

Before the
PUBLIC UTILITY COMMISSION OF OREGON

DOCKET UM 1437

In the Matter of)
)

TRACFONE WIRELESS, INC.)
)

Application for Designation as an Eligible)
Telecommunications Carrier.)
)

**SECOND AMENDED
APPLICATION**

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January 7, 2011

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TracFone Wireless, Inc. (“TracFone”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Communications Act”) and this Commission’s requirements,¹ hereby submits this Second Amended Application for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Oregon.² TracFone seeks ETC designation solely to provide Lifeline service, under the trade name SafeLink Wireless[®], to qualifying Oregon consumers; it will not seek access to funds from the

¹ See In the Matter of Public Utility Commission of Oregon Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support, Docket No. UM 1217, Order No. 06-292 (Oregon Pub. Util. Comm’n: June 13, 2006). Appendix A of Order No. 06-292 includes Initial Designation - Application Requirements (“Initial Requirements”) and Annual Recertification Requirements (“Recertification Requirements”).

² TracFone files this Second Amended ETC Application in compliance with the Prehearing Conference Report issued in this docket on December 9, 2010. This Second Amended ETC Application replaces TracFone’s initial ETC Application filed on August 7, 2009 and its First Amendment to Application filed on October 27, 2009, and incorporates additional information regarding TracFone’s Lifeline service disclosed during this proceeding.

federal Universal Service Fund (“USF”) for the purpose of providing service to high-cost areas.³ As demonstrated herein, and as certified in Exhibit 1 to this Application, TracFone meets all the statutory and regulatory requirements for designation as an ETC in the State of Oregon.⁴ TracFone respectfully requests that the Commission grant this Application and that it do so expeditiously so that TracFone may provide Lifeline service to low-income households at the earliest practicable time.⁵

I. TracFone’s Universal Service Offering.

TracFone is incorporated under the laws of the State of Delaware and is headquartered at Miami, Florida. Its corporate offices are located at 9700 N.W. 112th Avenue, Miami, FL 33178. TracFone is a reseller of commercial mobile radio service (“CMRS”) throughout the United States, including the State of Oregon. TracFone provides service through a “virtual network” consisting of services obtained from numerous licensed operators of wireless networks. TracFone has provided CMRS service throughout the State of Oregon continuously for the past ten years. In Oregon, TracFone obtains service from the following underlying carriers: AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone’s arrangements with these providers

³ Given that TracFone only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to TracFone. See, e.g., portions of Initial Requirement 5. As discussed further herein, TracFone identifies in Exhibit 2 the Commission rules, Initial Requirements, and Recertification Requirements for which it requests partial or full waiver, along with the basis for the request.

⁴ There are certain Oregon rules that are not applicable to TracFone or with which TracFone is unable to comply. In the event that the Commission determines that a waiver is necessary and in accordance with the Prehearing Conference Report issued in this docket, TracFone provides a list of those rules and the basis for requesting waiver of those rules as Exhibit 2.

⁵ Oregon law requires that an ETC also be designated an Eligible Telecommunications Provider (“ETP”) and participate in the Oregon Telephone Assistance Program (“OTAP”) to receive Lifeline support from the federal Universal Service Fund (“USF”). On April 9, 2010, TracFone also filed an OTAP Application for designation as an ETP pursuant to OAR 860-033-0005 to provide OTAP services. TracFone understands that the Commission will issue a decision on the ETP Application concurrent with its decision on this ETC Application.

enable it to offer services wherever any of those providers offer service in the State of Oregon. Indeed, TracFone service is available wherever wireless service is available in Oregon. With more than fifteen million customers nationwide, TracFone is the leading provider of prepaid wireless service in the United States.

TracFone, through its arrangements with its underlying carriers, has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the Federal Communications Commission ("FCC") Rules (47 C.F.R. § 54.101(a)) and the Commission's Initial Requirements throughout Oregon. Upon designation as an ETC, TracFone will make available to consumers a Lifeline offering which will provide consumers with all of the functionalities and features currently provided by TracFone to existing customers. TracFone 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) and Initial Requirement 3.2.

TracFone's Lifeline offerings will differ from other ETCs' Lifeline programs in several very important respects. For one thing, TracFone will offer low-income consumers the convenience and portability of wireless services. TracFone believes that many Lifeline-eligible consumers will take advantage of the opportunity to obtain subsidized wireless service. In addition, unlike any other ETC's Lifeline programs, TracFone's Lifeline service will provide quantities of wireless usage at no charge to the consumer. Stated simply, TracFone's Lifeline service will be free! Typically, Lifeline programs provide participating consumers with discounts below carriers' standard rates. However, participating customers still must pay the discounted rates and face service disconnection if they fail to pay the amounts owed. For example, if a provider's standard monthly charge is \$30.00 and the Lifeline customer receives a

\$10.00 discount funded by the USF, the customer still receives an invoice for \$20.00, plus additional charges incurred during the billing period. TracFone's Lifeline customers will also receive a free wireless handset. Thus, TracFone's Lifeline customers will be able to initiate and receive calls from their wireless phones while incurring no activation or usage charges. TracFone's Lifeline plan is described at Section III.B of this Application.

II. TracFone Meets the Requirements For Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Oregon.

Section 254(e) of the Communications Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support." Section 214(e)(2) of the Communications Act provides that a State commission "shall . . . upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service area designated by the State commission."

As demonstrated below, and as set forth in the Declaration of F.J. Pollak, TracFone's President and Chief Executive Officer, Exhibit 1, TracFone meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Communications Act and the Commission's Initial Requirements (except to the extent TracFone requests a waiver of the Initial Requirements). TracFone complies with the standards established by the FCC for determining whether applicants for ETC status serve the public interest.⁶ TracFone recognizes that Section 214(e)(1)(A) of the Communications Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC's Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a

⁶ See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, ¶¶ 40-43 (2005).

telecommunications carrier that offers services exclusively through the resale of another carrier's services. However, as described at Section II.B of this Application, on June 8, 2004, TracFone filed with the FCC a petition requesting that the FCC exercise its forbearance authority under Section 10 of the Communications Act (47 U.S.C. § 160) with respect to the facilities-based service requirement.⁷ The FCC granted the petition for forbearance in an Order dated September 8, 2005.⁸ In an Order dated April 11, 2008, the FCC granted all of TracFone's pending petitions for designation as an ETC, subject to the conditions set forth in the TracFone Forbearance Order.⁹

A. The Oregon Public Utility Commission Has Jurisdiction to Designate TracFone as an ETC.

Section 214(e)(2) of the Communications Act authorizes state commissions, such as the Oregon Public Utility Commission, to designate ETC status for federal universal service purposes.¹⁰ Indeed, "state commissions have the primary responsibility for the designation of

⁷ See TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004, as amended by TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed August 16, 2005 and TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004 ("Petition for Forbearance").

⁸ Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR § 54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order"). A copy of the TracFone Forbearance Order is attached as Exhibit 3.

⁹ 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) (granting TracFone's ETC Petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia) ("TracFone ETC Order"). A copy of the TracFone ETC Order is attached as Exhibit 4.

¹⁰ See Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

eligible telecommunications carriers under Section 214(e)(2).”¹¹ Although Section 332(c)(3)(A) of the Communications Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does not allow states to deny wireless carriers ETC status.¹² Therefore, the Oregon Public Utility Commission is authorized to designate TracFone as an ETC. In fact, the Commission has designated wireless carriers as ETCs.¹³

Section 214(e)(2) of the Communications Act provides that a State commission shall designate a common carrier as an ETC, if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) requires a carrier designated as an ETC to offer the services that are supported by Federal universal service support mechanisms using its own facilities or a combination of its own facilities and resale of another carrier’s services and to advertise the availability of such services and the related charges using media of general distribution. As discussed in Section II.F. of this Application, TracFone will advertise the availability of its Lifeline plan and the associated charges using media of general distribution.

As noted above, the FCC decided to forbear from applying the facilities-based requirement for ETCs to TracFone. Section 10(e) of the Communications Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, the Oregon Public Utility Commission is

¹¹ Federal-State Joint Board on Universal Service, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 93 (2000).

¹² USF Order, at 8858-59, ¶ 145.

¹³ See In the Matter of Cingular Wireless Application for Designation as an Eligible Telecommunications Carrier, Docket No. UM 1253, Order No. 07-111 (Oregon Pub. Utility Comm’n: March 29, 2007).

required by Section 10(e) to act in accordance with the FCC's TracFone Forbearance Order, and therefore, may not apply the facilities-based requirement to TracFone. Indeed, 24 state utility commissions already have complied with the FCC's TracFone Forbearance Order and have designated TracFone as an ETC in those states.¹⁴

B. TracFone Will Provide Service Through Resale.

In the TracFone Forbearance Order, the FCC granted TracFone's Petition for Forbearance subject to certain conditions. The FCC explained that requiring "TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live."¹⁵ The FCC also stated that grant of TracFone's petition for forbearance "serves the public interest in that it should expand participation of qualifying consumers" in the under-utilized low-income program.¹⁶ The low-income program supported by the Universal Service Fund includes the Lifeline program.

The FCC's grant of forbearance is subject to the following conditions: (a) TracFone providing Lifeline customers with basic 911 and enhanced 911 ("E911") access regardless of activation status and availability of prepaid minutes; (b) TracFone providing its new Lifeline customers with E911-compliant handsets and replacing any existing customers' non-compliant handsets at no additional charge; (c) TracFone complying with conditions (a) and (b) as of the date it provides Lifeline service; (d) TracFone obtaining a certification from each Public Service

¹⁴ State utility commissions in the following states have designated TracFone as an ETC: Arkansas, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nevada, New Jersey, Ohio, Puerto Rico, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia, and Wisconsin. A list of state utility commission orders is attached as Exhibit 5.

¹⁵ TracFone Forbearance Order, ¶ 23.

¹⁶ Id. ¶ 24.

Answering Point (“PSAP”) where TracFone provides Lifeline service confirming that TracFone complies with condition (a); (e) TracFone requiring its customers to self-certify at the time of service activation and annually thereafter that they are the heads of the households and receive Lifeline-supported service only from TracFone; and (f) TracFone establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

The FCC required TracFone to describe how it would implement each of these conditions. In October 2005, TracFone described to the FCC how it would comply with each of the FCC’s stated conditions. TracFone committed to providing all Lifeline customers with access to basic and E911 service even if the customer has no remaining prepaid minutes on his or her handset. TracFone further represented that it will provide new Lifeline customers with an E911-compliant handset and will replace any existing customers’ non-E911-compliant handsets with a compliant handset free of charge at the time such customers enroll in Lifeline. TracFone also stated that its Lifeline enrollment forms will require each applicant to certify under penalty of perjury that he or she is the head of the household and that he or she receives Lifeline service only from TracFone. In addition, TracFone explained that its enrollment form will require each applicant to list a primary residential address which TracFone will use to check its customer records to ensure that the applicant is not receiving Lifeline service for more than one handset associated with a particular address. TracFone also will verify annually that its Lifeline customers are still heads of households and that they only receive Lifeline service from TracFone. In the TracFone ETC Order, the FCC approved TracFone’s plan for complying with those conditions.¹⁷

The PSAP certification condition imposed by the FCC was difficult to implement and

¹⁷ TracFone ETC Order, ¶ 23.

resulted in delaying the availability of TracFone's SafeLink Wireless[®] Lifeline service in several jurisdictions. On November 21, 2008, TracFone petitioned the FCC to modify the PSAP certification condition. On March 5, 2009, the FCC issued an Order granting TracFone's request to modify the requirement that TracFone obtain a certification from each PSAP where TracFone provides Lifeline service confirming that it provides its customers with access to basic and E911 service.¹⁸ The FCC modified the PSAP certification to require the following: TracFone must still request such certification from each PSAP within its Lifeline service area; however, if within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements.

In accordance with the FCC's March 5, 2009 Order, TracFone, by a letter dated September 3, 2009, requested the Oregon Emergency Management ("OEM") to certify on behalf of all Oregon PSAPs that TracFone customers have access to 911 and E911 service. The letter advised OEM that under the FCC's Order, TracFone is allowed to self-certify in situations where the PSAP has not provided the requested certification within 90 days of the request and has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service. As of December 1, 2009, OEM had not provided the requested certification nor had it made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service. Therefore, by letter dated January 13, 2010, TracFone notified the OEM that it was self-certifying that its Lifeline customers in Oregon will be able to access 911 and E911 service without regard to activation status or availability of prepaid minutes. A copy of the

¹⁸ Federal -State Joint Board on Universal Service, et al., 24 FCC Rcd 3375 (2009) (attached as Exhibit 6).

January 13, 2010 letter is provided as Exhibit 7.

C. TracFone Offers All Required Services and Functionalities.

TracFone offers, or will offer upon designation as an ETC in Oregon, all of the services and functionalities required by Sections 54.101(a) and 54.202(a) of the FCC's Rules (47 C.F.R. §§ 54.101(a), 54.202(a)) and Initial Requirement 2.1, including the following:¹⁹

1. Voice Grade Access to the Public Switched Network.

Voice grade access to the public switched telecommunications network ("PSTN") means the ability to make and receive traditional voice phone calls between approximately 500 Hertz and 4,000 Hertz for a bandwidth of approximately 3,500 Hertz.²⁰ The voice grade access provided by TracFone enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling pursuant to 47 C.F.R. § 54.101(a)(2). TracFone provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is included in TracFone's calling plan. FCC Rule 54.202(a)(4) requires an ETC applicant to "demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service

¹⁹ The FCC's Rules require an applicant for ETC status to demonstrate that it satisfies network build-out and improvement requirements (47 C.F.R. § 54.202(a)(1)(ii)) and to provide a certification that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area (47 C.F.R. § 54.202(a)). In the TracFone ETC Order, the FCC determined that TracFone was not required to make these showings because it is a pure reseller. See n.35. TracFone maintains that it also is not required to make these showings for this Application. See Initial Requirement 2.5.

