

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

UM 1437

In the Matter of)
)

TRACFONE WIRELESS, INC.)

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

**TRACFONE WIRELESS,
INC.'S REPLY TESTIMONY
AND EXHIBITS**

TracFone Wireless Inc., by counsel, files its Reply Testimony and Exhibits with the Public Utility Commission of Oregon in this matter. TracFone's Reply Testimony and Exhibits include the testimony of Jose Fuentes (Exhibit TracFone/6) and Exhibit TracFone/7 through Exhibit TracFone/15, inclusive, identified therein.

Respectfully submitted,


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April 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of April, 2011, served the foregoing TRACFONE WIRELESS, INC.'S REPLY TESTIMONY AND EXHIBITS upon all parties of record in this proceeding by causing a copy to be sent by electronic mail to the following addresses:

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TRACFONE WIRELESS, INC.

Reply Testimony of Jose Fuentes

1 **Q. WHAT IS YOUR NAME AND OCCUPATION?**

2 A. My name is Jose Fuentes. I have been Director of Government Relations for TracFone
3 Wireless, Inc. ("TracFone") for the past two years. I am responsible for facilitating
4 TracFone's designation as an Eligible Telecommunications Carrier ("ETC") by state
5 utility commissions and for implementing SafeLink Wireless[®] Lifeline service
6 throughout the United States. I am also the corporate spokesperson for the SafeLink
7 Wireless[®] brand.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The reply testimony I am providing today responds to the testimony and exhibits filed by
10 Commission Staff, the Citizens' Utility Board of Oregon ("CUB"), and the Oregon
11 Office of Emergency Management ("OEM") on March 23, 2011.

12 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS**
13 **COMMISSION'S PROCEEDING CONCERNING TRACFONE'S ETC**
14 **APPLICATION?**

15 A. Yes. On January 7, 2011, I provided direct written testimony and exhibits to the
16 Commission. My direct testimony was filed in support of TracFone's Second Amended
17 ETC Application, filed with the Commission on January 7, 2011.

18 **Q. HAVE YOU REVIEWED THE TESTIMONY OF BOB JENKS FILED ON**
19 **BEHALF OF CUB?**

20 A. Yes.

21 **Q. WHAT IS YOUR UNDERSTANDING OF MR. JENKS'S TESTIMONY?**

1 A. Mr. Jenks testifies that CUB is of the opinion that the Commission should approve
2 TracFone's ETC Application subject to certain conditions.

3 **Q. WHAT CONDITIONS ARE PROPOSED BY CUB?**

4 A. CUB proposes four conditions related to when TracFone ships phones, quarterly reports,
5 service quality, and service plan changes.

6 **Q. WHAT IS THE CONDITION CONCERNING THE SHIPMENT OF PHONES?**

7 A. CUB proposes that the Commission disallow TracFone from receiving reimbursement
8 from the federal Universal Service Fund ("USF") for a month in which a phone is
9 shipped on or after the 20th of that month. TracFone does not agree to this condition. In
10 all states in which TracFone provides Lifeline service it seeks Lifeline support from the
11 federal USF based on the number of customers it has at the end of the month. Neither the
12 FCC, the Universal Service Administrative Company nor any other state commission has
13 questioned this practice.

14 **Q. WHAT IS THE CONDITION CONCERNING QUARTERLY REPORTS?**

15 A. CUB requests that the Commission require TracFone to submit quarterly reports that
16 follow the template of the quarterly report provided to the Ohio Public Utilities
17 Commission. TracFone would agree to this condition so long as the reports receive
18 confidential treatment.

19 **Q. WHAT IS THE CONDITION CONCERNING SERVICE QUALITY?**

20 A. Mr. Jenks testifies that the percentage of calls to TracFone's customer service that are
21 disconnected due to a high volume of calls is too high. CUB asks the Commission to
22 require TracFone to reduce the level of disconnected calls to below 5% and to reserve the
23 right to impose a penalty on TracFone by requiring TracFone to forfeit a percentage of

1 the USF funds it received for Lifeline service in Oregon. Under CUB's proposed
2 condition TracFone would have the opportunity to show cause as to why the penalties
3 should not be imposed or to demonstrate that it already has implemented a plan to
4 decrease the percentage of disconnected calls. TracFone agrees with CUB that service
5 quality includes the ability of customers to reach a customer service agent. TracFone is
6 not aware of any other wireless ETC being required to report customer service data to the
7 Commission nor is it aware of any ETC being subject to a monetary penalty if certain
8 customer service levels are not met. Moreover, CUB has provided no basis for
9 concluding that TracFone's rate of disconnected calls due to high volume is higher than
10 the rate for any other ETC. TracFone would not oppose a condition that would require it
11 to report the percentage of calls disconnected due to high volume on a semi-annual basis
12 and to advise the Commission of its plans to decrease the percentage of such calls if that
13 percentage is greater than 5%. However, TracFone would object to the imposition of a
14 penalty unless all ETCs were subject to the same penalty provisions. Also, I understand
15 that the Commission has limited authority to impose penalties, which TracFone will
16 address in its legal briefs.

17 **Q. WHAT IS THE CONDITION CONCERNING SERVICE PLAN CHANGES?**

18 A. CUB proposes that TracFone notify the Commission of any Lifeline plan changes 30
19 days in advance and wants the Commission to have the power to suspend any plan
20 changes if it determines that additional investigation is needed. TracFone would agree to
21 provide the Commission with reasonable notice of changes to its plan that impact the
22 amount or type of Lifeline benefit to be provided to Oregon customers. However,
23 TracFone would strongly object to the Commission being able to suspend and investigate

1 such changes. My understanding of the Commission's authority is that it can regulate the
2 ETC designation and reporting process, but has no authority to investigate or otherwise
3 regulate the rates of any commercial mobile service provider. Congress preempted state
4 regulation of CMRS rates at 47 U.S.C. § 332(c).

5 **Q. DOES MR. JENKS RAISE ANY OTHER ISSUES IN HIS TESTIMONY?**

6 A. Yes. Mr. Jenks suggests that the Commission consider processing all pending ETC
7 applications filed by wireless carriers and giving each applicant the same Lifeline service
8 start date.

9 **Q. DOES TRACFONE SUPPORT THIS PROPOSAL?**

10 A. No. TracFone was the first wireless service provider to request to be designated as an
11 ETC in Oregon having filed its ETC application in 2009 and it should not lose the benefit
12 of being the first wireless Lifeline service provider. Mr. Jenks states that it is important
13 to ensure a level playing field for all new mobile ETC competitors. However, the way to
14 ensure a level playing field is to apply the same ETC designation and reporting
15 requirements to all wireless service providers, not to treat all ETC applicants as though
16 they filed their applications at the same time. Moreover, the public interest would be
17 harmed if the Commission delays the effective date of ETC designation orders such that
18 the ETCs must commence the provision of Lifeline service on the same day. Denying
19 ETC applicants the benefit of filing before another ETC applicant would discourage
20 innovation. There would be no reason for a company to develop a new type of service if
21 it had to wait until its competitors had the opportunity to develop similar offerings before
22 it could start offering the new service.

23 **Q. DOES CUB RAISE ANY OTHER ISSUES?**

1 A. Yes. Mr. Jenks states that CUB has a few ideas as to how to lessen the impact of
2 increased Lifeline services on the USF. First, he states that the Commission should
3 require each ETC to provide a map of the territory in which service is reliable.

4 **Q. WOULD TRACFONE AGREE TO PROVIDE A MAP INDICATING WHERE**
5 **ITS SERVICE IS RELIABLE?**

6 A. TracFone, as a reseller, relies on the coverage maps its receives from its underlying
7 carriers. TracFone is willing to provide the Commission with a map based on all
8 information to which it has access. However, TracFone has not had success in obtaining
9 detailed maps from its underlying carriers indicating service quality. Such maps are not
10 made available by those carriers.

11 **Q. CUB ALSO RECOMMENDS THAT THE COMMISSION ESTABLISH A**
12 **CENTRALIZED DATABASE OF LIFELINE CUSTOMERS TO ADDRESS THE**
13 **POTENTIAL FOR ABUSE FROM CUSTOMERS WHO APPLY FOR SERVICE**
14 **WITH MULTIPLE ETCs. DOES TRACFONE SUPPORT THIS**
15 **RECOMMENDATION?**

16 A. Yes. As the Commission is aware, no ETC has access to information to enable it to
17 determine whether a Lifeline applicant is already receiving Lifeline-supported service
18 from another ETC. The FCC has recently commenced a rulemaking proceeding in which
19 it is considering changes to the FCC's rules governing Lifeline to prevent the waste of
20 funds caused by duplicate claims. The FCC has proposed establishment of a database of
21 all Lifeline customers that would enable ETCs to check whether a Lifeline applicant is
22 already receiving Lifeline service from another ETC. See In the Matter of Lifeline and
23 Link Up Reform and Modernization, et al., Notice of Proposed Rulemaking, WC Docket

1 No. 11-42, (released March 4, 2011). The FCC's Lifeline proceeding has been
2 commenced in response to recommendations received from the Federal-State Joint Board
3 on Universal Service in November 2010. The Federal-State Joint Board received
4 comments from many interested stakeholders, including state commissions, and
5 consumer groups, as well as many telecommunications companies and their industry
6 associations. TracFone was among the entities submitting comments to that Joint Board.
7 In filings with the Joint Board and with the FCC, TracFone consistently has advocated
8 for establishment of such a database as the most efficient and effective means to
9 minimize duplicate enrollment in Lifeline programs. TracFone continues to believe that
10 a national database is the best way to detect and prevent consumers attempting to enroll
11 in multiple Lifeline programs. In the absence of a national database, TracFone believes
12 that individual state databases, such the one proposed by CUB, can be used to prevent
13 duplicate claims.

14 **Q. WOULD TRACFONE BE WILLING TO CONTRIBUTE TO THE FUNDING OF**
15 **A STATE DATABASE?**

16 A. CUB proposes that a state database of Lifeline customers be funded with contributions
17 from all ETCs in Oregon. TracFone would agree to contribute to the funding of a state
18 database so long as the contribution mechanism is equitable and technologically-neutral.
19 In particular, any contribution mechanism must apply equally to wireless and wireline
20 ETCs.

21 **Q. HAVE YOU REVIEWED THE TESTIMONY OF MARK TENNYSON FILED ON**
22 **BEHALF OF OEM?**

23 A. Yes.

1 Q. **WHAT IS YOUR UNDERSTANDING OF MR. TENNYSON'S TESTIMONY?**

2 A. Mr. Tennyson testifies that the Commission's designation of TracFone as an ETC may
3 not be in the public interest, that TracFone's request for PSAP certification was denied,
4 and that it is concerned about how exigent circumstances are handled.

5 Q. **WHAT REASONS DOES MR. TENNYSON PROVIDE FOR OEM'S CONCERN**
6 **ABOUT THE PUBLIC INTEREST?**

7 A. Mr. Tennyson states that the potential increase in the number of Lifeline customers could
8 result in an increased burden on Oregon's 9-1-1 emergency reporting system. Mr.
9 Tennyson further asserts that OEM is unable to gauge the exact impact of an increased
10 number of Lifeline customers on the 9-1-1 system because TracFone has not provided its
11 current customer numbers and has not developed a forecast of the additional number of
12 customers it will service if its ETC application is approved.

13 Q. **DO YOU AGREE WITH MR. TENNYSON'S ASSERTION THAT TRACFONE'S**
14 **OFFERING OF LIFELINE SERVICE IN OREGON WOULD INCREASE THE**
15 **BURDEN ON OREGON'S 9-1-1 EMERGENCY REPORTING SYSTEM?**

16 A. No. Mr. Tennyson's conclusion that TracFone's presence as a Lifeline service provider
17 would increase the burden on Oregon's 9-1-1 system seems to be based on his belief that
18 increasing the number of devices capable of calling 9-1-1 will leave PSAPs unable to
19 provide the level of staffing necessary to accommodate callers. However, Mr. Tennyson
20 provides no support for his assertion that PSAPs will receive more calls if the number of
21 Lifeline customers increases. Mr. Tennyson also does not claim that the number of
22 people having telephone service will increase if TracFone offers Lifeline service.
23 Therefore, there is no basis for concluding that designating TracFone as an ETC will

1 place a burden on Oregon's 9-1-1 emergency reporting system. TracFone is providing
2 Lifeline service in more than 30 states where it has been designated as an ETC. It is not
3 aware of any burden to 911 service in any of those states, and knows of no reason to fear
4 that Oregon's 911 system will be less able than any of those other states' 911 systems to
5 provide reliable 911 service.

