

BEFORE THE

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IDAHO PUBLIC UTILITIES COMMISSION

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF TRACFONE WIRELESS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

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CASE NO. TFW-T-09-01

DIRECT TESTIMONY OF GRACE SEAMAN

IDAHO PUBLIC UTILITIES COMMISSION

MARCH 18, 2011

1 Q. Please state your name and address for the
2 record.

3 A. My name is Grace Seaman. My business address
4 is 472 West Washington Street, Boise, Idaho.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Idaho Public Utilities
7 Commission (Commission) as a Utilities Analyst. I
8 accepted the position with the Telecommunications Section
9 in June 2004. I am responsible for telecommunications
10 regulatory activities.

11 Q. Please give a brief description of your
12 educational background and experience.

13 A. I graduated from George Fox University with a
14 Bachelors of Arts degree in Management and Organization
15 Leadership in May 1998. I have attended various
16 regulatory, rates of return, economics, and service
17 rating programs including the New Mexico State University
18 "Camp" NARUC.

19 I worked for Mountain Bell/US WEST for 25 years
20 in the repair, dispatch, business office and marketing
21 departments. The last 21 years were spent in the
22 marketing department, in a variety of positions that
23 included sales, service, technical, project management,
24 and supervisory responsibilities.

25 Prior to accepting the position with the IPUC,

1 I was a Site Manager for CDI, a managed service provider,
2 at the Hewlett Packard main site. I supervised a team
3 that was responsible for installation and maintenance of
4 structured cabling, telephone/PBX and VoIP support, and
5 data network support.

6 Q. What is the purpose of your testimony?

7 A. The purpose of my testimony is to explain
8 Staff's recommendation to deny TracFone Wireless, Inc.'s
9 (TracFone) Application for Designation as an Eligible
10 Telecommunications Carrier (ETC) in Case No. TFW-T-09-01.

11 Q. What is TracFone requesting in this case?

12 A. TracFone is seeking Commission approval to be
13 designated as an ETC, which is required before the
14 Company may offer federal Lifeline support in Idaho.

15 Q. Does TracFone meet the conditions to receive
16 ETC designation under Idaho Code?

17 A. No. Upon review of the information provided in
18 the Amended Application and TracFone's responses to
19 production requests, Staff believes that the Company's
20 application does not fully meet Idaho's ETC requirements
21 and, therefore, that TracFone should not be designated as
22 an eligible telecommunications carrier.

23 Q. Before discussing TracFone's First Amended
24 Application, please explain your findings with TracFone's
25 initial ETC Application.

1 A. TracFone's initial ETC Application submitted on
2 October 29, 2009, contained no company contact
3 information, no agent of service information, and no
4 certificate of good standing from the Idaho Secretary of
5 State's Office (On October 7, 2004, the Secretary of
6 State's Office revoked TracFone's certificate because the
7 Company failed to file the required annual report.) In
8 response, on January 15, 2010, Staff submitted a decision
9 memo to the Commission. In the decision memo, the
10 Company's failure to submit the required annual report to
11 the Secretary of State's Office was cited as the reason
12 for Staff to conclude that an ETC designation was not in
13 the public interest, nor did the Secretary of State's
14 revocation elicit confidence that the Company would
15 comply with similar ETC annual reporting requirements
16 outlined in Commission Order No. 29841. During the
17 January 19, 2010 decision meeting, the Commission
18 approved Staff's recommendation to deny TracFone's ETC
19 Application and Commission Order No. 30996 was issued on
20 February 5, 2010.

21 Q. How did TracFone respond?

22 A. On March 1, 2010, TracFone responded by
23 submitting a Petition for Reconsideration and a First
24 Amended Application. A new certificate of authority from
25 the Secretary of State's Office dated January 25, 2010

1 was attached to the First Amended Application. The
2 Commission denied the Petition for Reconsideration, but
3 approved the filing of the First Amended Application and
4 a new 60-day comment period was established. On March
5 11, 2010, TracFone withdrew the Petition for
6 reconsideration.

7 Q. In the First Amended Application did the
8 Company submit significantly new information regarding
9 its proposed Lifeline service?

10 A. No. TracFone's Lifeline offering in the First
11 Amended Application was the same as the plan presented in
12 the original Application.