²⁰ See USF Order, at 8810-11, ¶¶ 63-64; see 47 C.F.R. § 54.101(a)(1).

areas for which it seeks designation.”²¹ The FCC has explained that an ETC applicant’s local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the incumbent LEC in the area.²² Importantly, the requirement is that ETCs offer local usage plans “comparable” to those of the ILEC, not that the plans be identical. The FCC has not adopted any minimum local usage requirements.²³ As a designated ETC, TracFone will comply with any applicable minimum local usage requirements adopted by the FCC.

Wireless and wireline services, though increasingly substitutable for each other, are different from each other and they are priced differently. Unlike any ILECs’ or other ETCs’ Lifeline plans, TracFone’s Lifeline offerings will go beyond those of other providers in a very important respect: TracFone’s Lifeline customers will receive as part of Lifeline service specified amounts of free wireless service. That is, Lifeline customers will be able to use TracFone’s service to initiate and receive specified amounts of wireless calling -- local and long distance -- with no charge to the customers.

3. Dual Tone Multi-Frequency (“DTMF”) Signaling or Its Functional Equivalent.

DTMF signaling allows carriers to provide expeditious call set-up and call detail information and enables modem usage.²⁴ The FCC permits carriers to provide signaling that is functionally equivalent to DTMF to satisfy the DTMF requirement. All telephone handsets provided by TracFone are DTMF-capable as required by 47 C.F.R. § 54.101(a)(3).

²¹ See also Initial Requirement 2.4.

²² Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

²³ Id. ¶ 32.

²⁴ USF Order, 12 FCC Rcd at 8814, ¶ 71.

4. Single-Party Service or Its Functional Equivalent.

Single-party service means that only one party will be served by a subscriber line or access loop in contrast to a multi-party line.²⁵ TracFone provides customers with single-party access for the duration of every phone call in accordance with 47 C.F.R. § 101(a)(4). TracFone does not provide “multi-party” or “party line” services.

5. Access to 911 and E911 Emergency Service.

The FCC has declared that access to emergency services is essential.²⁶ TracFone provides universal access to the 911 system for its customers, also in accordance with Initial Requirement 8. TracFone has implemented and will continue to implement enhanced 911 (“E911”) services consistent with the FCC’s Rules, including 47 C.F.R. § 54.101(a)(5), and orders when such services are made available by the carriers from whom TracFone purchases services. In particular, TracFone will fully comply with the FCC’s E911 requirements applicable to wireless resellers.²⁷ Pursuant to the FCC’s E911 Order, providers that use other carriers’ facilities to provide wireless voice service to customers have an obligation to comply with the FCC’s E911 rules “to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver enhanced 911 information to the appropriate PSAP [public service answering point].”²⁸ TracFone will make available access to E911 service in accordance with applicable FCC requirements.

In addition, in accordance with 47 C.F.R. § 54.202(a)(2) and Initial Requirement 8.1,

²⁵ Id. at 8810, ¶ 62.

²⁶ Id. at 8815, ¶ 72.

²⁷ See Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340 (2003).

²⁸ Id. at 25378-79, ¶ 91.

TracFone has the ability to remain functional in emergency situations. Given that TracFone is a reseller, it does not own or operate any cell sites, microwave hubs, or switches. Therefore, the requirement in Initial Requirement 8.1 that TracFone demonstrate that it has back-up power and is able to reroute and manage traffic in emergency situations is not applicable. (This is addressed in further detail in TracFone's Waiver Request, Exhibit 2.) As described in this Application, TracFone provides service in Oregon by reselling services of underlying wireless network carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless. Those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards. Throughout its over ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry.

6. Access to Operator Services.

TracFone offers all of its customers access to operator services, in accordance with 47 C.F.R. § 54.101(a)(6).

7. Access to Interexchange Service.

TracFone customers can use TracFone's services to complete toll calls as required by 47 C.F.R. § 54.101(a)(7). In fact, TracFone does not impose separate charges for interexchange calls. Long distance calling is included in TracFone's service with no additional charge.

8. Access to Directory Assistance.

All TracFone customers receive access to directory assistance service through the TracFone virtual network as required by 47 C.F.R. § 54.101(a)(8). Specifically, all TracFone customers, including those customers located in Oregon, have access to directory assistance services provided by TracFone's vendors.

9. Toll Limitation for Qualified Low-Income Customers.

There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or, for that matter, any other charges. TracFone treats long distance minutes of use as any other usage and the customers are not charged separately for toll services. Inasmuch as all TracFone services are prepaid there is no danger that low-income customers will incur large charges for heavy toll (or other) calling and no risk that they will be disconnected for nonpayment. Since customers pay for the service in advance, they can use only what they already have paid for or what service quantities have been provided to them under the Lifeline program. Thus, TracFone's prepaid services are especially beneficial to lower income users since the consumers enjoy the ability to control or limit their charges for toll service (as well as local service) in a manner that customers of traditional post-paid (billed in arrears) services do not.

D. TracFone Will Be Able to Serve the Designated Areas Within a Reasonable Time.

TracFone provides service in Oregon by reselling service which it obtains from underlying facilities-based providers. Each of those providers' networks are operational and are largely built out. Thus, TracFone will be able to commence offering its Lifeline service to all locations served by any of its underlying carriers very soon after receiving approval from the Oregon Public Utility Commission. Indeed, it already serves those areas. The only delay will be the time needed to implement procedures and internal systems to offer the Lifeline program. Thus, TracFone will be able to provide Lifeline service to all qualified customers on a timely basis or within a reasonable period of time in accordance with 47 C.F.R. § 54.202(a)(1).

The Commission's Initial Requirement 3.1 requests ETC applicants to provide a map showing designated service area boundaries overlaid on the boundaries of all ILEC wire centers

and a list of ILEC wire centers included in the proposed designated service area. TracFone is not an ILEC and does not have access to maps of the boundaries of ILEC wire centers. However, TracFone attaches as Exhibit 8 the following documents describing its Lifeline service area in Oregon: (1) a map depicting its coverage area in Oregon; (2) a list of rate centers within its service area; (3) a list Zip Codes in TracFone's service area and the underlying wireless carrier or carriers providing service in each Zip Code; and (4) a list of CLLI codes included in its underlying carriers' service areas. TracFone has sufficiently described its service area using all data available to it from its underlying carriers and from a third party data source (i.e. www.telcodata.us). Furthermore, TracFone asks individuals for their Zip Code when they apply for SafeLink Wireless[®] Lifeline service. Thus, customers are advised immediately whether TracFone's service is available in that Zip Code. In addition, network coverage maps are available on TracFone's website. Oregon residents who wish to subscribe to TracFone's wireless Lifeline service will not be impacted if TracFone is unable to provide a list and map of ILEC wire centers. As stated in Exhibit 2, TracFone seeks a waiver of Initial Requirement 3.1 to the extent that the Commission deems that TracFone's description of its service area does not meet this requirement.

Commission Initial Requirement 4 requests ETC applicants to provide a description of network facilities (4.1), a map showing current network coverage and signal strengths (4.2), and an identification of resale agreements (4.3). TracFone has resale agreements with AT&T Mobility, T-Mobile, and Verizon Wireless. TracFone does not have access to its underlying carriers' maps showing network coverage and signal strengths nor can it provide a description of its underlying carriers' network facilities. As stated in Exhibit 2, TracFone requests a waiver of Initial Requirements 4.1 and 4.2.

E. Service Quality Commitments.

As a reseller of other carriers' wireless services, TracFone's service is of the same quality and reliability as that of its underlying vendors. TracFone cannot assure the Commission that it will never experience service disruptions. Occasional dropped calls and inconsistent coverage depending on atmospheric conditions are a fact of life in the wireless industry. TracFone believes that its service is as reliable as that of any other wireless provider serving the Oregon market. To demonstrate its commitment to high service quality, TracFone will comply with the CTIA - The Wireless Association® Consumer Code for Wireless Service in accordance with 47 C.F.R. § 54.202(a)(3) and Initial Requirement 9.1. In accordance with Initial Requirement 9.2, TracFone commits to resolve complaints received by the Commission and will designate a contact person to work with the Commission's Consumer Services Division for complaint resolution. In addition, TracFone's Privacy Policy for its SafeLink Wireless® Lifeline service is available to all customers on its website at <http://www.safelink.com> and it is attached as Exhibit 9.

F. TracFone Will Advertise the Availability of Supported Services.

TracFone will aggressively advertise the availability of its Lifeline service and the associated charges using media of general distribution, in accordance with the requirements of Section 214(e)(1)(A) of the Communications Act, Section 54.201(d)(2) of the FCC's Rules (47 C.F.R. § 54.201(d)(2)), and Initial Requirements 6 and 7. TracFone plans to utilize such marketing and outreach efforts as necessary and appropriate to ensure that as many eligible consumers as possible avail themselves of TracFone's prepaid wireless Lifeline offering. TracFone understands that it will be competing with other ETCs in Oregon, including the incumbent local exchange carriers, to be chosen by consumers to be their Lifeline service provider. TracFone will utilize traditional means for promoting the availability of its Lifeline

program. These means will include print and broadcast advertising in media outlets most likely to reach consumers eligible for Lifeline. These would include national publications as well as local and community newspapers, and commercial broadcast stations, especially those stations whose programming is targeted to significant lower income communities including, for example, Spanish language stations in areas with significant Spanish-speaking populations. Examples of TracFone's advertisements for SafeLink Wireless® Lifeline service are attached as Exhibit 10. TracFone believes that its advertising and outreach efforts will result in increased participation in the Lifeline program. The Commission's grant of TracFone's ETC Application will promote the important goal of increasing Lifeline participation.

G. Lifeline Certification and Verification Requirements.

Commission Staff has advised TracFone that individuals who wish to apply for Lifeline in Oregon must complete an OTAP Application, available at www.rspf.org or by contacting the Commission and requesting a copy. Commission Staff is responsible for approving applications and notifying applicants whether they have been approved for Lifeline service. Commission Staff also generates a weekly electronic report and sends it to the ETC so that the ETC can commence providing the Lifeline benefit to approved individuals. The ETC must then notify the Commission Staff before the next weekly report of any discrepancy that prevents an applicant from receiving the Lifeline benefit. Commission Staff uses the discrepancy report from the ETC to update its database. Commission Staff will also notify any applicants who are found to be ineligible for Lifeline via mailed correspondence.

The OTAP Application requires that an applicant provide the name of the applicant's phone company (which must be one of the company's listed on the OTAP Application form) and the applicant's phone number. A copy of the OTAP Application is provided as Exhibit 11. Commission Staff has advised TracFone that the Commission will not approve the OTAP

application if an applicant is not an existing customer of an ETC. Furthermore, the OTAP Application requires applicants to indicate that they understand the following: “My name must be on the phone bill and I must have active phone service in order to receive OTAP credits.” (emphasis in original) In TracFone’s experience, the majority of its SafeLink Wireless® Lifeline applicants are not existing TracFone customers. Therefore, individuals interested in receiving SafeLink Wireless® Lifeline service are not able to list TracFone as their current phone company nor are they able to provide a telephone number for a TracFone account. Moreover, TracFone does not issue bills to any of its customers, including its Lifeline customers. Thus, applicants who wish to receive SafeLink Wireless® would not be able to indicate that they understood that their name must be on the bill. As stated in Exhibit 2, TracFone seeks a waiver of the initial certification requirements to the extent that applicants must have active billed service with an ETC to be eligible to receive Lifeline service. As discussed in the request for waiver, TracFone further asks that the OTAP Application be modified to account for the fact that an applicant may not be an active customer of a billed telephone service prior to applying for Lifeline benefits, or in the alternative, allow TracFone to use its own Lifeline application form that will direct applicants to submit the form to the Commission for approval.

The Commission verifies all customers’ eligibility on a monthly basis through an automated interface between the Commission and Department of Human Services databases. TracFone will comply with the requirements of the verification process as set forth in ORS 860-033-0046.

H. TracFone Requests Designation Throughout Its Service Area in Oregon.

TracFone requests designation as an ETC for its entire service area in Oregon. Specifically, TracFone requests ETC designation statewide in all exchanges to the extent that its underlying carriers have facilities and coverage. TracFone reiterates the fact that it is applying

for ETC designation solely to utilize USF funding to provide Lifeline service to qualified low-income consumers. It does not seek and will not accept high-cost support. Therefore, its designation as an ETC will cause no growth in the high-cost portions of the USF and will not erode high-cost support from any rural telephone company. The Commission may designate TracFone as an ETC in non-rural areas that TracFone serves without redefining the service areas of non-rural telephone companies. The Commission may designate TracFone as an ETC in rural telephone company service areas upon a finding that such designation would serve the public interest.²⁹

III. Designation of TracFone as an ETC in the State of Oregon Would Serve the Public Interest.

As noted above, TracFone seeks certification as an ETC in areas served by rural telephone companies, as well as in areas served by non-rural telephone companies. Consequently, the Communications Act requires that the Commission determine that TracFone's designation as an ETC would serve the public interest.³⁰ Initial Requirement 10 also requires a public interest showing.

The FCC has determined that “[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³¹ This is particularly applicable in the rural areas served by TracFone within the State of Oregon -- areas that in most cases are not presently served by

²⁹ See 47 C.F.R. § 54.207(c).

³⁰ 47 U.S.C. § 214(e)(2); see Federal-State Joint Board on Universal Service, 20 FCC Rcd 6371, ¶ 42 (2005) (“We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.”).

³¹ See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, *Memorandum Opinion and Order*, 16 FCC Rcd 48, 55 (2000).

competitive wireline carriers that could provide an alternative to the incumbent LECs. Designation of TracFone as an ETC will provide a valuable alternative to the existing telecommunications services available in these areas. Those public interest benefits include larger local calling areas, the convenience and security afforded by mobile telephone service, the opportunity for customers to control their costs by purchasing in advance only the volumes of service which they need and supplementing those quantities on an “as needed” basis after exhausting their monthly supply of free service, and availability of E911 service in accordance with the FCC’s E911 requirements. In addition, TracFone’s inclusion of toll calling within its calling plans will enable consumers to avoid the risk of becoming burdened with large and unanticipated charges for toll calling.

