

Exhibit 2

CTIA

Consumer Code *for* Wireless Service

To provide consumers with information to help them make informed choices when selecting wireless service, to help ensure that consumers understand their wireless service and rate plans, and to continue to provide wireless service that meets consumers' needs, the CTIA and the wireless carriers that are signatories below have developed the following Consumer Code. The carriers that are signatories to this Code have voluntarily adopted the principles, disclosures, and practices here for wireless service provided to individual consumers.

THE WIRELESS CARRIERS THAT ARE SIGNATORIES TO THIS CODE WILL:

ONE

DISCLOSE RATES AND TERMS OF SERVICE TO CONSUMERS

For each rate plan offered to new consumers, wireless carriers will make available to consumers in collateral or other disclosures at point of sale and on their web sites, at least the following information, as applicable: (a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies and the trial period during which no early termination fee will apply.

TWO

MAKE AVAILABLE MAPS SHOWING WHERE SERVICE IS GENERALLY AVAILABLE

Wireless carriers will make available at point of sale and on their web sites maps depicting approximate voice service coverage applicable to each of their rate plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain an appropriate legend concerning limitations and/or variations in wireless coverage and map

usage, including any geographic limitations on the availability of any services included in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request and incorporate coverage maps from roaming partners that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

T H R E E

PROVIDE CONTRACT TERMS TO CUSTOMERS AND CONFIRM CHANGES IN SERVICE

When a customer initiates service with a wireless carrier or agrees to a change in service whereby the customer is bound to a contract extension, the carrier will provide or confirm the material terms and conditions of service with the subscriber.

F O U R

ALLOW A TRIAL PERIOD FOR NEW SERVICE

When a customer initiates service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return and/or exchange policies. Other charges, including airtime usage, may still apply.

F I V E

PROVIDE SPECIFIC DISCLOSURES IN ADVERTISING

In advertising of prices for wireless service or devices, wireless carriers will disclose material charges and conditions related to the advertised prices, including if applicable and to the extent the advertising medium reasonably allows: (a) activation or initiation fees; (b) monthly access fees or base charges; (c) any required contract term; (d) early termination fees; (e) the terms and conditions related to receiving a product or service for "free;" (f) the times of any peak and off-peak calling periods; (g) whether different or additional charges apply for calls outside of the carrier's network or outside of designated calling areas; (h) for any rate plan advertised as "nationwide," (or using similar terms), the carrier will have available substantiation for this claim; (i) whether prices or benefits apply only for a limited time or promotional period and, if so, any different fees or charges to be paid for the remainder of the contract term; (j) whether any additional taxes, fees or surcharges apply; and (k) the amount or range of any such fees or surcharges collected and retained by the carrier.

S I X

SEPARATELY IDENTIFY CARRIER CHARGES FROM TAXES ON BILLING STATEMENTS

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.

S E V E N

**PROVIDE CUSTOMERS THE RIGHT TO TERMINATE SERVICE
FOR CHANGES TO CONTRACT TERMS**

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.

E I G H T

PROVIDE READY ACCESS TO CUSTOMER SERVICE

Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.

N I N E

**PROMPTLY RESPOND TO CONSUMER INQUIRIES AND COMPLAINTS
RECEIVED FROM GOVERNMENT AGENCIES**

Wireless carriers will respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.

T E N

ABIDE BY POLICIES FOR PROTECTION OF CUSTOMER PRIVACY

Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online.

Exhibit 3

November 14, 2007

Ms. Sandra K. Hilton
Office of the Secretary of State
Audits Division
255 Capitol Street, NE, Suite 500
Salem Oregon 97310

Dear Ms. Hilton:

On behalf of CTIA and the wireless industry, I am writing in response to the audit report entitled "Oregon Department of Revenue: 9-1-1 Tax Review," Report Number 2007-23, issued September 19, 2007. CTIA-The Wireless Association® is the international association for the wireless telecommunications industry, representing carriers, manufacturers, and wireless Internet providers.

The wireless industry has been and remains committed to deploying enhanced 911 services and recognizes the fact that mobile phones are one of the most important safety tools since the introduction of 911. The industry has spent almost \$200 billion to deploy wireless over the past ten years, including equipment that has enabled carriers to route emergency calls to the nearest Public Safety Answering Points (PSAPs) and identify the caller's location through either network or handset-based methods. In addition, wireless carriers annually collect from wireless consumers approximately \$1 billion that are remitted to state and local 911 funds intended to help support and upgrade the technical capabilities of the 6,174 PSAPs that exist across the country.

As a result of our commitment to public safety we are very concerned about several of the findings made by the Secretary of State in the above referenced report regarding compliance issues by carriers in collecting and remitting the Oregon 911 taxes. The wireless industry is dedicated to working with the Secretary of State and the Department Revenue to resolve the perceived problems and issues that have been raised in this report as soon as possible.

It is our understanding that the conclusions reached in the audit report relied primarily on reports filed with the state Public Utilities Commission (PUC) and the Federal Communications Commission (FCC) to estimate the subscriber counts for the fourth quarter of 2006. Given the different criteria that apply to the reporting of data to these various agencies, we believe that there are several reasons that the conclusions reached in the audit report may not be accurate nor do they reflect a true picture of carrier compliance with the 911 tax requirements in Oregon.

We believe that there are likely two principal reasons that the discrepancies identified in the audit report might exist. First, the report appears to conclude that the existing state statute imposing the tax encompasses prepaid consumers. However, based upon the way the actual statute is drafted, the industry does not believe that the current language encompasses prepaid customers.