6 **Q. HAS TRACFONE PROVIDED RESPONSES TO THE DATA REQUESTS**
7 **REFERENCED BY MR. TENNYSON?**

8 A. Yes. TracFone provided responses to data requests regarding the number of its current
9 customers and Oregon and its forecast of additional customers it expects to serve through
10 its Lifeline service. These responses were marked as confidential pursuant to the General
11 Protective Order entered in this proceeding and were not served on OEM because
12 (1) OEM did not request copies of the responses and (2) OEM had not agreed to be
13 bound by the Protective Order at the time the responses were served. OEM has recently
14 filed its signatory page for the General Protective Order with the Commission.
15 Therefore, TracFone will provide those confidential responses to OEM upon request.

16 **Q. HAS TRACFONE COMPLIED WITH ITS PSAP CERTIFICATION**
17 **REQUIREMENTS IN OREGON?**

18 A. Yes. TracFone has met the PSAP certification requirements in the Forbearance Order, as
19 modified by the FCC's March 2009 Order in Federal-State Joint Board on Universal
20 Service, et al., 24 FCC Rcd 3375 (2009). On that date, the FCC issued an Order granting
21 TracFone's request to modify the requirement that TracFone obtain a certification from
22 each PSAP where TracFone provides Lifeline service confirming that it provides its
23 customers with access to basic and E911 service. A copy of the March 2009 Order is

1 provided as Exhibit TracFone/7. The FCC modified the PSAP certification to require the
2 following: TracFone must still request such certification from each PSAP within its
3 Lifeline service area; however, if within 90 days of TracFone's request, a PSAP has not
4 provided the certification and the PSAP has not made an affirmative finding that
5 TracFone does not provide its customers with access to 911 and E911 service within the
6 PSAP's service area, TracFone may self-certify that it meets the basic and E911
7 requirements.

8 In accordance with the FCC's March 2009 Order, TracFone requested the
9 required PSAP certification from OEM, which has authority to issue a statewide PSAP
10 certification, by a letter dated September 3, 2009. By letter dated January 13, 2010,
11 TracFone advised OEM that 90 days had passed and TracFone had not received the
12 requested certification nor had it received from OEM an affirmative finding that
13 TracFone does not provide its customers with access to 911 and E911 services.
14 Therefore, TracFone advised OEM it would be self-certifying that its Lifeline customers
15 in Oregon will be able to access 911 and E911 service without regard to activation status
16 or availability of prepaid minutes. A copy of the January 13, 2010 letter is attached as
17 Exhibit TracFone/8.

18 **Q. MR. TENNYSON TESTIFIES THAT TRACFONE'S REQUEST FOR PSAP**
19 **CERTIFICATION WAS DENIED BY THE STATE 9-1-1 PROGRAM ON**
20 **OCTOBER 19, 2009. IS THIS CORRECT?**

21 A. No. On October 19, 2009, TracFone did receive an e-mail from OEM stating that the
22 "the State 9-1-1 Program will take no further action concerning the TracFone Wireless
23 Inc. ("TracFone") request for certification of 9-1-1 access for its SafeLink/Lifeline

1 program” until after the Commission approves TracFone’s ETC Application. A copy of
2 the October 19, 2009 is provided as Exhibit TracFone/9. OEM did not provide any
3 affirmative finding that TracFone does not provide its customers with access to 911 and
4 E911 services. Rather, OEM stated that it would not act on the request for certification at
5 that time. In accordance with the FCC’s March 5, 2009 Order, OEM’s failure to provide
6 the requested certification plus its failure to provide an affirmative finding that TracFone
7 does not provide 911 and E911 services to its customers allows TracFone to submit a
8 self-certification regarding its customers’ access to 911 and E911 services. OEM does
9 not have the option of unilaterally deciding to delay its consideration of a request for
10 PSAP certification. In fact, the reason the FCC modified the PSAP certification process
11 to allow for certification was to “ensure that the benefits of Lifeline service are made
12 available to TracFone’s customers in a timely manner.” See March 2009 Order, ¶ 6.

13 **Q. DOES MR. TENNYSON RAISE A VALID CONCERN ABOUT HOW EXIGENT**
14 **CIRCUMSTANCES ARE HANDLED?**

15 A. No. As I explained in my direct testimony, when a TracFone customer calls 911, the
16 PSAP automatically receives location data as well as the name of the underlying carrier.
17 The PSAP contacts the underlying carrier to learn the caller was a TracFone customer
18 and then contacts TracFone in the rare event that exigent circumstances make such
19 contact necessary. This process is necessary when a telephone service customer receives
20 service from any reseller, not just from TracFone. TracFone has provided service to
21 Oregon residents for over twelve years and is not aware of any instance in which the
22 manner in which exigent circumstances are handled degraded the emergency service
23 available in Oregon. The fact that TracFone will offer Lifeline service in addition to its

1 existing non-Lifeline service does not create any changed situation warranting an
2 increased concern about exigent circumstances.

3 **Q. HAVE YOU REVIEWED THE TESTIMONY OF KAY MARINOS FILED ON**
4 **BEHALF OF COMMISSION STAFF?**

5 A. Yes.

6 **Q. WHAT IS YOUR UNDERSTANDING OF MS. MARINOS'S TESTIMONY?**

7 A. Ms. Marinos recommends that the Commission deny TracFone's request for ETC and
8 ETP designation. Ms. Marinos further testifies that if the Commission decides to grant
9 TracFone's application, then the Commission should impose special conditions on
10 TracFone.

11 **Q. WHAT ARE THE REASONS MS. MARINOS RELIES UPON FOR HER**
12 **RECOMMENDATION THAT THE COMMISSION SHOULD DENY**
13 **TRACFONE'S APPLICATION?**

14 A. Ms. Marinos asserts that TracFone does not meet certain requirements for designation as
15 an ETC in Oregon. Ms. Marinos also states that TracFone's business model differs from
16 current ETCs' business models in that it offers free Lifeline service, is a reseller, does not
17 seek OTAP funds, and does not remit the E911 or RSPF surcharges. Ms. Marinos asserts
18 that these differences support Commission Staff's recommendation to deny TracFone's
19 application. As I will explain in my reply testimony, the differences asserted by
20 Commission Staff do not warrant Commission denial of TracFone's ETC application.

21 **Q. MS. MARINOS TESTIFIES THAT THE COMMISSION'S RULES GOVERNING**
22 **ETC AND ETP STATUS WERE NOT DESIGNED TO WORK WITH A**

1 **BUSINESS MODEL LIKE THAT USED BY TRACFONE. DO YOU AGREE**
2 **WITH HER?**

3 A. Yes. As I testified in my direct testimony, TracFone has requested the Commission to
4 waive certain Oregon state law requirements that are not applicable to TracFone or with
5 which TracFone is unable to comply. Pursuant to ORS 756.040, the Commission has
6 broad authority to “do all things necessary and convenient in the exercise of [its] power
7 and authority.” Therefore, the Commission can waive the rules it has promulgated.

8 **Q. WHAT IS TRACFONE’S RESPONSE TO MS. MARINOS’S**
9 **RECOMMENDATION THAT THE COMMISSION DENY TRACFONE’S**
10 **APPLICATION AT THIS TIME AND OPEN A GENERIC INVESTIGATION TO**
11 **REVISE OR AMEND ETC AND ETP RULES TO ACCOMMODATE LIFELINE**
12 **PROVIDERS THAT ARE RESELLERS OR THAT OFFER FREE LIFELINE**
13 **SERVICES?**

14 A. TracFone would support the commencement of a new proceeding to consider revisions or
15 amendments to the Commission’s rules governing ETC and ETP designation. Indeed,
16 TracFone would welcome the opportunity to participate in such a proceeding. However,
17 the fact that the current rules may need to be amended or updated to accommodate new
18 and innovative Lifeline services based upon advancements in technology and
19 marketplace changes should not stop this Commission from considering and acting on
20 TracFone’s ETC application in a timely manner. Rather, the Commission should waive
21 rules, where necessary, and may require an ETC to meet additional reporting or other
22 conditions as a means to address any concerns. The fact that TracFone, or any other ETC
23 applicant, does not fit within the business model reflected in the Commission’s current

1 rules, may signal the need for the Commission to consider making changes to those rules.
2 It does not justify the Commission suspending consideration of pending applications and,
3 in doing so, depriving thousands of low-income Oregon residents the availability of new
4 and innovative Lifeline services which may better meet their needs than existing Lifeline
5 services of currently-designated ETCs -- whose business models fit neatly within the
6 Commission's rules. Any new rules ultimately issued by the Commission will apply to
7 all ETCs. In the meantime, TracFone, as well as all other ETCs, is required to comply
8 with the current rules and to seek waivers, where necessary.

9 **Q. MS. MARINOS STATES THAT TRACFONE HAS NOT EXPLAINED THE**
10 **MINIMUM NUMBER OF MINUTES THAT MUST BE PURCHASED IF A**
11 **LIFELINE CUSTOMER WISHES TO PURCHASE ADDITIONAL MINUTES AT**
12 **A RATE OF \$0.10 PER MINUTE. WHAT IS THAT AMOUNT?**

13 A. TracFone's Lifeline customers who choose to purchase additional minutes can do so at a
14 rate of \$0.10 per minute by purchasing an airtime card. The lowest value airtime card is
15 available for \$9.99. This airtime card is available on line at TracFone's website
16 (www.tracfone.com). This airtime card offers 30 minutes of airtime to non-Lifeline
17 customers. However, Lifeline customers purchasing the \$9.99 card will receive 100
18 minutes of airtime.

19 **Q. MS. MARINOS TESTIFIES THAT TRACFONE DOES NOT MEET CERTAIN**
20 **REQUIREMENTS FOR ETC DESIGNATION IN OREGON, INCLUDING THE**
21 **REQUIREMENT THAT AN ETC PROVIDE SERVICES, IN PART, OVER ITS**
22 **OWN FACILITIES. HOW DOES TRACFONE MEET THE FACILITIES**
23 **REQUIREMENT?**

1 A. As I explained in my direct testimony and as Ms. Marinos acknowledges, the FCC
2 granted TracFone forbearance from the facilities requirement. Ms. Marinos recommends
3 that if the Commission decides to grant TracFone's ETC application, then the
4 Commission should not require TracFone to provide services using its own facilities.
5 Indeed, any attempt by the Commission to subject TracFone to facilities requirement
6 following the FCC's Forbearance Order would violate Section 10(e) of the
7 Communications Act of 1934, as amended (47 U.S.C. § 160(e)). Section 10(e) prohibits
8 State commissions from continuing to apply or enforce any provision of the
9 Communications Act that the FCC has determined to forbear from applying or enforcing.

10 **Q. DOES THE FORBEARANCE ORDER REQUIRE CERTAIN CONDITIONS**
11 **WITH WHICH TRACFONE MUST COMPLY?**

12 A. Yes. I discussed these conditions in my direct testimony. However, I want to stress that
13 all of the conditions are part of the FCC's Forbearance Order. Ms. Marinos testifies that
14 there are two conditions which conflict with the certification and verification procedures
15 used in the OTAP program. The FCC-imposed conditions of forbearance, which are a
16 required part of the Forbearance Order, are binding on TracFone in all jurisdictions where
17 it may be designated as an ETC. Therefore, the Commission may not require TracFone
18 to violate those FCC-imposed conditions of forbearance.

19 **Q. WHAT ARE THE CONDITIONS WHICH MS. MARINOS CLAIMS TO BE IN**
20 **CONFLICT WITH OREGON PROCEDURE?**

21 A. Ms. Marinos asserts that the following conditions should not be followed in Oregon: (1)
22 that customers self-certify, under penalty of perjury, at the time of service activation and
23 annually thereafter, that they are the head of household and receive Lifeline service only

1 from TracFone; and (2) that TracFone have direct contact with its Lifeline customer
2 when establishing initial and continued eligibility.

