3(B)(3)(a), 4(B), 4(D)(1), 4(D)(3), 4(E)(2), 4(E)(3), 4(F)(1), 4(F)(3), 4(J) and 6 to replace "Director of Finance" with "Director of Telephone and Water Utility Industries."

Exhibit No. 10
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

OPEN MEETING ITEM



0000123119

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS



ORIGINAL

ARIZONA CORPORATION COMMISSION

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DATE: FEBRUARY 15, 2011

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKET NO.: T-20664A-09-0148

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

TRACFONE WIRELESS, INC.
(ELIGIBLE TELECOMMUNICATIONS CARRIER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 24, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

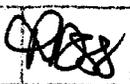
MARCH 1, 2011 and MARCH 2, 2011

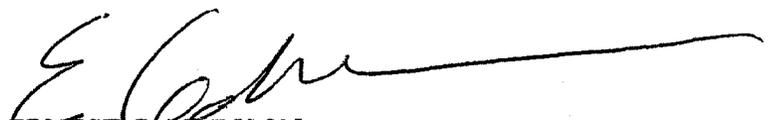
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

FEB 15 2011

DOCKETED BY 


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION
OF TRACFONE WIRELESS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER FOR
THE LIMITED PURPOSE OF OFFERING
LIFELINE AND LINK UP SERVICES TO
QUALIFIED HOUSEHOLDS IN ARIZONA.

DOCKET NO. T-20664A-09-0148

DECISION NO. _____

ORDER

Open Meeting
March 1 and 2, 2011
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

I. Procedural History

1. On March 24, 2009, TracFone Wireless, Inc. ("TracFone") filed with the Arizona Corporation Commission ("Commission") an application for designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of offering Lifeline and Link Up services in Arizona.
2. On July 27, 2009, TracFone filed a First Amendment to Petition for Designation as an ETC.
3. On August 7, 2009, TracFone filed a Revised First Amendment to its application.
4. On October 28, 2009, TracFone filed a Second Amendment to its application.
5. On December 18, 2009, the Arizona Local Exchange Carriers Association ("ALECA") filed a Motion to Intervene.

1 6. On February 8, 2010, TracFone filed a response to ALECA's Motion to Intervene,
2 stating that TracFone did not object to ALECA's intervention and that its proposed services are not
3 the same as those offered by ALECA member companies.

4 7. By Procedural Order issued on February 19, 2010, the Commission's Utilities
5 Division ("Staff") was directed to file a response to ALECA's Motion to Intervene.

6 8. On March 1, 2010, Staff filed a response to ALECA's Motion to Intervene, stating that
7 Staff had no objections to the intervention.

8 9. On March 16, 2010, by Procedural Order, ALECA's Motion to Intervene was granted.

9 10. On April 7, 2010, pursuant to Arizona Supreme Court Rule 38(a), Kristine K.
10 Campbell, an attorney with Greenberg Taurig, LLP, filed with the Commission a Motion and Consent
11 of Local Counsel for *Pro Hac Vice* Admission of Mitchell Brecher on behalf of TracFone Wireless,
12 Inc.

13 11. On April 15, 2010, by Procedural Order, Mitchell Brecher was admitted *pro hac vice*
14 in this matter with Kristine K. Campell as the designated member for the Arizona State Bar with
15 whom communications may be made and papers may be served.

16 12. On April 29, 2010, Staff issued a Staff Report, recommending approval of TracFone's
17 application with conditions.

18 13. On May 10, 2010, by Procedural Order, a procedural conference was scheduled for
19 May 20, 2010.

20 14. On May 20, 2010, a procedural conference was held as scheduled. TracFone,
21 Intervenor ALECA, and Staff appeared through counsel. During the procedural conference,
22 procedural deadlines were discussed; other Commission Decisions regarding TracFone's proposed
23 services were discussed; the parties were directed to make a joint filing updating the Commission on
24 the settlement of any of the issues raised in this proceeding; and tentative dates for a status conference
25 were discussed.

26 15. On May 25, 2010, by Procedural Order, a status conference was scheduled to
27 commence on July 1, 2010.

28 16. On June 17, 2010, TracFone filed a Notice of Mailing Application and Procedural

1 Order to Rural Incumbent Local Exchange Carriers.

2 17. On June 21, 2010, Staff filed a request to vacate the July 1, 2010, status conference
3 ("Request"). The Request stated the parties were in the process of trying to resolve the disputed
4 issues and that all the parties were in an agreement that more time was needed.

5 18. On June 25, 2010, by Procedural Order, Staff's request to vacate the July 1, 2010,
6 status conference was granted and the parties were ordered to make a joint filing within 30 days
7 updating the Commission on the resolution of any disputed issues.

8 19. On July 26, 2010, the parties filed a joint status report stating that significant progress
9 had been made towards narrowing the disputed issues, but that additional time, until August 16, 2010,
10 was needed.

11 20. On August 3, 2010, by Procedural Order, the parties were granted additional time to
12 until August 31, 2010, to file their joint status report.

13 21. On September 3, 2010, the parties filed a Supplemental Joint Status Report ("Report")
14 outlining the issues the parties were able to resolve.

15 22. On December 6, 2010, by Procedural Order, a pre-hearing conference was scheduled
16 for December 22, 2010.

17 23. On December 22, 2010, the pre-hearing conference was held as scheduled. Staff,
18 TracFone, and ALECA appeared through counsel. During the pre-hearing conference, TracFone
19 stated that the parties and Staff are in agreement on the substantive issues raised in this matter and
20 requested that no hearing be held, and that an Order be submitted to the Commission. After some
21 clarifying comments, Staff and ALECA concurred that this matter could proceed without a hearing as
22 the issues in dispute had been settled.

23 **II. Background**

24 24. TracFone is a telecommunications corporation, incorporated under the laws of
25 Delaware, with its principal place of business in Miami, Florida.¹ TracFone is a reseller of
26 commercial mobile radio service ("CMRS"), and provides services using a "virtual network."²

27
28 ¹ TracFone application at 2.

² Id.

1 According to TracFone's application, it has consistently provided CMRS services throughout Arizona
 2 and the United States for the past ten years through wireless carriers like AT&T Wireless, T-Mobile,
 3 and Verizon Wireless.³

4 25. TracFone is seeking ETC designation solely to provide Lifeline⁴ and Link Up⁵
 5 services to qualified low-income Arizona households. TracFone will be eligible to receive funds from
 6 the federal Universal Service Fund ("USF") for its Lifeline services only (see discussion below on
 7 TracFone's limited ETC designation), but is not eligible to receive federal USF support for high-costs
 8 services such as Link Up, toll limitation, or Lifeline to Tribal Lands.⁶ TracFone seeks to provide
 9 service within areas served by other non-rural and rural incumbent local exchange carriers
 10 ("ILECs").⁷

11 26. TracFone states that it will provide Lifeline service in all areas in Arizona served by
 12 AT&T Mobility, T-Mobile, and Verizon Wireless.⁸ TracFone's Lifeline customers in Arizona will
 13 receive 68 minutes of use each month at no charge, unused minutes will roll over from month to
 14 month, and all Link Up customers will receive handsets at no charge.⁹

15 27. Subsequent to filing the above application, TracFone filed a Notice of Expanded
 16 Lifeline Offering. The Notice states TracFone will offer expanded SafeLink Wireless® Lifeline
 17 service for existing and new customers.¹⁰ Under the expanded service, TracFone will offer Lifeline
 18 customers in all states and Arizona the option to select from three monthly plans.¹¹ The plans are:

- 19 a. 250 free minutes each month, which do not carry over the next month if
 20 unused, with texting available at a rate of one text per minute of airtime; or
- 21 b. 125 free minutes each month, which carry over the following month if unused,
 with texting available at a rate of one text per minute of airtime; or
- 22 c. 68 free minutes each month, which carry over the following month if unused,

23 ³ TracFone application at 2.

24 ⁴ TracFone's Lifeline service will offer low income customers wireless services and limited wireless usage at no charge.
 TracFone application at 3.

25 ⁵ TracFone's Link Up service will provide qualified customers with a free wireless telephone handset. TracFone
 application at 3.

26 ⁶ The FCC states that the Lifeline and Link Up programs are designed to reduce the monthly cost of telecommunications
 service and the cost of initial connection, respectively, for qualifying consumers. TracFone application at 2.

27 ⁷ Application at Exhibit 11.

27 ⁸ TracFone's Second Amended Petition (dated October 28, 2009) at 1.

27 ⁹ TracFone's First Amended Petition (dated July 27, 2010) at 2.

28 ¹⁰ TracFone's Notice of Expanded Lifeline Offering filed August 13, 2010.

28 ¹¹ Id.

1 with texting available at a rate of 3 texts per each minute of airtime, plus
2 International Long Distance calling to over 60 destinations.¹²

3 28. TracFone states that its proposed Lifeline service in Arizona will differ from other
4 ETC Lifeline programs because it will offer low-income consumers the convenience and portability
5 of wireless services free of charge.¹³ TracFone also states that under its Link Up service plan,
6 customers will receive a free wireless telephone handset, which will allow Lifeline and Link Up
7 customers to initiate and receive calls from their wireless handset without incurring activation or
8 usage charges.¹⁴ TracFone believes its proposed services will operate in accordance with the spirit of
9 universal service because its services can be accessed virtually nationwide and its rates are nationally
10 uniform.¹⁵

11 29. ALECA is comprised of small telephone companies and member-owned cooperatives
12 providing local exchange telecommunications services to customers in rural, high cost areas of
13 Arizona, and are considered "rural telephone companies" under the Telecommunications Act of 1996
14 ("1996 Act").¹⁶ ALECA states its members are Fort Mojave Telephone Company; Frontier
15 Communications Corporation; Gila River Telecommunications, Inc.; Hopi Telecommunications, Inc.;
16 Midvale Telephone Exchange, Inc.; San Carlos Apache Telecommunications Utility, Inc.; South
17 Central Communications; Table Top Telephone Company, Inc.; TDS; Tohono O'odham Utility
18 Authority; Valley Telephone Cooperative; and Zona Communications.¹⁷

19 30. ALECA states that it is concerned that TracFone's proposed services in Arizona will
20 be duplicative of the services already provided by its member companies and may cause the federal
21 USF to grow to the point where its members' compensation under the fund is endangered, and public
22 support may be undermined.¹⁸

23 31. TracFone asserts that its proposed Lifeline services are not similar to the Lifeline
24 offerings of ALECA member companies in that TracFone will offer wireless services at no charge to

25 ¹² TracFone's Notice of Expanded Lifeline Offering filed August 13, 2010.

26 ¹³ TracFone application at 3.

27 ¹⁴ Id.

28 ¹⁵ Id.

¹⁶ ALECA Motion to Intervene (dated December 18, 2009) at 1.

¹⁷ The Motion to Intervene states that Fort Mohave Telecommunications, Gila River Telecommunications, Hopi Telecommunications, San Carlos Apache Telecommunications, and Tohono O'odham Utility Authority are tribal owned telephone companies and are not subject to the ACC's jurisdiction. ALECA Motion to Intervene at 1.

¹⁸ ALECA Motion to Intervene (dated December 18, 2009) at 2.