TracFone’s SafeLink Wireless[®] Lifeline service offers important benefits that are especially needed by low-income Oregon residents in this time of economic downturn. According to the United States Bureau of Labor Statistics, as of November 2010, Oregon experienced an unemployment rate of 10.6 percent.³² These conditions have had a significant impact on Oregon residents.

As noted above, the availability of a regular mobile telephone will be critical to many of those unemployed Oregon residents’ efforts to search for other employment opportunities. Without a mobile telephone, unemployed individuals face extreme difficulty in finding a job. A mobile telephone allows individuals to be reached at any time and location and enables unemployed individuals to respond to potential employers immediately. In addition, a mobile telephone assists employed low-wage individuals by allowing those individuals to stay in contact with employers, manage relationships with supervisors, and respond to requests to work

³² Bureau of Labor Statistics, Local Area Unemployment Statistics, <http://www.bls.gov/lau/home.htm>, viewed on December 30, 2010.

additional shifts or hours. TracFone's SafeLink Wireless[®] Lifeline program will enable thousands of Oregon residents, including many who have been adversely impacted by the failing economy or job loss, to obtain a handset and wireless service, which would otherwise be unavailable to them, to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

Designation of TracFone as an ETC will also provide an incentive to the incumbent LECs serving those portions of the state to improve their existing networks in order to remain competitive, resulting in improved services to consumers. Designation of TracFone as an ETC will also benefit consumers because support to services provided by TracFone will help assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Communications Act.³³

The FCC has identified factors to be considered in determining whether designation of an additional ETC would serve the public interest. These factors require the Commission to weigh whether the benefits of an additional ETC would outweigh potential harms. The factors to be considered include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.³⁴ As described in the following paragraphs, TracFone meets these criteria.

A. The Benefits of Increased Competitive Choice.

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three decades.³⁵ The benefits of competitive choice are especially valuable in situations in which

³³ See 47 U.S.C. § 254(b)(1).

³⁴ See 47 C.F.R. § 54.202(c).

³⁵ See, e.g., Specialized Common Carrier Services, 29 FCC2d 870 (1971).

wireless providers like TracFone seek to provide service to rural communities and elsewhere. Moreover, the availability of a wireless competitive alternative benefits those rural consumers who often must drive significant distances to work, schools, stores, and other community locations.³⁶ TracFone's prepaid wireless service alternative will provide consumers with convenient and affordable telecommunications service, both from their residences and when they are away from their homes.

TracFone believes that many consumers, including qualified Lifeline customers, view the portability and convenience of wireless service as a modern necessity, not a luxury. Parents need to be able to reach their children wherever they may be (and vice versa); persons seeking work need to be reachable by potential employers; persons need to call for emergency assistance while away from home. According to FCC data, Oregon's statewide Lifeline participation rate is only 10.7 percent of eligible households.³⁷ In other words, nearly ninety percent of low-income Oregon households which are eligible to participate in Lifeline are not doing so. TracFone expects that qualified consumers will elect to participate in Lifeline, if a wireless option is available.

B. Unique Advantages of TracFone's Service Offerings.

As described elsewhere in this Application, TracFone's entire business model is predicated on providing easy-to-use, pay-as-you-go, affordable wireless telecommunications service to consumers to whom wireless service would be otherwise unavailable or unaffordable.

³⁶ See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422, ¶ 23 (2004).

³⁷ See In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87 (April 29, 2004) Table 1.A. The Universal Administrative Company estimates that in 2009 the participation rate for eligible households in Oregon was between 10 and 20 percent. See 2009 Participation Rates by State, available at <http://www.usac.org/li/about/participation-rate-information.aspx>.

TracFone offers consumers an opportunity to acquire wireless service using state-of-the-art handsets and such features as caller ID, voice mail, text messaging, and long distance calling without toll charges. Because TracFone's service requires no term contracts, no minimum service periods or volume commitments, no credit checks, and no early termination fees, the service is available to everyone – irrespective of age; irrespective of residency; irrespective of creditworthiness. Moreover, TracFone's prepaid service is unique in that usage information and remaining balance information is stored in the handsets and is thus available to consumers on a "real-time" basis. TracFone's prepaid service offers Lifeline-qualified customers access, quality and price. None of the incumbent providers nor those other non-incumbent ETCs serving the areas covered by TracFone in Oregon offer service to consumers under comparable conditions.

TracFone will offer the following Lifeline plan to its customers. Under the plan, TracFone's customers will receive free monthly service, free airtime each month, and a free handset. A description of the Lifeline plan (as required by Initial Requirement 2.3) is as follows:

TracFone SafeLink Wireless® Lifeline Plan

TracFone's Lifeline customers in all states, including Oregon, have the option to select from three monthly plans. The plans are as follows:

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

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

Customers who choose the 125 or 68 minute plan are able to carry over all unused minutes on a month-to-month basis. There is no limit on the number of minutes that may be carried over in to the following month. As noted above, whenever a SafeLink Wireless[®] customer enrolled in the 250 minute plan purchases additional airtime minutes, those purchased additional minutes will not expire at the end of the month of purchase. Instead, those purchased minutes will be carried over for three succeeding months. In addition, when such customers purchase additional minutes during a month the unused portions of those customers' free allotment of 250 minutes will not expire at the end of the month. Rather, like the purchased additional minutes, they will be carried over for three succeeding months. Extending the expiration of the free allotted minutes of Lifeline customers who purchase additional airtime minutes will ensure that no customer who purchases additional minutes will lose any purchased, but unused, minutes in less time than the normal expiration date for such purchased minutes of airtime.

TracFone will make available handsets to its participating Lifeline customers at no charge. TracFone will pre-activate handsets provided to qualified customers,³⁸ enroll the customers in the Lifeline plan, and allocate the appropriate number of minutes of usage to the customers' accounts. The handsets will be delivered to customers upon enrollment in the program with the first month's free usage allotment already activated. Low-income customers

³⁸ Customers who do not qualify for Lifeline must purchase a handset and then activate it by calling TracFone's Customer Care department from a landline telephone or by completing a form on TracFone's website.

who have limited access to communications sources will gain immediate and free access to wireless telecommunications service simply by turning on the handsets provided by TracFone.

Lifeline customers will be allowed to purchase additional usage cards at a rate of \$0.10 per minute. TracFone pledges that one hundred percent of the federal Lifeline support it receives will be flowed through to Lifeline customers in the form of free usage.³⁹ The terms and conditions governing SafeLink Wireless[®] Lifeline service are attached as Exhibit 12.

C. Impact on the Universal Service Fund.

The FCC has considered the impact on the USF when determining whether to grant TracFone's petitions for designation as an ETC.⁴⁰ Whatever impact classification of TracFone as an ETC will have on the universal service fund will be negligible. TracFone seeks ETC designation solely to enable it to offer Lifeline benefits to eligible low-income consumers. TracFone does not seek access to funds from the federal Universal Service Fund for the purpose of obtaining high-cost support. As noted in the FCC's TracFone Forbearance Order, "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.⁴¹ In 2008, low-income support accounted for only 11.5 percent of the distribution of the total universal service fund, while high-cost support accounted for 63.0 percent.⁴² "Any increase in the size of the fund [associated with granting TracFone's ETC petition] would be minimal and would be

³⁹ TracFone reserves the right to modify its Lifeline plan based on changes in market conditions or the amount of USF support available. However, under the Lifeline plan, 100 percent of federal and state required Lifeline support will be provided to Lifeline customers in the form of free usage.

⁴⁰ TracFone ETC Order, ¶ 16 n.47.

⁴¹ TracFone Forbearance Order, ¶ 17.

⁴² Wireline Competition Bureau, Federal Communications Commission, Trends in Telephone Service, Table 19.1 and Chart 19.1 (2010).

outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁴³ Indeed, the FCC has acknowledged the benefits of designating a carrier as an ETC, when the carrier only seeks to participate in the USF’s low-income programs. The FCC included the following statement in a May 1, 2008 Order in which it established an interim cap on high-cost support:

Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because “offering prepaid plans which make wireless service available to low income users ... has been a critical component of TracFone's business strategy since the company’s inception.” Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC’s base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.⁴⁴

Furthermore, it is important to recognize the differences between low-income funding for the Lifeline program and high-cost funding. With Lifeline, ETCs receive USF support only for customers they obtain. If TracFone acquires Lifeline customers currently served by other ETCs, TracFone will gain the Lifeline support for those customers, but the ETCs losing the customers will lose the support. TracFone will increase the amount of USF Lifeline funding only in situations where it obtains new Lifeline customers, *i.e.*, customers not currently enrolled in other ETCs’ Lifeline programs. In contrast, with high-cost support, when new ETCs enter the market

⁴³ TracFone Forbearance Order, ¶ 17.

⁴⁴ High-Cost Universal Service Support, et al., Order, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (released: May 1, 2008), ¶ 30.

and capture customers from the existing ETCs, both the incumbent ETCs and the new ETCs receive high cost support -- based on the incumbent LECs' costs, thereby increasing the size of the USF.

D. Designation of TracFone as an ETC Will Benefit the Public Interest of Consumers Throughout Oregon.

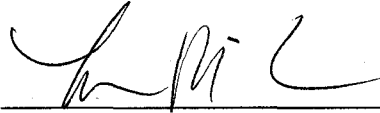
In addition to meeting the public interest factors, TracFone, if designated as an ETC, will also serve the public interest because TracFone will participate in the Lifeline program as required by the FCC's Rules and will otherwise comply with all FCC and Commission Rules governing universal service programs,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

Moreover, designation of TracFone as an ETC will serve the public interest by further promoting the extensive role TracFone plays in the provision of communications services to lower income and lower volume users, transient users, as well as other consumers 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. TracFone's SafeLink Wireless[®] Lifeline service enables low-income consumers to enjoy the convenience and security of wireless telecommunication without being subject to extensive credit reviews and long-term service commitments which historically have limited the availability of wireless service to many Americans, including many Oregon residents. For all the reasons described herein, designation of TracFone as an ETC will serve the public interest.

CONCLUSION

Based on the foregoing, TracFone contends that the requirements for eligibility for designation as an ETC have been met. Accordingly, TracFone requests that the Oregon Public Utility Commission promptly grant its application for designation as an eligible telecommunications carrier.

Respectfully submitted,



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Counsel for TracFone Wireless, Inc.

January 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 2011, served the foregoing TRACFONE WIRELESS, INC.'S SECOND AMENDED APPLICATION by causing a copy to be sent by U.S. or electronic mail to the following addresses (as indicated below):

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By



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Exhibit 1

DECLARATION OF TRACFONE WIRELESS, INC.

I, F.J. Pollak, state as follows:

1. I am President and Chief Executive Officer of TracFone Wireless, Inc. ("TracFone"). My business address is 9700 N.W. 112th Avenue, Miami, FL 33178.

2. In my capacity as President and Chief Executive Officer of TracFone, I am an authorized representative of TracFone. I have read TracFone's Second Amended Application for Designation as an Eligible Telecommunications Carrier in the State of Oregon. I confirm that the information contained therein is true and correct to the best of my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on January 3, 2011

A handwritten signature in black ink, appearing to read 'F.J. Pollak', written over a horizontal line.

F.J. Pollak
President and Chief Executive Officer

Exhibit 2

WAIVER REQUEST

In accordance with the Prehearing Conference Report issued in Docket No. UM 1437, TracFone Wireless, Inc. ("TracFone"), requests the Commission to waive the following regulatory requirements applicable to a telecommunications service provider that is applying for and designated as an Eligible Telecommunications Carrier ("ETC") and as an Eligible Telecommunications Provider ("ETP") to provide Lifeline service in Oregon.

TracFone seeks waiver of certain Commission rules governing the Residential Service Protection Fund ("RSPF"). These rules, which are set forth in Oregon Administrative Rules ("OAR") 860-033-0001 through 860-033-0100, detail the requirements that apply to telecommunications providers that offer Lifeline service in Oregon through the Oregon Telephone Assistance Program ("OTAP"). TracFone also seeks waiver of certain portions of the Commission's initial certification process used to approve applicants for Lifeline service. In addition, TracFone seeks waiver of certain ETC application and annual recertification requirements in Appendix A of Commission Order No. 06-292, issued in Docket No. UM 1217 on June 13, 2006.¹ As noted in this request, certain of the rules and requirements detailed below are not applicable to TracFone. However, in the event that the Commission determines that a waiver is required for those rules and regulations, TracFone has included them in this request for waiver.

¹ See In the Matter of Public Utility Commission of Oregon Staff Investigation to Establish Requirements for Initial Designation and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support, Docket No. UM 1217, Order No. 06-292, (Oregon Pub. Util. Comm'n: June 13, 2006). Appendix A of Order No. 06-292 includes Initial Designation - Application Requirements ("Initial Requirements") and Annual Recertification Requirements ("Recertification Requirements").

Requirements in the Commission's Rules

OAR 860-033-0006 - This rule provides for a RSPF surcharge and establishes general requirements in relation to the surcharge, including the submission of remittance reports and payments. TracFone is not legally obligated to collect or remit the RSPF surcharge for the reasons discussed below. Therefore, TracFone requests that the Commission waive this rule.

TracFone explained the basis for its position that the RSPF surcharge is not applicable to TracFone's SafeLink Wireless® Lifeline customers in a letter dated July 30, 2010 from its counsel to Michael Weirich, the Oregon Department of Justice Assistant Attorney General representing Commission Staff in this matter at that time. As stated in the July 30, 2010 letter, the Oregon statute establishing the RSPF surcharge (1987 Or. Laws c. 290 § 7, appearing as a note following ORS 759.690), instructs the Commission to assess the RSPF "surcharge" against "paying retail subscriber[s]" who have "telecommunications service." TracFone's SafeLink Wireless® customers are not "paying retail subscribers" who receive telecommunications service. Rather, they receive their service free of charge, with the cost of the service covered by the federal Universal Service Fund and by TracFone.