3 **Q. CAN THE COMMISSION REQUIRE TRACFONE TO VIOLATE THE**
4 **CONDITION REQUIRING SELF-CERTIFICATION BY THE APPLICANT**
5 **THAT HE OR SHE IS HEAD OF HOUSEHOLD AND NOT RECEIVING**
6 **LIFELINE-SUPPORTED SERVICE FROM ANY OTHER ETC ?**

7 A. No. As I just testified, the Commission may not require TracFone, as a condition of ETC
8 designation, to violate these conditions. The first condition was imposed to ensure that
9 there is only one Lifeline customer per household. The requirement that TracFone obtain
10 a self-certification from each customer at enrollment and annually thereafter that he or
11 she is head or household and not receiving Lifeline-supported service from any other
12 ETC, is an additional requirement (beyond the FCC's certification of initial eligibility
13 and verification of continued eligibility requirements imposed on all ETCs) that the FCC
14 has imposed on telecommunications service providers that have sought forbearance from
15 the facilities requirement for ETCs. Ms. Marinos provides no basis as to why TracFone
16 should not be subject to this additional condition imposed by the FCC. While the
17 Commission does have authority to impose Lifeline certification or verification
18 requirements that differ from those set forth in the FCC's rules, the Commission does not
19 have authority to require TracFone to fail to comply with an additional certification
20 requirement imposed by the FCC.

21 **Q. DO THE COMMISSION'S PROCEDURES FOR CERTIFICATION AND**
22 **VERIFICATION OF ELIGIBILITY OF LIFELINE CONFLICT WITH THE FCC**

1 **FORBEARANCE ORDER'S CONDITION REGARDING CERTIFICATION AND**
2 **ELIGIBILITY?**

3 A. No. The second condition regarding certification of initial eligibility and verification of
4 continued eligibility was imposed to ensure that TracFone, not a retail vendor, conducted
5 the initial certification and annual verification of customers' eligibility. TracFone
6 understands that in Oregon the Commission handles certification and verification of
7 eligibility. TracFone does not object to having the Commission handle the initial
8 certification and annual verification of Lifeline eligibility. The FCC is aware that some
9 state commissions are able to certify initial eligibility and verify continued eligibility and
10 is aware that TracFone may be required to comply with state certification and verification
11 procedures. The Commission's rules do not conflict with the FCC Forbearance Order's
12 condition that retail vendors may not be involved in Lifeline enrollment or in the annual
13 eligibility verification process.

14 **Q. IS TRACFONE REQUIRED TO OFFER A PLAN WITH UNLIMITED CALLING**
15 **TO OFFER A LOCAL USAGE PLAN THAT IS COMPARABLE TO THE**
16 **SERVICE OFFERING OF THE ILECS IN ITS SERVICE AREA?**

17 A. No. As I explained in my direct testimony, Initial Requirement 2.4 does not mandate a
18 direct comparison with ILECs' calling plans or require an ETC applicant to show that its
19 plans are identical to the ILECs' plans. The FCC and 25 state commissions have
20 concluded that TracFone's Lifeline service would meet the comparability requirement of
21 47 C.F.R. § 54.202(a) (or relevant state commission rules) given the differences between
22 wireline and wireless services.

1 **Q. HAS TRACFONE SUFFICIENTLY IDENTIFIED ITS PROPOSED**
2 **DESIGNATED SERVICE AREA?**

3 A. Yes. TracFone has provided the Commission with the following documents describing
4 its Lifeline service area in Oregon: (1) a map depicting its coverage area in Oregon; (2)
5 a list of rate centers within its service area; (3) a list of Zip Codes in TracFone's service
6 area and the underlying wireless carrier or carriers providing service in each Zip Code;
7 and (4) a list of CLLI codes included in its underlying carriers' service areas. Thus, Ms.
8 Marinos's assertion that TracFone has only described its service area in general terms is
9 not accurate.

10 TracFone is also able to provide additional information regarding its coverage
11 area. First, a map showing the proposed designated service area overlaid on a map of the
12 ILEC wire centers (which was provided to TracFone by Commission Staff) is provided
13 as Exhibit TracFone/10. Second, AT&T Mobility and T-Mobile recently provided maps
14 indicating which ILEC wire centers are included in their coverage areas. These maps are
15 provided as Exhibit TracFone/11. AT&T Mobility and T-Mobile use a GSM network,
16 so these maps indicate TracFone's GSM coverage in Oregon. TracFone requested a wire
17 center map from Verizon Wireless, but Verizon Wireless has refused to provide this
18 map. Therefore, TracFone developed a Verizon Wireless coverage map based on
19 publicly available information and is providing that map as Exhibit TracFone/12.
20 Verizon Wireless uses a CDMA network so this map indicates TracFone's CDMA
21 coverage in Oregon. The maps provided with my testimony, together with the coverage
22 area information previously provided sufficiently describe TracFone's proposed
23 designated service area.

1 **Q. DOES TRACFONE'S DESCRIPTION OF ITS COVERAGE AREA COMPLY**
2 **WITH THE COMMISSION'S RULES?**

3 A. Yes. The Commission's rules require a map showing the proposed designated service
4 overlaid on the boundaries of ILEC wire centers and a list of wire centers that will
5 comprise the designated service area. Exhibit TracFone/10 and Exhibit TracFone/11 (for
6 AT&T Mobility and T-Mobile) provide this information.

7 **Q. HAS TRACFONE COMMITTED TO OFFERING ITS LIFELINE SERVICE**
8 **THROUGHOUT ITS PROPOSED DESIGNATED SERVICE AREA?**

9 A. Yes. TracFone defines its service area as all areas within its underlying carriers'
10 coverage area. Ms. Marinos testifies that if TracFone cannot provide service in a
11 particular area then that area must be excluded from TracFone's designated service area
12 and that the Commission should not provide support to TracFone in an area where
13 TracFone cannot provide service. Ms. Marinos's concern about TracFone's commitment
14 to offer its Lifeline service throughout its designated service area is not valid. First,
15 TracFone does not seek support from the Commission; TracFone will only seek support
16 from the federal USF. Second, TracFone only seeks support from the federal USF based
17 on the number of customers to whom it is providing Lifeline service at the end of each
18 month – people who receive TracFone's service. Customers who reside in areas where
19 TracFone does not have wireless coverage will not be able to enroll in its Lifeline
20 program. Therefore, TracFone will not receive any USF support for persons not enrolled
21 in TracFone's Lifeline program.

22 **Q. HAS TRACFONE DEMONSTRATED THAT IT CAN REMAIN FUNCTIONAL**
23 **IN EMERGENCIES?**

1 A. Yes. As I testified in my direct testimony, TracFone has the ability to remain functional
2 in emergency situations based on its relationships with three underlying carriers that have
3 implemented state-of-the-art network reliability standards. Ms. Marinos suggests that
4 TracFone should be required to provide information from its underlying carriers to
5 demonstrate that they have sufficient back-up power, the means to reroute traffic, and the
6 ability to manage traffic spikes in the case of emergencies. TracFone is willing to seek
7 certifications from its underlying carriers regarding this issue if the Commission deems
8 such certifications to be necessary.

9 **Q. DOES TRACFONE HAVE ANY ASSURANCES FROM ITS UNDERLYING**
10 **CARRIERS REGARDING ITS CUSTOMERS' ACCESS TO 911 SERVICES?**

11 A. Yes. TracFone has received letters from each of its underlying carriers confirming that
12 the carriers route 911 calls from customers to PSAPs in accordance with applicable legal
13 requirements and provide TracFone's customers with the same access to 911 services as
14 they provide to their own retail customers. Copies of the letters are provided as Exhibit
15 TracFone/13.

16 **Q. MS. MARINOS RECOMMENDS THAT THE COMMISSION CONSIDER**
17 **PLACING ADDITIONAL SERVICE COMMITMENTS AND PERFORMANCE**
18 **MEASURES ON TRACFONE, INCLUDING REQUIRING TRACFONE TO**
19 **ALLOW CALLS TO CUSTOMER SERVICE WITHOUT HAVING ANY**
20 **MINUTES DEDUCTED. WOULD TRACFONE AGREE TO ADDITIONAL**
21 **SERVICE COMMITMENTS?**

22 A. TracFone is willing to comply with additional service commitments or performance
23 measures provided that any such requirements are also imposed on all other similarly-

1 situated ETCs (i.e. on all wireless resellers). TracFone will provide its Lifeline customers
2 in Oregon with access to customer service without having any airtime minutes deducted
3 when customers dial 611 from their handsets.

4 **Q. WILL TRACFONE BE ABLE TO COMPLY WITH THE ETC ANNUAL**
5 **REPORTING REQUIREMENT THAT IT REPORT THE NUMBER OF**
6 **LIFELINE CUSTOMERS BY ILEC STUDY AREA?**

7 A. Yes.

8 **Q. WILL TRACFONE BE ABLE TO PROVIDE ANNUAL OUTAGE REPORTS TO**
9 **THE COMMISSION?**

10 A. TracFone has requested outage reports from its underlying carriers. TracFone will
11 provide the Commission with all reports that it receives from those carriers. In the event
12 that an underlying carrier refuses to provide those reports to TracFone, then TracFone
13 will request that the carrier provide its outage report for Oregon directly to the
14 Commission. TracFone has arranged with its underlying carriers to provide outage
15 reports directly to the FCC so that TracFone comply with the FCC requirement codified
16 at 47 C.F.R. § 54.209 that ETCs provide outage data for the states where they operate as
17 an ETC pursuant to FCC designation. TracFone is prepared to make similar
18 arrangements with respect to Oregon outage data.

19 **Q. WOULD TRACFONE AGREE TO COMPLY WITH ADDITIONAL**
20 **REPORTING REQUIREMENTS IF IT IS UNABLE TO COMPLY WITH THE**
21 **COMMISSION'S ANNUAL REPORTING REQUIREMENTS?**

22 A. Yes. As I testified earlier in response to CUB's testimony, TracFone is willing to submit
23 quarterly reports that follow the template of the quarterly reports provided to the Ohio

1 Public Utilities Commission so long as the reports receive confidential treatment as they
2 do in Ohio.

3 **Q. MS. MARINOS RAISES SEVERAL ISSUES RELATED TO WHETHER**
4 **DESIGNATION OF TRACFONE AS AN ETC IS IN THE PUBLIC INTEREST.**
5 **HOW DOES TRACFONE RESPOND TO HER CONCERNS?**

6 A. Ms. Marinos does raise several issues and I will address each one. First, Ms. Marinos
7 states that the Commission must decide whether it must or will follow the FCC's
8 Forbearance Order. However, this testimony contradicts Ms. Marinos's earlier testimony
9 recommending that if the Commission decides to grant TracFone's ETC application, then
10 the Commission should not require TracFone to provide services using its own facilities.
11 Ms. Marinos also states that the Commission must determine if it will waive the facilities
12 requirement for designation as an ETP. Oregon's ETC designation process is unique in
13 that applicants who seek designation as an ETC for purposes of receiving support from
14 the federal USF, must meet the Commission's requirements for designation as an ETP.
15 To the extent that the Commission's rules require an ETP to have facilities to receive
16 federal USF support, those rules are not enforceable since any attempt to enforce a
17 requirement subject to a valid FCC exercise of its forbearance authority would be
18 prohibited by 47 U.S.C. § 160(e) as I have previously explained in this reply testimony.
19 The Texas Public Utilities Commission requires ETC applicants to have facilities for the
20 purpose of receiving funds from state USF. However, the Texas Public Utilities
21 Commission, which has designated TracFone as an ETC, correctly recognizes that it
22 could not apply that requirement to TracFone because TracFone did not seek any funds
23 from the Texas USF. Similarly, because TracFone will only seek funds from the federal

1 USF for Lifeline service provided in Oregon, this Commission's facilities requirement
2 may not be applied to TracFone as a basis for not designating it as an ETC or ETP.