13 Q. Please summarize the Lifeline plan presented in
14 the First Amended Application.

15 A. As in the original Application, the First
16 Amended Application described a Lifeline offering that
17 consisted of a free 911-compliant handset and 67 free
18 minutes of usage per month. Lifeline customers could
19 purchase additional minutes at the rate of \$.20 per
20 minute. In addition, calls to the customer service
21 center were not excluded from the 67 minutes. When
22 compared to other TracFone plans available on its
23 website, these rates appeared to be considerably more
24 expensive.

25 Q. After filing the First Amended Application, did

1 TracFone modify the Lifeline usage plan?

2 A. Yes. TracFone submitted a letter dated August
3 12, 2010, notifying the Commission that effective August
4 16, 2010, the Company was expanding the Lifeline offering
5 in all states. The new offering gave Lifeline customers
6 a choice of three monthly plans: (1) 250 free minutes
7 each month, with no carryover of unused minutes and
8 texting available at the rate of one text per minute of
9 airtime; (2) 125 free minutes each month, with no
10 carryover of unused minutes and texting available at the
11 rate of one text per minute of airtime; and (3) 68 free
12 minutes each month, with no carryover of unused minutes
13 and texting at a rate of 3 texts per each minute of
14 airtime, plus international long distance calling to over
15 60 destinations (later increased to over 100 destinations
16 in the direct testimony of Jose Fuentes). Lifeline
17 customers can purchase additional minutes at the rate of
18 \$.10 per minute.

19 Q. Did this change alter your analysis of
20 TracFone's Lifeline offering?

21 A. Yes. I was pleased to see these changes. With
22 the expansion to three plans with increased number of
23 minutes per month, Lifeline customers may now choose the
24 plan that best fits their calling needs.

25 Q. Did the Company modify the Lifeline plan in

1 other areas?

2 A. Yes. Another improvement that TracFone made to
3 its Lifeline service was to allow customers to dial 611
4 (customer service) from the Lifeline phone without having
5 any minutes deducted from the plans.

6 Q. Do you know why TracFone increased the monthly
7 minutes from the originally proposed 67 free minutes?

8 A. Mr. Fuentes in his direct testimony states the
9 reason the Company enhanced the plans was due to
10 criticism from consumer groups and due to competition
11 from another prepaid wireless company who had recently
12 been designated an ETC. This company was offering 200
13 free minutes per month.

14 Q. Why is TracFone bringing its ETC designation
15 before the Idaho Public Utilities Commission?

16 A. The Idaho Commission has the duty and is
17 authorized to designate carriers (including wireless
18 carriers) as ETCs pursuant to the federal
19 Telecommunications Act of 1996 (the Act) and FCC rules,
20 and *Idaho Code* §§ 62-610B and 62-610D.

21 Q. Does TracFone's ETC application present any
22 unprecedented considerations?

23 A. Yes. TracFone is not a traditional facilities-
24 based carrier. The Company does not own or operate any
25 telecommunications facilities in Idaho. Instead, the

1 Company resells wireless service from AT&T Mobility,
2 T-Mobile, and Verizon Wireless. The Act restricts ETC
3 designation to facilities-based carriers only.

4 Q. How then can TracFone qualify for an ETC
5 designation in Idaho?

6 A. In 2005, TracFone petitioned for and received
7 an FCC forbearance that waives the facilities-based
8 requirement for the sole purpose of providing federal
9 Lifeline support.

10 Q. Please explain why you are recommending denial
11 of TracFone's Application for ETC designation.

12 A. Although TracFone's revised usage plans improve
13 the Company's Application, Staff believes TracFone's ETC
14 request should, none the less, be denied for the
15 following reasons: (1) non-payment to the Idaho
16 Telecommunications Service Assistance Program (ITSAP) as
17 required by Idaho Code; (2) non-payment to the Idaho
18 Emergency Services fund or 911; and (3) incomplete
19 evidence to support that all wire centers in the rural
20 service areas will be fully served by TracFone.

21 Q. Is TracFone currently operating in Idaho?

22 A. Yes. Through retailers such as Shopko and
23 Walmart, TracFone has been selling its prepaid wireless
24 service throughout Idaho for twelve years.