TracFone's SafeLink Wireless® customers also are not "retail subscribers." The term "retail subscriber" is not defined in the relevant statutes but, as commonly used, a retail subscriber is a person who agrees to purchase a service or product on an ongoing basis, such as telephone service, newspaper delivery, or tickets to a series of concerts. The term contemplates an ongoing obligation for the payment of money in return for the vendor's provision of such services or products. SafeLink Wireless® customers are not retail subscribers to the service in that they are not obligating themselves to pay anything for the service — a service which is provided to qualified Lifeline customers as a free service.

Moreover, it is impossible for TracFone to collect RSPF surcharges from its SafeLink Wireless[®] customers because it does not issue them any monthly bills. In short, there is no billing mechanism available to collect the surcharges. This practical problem also informs the interpretation of the term “retail subscriber” and confirms that it requires an agreement to pay charges on an ongoing basis that are invoiced every month.

In addition, the RSPF surcharge relates to “telecommunications service,” which as defined in ORS 759.005(8)(a), expressly excludes radio common carriers, such as TracFone. OAR 860-033-0006(3)(b) also requires each telecommunications provider to “identify the surcharge on each retail customer’s bill,” which reflects the fact that the surcharge is intended to be applicable to billed services provided to paying retail subscribers. TracFone’s SafeLink Wireless[®] services are not telecommunications services as that term is defined at ORS 759.005(8)(a), nor billed services provided to paying retail subscribers. For the foregoing reasons, TracFone has no legal obligation to collect the RSPF surcharge from its Lifeline customers nor does it have a legal obligation to remit the RSPF surcharge. OAR 860-033-0006 is not applicable to TracFone for purposes of its ETC and ETP Applications, and as such, TracFone seeks a waiver of this rule.

OAR 860-033-0010 - This rule provides that an ETP must offer OTAP reduced rates or discounts with all service offerings that include basic telephone service. TracFone does not offer basic telephone service as that term is defined by Oregon law. Section 759.400 of the Oregon Revised Statutes defines “basic telephone service” as “local exchange telecommunications service defined as basic by rule of the Public Utility Commission.” However, TracFone does not provide “local exchange telecommunications service” because it does not provide “telecommunications service” as defined by Oregon Statutes. As explained in relation to

TracFone's request for waiver of OAR 860-033-0006, ORS 759.005(8)(a) specifically excludes services provided by radio common carriers from the definition of "telecommunications service." TracFone is a radio common carrier, and as such, does not provide telecommunications service under Oregon law nor does it provide local exchange telecommunications service or basic telephone service. Therefore, the requirement in OAR 860-033-0010 that an ETP offer OTAP reduced rates or discounts with all service offerings that include basic telephone service is not applicable to TracFone for purposes of its ETC and ETP Applications. If the Commission deems the rule to be applicable, then TracFone requests a waiver of this rule. Moreover, TracFone will offer its Oregon customers a choice of three service plans for no monthly charge, so TracFone's offerings comply with the intent of the rule.

OAR 860-033-0030(6) - OAR 860-033-0030(6) provides that the name of the applicant or recipient must appear on the billing statement for the telecommunications service in order for that recipient to qualify for OTAP benefits. This rule further states that the "Commission may waive this requirement if it determines that good cause exists." TracFone, as a provider of prepaid wireless services, does not render bills or issue billing statements. Therefore, customers of TracFone are not able to comply with this rule. Moreover, strict application of this rule would require that applicants for OTAP benefits already have telephone service from a provider who renders billing statements, which may unfairly restrict otherwise eligible applicants and unduly discriminate against ETPs such as TracFone. As such, TracFone has demonstrated that good cause exists for waiver of OAR 860-033-0030(6).

OAR 860-033-0035(2) - OAR 860-033-0035(2) requires ETPs to provide the OTAP benefit for a "billing period" and to prorate the benefit if a customer is eligible for less than an entire billing period. TracFone, as a provider of prepaid service, does not issue bills and does

not have billing periods. TracFone provides free airtime minutes to its SafeLink Wireless® Lifeline customers on a monthly basis. TracFone is technically unable to prorate the Lifeline benefit to customers, and does not do so in any of the more than 30 jurisdictions where it operates as an ETC. TracFone provides its Lifeline customers with a full month of Lifeline benefit without regard to when during the month a customer enrolls in Lifeline. For example, if a customer enrolls in SafeLink Wireless® on July 1 and chooses the 125 minute option, the customer will receive 125 minutes of airtime for July. If a customer enrolls in SafeLink Wireless® on July 29 and chooses the 125 minute option, the customer will still receive 125 of minutes of airtime for July. Given that TracFone does not prorate Lifeline benefits to its customers, the absence of prorating would actually benefit TracFone's Lifeline customers. For all these reasons, TracFone seeks a waiver of OAR 860-033-0035(2).

OAR 860-033-0050 and OAR 860-033-0055 - These rules relate to Link Up America eligibility. In the Federal Communications Commission's 2005 TracFone Forbearance Order, the FCC exercised its statutory authority to forbear from the facilities-based requirement applicable to ETCs only to allow TracFone to be designated as an ETC for the limited purpose of providing Lifeline service. As a non-facilities-based provider, TracFone may not offer Link Up service in Oregon, or in any other state.²

In addition, Link Up is not relevant to TracFone's SafeLink Wireless® service. The Link Up program is described at Section 54.411 of the FCC's rules.³ It consists of two assistance programs: 1) a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal residence, up to

² 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 (2005) ("TracFone Forbearance Order").

³ 47 C.F.R. § 54.411.

one-half the customary charge or \$30.00, whichever is less; and 2) a deferred schedule for payment of charges for commencing service, without interest payments. Neither part of the two-part Link Up benefit is applicable to TracFone. TracFone has no customary service commencement, connection or installation charges. Therefore, there are no such charges to be offset or reduced through Link Up support. Since there are no commencement, connection or installation charges, there is no reason for TracFone to receive federal USF support to allow for deferred payment on charges which do not exist. Handset acquisition costs are not subject to Link Up support. Therefore, even if TracFone had authority to provide Link Up benefits to its customers, there would be basis for offering Link Up benefits.

TracFone is not seeking designation as an ETP to provide Link-Up service and is not permitted to do so by the conditions of the FCC's 2005 Forbearance Order. OAR 860-033-0050 and OAR 860-033-0055 are not applicable to TracFone for purposes of its ETC and ETP Applications, and as such, TracFone seeks a waiver of these rules.

OAR 860-033-0100 - This rule entitles a qualifying OTAP recipient to receive Toll Limitation Service from an ETP at no additional charge. There is no need for TracFone to offer a toll limitation feature to qualifying low-income customers. Since TracFone's service is a prepaid service, no customers will be disconnected for failure to pay toll charges or any other charges. TracFone treats long distance minutes of use just as any other usage and the customers are not charged separately for toll services. Given that all TracFone services are prepaid, there is no danger that low-income customers will incur large charges for toll calling (or for any other calling) and there is no risk that they will be disconnected for nonpayment. Therefore, toll limitation service is not necessary nor is it applicable to TracFone's service. As such, TracFone seeks a waiver of OAR 860-033-0100 to the extent the Commission deems such a

waiver to be necessary.

Certification Requirements

Commission Staff has advised TracFone that individuals who wish to apply for Lifeline in Oregon must complete an OTAP Application, available at www.rspf.org or by contacting the Commission and requesting a copy. Commission Staff is responsible for approving applications and notifying applicants whether they have been approved for Lifeline service. The OTAP Application requires that an applicant provide the name of the applicant's phone company (which must be one of the company's listed on the OTAP Application form) and the applicant's phone number. Commission Staff has advised TracFone that the Commission will not approve an OTAP application if an applicant is not an existing customer of an ETC. Furthermore, the OTAP Application requires applicants to indicate that they understand the following: "My name must be on the phone bill and I must have **active** phone service in order to receive OTAP credits." TracFone seeks a waiver of the requirement that an applicant be an active customer of a billed telephone service to be eligible to receive Lifeline benefits.

In TracFone's experience, the majority of its SafeLink Wireless[®] Lifeline applicants are not existing TracFone customers. Therefore, individuals interested in receiving SafeLink Wireless[®] Lifeline service are not able to list TracFone as their current phone company nor are they able to provide a telephone number for a TracFone account. Moreover, TracFone does not issue bills to any of its customers, including its Lifeline customers. Thus, applicants who wish to receive SafeLink Wireless[®] Lifeline service would not be able to indicate that they understood that their name must be on the bill. A waiver is necessary to allow applicants to apply for SafeLink Wireless[®] Lifeline service.

The OTAP Application unfairly favors companies that have current customers who wish

to receive Lifeline benefits. A company, such as TracFone, that attracts new customers to its Lifeline service, rather than relying solely on its current non-Lifeline customer base, is at a significant competitive disadvantage under the current Lifeline certification process. Indeed, if the current OTAP Application is the only application that is accepted by the Commission, individuals who wish to receive Lifeline benefits from TracFone will be unable to do so. Such Lifeline applicants will only be able to receive Lifeline-supported service from their existing telephone company - - in most cases, the incumbent local exchange carrier.

Moreover, a requirement that a Lifeline applicant provide its current telephone number on its application would render Lifeline service unavailable to those low-income households which do not currently have telephone service. The primary purpose for Lifeline is to make affordable telecommunications service available to low income households, including those households that, for economic reasons or otherwise, do not currently have service. A requirement that applicants provide their current telephone numbers precludes current non-subscribers from receiving Lifeline assistance, in contravention of the national policy that consumers, "including low income consumers," have access to telecommunications service.⁴

TracFone asks the Commission to waive the requirement in the OTAP Application that applicants must have their name on the phone bill and have active phone service to receive Lifeline benefits. TracFone further requests that the OTAP Application be modified to account for the fact that an applicant may not be an active customer of a billed telephone service prior to applying for Lifeline benefits. In particular, TracFone requests that the OTAP Application require the applicant to identify the company from which it seeks Lifeline benefits, rather than identify the applicant's phone company and telephone number. TracFone also asks that the

⁴ 47 U.S.C. § 254(b)(3).

OTAP Application delete the requirement that the applicant must indicate an understanding that the applicant's name must be on the phone bill and that the applicant must have active phone service to receive Lifeline benefits. Finally, TracFone asks that upon the Commission's designation of TracFone as an ETC, the OTAP Application be revised to add TracFone SafeLink Wireless[®] as a participating wireless ETC. In the alternative, TracFone requests that the Commission allow TracFone to use its own Lifeline application form that will direct applicants to submit the form to the Commission for approval.

Requirements of Order No. 06-292, Appendix A.

Initial Requirement 3.1.1 - This subsection requires an ETC applicant to submit a "[m]ap showing applicant's licensed area boundaries and its requested designated service area boundaries overlaid on the boundaries of all ILEC wire centers it proposes to include in its designated service area." TracFone is not an ILEC and does not have access to maps of the boundaries of ILEC wire centers. However, TracFone has provided Commission Staff with the following documents describing its Lifeline service area in Oregon: (1) a map depicting its coverage area in Oregon; (2) a list of rate centers within its service area; (3) a list Zip Codes in TracFone's service area and the underlying wireless carrier or carriers providing service in each Zip Code; and (4) a list of CLLI codes included in its underlying carriers' service areas. TracFone has sufficiently described its service area using all data available to it from its underlying carriers and from a third party data source (i.e. www.telcodata.us). Furthermore, TracFone asks individuals for their Zip Code when they apply for SafeLink Wireless[®] Lifeline service. Thus, customers are advised immediately whether TracFone's service is available in that Zip Code. In addition, network coverage maps are available on TracFone's website. Oregon residents who wish to subscribe to TracFone's wireless Lifeline service will not be

impacted if TracFone is unable to provide a list and map of ILEC wire centers. TracFone seeks a waiver of Initial Requirement 3.1.1 to the extent that the Commission deems that TracFone's description of its service area does not meet this requirement.

Initial Requirement 3.1.2 - This subsection requires an ETC applicant to submit a "[l]ist of ILEC wire centers ... with identification for each wire center, whether it will be fully or partially included in the ETC's proposed designated service area." As indicated above regarding Initial Requirement 3.1.1, TracFone does not have access to information that would enable it to identify its service area in terms of wire centers. However, TracFone has already provided the Commission Staff with a list of rate centers within its service area. In addition, TracFone has provided Commission Staff with a map depicting its coverage area in Oregon, a list of Zip Codes in TracFone's service area and the underlying wireless carrier or carriers providing service in each Zip Code, and a list of CLLI codes included in its underlying carriers' service areas. TracFone seeks a waiver of Initial Requirement 3.1.2 to the extent that the Commission deems that TracFone's description of its service area does not meet this requirement.

Initial Requirement 3.2 - This subsection requires an ETC applicant to commit to offer supported services throughout the proposed service area and to provide service to all customers consistent with the requirements of 47 C.F.R. § 54.202(a)(1)(i). The purpose of this requirement is to ensure that an ETC is using high-cost support to expand and improve network services. See Federal-State Joint Board on Universal Service, 20 FCC Rcd. 6371, ¶ 21 (2005). TracFone does not own and operate a network and it does not seek high-cost support. However, TracFone will provide service on a timely basis to all customers requesting service within its designated service area. TracFone, as a reseller, defines its service area to include the service areas of its underlying carriers. Therefore, TracFone is limited by its underlying carriers' service areas and facilities

and does not have the ability to expand or make any changes to the networks of its underlying carriers. As such, it can only comply with requests for service within its underlying carriers' service areas. Therefore, TracFone seeks a waiver of this requirement.

Initial Requirement 4.1 - This subsection requires an ETC applicant to describe the types of network facilities currently used to provide service. As a reseller, TracFone does not own or control any networks or other facilities, and is not privy to sufficiently accurate descriptions of facilities owned or operated by underlying carriers. Therefore, TracFone seeks a waiver of this requirement.