3 **Q. DOES THE FREE NATURE OF TRACFONE'S LIFELINE SERVICE RAISE A**
4 **PUBLIC INTEREST CONCERN?**

5 A. Ms. Marinos testifies that the free nature of TracFone's Lifelines service raises two
6 concerns: (1) that TracFone can provide no assurance that the value of the Lifeline
7 benefit is flowed through to the customer and (2) that incidents of waste, fraud, and abuse
8 are less likely to occur when the customer must pay some amount for service.

9 Regarding the first concern about the value of TracFone's Lifeline plans,
10 TracFone confirms that it is passing through the Lifeline support it receives in the
11 Lifeline benefit it provides to its customers. Contrary to Ms. Marinos's testimony,
12 TracFone is not required to demonstrate that the three plans it offers are comparable in
13 cost or value. However, TracFone points out that it does not offer any non-Lifeline plan
14 that provides 250 minutes -- the Lifeline plan most customers choose -- for a price less
15 than the federal Lifeline support TracFone receives. Therefore, there is no doubt that the
16 full amount of Lifeline support is passed through to the customer.

17 Regarding the second concern about waste, fraud, and abuse due to the free nature
18 of TracFone's Lifeline service, I want to stress that Ms. Marinos provides no support for
19 her assertion that incidences of waste, fraud, and abuse are less likely to occur when a
20 customer must pay some amount for service. In addition, TracFone's non-usage policy
21 ensures that only those customers who are actually using the Lifeline service continue to
22 receive airtime minutes each month and that TracFone only receives Lifeline support for
23 those customers who are using the service. TracFone also has a Loss Prevention

1 department that is dedicated to identifying instances of fraud, including illegal sales of its
2 handsets on the Internet. Also, as this Commission is aware, the FCC is currently
3 conducting a rulemaking wherein it is considering reforms of the Lifeline program,
4 including imposition of rules to detect and prevent waste, fraud and abuse of USF
5 resources. Among the issues under consideration by the FCC is whether a non-usage
6 policy should be required of all ETCs so as to prevent ETCs from continuing to receive
7 Lifeline support for enrolled customers who make no use of the service. Elimination of
8 free Lifeline service such as that provided by TracFone would preclude many low-
9 income households from enrolling in Lifeline. TracFone has learned that for many low-
10 income households, imposition of any charges, even discounted charges, will make
11 telecommunications service unaffordable. At this time there is no prohibition on
12 providing free Lifeline service.

13 **Q. MS. MARINOS ALLEGES THAT THERE IS COMPELLING EVIDENCE OF**
14 **WASTE, FRAUD, AND ABUSE RELATED TO TRACFONE'S LIFELINE**
15 **SERVICES. DO YOU AGREE WITH HER ALLEGATION?**

16 A. No. Ms. Marinis offers no valid support for her allegation. First, Ms. Marinis claims
17 that there are examples of the sale of TracFone's Lifeline service on the Internet.
18 However, as I testified in my direct testimony, to date, fewer than twenty attempts to sell
19 SafeLink Wireless® handsets have been discovered. This is a de minimus amount
20 compared to TracFone's total of over 3 million Lifeline customers. Nevertheless,
21 because TracFone believes it is important to prevent fraud, TracFone maintains a Loss
22 Prevention department to monitor various online sources to detect and investigate

1 potentially improper or fraudulent activity related to its Lifeline service. TracFone
2 deactivates any service that is the subject of such activity.

3 Second, Ms. Marinos refers to a Massachusetts Department of
4 Telecommunications and Cable (“DTC”) audit of TracFone’s annual verification of its
5 Lifeline customers’ continued eligibility. Ms. Marinos incorrectly states that the audit
6 “indicated that 43 percent of TracFone’s Lifeline customers in that state were found to be
7 ineligible for the Lifeline services they has been receiving.” Ms. Marinos
8 mischaracterizes the results of the audit. First, although the Final Order regarding the
9 audit stated that 43 percent of the 244 individuals in the sample were “ineligible”, the
10 Final Order also stated that 30 percent of the individuals in the sample did not provide
11 any response to TracFone’s request for verification of eligibility. In accordance with the
12 FCC’s rules, the individuals who did not respond were treated as ineligible even though
13 there was no determination that those individuals were in fact ineligible. Significantly,
14 Ms. Marinos overlooks the Massachusetts DTC’s conclusion “that TracFone complied
15 with the current eligibility verification requirements.” Furthermore, the Massachusetts DTC
16 has initiated a proceeding to review Lifeline verification rules that apply to all ETCs, not only
17 TracFone. Thus, the Massachusetts DTC’s audit does not provide any evidence that waste,
18 fraud, or abuse is specifically related to TracFone’s Lifeline services.

19 Third, Ms. Marinos asserts that the Lifeline verification results it submitted to USAC
20 in 2010 indicated that a large percentage of its customers were ineligible. Again, Ms.
21 Marinos fails to note that the results were based on a sample and that a large percentage of
22 the customers in the sample were deemed ineligible because they failed to respond to the
23 request for verification, not because they were found to be ineligible. Neither the FCC nor
24 USAC, nor any state commission has ever found that TracFone failed to comply with all

1 applicable rules governing Lifeline service, including the rules regarding verification of
2 consumer eligibility. In the FCC's current Lifeline reform rulemaking proceeding, that
3 agency is considering revisions to the annual verification procedures. TracFone urges the
4 Commission to continue to apply the current federal Lifeline rules until the FCC makes
5 changes to those rules.

6 **Q. WHILE THE FCC PROCEEDING IS PENDING, SHOULD THE COMMISSION**
7 **DEFER A DECISION IN THIS CASE?**

8 A. No. Any new rules ultimately issued by the FCC in the rulemaking proceeding will apply
9 to all ETCs. In the meantime, TracFone, as well as all other ETCs, is required to comply
10 with the current rules. The FCC, fully aware that carriers are continuing to request ETC
11 designation at the FCC, as well as at state commissions, has not required that any ETC
12 proceedings be delayed or suspended. Ms. Marinos's suggestion that the Commission
13 should prohibit the offering of free wireless Lifeline service until the Commission can
14 gather more information either from its own generic investigation or from the FCC's
15 rulemaking proceeding is not a basis for delaying the current proceeding.

16 **Q. DOES TRACFONE'S NON-PAYMENT OF 911 AND RSPF SURCHARGES**
17 **WARRANT THE COMMISSION'S DENIAL OF TRACFONE'S ETC**
18 **APPLICATION?**

19 A. No. My direct testimony, as well as TracFone's Waiver Request in its Second Amended
20 ETC Application, include TracFone's explanation as to why it is not obligated to pay the
21 911 and RSPF surcharges. Furthermore, two bills concerning the statutes governing the
22 911 and RSPF surcharges have been recently introduced in the Oregon legislative
23 session. These bills address prepaid wireless services. Copies of SB 146 (regarding the

1 RSPF surcharge) and HB 2075 (regarding the 911 surcharge) are provided in Exhibit
2 TracFone/14. The introduction of these bills provides further support for TracFone's
3 position that the 911 and RSPF surcharges are not applicable to TracFone or to other
4 prepaid wireless service providers. As I stated in my direct testimony, if the Commission
5 deems it necessary to determine whether TracFone and other prepaid wireless providers
6 are legally obligated to pay any fees or surcharges within the Commission's jurisdiction,
7 it should open a separate proceeding to address that issue.

8 **Q. IS A CREAMSKIMMING ANALYSIS NECESSARY TO EVALUATE**
9 **TRACFONE'S ETC APPLICATION?**

10 A. No. I want to point out that creamskimming is not a relevant issue when a wireless
11 service provider seeks ETC designation solely for purposes of providing Lifeline service.
12 In 2008, when the FCC designated TracFone as an ETC in 11 States, it stated: "In
13 addition, we need not perform a creamskimming analysis because TracFone is seeking to
14 be eligible for Lifeline support only." A copy of the FCC's Order is provided as Exhibit
15 TracFone/15. Furthermore, as I noted in my direct testimony, the FCC developed the
16 "creamskimming" analysis requirement when it began to designate wireless ETCs who
17 sought support from the high-cost portion of the USF to subsidize the costs of building
18 alternative networks which would compete with rural LECs. The FCC's concern was
19 that such facilities-based wireless ETCs might obtain high-cost support to build out
20 competing networks with those of the rural LECs but would actually deploy competing
21 networks only in the most populous areas of the rural ILECs' service territories --
22 effectively using USF support to engage in "creamskimming" in the ILECs' territories
23 since the ILECs had to build out throughout their entire service areas, including the

1 sparsely-populated portions of their service areas. Since TracFone provides service only
2 where its underlying vendors have wireless coverage, it will not, and cannot, engage in
3 creamskimming as that term has been used by the FCC. It is for that reason that the FCC
4 concluded in 2008 that a creamskimming analysis is not necessary when considering
5 Lifeline-only ETC designation requests.

6 **Q. HAVE YOU REVIEWED THE TESTIMONY OF JON CRAY FILED ON**
7 **BEHALF OF THE COMMISSION STAFF?**

8 A. Yes.

9 **Q. WHAT IS YOUR UNDERSTANDING OF MR. CRAY'S TESTIMONY?**

10 A. Mr. Cray recommends that the Commission deny TracFone's request for ETP designation
11 based on his determination that TracFone fails to meet the requirements for ETP
12 designation. As I testified earlier, in Oregon, an ETC applicant must also meet the
13 Commission's ETP requirements.

14 **Q. MR. CRAY TESTIFIED THAT THE COMMISSION DOES NOT HAVE**
15 **AUTHORITY TO WAIVE ANY ETP REQUIREMENT UNLESS THE LAW**
16 **PROVIDES OTHERWISE. IS IT YOUR UNDERSTANDING THAT THE**
17 **COMMISSION DOES NOT HAVE AUTHORITY TO WAIVE ITS OWN RULES?**

18 A. No. As I testified earlier in my testimony, pursuant to ORS 756.040, the Commission has
19 broad authority to "do all things necessary and convenient in the exercise of [its] power
20 and authority." That broad authority would include the authority to waive its own rules
21 in appropriate circumstances.

22 **Q. WHAT ARE THE ETP REQUIREMENTS THAT MR. CRAY ASSERTS THAT**
23 **TRACFONE DOES NOT MEET?**

1 A. Mr. Cray contends that there are several ETP requirements that TracFone is unable to
2 meet. In his testimony, he reviews each of the ETP requirements for which TracFone
3 seeks a waiver and provides his assessment of whether the Commission should grant the
4 waiver request. TracFone's position on the ETP requirements is set forth in its Waiver
5 Request and I addressed certain ETP requirements in my direct testimony. In addition,
6 Ms. Marinos's testimony also covers several of the issues that Mr. Cray raises.
7 Therefore, in my reply testimony, I will only address portions of Mr. Cray's testimony to
8 the extent that the additional clarification is necessary.

9 **Q. DO THE COMMISSION'S RULES PROHIBIT FREE LIFELINE SERVICE?**

10 A. No. The Commission's rules require a reduced rate or discount. There is no requirement
11 that limits the amount of the discount or that sets a minimum charge. As Mr. Cray
12 acknowledges, "[t]heoretically, the discount could take the bill to zero."

13 **Q. HOW WILL OREGON LIFELINE CUSTOMERS BE IMPACTED IF**
14 **TRACFONE DOES NOT ACCEPT THE \$3.50 BENEFIT PROVIDED BY OTAP?**

15 A. Oregon's Lifeline customers will not be impacted if TracFone does not accept the \$3.50
16 OTAP benefit. Whether TracFone receives the \$3.50 from OTAP or provides the \$3.50
17 itself, TracFone's Oregon Lifeline customers will receive a Lifeline benefit of \$13.50.
18 TracFone is not aware of any ETC in Oregon that has been required by the Commission
19 to provide a Lifeline benefit greater than \$13.50.