25 Q. Does the Company pay into the Idaho

1 Telecommunications Service Assistance Program (ITSAP)
2 fund based on the service it provides today?

3 A. No. According to the ITSAP Program
4 Administrator, TracFone has never submitted an ITSAP
5 payment.

6 Q. Is it your understanding that TracFone is
7 obligated to pay into the ITSAP fund?

8 A. Yes. Idaho Code § 56-904(1), states that all
9 wireline and wireless companies are obligated to collect
10 the ITSAP surcharge from its customers and remit these
11 funds to the program Administrator. The only customers
12 who are not assessed this surcharge are those customers
13 who are eligible to receive the ITSAP discount. Not
14 assessing ITSAP-eligible customers, however, does not
15 excuse TracFone from paying into the ITSAP fund.

16 Q. Why is TracFone not paying into the ITSAP fund?

17 A. TracFone asserts that as a prepaid provider, it
18 does not render bills, and therefore has no "end user
19 billings" on which to assess the charges, and thus is not
20 legally obligated to contribute to the fund. TracFone
21 also argues that it does not have a direct relationship
22 with its users and, therefore, the fees should be
23 collected and remitted by the retailers that sell
24 TracFone's prepaid service.

25 Q. In your opinion, is this a persuasive argument

1 with regard to services purchased at a retailer?

2 A. I am not an attorney and do not purport to
3 analyze TracFone's legal argument. However, just looking
4 at the facts TracFone asserts, its arguments are not
5 persuasive. TracFone customers who purchase the wireless
6 handset from a retailer receive an inoperable handset.
7 To activate the handset, the customer must call the
8 TracFone service center, from a payphone or another
9 working telephone. The TracFone service center assigns a
10 telephone number and activates the handset purchased from
11 the retailer. This process clearly indicates that
12 TracFone has direct contact with the customer. Purchased
13 prepaid cards are also activated through the TracFone
14 service center or from the newly activated handset. In
15 addition, as stated in the TracFone prehearing brief,
16 customers may also purchase TracFone service directly
17 through its website (www.tracfone.com).

18 Q. What about TracFone's relationship with
19 Lifeline customers?

20 A. TracFone's argument is even less persuasive for
21 its Lifeline customers. Lifeline customers must complete
22 an eligibility form to enroll in the Lifeline program
23 through TracFone's Safelink Wireless. Therefore,
24 TracFone has a direct relationship with its Lifeline
25 customers. Safelink Wireless processes Lifeline

1 customer's application and applies the Lifeline monthly
2 credits to the individual accounts. If the Company is
3 capable of performing these tasks, then Staff believes it
4 should be capable of assessing and remitting the monthly
5 program fees. Furthermore, Staff believes that TracFone
6 must remit to the fund regardless of whether the ITSAP
7 fee is collected directly from its customers.

8 Q. Does TracFone remit fees to the Idaho 911
9 service fund?

10 A. No. TracFone does not remit fees into the 911
11 service fund.

12 Q. Is it your understanding that TracFone is
13 obligated to remit payments into the 911 service fund?

14 A. Yes. Idaho Code § 31-4804(1) states, "the
15 emergency communications fee provided pursuant to the
16 provisions of this chapter shall be a uniform amount not
17 to exceed one dollar (\$1.00) per month per access or
18 interconnected VoIP service line" (emphasis added). In
19 Idaho Code § 31-4802, the definition of access line in
20 the case of wireless technology is, "each active
21 dedicated telephone number shall be considered a single
22 access line." In addition, FCC Order No. DA 10-753
23 (Exhibit 101), adopted on May 3, 2010, denied a petition
24 filed by TracFone requesting rescission of the 911
25 support imposed in the TracFone ETC Designation Order by

1 the Federal-State Joint Board on Universal Service.

2 Q. Does the FCC state an opinion regarding
3 TracFone's efforts to avoid 911 support?

4 A. Yes. On page 3 of FCC Order No. DA 10-753, the
5 FCC states that it imposed this condition (the 911
6 support requirement) in response to both the "unique
7 circumstances presented by TracFone's petition for
8 limited ETC designation for Lifeline support" and the
9 concern that TracFone had engaged in a pattern of
10 behavior in several states of refusing to support 911
11 services.