1 customers and free E911 compliant handsets.¹⁹ In contrast, ALECA member companies offer Lifeline
 2 services using landlines.²⁰ Regarding the growth of the federal USF, TracFone asserts that it is
 3 seeking Tier 1, Tier 2, and Tier 3 Lifeline support from the federal USF and that it is not eligible for
 4 Tier 4 support which allows an ETC to receive an additional \$25 per customer, per month for
 5 residents of tribal communities.²¹ TracFone contends that because several of ALECA's member
 6 companies are tribally owned it will not be competing for federal USF support with those companies
 7 and therefore the funds dispersed from the federal USF will not grow as a result of TracFone's
 8 proposed services.²²

9 32. Staff believes that TracFone's proposed service as a wireless ETC is consistent with
 10 the FCC's requirement that universal service support not unfairly advantage or disadvantage one
 11 provider over another or one technology over another.²³ Staff also contends that since TracFone is
 12 not eligible for high cost support (Tier 4), TracFone's proposed services will not affect any Lifeline
 13 support for ALECA member companies serving tribal lands.²⁴

14 33. Staff's conclusions are consistent with the FCC's Forbearance Order (discussed
 15 below) which states that "if TracFone is able to obtain ETC designation for Lifeline-only services, we
 16 do not expect this to significantly burden the universal service fund and thus negatively affect
 17 consumers through increased pass through charges of the carriers' contribution obligations."²⁵

18 **III. Requirements for Designation as an ETC**

19 34. Pursuant to 47 U.S.C. § 214(e)(1) of the 1996 Act, in order to qualify for designation
 20 as an ETC a common carrier must meet the following requirements:

21 "A common carrier designated as an eligible telecommunications carrier
 22 under paragraph (2) or (3) shall be eligible to receive universal service
 23 support in accordance with Section 254 and shall throughout the service
 24 area for which the designation is received – (A) offer the services that are
 25 supported by Federal universal service support mechanisms under Section
 254(c), either using its own facilities or a combination of its own facilities
 and resale of another carrier's services (including the services offered by
 another eligible telecommunications carrier); and (B) advertise the

26 ¹⁹ TracFone Response to ALECA's Motion to Intervene at 1.

27 ²⁰ TracFone Response to ALECA Motion to Intervene at 2.

28 ²¹ Id. at 2.

²² Id.

²³ Staff Report at 10.

²⁴ Id.

²⁵ Staff Report at 11.

1 availability of such services and the corresponding charges using media of
2 general distribution.”

3 35. TracFone acknowledges that Section 214(e)(1)(A) requires that a common carrier
4 seeking designation as an ETC must “offer services, at least in part, over their own facilities and that
5 Federal Communication Commission Rules prohibits state commissions from designating as an ETC
6 a telecommunications carrier that offers services exclusively through the resale of another carrier’s
7 services.”²⁶

8 36. TracFone attached to its application in this docket a Forbearance Order issued by the
9 Federal Communication Commission (“FCC”) granting TracFone forbearance from the facilities-
10 based service requirement pursuant to Section 214(e)(1)(A) for its Lifeline support services only, and
11 subject to the following conditions.²⁷ The Forbearance Order requires TracFone to:

- 12 a. Provide its Lifeline customers with 911 and enhanced 911 (“E911”) access
13 regardless of the activation status and availability of prepaid minutes;
- 14 b. Provide its Lifeline customers with E911-compliant handsets and replace, at no
15 additional charge to the customer, non-compliant handsets of existing
16 customers who obtain Lifeline supported services;
- 17 c. Comply with conditions (a) and (b) as of the date it provides Lifeline services;
- 18 d. Obtain a certification from each Public Safety Answering Point (“PSAP”)
19 where TracFone provides Lifeline service confirming that TracFone complies
20 with condition (a) or if within 90 days of TracFone’s request a PSAP has not
21 responded, TracFone may self-certify that it meets the basic and E911
22 requirements;
- 23 e. Require its customers to self-certify at time of service activation and annually
24 thereafter that they are the head of the household and receive Lifeline
25 supported service only from TracFone; and
- 26 f. Establish safeguards to prevent its customers from receiving multiple TracFone
27 Lifeline subsidies at the same address.²⁸

28 37. Under the Forbearance Order, TracFone is designated as a “limited ETC” because its
29 eligibility applies to only Lifeline services, TracFone is not eligible to receive support for other
30 supported services under the low-income program, and it is not eligible to receive support for services
31 supported by the other universal service fund support mechanisms like high costs Link Up services.²⁹

32 ²⁶ TracFone application at 4.

33 ²⁷ Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd
34 15095 (2005) (“TracFone Forbearance Order”).

35 ²⁸ Id.

36 ²⁹ Id.

1 **IV. Staff Recommendations**

2 38. In addition to the conditions set forth by the FCC, Staff recommends approval of
3 TracFone's application for designation as an ETC, subject to the following conditions:

- 4 a. TracFone shall evaluate providing Lifeline customers free access to Customer
5 Service from TracFone's handsets;
- 6 b. TracFone shall evaluate offering a rate no more than \$0.10 per minute for
7 additional minutes;
- 8 c. TracFone shall file a tariff with the Commission, setting forth the rates, terms,
9 and conditions for its Lifeline service within thirty (30) days of a Commission
10 Order in this matter;
- 11 d. TracFone shall notify the Commission of any future changes to its rates, terms
12 and/or conditions regarding its Lifeline offerings and file such charges in its
13 tariff and amend its tariff in compliance with A.R.S. § 40-367;
- 14 e. TracFone shall make available Lifeline services to qualifying low-income
15 applicants in its ETC service area no later than ninety (90) days after the
16 effective date of this decision and concurrently to notify the Utilities Division
17 Director, by making a filing in Docket Control, of the commencement for such
18 services;
- 19 f. TracFone shall apprise the Commission of customer complaints that may arise
20 from its ETC service offerings by making a filing in Docket Control;
- 21 g. TracFone shall provide a regulatory contact to the Commission's Consumer
22 Services Division;
- 23 h. In the event that TracFone requests to relinquish its ETC status and no longer
24 provides Lifeline services, it must provide notice to both the Commission and
25 its customers. Such notices shall be in accordance with A.A.C. R14-2-1107;
- 26 i. TracFone shall submit an annual report by April 15th of each year, beginning
27 April 15, 2011, that contains its total number of Lifeline subscribers, total
28 amount of Federal USF support received and an affidavit stating that Lifeline
discounts or the equivalent are equal to the amount of total federal USF support
per line. The annual filing shall be submitted as a compliance item in this
docket; and
- 29 j. That TracFone submit a quarterly report detailing the total number of Lifeline
customers, the total number of customers removed from the customer base due
to 60-day inactivity, the number of customers removed from the customer base
due to annual verification, and the total number of customers who voluntarily
relinquished Lifeline service. The quarterly report should be submitted as a
compliance item in this docket on the 15th of the month following the end of
the quarter.

30 39. Staff believes its recommendation that TracFone provide a quarterly report of the
31 number of customers with periods of inactivity greater than sixty (60) days who have not cancelled
32

1 service, are no longer eligible for Lifeline service, or who voluntarily deactivate service; will help to
 2 monitor whether TracFone is continuing to receive the \$10 per month, per handset fee from the
 3 Universal Service Administrative Company after customers deactivate services.³⁰

4 **V. TracFone's Compliance with the Requirements for ETC Designation**

5 **A. Services Designated for Support**

6 40. TracFone states it will offer the services set forth in 47 C.F.R. § 54.101(a) and
 7 54.202(a), in order to receive federal USF support for its Lifeline service.³¹ These services include:

- 8 a. Voice Grade Access to the Public Switched Network: "Voice grade access" is
 9 defined as a functionality that enables a user of telecommunications services to
 10 transmit voice communications, including signaling the network that the caller
 11 wishes to place a call, and to receive voice communications, including
 12 receiving a signal indicating there is an incoming call. The bandwidth for
 13 voice grade access should be at a minimum, 500 to 4,000 Hertz;
- 14 b. Local usage: "Local usage" means an amount of minutes of use of exchange
 15 service, prescribed by the Commission, provided free of charge to end users;
- 16 c. Dual Tone Multi-Frequency Signaling of its Functional Equivalent: "Dual
 17 tone multi-frequency" ("DTMF") is a method of signaling that facilitates the
 18 transportation of signaling through the network, shortening call set-up time;
- 19 d. Single-Party Service or its Functional Equivalent: "Single-party service" is a
 20 telecommunications service that permits users to have exclusive use of a
 21 wireline subscriber loop or access line for each call placed, or, in the case of
 22 wireless telecommunications carriers, which use spectrum shared among users
 23 to provide service, a dedicated message path for the length of a user's
 24 particular transmission;
- 25 e. Access to Emergency Services: "Access to emergency services" includes
 26 access to services, such as 911 and enhanced 911, provided by local
 27 governments or other public safety organizations. 911 is defined as a service
 28 that permits a telecommunications user, by dialing the three-digit code "911,"
 to call emergency services through a Public Service Access Point ("PSAP")
 operated by the local government. "Enhanced 911" is defined as 911 service
 that includes the ability to provide automatic numbering information ("ANI"),
 which enables the PSAP to call back if the call is disconnected, and automatic
 location information ("ALI"), which permits emergency service providers to
 identify the geographic location of the of the calling party. "Access to
 emergency services" includes access to 911 and enhanced 911 services to the
 extent the local government in an eligible carrier's service area has
 implemented 911 or enhanced 911 systems;
- f. Access to Operator Services: "Access to operator services" is defined as
 access to any automatic or live assistance to a consumer to arrange for billing
 or completion, or both, of a telephone call;
- g. Access to Interexchange Service: "Access to interexchange service" is defined

³⁰ Staff Report at 9.

³¹ TracFone's application at 9.

1 as the use of the loop, as well as that portion of the switch that is paid for by
 2 the end user, or the functional equivalent of these network elements in the case
 3 of a wireless carrier, necessary to access an interexchange carrier's network;

4 h. Access to Directory Assistance: "Access to directory assistance" is defined as
 5 access to a service that includes, but is not limited to, making available to
 6 customers, upon request, information contained in directory listings; and,

7 i. Toll Limitation for Qualifying Low-Income Consumers: "Toll limitation for
 8 qualifying low-income consumers" is described in Subpart E³² of this part.

9 41. ALECA raised concerns over whether TracFone could adequately provide 911 service
 10 to its LifeLine customers.³³ TracFone states that the FCC's Forbearance Order directs TracFone to
 11 provide E911 compliant handsets to all its Lifeline customers and that TracFone has complied with
 12 that directive in every jurisdiction where it provides Lifeline service, and that TracFone will also in
 13 Arizona.³⁴ Further, TracFone states the Forbearance Order requires TracFone to obtain PSAP
 14 certification that its Lifeline customers have access to 911 and E911 service; that TracFone can self-
 15 certify that its customers have 911 and E911 service if TracFone obtains from its underlying carriers
 16 documentation stating that those carriers will treat 911 calls from TracFone customers in the same
 17 manner as they treat their own retail customers; and that TracFone has already obtained such
 18 documentation from its underlying carriers.³⁵

19 42. Based on the information provided by TracFone, TracFone and ALECA agree that
 20 TracFone has the ability to provide 911 and E911 service.³⁶

21 43. Based on TracFone's ability to provide all of the support services and functionalities
 22 required in the proposed ETC coverage area to all subscribers taking services under its Lifeline plan
 23 through arrangements with its underlying carriers, Staff believes that TracFone meets the ETC
 24 designation criteria.³⁷

25 **B. Advertising of Supported Services**

26 44. Pursuant to Section 214(e)(1)(A) of the 1996 Act and 47 C.F.R. § 54.201(d)(2)
 27 TracFone states that it will advertise the availability of its Lifeline and Link Up services and the

28 ³² "Toll limitation" denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable
 of providing both services. For eligible telecommunications that are capable of providing both services, "toll limitation"
 denotes both toll blocking and toll control. 47 C.F.R. § 54-400(d).

³³ Joint Supplemental Status Report filed September 3, 2010 at 3.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 4.

³⁷ Staff Report at 5.

1 associated charges using media of general distribution as well as using marketing and outreach efforts
 2 (i.e., print and broadcast advertising) to ensure that eligible consumers are aware of the services it
 3 offers.³⁸ In addition, TracFone states it will use its network of retail outlets to help promote the
 4 availability of Lifeline and Link Up programs.³⁹

5 45. TracFone provided sample print, radio, and television ads for its proposed services and
 6 charges for Staff's review. Based on the information provided, Staff concluded that TracFone will
 7 advertise the availability of its supported services and corresponding charges using media of general
 8 distribution and therefore meets the ETC designation criteria.

9 **C. ETC Requirements Pursuant to 47 C.F.R. § 54.202(a)(1)-(5)**⁴⁰

10 46. Pursuant to 47 C.F.R. § 54.202(a)(1) an "ETC applicant must demonstrate its
 11 commitment and ability to provide the supported services throughout the designated service area by
 12 providing services to all requesting customers within its designated service area and by submitting a
 13 formal network improvement plan that demonstrates how universal service funds will be used to
 14 improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of
 15 high cost support."

