

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: MARCH 11, 2010

SUBJECT: AMENDED APPLICATION OF TRACFONE WIRELESS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF IDAHO, CASE NO. TFW-T-09-01

On October 29, 2009, TracFone Wireless, Inc. (“TracFone” or “Company”) filed an Application, pursuant to Section 214(e)(2) of the Communications Act of 1934, for designation as an Eligible Telecommunications Carrier (“ETC”). *Application* at 1. TracFone is seeking ETC designation solely for the purpose of providing Lifeline service under its trade name SafeLink Wireless and will not seek funds from the federal Universal Service Fund. *Id.*

On January 15, 2010, Commission Staff submitted a decision memorandum recommending that the Commission deny TracFone’s Application. On February 5, 2010, the Commission issued an Order denying TracFone’s Application. *See* Order No. 30996.

On March 1, 2010, TracFone filed a Petition for Reconsideration and an Amended Application for ETC designation. On March 8, 2010, Commission Staff filed an Answer to TracFone’s Petition. Subsequently, TracFone submitted a letter withdrawing its Petition for Reconsideration and expressing its support for a process that would facilitate a Staff review and recommendation regarding its Amended Application within 60 days.

AMENDED APPLICATION

TracFone is incorporated in the State of Delaware and is headquartered in Miami, Florida. *First Amended Application* at 3. TracFone is a reseller of commercial mobile radio service (CMRS) throughout the United States, including the State of Idaho. *Id.* TracFone has

obtained a Certificate of Authority and Certificate of Good Standing from the Idaho Secretary of State. *Id.*, Exhs. 1-2.

The Company provides service through a virtual network consisting of services obtained from numerous licensed operators of wireless networks and has provided CMRS service throughout the State of Idaho for the past ten years. *Id.* at 4. In Idaho, TracFone obtains service from several underlying carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless that enable the Company to offer services wherever these providers offer service. *Id.* Initially, TracFone will offer its LifeLine service in all areas of Idaho currently being served by AT&T Mobility and T-Mobile and expand its service to areas being served by Verizon Wireless in the second quarter of 2010. *Id.* at 17-18.

TracFone states that it “will provide Lifeline service to qualifying customers requesting these services pursuant to the universal service program and in accordance with 47 C.F.R. § 54.202(a)(1).” *Id.* TracFone states that its Lifeline program can be differentiated from other ETCs’ Lifeline programs in the following ways: (1) TracFone will offer low-income consumers the convenience and portability of wireless services; (2) many of its Lifeline-eligible consumers will be able to obtain subsidized wireless service; and (3) TracFone will not charge consumers for certain quantities of its Lifeline service. *Id.*

TracFone will provide a free wireless handset to its Lifeline customers. *Id.* at 5. These customers will not incur any activation or usage charges. *Id.* TracFone service is available at nationally uniform rates. *Id.*

On April 9, 2008, the Federal Communications Commission (FCC) granted all of TracFone’s pending petitions for designation as an ETC, subject to certain conditions. *Id.* at 6, 9. The FCC’s decision opened the door for the Commission to consider TracFone’s Application seeking ETC designation in Idaho under Section 214(e)(2) of the federal Communications Act. *Id.* at 7-8.

TracFone has been granted ETC designation in the following states: Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, Ohio, Texas, West Virginia and Wisconsin. *Id.* at 8, fn. 12. Upon ETC designation in Idaho, TracFone asserts that it will offer “all of the services and functionalities Sections 54.101(a) and 54.202(a) of the FCC’s Rules (47 C.F.R. §§ 54.101(a), 54.202(a)) and ETC Checklist . . .” *Id.* at 11.

TracFone states that it is seeking ETC designation solely to obtain USF funding to provide Lifeline service to qualified low-income consumers and will not seek or accept high-cost support. *Id.* at 18. TracFone noted that there is only one other wireless ETC, Syringa Wireless, providing Lifeline service in Idaho to approximately 1,600 Lifeline customers. *Id.* at 22-23, fn. 37. Finally, the Company believes that granting ETC status will benefit low-income consumers, low volume users, transient users and other types of consumers in Idaho “who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers.” *Id.* at 28.

STAFF RECOMMENDATION

Staff has made a cursory review TracFone’s Amended Application. In its Answer to TracFone’s Petition for Reconsideration, which was later obviated by TracFone’s decision to withdraw its Petition, Staff recommended that the Amended Application be processed through Modified Procedure with a 60-day comment period. This extended comment period is necessary in order to allow Staff to submit and receive responses to its production requests regarding TracFone’s Amended Application.

COMMISSION DECISION

Does the Commission wish to process TracFone’s Amended Application for designation as an Eligible Telecommunications Carrier through Modified Procedure with a 60-day comment period?



Neil Price
Deputy Attorney General

M:TFW-T-09-01_np