Initial Requirement 4.2 - This subsection requires an ETC applicant to provide a map showing the extent of current network coverage and, for wireless applicants, signal strengths. TracFone, as a mobile virtual network operator, obtains wireless service from the following underlying carriers in Oregon: AT&T Mobility, T-Mobile, and Verizon Wireless. As a reseller, TracFone's Oregon coverage area encompasses the aggregate coverage areas of these underlying carriers. TracFone does not have access to its underlying carriers' coverage area maps depicting signal strength. Given that TracFone does not have access to this information, that it is reselling the services of three major wireless carriers, and that it has provided a significant amount of information describing its service area, TracFone seeks waiver of this requirement.

Initial Requirement 5.2 - This subsection requires an ETC applicant to submit a copy of the certification required by the FCC pursuant to 47 C.F.R. § 54.809 to receive Interstate Access Support and pursuant to 47 C.F.R. § 54.904 to receive Interstate Common Line Support. TracFone does not receive, and is not seeking, Interstate Access Support or Interstate Common Line Support. Accordingly, it does not need such certification from the FCC and

has not sought such certification. Therefore, TracFone seeks a waiver of this requirement.

Initial Requirement 5.3.2 - This subsection requires an ETC applicant to submit plans for expanding or improving services over the next three to five years. This requirement is applicable to those ETCs that own and operate their own networks. TracFone, as a reseller, does not own or control any networks or facilities, and as such has no basis for filing an improvement plan. Therefore, TracFone seeks a waiver of this requirement.

Initial Requirement 8 - This section requires an ETC applicant to demonstrate its ability to remain functional in emergencies. TracFone is a reseller; it does not own or operate any cell sites, microwave hubs or switches. TracFone provides service in Oregon by reselling services of underlying wireless network carriers. Those network operators have implemented state-of-the-art network reliability standards and TracFone and its customers benefit from their high standards. Throughout its over ten years of existence, TracFone's service reliability has compared favorably with that of any facilities-based operator in the wireless telecommunications industry. Given that TracFone does not have the ability to control back-up power and routing and management of traffic by its underlying carriers, TracFone seeks a waiver of this requirement.

Recertification Requirement 2.1.1 - This subsection requires a wireless ETC to “[r]eport on number of unfulfilled service requests during the past calendar year, noting location of each such request, and description of ETC’s attempts to provide service; [and provide] a brief description of how the ETC ensures that every request for service that cannot be immediately fulfilled is recorded and processed further under the 6-step process set forth in 47 C.F.R. § 54.202(a)(1)(i).” As discussed above in relation to Initial Requirement 3.2, the purpose of this requirement is to ensure that an ETC is using high-cost support to expand and

improve network services. See Federal-State Joint Board on Universal Service, 20 FCC Rcd. 6371, ¶ 21 (2005). TracFone does not own and operate a network and it will not seek high-cost support. However, TracFone will provide service on a timely basis to all customers requesting service within its designated service area. TracFone, as a reseller, defines its service area to include the service areas of its underlying carriers. Therefore, TracFone is limited by its underlying carriers' service areas and facilities and does not have the ability to expand or make any changes to the networks of its underlying carriers. As such, it can only comply with requests for service within its underlying carriers' service areas and as such, does not have any unfulfilled service requests. Therefore, TracFone seeks a waiver of this requirement.

Recertification Requirement 4.1 - This subsection requires an ETC to report the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year. TracFone is unable to report the number of customers by ILEC study area because it does not have access to the data necessary to develop this report. However, TracFone is able to report the number of Lifeline customers in Oregon by Zip Code. Therefore, TracFone seeks a partial waiver of this requirement and requests that it be permitted to report the number of Lifeline customers by Zip Code.

Recertification Requirement 5.2 - This subsection requires a wireless ETC to file an annual outage report consistent with 47 C.F.R. § 54.209(a)(2). Section 54.209(a)(2) requires the annual outage report to include information detailing: (A) the date and time of onset of the outage; (B) a brief description of the outage and its resolution; (C) the particular services affected; (D) the geographic areas affected by the outage; (E) steps taken to prevent a similar situation in the future; and (F) the number of customers affected. TracFone receives outage information from each of its underlying carriers in Oregon. The information received by

TracFone identifies the date and time of the onset of the outage, the duration of the outage, the nature of the outage, and the general geographic location of the outage. However, as a reseller, TracFone does not own or operate any switches, and therefore cannot identify the steps taken to prevent a similar situation in the future. Furthermore, the outage information provided to TracFone does not enable TracFone to identify the number of customers affected. Therefore, TracFone seeks a partial waiver of this requirement to the extent that it is unable to provide all of the information required by Section 54.209(a)(2).

Recertification Requirement 6.2 - This subsection requires a wireless ETC to report service troubles per 100 handsets by wireless switch. As a reseller, TracFone does not own or operate any switches, and therefore, cannot report troubles by wireless switch. Furthermore, TracFone's underlying carriers do not provide TracFone with trouble reports. Therefore, TracFone seeks a waiver of this requirement.

Recertification Requirement 7.2 - This subsection requires an ETC to submit its most recent certification submitted to FCC pursuant to 47 C.F.R. § 54.809 for Interstate Access Support and pursuant to 47 C.F.R. § 54.904 for Interstate Common Line Support. TracFone does not receive, and is not seeking, Interstate Access Support or Interstate Common Line Support and does not submit to the FCC certifications required by 47 C.F.R. § 54.904. Therefore, TracFone seeks a waiver of this requirement.

Recertification Requirement 7.3 - This subsection requires a competitive ETC to submit a network improvement plan update. This requirement applies to carriers that own and operate their own networks. TracFone, as a reseller, does not own or control any networks or facilities, and as such has no basis for filing an improvement plan. Therefore, TracFone seeks a waiver of this requirement.

Waiver of the rules and requirements described in this request will enable TracFone to operate as an ETC and ETP in compliance with the Commission's rules to the extent they reasonably apply to TracFone's operations and Lifeline service offering. Grant of TracFone's request for waiver will serve the public interest because it will allow Oregon low-income households to have access to a free wireless Lifeline plan. Furthermore, TracFone is not aware of any anticompetitive effect if the Commission grants its waiver requests. Rather, only TracFone would be prejudiced if strict compliance with the rules, which are not applicable to TracFone or with which TracFone is unable to comply, were a requirement for designation as an ETC and ETP.

Based on the foregoing, TracFone requests that the Commission grant its request for waiver of OAR 860-033-0006, -0010, -0030(6), -0035, -0050, -0055, and -0100; certification requirements in the OTAP Application; Initial Requirements 3.1.1, 3.1.2, 3.2, 4.1, 4.2, 5.2, 5.3.2, and 8; and Recertification Requirements 2.1.1, 4.1, 5.2, 6.2, 7.2, and 7.3.

Exhibit 3

**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
)	
Petition of TracFone Wireless, Inc. for)	
Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47)	
C.F.R. § 54.201(i))	

ORDER

Adopted: September 6, 2005

Released: September 8, 2005

By the Commission: Commissioner Abernathy issuing a statement.

I. INTRODUCTION

1. In this Order, we address a petition filed by TracFone Wireless, Inc. (TracFone)¹ pursuant to section 10 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act)² requesting that the Commission forbear from the requirement that a carrier designated as an eligible telecommunications carrier (ETC) for purposes of federal universal service support provide services, at least in part, over its own facilities.³ TracFone requests that its eligibility for federal universal service support be limited to Lifeline only. Subject to the conditions that we describe below, we grant TracFone forbearance from the facilities requirement for ETC designation for Lifeline support only.⁴

II. BACKGROUND

2. Procedural History: TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider (*i.e.*, a pure wireless reseller) that provides prepaid wireless telecommunications services. On June 8, 2004, TracFone filed a Petition for Forbearance from section 214(e) of the Act, which requires that an ETC offer service using its own facilities or a combination of its own facilities and resale of another carrier's services (Forbearance Petition or Petition).⁵ Contemporaneously with its Petition, TracFone filed

¹ TracFone Wireless, Inc. Petition for Forbearance, CC Docket No. 96-45, filed June 8, 2004 (Forbearance Petition or Petition). On February 17, 2005, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 6, 2005, the date on which TracFone's Petition shall be deemed granted in the absence of a Commission decision that the Petition fails to meet the standard for forbearance under section 10(a). *TracFone Wireless, Inc.'s Petition 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 3677 (2005).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. § 214(e).

⁴ We note that this grant of forbearance does not establish TracFone as an ETC. We will address TracFone's petitions for ETC designations in subsequent orders.

⁵ On June 24, 2004, the Bureau issued a Public Notice seeking comment on TracFone's Petition for Forbearance. *Parties are Invited to Comment on TracFone Wireless' Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and Petition for Forbearance from Application of Section 214*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 11264 (2004). Comments and replies to the June 24th Public Notice were received

with the Commission petitions for ETC designation for several states.⁶ On August 8, 2004, TracFone, in its reply comments, and shortly thereafter in its applications for ETC designation, amended its Petition and related ETC applications to limit its eligibility for federal universal service support to the Lifeline portion of the low-income program.⁷ TracFone states that it will meet all ETC obligations except for the requirement to “own facilities” and commits to providing its Lifeline customers with access to E911 service, regardless of activation status and availability of prepaid minutes, and to requiring its customers to self-certify they are receiving only one Lifeline-supported service.⁸ On September 24, 2004, TracFone amended its Petition a second time to include a request for forbearance from section 54.201(i) of the Commission’s rules, which provides that state commissions shall not designate as an ETC a carrier that offers services supported by federal universal service support mechanisms exclusively through resale of another carrier’s service.⁹

3. Applicable Statutes and Rules: The Act provides that only an ETC shall be eligible for universal service support.¹⁰ To be eligible for ETC designation, a carrier must meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another

on July 26 and August 9, 2004, respectively. In response to certain comments, TracFone limited its Petition to Lifeline support in its August 9th reply comments. Because TracFone modified its Petition in its reply comments, commenters did not provide comment in the Forbearance proceeding on the Lifeline-only limitation. Despite this fact, commenters did address the Lifeline-only limitation in the related TracFone ETC proceedings, which TracFone likewise modified to reflect the request for limited universal service support. *See The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-up Universal Service Support Mechanism*, CC Docket No. 96-45 and WC Docket No. 03-109, Public Notice, 19 FCC Rcd 20462 (2004).

⁶ TracFone has eight ETC petitions pending before the Commission. *See* 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; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed June 21, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, filed November 9, 2004; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, filed November 9, 2004.

⁷ TracFone Reply Comments, filed August 9, at 2-3 (August Reply Comments). *See* TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed Aug. 16, 2004.

⁸ TracFone Reply Comments, filed October 4, 2004, at 3-4 (October Reply Comments); August Reply Comments at 10.

⁹ 47 C.F.R. § 54.201(i); TracFone Wireless, Inc. Clarification of Petition for Forbearance, CC Docket No. 96-45, filed September 24, 2004.

¹⁰ 47 U.S.C. § 254(e).

carrier's service.¹¹ Only ETCs may receive high-cost and low-income support.¹² The low-income support mechanism of the universal service fund consists of the Lifeline and Link-Up programs.¹³

4. Collectively, 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. Lifeline provides low-income consumers with discounts of up to \$10.00 off of the monthly cost of telephone service.¹⁴ Link-Up provides low-income consumers with discounts of up to \$30.00 off of the initial costs of installing telephone service.¹⁵ Recognizing the unique needs and characteristics of tribal communities, enhanced Lifeline and Link-Up provide qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly costs of telephone service and up to \$70.00 more off the initial costs of installing telephone service.¹⁶ TracFone seeks eligibility to receive support only for the Lifeline portion of the low-income program.¹⁷

¹¹ 47 U.S.C. § 214(e)(1)(A).

¹² A carrier need not be an ETC to participate in the schools and libraries or rural health care programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997 *Universal Service Order*) (concluding that any telecommunications carrier, not just ETCs, may receive universal service support for providing supported services to schools and libraries); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114-5, para. 19 (1999) (*Fourteenth Order on Reconsideration*) (finding that although only ETCs may receive universal service support, a non-ETC that provides supported services to eligible rural health care providers may offset the value of the discount provided against its universal service contribution obligation and, to the extent such discount exceeds its contribution obligation, receive a refund).

¹³ 47 C.F.R. §§ 54.401, 54.411.

¹⁴ *See* 47 C.F.R. § 54.401(a)(2).

¹⁵ *See* 47 C.F.R. § 54.411(a)(1).

¹⁶ *See* 47 C.F.R. §§ 54.405(a)(4), 54.411(a)(3). Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (All fifty states have approved this reduction.) Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline/Link-Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than \$1. *See* 47 C.F.R. § 54.403.

¹⁷ August Reply Comments at 3 (requesting eligibility for Lifeline only support); October Reply Comments at 4 (specifying it does not seek eligibility for Link-Up support). TracFone has filed details of two proposed Lifeline plans. TracFone Wireless, Inc. *Ex Parte* Supplement to Petition for Forbearance and Petitions for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, at 3-5, filed July 15, 2005. The first plan, the "Pay-As-You-Go" Lifeline Plan, provides Lifeline customers with access to the network for one year and 30 minutes of airtime each month. Under TracFone's proposal, the cost of this plan would be completely subsidized by the Lifeline support. *Id.* at 3-4. The second plan, the "Net10 Pay-As-You-Go" Lifeline Plan, would require the Lifeline customer to purchase buckets of minutes to be used in an identified period of time that are discounted from TracFone's retail price to reflect the Lifeline subsidy. *Id.* at 4-5. One variation under this plan would require Lifeline customers to redeem coupons monthly. *Id.* TracFone states that, under any plan, the Administrator would provide support to TracFone as it does to all other recipients of Lifeline support; that is, TracFone's Lifeline support will be calculated on a monthly basis and distributed on a quarterly basis. Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3, filed August 22, 2005.