16 47. In its application, TracFone states that it will provide services in the designated areas
 17 within a reasonable time by reselling its service through its underlying facilities-based providers; its
 18 providers are operational and are largely built out and service can commence upon Commission
 19 approval; and that TracFone is ready to commence providing handsets to qualified customers under
 20 its Link Up plan.⁴¹

21 48. Based on the information provided by TracFone, Staff concluded that TracFone meets
 22 the non-facilities based portion of the ETC criteria.

23 49. In accordance with 47 C.F.R. § 54.202(a)(2), an applicant for ETC designation must
 24 demonstrate that "it has a reasonable amount of back-up power to ensure functionality without an
 25 external power source, is able to reroute traffic around damaged facilities, and is capable of managing
 26

³⁸ TracFone application at 15.

³⁹ TracFone states its retail vendors include Rent-a-Center, Dollar General Stores, Walgreen's, CVS, and Wal-Mart.
 Tracfone application at 15.

⁴⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

⁴¹ TracFone application at 14.

1 traffic spikes resulting from emergency situations.”

2 50. Staff states that because of TracFone’s use of underlying wireless carriers who have
3 state-of-the-art network reliability standards, TracFone’s service reliability compares favorably with
4 that of any facilities-based operator in the wireless telecommunications industry.⁴² Therefore, Staff
5 concludes that TracFone has demonstrated its ability to remain functional in emergency situations and
6 therefore meets the ETC designation criteria.⁴³

7 51. TracFone states it will comply with the Cellular Telecommunications and Internet
8 Association’s (“CITA”) Consumer Code for Wireless Service to meet the ETC criteria that all ETC
9 applicants must demonstrate “a commitment to meeting consumer protection and service quality
10 standards,” pursuant to 47 C.F.R. § 54.202(a)(3).⁴⁴ Further, TracFone states it will make its website
11 available to customers for review of TracFone’s Privacy Policy.⁴⁵

12 52. Based on the information provided by TracFone, Staff believes TracFone meets the
13 ETC designation criteria for consumer protection and service quality.⁴⁶

14 53. Pursuant to 47 C.F.R. § 54.202(a)(4), an ETC applicant must “demonstrate that it
15 offers a local usage plan comparable to the one offered by the incumbent local exchange carrier
16 (“LEC”) in the services areas for which it seeks designation.”

17 54. TracFone states that it will provide customers with service capable of sending and
18 receiving local phone calls and that local usage is included in TracFone’s calling plan wherever it
19 provides service.⁴⁷ TracFone states that under FCC rules an ETC applicant’s local usage plan should
20 be reviewed on a case-by-case basis to ensure that the ETC provider local usage plan is comparable to
21 other plans offered by ILECs in the area.⁴⁸ Further, TracFone states that although the FCC has not
22 adopted minimum local usage requirements, TracFone will comply with any applicable minimum
23 local usage requirements adopted by the FCC.⁴⁹

24
25 ⁴² Staff Report at 7.

⁴³ Id.

⁴⁴ TracFone application at 14.

⁴⁵ Id.

⁴⁶ TracFone application at 7.

⁴⁷ TracFone application at 10.

⁴⁸ TracFone application citing Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, 33 (2005).

⁴⁹ TracFone application at 32.

1 55. Staff believes that TracFone meets the ETC designation criteria for minimum local
2 usage.⁵⁰

3 56. Applicants for the ETC designation are required under 47 C.F.R. § 54.202(a)(5) “to
4 provide equal access to long distance carriers in the event that no other eligible telecommunications
5 carrier is providing equal access within the service area.”

6 57. Staff states that TracFone received a waiver of this requirement in its Forbearance
7 Order because the FCC concluded that TracFone is a pure reseller.⁵¹ Staff therefore concludes that the
8 equal access requirement is not applicable to TracFone.⁵²

9 **D. ETC Requirements Pursuant to 47 C.F.R §§ 54.410 and 54.416**

10 58. FCC Rules require ETC providers to comply with certification of eligibility and
11 verification of continued eligibility for Lifeline and Link Up participation. TracFone states it will
12 comply with the FCC rules regarding certification and continued eligibility.⁵³

13 59. According to Staff, TracFone certified that it will also comply with the FCC’s
14 expanded eligibility criteria, certification, verification, and recordkeeping requirements pursuant to 47
15 § 54.410 which were adopted in Commission Decision No. 67941 (June 21, 2005).⁵⁴

16 60. Pursuant to 47 U.S.C. § 214(e)(2) the Commission must establish a geographic area
17 for the purpose of determining universal service obligations and support mechanisms for each
18 designated ETC.

19 61. TracFone initially sought designation as an ETC for the entire state of Arizona.⁵⁵
20 ALECA objected to TracFone’s proposed service on tribal lands because ALECA believed the
21 services would be duplicative of services provided by its member companies.⁵⁶

22 62. Regarding TracFone’s designated service area, the parties and Staff agreed that
23 TracFone would **not** attempt to provide its SafeLink Wireless® Lifeline service to eligible residents
24

25 ⁵⁰ Staff Report at 8.

26 ⁵¹ Staff Report citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC 08-100 (rel.
April 11, 2008), note 30.

27 ⁵² Staff Report at 8.

27 ⁵³ TracFone application at 17.

27 ⁵⁴ Staff Report at 9.

28 ⁵⁵ TracFone application at 17.

28 ⁵⁶ ALECA’s Motion to Intervene and Joint Supplemental Status Report dated September 3, 2010.

1 on tribal lands.⁵⁷ TracFone states it will implement the following procedures to comply with its
2 commitment not to serve tribal residents:

- 3 a. Exclusion by Zip Code: TracFone will program its data base to deny
4 applications for SafeLink Wireless® Lifeline service to zip codes located
5 within tribal lands; and
- 6 b. Self-Certification of Non-Tribal Land Residency: TracFone will include in its
7 Arizona Lifeline enrollment application a line for applicants to self-certify
8 under penalty of perjury that they do not reside in Federally-Recognized Tribal
9 Lands.⁵⁸

7 63. With the above agreed upon procedures, the parties and Staff were able to resolve the
8 issue and ALECA has agreed to work with TracFone to identify zip codes located within Federally-
9 Recognized Tribal Lands for exclusion of service by TracFone.⁵⁹

10 64. ALECA expressed concern that TracFone should be required to pay certain fees to
11 various state agencies, including the ACC assessment, Residential Utilities Consumer Office
12 (“RUCO”) assessment, Arizona Emergency Telecommunications Services Revolving Fund (911
13 fees), the Arizona Telecommunications Relay Service Fund, and the Arizona USF fee, on behalf of
14 TracFone’s customers.⁶⁰ TracFone asserts that the current laws governing the above fees are not
15 applicable to prepaid wireless services such as those proposed by TracFone in Arizona.⁶¹ To resolve
16 the issue, TracFone recommends that it send letters to each of the agencies⁶² with jurisdictional
17 authority seeking clarification as to whether the fees, over which the agency has jurisdiction, apply to
18 TracFone.⁶³ TracFone states that it will file as a compliance item in this docket, the letters sent to the
19 agencies as well as the agencies determinations’ on the issue.⁶⁴

20 65. TracFone, Staff, and ALECA stated that based on the above proposed procedures, the
21 parties and Staff agree to the mechanism to resolve the issue.⁶⁵

22 ...
23 ...

24 ⁵⁷ Joint Supplemental Status Report at 2.
25 ⁵⁸ Joint Supplemental Status Report at 3.
26 ⁵⁹ Id.
⁶⁰ Joint Supplemental Status Report at 4.
⁶¹ Id.
27 ⁶² TracFone states that those agencies include the Arizona Department of Administration; the Arizona Commission on the
Deaf and Hard of Hearing (Telecommunications Relay Service); and the Commission.
⁶³ Joint Supplemental Status Report at 4.
28 ⁶⁴ Id. at 5.
⁶⁵ Tr. at 4-9.

1 **VI. Analysis**

2 66. Pursuant to the 1996 Act⁶⁶ the Commission must make a determination that an
 3 applicant's application for designation as an ETC is in the public interest. TracFone asserts that its
 4 proposed services are in the public interest because it will serve consumers in non-rural and rural,
 5 high cost areas where most competitive wireline carriers do not provide service. TracFone states that
 6 its proposed services will provide an alternative to existing telecommunications services available in
 7 the ETC designated areas. TracFone states that the benefits of its proposed services include: wider
 8 local calling areas; the convenience and security of mobile service; customers' ability to control the
 9 cost of service; and the availability of E911 services.⁶⁷

10 67. Staff expressed concerns that TracFone has stated it will deduct minutes from Lifeline
 11 customers when they call TracFone's customer service line.⁶⁸ Staff states that TracFone's three
 12 underlying carriers are among the largest wireless providers in the country and that they do not
 13 deduct minutes from customers when making customer service calls.⁶⁹ Staff recommends that
 14 TracFone evaluate providing Lifeline customers with free customer service calls.⁷⁰ TracFone has
 15 agreed to evaluate whether deducting customer minutes for customer service calls is appropriate.⁷¹

16 68. Staff also expressed concerns regarding the limited amount of free minutes (68
 17 minutes per month)⁷² and the additional cost per minute TracFone's plan provides.⁷³ Staff states that
 18 in other jurisdictions TracFone has offered a \$0.10 per additional minute option and Staff requests
 19 that TracFone extend the same rate to Arizona low-income households.⁷⁴

20 69. Staff believes TracFone meets the overall criteria for designation as an ETC. Staff
 21 recommends that the Commission grant TracFone's application for designation as ETC pursuant to
 22 47 U.S.C. § 214(e)(2).
 23

24 ⁶⁶ 47 U.S.C. § 214(e)(2).

25 ⁶⁷ TracFone application at 19.

26 ⁶⁸ Staff Report at 11.

27 ⁶⁹ Id.

28 ⁷⁰ Id.

⁷¹ Tr. at 10.

⁷² Subsequent to the Staff Report, TracFone filed a Notice of Expanded Lifeline Offering, which gives customers three options to choose from for Lifeline services. Under the three plans, customers will be able to choose from a plan with the minimum 68 free minutes up to 250 free minutes. See discussion in section II of this Decision.

⁷³ Staff Report at 11.

⁷⁴ Id.

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ORDER

IT IS THEREFORE ORDERED that the TracFone Wireless, Inc.'s application for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2) is hereby granted, conditioned upon compliance with the following Ordering Paragraphs.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall make available Lifeline and Link Up services to qualifying low-income applicants in its new ETC area no later than 90 days after the effective date of this Decision.

IT IS FURTHER ORDERED that TracFone Wireless, Inc. shall comply with all Federal Communication Commission rules and Staff's conditions as set forth in Finding of Fact No. 38.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file a document identifying zip codes located within Federally-Recognized Tribal Lands for which TracFone Wireless, Inc., will not be providing service in Arizona.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file a list of all (rural and non-rural local exchange carrier) zip codes TracFone will be serving in Arizona for Staff's review and acceptance.

IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 30 days of the effective date of this Decision as a compliance item in this docket, file an affidavit stating that it has submitted letters (as well as attach to its filing such letters) to the Arizona Department of Administration; the Arizona Commission on the Deaf and Hard of Hearing (Telecommunications Relay Service); and the Arizona Corporation Commission, seeking a determination as to whether the fees, over which the agencies have jurisdiction, apply to TracFone Wireless, Inc.'s services as an Eligible Telecommunications Carrier in Arizona.

...
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...
...

1 IT IS FURTHER ORDERED that TracFone Wireless, Inc., shall, within 10 days of receipt,
2 file as a compliance item in this docket any response(s) or determinations by the above agencies of
3 the applicable and/or non applicable fees to be paid by TracFone Wireless, Inc.

4 IT IS FURTHER ORDERED that TracFone Wireless, Inc.'s designation as an Eligible
5 Telephone Carrier shall include a service area covered by its underlying carriers AT&T Mobility, T-
6 Mobile, and Verizon Wireless, with the exception of Federally-Recognized Tribal Lands located
7 within the state of Arizona.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR: TRACFONE WIRELESS, INC.