20 **Q. WILL TRACFONE PROVIDE TRIBAL LIFELINE SERVICE IN OREGON?**

21 A. No. TracFone will exclude tribal areas from its Lifeline service area.

22 **Q. WOULD TRACFONE AGREE TO NOTIFY COMMISSION STAFF OF**
23 **MARKETING CAMPAIGNS IN ADVANCE SO THAT STAFF CAN PREPARE**

1 **FOR THE ANTICIPATED INCREASED WORKLOAD DUE TO INCREASED**
2 **CUSTOMER CALLS AND APPLICATIONS?**

3 A. Yes.

4 **Q. WHAT MODIFICATIONS NEED TO BE MADE TO THE OTAP**
5 **APPLICATION?**

6 A. The OTAP Application requires that an applicant provide the name of the applicant's
7 phone company (which must be one of the companies listed on the OTAP Application
8 form) and the applicant's phone number. Commission Staff has advised TracFone that
9 the Commission will not approve an OTAP application if an applicant is not an existing
10 customer of an ETC. Furthermore, the OTAP Application requires applicants to indicate
11 that they understand the following: "My name must be on the phone bill and I must have
12 active phone service in order to receive OTAP credits." As I stated in my direct
13 testimony, the requirement that an applicant be an existing customer of a billed service
14 unfairly discriminates against companies that do not issue bills or that do not have a
15 current relationship with the individuals who are interested in receiving Lifeline service.
16 More importantly, a consequence of this requirement is to make Lifeline service
17 unavailable to those low-income households who do not currently receive telephone
18 service. Increasing telephone service penetration among low-income households is a
19 purpose of the Lifeline program. A requirement which renders ineligible for Lifeline
20 support those Oregon residents who do not currently receive telecommunications service
21 would undermine attainment of that purpose. Therefore, TracFone requested that the
22 OTAP Application be modified to account for the fact that an applicant may not be an
23 active customer of a billed telephone service prior to applying for Lifeline benefits.

1 **Q. HAS COMMISSION STAFF AGREED TO THOSE CHANGES?**

2 A. Mr. Cray states that if the Commission waives the requirement that an OTAP recipient's
3 name must be listed on the phone bill to receive OTAP benefits, then the Commission
4 Staff would modify the OTAP application to state that the applicant's name must be on
5 the account, rather than on the bill. However, Mr. Cray does not agree that the OTAP
6 Application should be modified to remove the requirement that a Lifeline applicant have
7 active phone service. Mr. Cray asserts that TracFone has not fully explained why a
8 requirement that a Lifeline applicant have active phone service would prohibit it from
9 offering Lifeline benefits to customers.

10 **Q. HOW DOES THE REQUIREMENT THAT A LIFELINE APPLICANT HAVE**
11 **ACTIVE PHONE SERVICE WITH TRACFONE PREVENT TRACFONE FROM**
12 **PROVIDING LIFELINE BENEFITS?**

13 A. As I explained in my direct testimony, in TracFone's experience, the majority of its
14 SafeLink Wireless® Lifeline applicants are not existing TracFone customers. Therefore,
15 individuals interested in receiving SafeLink Wireless® Lifeline service are not able to list
16 TracFone as their current phone company nor are they able to provide a telephone
17 number for a TracFone account. Furthermore, requiring a Lifeline applicant to first be a
18 customer of TracFone's non-Lifeline service would defeat the entire purpose of the
19 Lifeline program. If the OTAP Application is not modified, a person seeking to receive
20 Lifeline service from TracFone (but who is not a current TracFone customer) would need
21 to purchase a handset and airtime minutes to receive a telephone number and become a
22 non-Lifeline TracFone customer. The customer could then complete the OTAP
23 Application. It is highly unlikely that any individual who is not an existing TracFone

1 customer would go through the expense of purchasing a handset at his or her own
2 expense and signing up as a non-Lifeline TracFone customer prior to applying for
3 Lifeline service. Such a procedure is illogical, deprives low-income individuals of the
4 ability to choose a Lifeline service provider that differs from their current provider, and
5 places new ETCs at a substantial competitive disadvantage. In the case of TracFone, it
6 would deprive those customers of one of the most attractive features of the SafeLink
7 Wireless[®] Lifeline service -- a free handset.

8 **Q. DOES THE COMMISSION STAFF HAVE AUTHORITY TO MODIFY THE**
9 **OTAP APPLICATION TO REMOVE THE REQUIREMENT THAT AN**
10 **APPLICANT HAVE AN ACTIVE PHONE SERVICE AND PROVIDE A**
11 **TELEPHONE NUMBER?**

12 A. Yes. There is no Commission rule that requires recipients of Lifeline benefits to have
13 active phone service.

14 **Q. WHAT IS MR. CRAY'S REASONING FOR NOT SUPPORTING THE**
15 **MODIFICATION REQUESTED BY TRACFONE?**

16 A. In the past, the Commission Staff modified the OTAP Application for customers that did
17 not have telephone service but who sought Lifeline benefits. In that situation, the ETP
18 assigned a telephone number to be used on the OTAP Application even though the
19 applicant did not have current phone service with the ETP. The Commission identified
20 several instances of fraud that included customers who never received service or had
21 discontinued service. Given this experience, Mr. Cray states that the Commission must
22 proceed with caution when modifying procedures. However, Mr. Cray does
23 acknowledge that the requirement of having active phone service to be a Lifeline

1 applicant should be reviewed in a separate docket to determine whether it acts as an
2 impediment to Lifeline service provider's ability to enroll customers.

3 **Q. DOES TRACFONE'S LIFELINE SERVICE POSE SIMILAR CONCERNS?**

4 A. No. TracFone does not seek Lifeline support from the federal USF until it provides its
5 Lifeline customers with a handset and wireless airtime. Therefore, there is no risk that
6 TracFone would claim an individual as a Lifeline customer unless the customer is
7 actually receiving service from TracFone. Furthermore, TracFone has several procedures
8 in place to minimize fraud, including its non-usage policy and annual verification that
9 each customer is head of household and only receives Lifeline-supported service from
10 TracFone. As such, the circumstances present with former ETP described in Mr. Cray's
11 testimony do not exist with TracFone.

12 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD TO YOUR**
13 **TESTIMONY?**

14 A. Based on my testimony above, I would like to reiterate that TracFone meets the
15 applicable legal requirements for designation as an ETC and ETP or has demonstrated
16 that the Commission should grant its request for waiver of certain requirements.
17 Moreover, designation of TracFone as an ETC and ETP for the limited purpose of
18 providing Lifeline service to low-income Oregon households will serve the public
19 interest. Accordingly, the Oregon Public Utility Commission should unconditionally and
20 promptly grant TracFone's ETC Application so that TracFone may commence providing
21 its SafeLink Wireless[®] service to low-income Oregon households at the earliest possible
22 time. TracFone looks forward to soon bringing this important Congressionally-mandated

1 telecommunications benefit to low-income Oregon households as it already is doing in 33
2 other States.

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 **A.** Yes, it does.

Exhibit 7

Federal Communications Commission

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

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

Federal Communications Commission

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.

Federal Communications Commission

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 8



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,

A handwritten signature in black ink, appearing to read "José A. Fuentes". The signature is fluid and cursive.

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

Exhibit 9

From: Shannon Marheine [<mailto:smarhein@oem.state.or.us>]
Sent: Monday, October 19, 2009 6:35 PM
To: 'Mara Leventhal'
Cc: 'Erin Errington'; 'John Sneed'
Subject: RE: SafeLink statement

Mara,

This email is sent on behalf of the Oregon State 9-1-1 Program and the 50 PSAPs in the state.

Please accept this email as confirmation that the State 9-1-1 Program will take no further action concerning the TracFone Wireless Inc. ("TracFone") request for certification of 9-1-1 access for its SafeLink/Lifeline program, we will not sign the SafeLink 9-1-1 Certification Form at this time. Once the Eligible Telecommunications Carrier (ETC) status application has been approved by the Oregon Public Utilities Commission (PUC) and SafeLink requests certification, the State 9-1-1 Program will re-review your request for certification.

Thank you,
Shannon Marheine, ENP
State 9-1-1 Program Lead
Oregon Emergency Management

Jose, please let me know if you need any additional information.

Take care,
Erin

Exhibit 10

SafeLink

WIRELESS®

Lifeline Available (Transparent)	No Lifeline Available
----------------------------------	-----------------------

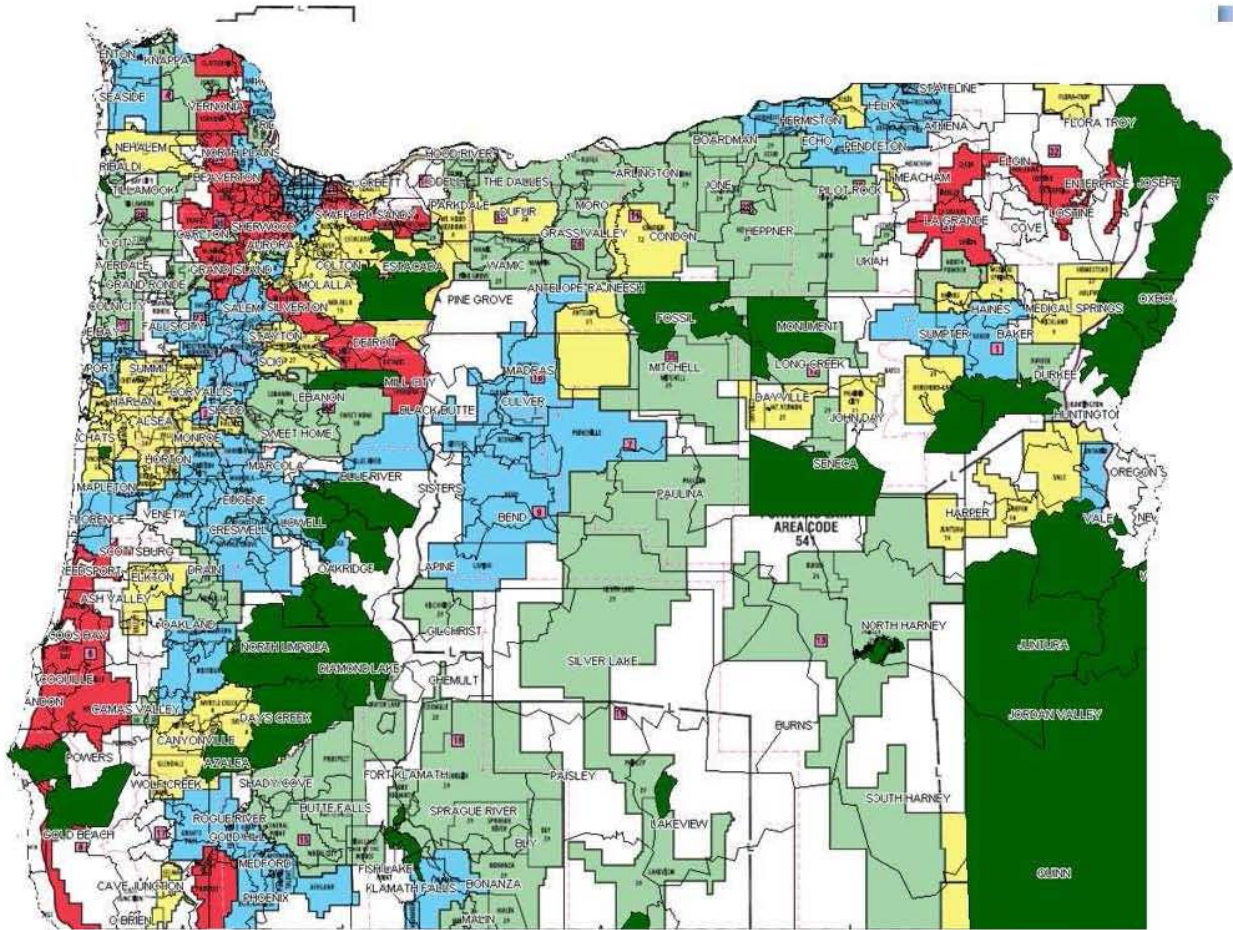
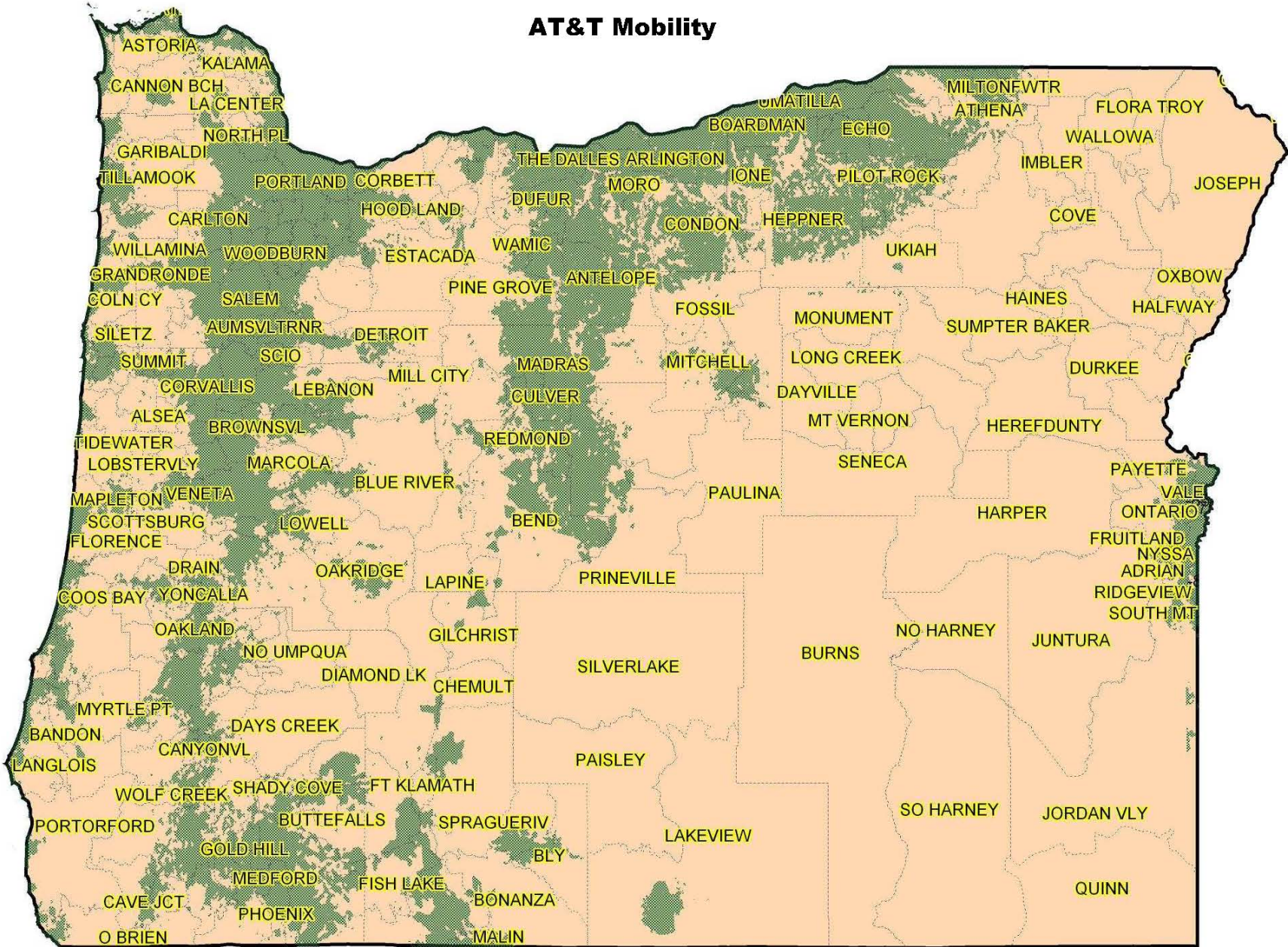