5. The Commission has in the past declined to extend ETC status to pure resellers. In the *1997 Universal Service Order*, the Commission found that the plain language of the statute requires that a carrier seeking ETC designation must own facilities, at least in part, thus precluding a carrier that offers services solely through resale from being designated as eligible.¹⁸ The Commission reasoned, without distinguishing among the various universal service support programs, that it was appropriate to deny pure resellers universal service support because pure resellers could receive the benefit of universal service support by purchasing wholesale services at a price that includes the universal service support received by the incumbent provider.¹⁹ Later in the *1997 Universal Service Order*, the Commission found that although resellers were not eligible to receive universal support directly, they were not precluded from offering Lifeline services. Resellers could offer Lifeline services by purchasing services at wholesale rates pursuant to section 251(c)(4) that reflect the customer-specific Lifeline support amount received by the incumbent local exchange company (LEC) and then passing these discounts through to qualifying low-income customers.²⁰ The Commission, in so finding, considered only that the underlying carrier was an incumbent LEC, subject to price-regulated resale obligations. Further, the Commission declined to forbear from the facilities requirement, finding that the statutory criteria had not been met.²¹ Making no finding with respect to the first two prongs, the Commission concluded that forbearance was not in the public interest because allowing pure resellers to receive universal service support would result in double recovery by the resellers.²² In making this finding, however, the Commission again did not distinguish among the various universal service support programs. Specifically, it did not consider whether providing only Lifeline support directly to a pure wireless reseller would result in double recovery.

III. DISCUSSION

6. For the reasons provided below, we conditionally grant TracFone's Petition and forbear from section 214(e) of the Act and sections 54.201(d)(1) and 54.201(i) of our rules for the purpose of considering its Petitions for ETC Designation for Lifeline support only.²³ If ultimately granted ETC status, TracFone will be eligible only for Lifeline support. As a limited ETC, TracFone would not be eligible to receive support for the other supported services under the low-income program nor would it be eligible, as an ETC, to receive support for services supported by the other universal support mechanisms.²⁴ We will address TracFone's petitions for ETC designation in subsequent orders. In sum, this grant is conditional on 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 it provides Lifeline service; (d) obtaining a certification from each Public Safety

¹⁸ *Id.* at 8875, para. 178 (adopting Joint Board's analysis and conclusion); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-73, paras. 160-161 (1996).

¹⁹ *1997 Universal Service Order*, 12 FCC Rcd at 8866, para. 161 and 8875, para. 178.

²⁰ *Id.* at 8972, para. 370. The Commission noted that it would reassess this approach in the future if the Lifeline program appeared to be under-utilized. *Id.*

²¹ *Id.* at 8875-6, para. 179.

²² *Id.*

²³ In addition, and on our own motion, we forbear from section 54.201(d)(1) of the Commission's rules. 47 C.F.R. § 54.201(d)(1). This section mirrors section 214(e) of the Act and requires that ETCs be facility-based, at least in part. We apply the same forbearance analysis we applied to section 214(e) to this section of our rules in determining that forbearance is warranted.

²⁴ See n.16, *supra*, for discussion regarding participation by non-ETCs in the schools and libraries and rural health care programs.

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 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.²⁵ Finally, as explained below, within thirty days of the release of this Order, we require TracFone to file with the Commission a plan outlining the measures it will take to implement these conditions.

7. Section 10 of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied. Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²⁶

8. In addition, when considering the public interest prong under section 10(a)(3), the Commission must consider “whether forbearance . . . will promote competitive market conditions.”²⁷ If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.²⁸ Forbearance is warranted, however, only if all three prongs of the test are satisfied. For the reasons explained below, we find that TracFone satisfies all three prongs.

9. This Petition requires that we consider the statutory goals of two related but different provisions of the Act. We first examine the statutory goals of universal service in section 254 specifically in the

²⁵ Commenters have raised concerns about the administrative costs, complexities, and burdens of granting this Petition and presumably the associated ETC designation petitions. See Letter from Robin E. Tuttle, USTelecom, to Marlene Dortch, FCC, CC Docket No. 96-45 (filed August 17, 2005) (USTelecom August 17 *Ex Parte*). We believe that this conditional forbearance will serve to further the statutory goal of the providing telecommunications access to low-income subscribers while establishing the necessary safeguards to protect the universal service fund and the functioning of the low-income support mechanism. To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, the parties can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling. See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-9, para. 26 n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998). Additionally, we note that the conditions we impose here will be incorporated into any grant of the ETC designation petitions and any violation of such conditions may result in loss of ETC status.

²⁶ 47 U.S.C. § 160(a).

²⁷ 47 U.S.C. § 160(b).

²⁸ *Id.*

context of “low-income consumers.”²⁹ We then consider the statutory purpose underpinning the facilities requirement in section 214(e) as it relates to qualifying for federal low-income universal service support. After careful examination of the regulatory goals of universal service as applied to low-income consumers, we determine that a facilities requirement for ETC designation is not necessary to ensure that a pure wireless reseller’s charges, practices, classifications or regulations are just and reasonable when that carrier seeks such status solely for the purpose of providing Lifeline-supported services. Indeed, for the reasons provided below, we find that the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller.

10. Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.³⁰ Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement and preservation of universal service.³¹ Specifically, the Act directs the Commission to consider whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas.”³² We therefore examine the facilities requirement from which TracFone seeks forbearance in light of the statute’s goal of providing low-income consumers with access to telecommunications services.

11. Just and Reasonable: As an initial matter, we note that a provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal.³³ Section 10(a)(1) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is necessary to ensure that the charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory.

12. We find that the facilities requirement is not necessary to ensure that TracFone’s charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only. The Commission has in the past declined to extend ETC status to pure resellers because it was concerned about double recovery of universal service support.³⁴ In making this decision, however, the Commission considered the issue in the context of wireline resellers and without differentiating among the types of universal service support and the basis of distribution. Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-customer basis and is directly reflected in the price that the eligible customer pays.³⁵ Because it is customer-specific, a carrier who loses a Lifeline customer to a reseller would no longer receive the Lifeline support to pass through to that customer. Thus, a wireless reseller who serves a Lifeline-eligible customer and receives Lifeline support directly from the fund does not receive a double recovery. By comparison, where the wholesale carrier is an incumbent LEC subject to price-regulated resale under section 251(c)(4), the rate at which the reseller obtains the wholesale service is based on a state-mandated percentage

²⁹ 47 U.S.C. § 254(b)(3).

³⁰ 47 U.S.C. § 151 (“to make available, so far as possible, *to all the people* of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates”) (emphasis added).

³¹ 47 U.S.C. § 254(b); *see 1997 Universal Service Order*, 12 FCC Rcd at 8789, para. 21 and 8793, para. 27.

³² 47 U.S.C. § 254(b)(3) (emphasis added).

³³ *See CTIA v. FCC*, 330 F.3d 502, 512 (2003).

³⁴ *1997 Universal Service Order*, 12 FCC Rcd at 8861, 8873, 8875, paras. 151-152, 174, and 178.

³⁵ 47 C.F.R. §§ 54.401, 54.504.

discount off of the incumbent LEC's retail rate for the service, and any Lifeline support received by the incumbent LEC would therefore be reflected in the price charged to the reseller.³⁶ In this scenario, a reseller that also received Lifeline support could recover twice: first because the benefit of the Lifeline support is reflected in the wholesale price and second because the reseller also receives payment directly from the fund for the Lifeline customer. That, however, is not the case before us. TracFone, as a CMRS provider, does not purchase Lifeline-supported services from incumbent LEC providers. Because TracFone's CMRS wholesale providers are not subject to section 251(c)(4) resale obligations, the resold services do not reflect a reduction in price due to Lifeline support. Therefore, we find that allowing TracFone to receive Lifeline support directly from the fund would not result in double recovery to TracFone and that the logic of the *1997 Universal Service Order* does not apply here.

13. We agree with TracFone that, as a reseller, it is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.³⁷ We note that TracFone's Lifeline offering will compete with at least one other Lifeline offering whether from the underlying CMRS provider, if an ETC, or from the incumbent wireline carrier.³⁸ We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. We note that TracFone has created a wireless prepaid product that is neither dependent upon the retail service offerings of its underlying carriers nor simply a rebranding of the underlying carrier's retail service offering which may provide a valuable alternative to eligible consumers.³⁹

14. For the reasons provided above, we find that the requirements of the first prong of section 10(a) are met. Where, as here, the wireless reseller is forgoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund. By limiting TracFone's eligibility to Lifeline support, the facilities requirement is not necessary to ensure that TracFone's charges, practices, and classifications are just and reasonable.

15. Consumer Protection: Section 10(a)(2) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. We find that imposing a facilities requirement on a pure wireless reseller is not necessary for the protection of consumers subject to the conditions described below. Specifically, we conclude that forbearance from this provision will actually benefit consumers. Indeed, if TracFone is ultimately granted limited ETC status, it would be offering Lifeline-eligible consumers a choice of providers not available to such consumers today for accessing telecommunications services. The prepaid feature may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts. We also note that TracFone has committed to ensuring that all of its consumers will be able to place enhanced 911 (E911) calls from their handsets even if the consumer's service is not active or does not have prepaid minutes available.⁴⁰

³⁶ See 47 C.F.R. § 251(c)(4).

³⁷ Forbearance Petition at 5.

³⁸ See 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

³⁹ TracFone states that its customers pay in advance for minutes of use, without term contracts or termination fees, other extraneous or pass-through fees, credit checks, or deposits. TracFone also states that its pricing is uniform across its service areas despite the costs associated with any particular underlying carrier. Forbearance Petition at 3-4.

⁴⁰ August Reply Comments at 10.

16. Given the importance of public safety, we condition this grant of forbearance on TracFone's compliance with the E911 requirements applicable to wireless resellers, as modified below, for all Lifeline customers. In light of the condition discussed below, that TracFone ensure its customers receive only one Lifeline-supported service, we find it essential that TracFone's Lifeline-supported service be capable of providing emergency access. Given the possibility that this Lifeline-supported service will be the customers' only means of accessing emergency personnel, we require that TracFone provide its Lifeline customers with access to basic and E911 service immediately upon activation of service.⁴¹ We note that this condition is consistent with TracFone's representation that its Lifeline customers will be able to make emergency calls at any time.⁴² To demonstrate compliance with this condition, TracFone must obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service. TracFone must furnish copies of these certifications to the Commission upon request.⁴³ As an additional condition, TracFone must provide only E911-compliant handsets to its Lifeline customers, and must replace any non-compliant handset of an existing customer that obtains Lifeline-supported service with an E911-compliant handset, at no charge to the customer. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.⁴⁴ The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.⁴⁵ We believe that these conditions are necessary to ensure that TracFone's Lifeline customers have meaningful access to emergency services. We reiterate that, with the possibility that the Lifeline service will be the customer's only access to emergency services and given the potential gravity of harm if such Lifeline customers cannot obtain such access, we believe that these conditions will further the protection of such Lifeline customers.

17. We are not persuaded by some commenters' concerns regarding the impact on the size of the universal service fund and the associated contribution obligation if we grant this Petition.⁴⁶ Because section 10(a)(2) requires that we consider the welfare of all "consumers," we must consider the effect a grant of this Petition will have on consumers who will likely shoulder the effects of any increased contribution obligation since carriers are permitted to recover their contribution obligations from

⁴¹ Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate PSAP. 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.* As a condition of this grant of forbearance, however, we require that TracFone, if granted ETC status, meet the requirements of section 20.18(m) for all of its Lifeline customers as of the date it provides such Lifeline service.

⁴² August Reply Comments at 10 (given E911 capabilities of its service and handsets, TracFone envisions that its service "really will serve as a 'lifeline' for those eligible customers participating in the program").

⁴³ We recognize that, as a practical matter, if TracFone's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, TracFone will not be able to offer Lifeline-supported service to customers residing in that area.

⁴⁴ *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum and Order, FCC 05-148, para. 144 (rel. August 8, 2005).

⁴⁵ *Id.*

⁴⁶ *See, e.g.*, Comments of TDS Telecommunications Corp., filed September 20, 2004, at 5-6 (TDS Comments).

customers.⁴⁷ If TracFone is able to obtain ETC designation for Lifeline-only services, we do not expect this to significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations. The Commission has recognized the potential growth of the fund associated with high-cost support distributed to competitive ETCs.⁴⁸ TracFone, however, would not be eligible for high-cost support. In 2004, low-income support accounted for only 14 percent of the distribution of the total universal service fund; whereas, high-cost support accounted for 64.2 percent.⁴⁹ Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers. Significantly, granting TracFone's Petition will not have any effect on the number of persons eligible for Lifeline support.

18. We further safeguard the fund by imposing additional conditions on this grant of forbearance. Specifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that TracFone require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from TracFone.⁵⁰ The penalties for perjury must be clearly stated on the certification form. Additionally, in order to further strengthen the head of household requirement, we require that TracFone track its Lifeline customer's primary residential address and prohibit more than one supported TracFone service at each residential address.⁵¹ These conditions are consistent with TracFone's representations in the record.⁵² In light of these safeguards, we are not dissuaded from granting forbearance by concerns of double recovery relating to customers receiving Lifeline support for more than one service.⁵³ We recognize, however, that the potential for more than one

⁴⁷ See 47 C.F.R. § 54.712.

⁴⁸ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1577, para. 31 (2004); see also *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6433-4, para. 25 (2004).

⁴⁹ Wireline Competition Bureau, Federal Communications Commission, *Trends in Telephone Service*, Table 19.1 and Chart 19.1 (June 2005). As of March 2004, the average monthly federal support per non-tribal Lifeline customer was \$8.55. *Id.* at Table 19.7. See 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25 per month in Lifeline support. 47 C.F.R. § 54.403(a)(4).

⁵⁰ October Reply Comments at 3-4 (commitment to require Lifeline customers to self-certify that they do not receive support from any other carrier). To monitor compliance, we require that TracFone maintain the self-certifications and provide such documentation to the Commission upon request.