12 Q. Does the FCC believe that 911 support is a
13 public interest concern?

14 A. Yes. On page 4 of Order No. DA 10-753, the FCC
15 states that its decision "was based on its determination
16 that compliance with state-level 911/E911 obligations was
17 relevant to the public-interest assessment of TracFone's
18 ETC designation request."

19 Q. Do you have an additional reference to support
20 your opinion?

21 A. Yes. On May 21, 2010, Garret Nancolas, the
22 Chairman of the Idaho Emergency Communications
23 Commission, wrote a letter to the Commission (Exhibit
24 102), opposing TracFone's ETC application. In the
25 letter, the Chairman states that TracFone is obligated to

1 remit the 911 fees but has not complied with this
2 requirement.

3 Q. Is it your opinion that failure to pay into the
4 911 fund is contrary to the public interest?

5 A. Yes. The Emergency Communications Act under
6 Idaho Code § 31-4804 states that "such fee shall be used
7 exclusively to finance the initiation, maintenance,
8 operation, enhancement and governance of a consolidated
9 emergency communications system." If TracFone customers
10 use this service, but the Company does not pay into the
11 fund, the financial burden for TracFone's use of the
12 service is assumed by all the other wireline and wireless
13 companies that are in compliance. Thus, failure to pay
14 into the fund is contrary to the public interest.

15 Q. Has TracFone addressed this issue?

16 A. Yes. TracFone states in its response to
17 Staff's Production Request No. 25 that it is not
18 obligated to collect 911 fees and contribute those
19 amounts to the fund. Once again, the Company argues that
20 because it does not render a monthly billing it has no
21 method of collecting or remitting the fees to the fund.
22 TracFone believes this responsibility lies with retailers
23 that sell TracFone prepaid cards.

24 Q. Do you agree with TracFone?

25 A. No. As addressed earlier, the service a

1 customer purchases from a retailer is not a fully
2 functioning wireless service. The handset is inoperable
3 until the customer calls an 800 number to reach a
4 TracFone service center to activate the service.

5 Q. Are you aware of a prepaid wireless company
6 that pays into the 911 funds?

7 A. Yes, Cricket Wireless has always paid into the
8 fund.

9 Q. Are you aware of how other state Commissions
10 have addressed the issue of TracFone's support of public
11 programs?

12 A. Yes. Recent state Commission decisions
13 regarding TracFone's ETC designation were conditional.
14 Many states that recently granted ETC designation to
15 TracFone did so with a public funding requirement.

16 Q. Please describe some of these conditions.

17 A. For example, the Minnesota Commission granted
18 TracFone a one-year conditional ETC designation with the
19 requirement that the Company must collect and remit 911
20 fees.

21 Q. Are the conditions imposed by other state
22 Commissions having the desired effect on TracFone's
23 support of 911 services?

24 A. No. In Ohio, in May 2009, the Public Utilities
25 Commission granted a one-year conditional ETC designation

1 and ordered TracFone to remit 911 fees. Almost two years
2 later, the Company has not yet complied. In other
3 states, such as Florida, Oregon and Minnesota, TracFone
4 supported legislation to require retailers to collect and
5 remit the 911 fees. The TracFone legislation was
6 successful in Florida, but it has taken the Florida
7 legislation two years to be enacted. In the meantime,
8 rapidly increasing number of TracFone users (both prepaid
9 retail and Lifeline) in the state have the benefit of
10 access to emergency services without contributing funding
11 to support the agencies providing this public service.

12 Q. Aside from collection and remittance of fees,
13 are you aware of any other state Commission requirements
14 imposed upon TracFone?

15 A. Yes. Ohio imposed a condition requiring an
16 annual verification of a sample of Lifeline customers
17 that requires the Company to supply proof of customer
18 qualification such as a food stamp card. Florida imposed
19 a condition requiring TracFone to perform a 60-day
20 inactivity test every month on its Lifeline customers.
21 TracFone is required to call inactive customers to
22 determine if they are still using the service. If the
23 customer cannot be reached, TracFone must automatically
24 disconnect the service. According to the Florida
25 Commission Staff, thousands of Lifeline customers are

1 disconnected each month as a result of this requirement.