2 DOCKET NO.: T-20664A-09-0148

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Exhibit No. 11
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
TracFone Wireless, Inc.)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of New)
York)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of Florida)
Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Virginia)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Connecticut)
Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Massachusetts)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Alabama)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of North)
Carolina)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Tennessee)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Delaware for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
Petition for Designation as an Eligible)
Telecommunications Carrier in the State of New)
Hampshire for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Pennsylvania for the Limited)

Purpose of Offering Lifeline Service to Qualified)
 Households)
)
 Petition for Designation as an Eligible)
 Telecommunications Carrier in the District of)
 Columbia for the Limited Purpose of Offering)
 Lifeline Service to Qualified Households)

ORDER

Adopted: April 9, 2008

Released: April 11, 2008

By the Commission: Commissioners Copps, Adelstein and Tate issuing separate statements.

I. INTRODUCTION

1. In this Order, we conditionally grant the petitions of TracFone Wireless, Inc. (TracFone) to be designated as an eligible telecommunications carrier (ETC), eligible only to receive universal service Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ Due

¹ TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 8, 2004) (New York Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed July 21, 2004) (Virginia Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45 (filed Nov. 9, 2004) (Connecticut Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45 (filed Nov. 9, 2004) (Massachusetts Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45 (filed Nov. 9, 2004) (Alabama Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45 (filed Nov. 9, 2004) (North Carolina Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45 (filed Nov. 9, 2004) (Tennessee Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (Delaware Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Nov. 28, 2007) (New Hampshire Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Dec. 11, 2007) (Pennsylvania Petition); TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45 (filed Jan. 18, 2008) (District of Columbia Petition). TracFone filed an erratum to its New York Petition correcting, from four to five, the number of underlying carriers it uses to serve subscribers in that state. Erratum to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed June 14, 2004). TracFone later amended its request for ETC designation in New York and Virginia to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, 2 (filed Aug. 16, 2004). TracFone's petitions for ETC designation in the remaining states, other than Florida, as discussed below, were limited to eligibility for Lifeline support as originally filed. TracFone does not seek eligibility for high-cost support.

to the Florida Public Service Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice TracFone's petition for designation as an eligible telecommunications carrier in Florida.² On September 8, 2005, the Commission conditionally granted TracFone's petition for forbearance from the facilities requirement of section 214(e)(1).³ As discussed below, we now conclude that TracFone has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support (limited ETC).⁴ We also approve TracFone's plan for complying with the conditions imposed in the *Forbearance Order*.⁵

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."⁶ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁷

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁸ Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."⁹ Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).¹⁰ Before

² TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45 (filed July 21, 2004) (Florida Petition). TracFone later amended its request for ETC designation in Florida to limit its eligibility for federal universal service support to the Lifeline program only. Amendment to TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, 2 (filed Aug. 16, 2004); see para. 10 *infra* (discussing jurisdiction of the Florida Public Service Commission).

³ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (*Forbearance Order*). Under section 214(e)(1)(A) of the Act, an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's service. 47 U.S.C. § 214(e)(1)(A).

⁴ Lifeline is the universal service low-income program that provides discounts to qualified low-income consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409.

⁵ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Compliance Plan (filed Oct. 11, 2005) (TracFone Compliance Plan); *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Erratum to Compliance Plan (filed Oct. 17, 2005) (Erratum to Compliance Plan) (correcting its characterization of Florida to identify it as a state with state-imposed certification and verification requirements for Lifeline eligibility).

⁶ 47 U.S.C. § 254(e).

⁷ 47 U.S.C. § 214(e)(1); see also 47 C.F.R. § 54.201(d).

⁸ 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁹ 47 U.S.C. § 214(e)(6).

¹⁰ *Id.*

designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹¹

B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of the [supported] services and the charges therefore using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a "rural telephone company," a detailed description of the geographic service area for which it requests an ETC designation from the Commission.¹²

5. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.¹³ Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.¹⁴ These additional requirements are mandatory for all ETCs designated by the Commission.¹⁵ ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* must make such showings in their annual certification filings.¹⁶

¹¹ *Id.*

¹² See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

¹³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

¹⁴ See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)).

¹⁵ 47 C.F.R. § 54.202(a). Because TracFone is a pure reseller eligible for Lifeline support only, we do not require TracFone to demonstrate that it satisfies the network build-out and improvement requirements or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

¹⁶ 47 C.F.R. §§ 54.202(b); 54.209.

6. In addition, prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.¹⁷ In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.¹⁸ Specifically, in determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.¹⁹ As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.²⁰

C. TracFone's Petitions

7. TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider that offers prepaid wireless telecommunications services.²¹ On June 8, 2004, TracFone filed a petition seeking forbearance from section 214(e)(1) of the Act, which requires that an ETC be facilities-based, at least in part.²² Beginning on that date, TracFone filed with the Commission petitions seeking designation as an ETC only for the purpose of being eligible to receive universal service Lifeline support in its licensed service areas in New York, Virginia, Florida, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.²³

8. In the *Forbearance Order*, the Commission conditionally granted TracFone's request for forbearance from the facilities-based requirements of section 214(e)(1)(A) of the Act and section 54.201(i) of its rules for the purpose of considering TracFone's petitions for limited ETC designation.²⁴ The *Forbearance Order* required that TracFone file a compliance plan with the Commission explaining how TracFone will implement the conditions imposed by the *Forbearance Order*.²⁵ TracFone filed its compliance plan on October 11, 2005.²⁶

¹⁷ 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). See also *ETC Designation Order*, 20 FCC Rcd at 6388-96, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

¹⁸ *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

¹⁹ 47 C.F.R. § 54.202(c).

²⁰ *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. In analyzing the public interest factors in this instance, there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural. See 47 C.F.R. § 54.403.

²¹ See, e.g., Massachusetts Petition at 2, 3.

²² 47 U.S.C. § 214(e)(1).

²³ See *supra* notes 1 and 2.

²⁴ *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6. Additionally, on its own motion, the Commission forbore from section 54.201(d)(1) of its rules, which mirrors section 214(e) of the Act, requiring that ETCs be facilities-based, at least in part. *Id.* at 15098, n.23.

²⁵ *Id.* at 15105, para. 25.

²⁶ See generally TracFone Compliance Plan; Erratum to Compliance Plan.

III. DISCUSSION

A. Commission Authority to Perform the ETC Designation

9. TracFone has demonstrated that, except for the Florida Public Service Commission, the relevant state commissions lack authority to perform the requested limited ETC designations, and the Commission has authority to consider TracFone's petitions under section 214(e)(6) of the Act. Each petition includes an affirmative statement from the relevant state commission providing that ETC designation should be sought from the Commission.²⁷ Accordingly, we find the relevant state commissions lack jurisdiction to designate TracFone as an ETC and that this Commission therefore has authority to perform the requested limited ETC designations under section 214(e)(6).²⁸

10. In April of this year, the Florida Public Service Commission found that, due to a change in Florida state law, it "now ha[s] jurisdiction to consider CMRS applications for ETC designation."²⁹ In light of this development, and because section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petition filed by TracFone seeking designation as an ETC in Florida. TracFone may re-file its petition with the Florida Public Service Commission. Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein.

B. Analysis of the Eligibility Requirements

11. Offering the Services Designated for Support. TracFone has demonstrated, through the required certifications and related filings, that it now offers or will offer upon designation as a limited ETC the services supported by the Lifeline program.³⁰

12. Offering the Supported Services Using a Carrier's Own Facilities. The Commission previously granted TracFone forbearance from the facilities requirement for purposes of this limited ETC designation, permitting TracFone to offer the supported services via resale only.³¹

13. Advertising the Supported Services. TracFone has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."³² TracFone has also stated that, in compliance with the

²⁷ *E.g.*, New York Petition at 4 and Exhibit 2.

²⁸ 47 U.S.C. § 214(e)(6).

²⁹ *Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0288-PAA-TP, Notice of Proposed Agency Action Order Finding Authority to Consider Applications By CMRS Providers For ETC Designation, 2007 WL 1029436 (Fla. P.S.C. Apr. 3, 2007). The April order was a proposed agency action, which was made final by a consummating order on June 7, 2007. *See Petition of Alltel Communications, Inc. for Designation as Eligible Telecommunications Carrier (ETC) in Certain Rural Telephone Company Study Areas Located Partially in Alltel's Licensed Area and for Redefinition of those Study Areas*, PSC-07-0481A-CO-TP, Amendatory Order, 2007 WL 1774614 (Fla. P.S.C. June 7, 2007).

³⁰ 47 C.F.R. §§ 54.410(a), 54.101(a)(1)-(a)(9); *see, e.g.*, New York Petition at 5-8. In particular, we disagree with commenters who argued that TracFone cannot offer toll limitation service. *See, e.g.*, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, Comments of TDS Telecommunications Corp., at 9-11 (filed July 26, 2004). We find that the prepaid nature of TracFone's service offering works as an effective toll control. *See infra* para. 15.

³¹ *Forbearance Order*, 20 FCC Rcd at 15098, para. 6.

³² 47 U.S.C. § 214(e)(1)(B); *see, e.g.*, New York Petition at 8.

Commission's Lifeline rules, it will advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for those services.³³

14. Additional Eligibility Requirements. TracFone either satisfies the applicable eligibility requirements set forth in the *ETC Designation Order*, described above,³⁴ or must make such showings in its first annual report under section 54.209 of the Commission's rules.³⁵

C. Public Interest Analysis

15. We find that TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice,³⁶ high-quality service offerings,³⁷ and mobility.³⁸ In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts. The Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association Keystone Chapter assert, however, that TracFone is not complying with Pennsylvania's Public Safety Emergency Telephone Act (the Pennsylvania Act), which requires that wireless providers collect a wireless E911 surcharge and remit the money to Pennsylvania's Wireless E-911 Emergency Fund.³⁹ The National Emergency Numbers Association (NENA) further asserts that TracFone's actions in Pennsylvania reflect "patterns of behavior" evidenced "in several other states."⁴⁰ TracFone's reply asserts, *inter alia*, that the allegations set forth in the NENA Keystone/PAOCA Joint Comments are not relevant to TracFone's qualifications to be designated as an ETC and are a question of

³³ 47 C.F.R. § 54.405(b); *see, e.g.*, Petitions for Designation as an Eligible Telecommunications Carrier in the State of Connecticut and the Commonwealth of Massachusetts, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 10 (filed Dec. 29, 2004).

³⁴ *See supra* para. 5.

³⁵ *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209. For example, TracFone has committed to provide high-quality service, as demonstrated by committing to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association (CTIA), and to serve the designated areas within a reasonable time. *See, e.g.*, New York Petition at 13-14. Because TracFone is a pure reseller, eligible for universal service Lifeline support only, we do not require it to demonstrate that it satisfies the network build-out and improvement requirements, or to provide a certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

³⁶ For example, TracFone's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. *See, e.g.*, New York Petition at 12, 14.

³⁷ For example, TracFone committed that it will comply with the Consumer Code for Wireless Service of the CTIA. *See, e.g.*, New York Petition at 13.

³⁸ *See e.g.*, New York Petition at 10-14. As noted in the *PSC Alabama Order*, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *Public Service Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd 6854, 6861, para. 25 (Wireline Comp. Bur. 2005) (*PSC Alabama Order*). Moreover, the availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. *Id.*

³⁹ TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Joint Comments of the Pennsylvania Office of Consumer Advocate and the National Emergency Numbers Association, Keystone Chapter, CC Docket No. 96-45, 5-6 (filed Feb. 8, 2008) (NENA Keystone/PAOCA Joint Comments).