⁵¹ See Reply Comments of TracFone Wireless, Inc. to Petition for ETC Designation in Virginia, filed September 7, 2004, at 7-8 (fully capable of fulfilling all record keeping requirements and has the ability to track each consumer's primary residence). See also Letter from Mitchell F. Brecher, Counsel for TracFone, to Marlene H. Dortch, FCC, CC Docket No. 96-45, filed July 13, 2005 (capable of fulfilling certification and verification requirements) (TracFone July 13 *Ex Parte*).

⁵² See n.56 and n.57 above. We point out that these conditions are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. See, e.g., 47 C.F.R. § 54.410 (requiring initial certification and annual verification of eligibility).

⁵³ See TDS Comments at 5-6; Reply Comments of the United State Telecom Association, filed October 4, 2004, at 6 and n.18; letter from Katherine O'Hara, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 1, filed August 9, 2005 (Verizon *Ex Parte*); USTelecom August 17 *Ex Parte* at 4.

Lifeline-supported service per eligible consumer is an industry-wide problem.⁵⁴ We are confident that these conditions of this grant of forbearance will eliminate this concern with respect to TracFone's customers. Additionally, we encourage comment on this issue in the *Comprehensive Universal Services Program Management* proceeding to address the potential for abuse throughout the industry.⁵⁵

19. USTelecom raised concerns about the fact that TracFone distributes its service through retail outlets.⁵⁶ USTelecom argues that TracFone will not have the requisite control over the retailer's employees to ensure compliance with Lifeline rules and certifications. We recognize that this may be a problem and thus require that TracFone distribute its Lifeline service directly to its Lifeline customers. Specifically, customers may purchase handsets at TracFone's retail outlets, however, we require that TracFone deal directly with the customer to certify and verify the customer's Lifeline eligibility. Of the two methods for certifying and verifying customer eligibility offered by TracFone, we reject the point of sale procedures that would allow TracFone Lifeline customers to submit qualifying information to the retail vendor.⁵⁷ TracFone must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.

20. Certain commenters argue that the prepaid, resold nature of TracFone's proposed service offering will facilitate fraud, waste, and abuse in the Lifeline program.⁵⁸ We find that this concern is more properly addressed in any order resolving TracFone's petitions for designation as an ETC. In the ETC designation proceedings, if TracFone's petitions are granted, we will address how Lifeline support will be calculated and distributed if the prepaid nature of TracFone's service offering requires such clarification.

21. In light of the conditions we have outlined here, we believe that appropriate safeguards are in place to deter waste, fraud, and abuse. We strive to balance our objective of increasing participation in the low-income program with our objective of preventing and deterring waste, fraud, and abuse. We find that we have struck the appropriate balance here. We are also mindful of the fact that other prepaid pure wireless carriers may similarly seek eligibility for Lifeline-only support. Given the safeguards we put in place aimed at ensuring that only eligible consumers receive such support and that they receive such support only once, we do not believe that similar requests will have a detrimental impact on the fund. We note that to the extent any similarly situated prepaid wireless reseller seeks forbearance from these requirements for the purpose of providing only Lifeline support, it will be expected to comply with all the conditions we impose upon TracFone herein.

22. Accordingly, we find that, subject to the 911 and E911 conditions and the self-certification and address limitation conditions set out above, the ETC facilities-based requirement is not necessary for consumer protection. We thus conclude that the second prong of section 10(a) is satisfied.

23. Public Interest: Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline

⁵⁴ See Verizon *Ex Parte* at 1; USTelecom August 17 *Ex Parte* at 2, 4.

⁵⁵ See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109 and CC Docket Nos. 96-45, 97-21, FCC 05-124, para. 22 (rel. June 14, 2005) (*Comprehensive Universal Services Program Management*).

⁵⁶ See USTelecom August 17 *Ex Parte* at 4.

⁵⁷ TracFone July 13 *Ex Parte* at 2-3.

⁵⁸ Letter from Jeffrey S. Lanning, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 3-5, filed August 26, 2005; Reply Comments of Verizon, filed October 4, 2004, at 3.

support only is in the public interest. In this instance, based on the record before us, we find that the statutory goal of providing telecommunications access to low-income consumers outweighs the requirement that TracFone own facilities, where TracFone, should it be designated an ETC, will be eligible only for Lifeline support. Thus, we find that requiring TracFone, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.

24. The Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.⁵⁹ Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.⁶⁰ We recently expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.⁶¹ On July 26, 2005, we launched a joint initiative with the National Association of Regulatory Utility Commissioners to raise awareness of our Lifeline and Link-Up programs among low-income consumers.⁶² We believe even more can be done to further expand participation to those subscribers that qualify and thus further the statutory goal of section 254(b). Therefore, consistent with the Commission's assertion in the *1997 Universal Service Order* concerning under-utilization of the program, we conclude it is appropriate to consider the relief requested with the goal of expanding eligible participation in the program.⁶³ With only about one-third of Lifeline-eligible households actually subscribing, we believe that granting TracFone's Petition serves the public interest in that it should expand participation of qualifying consumers. Accordingly, we conclude that forbearing from the facilities requirement for Lifeline support only, subject to the conditions set forth above satisfies the requirements of section 10(a)(3).

25. Within thirty days of this release of this Order, we require that TracFone file with the Commission a plan outlining the measures it will take to implement the conditions outlined in this Order. This plan will be placed on public notice and will be considered by the Commission in TracFone's ETC designation proceedings. For the foregoing reasons and subject to the conditions above, we find that the third prong of section 10(a) is satisfied.

26. Finally, we reject USTelecom's argument that TracFone has not requested forbearance from the facilities requirement in section 254(e) and that without such forbearance TracFone cannot fulfill the obligations of an ETC. Specifically, section 254(e) requires that "a carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶⁴ USTelecom emphasizes that the words "facilities" and "services" are joined by the conjunctive article "and" and therefore an ETC must use any universal support received for facilities as well as services.⁶⁵ We disagree with USTelecom's interpretation. First, we read this provision together with the sentence that precedes it. The preceding sentence states that only an ETC "shall be eligible to receive *specific* Federal universal service support."⁶⁶ The next sentence, which USTelecom quotes, then

⁵⁹ 47 C.F.R. § 54.401.

⁶⁰ *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, para. 1 and Appendix K at Table 1.B.

⁶¹ *Id.* at 8305, para 1.

⁶² *FCC and NARUC Launch "Lifeline Across America" to Raise Awareness of Lifeline and Link-Up Programs*, News Release, July 26, 2005.

⁶³ *1997 Universal Service Order*, 12 FCC Rcd at 8972, para. 370.

⁶⁴ 47 U.S.C. § 254(e).

⁶⁵ USTelecom August 17 *Ex Parte* at 5 n.1.

⁶⁶ 47 U.S.C. § 254(e) (emphasis added).

requires that “*such* service”, which we find refers to the specific universal support from the previous sentence, be used only for purposes “for which the support is intended.” Reading these sentences together in their entirety, we find that Congress intended that a carrier must use the universal support received to meet the goals of the specific support mechanism under which it was distributed. For example, a carrier who receives specific Lifeline support must use that support to reduce the price of access to telecommunications services for the eligible customer. Second, we note that not all the nominalized verbs in the sentence quoted by USTelecom, “provision,” “maintenance,” and “upgrading,” can be read to apply to both facilities and services. What for example would it mean to “maintain” a “service” apart from the “facilities”? We also note that the nominalized verbs themselves are joined by the conjunctive article “and”. Therefore, extending USTelecom’s logic, any universal support received by a carrier must always be used for the provision, maintenance, *and* upgrading of *both* facilities and services. The terms maintenance and upgrading as generally associated with a carrier’s network and not with service itself. Thus, USTelecom’s reading of section 254(e) would require us to interpret the term “service” as surplusage – a result that must be avoided when the statute admits to other interpretations.⁶⁷ We find the more appropriate reading is to consider these terms in the disjunctive. Thus, we conclude that an ETC receiving Lifeline support uses this specific universal service support for the purposes for which it was intended when it reduces the price of the Lifeline service by the amount of the support.

IV. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED THAT, pursuant to sections 4(i), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 214, and 254, the Petition for Forbearance filed by TracFone Wireless, Inc. on June 8, 2004, and amended on August 9, 2004 and September 24, 2004, IS GRANTED subject to the conditions set forth above and, on our own motion, we forbear from enforcing 47 C.F.R. § 54.201(1)(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁷ See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: 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).*

I am very pleased to join in today's decision, which will help expand the availability of Lifeline subsidies to low-income users of resold wireless telecommunications services. In the 1996 Act, Congress directed the Commission to ensure that all Americans, "including low-income consumers," have access to telecommunications services and information services. One critical component of the Commission's effort to guarantee such access is the Lifeline program, which provides discounts to monthly telephone service for the less fortunate among us. Unfortunately, however, a 2004 analysis performed by Commission staff indicated that only about a third of households eligible for Lifeline support actually subscribe to the program.

While it is clear that today's action will not close that gap on its own, I believe it is essential that we take all possible steps to ensure that low-income users are not barred from utilizing available support on the basis of the specific technologies they wish to use or the specific business plans pursued by their service providers. By providing support to resold wireless services, we are indeed extending a "line" to customers who might not otherwise make use of the Lifeline program, and thus are helping to fulfill Congress's vision of truly *universal* service.

Exhibit 4

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)
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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 Subscriberhip 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 5

**State Utility Commission Decisions Designating TracFone Wireless, Inc.
as an Eligible Telecommunications Carrier**

STATE	DECISION
Arkansas	<u>In the Matter of the Application of TracFone Wireless, Inc. for Eligible Telecommunications Carrier Designation</u> , Order No. 5, Docket No. 09-073-U (Arkansas Pub. Serv. Comm'n: May 20, 2010)
Florida	<u>Application for designation as an eligible telecommunications carrier (ETC) by TracFone Wireless, Inc. for limited purpose of offering lifeline service to qualified households</u> , Order No. PSC-08-0418-PAA-TP, Docket No. 070586-TP (Florida Pub. Serv. Comm'n: June 23, 2008)
Georgia	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. 26282 (Georgia Pub. Serv. Comm'n: May 6, 2008)
Illinois	<u>TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. 09-0213 (Illinois Commerce Comm'n: September 10, 2009)
Kansas	<u>In the Matter of the Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Kansas for the Limited Purpose of Offering Lifeline Services to Qualified Households</u> , Order Granting in Part and Denying in Part Amended Application of TracFone for Designation as an ETC for the Limited Purpose of Offering Lifeline Services to Qualified Households, Docket No. 09-TFWZ-945-ETC (Kansas Corp. Comm'n: December 14, 2010)
Kentucky	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Case No. 2009-00100 (Kentucky Pub. Serv. Comm'n: September 23, 2010), as modified by Order dated November 24, 2010.
Louisiana	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Louisiana for the Limited Purpose of Offering Lifeline Service to Qualified Households</u> , Order, Docket No. S-31097 (Louisiana Pub. Serv. Comm'n: December 22, 2009)
Maine	<u>TracFone Wireless Inc. Request for Designation as an Eligible Telecommunications Carrier</u> , Order, Docket No. 2009-263 (Maine Pub. Utilities Comm'n: February 9, 2010)
Maryland	Letter from Terry J. Romine (Executive Secretary, Maryland Public Service Commission) to Debra McGuire Mercer, Greenberg Traurig, LLP) noting that the Commission approved TracFone Wireless, Inc.'s Petition for Designation as an Eligible Telecommunications Carrier, August 19, 2009.
Michigan	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996</u> , Order, Case No. U-15625 (Michigan Pub. Serv. Comm'n: October 21, 2008)

Minnesota	<u>In the Matter of a Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Granting One-Year Conditional ETC Designation and Opening Investigation, Docket No. P-6832/M-09-802 (Minnesota Pub. Utilities Comm'n: June 9, 2010)</u>
Mississippi	<u>In the Matter of Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Mississippi for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order, Docket No. 2009-UA-218 (Mississippi Pub. Serv. Comm'n: August 3, 2010)</u>
Missouri	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Lifeline Services to Qualified Households, Order, Case No. TA-2009-0327 (Missouri Pub. Serv. Comm'n: August 26, 2009)</u>
Nevada	<u>Application of TracFone Wireless, Inc. d/b/a SafeLink Wireless to be designated as an Eligible Telecommunications Carrier in the state of Nevada pursuant to NAC 704.6804 and Section 254 of the Telecommunications Act of 1996, Compliance Order, Docket No. 09-10037 (Nevada Pub. Utilities Comm'n: April 5, 2010)</u>
New Jersey	<u>Petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New Jersey for the Limited Purpose of Offering Lifeline Services to Qualified Households, Order of Approval, Docket No. TO09010092 (New Jersey Board of Pub. Utilities: April 27, 2009)</u>
Ohio	<u>In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts, Supplemental Finding and Order, Case No. 97-632-TP-COI (Ohio Pub. Utilities Comm'n: May 21, 2009), as modified by Entry on Rehearing (July 8, 2009)</u>
Puerto Rico	<u>In the Matter of Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Puerto Rico for the Limited Purpose of Offering Lifeline Service to Qualified Households, Resolution and Order, Case No, JRT-2009-SU-0001 (Puerto Rico Telecomm. Regulatory. Bd.: March 3, 2010)</u>
Rhode Island	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Rhode Island for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order, Docket No. 4153 (Rhode Island Pub. Utilities Comm'n: September 14, 2010)</u>
South Carolina	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of South Carolina for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order Approving SafeLink Wireless, Inc. as an ETC, Docket No. 2009-144-C (South Carolina Pub. Serv. Comm'n: March 30, 2010)</u>
Texas	<u>Application of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service to Qualified Households, Order on Rehearing, Docket No. 36646 (Texas Pub. Utility Comm'n: June 18, 2009)</u>
Utah	<u>In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Utah for the Limited Purpose of Offering Lifeline Service to Qualified Households, Amended Report and Order and Order on Request for Limited Reconsideration, Docket No. 09-2511-01 (Utah</u>

	Pub. Serv. Comm'n: December 1, 2010)
Washington	<u>In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d), (f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund</u> , Final Order Adopting Settlement Agreement, Docket UT-093012 (Washington Utilities and Transp. Comm'n: June 24, 2010), as modified by Order Granting Joint Motion and Approving Revisions to Settlement Agreement dated October 13, 2010.
West Virginia	<u>TracFone Wireless, Inc. Petition for consent and approval to be designated an eligible telecommunications carrier</u> , Recommended Decision, Case No. 08-1605-C-PC (West Virginia Pub. Serv. Comm'n: Feb. 25, 2009) (Final on March 17, 2009)
Wisconsin	<u>Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Wisconsin</u> , Final Decision, Docket No. 9385-TI-100 (Wisconsin Pub. Serv. Comm'n: May 20, 2009)

Exhibit 6

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)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the)
Commonwealth of Massachusetts)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Alabama)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of North)
Carolina)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Tennessee)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the State of)
Delaware for the Limited Purpose of Offering)
Lifeline Service to Qualified Households)
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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: March 4, 2009

Released: March 5, 2009

By the Commission:

I. INTRODUCTION

1. In this order, we grant a petition for modification filed by TracFone Wireless, Inc. (TracFone). TracFone seeks modification of a condition imposed as part of the Commission's grant of TracFone's request for forbearance allowing it to be designated as an eligible telecommunications carrier (ETC) for the purposes of providing low-income universal service support to its customers under the Lifeline program.¹ Specifically, we grant TracFone's request to modify the requirement that TracFone obtain a certification from each public safety answering point (PSAP) where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.² TracFone must still request such certification from each PSAP within its service area; however, if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area, TracFone may self-certify that it meets the basic and E911 requirements. Grant of this request will allow TracFone to provide Lifeline service to low-income consumers within its service areas in a timely manner, while also ensuring that TracFone's Lifeline customers have access to necessary 911 services.