2 Q. Why are these requirements necessary?

3 A. These requirements help eliminate Lifeline
4 payments for customers who are no longer using TracFone's
5 service and avoid duplicate claims from Lifeline
6 customers.

7 Q. Are duplicate claims an issue?

8 A. Yes. In a Universal Service Administrative
9 Company (USAC) audit (USAC Audit No. LI2009BE006)
10 conducted in Florida and Tennessee during 2010, USAC
11 found that approximately 10% of TracFone Lifeline
12 customers were duplicates. For the study month of
13 January 2010, this represents approximately 40,000
14 Florida Lifeline customers and approximately 21,000
15 Tennessee Lifeline customers who had duplicate claims.
16 In these two states, approximately 61,000 customers, in
17 one month, were found to have duplicate claims.

18 Q. Are you aware of any proactive steps initiated
19 by TracFone to reduce duplicate claims?

20 A. No, just the opposite. Most steps to reduce
21 duplicate claims have been imposed on TracFone by state
22 Commissions or the FCC. I am not aware of any
23 initiatives introduced by TracFone to help resolve this
24 issue. In fact, on April 27, 2009, TracFone filed with
25 the FCC, a Petition for Modification of Annual

1 Verification Condition. In the petition, TracFone was
2 seeking to modify the compliance plan condition that it
3 require each of its Lifeline customers to self-certify
4 annually that they are the head of their household and
5 receive Lifeline-supported service only from TracFone.
6 TracFone, instead, requested that it be allowed to
7 contact only a statistically-valid sample of its
8 customers to comply with this condition. The FCC denied
9 the petition on January 11, 2011.

10 Q. Please state your concerns with regard to
11 TracFone providing Lifeline support in all wire centers
12 in an ETC service area?

13 A. In response to the CTC and ITA production
14 request, TracFone provides a confidential list of wire
15 centers that it intends to serve. When reviewing the
16 rural wire centers to determine if the entire ETC service
17 area will be served, the list shows some wire centers
18 multiple times and some wire centers that are part of the
19 service area are not listed. The service list does not
20 clearly indicate that all rural service areas will be
21 fully served by TracFone, thus avoiding the possibility
22 of cream skimming.

23 Q. Why is cream skimming a concern when TracFone
24 states in its Application that it seeks ETC designation
25 solely to provide Lifeline support and that it will not

1 seek high cost funds?

2 A. Cream skimming is a public interest issue and
3 the concern is that a company competing with the
4 incumbent local exchange carriers (ILEC) may attempt to
5 compete only in the more densely populated and,
6 therefore, the more profitable areas. This strategy
7 would leave the more costly areas to be served by the
8 ILEC. Cream skimming is a public interest concern that
9 the Commission has evaluated in all ETC Applications for
10 both rural and non-rural wire centers.

11 Q. In your opinion, what must TracFone do to be
12 eligible for an ETC designation?

13 A. Before TracFone is designated as an ETC, the
14 Company should: (1) begin remitting payments into the
15 ITSAP fund; (2) begin remitting payments into the 911
16 services fund; and (3) provide a complete list of wire
17 centers (devoid of duplicates) that the Company intends
18 to serve, thereby demonstrating that TracFone does not
19 intend to only serve the more populated wire centers.
20 This will satisfy the cream skimming concern.

21 Q. Does this conclude your direct testimony in
22 this proceeding?

23 A. Yes, it does.
24
25

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 to Rescind State)
911/E911 Condition)

ORDER

Adopted: May 3, 2010

Released: May 3, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a petition filed by TracFone Wireless, Inc. (TracFone) requesting rescission of a condition imposed in the *TracFone ETC Designation Order*.¹ In that order, the

¹ *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 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*, CC Docket No. 96-45, *Petition to Rescind State 911/E911Condition* (filed July 16, 2009) (TracFone Petition); *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 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*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*). Because TracFone's petition does not present novel questions of fact, law, or policy that cannot be resolved under existing precedents and guidelines, the Wireline Competition Bureau has authority to act on the petition. See 47 C.F.R. §§ 0.91(m), 0.291(a)(2).