⁴⁰ *See* Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 1-3 (filed Apr. 3, 2007) (NENA Apr. 3, 2008 *Ex Parte* Letter).

state law, not commission regulation.⁴¹ TracFone further denies that it is in violation of the Pennsylvania Act, and asserts that the larger question of state 911 funding requirements is more appropriately addressed "at the national level."⁴²

16. We disagree with TracFone and find compliance with 911/E911 requirements relevant to the public interest in this instance. In the *Forbearance Order*, the Commission expressly conditioned its grant of forbearance from the facilities requirement of section 214(e) of the Act on TracFone's compliance with E911 requirements applicable to wireless resellers.⁴³ The Commission adopted these conditions because of the unique circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support.⁴⁴ The Commission further required TracFone to submit a plan outlining measures to implement the conditions imposed in the *Forbearance Order*, and stated the Commission would consider the plan in deciding whether to grant TracFone's petitions for limited ETC designation.⁴⁵ Given these circumstances, and in light of the concerns raised by NENA and the Pennsylvania Office of Consumer Advocate, we condition TracFone's designation as an ETC eligible for Lifeline support in each state on TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service.⁴⁶ Subject to this condition, we find, on balance, that the advantages of designating TracFone as a limited ETC in the designated service areas outweigh any potential disadvantages.⁴⁷

D. Designated Service Areas

17. Based on the foregoing, we hereby designate TracFone as a limited ETC, eligible only for Lifeline support, in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia.⁴⁸ In designating TracFone as a limited ETC, we clarify that TracFone's designated service areas do not encompass federally-recognized tribally-owned lands.⁴⁹

⁴¹ Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Reply Comments of TracFone Wireless, Inc., CC Docket No. 96-45, 2-5 (filed Feb. 25, 2008).

⁴² *Id.* at 5-9.

⁴³ See *Forbearance Order*, 20 FCC Rcd at 15102, para 16; *infra* at paras. 20-22.

⁴⁴ See *Forbearance Order*, 20 FCC Rcd at 15102, para 16. The Commission noted that TracFone's Lifeline-supported service may well be the customers' only means of accessing emergency personnel. *Id.* Given the potential gravity of the harm if TracFone's Lifeline customers cannot obtain access to emergency services, the Commission adopted the conditions to protect Lifeline customers. *Id.*

⁴⁵ *Id.* at 15105, para. 25.

⁴⁶ See NENA Keystone/PAOCA Joint Comments; NENA Apr. 3, 2008 *Ex Parte* Letter.

⁴⁷ The Commission has already found that any effect on the universal service fund would be minimal, limited to the Lifeline program, and outweighed by the benefit of increasing eligible participation in the Lifeline program. *Forbearance Order*, 20 FCC Rcd 15103-04, para. 17. In addition, we need not perform a creamskimming analysis because TracFone is seeking to be eligible for Lifeline support only.

⁴⁸ Under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support as an ETC. Non-ETCs, however, may participate in certain aspects of the schools and libraries or rural health care programs. See *Forbearance Order*, 20 FCC Rcd at 15097, para. 3 & n.12.

⁴⁹ TracFone expressly states that it does not request ETC designation for tribal lands. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, North Carolina, and Tennessee, CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at n.22 (filed Feb. 2, 2005).

E. Regulatory Oversight and Compliance Plan

18. Under section 254(e) of the Act, TracFone is required to use the specific universal service support it receives “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁵⁰ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁵¹ Lifeline assistance shall be made available to qualifying low-income consumers as soon as the universal service fund Administrator certifies that TracFone’s Lifeline service offering satisfies the criteria in our rules and complies with the conditions imposed under the *Forbearance Order*.⁵² In addition, TracFone must report certain information to the Commission and the Universal Service Administrative Company (USAC) pursuant to section 54.209 of the Commission’s rules.⁵³

19. We find that reliance on TracFone’s commitments to meet these requirements is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.⁵⁴ These requirements will further the Commission’s goal of ensuring that TracFone satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service areas.

20. In addition, we note that, in the *Forbearance Order*, the Commission imposed additional requirements on TracFone, and ordered that TracFone file a compliance plan detailing how it will adhere to these requirements. The additional requirements obligate TracFone to implement certain 911 and E911 requirements and to establish certain administrative procedures to safeguard against waste, fraud, and abuse in the Lifeline program.

21. Specifically, the Commission conditioned forbearance from the facilities requirement for limited ETC designation upon TracFone: (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtaining a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) requiring its customers to self-certify at time of service

⁵⁰ 47 U.S.C. § 254(e). Because TracFone is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under §§ 54.313 and 54.314 of our rules. See 47 C.F.R. §§ 54.313, 54.314.

⁵¹ See *Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

⁵² See 47 C.F.R. §54.401(d). As noted above, we find that TracFone’s service offering meets the criteria for service and functionality contained in our rules. See *supra* para. 11 & n.29. We also approve TracFone’s compliance plan, finding that it is adequate to implement the conditions of the *Forbearance Order*. See *infra* para. 21.

⁵³ See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400-6402, paras. 68-69; see also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC’s designated service areas). As noted above, as a pure reseller eligible for Lifeline support only, we do not require TracFone to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. See *supra* note 15.

⁵⁴ In *TOPUC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.⁵⁵

22. The Commission carefully crafted the conditions of the *Forbearance Order* to meet important regulatory goals. We decline, therefore, to modify these conditions as requested by TracFone in granting the ETC designation requests at issue herein.⁵⁶ Consequently, TracFone must obtain the required certification from each PSAP where it will provide Lifeline service.⁵⁷ Moreover, TracFone must continue to provide access to “basic *and* enhanced 911 service” as described in section 20.18(m) of our rules.⁵⁸ Finally, TracFone must “distribute its Lifeline service directly to its Lifeline customers.”⁵⁹

23. After careful review of the compliance plan and the record, we find the compliance plan adequate to implement the original and unmodified conditions of the *Forbearance Order*.⁶⁰ We, therefore, approve the compliance plan as discussed in this Order.

⁵⁵ *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

⁵⁶ In its compliance plan, TracFone requests two modifications to the public safety conditions. First, TracFone requests that, in lieu of obtaining certification from each PSAP confirming access to 911 and E911, that it be permitted to rely on the underlying carrier’s current quarterly E911 report filed with the Commission together with a certification from TracFone that its Lifeline customers in the relevant market will be served only by such carrier(s). TracFone Compliance Plan at 7-10. Second, TracFone requests that it be allowed to offer Lifeline service where either 911 or E911 service is available. *Id.* at 11-14. Further, TracFone states in its applications that it will implement, upon designation as an ETC, the Lifeline certification and verification procedures set forth in an *ex parte* presentation dated July 13, 2005. *See, e.g.*, Delaware Petition at 12; District of Columbia Petition at 12-13; Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, Secretary, FCC, WC Docket 96-45, Attach. (July 13, 2005). TracFone does not explicitly note, however, that the procedures set forth in that document were rejected, in part, in the *Forbearance Order*. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 19; District of Columbia Public Service Commission Reply Comments, CC Docket No. 96-45, at 4-5 (filed Mar. 13, 2008) (District of Columbia Reply). Out of an abundance of caution, we treat this omission as a request for modification of the conditions of the *Forbearance Order*.

⁵⁷ *See Forbearance Order*, 20 FCC Rcd at 15102, para. 16. We believe this requirement is sufficient to address the District of Columbia Public Service Commission’s concern that the District of Columbia Office of Unified Communications be notified that TracFone is providing Lifeline service in the District of Columbia. *See* District of Columbia Reply at 4.

⁵⁸ 47 U.S.C. § 20.18(m) (emphasis added). We also note that CMRS providers are required to “transmit all wireless 911 calls without respect to their call validation process. . . .” *See* 47 C.F.R. § 20.18(b). This rule addresses the concerns of the District of Columbia Public Service Commission regarding the 911 capability of TracFone handsets “regardless of activation status or minute availability.” *See* District of Columbia Reply at 3; *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18691-99, paras. 29-46 (1996).

⁵⁹ *Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

⁶⁰ In particular, we disagree with USTelecom, who questions whether TracFone will receive 12 months of Lifeline support if a subscriber who chooses the annual prepaid plan uses all of the initial minutes in the first month or if a subscriber under the “NET10” plan redeems fewer than 12 monthly coupons. *See* Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Comments of the United States Telecom Association, at 3, 4 (filed Nov. 28, 2005) (USTelecom Compliance Plan Comments). We find that TracFone’s plans for seeking reimbursement are consistent with our Lifeline rules and procedures. Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Reply Comments of TracFone Wireless, Inc., at 6, 7 (filed Dec. 12, 2005). Moreover, despite comments to the contrary, we are satisfied that TracFone will pass through all Lifeline support as required by our rules. *See* USTelecom Compliance Plan Comments at 1-2. Finally, we find that we do not need to clarify how Lifeline support

(continued....)

24. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.⁶¹ TracFone will be required to provide such records and documentation to the Commission and USAC upon request. If TracFone fails to fulfill the requirements of the Act, our rules, the terms of this Order, or the conditions imposed under the *Forbearance Order* after it begins receiving universal service Lifeline support, the Commission may revoke its limited ETC designation.⁶² The Commission may also assess forfeitures for violations of its rules and orders.⁶³

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Under section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued under section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁶⁴ TracFone has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁶⁵ We find that TracFone has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.⁶⁶

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support in its licensed

(...continued from previous page)

will be calculated and distributed because we are confident that USAC is capable of handling any administrative issues presented by TracFone's Lifeline offering. *See Forbearance Order*, 20 FCC Rcd at 15104, para. 20 (stating that the ETC designation order would address how Lifeline support will be calculated and distributed if the prepaid nature of the offering requires such clarification). The *Forbearance Order* also addressed the issue of double recovery, noting that, although the Commission has in the past declined to extend ETC status to pure resellers due to concerns about double recovery of universal service support, TracFone's CMRS wholesale providers are not subject to section 251(c)(4) wholesale obligations and so the resold services presumably do not reflect a reduction in price due to Lifeline support. *See id.* at 15100-01, para. 12. We, therefore, dismiss comments to the contrary. *See, e.g.,* Comments of Verizon, Federal-State Joint Board on Universal Service, TracFone Wireless Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, Petition for Forbearance from Application of Section 214, CC Docket No. 96-45 at 9 (filed July 26, 2004).

⁶¹ 47 U.S.C. §§ 220, 403.

⁶² *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e); *see also Forbearance Order*, 20 FCC Rcd at 15099, para. 6, n.25.

⁶³ *See* 47 U.S.C. § 503(b).

⁶⁴ 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b). *See Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

⁶⁵ *See e.g.,* New York Petition at Exhibit 1.

⁶⁶ 47 C.F.R. §§ 1.2001-2003.

service areas in New York, Virginia, Connecticut, Massachusetts, North Carolina, Alabama, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia to the extent described in this Order and subject to the conditions set forth herein.

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), TracFone Wireless, Inc.'s petition for eligible telecommunications carrier designation in the state of Florida IS DISMISSED WITHOUT PREJUDICE to the extent described herein.

28. IT IS FURTHER ORDERED that TracFone Wireless, Inc. WILL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2008, as part of its annual reporting requirements.

29. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For quite some time the public debate has centered on whether and how the Universal Service system's high-cost fund should support wireless CETCs. While an important policy discussion for sure, sometimes we lose sight of the fact that there is an entire segment of consumers who would lack a phone at all and would easily become disconnected from society were it not for the support of the Lifeline program. I am very pleased that today the Commission takes a moment to focus on making it easier for low-income consumers to receive wireless phone service. The Petitioner is now eligible for Lifeline support to provide wireless phone service in ten states and the District of Columbia. To some who own multiple phones of every size and shape, such a decision may seem inconsequential; but to the many working poor in this country phone service remains essential to staying connected with family, employers, and the communities in which they live. A wireless option will only make it easier for these consumers to stay connected. The Order recognizes both the importance of providing consumers with a wireless option and at the same time ensures that consumers have essential emergency services available to them. For these reasons, I am pleased to approve this item.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

For most of us, living without telephone service is almost unimaginable. It is a link to our jobs, to commerce, to healthcare and emergency services, not to mention friends and family. For that reason, Congress and the Commission have long recognized the importance of ensuring that consumers have affordable access to telecommunications services. We have succeeded through Federal universal service programs, including Lifeline and Link Up, in achieving extraordinarily high levels of telephone penetration in the U.S. Despite that progress, millions of consumers lack even the most basic connectivity. For many of these consumers, the cost of maintaining telephone service is prohibitively expensive, keeping even the most basic connections out of reach. This is particularly so for low-income consumers, who are much less likely to have access to telephone service.

Our Lifeline program forms the backbone of our efforts to reach low income consumers. Through this Order, the Commission takes a modest step to expand the options available for low income consumers. By designating a provider that actively targets low-income consumers for Lifeline support, this Order should expand choice for these consumers. This is particularly important, given the Commission's estimate that only about one third of households eligible for Lifeline support actually subscribe to the program. Greater competition for low-income customers should lead to better service offerings, lower costs, and, most importantly, greater participation.

I would like to thank the staff of the Wireline Competition Bureau for their hard work to address these petitions and the proposed compliance plan. Given the unique circumstances of designating a prepaid provider as eligible to receive universal service support, it is important that the Commission carefully monitor its implementation and I look forward to working with both the Bureau and my colleagues should any questions arise.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households, CC Docket No. 96-45, Order.*

Just as we improved utilization of the separate rural health care mechanism of the universal service program with our recent Rural Health Care Pilot Program, we now take action to enhance the Lifeline Program. The Lifeline program is a key component of the national universal service goal set out by Congress to ensure that consumers in all corners of the nation – no matter their economic status – have access to telecommunications services. Since its inception, Lifeline has provided support for millions of low-income consumers.

In our decision we grant a very narrow and limited Eligible Telecommunications Carrier (ETC) designation to TracFone's Lifeline program which provides eligible consumers increased choice and mobility, especially citizens in rural areas who often must drive significant distances for employment, education and healthcare. In addition the prepaid feature may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.

Significantly, under this limited ETC designation, TracFone will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support. In addition, we impose additional requirements on TracFone that obligate it to implement certain 911 and E911 requirements, including administrative procedures to safeguard against waste, fraud, and abuse.

Exhibit No. 12
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
TracFone Wireless, Inc.)	CC Docket No. 96-45
)	
Petition for Modification of Condition Imposed)	
On TracFone upon Designation as an Eligible)	
Telecommunications Carrier)	

ORDER

Adopted: January 11, 2011

Released: January 11, 2011

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a petition for waiver filed by TracFone Wireless, Inc. (TracFone) seeking to modify the compliance plan condition that it require each of its Lifeline customers to self-certify annually that they are the head of their household and receive Lifeline-supported service only from TracFone.¹ TracFone requests that it instead be allowed to contact only a statistically-valid sample of its customers to comply with this condition.² We find that TracFone has not demonstrated good cause and that a waiver is not in the public interest.

II. BACKGROUND

2. TracFone is a pre-paid wireless provider currently offering Lifeline service to low-income consumers. In 2005, the Commission conditionally granted a petition for forbearance filed by TracFone allowing TracFone to seek designation as a limited eligible telecommunications carrier (ETC) for the purpose of providing only universal service Lifeline service.³ Specifically, TracFone sought forbearance from the statutory requirement that a carrier provide services "either using its own facilities or a combination of its own facilities and resale of another carrier's services" to be considered an ETC.⁴ As a

¹ Petition for Modification of Annual Verification Condition, CC Docket No. 96-45 (filed Apr. 27, 2009) (TracFone Petition); *see also* Supplement to Petition for Modification of Annual Verification Condition, CC Docket No. 96-45 (filed Jun. 1, 2009) (TracFone Supplement). On June 5, 2009, the Commission released a Public Notice seeking comment on TracFone's petition. *Comment Sought on TracFone Request for Modification Condition Adopted in Commission Order Granting TracFone Forbearance from Eligible Telecommunications Carrier Requirements*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 7694 (2009).

² *See* TracFone Petition at 3; *see also* 47 C.F.R. § 54.410(c)(2).

³ *See Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098, para. 6 (2005) (*Forbearance Order*).

⁴ 47 U.S.C. § 214(e)(1)(A). *See* TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45 (filed June 8, 2004).

condition of the grant of forbearance, among other requirements, the Commission ordered TracFone to require each of its Lifeline customers to self-certify at the time of service activation and annually thereafter that the customer is the head of household and receives Lifeline-supported service only from TracFone.⁵ The Commission imposed this condition because of concerns with customers receiving duplicate Lifeline support.⁶ The Commission also required that TracFone file a compliance plan explaining how TracFone would implement the conditions imposed.⁷ TracFone subsequently filed its compliance plan.⁸ In 2008, the Commission issued an order designating TracFone as a Lifeline-only ETC in certain states and re-affirming the *Forbearance Order* condition explained above.⁹

3. A year after the *ETC Designation Order*, TracFone filed the instant petition for a waiver.¹⁰ TracFone requests that instead of annually confirming each of its Lifeline customer's status as the head of household and a recipient of Lifeline-supported service only from TracFone, TracFone be allowed to survey a statistically-valid sample of its customers.¹¹ TracFone argues that the condition is overly burdensome and without justification as compared to the annual Lifeline eligibility verification requirements imposed on all ETCs operating in federal default states.¹² TracFone further argues that its methods for contacting its Lifeline customers for this condition could force it to de-enroll a large percentage of those customers due to poor response rates.¹³

III. DISCUSSION

4. We conclude that TracFone has not demonstrated good cause to justify a modification of the *Forbearance Order* condition and that waiver of the condition is not in the public interest. The Commission may waive any provision of its rules for good cause shown.¹⁴ Good cause may be shown through particular facts that make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation

⁵ *Forbearance Order*, 20 FCC Rcd at 15103, para. 18.

⁶ *Id.*

⁷ *Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6.

⁸ TracFone Wireless, Inc. Compliance Plan, CC Docket No. 96-45 (filed Oct. 11, 2005).

⁹ *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.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206, 6214-15, para. 21 (2008) (*ETC Designation Order*).

¹⁰ See *supra* note 1.

¹¹ TracFone Petition at 3.

¹² TracFone Petition at 3-4. See 47 C.F.R. §§ 54.409, 54.410. ETCs operating in federal default states (those states without their own Lifeline programs) are required to implement procedures to verify annually the continued eligibility of a statistically-valid random sample of their Lifeline consumers and provide results of that sample to USAC. 47 C.F.R. § 54.410(c)(2). However, the Commission's rules require ETCs in states that have their own Lifeline programs to comply with state verification procedures. 47 C.F.R. § 54.410(c)(1).

¹³ TracFone Supplement at 3. See also Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket 96-45, filed July 31, 2009 (TracFone Letter) (arguing the ineffectiveness of using direct mail in fulfillment of the *Forbearance Order* condition).

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

of overall policy on an individual basis.¹⁶ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁷

5. We find that TracFone has failed to demonstrate that modification of the condition would be in the public interest. TracFone contends that the condition, which requires it to contact annually each of its Lifeline customers, is overly burdensome and not justified, particularly compared to a requirement the Commission imposed on ETCs that permits them to conduct annual verification of Lifeline consumers' eligibility using only statistically valid customer samples.¹⁸ While the verification requirement serves an important function in ensuring Lifeline customers maintain their eligibility, the Commission has recognized that the *Forbearance Order* condition imposed on TracFone and similarly situated ETCs is essential to protecting the program from waste.¹⁹ TracFone and other similarly-situated ETCs typically provide their Lifeline-supported service for free and do not invoice their Lifeline consumers. We believe this may increase the risk for more duplicate claims for Lifeline-supported service than is likely with traditional ETCs which bill their customers monthly. First, some enrolled low-income consumers of pre-paid wireless service may not understand that their service is supported by the Lifeline program because, lacking a monthly bill, they do not see a Lifeline discount noted on a bill. Second, some consumers may understand that TracFone and similarly-situated carriers are offering Lifeline-supported service, but these consumers may still sign up for a second Lifeline-supported phone through a pre-paid wireless carrier because of the free nature of the service. In fact, as noted above, the Commission imposed additional requirements on carriers such as TracFone because of concerns with double recovery of Lifeline support by consumers.²⁰ TracFone is obligated "to establish certain administrative procedures to safeguard against waste, fraud, and abuse."²¹ TracFone's specific duty to survey annually each of its Lifeline customers as to whether TracFone is the sole Lifeline provider to the customer's household helps prevent duplication of Lifeline service and is intended to guard against waste in the program. Granting this petition would result in TracFone contacting far fewer customers to determine if they are receiving duplicate Lifeline support. By contacting each of its Lifeline customers annually, TracFone will have to monitor and, if necessary, de-enroll many more ineligible consumers than it would through contacting a statistically-valid sample of its Lifeline customers.

6. We also find that TracFone has not shown good cause justifying a modification of its annual verification condition. TracFone has not presented in its petition, supplement, or subsequent letter any new or special circumstances that warrant a waiver. TracFone instead argues that the condition is overly burdensome, and it should be permitted to contact only a subset of its customers to comply with this obligation.²² Notably, TracFone did not claim any change in its circumstances from the time the

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁷ *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

¹⁸ TracFone Petition at 4. Section 54.410(c)(2) of the Commission's rules requires all ETCs in federal default states, including TracFone, to verify the continued eligibility of a statistically-valid sample of their Lifeline customers. See 47 C.F.R. § 54.410(c)(2). See *supra* note 12.

¹⁹ See, e.g., *Petition for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, CC Docket No. 96-45, Order, 24 FCC Rcd 13413 (2009) (Virgin Mobile, as a prepaid wireless reseller, is also subject to the condition for which TracFone seeks a waiver).

²⁰ See e.g., *Forbearance Order*, 20 FCC Rcd at 15103, para. 18; see also *ETC Designation Order*, 23 FCC Rcd at 6214-6215, para. 21.

²¹ See *ETC Designation Order* at 6214, para. 20.

²² TracFone Petition at 3.

Commission granted it forbearance and designated it as an ETC that would support its claim that the continued imposition of this condition creates a new burden on the company. Commenters expressed unanimous opposition to TracFone's petition, arguing, among other things, that TracFone has failed to show its need for a waiver for just this reason.²³ As Sprint Nextel Corporation points out, TracFone's petition argues only that the "use of a statistically valid sample would be more convenient for TracFone."²⁴ Among other reasons, we conclude that TracFone's failure to support its petition with new facts warrants a denial of its petition.

7. Further, we are not sympathetic to TracFone's argument that continued imposition of this condition will cause it to de-enroll a large percentage of its Lifeline subscribers because of poor response rates from its customers.²⁵ We believe that the possibility of de-enrolling a large percentage of non-responsive consumers, even those that may be eligible, is outweighed by the significant protections afforded to the program by continued imposition of the *Forbearance Order* condition on TracFone – namely, that such a condition will protect the program against waste, fraud, and abuse. We note that in the event that eligible TracFone Lifeline consumers are de-enrolled due to their lack of a response, these customers are free to sign up with TracFone again if they are able to prove their eligibility and otherwise meet all program requirements.

8. In conclusion, TracFone has not demonstrated good cause to justify a modification of this condition or that waiver of the condition is in the public interest. Given TracFone's consent to the obligation at hand, our ongoing responsibility to protect against waste, fraud, and abuse in the program, and the dearth of new facts presented by TracFone to justify modification of the condition, we deny TracFone's petition to modify the compliance plan condition that it require each of its Lifeline customers to annually self-certify that they are the head of their household and receive Lifeline-supported service only from TracFone.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91 and 1.3, that the petition for modification filed by TracFone Wireless, Inc. IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. § 408, this Order SHALL BE EFFECTIVE upon release.

²³ Sprint Comments at 3; NASUCA Reply Comments at 4; *see also* Pa PUC Comments and Reply Comments.

²⁴ Sprint Comments at 3.

²⁵ TracFone Supplement at 3; *see also* TracFone Letter.

FEDERAL COMMUNICATIONS COMMISSION

**Sharon Gillett
Chief
Wireline Competition Bureau**

APPENDIX

List of Commenters

Commenter

Pennsylvania Public Utility Commission
Public Service Commission of the District of Columbia
Sprint Nextel, Corp.

Abbreviation

Pa PUC
DC PSC
Sprint

Reply Commenter

National Association of State Utility Consumer Advocates
Pennsylvania Public Utility Commission
TracFone Wireless, Inc.