Exhibit 11

AT&T Mobility



T-Mobile

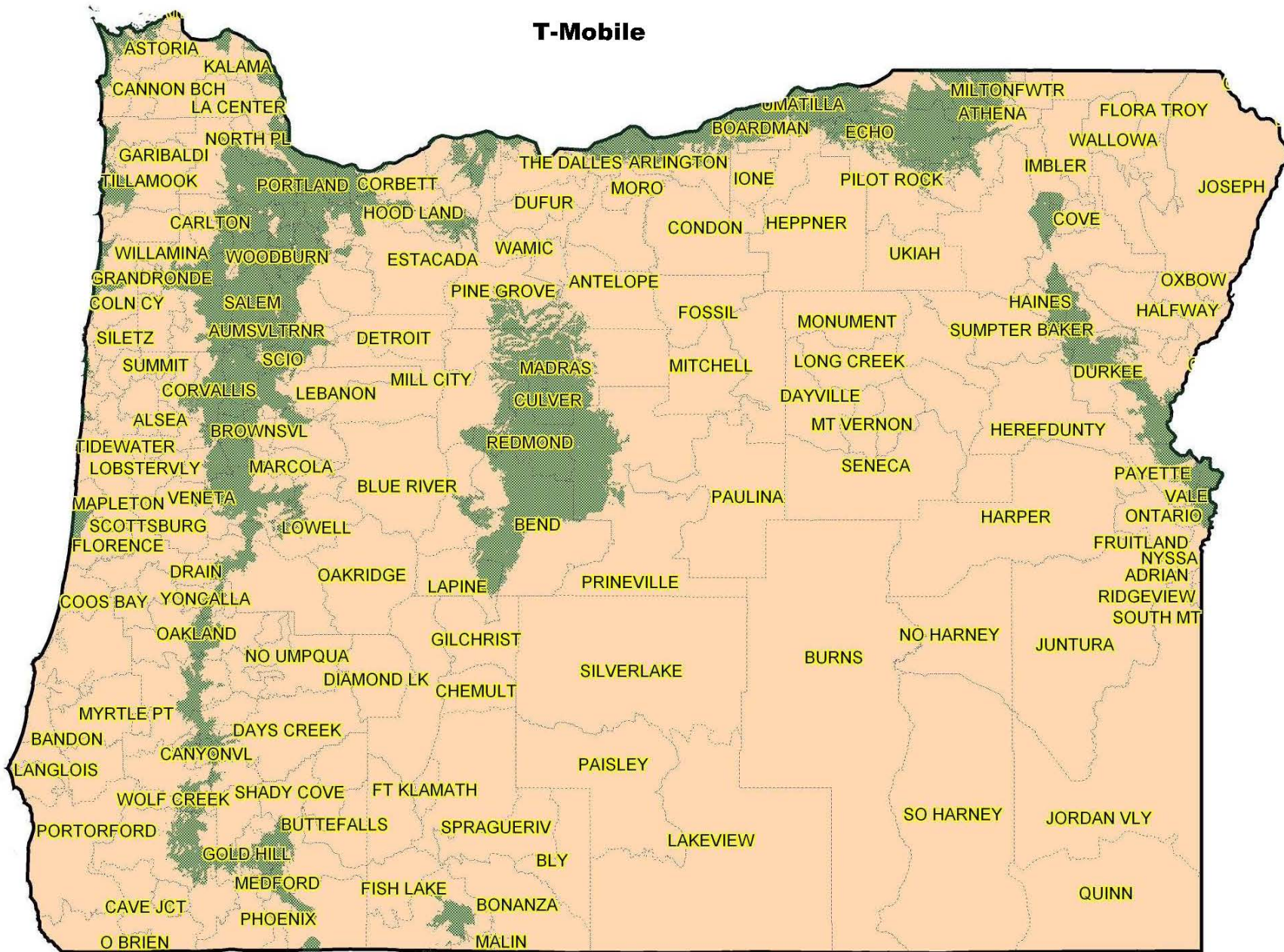
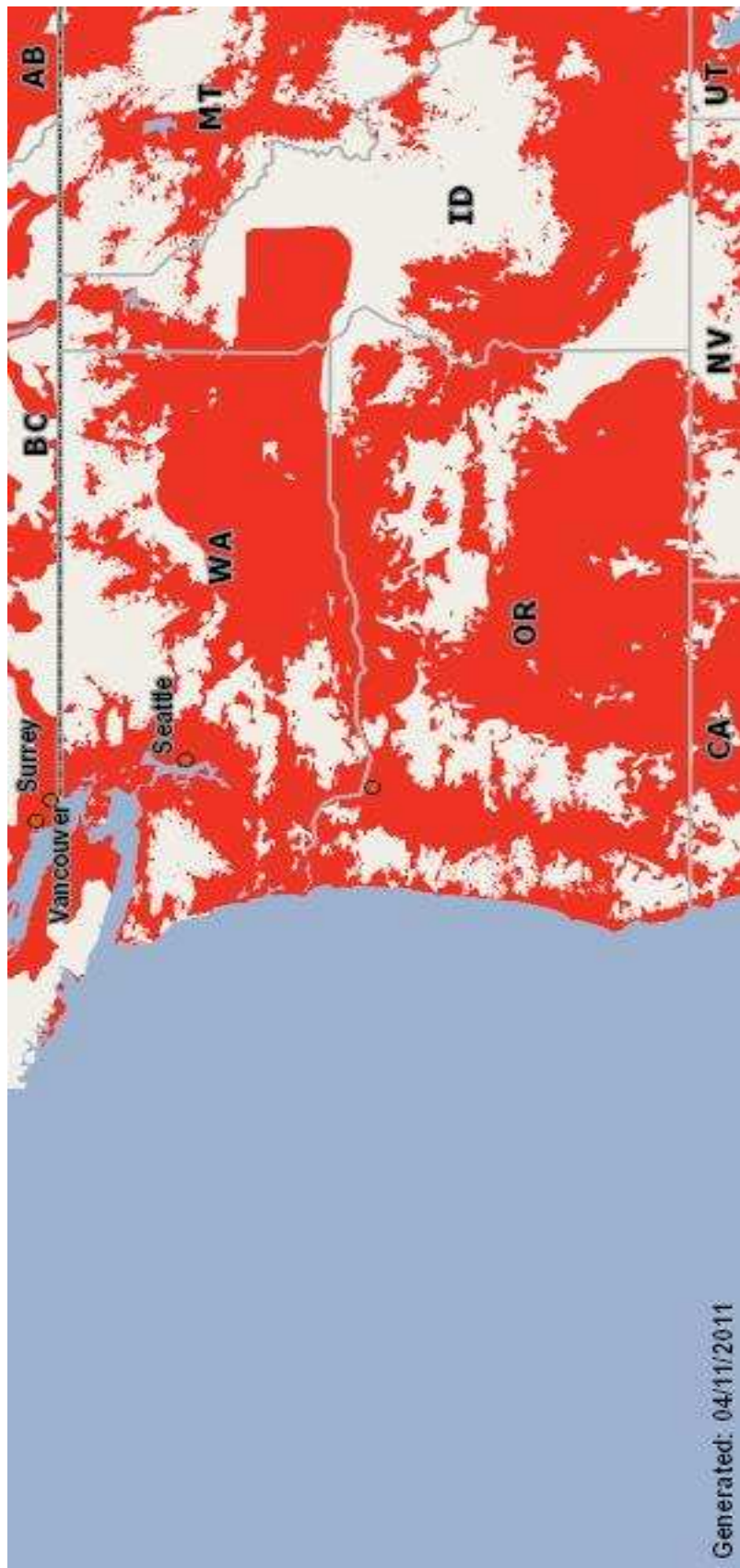


Exhibit 12



Verizon Coverage Map

Exhibit 13



Lane Mansell
Vice President
Partnership & Resale

AT&T Mobility
1025 Lenox Park Blvd
Atlanta, GA 30319

TracFone/13
Fuentes/1

Date: April 14, 2009

To: All 911 Directors
Re: Routing of E911 Calls from Resold Wireless Services

Carrier provides licensed facilities-based wireless services directly to all of its customers and routes 911 calls from such customers to the Public Safety Answering Points (PSAPs) in accordance with applicable Federal Communications Commission ("FCC") enhanced 911 ("E911") legal requirements and pursuant to arrangements with PSAPs to receive such calls.¹

Carrier provides wholesale wireless service to TracFone Wireless, Inc. (TracFone), which resells such service to customers under its own brand on a prepaid basis.

As a wholesale customer of Carrier, TracFone has asked Carrier to certify that TracFone's Lifeline customers will have access to 911 and E911. In this regard, Carrier certifies that Carrier routes 911 calls according to applicable FCC E911 requirements and that it routes 911 calls from TracFone customers to PSAPs in the same manner as Carrier routes 911 calls from its own customers to PSAPs.