Commission conditionally designated TracFone as an eligible telecommunications carrier (ETC) for the limited purpose of receiving universal service low-income support through the Lifeline program in its licensed service areas in several states.² TracFone's limited ETC designation is subject to, among other things, the condition that TracFone certify that it is in full compliance with state-level 911 and enhanced 911 (E911) obligations, including obligations relating to the provision and support of such service, before receiving Lifeline universal service support in a state.³ Given the importance of ensuring that all consumers, including low-income consumers, have access to emergency services and consistent with the Commission's previous holding that TracFone must comply with state obligations relating to access to those services, we find that TracFone has not demonstrated sufficient cause to justify rescission of the state 911/E911 compliance certification requirement imposed in the *TracFone ETC Designation Order*.

II. BACKGROUND

2. Congress established the federal universal service fund to help ensure that quality services are available at just, reasonable, and affordable rates for all consumers throughout the nation.⁴ The Lifeline program furthers the goal of affordability by reducing the price of monthly telephone service for low-income consumers.⁵ The universal service fund then reimburses carriers for the revenues foregone through its participation in the Lifeline program.⁶

3. Section 214(e)(6) of the Communications Act of 1934, as amended (Act), 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."⁷ Before the Commission will designate a carrier as an ETC, the 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.⁸ All ETC designations must be "consistent with the public interest, convenience and necessity."⁹

4. In the *TracFone ETC Designation Order*, the Commission conditionally designated TracFone as an ETC eligible to receive Lifeline support in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire,

² See *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, para. 1.

³ *Id.* at 6213, para. 16.

⁴ 47 U.S.C. § 254(b)(3).

⁵ 47 C.F.R. § 54.401(a)(2).

⁶ 47 C.F.R. § 54.407(b)-(c).

⁷ 47 U.S.C. § 214(e)(6). Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2).

⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6380, para 20 (2005). Pursuant to section 214(e)(1) of the Act, a carrier must offer the supported services over its own facilities or a combination of its own facilities and resale of another carrier's service to be eligible for ETC designation. 47 U.S.C. § 214(e)(1). In the *TracFone Forbearance Order*, the Commission forbore from the section 214(e)(1) facilities requirement for TracFone, which is a wireless reseller, so that it could be eligible to receive Lifeline support. *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, 15100, para. 12 (2005) (*TracFone Forbearance Order*).

⁹ 47 U.S.C. § 214(e)(6).

Pennsylvania, and the District of Columbia.¹⁰ To ensure that low-income consumers would have access to emergency services, the Commission expressly conditioned TracFone's eligibility for Lifeline support upon, among other things, 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.¹¹ The Commission imposed this condition in response to both the "unique circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support" and the concern that TracFone had engaged in a pattern of behavior in several states of refusing to support 911 services.¹²

5. The Commission has pending before it two petitions contesting TracFone's self-certification to compliance with state 911/E911 requirements. The Alabama Commercial Mobile Radio Service Emergency Telephone Services Board has petitioned the Commission to reject TracFone's 911/E911 self-certification for Alabama, asserting that TracFone does not, in fact, remit the state-imposed 911/E911 surcharges.¹³ A group of Colorado 911 authorities have also objected to TracFone's self-certification in that state.¹⁴

6. On July 16, 2009, TracFone petitioned the Commission to rescind the 911/E911 certification condition imposed in the *TracFone ETC Designation Order*.¹⁵ TracFone claims that the Commission should rescind the condition because the "only reason for imposition of the state law certification condition" was to address several "false statements" in the record and because state agencies are "abusing" the certification process.¹⁶

III. DISCUSSION

7. We deny TracFone's petition to rescind the 911/E911 certification condition of TracFone's ETC designation. TracFone has not presented any convincing evidence or arguments in its petition to suggest that the Commission should revisit its previous findings on the necessity for TracFone to certify compliance with state 911 and E911 requirements as a condition of its limited ETC designation.

8. The Commission adopted the 911/E911 certification condition in the *TracFone ETC Designation Order*, holding that TracFone's compliance with 911/E911 requirements was relevant to the issue of whether designation of TracFone as an ETC was in the public interest, as required by section 214(e) of the Act.¹⁷ Given the circumstances presented by TracFone's petitions for limited ETC designation for Lifeline support, the Commission imposed the 911/E911 certification condition as being necessary to counterbalance the potential disadvantages of designating TracFone a limited ETC.¹⁸ The

¹⁰ *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, para. 1.