Abbreviation

NASUCA
Pa PUC
TracFone

Exhibit No. 13
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.

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Silver Star Communications

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Pay As You Go Calling Plans

Get a free phone with the 750 or 1000 minute plan!

Plan	Fee
up to 250 min	\$25

up to 350 min \$35
up to 500 min \$50
up to 750 min \$75
up to 1000 min \$100

Charges	Fee
Local minutes	25¢
Roaming minutes	50¢
Mobile to Mobile	10¢
Text Messages	10¢

Prepaid Terms

Activation and Reactivation

A \$10 activation fee applies to all new Pay As You Go plans. Pay as you go plans expire after 180 days. Pay As You Go plans expire after 60 days of inactivity, disabling the account. After 60 days of inactivity or 180 days whichever is sooner, a 60 day grace period allows accounts to be reactivated by purchasing an additional minute plan of the same or greater value; a \$10 reactivation fee will apply. After the 60 day grace period, disabled accounts will be terminated.

Voice Mail & Caller ID

Voice mail and Caller ID are included in all Pay As You Go plans. Retrieving voice mail messages uses airtime minutes. Both features come with Pay As You Go plans unless removal is requested at time of purchase.

Phones

Pay As You Go phones have a 30-day warranty. Manufacturer warranties may apply, but are the responsibility of the buyer. Ask a representative for more details before purchasing a phone. Handset protection is not available for Pay As You Go plans. Pay As You Go phones are free with purchase of 750 minute plans or above. All Silver Star Wireless CDMA phones are available with the Pay As You Go plan at listed retail price.

"Up to Minutes"

For plans calculated based on mobile to mobile price. Actual usage will be based on type of call placed.

Roaming

Roaming minutes will be charged at 50 cents per minute. Roaming charges will apply to all calls originating outside of the Silver Star Wireless network (see map). Nationwide calling is on CDMA network with Silver Star Wireless preferred CDMA roaming partners.

Long Distance

Long distance includes the continental United States, Alaska and Hawaii.

Taxes & Fees

All services are taxable and subject to regulatory fees.

Silver Star

Silver Star Wireless

PO Box 226 Freedom, WY 83120

Main Number: (307) 883-2411, (208) 354-3300

Technical Support

8-6 Monday-Friday, 9-1 Saturday

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Exhibit No. 14
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.



Webmail
 Email:
 Password:



Wireless



WIRELESS

CTC offers a wide range of calling plans and service options so you can choose the combination that's ideal for you. You'll get great quality with our digital PCS network. But most importantly, you'll enjoy friendly customer service from a real person every time you call.

Location: Boise - Anthem

CTC Wireless

Powered by America's Most Reliable Network

FAMILY PLANS



Family Plans

PEAK MINUTES	NIGHT & WEEKEND MINUTES	MOBILE-TO-MOBILE	MONTHLY PRICE
500	Unlimited	Unlimited	\$59.99
1000	Unlimited	Unlimited	\$79.99
1500	Unlimited	Unlimited	\$99.99
2100	Unlimited	Unlimited	\$119.99
3000	Unlimited	Unlimited	\$139.99
4000	Unlimited	Unlimited	\$189.99
6000	Unlimited	Unlimited	\$279.99

Add a Family Line for \$12 per month.
 Unlimited Mobile to Mobile In-Network Calling.

DON'T FORGET TO ADD TEXTING!

TEXT MESSAGES	PRICE	OVERAGE (PER MESSAGE)
250	\$8.00	\$0.15
500	\$10.00	\$0.15
1500	\$15.00	\$0.15
Unlimited	\$25.00	\$0.15
Family Unlimited	\$35.00	\$0.15



STAY CONNECTED WITH A DATA PACKAGE

SMART PHONE DATA PLANS (MB)	PRICE	OVERAGE (PER KB)
0	\$10.00	\$0.005
20	\$25.00	\$0.005
60	\$30.00	\$0.003
150	\$50.00	\$0.002
250	\$65.00	\$0.001
1000	\$75.00	\$0.001



Additional Monthly Charge for Blackberry Service of \$15 to \$22 Depending Extras

DATA CARD PLANS (MB)	PRICE	OVERAGE (PER KB)
0	\$12.00	\$0.005
60	\$35.00	\$0.003
150	\$55.00	\$0.002
250	\$70.00	\$0.001
1000	\$75.00	\$0.001

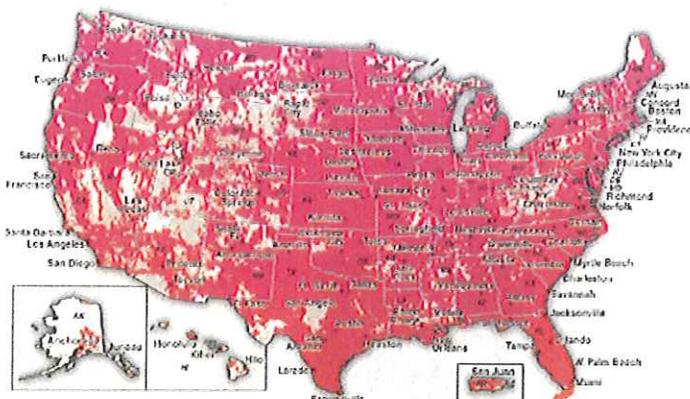


Enhanced Voice Mail \$7.99
 Per message SMS (texting) \$0.15
 Per message MMS \$0.35

SINGLE LINE PLANS

Map Key

- Home Airline Rate and Coverage Area
- Roam At Home Rate and Coverage Area
- No Coverage Area



Single Line Plans

PEAK MINUTES	NIGHT & WEEKEND MINUTES	MOBILE-TO-MOBILE	MONTHLY PRICE
300	Unlimited	N/A	\$35.50
450	Unlimited	Unlimited	\$41.99
575	Unlimited	Unlimited	\$51.99
900	Unlimited	Unlimited	\$61.99
1350	Unlimited	Unlimited	\$71.99
Unlimited	Unlimited	Unlimited	\$99.99

Night minutes begin at 7pm & end at 5:59 am. Coverage not available in all areas.



Exhibit No. 15
Case No. TFW-T-09-01
J. Fuentes, TracFone Wireless, Inc.



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PAYGO PLANS

Syringa Wireless PayGo Plans offer the ultimate in flexibility and affordability. No contracts, no credit checks, no hassle. Available either weekly or monthly, Syringa Wireless PayGo is the best value around. See store for details.



MONTHLY

- \$30.00 for 30 days of Unlimited Local Calling
- \$5.00 add 200 Long Distance Minutes
- \$10.00 add 500 Long Distance Minutes
- \$15.00 add Unlimited Text Messaging
- \$20.00 add Unlimited Mobile Data

WEEKLY

- \$10.00 for 1 week of Unlimited Local Calling
- \$5.00 add 200 Long Distance Minutes
- \$10.00 add 500 Long Distance Minutes
- \$10.00 add Unlimited Text Messaging
- \$15.00 add Unlimited Mobile Data

Unlimited Everything!

- \$55.00 for 30 days
- Unlimited Local Calling
- Unlimited Long Distance Calling
- Unlimited Text Messaging
- Unlimited Mobile Data

Site Design:
Henry Creason

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TERMS & CONDITIONS

This is an agreement between you the subscriber of the wireless radio transmitted services, that may be referenced to in accordance with this document as (You, Your, Customer and/or Subscriber) and with Syringa Wireless a Limited Liability Company, providing the wireless radio service that may further more be reference as (Syringa Wireless, We, Our, and/or Us) pertaining to this agreement. This is an agreement for the use of wireless CDMA phone service use.

Agreement: Upon approving your request for service by an authorized employee of Syringa Wireless or its Affiliate Providers, and when you sign this contract agreement Syringa Wireless will authorize service to you through use of the Syringa Wireless Network and authorized Syringa Wireless Affiliates in accordance to the provisions printed on the front and back of this page. You agree to pay us any amounts owing on your service account in accordance with any and all use of Syringa Wireless Service and all outlined provisions including: rate plans, data plans, features, promotions, etc., that you select. Service, Features and Add-ons rates will be outlined in the Syringa Wireless Plan Service Guides that are part of these terms and conditions. All conditions of this contract apply to the primary service line, any future service line(s) additions, and any additional features and add-ons associated with these additional service line(s). By your signature: (1) you confirm that you have read and agree to all of the provisions of this agreement printed on the front and back of this page., (2) you authorize Syringa Wireless and its agents to check your credit and/or trade references and any other applicable public records as made available to us through a licensed credit bureau, and you agree that Syringa Wireless may report our credit experience with you to any licensed credit bureau we deem necessary., (3) you authorize us the ability to fax, e-mail and record your signature as shown on this document., (4) if you are signing on behalf of a corporation or other entity, you give your assurance that you have authority to sign, and if you lack this authority, you will be personally and/or jointly be responsible for any and all amounts due under this agreement., (5) if you are signing on behalf of a partnership, private corporation, limited liability corporation, or other entity you personally guarantee payment and performance of all obligations of this contract., (6) you understand that should you wish to cancel your service with Syringa Wireless after you agree to these contractual terms you must give us written notification of your decision at least 30 days prior to disconnection., (7) you understand that the Syringa Wireless' Business, National, and Eight States service plans require 50% of your airtime usage to originate within your local calling network.

Service Availability: Syringa Wireless service is available within the applicable operating service ranges that are denoted by the coverage area map illustrated in the Plan Service Guide as associated with your service plan selection. Wireless service is provided through the use of radio frequency waves. Radio wave signals are subject to inherent limitations, such as: blockage from the horizon or intervening terrain, man-made structures, heavy foliage, and the effects of excess distance, multi-path distortion, radio or electronic interference, and certain weather conditions and other natural or man-made conditions. Service may be limited by acts of nature, system repair, and emergency or in suspected fraud, abuse, viruses, or hacking. If you are outside Syringa Wireless' Network, then service is also subject to the conditions of availability from roaming arrangements, and functionality may vary while roaming. A digital, dual-mode (CDMA) phone is required to access a digital signal.

Billing: Your usage charges start at the channel seizure (when you press the SEND, Go or any Primary key/button designated to initiate a voice or text call. You will not be charged for busy signals or incomplete calls. Airtime is billed in 60 second increments rounded up to the next available minute. Charges for service access and system features will be billed in monthly increments based on a thirty (30)-day billing cycle. Services are to be paid monthly by the subscriber. Service

payments will be billed prior to the use of, or post use based on the circumstances of your current service offering as denoted in the Plan Service Guides that are part of these Terms and Agreements. Some plans may be prorated monthly at our discretion. The pro-ration of monthly service charges is calculated on the basis of the thirty (30) day billing cycle divided by your monthly service amount. All usage of your phone or device must be paid by you, whether the call originates from your phone or device or someone contacts with your phone or device, and whether the usage is reflected on the Syringa Wireless' Network or our an Authorized Service Exchange Affiliate. Charges for usage through an Authorized Exchange Affiliate (roaming) may be delayed and not appear on your Syringa bill until sometime after the month the charges were actually incurred. Roaming airline minutes will be applied against the included minutes for the month in which they were billed. We will provide your bill in a format of our choice. This format may change from time to time with no notice given to you. Charges paid by you through any method that may involve any action that relates to non-sufficient funds will result in a twenty dollar (\$20.00) fee applied to your account.

Taxes and Additional Fees: In addition to your wireless service, you must pay any and all taxes, carrier charges and mandated fees, if any, incurred by the use of the service, such as all applicable federal, state or local taxes (whether levied as excise, sales, use, receipts, spectrum, utility, 911, message or other form of tax), landline access fees, long distance charges, toll charges, interconnect charges, maritime service charges, operator assisted calls or charges, information charges, and dial up service vendor fees. You must provide us with an original Tax Exempt Document to be relieved of future charges for any such taxes (you cannot receive credit for any taxes already paid).

Agreement Term: This agreement will apply immediately upon activation of your account. Your account term is outlined on this contract agreement and must be signed by you to show your full agreement; then this contract shall continue until the expiration term as denoted on the contract. The contract terms will vary, you may be agreeing to a thirty (30) month term, a twenty four (24) month term, a twelve (12) month term or a thirty (30) day term. Upon completion of this contract, your service shall continue month by month. If you do not agree with the current Terms and Conditions in relation to your monthly service time frame, after your initial contract terms have expired, do not make payment for your monthly Syringa Wireless service. If payment is received we assume that you do agree to the current Syringa Wireless terms as they relate to your service plan. Once this contract agreement has expired, Syringa Wireless reserves the right to cancel your past service plan offering.

Number portability: We make no claim of ownership of your phone number in regarding to your ten (ten) digit number that is programmed into your handset (Phone Number), unless otherwise agreed to in writing by you and us in a separate document that may become part of these Terms and Conditions. Your ownership over your number allows you the right to choose which Wireless Service Carrier you choose to contract with or not for wireless phone service. If you request a new service provider to provide you with phone service by using your phone number on their network (port number) you will terminate your service with Syringa Wireless. If you elect to port your number the number must be currently active on the Syringa Wireless Network AND your account must be in good standing. Even after porting your number from the Syringa Wireless Network you are still responsible for any fees and charges associated with this contract and your account.

Cancellation Fee: This service contract carries a minimum term. The minimum term is stated at the bottom left hand corner of this document. Your signature on or near this stated term, binds you to the outlined term and your signature demonstrates full agreement to the term period and these Terms and Conditions. If you do not agree with these terms, do not sign your name and refuse any wireless radio phone service usage from the Syringa Network. If you cancel your contract before the minimum term has expired, you agree to pay Syringa Wireless a cancellation fee in the amount of one hundred seventy five dollars (\$175.00) which is due at the time your service is terminated or disconnected by us due to issues involving fraud, and/or breach of contract agreement resulting to lack of receipt of monthly service payments. Customers whose service(s) is cancelled will be responsible for the payment of all outstanding charges including but not limited to those charges that have not been billed. Once we have received your monthly service payments there will be no refunds or partial refunds given back at your request. Monthly service charges are also non-refundable if service is terminated by you prior to the end of our billing cycle.

Security Deposits: Syringa Wireless, at its discretion, may require you to make an initial and, if necessary additional, security deposit to be held as guarantee of your payment of future charges while this contract is in effect. This security deposit may be held by Syringa Wireless in an account which may hold other funds of Syringa Wireless. Security deposits will be held for the term of this contract or 12 months of continuous good payment history and no disconnects for non-pay or NSF checks. Interest shall not be paid to you upon return of any security deposit. Each security deposit may be applied by Syringa Wireless to any amount you owe at any time. Syringa Wireless may return any security deposit in excess of ten dollars (\$10.00) or other amount due to you by mailing it to your address appearing in Syringa Wireless' records. If you do not cash a returned payment within ninety days after being sent, then the amount shall be treated as forfeited by you.

Limitations on Your Usage: You may not use your wireless phone or device for any unlawful purpose, such as aiding or committing a crime or making an obscene or harassing phone call. Syringa Wireless reserves the right to terminate this agreement if more than 50% of your total minutes are not being used on the Syringa Wireless Network. For your own safety, and the safety of others, do not place calls while you are driving and the vehicle is in motion. Do not use your phone or device in any circumstance that would increase the risk of an accident or other hazard. Turn off power to your phone or device when you are instructed to so while in an airplane, or in any explosive atmosphere, or near flammable vapors, or in the vicinity of

blasting caps, explosives or blasting operations. You may not transmit a signal that may harm our system. While it is difficult and illegal for unauthorized persons to intercept conversations carried on Syringa Wireless' network system or the wire-line network, the privacy of your conversations cannot be guaranteed.

Rate or Phone Number Changes: Syringa Wireless reserves the right to change any of its rates or terms of service, even if this contract has not expired or terminated. If a change is ever made which would increase your cost, you will be provided at least thirty (30) days advance written notice of the change. If you do not agree to any stated change(s), then you will be permitted to change your rate plan to another plan offered by Syringa Wireless or terminate this contract at will by providing to us in writing within thirty (30) days of notification of change the reason you are canceling service and include full payment for any outstanding charges on your account. If we receive no written notice from you within the thirty (30) day period then this contract shall continue in force. Syringa Wireless may ask you to change your phone number from time to time, this request will be accepted by you at your sole discretion unless the request is made in accordance to a national emergency situation.

Disputed Charges: If you dispute any charge(s) appearing on your bill, you should call or write Customer Service at Syringa Wireless: 1-866-542-9999 or PO Box 1117 N. Main St. Pocatello Idaho 83204 prior to the due date on your bill to resolve your question. If you and Syringa Wireless continue to disagree, then the disputed amount shall remain due, and if it is not paid at the time your payment is expected, it shall be considered delinquent.

Delinquent Accounts: If you do not pay your bill by the due date on the invoice, your account will be delinquent. Each delinquent account shall be subject to a late payment fee equal to one and a half percent (1.5%) of your entire balance due to Syringa Wireless, including previously accrued late payment fees for each month or fraction of a month that the account is delinquent. Each delinquent account is also subject to suspension or termination of service without advance notice. Any account that shows a delinquent amount outstanding for a period of Sixty Days (60) days from last payment date as recorded within our database will be assessed by us as a breach of contractual agreement. We may turn your account over to a collection agency to pursue collections on our behalf.

Contract Suspension: Syringa Wireless may suspend or discontinue service to you immediately without notice to you if your bill is not paid on time or if you become insolvent or are subject to bankruptcy proceedings, or if you violate any term of this contract or for any NSF checks. You may also be subject to a reactivation charge of (\$15.00) fifteen dollars if your service is restored after suspension or discontinuance.

Collection Cost: If Syringa Wireless engages a collection agency or lawyer to collect your bill or to enforce this contract, or if any lawsuit or other proceeding is commenced to do so, then you shall also pay for all resulting fees and expenses incurred by Syringa Wireless, including collection agency fees, reasonable attorney's fees (including those on appeal), litigation and appeal expenses, and court costs. Any returned payment will be subject to the maximum penalties allowed by state law. This payment is in addition to the amounts you owe on your bill.

SYRINGA WIRELESS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ITS SERVICE OR ANY WIRELESS PHONE OR DEVICE USED ON SYRINGA WIRELESS NETWORK OR ANY THIRD PARTY NETWORK, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES OF THIS NATURE ARE EXPRESSLY EXCLUDED. SYRINGA WIRELESS' LIABILITY IS ALSO LIMITED BY THE FOLLOWING FOUR PARAGRAPHS.

Limitation of Liability to Credits: Syringa Wireless makes no representations that the network will be error free, uninterrupted, or free from any unauthorized access. Syringa Wireless will not be liable for signal loss for less than twenty four (24) continuous hours. Except for the credits described in the next paragraph, Syringa Wireless shall not be responsible or liable to you or to any other person or entity for any problem with the service provided (meaning any mistake, omission, interruption, delay, error, defect, denial, lack of privacy, or other failure). Under no circumstances shall Syringa Wireless be responsible or liable to you or to any other person or entity for any other damage, loss or expense arising from the problem or from your equipment, including but not limited to any loss of opportunity or profit, or any special, incidental, or consequential damages.

Determining the Credit: If a communication is attempted but fails or is unintelligible as a result of a problem with Syringa Wireless' service, or if Syringa Wireless' service is unavailable for an extended period of twenty-four (24) or more continuous hours as a result of the service problem, and if you are subsequently billed by Syringa Wireless for the attempted communication or for access during the extended period of unavailability, then you may contact Customer Service at Syringa Wireless before the due date on your bill and explain the problem, and if Syringa Wireless agrees, it will cancel or reduce the charge, if any, actually billed to you under your rate plan for attempted communications or for access during the extended period of unavailability. NO charge will be cancelled or reduced if the occurrence of the problem cannot be independently verified from Syringa Wireless' records of your calls or its other records.

Warranties: Syringa Wireless makes no expressed or implied warranty towards any phone, equipment or accessories sold through our retail stores, member partner locations or through our web site. Syringa Wireless is not the manufacturer of these

items and offers no ownership to the craftsmanship and reliability of these items.

Other Liability Limitations: Syringa Wireless shall not be responsible or liable to you or to any other person or entity for any act or omission of any person or entity other than Syringa Wireless, or due to any cause beyond the control of Syringa Wireless, including but not limited to, acts or omissions of other communications carriers equipment manufacturers, lack of security, government actions or inaction, license restrictions, court orders, equipment failures, modifications, capacity limitations, vandalism, theft, criminal acts, terrorism, war, or accidents. Any liability of Syringa Wireless to you shall be limited to Syringa Wireless itself and shall not entitle you to any legal recourse against any owner, manager, employee of Syringa Wireless, or any person representing Syringa Wireless.

Binding Arbitration: Any dispute or claim arising out of, or relating to, this Agreement or to any product or service provided in connection with this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory), will be resolved by binding arbitration under the rules and procedures of the American Arbitration Association, except that (1) you may take claims to small claims court if they qualify for hearing by such a court, or (2) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us. However, even for those claims that may be taken to court, you and we both waive any claims for punitive damages and any right to pursue claims on a class or representative basis.

Waiver of Punitive Damage Claims and Class Actions: By this agreement to arbitrate set forth above, both you and we are waiving certain rights to litigate disputes in court. If for any reason the arbitration clause is deemed inapplicable or invalid, you and we both waive, to the fullest extent allowed by law, any claims to recover punitive or exemplary damages and any rights to pursue any claims on a class or consolidated basis or in a representative capacity.

Indemnification: In the event that any personal injury, property damage, distress, harassment, defamation, copyright infringement, contract breach or other harm is caused by you or any other person or entity while using your Wireless phone or device, or if you fail to perform this contract or to act in accordance with any of its provisions, then you shall pay for and protect Syringa Wireless against every resulting claim, suit, action, loss, expense, or liability, including attorney's fees and litigation expenses (including those on appeal). Your obligations in this regard shall survive the expiration or termination of this contract and your protection of Syringa Wireless under this paragraph shall also extend to Syringa Wireless' owners, managers, employees, and agents. The use of Wireless devices while operating a motor vehicle may be prohibited by law. It is your responsibility to obey all laws and you will indemnify Syringa Wireless of such use.

Privacy and Call Monitoring: Syringa Wireless is committed to protecting your privacy. In all matters relating to your personal and call privacy you may refer to the Syringa Wireless LLC Privacy Policy Statement. It is the policy of Syringa Wireless to respect and maintain your privacy including, but not limited to: Voice, SMS, MSM, WAP, and Brew usage. However, there may be requirements imposed by Federal, State, County, City and other authorized government operations that may require us to disclose your personal information and necessitate service monitoring. Syringa Wireless will ONLY allow your personal information to be disclosed and/or surveillance to take place if the authorized government authorities provide the necessary and certified legal documentation granting the authorization to pursue any and all information in this matter. Syringa Wireless is fully compliant with all CALEA Policies and Procedures.

General Matters: Syringa Wireless may assign its rights, obligations and liabilities under this contract without notice to you. You may assign your rights, obligations and liabilities under this Contract only with Syringa Wireless' prior written consent. All notices required under this contract must be in writing. Each notice to you shall be effective the day after Syringa Wireless deposits the notice in the U.S. mail, postage prepaid, addressed to you in accordance with Syringa Wireless' records of your account. Notices to Syringa Wireless shall be effective only when actually delivered to an authorized employee of Syringa Wireless at its headquarters address. The laws of the state of Idaho shall govern this contract. If any provision of this contract is held to be unenforceable or contrary to law, then the provision shall be revised, if possible, by the reviewing authority to the minimum extent necessary to make the provision enforceable and legally valid and the remaining provisions of this contract shall continue in effect. This contract may not be modified unless the modification is in writing signed by you and an authorized employee of Syringa Wireless. Any failure by Syringa Wireless to insist on strict performance of any of your obligations under this contract will not be a waiver and shall not affect Syringa Wireless' right to insist later on strict performance of your obligations. If any prior statement, communication or agreement with you that was made on behalf of Syringa Wireless is inconsistent with this contract, then this contract shall control and take precedence.