Carrier has engaged in 911 testing with PSAPs to confirm 911 and E911 access in accordance with applicable FCC requirements. Thus, as a resale customer of Carrier, TracFone customers have the same access to 911 and E911 as do Carrier's own customers.

Lane Mansell
NAME

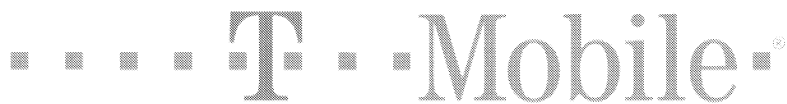
Vice President - Partnership & Resale
TITLE


SIGNATURE

404-986-1035
PHONE

Lm1144@att.com
EMAIL

¹ "The basic 911 rules required covered carriers to deliver all 911 calls to the appropriate PSAP...they are designed to ensure the appropriate delivery of 911 calls.... [E]nhanced 911 rules require covered wireless carriers to be capable of delivering the calling party's call back number and the calling party's location information to the requesting PSAPs. *In the Matter of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, FCC 05-116 at p. 8, note 18, (June 3, 2005) describing the difference between basic 911 and E911 service.



T-Mobile USA, Inc.
12920 SE 38th Street, Bellevue, WA 98006

Date: November 25, 2008
To: TracFone Wireless Inc.
From: T-Mobile USA, Inc.
Re: Routing of E911 Calls from Resold Wireless Services

T-Mobile USA, Inc. ("T-Mobile") provides licensed, facilities-based wireless services directly to customers and routes E9-1-1 calls from such customers to designated Public Safety Answering Points ("PSAP") in accordance with the law and pursuant to arrangements with PSAPs to receive such calls.

T-Mobile offers wholesale wireless services to TracFone Wireless, Inc. ("TracFone"), which resells such services to customers under its own brand on a prepaid basis.

Any Tracfone customer whose service is activated on the T-Mobile network and who dials 9-1-1 will have the same access to E9-1-1 as a retail customer of T-Mobile.

Dirk Mosa

Name

Vice President, Corporate Development & Wholesale

Title



Signature



Date: April 16, 2009

To: TracFone Wireless, Inc.

From: Verizon Wireless

Re: Routing of E911 Calls

Verizon Wireless provides licensed facilities-based wireless services to its customers and routes 911 and E911 calls from such customers to the Public Safety Answering Points (PSAPs).

Verizon Wireless provides wholesale wireless service to TracFone Wireless, Inc. (TracFone), which resells such service to customers under its own brand on a prepaid basis.

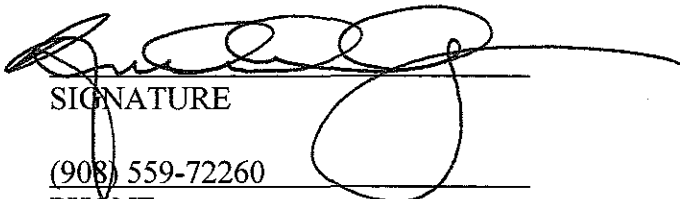
As a wholesale customer of Verizon Wireless, TracFone has asked Verizon Wireless to certify that TracFone's customers who receive their underlying wireless network service via Verizon Wireless have access to 911 and E911. In this regard, subject to the capabilities of TracFone's wireless handsets/devices, Verizon Wireless certifies that it routes 911 and E911 calls from such TracFone customers to PSAPs in the same manner as it routes 911 and E911 calls from its own customers.

Richard A Craig

NAME

Director Compliance

TITLE


A handwritten signature in black ink, appearing to read "Richard A. Craig", written over a horizontal line.

SIGNATURE

(908) 559-72260

PHONE

Richard.craig@verizonwireless.com

Exhibit 14

Senate Bill 146

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber for Public Utility Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends scope of Residential Service Protection Fund surcharge to include fixed interconnected voice over Internet protocol service and prepaid telecommunications service.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Residential Service Protection Fund; creating new provisions; amending section 7,
3 chapter 290, Oregon Laws 1987; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Section 7, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 622,
6 Oregon Laws 1991, section 8, chapter 872, Oregon Laws 1991, section 1, chapter 231, Oregon Laws
7 1993, section 387, chapter 79, Oregon Laws 1995, section 1, chapter 451, Oregon Laws 1995, and
8 section 2, chapter 408, Oregon Laws 2001, is amended to read:

9 **Sec. 7. (1) For purposes of this section:**

10 (a) **“Customer” means a person that has telecommunications service with access to the**
11 **telecommunications relay service through local exchange service, cellular service or other**
12 **wired or wireless means, including fixed interconnected voice over Internet protocol service.**

13 (b) **“Fixed interconnected voice over Internet protocol service” means any Internet pro-**
14 **tol enabled service that offers real-time two-way voice communications requiring a**
15 **broadband connection from the user’s location and permits users generally to receive calls**
16 **that originate on the public switched telephone network and to terminate calls to the public**
17 **switched telephone network.**

18 (c) **“Prepaid telecommunications service” means any telecommunications service paid for**
19 **by the customer prior to activation or use of the service.**

20 (d) **“Prepaid telecommunications service provider” means any telecommunications ser-**
21 **vice provider that sells prepaid telecommunications service on a wholesale or retail basis.**

22 [(1)] (2)(a) In order to fund the programs provided in sections 2 to 6 and 9 to 14, chapter 290,
23 Oregon Laws 1987, the Public Utility Commission shall develop and implement a system for assess-
24 ing a surcharge in an amount not to exceed 35 cents per month against each paying retail [*sub-*
25 *scriber*] **customer** [*who has telecommunications service with access to the telecommunications relay*
26 *service*]. The surcharge shall be applied on a telecommunications circuit designated for a particular
27 [*subscriber*] **customer**. One [*subscriber*] **customer** line shall be counted for each circuit that is ca-
28 pable of generating usage on the line side of the **public** switched **telephone** network regardless of
29 the quantity of customer premises equipment connected to each circuit. For providers of central
30 office based services, the surcharge shall be applied to each line that has unrestricted connection

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 to the telecommunications relay service. These central office based service lines that have restricted
 2 access to the telecommunications relay service shall be charged based on software design. **Except**
 3 **for prepaid telecommunications service, the surcharge shall be assessed on each customer**
 4 **connection for cellular, wireless, fixed interconnected voice over Internet protocol or other**
 5 **radio common carriers.** *[For cellular, wireless or other radio common carriers, the surcharge shall*
 6 *be applied on a per instrument basis, but]* **The surcharge** applies only to *[subscribers]* **customers**
 7 whose place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

8 **(b) The surcharge must be assessed on each customer connection provided and billed by**
 9 **each telecommunications service provider and on any prepaid telecommunications service**
 10 **offered by each prepaid telecommunications service provider.**

11 **(c) Each customer is liable to the telecommunications service provider for payment of**
 12 **any surcharge properly imposed under this section. The telecommunications service provider**
 13 **is not liable for any uncollected surcharge, and does not have an obligation to take legal**
 14 **action to enforce the collection of any surcharge that is unpaid by its customers.**

15 **(d) Each telecommunications service provider that periodically bills customers for its**
 16 **services must bill each customer for the surcharge.**

17 **(e) For customers that are not billed periodically, including but not limited to customers**
 18 **that purchase prepaid telecommunications service, the telecommunications service provider**
 19 **must include in the price of the service the surcharge for each month during which the**
 20 **customer is authorized to use the service. A prepaid telecommunications service provider**
 21 **must remit to the Residential Protection Service Fund an amount equal to the surcharge**
 22 **after collecting the amount using one of the following options:**

23 **(A) On a monthly basis, the prepaid telecommunications service provider must collect**
 24 **an amount equal to the surcharge from each active prepaid telecommunications service**
 25 **customer whose account balance is equal to or greater than the surcharge; or**

26 **(B) The prepaid telecommunications service provider must divide the provider's total**
 27 **intrastate monthly revenue by the national average monthly revenue for each prepaid tele-**
 28 **communications service customer of the national prepaid telecommunications service in-**
 29 **dustry to determine the number of the provider's prepaid customers. The prepaid**
 30 **telecommunications service provider must then pay on a monthly basis an amount to the**
 31 **Residential Service Protection Fund equal to the number of the provider's prepaid custom-**
 32 **ers, multiplied by the amount of the surcharge.**

33 **(f) The commission may adopt by rule the method for calculating the national average**
 34 **monthly revenue for each prepaid telecommunications service customer of the national pre-**
 35 **paid telecommunications service industry.**

36 **(g) If a customer receives prepaid wireless telecommunication services at no cost to the**
 37 **customer, the provider of the services must remit an amount equal to the surcharge for each**
 38 **month during which the customer is authorized to use the service.**

39 *[(2)]* **(3) The surcharge imposed by subsection [(1)] (2) of this section does not apply to:**

40 **(a) Services upon which the state is prohibited from imposing the surcharge by the Constitution**
 41 **or laws of the United States or the Constitution or laws of the State of Oregon.**

42 **(b) Interconnection between telecommunications utilities, telecommunications cooperatives,**
 43 **competitive telecommunications services providers certified pursuant to ORS 759.020, radio common**
 44 **carriers and interexchange carriers.**

45 *[(3)]* **(4) The commission annually shall review the surcharge and the balance in the Residential**

1 Service Protection Fund and may make adjustments to the amount of the surcharge to ensure that
2 the fund has adequate resources but that the fund balance does not exceed six months of projected
3 expenses.

4 [(4)] (5) Moneys collected pursuant to the surcharge [*shall*] **may** not be considered in any pro-
5 ceeding to establish rates for telecommunication service.

6 [(5)] (6) The commission shall direct telecommunications public utilities to identify separately
7 in bills to customers for service the surcharge imposed pursuant to this section.

8 **SECTION 2. The amendments to section 7, chapter 290, Oregon Laws 1987, by section 1**
9 **of this 2011 Act become operative January 1, 2012.**

10 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
12 **on its passage.**

13

House Bill 2075

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Military Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes alternative methods for telecommunications provider to satisfy requirement to collect and remit tax on customer access to 9-1-1 emergency reporting system from prepaid telecommunications service customers. Defines terms.

A BILL FOR AN ACT

1
2 Relating to 9-1-1 emergency reporting system; creating new provisions; and amending ORS 403.105,
3 403.135, 403.200, 403.210, 403.220, 403.225 and 403.230 and section 4, chapter 5, Oregon Laws
4 2002 (first special session).

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 403.105 is amended to read:

7 403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context requires otherwise:

8 (1) "Account" means the Emergency Communications Account **established under ORS**
9 **403.235**.

10 (2) "Central office" means a utility that houses the switching and trunking equipment serving
11 telephones in a defined area.

12 (3) "**Customer**" means a person that has telecommunications service with access to the
13 **9-1-1 emergency reporting system through local exchange service, cellular service, fixed**
14 **interconnected voice over Internet protocol service or other wired or wireless means**.

15 [(3)] (4) "Department" means the Department of Revenue.

16 [(4)] (5) "Emergency call" means a [*telephone*] request **for service to a public safety answering**
17 **point that is communicated through local exchange service, cellular service, fixed intercon-**
18 **connected voice over Internet protocol service or other wired or wireless means and** that results
19 from a situation in which prompt service is essential to preserve human life or property.

20 [(5)] (6) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a net-
21 work, database and on-premises equipment that provides automatic display of the incoming tele-
22 phone number and address in the designated public safety answering point at the time of receiving
23 an incoming 9-1-1 call.

24 [(6)] (7) "Exchange access services" means:

25 (a) Telephone exchange access lines or channels that provide local access by a [*subscriber*]
26 **customer** in this state to the local telecommunications network to effect the transfer of information;
27 and

28 (b) Unless a separate tariff rate is charged therefor, any facility or service provided in con-
29 nection with the services described in paragraph (a) of this subsection.

30 (8) "**Fixed interconnected voice over Internet protocol service**" means a telecommuni-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **cations service that utilizes an Internet protocol to enable a customer to participate in**
2 **real-time two-way voice communication.**

3 [(7)] (9) “Governing body” means the board of county commissioners of a county, city council
4 of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1
5 jurisdiction.