ORS 401.792 states:

(1) There is imposed on each paying retail subscriber who has telecommunication services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month.... **For cellular, wireless or other radio common carriers, the tax shall apply on a per instrument basis and only if the subscriber's place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.**

The term “place of primary use”, as defined in 4 U.S.C. 116 to 126 (generally known as the Mobile Telecom Sourcing Act “MTSA”), means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be—

“(A) the residential street address or the primary business street address of the customer; and

“(B) within the licensed service area of the home service provider.

In order to make this determination the service provider would have to have knowledge of the prepaid customer’s residential or business address. However, prepaid services are not sold on a “monthly” basis and carriers do not send monthly bills to prepaid consumers. Given this business anomaly prepaid telephone calling service was specifically exempted from the taxing situs determination rules of the MTSA by 4 U.S.C. 116(c)(1). Accordingly, carriers do not solicit nor do they retain information as to a “place of primary use as determined under 4 U.S.C. 116 to 126” for prepaid customers. Therefore, if the Oregon statute requires the use of federal law to identify the taxing jurisdiction of prepaid telephone service but the same federal law exempts the application of that same statute to prepaid telephone services then the logical conclusion is that the Oregon law was not intended to nor does it apply to prepaid telephone service.

To the extent that the apparent shortfall identified in the audit is attributable to the difference between FCC-reported state-specific subscribership and subscriber counts which omit prepaid, as would be the case in the subscriber counts reported on the 911 filings, this difference could easily be reconciled by the fact that the information reported to the FCC clearly includes prepaid service consumers. Using that information would not be an accurate way to determine a carrier’s compliance with the state’s 911 tax obligation.

The second major difference would be that the 911 fee only applies to retail subscribers. Again, the reports likely used to determine a wireless carrier’s compliance would have primarily been the FCC reports since there are no other reports besides the Residential Services Protection Fund (RSPF) report filed with the state PUC. However, the FCC reports would include all customer counts, both wholesale and retail consumers. Again, this would not be an accurate reflection of a carrier’s true liability for the state’s 911 tax obligation.

To fully resolve these issues, it would be helpful to have a more in depth understanding of the specific data and assumptions used in conducting the audit to determine that substantial underreporting occurred. Assistance in understanding the variables in the data used will help resolve the perceived discrepancies.

One other very important point to note is that the 911 tax is imposed upon the *user* of communication services that have the ability to access the 911 emergency communications system. This is a critically important distinction in that it is not meant to be a tax on the *providers* of such

service. Even if the statute explicitly included prepaid services/consumers in the taxable base, there is no effective way to try to collect the tax from the prepaid consumers. That has been one of the lingering policy debates throughout the country by states who seek to expand this type of tax to prepaid services. Expansion of 911 fees to prepaid services essentially forces providers to bear the burden of the tax, creating a fundamental policy shift in the imposition of the tax and clearly inconsistent with the legislative intent of the 911 tax. That is an issue that needs to be more clearly worked through before states seek to include prepaid services in their 911 tax base.

We applaud Governor Kulongoski for his line item veto of SB 994, which sought to transfer funds from the Emergency Communications Account to the General Fund. While the industry supports the goals and funding for the emergency communications system, we do not support taking these important public safety funds and using them as revenue for other purposes. These monies have been collected from consumers with the understanding that the funds will be used solely to fund the emergency communications system. Over the last few years, the industry has worked very diligently with states and the public safety community to ensure accountability in how these funds are utilized.

The wireless industry is strongly committed to working with the Secretary of State and the Department of Revenue to address the issues and concerns raised in this report and to remedy any concerns that ultimately remain once the data is further analyzed and better understood. We look forward to hearing back from you as we work together to resolve the concerns raised in this report. Please do not hesitate to contact Jim Schuler directly at 202-736-3219 to further discuss this matter.

Sincerely,



K. Dane Snowden
Vice President,
External & State Affairs

Exhibit 4

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2009-263

February 9, 2010

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

ORDER GRANTING ETC
STATUS AND OPENING
SEPARATE INVESTIGATION

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LEGAL STANDARDS

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

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

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

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

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

III. DISCUSSION

A. INITIAL APPLICATION

In its Application, TracFone describes in detail how it meets the federal requirements for designation as an ETC in Maine. As an initial matter, TracFone recognizes that federal law requires ETCs to offer services, at least in part, over their own facilities, and that the FCC's Rules prohibit state commissions from designating as an ETC a carrier that offers exclusively resale services. However, TracFone states that in 2005 the FCC granted TracFone "forbearance from the facilities requirement for ETC designation for Lifeline support only." See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 FCC Rcd 15095 (Sept. 8, 2005) (TracFone Forbearance Order) at 1; *Application* at 4-5. Based on this order of forbearance, TracFone asserts that this Commission has jurisdiction to designate TracFone as an ETC under 47 U.S.C § 214(e)(2).

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

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

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

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

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

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

B. AMENDED APPLICATION

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

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

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

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

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

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

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

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

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

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

¹⁶ TracFone states that under relevant FCC orders, local calling plans do not have to be identical to those of an ILEC, as long as it is comparable. See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005); *In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, 23 FCC Rcd 6206 (2008) (TracFone ETC Order).

IV. DECISION

A. PETITION FOR WAIVER

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

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

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

B. ETC DESIGNATION

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

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

C. INVESTIGATION INTO COMPLIANCE WITH REGULATORY FEE OBLIGATIONS

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

V. **CONCLUSION**

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

In light of the foregoing it is,

ORDERED

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

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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

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

Exhibit 5

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-47

February 11, 2010

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

NOTICE OF INVESTIGATION;
OPPORTUNITY TO
PARTICIPATE; OPPORTUNITY
FOR COMMENT

I. SUMMARY

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

III. NOTICE OF INVESTIGATION

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

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

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

IV. OPPORTUNITY TO PARTICIPATE¹

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

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

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

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

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

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

V. OPPORTUNITY TO COMMENT

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

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

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

Jordan McColman
Hearing Examiner