¹¹ *Id.* at 6213, para. 16.

¹² *Id.* at 6212-13, paras. 15-16. The specific concern raised by the National Emergency Numbers Association was that TracFone had "offer[ed] to cooperate with 9-1-1 entities in the search for a fair and practicable way to surcharge prepaid services, only to turn against, and sometimes formally challenge, the legislative result." Letter from James R. Hobson, Counsel for the National Emergency Numbers Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Apr. 3, 2008).

¹³ Petition for Rejection of Certification and for Revocation of the Limited "ETC" Status of TracFone Wireless, Inc. in the State of Alabama, CC Docket No. 96-45 (filed Jan. 29, 2009).

¹⁴ Letter from Dennis J. Tharp, Counsel for the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Emergency Communication Service Authority, and the Jefferson County Emergency Communications Authority, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197 (filed Jan. 28, 2010).

¹⁵ TracFone Petition at 2.

¹⁶ See Petition to Rescind at 7-8.

¹⁷ *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

¹⁸ See *id.*

certification condition echoed the Commission's previous finding in the *TracFone Forbearance Order* that "provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises" and its finding there that access to 911 and E911 was especially critical for TracFone's Lifeline customers because that service may be the customer's only means of accessing emergency services.¹⁹

9. In adopting the certification condition, the Commission affirmed its longstanding commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers. Indeed, the certification condition enforces the principle that Lifeline funds should not be disbursed to any carrier that is not providing access to emergency services nor complying with state-level obligations regarding 911 funding; that principle should be especially potent here, where extending emergency services to the most needy was a motivating factor in the Commission's initial grant of forbearance to TracFone.²⁰

10. We conclude that TracFone has not demonstrated sufficient cause for rescission of the 911/E911 certification condition imposed in the *TracFone ETC Designation Order*. Contrary to TracFone's assertion that the Commission only imposed the state law certification requirement based on "false statements" in the record, the Commission's decision was based on its determination that compliance with state-level 911/E911 obligations was relevant to the public-interest assessment of TracFone's ETC designation requests.²¹ TracFone also claims that state agencies are "abusing" the certification process with its evidence being the filing of the petitions with the Commission challenging TracFone's self-certification of compliance.²² We, however, need not adjudge the merits of those petitions here because TracFone's argument here is essentially a replay of its previous argument specifically rejected by the Commission in the *TracFone ETC Designation Order*.²³ If compliance with state-level 911/E911 obligations was relevant to the public-interest assessment in designating TracFone an ETC, and the Commission found that it was, then surely ensuring that compliance through the certification process is also needed to protect the public interest. Moreover, if multiple state agencies assert that TracFone is not in fact complying with state-level 911/E911 obligations,²⁴ the question of whether TracFone's certification is accurate or not becomes all the more relevant. Accordingly, we deny TracFone's petition.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§ 1.103(a) and 1.4(b)(2), TracFone's petition to rescind the state-level 911/E911 obligations imposed in the Commission's *TracFone ETC Designation Order*, 23 FCC Rcd 6206, IS DENIED.

¹⁹ *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16.

²⁰ *Id.*

²¹ See *TracFone ETC Designation Order*, 23 FCC Rcd at 6213, para. 16.

²² See TracFone Petition at 7–8.

²³ *TracFone ETC Designation Order*, 23 FCC Rcd at 6212–13, paras. 15–16.

²⁴ See *supra* para. 5.



May 21, 2010

RECEIVED

Idaho Public Utilities Commission
472 W. Washington St.
PO Box 83720
Boise, Idaho 83720-0074

2010 MAY 24 AM 9:48
IDAHO PUBLIC UTILITIES COMMISSION

Mayor Garret Nancolas - Chairman
Association of Idaho Cities
621 Cleveland Blvd., Caldwell 83605
455-3011, gnancolas@ci.caldwell.id.us

RE: TracFone Wireless Inc. - Application for Designation as an Eligible
Telecommunications Carrier, Case No. TFW-T-09-01