6 [(8)] (10) “Local government” has the meaning given that term in ORS 190.710.

7 **(11) “Prepaid telecommunications service” means any telecommunications service paid**
8 **for by a customer prior to activation or use of the service.**

9 [(9)] (12) “Provider” means a utility or other vendor or supplier of telecommunications service
10 or equipment that provides telecommunications **service** with access to the 9-1-1 emergency reporting
11 system through local exchange service, cellular service, **fixed interconnected voice over Internet**
12 **protocol service** or other wired or wireless means.

13 [(10)] (13) “Public or private safety agency” means any unit of state or local government, a
14 special-purpose district or a private firm that provides or has authority to provide fire-fighting, po-
15 lice, ambulance or emergency medical services.

16 [(11)] (14) “Public safety answering point” means a 24-hour communications facility established
17 as an answering location for 9-1-1 calls originating within a given service area. A “primary public
18 safety answering point” receives all calls directly from the public. A “secondary public safety an-
19 swering point” [only] receives calls **only** from a primary public safety answering point on a transfer
20 or relay basis.

21 [(12)] “Subscriber” means a person who has telecommunication access to the 9-1-1 emergency re-
22 porting system through local exchange service, cellular service or other wired or wireless means.]

23 **(15) “Telecommunications” means a full duplex method of providing the ability to make**
24 **real-time two-way voice communication initiated, received or terminated through local ex-**
25 **change service, cellular service, fixed interconnected voice over Internet protocol service or**
26 **other wired or wireless means.**

27 [(13)] (16) “TTY” means a telephone-typewriter used by an individual with a hearing or speech
28 impairment to communicate with another device or individual.

29 [(14)] (17) “Utility” means a utility, as defined in ORS 759.005, a telecommunications carrier, as
30 defined in ORS 133.721, a municipality or any provider of exchange access services.

31 [(15)] (18) “Vendor” means a person providing telephone customer premises equipment or
32 equipment specific to the operation of enhanced 9-1-1 telephone service.

33 [(16)] (19) “9-1-1 emergency reporting system” means a telephone service that provides the users
34 of a public telephone system the ability to reach a primary public safety answering point by calling
35 9-1-1.

36 [(17)] (20) “9-1-1 jurisdiction” means:

37 (a) An entity created under ORS chapter 190;

38 (b) A county service district established under ORS chapter 451 to provide an emergency com-
39 munications system;

40 (c) An emergency communications district created under ORS 403.300 to 403.380; or

41 (d) A group of public or private safety agencies [who] **that** have agreed in writing to jointly plan
42 the installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

43 [(18)] (21) “9-1-1 service area” means the geographical area that contains the entire central of-
44 fice serving area from which the primary public safety answering point will have the capability to
45 answer calls placed to 9-1-1.

1 **SECTION 2.** ORS 403.200 is amended to read:

2 403.200. (1) There is imposed on each paying retail [*subscriber who has telecommunication ser-*
3 *vices*] **customer that has telecommunications service** with access to the 9-1-1 emergency report-
4 ing system a tax equal to 75 cents per month. The tax must be applied on a telecommunications
5 circuit designated for a particular [*subscriber*] **customer**. One [*subscriber*] **customer** line must be
6 counted for each circuit that is capable of generating usage on the line side of the **public** switched
7 **telephone** network regardless of the quantity or ownership of customer premises equipment con-
8 nected to each circuit.

9 (2) For providers of central office based services, the tax must be applied to each line that has
10 unrestricted connection to the **public** switched **telephone** network. Those central office based ser-
11 vice lines that have restricted connection to the **public** switched **telephone** network must be
12 charged based on software design in the central office that restricts the number of station calls to
13 and from the network. [*For cellular, wireless or other radio common carriers, the tax applies on a per*
14 *instrument basis and only if the subscriber's*]

15 (3) **Except for prepaid telecommunications service, the tax shall be assessed on each**
16 **customer connection for cellular, wireless, fixed interconnected voice over Internet protocol**
17 **or other radio common carriers. The tax applies only if the customer's** place of primary use,
18 as defined and determined under 4 U.S.C. 116 to 126, is within this state.

19 (4) **For customers that purchase prepaid telecommunications service or other customers**
20 **that are not billed periodically for telecommunications service, the amount charged by the**
21 **provider must include 75 cents for each monthly period during which the customer is au-**
22 **thorized to access the prepaid telecommunications service. A provider is deemed to have met**
23 **its obligation to collect the tax if the provider collects and remits the tax using one of the**
24 **following options:**

25 (a) **On a monthly basis, the provider shall collect an amount equal to the tax from each**
26 **active prepaid telecommunications service customer that is authorized to access the service**
27 **and whose account balance is equal to or greater than the tax; or**

28 (b) **If the provider cannot determine with reasonable specificity the number of prepaid**
29 **telecommunications service customers that are authorized to access the service, the pro-**
30 **vider shall determine, on a monthly basis, the number of prepaid telecommunications service**
31 **customers by dividing the provider's total intrastate monthly income from prepaid telecom-**
32 **munications service customers by the average income from each prepaid telecommunications**
33 **service customer of the national prepaid telecommunications service industry and multiply**
34 **the calculated number of prepaid telecommunications service customers by the amount of**
35 **the tax.**

36 [(2)] (5) The [*subscriber*] **customer** is liable for the tax imposed by this section.

37 [(3)] (6) The amounts of tax collected by the provider are considered as payment by the [*sub-*
38 *scriber*] **customer** for that amount of tax.

39 [(4)] (7) Any return made by the provider collecting the tax must be accepted by the Department
40 of Revenue as evidence of payments by the [*subscriber*] **customer** of amounts of tax so indicated
41 upon the return.

42 **SECTION 3.** Section 4, chapter 5, Oregon Laws 2002 (first special session), as amended by sec-
43 tion 1, chapter 4, Oregon Laws 2002 (third special session), and section 1, chapter 629, Oregon Laws
44 2007, is amended to read:

45 **Sec. 4.** [(1)] Taxes imposed under ORS [401.792] **403.200** apply to [*subscriber*] **customer** bills is-

1 sued on or after January 1, 2002, and before January 1, 2014.

2 [(2) Taxes imposed under ORS 401.792 on or after January 1, 2002, and before May 13, 2002, are
3 due and payable by the subscriber to the provider on or before 20 days after the first day of the month
4 following May 13, 2002. Taxes that are not paid by the subscriber to the provider within the time re-
5 quired shall bear interest at the rate established under ORS 305.220 for each month, or fraction of a
6 month, from the date that is 20 days after the first day of the month following May 13, 2002, until
7 paid.]

8 [(3) Unless previously remitted, taxes that are paid to the provider under subsection (2) of this
9 section shall be remitted by the provider to the Department of Revenue at the time and in the same
10 manner as taxes imposed under ORS 401.792 for the first month following May 13, 2002, are remitted
11 to the department.]

12 **SECTION 4.** ORS 403.135 is amended to read:

13 403.135. (1) Each telecommunications utility that provides exchange access service or radio
14 communications service and that provides automatic telephone number identification to public safety
15 answering points may not block the number of the calling party from being forwarded on 9-1-1 calls.

16 (2) Automatic telephone number identifications received by public safety answering points are
17 confidential and are not subject to public disclosure unless and until an official report is written
18 by the public or private safety agency and that agency does not withhold the telephone number
19 under ORS 192.410 to 192.505 or other state and federal laws. The official report of a public safety
20 answering point may not include nonpublished or nonlisted telephone numbers. The official report
21 of a public or private safety agency may not include nonpublished or nonlisted telephone numbers.
22 Nonpublished or nonlisted telephone numbers are not otherwise subject to public disclosure without
23 the permission of the [subscriber] **customer**.

24 (3) A telecommunications utility is not subject to an action for civil damages for providing in
25 good faith confidential or nonpublic information, including nonpublished and nonlisted [subscriber]
26 **customer** information, to emergency services providers who are responding to emergency calls
27 placed to a 9-1-1 or an enhanced 9-1-1 emergency reporting system or notifying the public of an
28 emergency. This subsection does not compel a telecommunications utility to provide nonpublished
29 and nonlisted [subscriber] **customer** information directly to emergency services providers or law
30 enforcement agencies prior to placement of an emergency call to a 9-1-1 or an enhanced 9-1-1
31 emergency reporting system without process of law. [Subscriber] **Customer** information acquired by
32 a 9-1-1 jurisdiction for the purpose of enhancing a 9-1-1 emergency reporting system is not subject
33 to public disclosure and may not be used by other public agencies except:

34 (a) To respond to a 9-1-1 call; or

35 (b) To notify the public of an emergency by utilizing an automated telephone notification system
36 if a telecommunications utility has provided [subscriber] **customer** information to the 9-1-1 juris-
37 diction or emergency services provider.

38 **SECTION 5.** ORS 403.210 is amended to read:

39 403.210. Every provider [responsible for the collection of] **required to collect** the tax imposed by
40 ORS 403.200 to 403.230 shall keep records, render statements, make returns and comply with rules
41 adopted by the Department of Revenue with respect to the tax. Whenever in the judgment of the
42 department it is necessary, the department may require the provider or [subscriber] **customer**, by
43 notice served upon that person by first-class mail, to make returns, render statements or keep re-
44 cords sufficient to show whether there is tax liability under ORS 403.200 to 403.230.

45 **SECTION 6.** ORS 403.220 is amended to read:

1 403.220. (1) If the amount paid by the provider to the Department of Revenue under ORS 403.215
2 exceeds the amount of tax payable, the department shall refund the amount of the excess with in-
3 terest thereon at the rate established under ORS 305.220 for each month or fraction of a month from
4 the date of payment of the excess until the date of the refund. The department may not make a re-
5 fund to a provider *[who]* **that** fails to claim the refund within two years after the due date for filing
6 of the return with respect to which the claim for refund relates.

7 (2) A *[subscriber's]* **customer's** exclusive remedy in a dispute involving tax liability is to file a
8 claim with the department.

9 **SECTION 7.** ORS 403.225 is amended to read:

10 403.225. (1) Every provider required to collect the tax imposed by ORS 403.200 to 403.230 is
11 deemed to hold the same in trust for the State of Oregon and for the payment thereof to the De-
12 partment of Revenue in the manner and at the time provided by ORS 403.215.

13 (2) If the provider required to collect the tax fails to remit any amount deemed to be held in
14 trust for the State of Oregon or if the *[subscriber]* **customer** fails to pay the tax, the department
15 may enforce collection by the issuance of a distraint warrant for the collection of the delinquent
16 amount and all penalties, interest and collection charges accrued thereon. The warrant is issued and
17 proceeded upon in the same manner and has the same force and effect as is prescribed with respect
18 to warrants for the collection of delinquent income taxes.

19 **SECTION 8.** ORS 403.230 is amended to read:

20 403.230. (1) Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and
21 316 as to the audit and examination of reports and returns, determination of deficiencies, assess-
22 ments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and ap-
23 peals to the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200 to 403.230 the
24 same as if the tax were a tax imposed upon or measured by net income. The provisions apply to the
25 *[subscriber]* **customer** liable for the tax and to the provider required to collect the tax. As to any
26 amount collected and required to be remitted to the Department of Revenue, the tax is considered
27 a tax upon the provider required to collect the tax and that provider is considered a taxpayer.

28 (2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose infor-
29 mation received under ORS 403.200 to 403.230 to the Public Utility Commission to carry out the
30 provisions of chapter 290, Oregon Laws 1987.

31 (3) The Public Utility Commission may disclose information obtained pursuant to chapter 290,
32 Oregon Laws 1987, to the Department of Revenue to administer the tax imposed under ORS 403.200
33 to 403.230.

34 **SECTION 9.** The amendments to ORS 403.105, 403.135, 403.200, 403.210, 403.220, 403.225 and
35 403.230 and section 4, chapter 5, Oregon Laws 2002 (first special session), by sections 1 to 8
36 of this 2011 Act apply to monthly periods of telecommunications service that begin on or
37 after the effective date of this 2011 Act.

38

Exhibit 15

Federal Communications Commission

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

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

Federal Communications Commission

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.

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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 though 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.

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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