¹ See Petition for Modification of Public Safety Answering Point Certification Condition by TracFone Wireless, Inc., CC Docket No. 96-45 (filed Nov. 21, 2008) (TracFone Petition); see also *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) (*TracFone Forbearance Order*); *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 (2008) (*TracFone ETC Designation Order*) (designating TracFone as an ETC for Lifeline support only in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia). Under the Lifeline program, low-income consumers receive discounts on their monthly charges for local phone service. 47 C.F.R. § 54.401. In its initial comments on the petition, the Pennsylvania Public Utility Commission (Pennsylvania Commission) sought an extension of the pleading cycle, seeking four additional weeks for comments and two more weeks for reply comments. Pennsylvania Commission Comments at 2. The Pennsylvania Commission filed comments and reply comments, as well as an *ex parte* filing in response to the TracFone Petition. See *infra* note 10; Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Commission Law Bureau, to Marlene Dortch, Office of the Secretary, Federal Communications Commission, CC Docket No. 96-45 (dated Jan. 29, 2009) (Pennsylvania Commission January 29th *Ex Parte* Letter). We find that the Pennsylvania Commission was able to provide comment on the TracFone Petition without the need for an extension of the pleading cycle. We therefore deny the Pennsylvania Commission's request.

² *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; see also *TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22 (declining TracFone's request to modify the forbearance condition requiring TracFone to obtain the required certification from each PSAP).

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, (the Act) provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”³ Pursuant to section 214(e)(1) of the Act, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms either using its own facilities, or a combination of its own facilities and resale of another carrier’s services.⁴

3. TracFone provides prepaid wireless services on a resale basis only, rather than providing service over its own facilities.⁵ On September 8, 2005, the Commission conditionally granted TracFone’s request for forbearance from the facilities-based requirement of section 214(e)(1) of the Act.⁶ Among other things, the forbearance grant was conditioned on the requirement that TracFone obtain a certification from each PSAP where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service.⁷ On April 11, 2008, the Commission conditionally designated TracFone an ETC for the purpose of receiving Lifeline support only in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania,⁸ and the District of Columbia.⁹ In the *TracFone ETC*

³ 47 U.S.C. § 254(e).

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

⁵ TracFone Petition at 3-4.

⁶ *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16.

⁷ *Id.* at 15098, para. 6. Grant of forbearance was conditioned on TracFone: (a) providing its Lifeline customers with 911 and 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 consumer, non-compliant handsets of 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 PSAP where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) requiring its customers to self-certify at time of service 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. *Id.*

⁸ At the time the Commission designated TracFone an ETC in Pennsylvania, the Pennsylvania Commission had not exerted jurisdiction over wireless providers for purposes of ETC designation; therefore the Commission granted TracFone ETC designation pursuant to section 214(e)(6) of the Act. *TracFone ETC Designation Order*, 23 FCC Rcd at 6207, 6211, paras. 1, 9; 47 U.S.C. § 214(e)(6). On February 26, 2009, the Pennsylvania Commission announced that it will exert its jurisdiction, effective as of that date, to designate wireless carrier ETCs pursuant to section 214(e)(2) of the Act. *See* Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 26, 2009) (attaching February 26, 2009 Pennsylvania Commission decision); 47 U.S.C. § 214(e)(2).

⁹ *See TracFone ETC Designation Order*, 23 FCC Rcd at 6207-08, para. 1. The Commission conditioned grant of TracFone’s ETC designations 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. *Id.* at 6213, para. 16. The TracFone Petition and this order are limited to the PSAP certification requirement regarding TracFone’s provision of access to 911 and E911 service to its customers. This condition is separate from the certification regarding TracFone’s compliance with any state 911/E911 obligations, including payment of fees into state 911/E911 funds. *See* Pennsylvania Commission January 29th *Ex Parte* Letter at 2 (expressing concern about TracFone’s compliance with the separate condition to certify compliance with Pennsylvania law); Pennsylvania Emergency Management Agency Petition to Reject, CC Docket No. 96-45 (filed Jan. 29, 2009) (asking the Commission to reject TracFone’s certification for compliance with Pennsylvania 911/E911 obligations due to TracFone’s failure to contribute to Pennsylvania’s Wireless E911 Emergency Services Fund).

Designation Order, the Commission declined TracFone's request to eliminate the condition that TracFone obtain the required certification from each PSAP where it will provide Lifeline service.¹⁰

4. On November 21, 2008, TracFone filed the instant petition seeking to modify the PSAP certification requirements. Specifically, TracFone requests that, if a PSAP does not provide the requisite certification within 90 days of a request for such certification from TracFone, TracFone would be allowed to self-certify that its customers will have access to 911 and E911 without regard to activation status or availability of prepaid minutes.¹¹

III. DISCUSSION

5. As the Commission found in the *TracFone ETC Designation Order*, TracFone's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility.¹² In addition, the prepaid feature of TracFone's service, 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. Therefore, we find that the public interest is served by allowing TracFone to offer its Lifeline service to consumers as quickly as possible, while also ensuring that its consumers have access to necessary emergency services.

6. The Commission has twice stressed the importance of ensuring that TracFone's Lifeline customers have access to 911 and E911 services through the PSAP certification process.¹³ We affirm that TracFone must continue to comply with this requirement and seek certification from the PSAPs within its service area. To ensure that the benefits of Lifeline service are made available to TracFone's customers in a timely manner, however, we grant TracFone's request to allow it to self-certify compliance with the 911 and E911 availability condition if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area.¹⁴ In making a request for certification, TracFone must notify the PSAP that TracFone has the option to self-certify within 90 days of the request if the PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service. TracFone may not self-certify compliance until 90 days after it has provided a PSAP with notification of the 90-day self-certification period adopted in this order. TracFone also may not make such a self-certification until it has provided a PSAP with all of the information and/or equipment requested by the PSAP in analyzing

¹⁰ *Id.* at 6213, para. 16.

¹¹ TracFone Petition at 1. On December 23, 2008, the Wireline Competition Bureau sought comment on TracFone's petition. *See Comment Sought on TracFone Wireless Inc. Petition for Modification of Public Safety Answering Point Certification Condition*, CC Docket No. 96-45, Public Notice, DA 08-2779 (Wireline Comp. Bur., rel. Dec. 23, 2008). Comments on the petition were due January 6, 2009, and reply comments were due January 13, 2009. Comments were filed by Consumer Action, the National Emergency Number Association, and the Pennsylvania Commission. TracFone and the Pennsylvania Commission filed reply comments.

¹² *See TracFone ETC Designation Order*, 23 FCC Rcd at 6212, para. 15.

¹³ *TracFone Forbearance Order*, 20 FCC Rcd at 15102, para. 16; *see also TracFone ETC Designation Order*, 23 FCC Rcd at 6215, para. 22.

¹⁴ If a PSAP has conducted testing and notified TracFone within the 90-day period of concerns regarding the ability of TracFone customers to access 911 and E911 services, TracFone may not self-certify compliance until it has addressed the PSAP's concerns (for example, issues with TracFone's underlying wireless provider concerning access to 911 and E911 services), such that the PSAP can provide the required certification. In this circumstance, TracFone may self-certify 180 days after requesting certification from the PSAP if the PSAP does not approve or deny the certification within that period.

TracFone's ability to provide 911 and E911 service to its customers. If TracFone makes such a self-certification, TracFone must obtain from each of its underlying carriers that provide service to TracFone in the area served by that PSAP certification that the carriers route 911 and E911 calls from TracFone customers to the PSAP in the same manner that they route 911 and E911 calls from their own customers. TracFone is required to retain such underlying carrier certifications and provide them to the Commission upon request. TracFone must provide PSAPs with copies of any self-certifications at the time they are filed. If after TracFone makes a self-certification a PSAP finds that TracFone does not provide its customers with 911 and E911 access, upon receiving notice of this finding TracFone must immediately notify the Commission of this finding and explain how it plans to come into compliance with this condition.

7. The Pennsylvania Commission opposed TracFone's request for a modification of the PSAP certification requirement, stating that TracFone has refused to comply with the "drive testing" requirements included as part of Pennsylvania's Phase II 911 compliance.¹⁵ It is unclear from the Pennsylvania Commission's filing whether such state "drive testing" requirements apply to resale services, such as those provided by TracFone, or whether a demonstration of successful "drive testing" of the underlying wireless provider's service would comply with the state requirement. As this Commission stated in the *TracFone ETC Designation Order*, TracFone's designation as an ETC eligible for Lifeline support in each state is conditioned upon 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.¹⁶ Therefore, TracFone must comply with any state requirements that are applicable to carriers providing service on a purely-resale basis. We do not find that the Pennsylvania Commission's claim of TracFone's non-compliance with the state "drive testing" requirement warrants denial of TracFone's request for a 90-day PSAP certification period. As discussed above, TracFone's customers should not be denied the benefits of access to Lifeline support for a prolonged period of time pending PSAP action on TracFone's certification requests. We therefore grant TracFone's request and allow it to self-certify its provision of 911 and E911 services to its customers, and also require it to obtain certification from its underlying carriers, if, within 90 days of TracFone's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area. To the extent an entity disagrees with TracFone's self-certification, it may file a request asking the Commission to examine the issue pursuant to section 1.41 of the Commission's rules.¹⁷

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 214(e) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214 and 254, the petition for modification filed by TracFone Wireless, Inc. IS GRANTED as discussed herein.

¹⁵ Pennsylvania Commission Reply Comments at 7-8. The Pennsylvania Commission also requests that the Commission revisit the decisions granting TracFone's forbearance request and ETC designation in Pennsylvania. *Id.* at 9, 12-17. Pursuant to section 1.106(f) of the Commission's rules, petitions for reconsideration of Commission actions must be filed within 30 days from the date of public notice of the final Commission action. 47 C.F.R. § 1.106(f). The public notice dates of both the *TracFone Forbearance Order* and the *TracFone ETC Designation Order* were their release dates pursuant to section 1.4(b)(2) of the Commission's rules. 47 C.F.R. § 1.4(b)(2). Those dates were September 8, 2005, and April 11, 2008, respectively. The Pennsylvania Commission's reply comments were filed on January 13, 2009, well outside of the 30-day reconsideration deadlines for both orders. The Pennsylvania Commission's oppositions to those decisions are therefore untimely and will not be considered here.

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

¹⁷ 47 C.F.R. § 1.41.

9. IT IS FURTHER ORDERED that the Pennsylvania Public Utility Commission's request for an extension of the pleading cycle IS DENIED.

10. 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

Exhibit 7



wireless, inc. 9700 NW 112th Avenue | Miami, FL 33178

January 13, 2010

Shannon Marheine
E911 Program Lead
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062

Re: TracFone Wireless, Inc. – Notification of Intent to Self-Certify
Compliance with 911 and E911 Availability Condition

Dear Ms. Marheine,

As you are aware, by order issued March 5, 2009, the Federal Communications Commission (“FCC”) modified the Public Safety Answering Point (“PSAP”) certification condition previously imposed on TracFone (In the Matter of Federal-State Joint Board on Universal Service and TracFone Wireless, Inc., et al., FCC 09-17). For your convenience, a copy of the FCC’s March 5, 2009 order is enclosed with this letter. Your attention is directed to paragraph 6 of the FCC order which allows TracFone to self-certify in situations where the PSAP has not provided the requested certification within 90 days of the request and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service.

By letter dated September 3, 2009 we respectfully requested for you to certify on behalf of all Oregon PSAP’s by December 1, 2009 that TracFone customers have access to 911 and E911 service. Although the ninety day period contemplated by the FCC’s order has expired, as of the date of this letter, TracFone has not received the requested certification from your office. By this letter TracFone Wireless, Inc. (“TracFone”) certifies that TracFone Lifeline customers in the State of Oregon will be able to access 911 and E911 without regard to activation status or availability of prepaid minutes. Enclosed with this document are letters from AT&T, T-Mobile and Verizon Wireless, the three underlying network operators whose networks TracFone uses to provide service to its customers in your area, confirming that each of those underlying carriers routes 911 calls from TracFone customers in the same manner as it routes 911 calls from its own retail customers.

If you have any questions regarding this notification to self-certify please do not hesitate to contact me.

Sincerely,

José A. Fuentes
Director of Government Relations
TracFone Wireless, Inc.