Rep. Rich Wills - Vice Chairman
Box 602, Glens Ferry 83623
484-0403, wills550@aol.com

Dear Commissioners:

Captain Bill Gardner
Idaho State Police
700 S. Stratford Dr., Meridian 83642
846-7555, bill.gardner@isp.idaho.gov

On behalf of the Idaho Emergency Communications Commission ("IECC") I write
to express our opposition to the application of TracFone Wireless to become an
Eligible Telecommunications Carrier ("ETC"). The primary basis for this
opposition is that TracFone does not collect the Emergency Communications
Fee in support of Idaho counties' 9-1-1 systems. Further, it is the IECC's
position that TracFone's failure to do so is in violation of the Idaho Emergency
Communications Act, Idaho Code § 31-4801 et. seq.

Chief David Moore - Treasurer
Idaho Chiefs of Police Association
501 N. Maple #410, Blackfoot 83721
785-1235, dmoore@co.bingham.id.us

Joe Young, County Commissioner
Idaho Association of Counties
215 South First Avenue, Sandpoint 83864
265-1438, jyoung@co.bonner.id.us

In TracFone's Response to First Production Request of Commission Staff dated
May 3, 2010, on page 34, TracFone cites the minutes of the IECC meeting on
February 4, 2010, as a legal conclusion that they are not responsible for
collecting the fee. However, the IECC has not made this determination and in
fact believes that TracFone should be paying the required fees under Idaho Code
§ 31-4804 as they provide wireless service in Idaho. The IECC does not have a
preference as to how the funds are collected from TracFone's users, i.e. at the
retail level or by a deduction of minutes from the account by TracFone. The
funds simply should be collected and paid in compliance with the Idaho Code §
31-4804.

Sheriff Chris Smith, Canyon County
Idaho Sheriffs Association
1115 Albany Street, Caldwell 83605
454-7515, csmith@canyoncounty.org

Chief Martin Knoelk
Idaho Fire Chiefs Association
5800 Glenwood, Garden City 83714
375-0906, martink@nacfir.org

Teresa Baker
Idaho Prosecuting Attorneys Association
200 W. Front Street, Suite 3191, Boise 83702
287-7700, teresab@adaweb.net

This letter is also to confirm that TracFone has not made any attempt to
negotiate a process for collecting the Emergency Communications Fee with the
IECC or any of the local governments that collect the fee.

Troy Hagen
Idaho EMS Association
5870 Glenwood, Boise 83714
287-2962, thagen@adaweb.net

Dia Gainor
Idaho State EMS Communications Center
590 W. Washington St., Boise, 83702
334-4000, gainord@dhw.idaho.gov

The IECC's goal is to provide an emergency 9-1-1-communication system that
protects the citizens that rely upon it. The refusal of TracFone to collect and
remit the fees that they are obligated to collect under Idaho law is an unfair
business practice and is contrary to protecting those citizens that TracFone is
claiming to assist in their application with the Lifeline services.

Brig Gen Bill Shawver
Director, Idaho Bureau of Homeland Security
(Military Division)
4040 W. Guard, #600, Boise 83705-5004
422-3001, bshawver@bhs.idaho.gov

Clint Berry
Qwest
999 Main St., 8th Floor, Boise, 83702
364-3977, clint.berry@qwest.com

Accordingly, the Commissioners of the IECC respectfully request that the PUC
deny the application before them until TracFone comes into compliance with
existing law regarding the services they provide in Idaho.

James Lemm
J & R Electronics, Inc.
8144 Stone Haven Ave., Hayden, 83835
699-5366, jim@ircda.com

Karin Magnelli, Deputy Attorney General
954 W. Jefferson Street, Boise 83720
334-4550, Karin.magnelli@ag.idaho.gov

Sincerely,

[Handwritten signature of Garret Nancolas]

Garret Nancolas
Chair



CERTIFICATE OF SERVICE

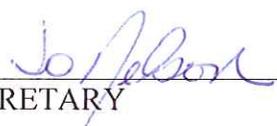
I HEREBY CERTIFY THAT I HAVE THIS 18TH DAY OF MARCH 2011, SERVED THE FOREGOING **DIRECT TESTIMONY OF GRACE SEAMAN**, IN CASE NO. TFW-T-09-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY